

Exhibit DIDP A1



New gTLD Application Submitted to ICANN by: DotMusic Limited

Application Downloaded On: 16 May 2014

String: MUSIC

Application ID: 1-1115-14110

Applicant Information

1. Full legal name

[DotMusic Limited](#)

2. Address of the principal place of business

Contact Information Redacted

3. Phone number

Contact Information Redacted

4. Fax number

Contact Information Redacted

5. If applicable, website or URL

<http://music.us>

Primary Contact

6(a). Name

[Constantinos Roussos](#)

6(b). Title

[Founder](#)

6(c). Address

6(d). Phone Number

Contact Information Redacted

6(e). Fax Number

6(f). Email Address

Contact Information Redacted

Secondary Contact

7(a). Name

Tina Dam

7(b). Title

COO

7(c). Address

7(d). Phone Number

Contact Information Redacted

7(e). Fax Number

7(f). Email Address

Contact Information Redacted

Proof of Legal Establishment

8(a). Legal form of the Applicant

Limited Liability Company (Ltd)

8(b). State the specific national or other jurisdiction that defines the type of entity identified in 8(a).

Cyprus Companies Law Republic of Cyprus, Ministry of Commerce, Industry and Tourism
Department of Registrar of Companies and Receiver, Nicosia

8(c). Attach evidence of the applicant's establishment.

Attachments are not displayed on this form.

9(a). If applying company is publicly traded, provide the exchange and symbol.

9(b). If the applying entity is a subsidiary, provide the parent company.

9(c). If the applying entity is a joint venture, list all joint venture partners.

Applicant Background

11(a). Name(s) and position(s) of all directors

Name	Position

Constantinos Roussos	Managing Director
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11(b). Name(s) and position(s) of all officers and partners

Name	Position
Tina Dam	COO

11(c). Name(s) and position(s) of all shareholders holding at least 15% of shares

Name	Position
Constantinos Roussos	Managing Director

11(d). For an applying entity that does not have directors, officers, partners, or shareholders: Name(s) and position(s) of all individuals having legal or executive responsibility

Applied-for gTLD string

13. Provide the applied-for gTLD string. If an IDN, provide the U-label.

MUSIC

14A. If applying for an IDN, provide the A-label (beginning with "xn--").

14B. If an IDN, provide the meaning, or restatement of the string in English, that is, a description of the literal meaning of the string in the opinion of the applicant.

14C1. If an IDN, provide the language of the label (in English).

14C2. If an IDN, provide the language of the label (as referenced by ISO-639-1).

14D1. If an IDN, provide the script of the label (in English).

14D2. If an IDN, provide the script of the label (as referenced by ISO 15924).

14E. If an IDN, list all code points contained in the U-label according to Unicode form.

15A. If an IDN, upload IDN tables for the proposed registry. An IDN table must include:

1. the applied-for gTLD string relevant to the tables,
2. the script or language designator (as defined in BCP 47),
3. table version number,
4. effective date (DD Month YYYY), and
5. contact name, email address, and phone number.

Submission of IDN tables in a standards-based format is encouraged.

15B. Describe the process used for development of the IDN tables submitted, including consultations and sources used.

15C. List any variants to the applied-for gTLD string according to the relevant IDN tables.

16. Describe the applicant's efforts to ensure that there are no known operational or rendering problems concerning the applied-for gTLD string. If such issues are known, describe steps that will be taken to mitigate these issues in software and other applications.

DotMusic has carefully examined the applied-for string "MUSIC" and found that deployment of it will not cause adverse operational, rendering issues, or general user-confusion issues due to visual similarity with existing TLDs/ISO3166 lists/ICANN reserved list of names & list of ineligible strings.

However some non-adverse issues exist and mitigation plans are developed for them to ensure a careful and a safe introduction, as follows:

1. Application software is not consistent in their functionality across TLDs, including for example:
 - Length of TLD, where some software was programmed to only accept email or web strings ending in .com, or perhaps of the length of 2 or 3 characters.
 - Name completion, where when you enter "example" in a browser bar you get "example.com" or diversion to a search engine.
 - Display of A-labels for SLDs as opposed to the U-label entered or clicked on and hence expected by the user.
 - Other affirmative decisions based on trusting a certain TLD, domain type, and/or management of the subdomains of the TLD, where some could result in blocking the TLD and all its subdomains.

Jointly these issues results in non-consistent user-experience across applications. Some are historic and simple information will help solve them; the issue with TLDs longer than 2 or 3 characters that was a big issue in the 2000-01 new TLDs but now largely eliminated; other has to do with trust in the TLD Policies.

DotMusic staff has worked directly with all ICANN projects concerning the Universal Acceptance of TLDs since 2003, and will continue. DotMusic has initiated an outreach campaign communicating with Browsers and Search Engine Operators to provide information about the .MUSIC TLD mission, registration policies associated protection mechanism. DotMusic staff has and will participate in application-focused events to mitigate the issues and thereby provide a consistent approach for .MUSIC registrants and users. DotMusic takes full responsibility for any such issues; will provide information for registrars and work jointly with the gTLD stakeholders to enable general global acceptance of all TLDs.

2. Visual Confusion

DotMusic has conducted due diligence in comparing the string "music" toward any existing TLDs, future ccTLDs, 3-character country codes per the ISO list, reserved and otherwise ineligible strings per the ICANN Applicant Guidebook, and against any country- or territory names. .MUSIC is represented in standard ASCII, fulfills technical standards and due to the length, construction, and meaning of the string, we have found that it is not conflicting with any of the restrictions placed by ICANN. We have also found that the string does not relate confusingly to a country/regional/geographic name.

As a result the TLD is safe for delegation and will not create adverse effects for registrants and users of the domain name under it.

17. OPTIONAL.

Provide a representation of the label according to the International Phonetic Alphabet (<http://www.langsci.ucl.ac.uk/ipa/>).

18A. Describe the mission/purpose of your proposed gTLD.

The .MUSIC Mission/Purpose is:

- Creating a trusted, safe online haven for music consumption & licensing
- Establishing a safe home on the Internet for Music Community ("Community") members regardless of locale or size
- Protecting intellectual property & fighting piracy
- Supporting Musicians' welfare, rights & fair compensation
- Promoting music and the arts, cultural diversity & music education
- Following a multi-stakeholder approach of fair representation of all types of global music constituents, including a rotating regional Advisory Committee Board working in the Community's best interest

The global Music Community includes both reaching commercial and non-commercial stakeholders. Details of Music Community Establishment can be found in question #20.

.MUSIC will effectively differentiate itself by addressing the key online usage issues of safety, trust, consistency, brand recognition as well as communicate site subject-matter: music-related content. The TLD will be exclusive to the Community and will incorporate enhanced safeguards and Use policies to protect creators, intellectual property and rights holders.

DotMusic will also provide non-registry services and activities which have been established through ongoing outreach efforts. Community members need to be able to distinguish themselves from illegal or unlicensed sites. Ensuring monies flow to rightful owners and the Music Community is critical to the .MUSIC Mission. Purpose-driven services and activities are:

1. Development of Music Community Social Network Premium Domain Channels (Channels) sorted by category types, e.g. genres. It will leverage Search Engine Optimization (SEO) best practices to improve .MUSIC website search result rankings. The objective is for .MUSIC domains to signal a badge of trust that enables search engines to provide music consumers more relevant and safer search results while reducing infringing and unlicensed rogue sites. Premium Channel development will also include a global Song Registry
2. Promoting arts and music through sponsorships, events and Music Community activities; Enriching society with artistic and cultural diversity;
3. Advancing music education and the study of music in school curriculum by donating proceeds of domain registrations to relevant causes
4. Re-inventing music discovery and search innovation by leading the way to establish the Industry standard for official music sites to benefit the at-large global Music Community and the Internet
5. Enabling legal music licensing via a global Song Registry akin to the International Music Registry (IMR - www.wipo.int/imr) & Global Repertoire Database (GRD - www.globalrepertoiredatabase.com / International Copyright Enterprise) initiatives.

The Mission/Purpose has been established through interactions with the Community via numerous outreach activities and upon experiences gained in previous ICANN new gTLD introductions. The Mission/Purpose is consistent with ICANN's Affirmation of Commitments (AoC) and Basic Principles of the IMR with participants including RIAA, IFPI, SCAPR, ACTRA, SAMRO, IRSC, ECAD, CIAM). These include:

- The "vital importance of transparency, openness and non-discrimination." (www.internationalmusicregistry.org/portal/en/basic_principles.html)
- "Ensuring accountability, transparency and the interests of global Internet users", "enhancing the operational stability, reliability, resiliency, security, and global interoperability of the DNS" and "promoting competition, consumer trust, and consumer choice" while "adequately addressing consumer protection, malicious abuse, and rights protection issues" (www.icann.org/en/about/agreements/aoc/affirmation-of-commitments-30sep09-en.htm)

DotMusic Mission/Purpose guiding principles:

TRANSPARENCY OPENNESS & ACCOUNTABILITY

DotMusic has been an accessible and transparently visible .MUSIC applicant since 2008 communicating its intentions publicly at music events, online through its website and social media outreach, and through mainstream/non-mainstream media. The .MUSIC registration policies and protection mechanisms have been developed using a bottom-up, multi-stakeholder methodology with input from international Music Community members in both the commercial and non-commercial sector.

DotMusic serves the Community without conflicts of interest and is accountable to the Community by establishing an Advisory Committee & Policy Board with representation from each constituency in the Community. The Committee will advise and provide perspective on .MUSIC issues such as broad policy matters and introductions of new services to meet Community needs.

INTERNATIONAL COMMUNITY PARTICIPATION, COMMUNICATION AND OUTREACH

Since 2008, DotMusic has participated in over one hundred public events globally (www.music.us/events.htm), including public speaking engagements, keynote addresses, major music and domain conferences, festivals, events and expos; earned media (broadcast, online and print) in major mainstream publications, online press, and thousands of blog and social media mentions; over 1.5 million emails of support; top search engine results for .MUSIC site(s); and over 5 million social media followers; sponsored major Music Community events globally to explain the intended benefits of the .MUSIC TLD, requesting support and letters of intent or interest by partners or Music Community Member Organizations (mCMO) for this .MUSIC application.

Specific details of these activities can be found in response to question 18b(vi). Support letters are attached in response to question 20f (Updated list: www.music.us/letters). .MUSIC is trademarked in over 20 countries; has been using the brand in commerce (<http://music.us/commerce>), advertising and sponsorships, in domain registrations as an authorized reseller, merchandising and other commercial activities.

STANDARDS COMPLIANCE, SECURITY, RESILIENCY, AND STABILITY

Afilias is the DNS Registry provider for .MUSIC. Details of technical and operational capabilities matching the .MUSIC mission are provided in responses to questions #24-44.

COMPETITION, INNOVATION, FAIRNESS, AND CONSUMER CHOICE

Balanced domain registration restrictions and a broad Music Community definition ensures the entire Music Community can register .MUSIC domains, provides fairness in .MUSIC domain availability, advantaged branding position, avoid anti-competitive concerns and anti-trust actions.

The Premium Channels will maximize the competitive landscape and innovation in both the music and domain space.

INTELLECTUAL PROPERTY PROTECTION AND TRUST

In consultation with major music constituents, including multiple Coalitions (such as a Coalition that include the RIAA, ASCAP, BMI, SESAC, IFPI, A2IM, FIM, CISAC, IMPALA, NMPA, SABAM, FIM and others), DotMusic has developed policies to protect intellectual property, fight piracy and ensure .MUSIC domains are allocated in a fair method so that music consumers and Internet users are assured the highest level of trust and authenticity when they visit a .MUSIC domain.

A Global Protected Marks Lists (GPML) will reserve all major music brands and established artists, such as RIAA-certified platinum-selling bands.

Phased launches provides rights holders a first-come in the .MUSIC Sunrise, auction of multiple initial landrush domain inquiries, and eventually allows all stakeholders of the Community to register. All registrants must adhere to restricted Use, Name and Anti-Abuse policies that will be monitored to prevent bad practices harming the Music Community.

Dispute mechanisms, compliance efforts, and data validation processes will provide an added level of trust.

DotMusic will conduct reviews of the applicability, usability, overall Community satisfaction. Results will be provided to the Music Community publicly for feedback and we look forward to providing review results and expertise in the ICANN Post-Launch

18B. How do you expect that your proposed gTLD will benefit registrants, Internet users, and others?

.MUSIC will benefit the registrants and Internet users by providing an immediately-identifiable exclusive domain for the Music Community to use as their online home. Registrants will have the opportunity to register their preferred domain under .MUSIC which might not be available today under .COM or other preferred TLDs.

(i) The .MUSIC goal is to provide an exclusive, trusted, safe music-branded domain for the Music Community. .MUSIC will enable the Community to project identification, accountability and transparency to Internet users under a unique, music-themed domain.

TRUSTED gTLD

Trust will be achieved via protection policies and associated compliance functions to increase legal music consumption and ensure monies flow to rightful owners not pirates. Relevant, trusted content will enable search engines to rank .MUSIC domains higher in music-related searches than illegal sites.

PREMIUM CHANNELS

DotMusic has conducted an extensive communications outreach campaign and research activities within the Community to identify needs for value-added services beyond .MUSIC domains. It has been affirmed that the Community has a need for (i) a faster, easier and simpler way to license songs on a global basis and (ii) differentiated online resources of information about music, containing regional, national and local Community member information, powered by their associated dynamic content, services or products.

Premium Channels will offer opportunities to promote cultural diversity and unique music content. The level of information and content shared in the Premium Channels will be at the sole discretion of registrants. Registrants can promote themselves, their content, share contact information, communicate, network and engage in commerce with music consumers and each other. Unlike using search engines, the Premium Channels will provide Internet users a quick and intuitive search mechanism through direct navigation discovery. For example, a music consumer searching for reggae music can directly visit "reggae.MUSIC" to find registrants that offer reggae-related music, content, services and products. Premium Channels will:

- Promote Community members
- Increase legal commerce/business/collaboration
- Facilitate the sharing of contact information & enable more efficient communication
- Provide a quick and intuitive reference to music-related content through direct navigation
- Offer networking opportunities & increased exposure
- Promote cultural diversity, the arts & music education
- Differentiate Community members from each other
- Promote interaction, communication & support amongst the Community
- Promote music innovation

The Premium Channels will also include the development of a global Song Registry to facilitate a faster, easier and simpler way to legally license registrant songs.

(ii) .MUSIC will advance competition, differentiation and innovation in many ways. It will provide competition to TLDs that Community members might otherwise choose. .MUSIC domains restricted only to the Community will provide members branding differentiation along with the opportunity of registering their preferred domain under a self-explanatory music-themed TLD that clearly identifies them.

An exclusive and uniquely identifiable .MUSIC TLD will provide the Community differentiation that also benefits users who are searching for music-related content from international regions. DotMusic will provide Premium Channels and a Song Registry where the Community and Internet users can network, share information and engage in commerce in a trusted, secure ecosystem - a safe haven for legal music consumption and song licensing ensuring monies flow to the Community not unlicensed sites.

.MUSIC will compete with existing TLDs and be aligned with the FCC on principles affirming that "free and open competition benefits consumers and the global community by ensuring lower prices, new and better products and services, and greater consumer choice than occurs under monopoly conditions. A competitive market promotes innovation by rewarding producers that invent, develop, and introduce new and innovative products and production processes. By doing so, the wealth of the society as a whole is increased (FCC, Competition in Telecommunications Services, www.fcc.gov/connectglobe/sec5.html)."

Through its value chain, DotMusic will prevent TLD commoditization and achieve a competitive advantage by developing a unique differentiated TLD with Premium Channels offering registrants a more compelling value proposition than existing TLDs.

Stimulating competition and innovation is paramount to DotMusic's Mission. The .MUSIC rotating, all-inclusive, global multi-stakeholder Advisory Committee and Policy Board will not only represent the interests of all constituents but will also ensure any policy incorporated is consistent with the .MUSIC Use Policy and Mission/Purpose benefitting a multi-stakeholder model of neutral, equal and fair representation deterring anti-trust/anti-competitive practices.

.MUSIC will be run in an all-inclusive manner serving the global Community as a critical public resource benefitting and empowering all constituents in a non-discriminatory and fair manner irrespective of size, locale or commercial/non-commercial status.

To mitigate any anti-trust or privacy issues associated with registrant user data (such as highly-sensitive private or trade proprietary information) that compromises the confidentiality of Community members, DotMusic will incorporate Community membership eligibility restricted only to members verifying themselves as Community members based on NAICS/ISIC classifications and agreeing to Community-focused Use policies and dispute resolution/takedown mechanisms to benefit the .MUSIC Mission/Purpose and multi-stakeholder mission and to protect DotMusic from privacy and monopoly laws. Any violation of the membership criteria, Use and other Policies might lead to the cancellation of membership status, including domain takedown if deemed appropriate.

Community members will be able to use their membership credentials to be included in the uniquely-classified Premium Channels that are sorted according to NAICS/ISIC classifications. For example, music publishers (NAICS code 512230) will be able to organically self-categorize themselves in a highly relevant manner and be included in the Publishers.MUSIC Premium Channel using their membership credentials to participate.

DotMusic will also stimulate innovation through intellectual property (IP) protection (National Economic Council, A Strategy for American Innovation: Securing our Economic Growth & Prosperity; www.whitehouse.gov/innovation/strategy, 2011). By promoting innovation and protecting IP rights DotMusic will harness the inherent creativity of its Community.

Innovation, the process through which new ideas are generated and commercialized, is a key force behind Music Community global economic growth and competitiveness and the creation of new and better ways of producing goods/services (Maddison, Angus, The World of Economy, Organization for Economic Co-operation & Development, 2006).

Innovation protected by IP rights is paramount to creating new music jobs and growing music exports having a positive pervasive effect on the entire Music Community with benefits flowing both upstream (supply chain) and downstream (distribution) to every constituent fueling creativity, commercial distinctiveness and promoting open, competitive markets. DotMusic's incorporation of enhanced safeguards will protect creators from unlawful use of their work and be consistent with ESA/USPTO perspectives outlining that effective IP protection spurs innovation, competition, and technology advancement in markets in which IP is transacted (ESA & USPTO, U.S Department of Commerce, Intellectual Property & U.S Economy, www.esa.doc.gov/sites/default/files/reports/documents/ipandtheuseconomyindustriesinfocus.pdf, 2012).

DotMusic will:

- Harness an environment that promotes creation & innovation
- Protect creators from unauthorized IP infringement
- Facilitate legal exploitation of rights
- Stimulate new innovative music business models & licensing opportunities
- Enable a more efficient market

(iii) Traditional search engine results pages are agnostic whether music-related domains are legal or not. Despite the fact that there are less than 1000 legal music download stores on the web, the number of illegal sites significantly outnumber legal sites resulting in rampant, widespread music piracy and hundreds of thousands of monthly URL takedown requests. Piracy continues to adversely affect music sales and hurt the Community. However when visiting .MUSIC sites Internet users are provided with immediate music identification and a level of confidence and trust not available today.

Many legal music download stores do not offer songs directly through an open web browser but require consumers to use their proprietary software to access and buy songs. Since there are only a few search engine-friendly legal music sites to compete with illegitimate sites, most music-related search rankings are dominated by unlicensed sites. In many cases, 80% of artist-related top search engine results are infringing sites according to the IFPI: "Mass numbers of takedown notices are sent to search engines each month asking them to delist links to non-legal content. However, response times vary and delays still occur...there are also sometimes restrictions on the number of non-legal links that rights holders can notify. These need to be removed, and search engines should take measures to prevent notified infringing links re-appearing in results (www.digitalmusicnews.com/permalink/2012/120124search)."

Premium Channels will reduce exposure to pirated content to Internet users by serving secure and high quality relevant content to search engines to achieve top search engine results for a long tail of music-related keywords served by the differentiated, unique and niche Premium Channels incorporating local, national and regional searches. This type of search result ranking criteria is already implemented by search engines with existing TLDs (such as .DE for local content served to users in Germany).

Search engines will modify their algorithms to accommodate relevant, high quality and unique content, especially if it can be used as a filter to counter copyright-infringing sites and provide better search results.

.MUSIC domains can serve as trusted signals for search engines and used as filters for legal, licensed and safe music sites with relevant, quality content. .MUSIC domains will be validated to belong to Community members, who can only use the domains under Community-focused Policies. This way, Internet users will experience trusted interactions with registrants and be confident that any interaction is with legitimate Community members.

(iv) DotMusic has implemented measures to protect IP rights in registrations under .MUSIC, and to ensure that .MUSIC domains are used in a manner benefitting the Community resulting in reducing bad behaviors that currently exist relating to IP infringement.

Policies are built to match Community needs based on Community feedback and experience from the previous ICANN new gTLD launches. They are established to ensure a higher security level for .MUSIC domains than what is considered standard requirements for gTLDs.

.MUSIC will be launched with all standard gTLD registration rules (See response 27 for .MUSIC lifecycle). DotMusic will also adhere to all ICANN-mandated rights protection mechanisms and consensus policies (See 20e response).

RESERVATION PROTECTION: Second-level names will be reserved per ICANN requirements, including country-territory names (see response 22) and names for registry operations.

INNOVATIVE PREMIUM NAMES RESERVATIONS: Premium name reservations to develop the Premium Channels (e.g Rock.MUSIC) to promote registrants and enable music discovery.

RIGHTS PROTECTION & NOTIFICATIONS SYSTEM:

- Globally Protected Marks List (GPML) will reserve and protect domains of major music brands and established artists, such as RIAA-certified platinum-selling bands against cybersquatting.
- Trademark Clearing House will be implemented per ICANN specifications.
- Names Selection Policy ensuring that only music-related names are registered as domains under .MUSIC; restrictions:
 - 1) The name of (entire or portion of) the musician, band, company, organization, e.g. the registrant's "doing business as" name
 - 2) An acronym representing the registrant
 - 3) A name that recognizes or generally describes the registrant
 - 4) A name related to the mission or activities of the registrant

THREE TIME-RESTRICTED LAUNCH PHASES: (i) Sunrise for and to protect trademark holders (ii) Music Community Member Organization (MCMO) Landrush for registrants with demonstrated MCMO memberships (iii) a premium names Landrush period. Multiple applications for the same domain will be decided upon via a mini-auction after each phase. Following the completion of these phases the .MUSIC domain registration is available to the Community members on a first-come-first-serve availability (General registration).

USE POLICY for all domain registrants under .MUSIC regardless of the applicable launch phase; incorporated in the registration agreement for all registrants. The primary goal of the policy is to allow registrars and DotMusic to take down domains that violate Policies and IP rights (See response 20).

ANTI-ABUSE POLICY for all registrants under .MUSIC; incorporated in the registration agreement for all registrants to prevent malicious use of domains which can lead to security and stability issues for the registry, registrars, registrants and Internet users (See response 28).

REGISTRY DATA VALIDATION: DotMusic will validate elements of the received WHOIS data as a requirement for domain registration, also providing access to Premium Channels, such as the registrant's:

- Email address through validation links
- Phone number through validated PIN-codes

COMPLIANCE & ENFORCEMENT

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

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

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

The DRP's are required in the registrars' registration agreements with registrants. Proceedings must be brought by interested 3rd-parties in accordance with associated policies and procedures to dispute resolution providers.

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

(v) .MUSIC will use best practices around privacy and data protection. Afiliias, the back-end registry provider will administer specific WHOIS protections per response 26, and promote WHOIS accuracy per question 28 response.

Most Community members want to be discovered and have as much visibility and exposure as possible. DotMusic will provide this unique and branded visibility. The domain registration services and Premium Channel participation offered to registrants will be designed to respect the privacy of personally identifiable and confidential information, including applicable laws. Information provided by registrants for inclusion in Premium Channels will be publicly accessible. All other information provided by registrants to establish compliance with the Policies will remain private.

(vi) To meet the benefits described in responses to 18b (i-v) DotMusic has conducted ongoing outreach activities to serve the global Community.

Pursuant to its mission, DotMusic has been publicly conducting global outreach to the Community since 2008 to explain the intended benefits of .MUSIC, requesting support, letters of intent or interest by partners and MCMOs for .MUSIC.

A complete list of events relating to the ongoing outreach efforts can be found at www.music.us/events.htm. Extensive use of differentiated .MUSIC sites, social media presence, marketing and thousands of discussions/media mentions were conducted on the web in an open, publicly-accessible manner. Over 1,500,000 have signed the .MUSIC TLD Initiative petition. Support letters are attached in response to question 20f. The most updated list can be found on www.music.us/letters. Other outreach efforts include:

- Earned media (broadcast, online, print): Forbes, Billboard, Hollywood Reporter, Los Angeles Times, Washington Post, World Trademark Review (www.music.us/news.htm), other major mainstream publications, online press, and thousands of blogs/social media mentions.
- Google and Bing search engines have ranked the official DotMusic website (www.music.us) on the top of search engine results for term "music" ((#23 Google, #25 Bing - March 6th, 2012), which is one of the most competitive keyword terms on the web according to Google Adwords (277m global searches on Google, costing advertisers about \$9k a day in clicks for top rankings www.music.us/adwords/google-adwords-keyword-music.jpg).
- The official DotMusic site ranks on the top of both Google's and Bing's search engines for TLD terms such as "DotMusic", "dot music", "music domain", "music TLD", "music gTLD", "music top-level domain", "music generic top level domain" (www.music.us/seo).
- Social media: Participation of over 5 million social media followers across the most popular

social media websites, active since 2009 with hundreds of thousands of communication/status updates for participants, including:
Myspace, the Internet's largest music artist community (4.2m friends: www.myspace.com/musicextension)
Facebook, the world's largest social media site (Over 100k likes on www.facebook.com/musicextension and www.facebook.com/dotmusic and about 5k group members on www.facebook.com/groups/46381289474)
Twitter, the world's largest micro-blogging site (200k+ followers on www.twitter.com/mus, about 50k followers on www.twitter.com/dotmusic, about 60k+ followers on www.twitter.com/musicextension, about 31k+ on www.twitter.com/dot_music, about 21k+ followers on www.twitter.com/musicdomain) and other social media sites.
DotMusic sponsored major Community events globally, including SxSW, Midem, Billboard, CMJ, Digital Music Forum, SF Music Tech, SoundCtrl, Social Media Week, ASCAP Expo, Popkomm, Miami Music Festival, Future of Music Policy Summit, Bandwidth, New Music Park Thing, and domain events such as ICANN meetings in Seoul/South Korea, Brussels/Belgium, Cartagena/Colombia. Outreach has spanned all geographical continents and segments of the Community. DotMusic will continue its global outreach throughout 2012 and beyond

18C. What operating rules will you adopt to eliminate or minimize social costs (e.g., time or financial resource costs, as well as various types of consumer vulnerabilities)? What other steps will you take to minimize negative consequences/costs imposed upon consumers?

(i)
In the three initial launch phases - Sunrise, mCMO Landrush and General Landrush - multiple applications will be resolved via auction. During the general availability stage domains will be allocated in a first come-first serve basis. Please refer to question 18b(iv) and 20e for more detail.

(ii)
The .MUSIC registration fee will adopt a moderate, competitive pricing point taking into consideration Community feedback and outreach, the TLD's premium value proposition, differentiation, security and safety concerns, and other significant factors such as:
1. Most Community members are price sensitive since they operate in a highly competitive, fragmented environment with decreasing average music consumer spending that is aggravated by rampant piracy and competition from other forms of entertainment and substitute products/services.
2. As illustrated by the McAfee's 2011 "Mapping the Mal Web" Report (http://us.mcafee.com/en-us/local/docs/MTMW_Report.pdf), pricing is one of the most influential factors considered by registrants aiming to conduct malicious activity and abuse. Low priced domains have a higher likelihood for abuse. Prices in the middle to higher end are enough of a sufficient financial barrier to entry to reduce the number of registrants offering low quality content not useful to most Internet users, such as parking pages. Premium pricing will also help reduce cybersquatting and piracy. Registrants are more likely to register a cheaper domain to conduct illegal activity since it is less financially risky.
3. A benchmark analysis of comparable gTLDs and ccTLDs existing today (Please refer to responses to questions 45-49 for assumptions).
DotMusic will not be low price leader in the domain space because low price leadership will have an adverse effect on DotMusic's objective to brand .MUSIC as a differentiated, value-added domain. Competing on price alone is not an effective strategy for DotMusic because it usually leads to commoditization and a low-margin business that relies primarily on the core benefit of the TLD: the branded music-themed meaning of a novelty domain extension. Adopting a moderate, competitive pricing strategy will complement DotMusic's goal to continually invest in the TLD to create innovative services, provide new offerings, opportunities and benefits to registrants beyond a branded TLD and achieve augmented and potential product differentiation. Furthermore, DotMusic's goal is to align consumer perception of a differentiated TLD with an optimal domain price that communicates the premium nature of .MUSIC, its unique value proposition and benefits.

The .MUSIC price will also include registrant participation in the .MUSIC Premium Channels. DotMusic will offer the Music Community an affordable domain to build a unique and exclusive presence online, ensuring the cost of the domain is optimally priced to prevent malicious behavior and abuse traditionally experienced in lower priced domains and domains that lack enhanced safeguards. Depending on the cost of doing business and other economic factors, DotMusic may from time to time increase or lower the wholesale price in accordance with the provisions of Section 2.10 of the New gTLD Registry Agreement. However, final registration prices to registrants will be determined by accredited registrars. Registrants will have the flexibility to register a domain for a period of 1, 2, 3, 5 or 10 years. DotMusic might choose to incorporate cost benefits in relation to advantageous pricing, introductory discounts, or bulk discounts to assist in increasing domain sales if needed to meet registry financial and operational needs, especially in the situation where the most likely projected registration volume (see responses to questions #45-50) is not met. In that situation, DotMusic will strongly consider implementing targeted marketing campaigns that include discounted prices.

Otherwise DotMusic does not have specific plans for advantageous pricing, introductory pricing, nor plans for any bulk registration discounts.

(iii)
DotMusic will not offer long term or permanent contracts (beyond that of the maximum term of 10 years) for domains. DotMusic has carefully considered the needs of the Music Community in setting its prices on its services using a value-based pricing strategy as opposed to cost-based pricing methods. Any price escalations or reductions will be reasonably justified and managed in accordance with the provisions of Section 2.10 of the New gTLD Registry Agreement.

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

.MUSIC and its Premium Channels offer a robust, cost-effective means for the Community to assert their identities online. DotMusic is committed to launch and manage .MUSIC in a responsible manner for the Community with enhanced safeguards. DotMusic's substantial activities since 2008 highlight the diligent preparation of this application to serve the Community's interest. This includes minimizing and eliminating social costs; establishing a better financial income stream for Community members; financially assisting by sponsoring Community causes, non-for profit organizations, events, conferences and educational activities; promoting legal music commerce; and assisting the Community in establishment of new improved innovative services to address their needs. Steps and plans incorporated by DotMusic to minimize negative costs upon consumers, registrants and Internet users include:

DISCOVERY, SEARCH ENGINE & NETWORK EFFECT BENEFITS

A more indirect minimization of social costs relates to registrants and users having an immediate benefit of easy recognition and discovery via the .MUSIC Premium Channels. Engagement through Premium Channel social networks increases business opportunities and minimizes marketing costs for registrants.

DotMusic's goal to replace top search rankings of illegal music sites will be tackled by implementing search engine optimization best-practices for Premium Channels that will also complement .MUSIC registrant sites. This will increase general brand awareness and instill trust in .MUSIC sites by creating a safe haven for music consumption and improving international music discovery.

ENHANCED SAFEGUARDS & FIGHTING PIRACY

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

STRATEGIC INNOVATION

- Fostering open innovation by building Premium Channels and developing a Premium Channel global Song Registry to enable easier, faster and simpler way to license music.

PURPOSE, VALUES & LEADERSHIP

- Creating an organizational culture with strong values and high integrity serving the Community and the public interest.
- Developing value-oriented, registrant-driven methods for measuring and recognizing performance while aligning management and leadership, culture and values, and strategy and vision with registrant customer-centricity.

CUSTOMER CENTRICITY

- Maintaining customer stickiness by simplifying and personalizing the TLD value proposition, enhancing Community engagement and complementing the network effect benefits offered by the diverse, targeted and niche Premium Channels.

GLOBAL MINDSET

- Expanding successfully across borders and cultures including launching language-based IDN channels to cater a multilingual growing Internet user base especially in regions with lower legal music penetration and consumption.

COMMUNITY & GOVERNANCE

- Enhancing the Advisory Committee & Policy Board's role in strategic planning, goal setting, initiating positive change and strengthening governance to ensure accountability, responsibility and ethical business practices in the public interest, while eliminating preventable social costs.
- Creating business and social value by adopting a shared values system of innovation that fosters successful interaction with key stakeholders, governments and non-government associations and promotes social responsibility towards the Community.
- DotMusic understands the difficulties faced by the content industries to cope with changes created by the digital revolution. DotMusic's neutral multi-stakeholder governance of equal representation of all music constituents is based on gaining stakeholder consensus to enable the development of a domain Industry standard in .MUSIC that serves registrants and Internet

users and assures that rightful entities can own and leverage their .MUSIC domain to eliminate cybersquatting and piracy issues, while building trust with consumers to ensure commercial activities are trusted and monies flow to the music community not pirates or unlicensed sites. - The .MUSIC Community, as established and delineated in Question 20, represents the majority of the overall Community and ensures that its expressions of support cover a balanced, diverse and representative blend of Community stakeholders, including constituents representing over 70 governments culture agencies and/or arts councils, over 35 countries' music information centers, music export offices, country-led music coalitions, digital distributors representing most of the music distributed on the leading legal music stores, music associations and organizations representing the interests of many Community members, and other entities. Refer to 20f for documented support from organizations representing a majority of the overall Community, including process and rationale behind expressions of support.

DOMAIN ALLOCATION, INDUSTRY STANDARDS & CONSUMER TRUST

DotMusic recognizes that many Community members do not own their domain names in .COM or other extensions because they were late to register their preferred domain name, were victims of cybersquatting or could not recover their domain from fans. This issue is prevalent for most popular artists that have a generic term as their name. DotMusic has incorporated enhanced safeguards, such as the Globally Protected Marks List to safeguard popular brands from cybersquatting, registration eligibility and use policies, and a MCMO domain allocation phase to benefit Community registrants. This way the .MUSIC domain will establish a new methodology of assigning domain names to the rightful owners. Consumers can type their favorite artistname.MUSIC directly in the browser bypassing Google and other search engines and ensuring music fans and consumers are accessing the legal, official artist site in the fastest and simplest way possible reducing Internet user search and time costs.

Officially licensed .MUSIC domains can give search engines a unique identifier and a signal of trust and relevancy not available today which can be used to achieve higher search results to help replace the proliferation of illegal rogue sites found in top of search results for music terms. This unique filter will help protect and benefit registrants, Internet users and instill trust in consumers since the DMCA has shown to be ineffective. Google URL takedown requests have more than doubled in less than a year, approaching about 300,000 URL removals a week. 5 out of the top 12 copyright owners requesting URL takedown requests are music entities (www.google.com/transparencyreport/removals/copyright/owners/?r=last-year). This problem does not only harm the Music Community. It harms other IP-driven communities, such as movies, software, games and books.

Community buy-in is critical to establish these legal standards to facilitate safer, trusted and enhanced commerce on the web while fighting piracy and unlicensed sites. The music-themed domain is built with usage polices that will enable taking down infringing sites, protecting trademarks and help the exploitation of copyrights by providing a safe haven for legal music distribution, consumption and licensing.

The goal is to create a secure Industry standard domain matching Community needs with enhanced safeguards not available in current TLDs. Standards save money and drive productivity. The music-themed TLD will be launched in an intuitive, simple manner to leverage the interoperability, effectiveness and efficiency of the open web and the DNS. By using the same standards communicating data becomes easier and cheaper ensuring more revenue is distributed across the whole digital music supply chain to the rightful entities not rogue sites. The DotMusic Song Registry will also benefit the Community by enabling registrants to legally license their works territorially in a simple, fast and easy way. This way IP can be utilized and commercialized more efficiently to assist the Community to better serve an entire music value chain globally.

INTEROPERABILITY & TLD UNIVERSAL ACCEPTANCE

DotMusic will work with leading browser/application/software/web-related developers and vendors to lift any artificial constraints relating to .MUSIC. Universal acceptance efforts will complement the TLD and its utility to Internet users and help fulfill the continued realization of the Internet's potential for communication and commerce. DotMusic will conduct outreach efforts to technology providers to help incorporate new TLD interoperability standards relating to:

- Browsers & DNS tools
- Registrars & RIR systems
- Network infrastructure
- Hosting & email
- Network management & security tools
- Applications
- Databases
- Hardware & devices

19. Is the application for a community-based TLD?

Yes

20A. Provide the name and full description of the community that the applicant is committing to serve. In the event that this application is included in a community priority evaluation, it will be scored based on the community identified in response to this question. The name of the community does not have to be formally adopted for the application to be designated as community-based.

The name of the community served is the "Music Community" ("Community"). The parentheses below reflect ICANN's Applicant Guidebook 4.2.3 Criterion Definitions; Delineation; Extension; Nexus; Uniqueness; Eligibility; Name Selection; Content and Use; Enforcement; Support; Opposition. DotMusic will use clear, organized, consistent and interrelated criteria to demonstrate Community Establishment beyond reasonable doubt and incorporate safeguards in membership criteria "aligned with the community-based Purpose" and mitigate anti-trust and confidentiality/privacy concerns by protecting the Community of considerable size/extension while ensuring there is no material detriment to Community rights/legitimate interests. Registrants will be verified using Community-organized, unified "criteria taken from holistic perspective with due regard of Community particularities" that "invoke a formal membership" without discrimination, conflict of interest or "likelihood of material detriment to the rights and legitimate interests" of the Community:

(i) Qualification criteria as delineated by recognized NAICS codes corresponding to Community member classification music entity types. This classification-based delineation will also be consistent with registrant Premium Channel membership criteria ("ELIGIBILITY")

(ii) Domain naming conditions ("NAME SELECTION")

(iii) Restrictions relating to domain usage and content ("CONTENT & USE")

(iv) Enforcement mechanisms to uphold Community Establishment and meet Nexus Criteria, consistent with our clear, organized delineation of the Community ("ENFORCEMENT")

The Community is a strictly delineated and organized community of individuals, organizations and business, a "logical alliance of communities of a similar nature ("COMMUNITY")", that relate to music: the art of combining sounds rhythmically, melodically or harmonically. "MUSIC" has no other significant meaning or name beyond the definition offered by popular dictionaries and encyclopedias that define "MUSIC" as relating to "combining sounds rhythmically, melodically or harmonically ("UNIQUENESS")." The Community corresponds to the community relating to "the art of combining sounds rhythmically, melodically and harmonically" ("IDENTIFY"). The Community is distinct, sharing similar needs and attitudinal and behavioral patterns in relation to music-related activities, music production and its consumption. The "MUSIC" string matches the name ("NAME") of the Community and is the established name by which the Community is commonly known by others, such as the traditional media using phrases such as the "MUSIC" artists, "MUSIC" producers and "MUSIC" publishers to classify commonly known Music Community entity types ("NEXUS"). "MUSIC" matches the name of the Community entirely and is unique since no-one commonly refers to classes relating to the "MUSIC" Community using alternative words to replace the established Community word "MUSIC" identifying the Community ("UNIQUENESS"). For example, using a "COMMUNITY string" plus "CLASS" methodology, no-one refers to "MUSIC" "ARTISTS" as "SONG" "ARTISTS." The string "MUSIC" clearly identifies the Community and is unique and rarely replaceable in the Community language context perspective. Also the "MUSIC" string is commonly used in classification systems such as ISMN, ISRC, ISWC, ISNI and Dewey. For example, the Dewey Decimal Classification system, published in 1876 (LONGEVITY;PRE-EXISTING), has code 780 relating to "MUSIC".

The Community served is defined as music stakeholders being structurally organized using pre-existing, strictly delineated classes ("DELINEATION") and recognized criteria to clearly organize the Community ("ORGANIZED") classified by:

- North American Industrial Classification System codes (NAICS) used by the Census Bureau (www.census.gov/eos/www/naics) and Federal statistical agencies as the classification standard for the purpose of collecting, analyzing, and publishing statistical data related to the U.S.
- United Nations International Standard Industrial Classification (ISIC) system (www.unstats.un.org/unsd/publication/seriesM/seriesm_4rev4e.pdf), to "delineate according to what is the customary combination of activities" (www.unstats.un.org/unsd/class/family/family2.asp?Cl=17), such as those representing the Community.

The Music Community is strictly delineated using established NAICS codes that align with the (i) characteristics of the globally recognized, organized Community, and (ii) .MUSIC global rotating multi-stakeholder Advisory Board model of fair representation, irrespective of locale, size or commercial/non-commercial status, organized with the following delineation (corresponding NAICS code in parenthesis):

- Musical groups and artists (711130)
- Independent music artists, performers, arrangers & composers (711500)
- Music publishers (512230)
- Music recording industries (512290)
- Music recording & rehearsal studios (512240)
- Music distributors, promoters & record labels (512220)
- Music production companies & record producers (512210)
- Live musical producers (711130)
- Musical instrument manufacturers (339992)
- Musical instruments & supplies stores (451140)
- Music stores (451220)
- Music accountants (541211)
- Music lawyers (541110)
- Musical groups & artists (711130)

- Music education & schools (611610)
- Music agents & managers (711400)
- Music promoters & performing arts establishments (711300)
- Music promoters of performing arts with facilities (711310)
- Music promoters of performing arts without facilities (711320)
- Music performing arts companies (711100)
- Other music performing arts companies (711190)
- Music record reproducing companies (334612)
- Music, audio and video equipment manufacturers (334310)
- Music radio networks (515111)
- Music radio stations (515112)
- Music archives & libraries (519120)
- Music business & management consultants (541611)
- Music collection agencies & performance rights organizations (561440)
- Music therapists (621340)
- Music business associations (813910)
- Music coalitions, associations, organizations, information centers & export offices (813920)
- Music unions (813930)
- Music public relations agencies (541820)
- Music journalists & bloggers (711510)
- Internet Music radio station (519130)
- Music broadcasters (515120)
- Music video producers (512110)
- Music marketing services (541613)
- Music & audio engineers (541330)
- Music ticketing (561599)
- Music recreation establishments (722410)
- Music fans/clubs (813410)

The Music Community's geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries ("EXTENSION") with a Community of considerable size with millions of constituents ("SIZE").

The Community has bought, sold, and bartered music for as long ("LONGEVITY") as it has been made (R. Burnett, International Music Industry, 1996 and P. Gronow, International History of the Recording Industry, 1998). The Community is a delineated network where production and distribution of music occur in a process relying on labor division and technology. Under such structured context music consumption becomes possible regardless whether the transaction is commercial and non-commercial (M. Talbot, Business of Music, 2002). The foundation for the structured and strictly delineated Community only resulted from the interplay between the growing music publishing business and an emerging public music concert culture in the 18th century ("PRE-EXISTING"). Consequently, music publishers and concert promoters assumed the function of institutional gatekeepers of the Music Community who decided which music reached consumers and in what form, thus setting the parameters within which creativity was able to unfold (P. Tschmuck, Creativity & Innovation in the Music Industry, Institute of Culture Management & Culture Science, 2006).

20B. Explain the applicant's relationship to the community identified in 20(a).

DotMusic is a member of:

- International Federation of Arts Councils & Culture Agencies (IFACCA) serving a global community of arts councils and government ministries of culture representing over 70 countries (www.ifacca.org)
- American Association of Independent Music (A2IM) serving the independent Music Community (www.a2im.org)
- National Association of Recording Manufacturers (NARM) the music business association formed in 1958 (www.narm.com)

DotMusic was founded in 2004 under the Music.us umbrella by Community member Constantine Roussos, an independent musician, songwriter and certified sound engineer, who also produced albums for artists such as Family of Snail, Katie Quinlan, Some Change from US, Pigeon's Rhythm and David Silverman. It was through his interactions with the Community that he recognized the opportunity for a safer and more trusted innovative, community-based music-themed TLD. He is also a member of the National Association of Recording Industry Professionals and other music organizations.

Other DotMusic team members include:

Robert Singerman: NARAS member with over 30 years of experience as an agent, manager, label executive, consultant, producer, venue programmer and music supervisor; represented R.E.M, Gipsy Kings, James Brown, Suzanne Vega, 10,000 Maniacs and others; directed the European Music Office for the European Commission (EU) and the French Music Export Office in the U.S; represents Brazilian music, funded by APEX, the Brazilian trade organization.

Ken Abdo: A known artist advocate; a life-long multi-instrumentalist/songwriter and former DJ; served as legal counsel to artists including Jonny Lang, Michelle Branch, Owl City and Hall & Oates.

Bob Donnelly: Music industry attorney with over 35 years of experience; 41-awarded platinum albums.

John Simson: A singer-songwriter; managed country artists who sold over 10 Million albums and won 6 Grammys; ex-director of SoundExchange, the first performing rights organization formed to

collect digital performance royalties for sound recording copyright owners & artists; co-founded the Washington Area Music Association; ex-president of the NARAS/Grammys D.C. chapter; National Trustee of the Academy; Board of the Alliance of Artists & Record Companies; member of the Folk Alliance and the Country Music Association.

Paul Bezilla: Bassist in various bands; entertainment lawyer for over 25 years; clients included Frank Sinatra, Cher, Quincy Jones, Warner Bros, and Disney.

DotMusic is the only Community member with advanced professional technical, policy, and operational TLD management experience led by DNS veteran Tina Dam to meet DotMusic's primary role: to launch, operate and maintain trusted Music Community-based TLD.

RELATION TO MUSIC COMMUNITY

Pursuant to its mission, DotMusic has been conducting extensive outreach to the Community since 2008 to brand itself and its mission to convey the benefits of .MUSIC and requesting Community support letters. Since 2008 DotMusic has led Music Community efforts to the ICANN community through dedicated participation at ICANN meetings and other DNS/new TLD related events. The mCMO domain allocation method during the Landrush phase was created by DotMusic to allow Community members to register through established Community organizations. During the General Registration phase the TLD is open to all Community members for registration but also restricted by Eligibility, Use and other Policies, including enhanced safeguards.

DotMusic has been a strong Community supporter and participant as demonstrated in its ongoing efforts to build a sustainable TLD with policies dedicated to match the needs of the Community using a multi-stakeholder model, while ensuring it is implemented in a manner fulfilling DNS and ICANN technical, political and legal requirements.

DotMusic has publicly branded itself in an open, transparent and accessible manner through differentiated .MUSIC-related sites, social media, online marketing and through tens of thousands of web discussions/media mentions. Over 1,500,000 have signed the .MUSIC Initiative petition; over 5 million have liked/followed DotMusic in popular social media sites; and a significant number of leading mCMOs have signed support/interest letters as demonstrated in response to question 20f.

Other activities include sponsorships of Community events such as SxSW, Midem, Billboard, CMJ, Digital Music Forum, SF Music Tech, SoundCtrl, Social Media Week, ASCAP Expo, Popkomm, Miami Music Festival, Future of Music Policy Summit, Bandwidth, New Music Park Thing and others.

Social Media presence includes:

- Myspace, the Internet's largest music artist community (4.2 million friends: www.myspace.com/musicextension)
- Facebook, the world's largest social media site (Over 100,000 likes on www.facebook.com/musicextension and www.facebook.com/DotMusic and about 5,000 group members on www.facebook.com/groups/46381289474)
- Twitter, the world's largest micro-blogging site (220,000+ followers on www.twitter.com/mus, about 50,000 followers on www.twitter.com/DotMusic, about 60,000+ followers on www.twitter.com/musicextension, about 31,000+ on www.twitter.com/dot_music, about 21,000+ followers on www.twitter.com/musicdomain) and other social media sites

DotMusic also branded itself through earned media including:

- Forbes, Billboard, Hollywood Reporter, Los Angeles Times, Washington Post, World Trademark Review (www.music.us/news.htm), other mainstream publications, online press and thousands of blogs and social media mentions
- Google and Bing search engines have ranked the official DotMusic site (www.music.us) on the top of search engine results for the term "music" ((#23 Google, #25 Bing - March 6th, 2012), one of the most competitive keyword terms on the web according to Google Adwords (277 million global searches on Google, costing advertisers over \$9k a day in clicks - www.music.us/adwords/google-adwords-keyword-music.jpg)
- The official DotMusic site ranks on the top of both Google's and Bing's search engines for terms such as "dotmusic", "dot music", "music domain", "music TLD", "music gTLD", "music top-level domain", "music generic top level domain" (www.music.us/seo)

A complete list of events relating to the ongoing outreach campaign can be found on www.music.us/events.htm

DotMusic will continue its active outreach and participation efforts in the Community and anticipates receipt of additional support letters from Community members throughout and beyond the ICANN TLD evaluation process.

ACCOUNTABILITY MECHANISMS

DotMusic will be accountable to the Community by serving them without conflicts of interest and:

- Creating and managing a trusted safe online haven for music consumption
- Establishing a safe home on the Internet for Community members to differentiate themselves regardless of locale, segment or size
- Enforcing registration policies that enhance and preserve the integrity of the Community
- Enabling music discovery & Community member promotion through Premium Channels
- Protecting intellectual property & fighting piracy
- Supporting musicians' welfare, rights & fair compensation
- Promoting music and arts, cultural diversity and music education
- Following a neutral multi-stakeholder governance of fair representation of all global music constituents
- Soliciting Community advice through the Advisory Committee
- Offering registration from a proven, scalable registry platform with 100% DNS availability

The rotating, global Advisory Committee will represent all Community stakeholder groups per the NAICS codes list, such as musicians, songwriters, composers, industry professionals, collection agencies, associations, unions, businesses, education, arts councils/export offices/government agencies, managers, promoters and agents. The Committee will operate under Bylaws central to the .MUSIC Mission, Core Values, and commitment to serve the Community and public interest.

20C. Provide a description of the community-based purpose of the applied-for gTLD.

The .MUSIC mission/purpose is:

- Creating a trusted, safe online haven for music consumption
- Establishing a safe home on the Internet for Music Community members regardless of locale or size
- Protecting intellectual property and fighting piracy
- Supporting musicians' welfare, rights & fair compensation
- Promoting music and the arts, cultural diversity and music education
- Following a multi-stakeholder approach of fair representation of all types of global music constituents, including a rotating regional advisory board working in the best interests of the Music Community

The Music Community encompasses global reaching commercial and non-commercial stakeholders, and amateur stakeholders.

.MUSIC will effectively differentiate itself by addressing the key online usage issues of safety, trust, consistency, brand recognition as well as communicate a website's content subject-matter: music-related content. The exclusivity of the .MUSIC TLD will be established by protection mechanisms for established Music Community entities, while also allowing Do-It-Yourself artists to register and use their .MUSIC domain consistent with .MUSIC Use Policy.

In addition to .MUSIC domain registrations, DotMusic will provide related services which have been established through ongoing outreach efforts. Music Community members need to be able to distinguish themselves from illegal and right infringing websites, a critical factor for the Music Community to ensure that monies flow to the right holders. DotMusic launch-related services are:

1. Developing the Music Community Social Network Premium Domain Channels (Premium Channels) sorted by NAICS classifications and category types e.g. genre/language. They will leverage Search Engine Optimization (SEO) best practices to improve .MUSIC site search result rankings. The objective is for .MUSIC domains to signal a badge of trust that enables search engines to provide music consumers more relevant and safer search results while reducing infringing and unlicensed rogue websites. Premium Channel development will also include a global Song Registry
2. Enriching society with artistic and cultural diversity; promoting arts and music through sponsorships, events and Music Community activities
3. Advancing music education and the study of music in school curriculum by donating proceeds of domain registrations to relevant causes
4. Re-inventing music discovery and search innovation by leading the way to establish the global music standard for official music websites to benefit the at-large global Music Community and the Internet

The .MUSIC mission and purpose has been established by interactions with Community members through numerous outreach activities and upon experiences gained in previous ICANN new gTLD launches. The mission/purpose is consistent with ICANN's Affirmation of Commitments (AoC) and Basic Principles of the International Music Registry (IMR - with participants including RIAA, IFPI, SCAPR, ACTRA, SAMRO, IRSC, ECAD, CIAM), including:

- the "vital importance of transparency, openness and non-discrimination." (www.internationalmusicregistry.org/portal/en/basic_principles.html) and
- "ensuring accountability, transparency and the interests of global Internet users", "enhancing the operational stability, reliability, resiliency, security, and global interoperability of the DNS" and "promoting competition, consumer trust, and consumer choice" while "adequately addressing consumer protection, malicious abuse, and rights protection issues" (www.icann.org/en/about/agreements/aoc/affirmation-of-commitments-30sep09-en.htm).

DotMusic mission/purpose guiding principles:

TRANSPARENCY OPENNESS & ACCOUNTABILITY

DotMusic has been an accessible and transparently visible .MUSIC applicant since 2008 communicating its intentions publicly at music events, online through its website and social media outreach, and through mainstream and non-mainstream media. The .MUSIC registration policies and protection mechanisms have been developed using a bottom-up, multi-stakeholder methodology with input from international Music Community members in both the commercial and non-commercial sector.

DotMusic serves the Community without conflicts of interest and is accountable to the Community by establishing a Music Community Advisory Committee with representation from each constituency in the Community. The Committee will advise and provide perspective on .MUSIC issues such as broad policy matters and introductions of new services to meet the Community needs.

INTERNATIONAL COMMUNITY PARTICIPATION, COMMUNICATION AND OUTREACH

Since 2008, DotMusic has participated in over one hundred public events globally (full list: www.music.us/events.htm), including public speaking engagements, keynote addresses, major music and domain conferences, festivals, events and expos; earned media (broadcast, online and print) in major mainstream publications, online press, and thousands of blog and social media mentions; over 1.5 million emails of support; top search engine results for DotMusic website; and over 5 million social media followers; sponsored major Music Community events globally to explain the intended benefits of the .MUSIC TLD, requesting support and letters of intent or

interest by supporters or Music Community Member Organizations (mCMO) for this .MUSIC application.

Specific details of these activities can be found in response to question 18b(vi). Support letters are attached in response to question 20f (updated list can be found on www.music.us/letters).

.MUSIC is trademarked in over 20 countries; has been using the brand in commerce (www.music.us/commerce), advertising and sponsorships, in domain registrations as an authorized reseller, merchandising and other commercial activities.

STANDARDS COMPLIANCE, SECURITY, RESILIENCY, AND STABILITY

Afilias is the DNS Registry provider for .MUSIC. Details of technical and operational capabilities matching the .MUSIC mission are provided in responses to questions #24-44.

COMPETITION, INNOVATION, FAIRNESS, AND CONSUMER CHOICE

Balanced domain registration restrictions and an inclusive, delineated Community definition ensures the entire Music Community can register .MUSIC domains, provides fairness in .MUSIC domain availability, offers a branding advantage, avoid conflicts of interest, anti-competitive concerns and anti-trust actions.

The Premium Channels will maximize the competitive landscape and innovation in both the music and domain space.

INTELLECTUAL PROPERTY PROTECTION AND TRUST

In consultation with major music constituents, including multiple Coalitions (such as a Coalition that includes the RIAA, ASCAP, BMI, SESAC, IFPI, A2IM, FIM, CISAC, IMPALA, NMPA, SABAM, FIM and others), DotMusic has developed policies to protect intellectual property, fight piracy and ensure .MUSIC domains are allocated in fair methods so that music consumers and Internet users are assured the highest level of trust and authenticity when they visit a .MUSIC domain.

A Global Protected Marks List (GPML) will reserve all major music brands and established artists, such as RIAA-certified platinum-selling bands.

Phased launches provides rights holders a first-come in the .MUSIC Sunrise, auction of multiple initial landrush domain inquiries, and eventually allows all stakeholders of the Music Community to register. All registrants must adhere to restricted Use, Name and Anti-Abuse policies and other enhanced safeguards to prevent detrimental practices that harm the Community.

Dispute mechanisms, compliance efforts, and data validation processes will provide an added level of trust.

DotMusic will conduct reviews of the applicability, usability, overall Music Community satisfaction. Results will be publicly provided to the Music Community for feedback and looks forward to providing review results and expertise in the ICANN Post-Launch New gTLD Review.

20D. Explain the relationship between the applied- for gTLD string and the community identified in 20(a).

The .MUSIC string relates to the Community by:

- Completely representing the entire Community. It relates to all music-related constituents using an all-inclusive, multi-stakeholder model
- Directly communicating that the content is music-related and representing the Community in a positive and beneficial manner consistent with the .MUSIC Purpose and Use policy
- Incorporating enhanced policies and safeguards matching Community needs
- Branding music-related constituents/entities on the Internet through a unique music-identifying suffix
- Serving the Community by implementing supporting services that are built and recommended by Community stakeholders and brought to .MUSIC through its multi-stakeholder Advisory Committee
- Creating a source of creativity, cultural identity, recreation and employment through a music-themed TLD

The .MUSIC affiliation with the Music Community, including interconnected functional activities, relate to the same groups identified by the Cultural Ministers' Council's "Statistical Framework for the Music Sector" scoping study (H. Hoegh-Guldberg and R. Letts, Statistical Framework for the Music Sector, 2005 www.culturaldata.gov.au/sites/www.culturaldata.gov.au/files/A_Statistical_Framework_for_the_Music

- Musicians including composers & songwriters
- The recording industry including record companies, producers, manufacturers, distributors of physical/digital products, studios and self-produced recordings
- Audiences at all public performances and venue operators

The Community is not subject to merely commercial/financial variables. The music Community is driven primarily by technology and the socio-cultural environment that influence music-related media cultures and consumer behavior, including the Community itself.

The socio-cultural environment drives the TLD, including the cultural diversity that provides space within the Community for many genres/participants, general socioeconomic and demographic factors and their impact on diverse local environments, and the support that the Community

gives to new creators/performers. The string and Community share a particular cultural ambience: a sensitivity and preference for certain cultural expressions. The ambience is diverse and influential: music preferences of different sections of the society vary, ranging from metal to classical; Socio-economic distributions and demographic patterns, such as age.

.MUSIC will take these factors that relate to cultural-identity into consideration and add value to the Community through the Premium Channels sorted to address NAICS classifications, genre (e.g www.Reggae.music), style, mood, language and other culturally-significant music attributes to catalyze innovation, music identification and to bolster:
The cultural relationship between .MUSIC and the Community is based on the creation of a mutually beneficial ecosystem that is driven by value generation and supports value chains that make a difference that truly matters to:

- Creators, performers, bands, ensembles & orchestras
- Live performances
- Recording
- Airplay
- Distribution
- Others (e.g film, video, advertising)

.MUSIC relates to the Community by representing all constituents involved in music creation, production and distribution, including government culture agencies and arts councils and other complementor organizations involved in support activities that are aligned with the .MUSIC mission.

.MUSIC strategic activities that relate to the Community focus on:

- Creativity, skill and talent
- Wealth and job creation through the generation, protection and exploitation of intellectual property
- Creating music-related intangible inputs that add economic and social value
- Connecting music-related content in a meaningful and organized manner that will benefit both the Community and Internet users.

These strategic activities are consistent with the creative industries strategy that was defined, refined and introduced by the Blair U.K government through the Creative Industries Task Force started in 1997 (U.K Department for Culture, Media & Sport (DCMS 2001), Creative Industries Mapping Study - www.culture.gov.uk/global/publications/archive_2001/ci_mapping_doc_2001.htm).

Michael Chanan (Short History of Recording and its Effects on Music, 1995) and Peter Martland (Business History of the Gramophone Company Ltd (1887-1918), 1992) identify factors shared by the Community:

- Music offers the opportunity of enhancing Community earnings
- Music can spread the fame of members of the Community widely, as far afield as the Community's distribution systems permit
- Fame can be further exploited using global transport systems for touring
- Music, by virtue of its permanence, can create a form of immortality for Community members, which prior to the invention of sound technology had been denied to them

The Community and the .MUSIC string share a core value system of artistic expression with diverse, niche subcultures and socio-economic interactions between music creators, their value chain, distribution channel, and ultimately engaging fans as well as other music constituents subscribing to common ideals.

The Community genre dynamics are akin to those found in other culturally-driven Communities identifying cultural identity such as those relating to nationality, language, ethnicity, sexual orientation, religion. Just like languages such as English, music theory follows an organized set of rules relating to composition and performance.

A Community music genre is a conventional category that identifies music belonging to a Community-shared tradition or set of conventions. Cultural criteria relating to genres include a combination of art type; time period; regional/national origins; and social function. Fabbri defines genre as "a kind of music, as it is acknowledged by a community for any reason or purpose or criteria, i.e a set of music events whose course is governed by rules accepted by a community" and it is "characterized by cultural features." Genres are characterized using the following types of rules, of which only the first is related strictly to music content:

- Formal & technical: Content-based practices
- Semiotic: Abstract concepts communicated
- Behavior: How composers, performers and audiences appear and behave
- Social & ideological: Genres and demographic links such as age, race, sex, political views
- Economical & juridical: Laws and economic systems supporting a genre

(F. Fabbri, Theory of Musical Genres, Popular Music Perspectives, 1981)

Genres inform musicians how they are influenced by identification with different communities and by the music industry (J. Toynbee, Making Popular Music: Musicians, Creativity & Institutions, 2000).

Music genres have "significant importance beyond simply its utility in organizing music. The Community actively identifies culturally with certain genres of music, as can easily be observed in the differences in the ways that many fans of death metal or rap dress and speak, for example. Genre is so important to listeners, in fact, that psychological research has found that the style of a piece can influence listeners' liking for it more than the piece itself (A. North, & D. Hargreaves, Liking for Musical Styles, Music Scientiae,1997)."

Genre is an "intentional concept shared by a given community, much in the same way we ascribe and interpret meanings to words in our languages" akin to a "linguistic category. Music is

founded not on intrinsic properties but on extrinsic habits (F. Pachet, Representing Musical Genre: A State of the Art, Journal of New Music Research, 2003)." The Premium Channels will be organized to reflect these Community cultural nuances

.MUSIC & COMMUNITY SUPPORT

See 20f for documented support from institutions/organizations representing majority of the Community and description of the process/rationale used relating to the expression of support.

20E. Provide a complete description of the applicant's intended registration policies in support of the community-based purpose of the applied-for gTLD. Policies and enforcement mechanisms are expected to constitute a coherent set.

DotMusic has incorporated enhanced policies to ensure only eligible members of the Music Community who comply with the values, purpose and mission of the TLD can participate; to ensure domains are used in a manner benefitting the Community; to protect intellectual property; and to safeguard domains from malicious conduct and copyright infringement.

The policies are built to match Music Community needs, based on years of feedback from Music Community members and on experience from the previous ICANN new gTLD introductions, as well as established to ensure a higher level of security for .MUSIC than what is considered standard for gTLDs.

Aside from the policies described below .MUSIC will be launched with standard gTLD lifecycle requirements per response to question #27. DotMusic will adhere to all ICANN mandated rights protection mechanisms and consensus policies.

RESERVATION PROTECTION:

DotMusic will reserve names at the second level per ICANN requirements. The Country and Territory Names are reserved per the response to question #22. Names to support registry operations, e.g. nic.MUSIC can only be registered by DotMusic.

INNOVATIVE PREMIUM NAMES RESERVATIONS:

DotMusic will reserve premium names that will be used in an innovative manner to benefit eligible members including the development of Premium Channels, such as genres (e.g. Rock.MUSIC), that will define the locale web of music, promote Community members based on their classification/category, and improve music discovery.

RIGHTS PROTECTION AND NOTIFICATIONS SYSTEM:

- Globally Protected Marks List (GPML) will ensure major music brands and established artists, such as RIAA-certified platinum-selling bands, are protected not cybersquatted. These are reserved at all times.
- Trademark Clearing House and its notification mechanisms will be implemented in accordance to ICANN specifications.
- Names Selection Policy - to ensure only music-related names are registered as domains under .MUSIC, with the following restrictions:
 - 1) A name of (entire or portion of) the musician, band, company, organization, e.g. the registrants "doing business as" name
 - 2) An acronym representing the registrant
 - 3) A name that recognizes or generally describes the registrant, or
 - 4) A name related to the mission or activities of the registrant

SUNRISE LAUNCH W/ TRADEMARK VALIDATION

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

The eligibility requirements will be verified, and multiple registration applications for the same string will be auctioned, except for GPML entries that supersede any other sunrise registration applications.

The Sunrise Challenge Process solves disputes concerning domains registered under the Sunrise Policy.

Details of the Sunrise Policy and Challenge Process can be found in response to question #29.

MUSIC COMMUNITY MEMBER ORGANIZATION (MCMO) LANDRUSH LAUNCH

This is the second phase of .MUSIC domain registration. It is a limited-time period reserved for members of DotMusic-accredited music Community Member Organizations (mCMO). Unique registrations will be granted to the sole registrant and delegated at the close of the time period; multiple registration requests for the same string will go through an auction.

LANDRUSH LAUNCH

This is the third phase of .MUSIC domain registration; a limited- time period. Unique registrations will be granted to the registrant; multiple registration requests for the same domain will go through an auction.

Landrush is designed for members of the Music Community that want to secure premium .MUSIC domains giving members the chance to register their preferred .MUSIC domains; multiple registration requests for the same domain will go through an auction.

GENERAL AVAILABILITY

This is the fourth and final phase of registration of .MUSIC domains. .MUSIC registrations will

now be available to Music Community members on a first come, first served basis.

USE POLICY

This policy is in place for .MUSIC registrants regardless of the applicable launch phase. It is developed with extensive participation of Music Community members; tailored to meet the specific needs of the Music Community; and solve issues currently existing in the Music Community related to intellectual property infringement and malicious conduct.

The policy is incorporated in the registration agreement for all .MUSIC registrants. DotMusic may modify or revise these use policies at any time. Registrants agree to be bound by such modifications or revisions. Registrants that do not accept and abide by the registration agreement are disqualified from domain registrations.

The following use requirements apply:

- Use only for music-related activities
- Comply with applicable laws and regulations and not participate in, facilitate, or further illegal activities
- Do not post or submit content that is illegal, threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, invasive of another's privacy, or tortious
- Respect the intellectual property rights of others by posting or submitting only content that is owned, licensed, or otherwise have the right to post or submit
- Immediately notify us if there is a security breach, other member in compliance or illegal activity on .MUSIC sites
- Do not register a domain containing an established music brand's name in bad faith that might be deemed confusing to Internet users and the Music Community
- Do not use any automated process to access or use the .MUSIC sites or any process, whether automated or manual, to capture data or content from any service for any reason
- Do not use any service or any process to damage, disable, impair, or otherwise attack .MUSIC sites or the networks connected to .MUSIC sites

ANTI-ABUSE POLICY

This policy is in place for all registrants under .MUSIC and addresses the identification and prompt action on malicious abuse of domains. Such activity can lead to security and stability issues for the registry, registrars, and registrants, and general users of the Internet which the policy is in place to prevent. The policy is incorporated in the .MUSIC registration agreement with all registrants and detailed in response to question #28.

REGISTRY DATA VALIDATION

While DotMusic will hold the thick WHOIS data provided through registrars, we will also validate elements of the received WHOIS data:

1. The registrant's email address through validation links
2. The registrant's phone number through validated PIN-codes

Upon successful completion of these two steps, DotMusic will provide the registrant their Music Community membership details; used to join/access the Premium Channels. All future .MUSIC domains associated with the registrant-verified email address will not be re-verified.

COMPLIANCE AND ENFORCEMENT

DotMusic will take proactive and reactive measures to enforce its TLD policies. Proactive measures are taken at the time of registration. Reactive measures are addressed via compliance and enforcement mechanisms and through dispute processes.

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

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

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

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

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

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

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

it meets .MUSIC policies.

20F. Attach any written endorsements for the application from established institutions representative of the community identified in 20(a). An applicant may submit written endorsements by multiple institutions, if relevant to the community.

21A. Is the application for a geographic name?

No

22. Describe proposed measures for protection of geographic names at the second and other levels in the applied-for gTLD. This should include any applicable rules and procedures for reservation and/or release of such names.

DotMusic protects geographic names at the second level of .MUSIC by the following described measures. These have been developed in response to the GAC's Principles regarding New gTLDs, dated March 28, 2007, and to adhere to the requirements of the ICANN Registry Agreement Specification 5.

In correspondence with GAC principle 2.7, DotMusic will block all country and territory names as registrations under .MUSIC. To accomplish this DotMusic will prior to launch (i) place the names on a reserved list that can solely be released as second-level registrations under .MUSIC by an agreement with the respective country or territory and with ICANN; and (ii) include in its registration policies that country and territory names are prohibited at lower levels.

The names reserved as country and territory names will correspond to the requirements in the ICANN Registry Agreement Specification 5, paragraph 5; and paragraph 2 where all two-character labels will be reserved for registration to ensure that any release of such names is done to the appropriate corresponding country or territory and thereby avoid user confusion.

When DotMusic is launching Internationalized Domain Names DotMusic will place translated versions of country and territory names on a reserved list that also only can be released for registration if an agreement has been reached with the corresponding country or territory and ICANN.

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

The release of a two-character, country, or territory name as second level registration under .MUSIC will be done in agreement with the corresponding country or territory, ICANN. DotMusic will define a procedure so that governments can request the above reserved domain(s) if they would like to take possession of them. This procedure will be based on existing methodology developed for the release of country names in the .INFO TLD. For example, we will require a written request from the country's GAC representative, or a written request from the country's relevant Ministry or Department. We will allow the designated beneficiary (the Registrant) to register the name, with an accredited Afiliat Registrar, possibly using an authorization number transmitted directly to the designated beneficiary in the country concerned.

DotMusic will be working closely with the International Federation of Arts Councils and Culture Agencies, with national members from over 70 countries comprised of governments' Ministries of Culture and Arts Councils covering all continents, to ensure country names protection and the promotion of government-related cultural and music initiatives. Strategic partners include UNESCO, African Arts Institute, Asia-Pacific Regional Centre of the Culturelink Network, European League of Institutes of the Arts, European Research Institute for Comparative Cultural Policy and the Arts, European Commission Directorate General Education & Culture, Fundació Interarts, International Conference on Cultural Policy Research, International Network for Contemporary Performing Arts, International Federation of Coalitions for Cultural Diversity, International Network for Cultural Diversity, ISPA - International Society for the Performing

Arts Foundation, National Assembly of State Arts Agencies, Organization of American States, Observatory of Cultural Policies in Africa, Organización de Estados Iberoamericanos, Caribbean and Pacific Group of States, United Cities and Local Governments.

Ministries of Culture Agencies and Arts Councils include:

Albania (Ministry of Tourism, Culture, Youth & Sport)
Armenia (Ministry of Culture)
Australia (Australia Council for the Arts)
Bahamas (Ministry of Youth, Sports & Culture)
Belgium (Fédération Wallonie-Bruxelles, Cabinet de la Culture)
Belgium (Ministry of the Flemish Community, Arts & Heritage)
Belize (National Institute of Culture & History)
Botswana (Department of Arts & Culture, Ministry of Youth, Sport & Culture)
Bulgaria (National Culture Fund)
Cambodia (Ministry of Culture & Fine Arts)
Canada (Canada Council for the Arts)
Cayman Islands (Cayman National Cultural Foundation)
Chile (Consejo Nacional de la Cultura y las Artes)
China (CFLAC - China Federation of Literary & Art Circles)
Colombia (Ministerio de Cultura de Colombia)
Cook Islands (Ministry of Cultural Development)
Croatia (Ministarstvo Kulture - Ministry of Culture)
Cuba (Ministerio de Cultura de la República de Cuba)
Denmark (Kulturstyrelsen - Danish Agency for Culture)
Egypt (Ministry of Culture)
England (Arts Council England)
Fiji (Fiji Arts Council)
Finland (Arts Council of Finland)
France (Ministère de la Culture et de la Communication de France)
Gambia (National Council for Arts & Culture of The Gambia)
Grenada (Grenada Arts Council)
Guyana (National Trust of Guyana, Ministry of Culture, Youth and Sport)
Hong Kong (Home Affairs Bureau, Culture Section Government of Hong Kong)
Iceland (Ministry of Education, Science & Culture)
India (Ministry of Culture)
Ireland (Arts Council of Ireland - An Chomhairle Ealaíon)
Jamaica (Ministry of Youth, Sport & Culture)
Japan (Japan Foundation)
Kenya (Bomas of Kenya)
Lithuania (Ministry of Culture)
Luxembourg (Ministère de la Culture)
Malawi (Ministry of Tourism, Wildlife & Culture)
Malaysia (Ministry of Information, Communication & Culture)
Maldives (Ministry of Tourism, Arts & Culture)
Malta (Malta Council for Culture and the Arts)
Mongolia (Ministry of Education, Culture & Science)
Mozambique (Ministério da Cultura)
Namibia (National Arts Council of Namibia)
Netherlands (Mondriaan Fund)
Netherlands (Nederlands Fonds voor Podiumkunsten, Fund for Performing Arts)
Netherlands (Nederlands Letterenfonds - Dutch Foundation for Literature)
Netherlands (Raad voor Cultuur - Council for Culture)
Netherlands (SICA - Stichting Internationale Culturele Activiteiten)
New Zealand (Creative New Zealand - Toi Aotearoa)
Niger (Ministere de la Communication, des Nouvelles Technologies de l'Information et de la Culture)
Nigeria (National Council for Arts & Culture)
Northern Ireland (Arts Council of Northern Ireland)
Norway (Norsk Kulturråd - Arts Council Norway)
Palau (Ministry of Community & Cultural Affairs)
Papua New Guinea (Ministry of Culture & Tourism)
Philippines (National Commission for Culture & the Arts)
Portugal (Direcção-Geral das Artes)
Qatar (Ministry of Culture, Arts & Heritage)
Romania (Ministry of Culture & National Heritage)
Saudi Arabia (Ministry of Culture & Information)
Scotland (Creative Scotland)
Senegal (Ministère de la Culture et du Tourisme)
Serbia (International Cultural Centre Belgrade)
Seychelles (Ministry of Community Development, Youth, Sport & Culture)
Singapore (National Arts Council of Singapore)
Slovenia (Ministry of Education, Science, Culture and Sport)
Solomon Islands (Ministry of Culture & Tourism)
South Africa (National Arts Council of South Africa)
South Korea (Arts Council Korea)
Spain (Secretaría de Estado de Cultura, España)
Swaziland (Swaziland National Council of Arts and Culture)
Sweden (Statens Kulturråd - Swedish Arts Council)
Switzerland (Pro Helvetia - Swiss Arts Council)
Tanzania (Basata: National Arts Council)

Tunisia (Ministry of Culture)
United Arab Emirates (Sharjah Museums Council)
USA (National Endowment for the Arts)
USA (National Endowment for the Humanities)
Vietnam (Ministry of Culture, Sports & Tourism)
Wales (Cygnor Celfyddydau Cymru - Arts Council of Wales)
Zambia (National Arts Council of Zambia)
Zimbabwe (National Arts Council of Zimbabwe)

DotMusic also has support from the International Association of Music Information Centres (IAMIC), a global network of organizations which document and promote the music from our time. IAMIC will also help .MUSIC with its outreach efforts relating to the protection of country-name domains and the allocation of the domains to the proper government authorities to promote culture and music from those territories. IAMIC "supports the work of 40 member organizations in 37 countries. Music Information Centers across the world bear fundamental similarities: they provide specialized music resources for music students, performers, composers and music teachers; they act as visitor centers for any member of the public with an interest in learning about national musical heritage; they develop audiences for new music through educational and promotional projects."

These include:

Australia (Australian Music Centre)
Austria (MICA - Music Information Center Austria)
Belgium (Flanders Music Centre)
Belgium (CEBEDEM - Belgian Centre for Music Documentation)
Belgium (MATRIX)
Brazil (CIDDIC-Brasil/UNICAMP)
Canada (Canadian Music Centre)
Croatia (Croatian Music Information Centre KDZ)
Cyprus (Cyprus Music Information Center - CyMIC)
Czech Republic (Czech Music Information Centre)
Denmark (Danish Arts Agency - Music Centre)
England (Sound and Music - SAM)
Estonia (Estonian Music Information Centre)
Finland (Finnish Music Information Centre Fimic)
France (CDMC - Centre de documentation de la musique contemporaine)
Georgia (Georgian Music Information Centre)
Germany (German Music Information Centre)
Greece (Greek Music Information Centre / Institute for Research on Music and Acoustics)
Hungary (BMC Hungarian Music Information Center)
Iceland (Iceland Music Information Centre)
Ireland (Contemporary Music Centre, Ireland)
Israel (Israel Music Information Centre / Israel Music Institute)
Italy (CIDIM / AMIC)
Latvia (Latvian Music Information Centre - LMIC)
Lithuania (Lithuanian Music Information and Publishing Centre)
Luxembourg (Luxembourg Music Information Centre)
Netherlands (Netherlands Music Information Centre)
New Zealand (Centre for New Zealand Music - SOUNZ)
Norway (Music Information Centre Norway)
Poland (Polish Music Information Centre)
Portugal (Portuguese Music Research & Information Centre / Miso Music Portugal)
Scotland (Scottish Music Centre)
Slovakia (Music Centre Slovakia)
Slovenia (Slovene Music Information Centre)
South Africa (Music Communication Centre of Southern Africa - MCCOSA)
Sweden (Svensk Musik)
Switzerland (Fondation SUISA pour la musique)
USA (American Music Center)
Wales (Ty Cerdd - Welsh Music Information Centre)

DotMusic already holds support from multiple music export offices from different countries/territories. The music export offices are typically run by government agencies, and have expressed and signed letters of interest to administer the corresponding [countryname/territoryname.MUSIC] in an appropriate manner that benefits the music industry for that corresponding country/territory. The support gathered this far is attached in response to question #20, is publicly available at www.music.us/letters. DotMusic expects additional interest expressed from other countries and territories as the DotMusic outreach continues.

Other GAC Principles regarding New gTLDs are defined elsewhere in this application, for example methods for limiting the need for defensive registrations in paragraph 2.9 is described in response to question #18b and #20e.

23. Provide name and full description of all the Registry Services to be provided. Descriptions should include both technical and business components of each proposed service, and address any potential security or stability concerns.

The following registry services are customary services offered by a registry operator:

- A. Receipt of data from registrars concerning registration of domain names and name servers.
- B. Dissemination of TLD zone files.
- C. Dissemination of contact or other information concerning domain name registrations (e.g., port-43 WHOIS, Web- based Whois, RESTful Whois service).
- D. Internationalized Domain Names, where offered.
- E. DNS Security Extensions (DNSSEC). The applicant must describe whether any of these registry services are intended to be offered in a manner unique to the TLD.

Additional proposed registry services that are unique to the registry must also be described.

Throughout the technical portion (#23 - #44) of this application, answers are provided directly from Afiliias, the back-end provider of registry services for this TLD. DotMusic chose Afiliias as its back-end provider because Afiliias has more experience successfully applying to ICANN and launching new TLDs than any other provider. Afiliias is the ICANN-contracted registry operator of the .INFO and .MOBI TLDs, and Afiliias is the back-end registry services provider for other ICANN TLDs including .ORG, .ASIA, .AERO, and .XXX.

Registry services for this TLD will be performed by Afiliias in the same responsible manner used to support 16 top level domains today. Afiliias supports more ICANN-contracted TLDs (6) than any other provider currently. Afiliias' primary corporate mission is to deliver secure, stable and reliable registry services. This TLD will utilize an existing, proven team and platform for registry services with:

- A stable and secure, state-of-the-art, EPP-based SRS with ample storage capacity, data security provisions and scalability that is proven with registrars who account for over 95% of all gTLD domain name registration activity (over 375 registrars);
- A reliable, 100% available DNS service (zone file generation, publication and dissemination) tested to withstand severe DDoS attacks and dramatic growth in Internet use;
- A WHOIS service that is flexible and standards compliant, with search capabilities to address both registrar and end-user needs; includes consideration for evolving standards, such as RESTful, or draft-kucherawy-wierds;
- Experience introducing IDNs in the following languages: German (DE), Spanish (ES), Polish (PL), Swedish (SV), Danish (DA), Hungarian (HU), Icelandic (IS), Latvian (LV), Lithuanian (LT), Korean (KO), Simplified and Traditional Chinese (CN), Devanagari (HI-DEVA), Russian (RU), Belarusian (BE), Ukrainian (UK), Bosnian (BS), Serbian (SR), Macedonian (MK) and Bulgarian (BG) across the TLDs it serves;
- A registry platform that is both IPv6 and DNSSEC enabled;
- An experienced, respected team of professionals active in standards development of innovative services such as DNSSEC and IDN support;
- Methods to limit domain abuse, remove outdated and inaccurate data, and ensure the integrity of the SRS, and;
- Customer support and reporting capabilities to meet financial and administrative needs, e.g., 24x7 call center support, integration support, billing, and daily, weekly, and monthly reporting.

Afiliias will support this TLD in accordance with the specific policies and procedures of DotMusic (the "registry operator"), leveraging a proven registry infrastructure that is fully operational, staffed with professionals, massively provisioned, and immediately ready to launch and maintain this TLD.

The below response includes a description of the registry services to be provided for this TLD, additional services provided to support registry operations, and an overview of Afiliias' approach to registry management.

Registry services to be provided

To support this TLD, DotMusic and Afiliias will offer the following registry services, all in accordance with relevant technical standards and policies:

- Receipt of data from registrars concerning registration for domain names and nameservers, and provision to registrars of status information relating to the EPP-based domain services for registration, queries, updates, transfers, renewals, and other domain management functions. Please see our responses to questions #24, #25, and #27 for full details, which we request be incorporated here by reference.
- Operation of the registry DNS servers: The Afiliias DNS system, run and managed by Afiliias, is a massively provisioned DNS infrastructure that utilizes among the most sophisticated DNS architecture, hardware, software and redundant design created. Afiliias' industry-leading system works in a seamless way to incorporate nameservers from any number of other secondary DNS service vendors. Please see our response to question #35 for full details, which we request be incorporated here by reference.
- Dissemination of TLD zone files: Afiliias' distinctive architecture allows for real-time updates and maximum stability for zone file generation, publication and dissemination. Please see our response to question #34 for full details, which we request be incorporated here by reference.
- Dissemination of contact or other information concerning domain registrations: A port 43 WHOIS service with basic and expanded search capabilities with requisite measures to prevent abuse. Please see our response to question #26 for full details, which we request be

incorporated here by reference.

- Internationalized Domain Names (IDNs): Ability to support all protocol valid Unicode characters at every level of the TLD, including alphabetic, ideographic and right-to-left scripts, in conformance with the ICANN IDN Guidelines. Please see our response to question #44 for full details, which we request be incorporated here by reference.
- DNS Security Extensions (DNSSEC): A fully DNSSEC-enabled registry, with a stable and efficient means of signing and managing zones. This includes the ability to safeguard keys and manage keys completely. Please see our response to question #43 for full details, which we request be incorporated here by reference.

Each service will meet or exceed the contract service level agreement. All registry services for this TLD will be provided in a standards-compliant manner.

Security

Afilias addresses security in every significant aspect - physical, data and network as well as process. Afilias' approach to security permeates every aspect of the registry services provided. A dedicated security function exists within the company to continually identify existing and potential threats, and to put in place comprehensive mitigation plans for each identified threat. In addition, a rapid security response plan exists to respond comprehensively to unknown or unidentified threats. The specific threats and Afilias mitigation plans are defined in our response to question #30(b); please see that response for complete information. In short, Afilias is committed to ensuring the confidentiality, integrity, and availability of all information.

New registry services

No new registry services are planned for the launch of this TLD.

Additional services to support registry operation

Numerous supporting services and functions facilitate effective management of the TLD. These support services are also supported by Afilias, including:

- Customer support: 24x7 live phone and e-mail support for customers to address any access, update or other issues they may encounter. This includes assisting the customer identification of the problem as well as solving it. Customers include registrars and the registry operator, but not registrants except in unusual circumstances. Customers have access to a web-based portal for a rapid and transparent view of the status of pending issues.
- Financial services: billing and account reconciliation for all registry services according to pricing established in respective agreements.

Reporting is an important component of supporting registry operations. Afilias will provide reporting to the registry operator and registrars, and financial reporting.

Reporting provided to registry operator

Afilias provides an extensive suite of reports to the registry operator, including daily, weekly and monthly reports with data at the transaction level that enable the registry operator to track and reconcile at whatever level of detail preferred. Afilias provides the exact data required by ICANN in the required format to enable the registry operator to meet its technical reporting requirements to ICANN.

In addition, Afilias offers access to a data warehouse capability that will enable near real-time data to be available 24x7. This can be arranged by informing the Afilias Account Manager regarding who should have access. Afilias' data warehouse capability enables drill-down analytics all the way to the transaction level.

Reporting available to registrars

Afilias provides an extensive suite of reporting to registrars and has been doing so in an exemplary manner for more than ten years. Specifically, Afilias provides daily, weekly and monthly reports with detail at the transaction level to enable registrars to track and reconcile at whatever level of detail they prefer.

Reports are provided in standard formats, facilitating import for use by virtually any registrar analytical tool. Registrar reports are available for download via a secure administrative interface. A given registrar will only have access to its own reports. These include the following:

- Daily Reports: Transaction Report, Billable Transactions Report, and Transfer Reports;
- Weekly: Domain Status and Nameserver Report, Weekly Nameserver Report, Domains Hosted by Nameserver Weekly Report, and;
- Monthly: Billing Report and Monthly Expiring Domains Report.

Weekly registrar reports are maintained for each registrar for four weeks. Weekly reports older than four weeks will be archived for a period of six months, after which they will be deleted.

Financial reporting

Registrar account balances are updated real-time when payments and withdrawals are posted to the registrars' accounts. In addition, the registrar account balances are updated as and when they perform billable transactions at the registry level.

Afilias provides Deposit/Withdrawal Reports that are updated periodically to reflect payments received or credits and withdrawals posted to the registrar accounts.

The following reports are also available: a) Daily Billable Transaction Report, containing

details of all the billable transactions performed by all the registrars in the SRS, b) daily e-mail reports containing the number of domains in the registry and a summary of the number and types of billable transactions performed by the registrars, and c) registry operator versions of most registrar reports (for example, a daily Transfer Report that details all transfer activity between all of the registrars in the SRS).

Afilias approach to registry support

Afilias, the back end registry services provider for this TLD, is dedicated to managing the technical operations and support of this TLD in a secure, stable and reliable manner. Afilias has worked closely with DotMusic to review specific needs and objectives of this TLD. The resulting comprehensive plans are illustrated in technical responses #24-44, drafted by Afilias given DotMusic requirements. Afilias and DotMusic also worked together to provide financial responses for this application which demonstrate cost and technology consistent with the size and objectives of this TLD.

Afilias is the registry services provider for this and several other TLD applications. Over the past 11 years of providing services for gTLD and ccTLDs, Afilias has accumulated experience about resourcing levels necessary to provide high quality services with conformance to strict service requirements. Afilias currently supports over 20 million domain names, spread across 16 TLDs, with over 400 accredited registrars.

Since its founding, Afilias is focused on delivering secure, stable and reliable registry services. Several essential management and staff who designed and launched the Afilias registry in 2001 and expanded the number of TLDs supported, all while maintaining strict service levels over the past decade, are still in place today. This experiential continuity will endure for the implementation and on-going maintenance of this TLD. Afilias operates in a matrix structure, which allows its staff to be allocated to various critical functions in both a dedicated and a shared manner. With a team of specialists and generalists, the Afilias project management methodology allows efficient and effective use of our staff in a focused way.

With over a decade of registry experience, Afilias has the depth and breadth of experience that ensure existing and new needs are addressed, all while meeting or exceeding service level requirements and customer expectations. This is evident in Afilias' participation in business, policy and technical organizations supporting registry and Internet technology within ICANN and related organizations. This allows Afilias to be at the forefront of security initiatives such as: DNSSEC, wherein Afilias worked with Public Interest Registry (PIR) to make the .ORG registry the first DNSSEC enabled gTLD and the largest TLD enabled at the time; in enhancing the Internet experience for users across the globe by leading development of IDNs; in pioneering the use of open-source technologies by its usage of PostgreSQL, and; being the first to offer near-real-time dissemination of DNS zone data.

The ability to observe tightening resources for critical functions and the capacity to add extra resources ahead of a threshold event are factors that Afilias is well versed in. Afilias' human resources team, along with well-established relationships with external organizations, enables it to fill both long-term and short-term resource needs expediently.

Afilias' growth from a few domains to serving 20 million domain names across 16 TLDs and 400 accredited registrars indicates that the relationship between the number of people required and the volume of domains supported is not linear. In other words, servicing 100 TLDs does not automatically require 6 times more staff than servicing 16 TLDs. Similarly, an increase in the number of domains under management does not require in a linear increase in resources. Afilias carefully tracks the relationship between resources deployed and domains to be serviced, and pro-actively reviews this metric in order to retain a safe margin of error. This enables Afilias to add, train and prepare new staff well in advance of the need, allowing consistent delivery of high quality services.

24. Shared Registration System (SRS) Performance: describe

- the plan for operation of a robust and reliable SRS. SRS is a critical registry function for enabling multiple registrars to provide domain name registration services in the TLD. SRS must include the EPP interface to the registry, as well as any other interfaces intended to be provided, if they are critical to the functioning of the registry. Please refer to the requirements in Specification 6 (section 1.2) and Specification 10 (SLA Matrix) attached to the Registry Agreement; and
- resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).

A complete answer should include, but is not limited to:

A high-level SRS system description;

- Representative network diagram(s);
- Number of servers;
- Description of interconnectivity with other registry systems;
- Frequency of synchronization between servers; and
- Synchronization scheme (e.g., hot standby, cold standby).

THE RESPONSE FOR THIS QUESTION USES ANGLE BRACKETS (THE " <" and ">" CHARACTERS, or < and >), WHICH ICANN INFORMS US (CASE ID 11027) CANNOT BE PROPERLY RENDERED IN TAS DUE TO SECURITY CONCERNS. HENCE, THE ANSWER BELOW AS DISPLAYED IN TAS MAY NOT RENDER THE FULL RESPONSE AS INTENDED. THEREFORE, THE FULL ANSWER TO THIS QUESTION IS ALSO ATTACHED AS A PDF FILE, ACCORDING TO SPECIFIC GUIDANCE FROM ICANN UNDER CASE ID 11027.

Answers for this question (#24) are provided directly from Afiliias, the back-end provider of registry services for this TLD.

Afiliias operates a state-of-the-art EPP-based Shared Registration System (SRS) that is secure, stable and reliable. The SRS is a critical component of registry operations that must balance the business requirements for the registry and its customers, such as numerous domain acquisition and management functions. The SRS meets or exceeds all ICANN requirements given that Afiliias:

- Operates a secure, stable and reliable SRS which updates in real-time and in full compliance with Specification 6 of the new gTLD Registry Agreement;
- Is committed to continuously enhancing our SRS to meet existing and future needs;
- Currently exceeds contractual requirements and will perform in compliance with Specification 10 of the new gTLD Registry Agreement;
- Provides SRS functionality and staff, financial, and other resources to more than adequately meet the technical needs of this TLD, and;
- Manages the SRS with a team of experienced technical professionals who can seamlessly integrate this TLD into the Afiliias registry platform and support the TLD in a secure, stable and reliable manner.

Description of operation of the SRS, including diagrams

Afiliias' SRS provides the same advanced functionality as that used in the .INFO and .ORG registries, as well as the fourteen other TLDs currently supported by Afiliias. The Afiliias registry system is standards-compliant and utilizes proven technology, ensuring global familiarity for registrars, and it is protected by our massively provisioned infrastructure that mitigates the risk of disaster.

EPP functionality is described fully in our response to question #25; please consider those answers incorporated here by reference. An abbreviated list of Afiliias SRS functionality includes:

- Domain registration: Afiliias provides registration of names in the TLD, in both ASCII and IDN forms, to accredited registrars via EPP and a web-based administration tool.
- Domain renewal: Afiliias provides services that allow registrars the ability to renew domains under sponsorship at any time. Further, the registry performs the automated renewal of all domain names at the expiration of their term, and allows registrars to rescind automatic renewals within a specified number of days after the transaction for a full refund.
- Transfer: Afiliias provides efficient and automated procedures to facilitate the transfer of sponsorship of a domain name between accredited registrars. Further, the registry enables bulk transfers of domains under the provisions of the Registry-Registrar Agreement.
- RGP and restoring deleted domain registrations: Afiliias provides support for the Redemption Grace Period (RGP) as needed, enabling the restoration of deleted registrations.
- Other grace periods and conformance with ICANN guidelines: Afiliias provides support for other grace periods that are evolving as standard practice inside the ICANN community. In addition, the Afiliias registry system supports the evolving ICANN guidelines on IDNs.

Afiliias also supports the basic check, delete, and modify commands.

As required for all new gTLDs, Afiliias provides "thick" registry system functionality. In this model, all key contact details for each domain are stored in the registry. This allows better access to domain data and provides uniformity in storing the information.

Afiliias' SRS complies today and will continue to comply with global best practices including relevant RFCs, ICANN requirements, and this TLD's respective domain policies. With over a decade of experience, Afiliias has fully documented and tested policies and procedures, and our highly skilled team members are active participants of the major relevant technology and standards organizations, so ICANN can be assured that SRS performance and compliance are met. Full details regarding the SRS system and network architecture are provided in responses to questions #31 and #32; please consider those answers incorporated here by reference.

SRS servers and software

All applications and databases for this TLD will run in a virtual environment currently hosted by a cluster of servers equipped with the latest Intel Westmere multi-core processors. (It is

possible that by the time this application is evaluated and systems deployed, Westmere processors may no longer be the "latest"; the Afiliast policy is to use the most advanced, stable technology available at the time of deployment.) The data for the registry will be stored on storage arrays of solid state drives shared over a fast storage area network. The virtual environment allows the infrastructure to easily scale both vertically and horizontally to cater to changing demand. It also facilitates effective utilization of system resources, thus reducing energy consumption and carbon footprint.

The network firewalls, routers and switches support all applications and servers. Hardware traffic shapers are used to enforce an equitable access policy for connections coming from registrars. The registry system accommodates both IPv4 and IPv6 addresses. Hardware load balancers accelerate TLS/SSL handshaking and distribute load among a pool of application servers.

Each of the servers and network devices are equipped with redundant, hot-swappable components and multiple connections to ancillary systems. Additionally, 24x7 support agreements with a four-hour response time at all our data centers guarantee replacement of failed parts in the shortest time possible.

Examples of current system and network devices used are:

- Servers: Cisco UCS B230 blade servers
- SAN storage arrays: IBM Storwize V7000 with Solid State Drives
- SAN switches: Brocade 5100
- Firewalls: Cisco ASA 5585-X
- Load balancers: F5 Big-IP 6900
- Traffic shapers: Procera PacketLogic PL8720
- Routers: Juniper MX40 3D
- Network switches: Cisco Nexus 7010, Nexus 5548, Nexus 2232

These system components are upgraded and updated as required, and have usage and performance thresholds which trigger upgrade review points. In each data center, there is a minimum of two of each network component, a minimum of 25 servers, and a minimum of two storage arrays.

Technical components of the SRS include the following items, continually checked and upgraded as needed: SRS, WHOIS, web admin tool, DNS, DNS distributor, reporting, invoicing tools, and deferred revenue system (as needed).

All hardware is massively provisioned to ensure stability under all forecast volumes from launch through "normal" operations of average daily and peak capacities. Each and every system application, server, storage and network device is continuously monitored by the Afiliast Network Operations Center for performance and availability. The data gathered is used by dynamic predictive analysis tools in real-time to raise alerts for unusual resource demands. Should any volumes exceed established thresholds, a capacity planning review is instituted which will address the need for additions well in advance of their actual need.

SRS diagram and interconnectivity description

As with all core registry services, the SRS is run from a global cluster of registry system data centers, located in geographic centers with high Internet bandwidth, power, redundancy and availability. All of the registry systems will be run in a <n+1> setup, with a primary data center and a secondary data center. For detailed site information, please see our responses to questions #32 and #35. Registrars access the SRS in real-time using EPP.

A sample of the Afiliast SRS technical and operational capabilities (displayed in Figure 24-a) include:

- Geographically diverse redundant registry systems;
- Load balancing implemented for all registry services (e.g. EPP, WHOIS, web admin) ensuring equal experience for all customers and easy horizontal scalability;
- Disaster Recovery Point objective for the registry is within one minute of the loss of the primary system;
- Detailed and tested contingency plan, in case of primary site failure, and;
- Daily reports, with secure access for confidentiality protection.

As evidenced in Figure 24-a, the SRS contains several components of the registry system. The interconnectivity ensures near-real-time distribution of the data throughout the registry infrastructure, timely backups, and up-to-date billing information.

The WHOIS servers are directly connected to the registry database and provide real-time responses to queries using the most up-to-date information present in the registry.

Committed DNS-related EPP objects in the database are made available to the DNS Distributor via a dedicated set of connections. The DNS Distributor extracts committed DNS-related EPP objects in real time and immediately inserts them into the zone for dissemination.

The Afiliast system is architected such that read-only database connections are executed on database replicas and connections to the database master (where write-access is executed) are carefully protected to ensure high availability.

This interconnectivity is monitored, as is the entire registry system, according to the plans detailed in our response to question #42.

Synchronization scheme

Registry databases are synchronized both within the same data center and in the backup data center using a database application called Slony. For further details, please see the responses to questions #33 and #37. Slony replication of transactions from the publisher (master) database to its subscribers (replicas) works continuously to ensure the publisher and its subscribers remain synchronized. When the publisher database completes a transaction the Slony replication system ensures that each replica also processes the transaction. When there are no transactions to process, Slony "sleeps" until a transaction arrives or for one minute, whichever comes first. Slony "wakes up" each minute to confirm with the publisher that there has not been a transaction and thus ensures subscribers are synchronized and the replication time lag is minimized. The typical replication time lag between the publisher and subscribers depends on the topology of the replication cluster, specifically the location of the subscribers relative to the publisher. Subscribers located in the same data center as the publisher are typically updated within a couple of seconds, and subscribers located in a secondary data center are typically updated in less than ten seconds. This ensures real-time or near-real-time synchronization between all databases, and in the case where the secondary data center needs to be activated, it can be done with minimal disruption to registrars.

SRS SLA performance compliance

Afilias has a ten-year record of delivering on the demanding ICANN SLAs, and will continue to provide secure, stable and reliable service in compliance with SLA requirements as specified in the new gTLD Registry Agreement, Specification 10, as presented in Figure 24-b.

The Afilias SRS currently handles over 200 million EPP transactions per month for just .INFO and .ORG. Overall, the Afilias SRS manages over 700 million EPP transactions per month for all TLDs under management.

Given this robust functionality, and more than a decade of experience supporting a thick TLD registry with a strong performance history, Afilias, on behalf of DotMusic, will meet or exceed the performance metrics in Specification 10 of the new gTLD Registry Agreement. The Afilias services and infrastructure are designed to scale both vertically and horizontally without any downtime to provide consistent performance as this TLD grows. The Afilias architecture is also massively provisioned to meet seasonal demands and marketing campaigns. Afilias' experience also gives high confidence in the ability to scale and grow registry operations for this TLD in a secure, stable and reliable manner.

SRS resourcing plans

Since its founding, Afilias is focused on delivering secure, stable and reliable registry services. Several essential management and staff who designed and launched the Afilias registry in 2001 and expanded the number of TLDs supported, all while maintaining strict service levels over the past decade, are still in place today. This experiential continuity will endure for the implementation and on-going maintenance of this TLD. Afilias operates in a matrix structure, which allows its staff to be allocated to various critical functions in both a dedicated and a shared manner. With a team of specialists and generalists, the Afilias project management methodology allows efficient and effective use of our staff in a focused way.

Over 100 Afilias team members contribute to the management of the SRS code and network that will support this TLD. The SRS team is composed of Software Engineers, Quality Assurance Analysts, Application Administrators, System Administrators, Storage Administrators, Network Administrators, Database Administrators, and Security Analysts located at three geographically separate Afilias facilities. The systems and services set up and administered by these team members are monitored 24x7 by skilled analysts at two NOCs located in Toronto, Ontario (Canada) and Horsham, Pennsylvania (USA). In addition to these team members, Afilias also utilizes trained project management staff to maintain various calendars, work breakdown schedules, utilization and resource schedules and other tools to support the technical and management staff. It is this team who will both deploy this TLD on the Afilias infrastructure, and maintain it. Together, the Afilias team has managed 11 registry transitions and six new TLD launches, which illustrate its ability to securely and reliably deliver regularly scheduled updates as well as a secure, stable and reliable SRS service for this TLD.

25. Extensible Provisioning Protocol (EPP): provide a detailed description of the interface with registrars, including how the applicant will comply with EPP in RFCs 3735 (if applicable), and 5730-5734.

If intending to provide proprietary EPP extensions, provide documentation consistent with RFC 3735, including the EPP templates and schemas that will be used.

Describe resourcing plans (number and description of personnel roles allocated to this area).

A complete answer is expected to be no more than 5 pages. If there are proprietary EPP extensions, a complete answer is also expected to be no more than 5 pages per EPP extension.

Answers for this question (#25) are provided by Afilias, the back-end provider of registry services for this TLD.

Afilias has been a pioneer and innovator in the use of EPP. .INFO was the first EPP-based gTLD registry and launched on EPP version 02/00. Afilias has a track record of supporting TLDs on

standards-compliant versions of EPP. Afilias will operate the EPP registrar interface as well as a web-based interface for this TLD in accordance with RFCs and global best practices. In addition, Afilias will maintain a proper OT&E (Operational Testing and Evaluation) environment to facilitate registrar system development and testing.

Afilias' EPP technical performance meets or exceeds all ICANN requirements as demonstrated by:

- A completely functional, state-of-the-art, EPP-based SRS that currently meets the needs of various gTLDs and will meet this new TLD's needs;
- A track record of success in developing extensions to meet client and registrar business requirements such as multi-script support for IDNs;
- Supporting six ICANN gTLDs on EPP: .INFO, .ORG, .MOBI, .AERO, .ASIA and .XXX
- EPP software that is operating today and has been fully tested to be standards-compliant;
- Proven interoperability of existing EPP software with ICANN-accredited registrars, and;
- An SRS that currently processes over 200 million EPP transactions per month for both .INFO and .ORG. Overall, Afilias processes over 700 million EPP transactions per month for all 16 TLDs under management.

The EPP service is offered in accordance with the performance specifications defined in the new gTLD Registry Agreement, Specification 10.

EPP Standards

The Afilias registry system complies with the following revised versions of the RFCs and operates multiple ICANN TLDs on these standards, including .INFO, .ORG, .MOBI, .ASIA and .XXX. The systems have been tested by our Quality Assurance ("QA") team for RFC compliance, and have been used by registrars for an extended period of time:

- 3735 - Guidelines for Extending EPP
- 3915 - Domain Registry Grace Period Mapping
- 5730 - Extensible Provisioning Protocol (EPP)
- 5731 - Domain Name Mapping
- 5732 - Host Mapping
- 5733 - Contact Mapping
- 5734 - Transport Over TCP
- 5910 - Domain Name System (DNS) Security Extensions Mapping for the Extensible Provisioning Protocol (EPP)

This TLD will support all valid EPP commands. The following EPP commands are in operation today and will be made available for this TLD. See attachment #25a for the base set of EPP commands and copies of Afilias XSD schema files, which define all the rules of valid, RFC compliant EPP commands and responses that Afilias supports. Any customized EPP extensions, if necessary, will also conform to relevant RFCs.

Afilias staff members actively participated in the Internet Engineering Task Force (IETF) process that finalized the new standards for EPP. Afilias will continue to actively participate in the IETF and will stay abreast of any updates to the EPP standards.

EPP software interface and functionality

Afilias will provide all registrars with a free open-source EPP toolkit. Afilias provides this software for use with both Microsoft Windows and Unix/Linux operating systems. This software, which includes all relevant templates and schema defined in the RFCs, is available on sourceforge.net and will be available through the registry operator's website.

Afilias' SRS EPP software complies with all relevant RFCs and includes the following functionality:

- EPP Greeting: A response to a successful connection returns a greeting to the client. Information exchanged can include: name of server, server date and time in UTC, server features, e.g., protocol versions supported, languages for the text response supported, and one or more elements which identify the objects that the server is capable of managing;
- Session management controls: <login> to establish a connection with a server, and <logout> to end a session;
- EPP Objects: Domain, Host and Contact for respective mapping functions;
- EPP Object Query Commands: Info, Check, and Transfer (query) commands to retrieve object information, and;
- EPP Object Transform Commands: five commands to transform objects: <create> to create an instance of an object, <delete> to remove an instance of an object, <renew> to extend the validity period of an object, <update> to change information associated with an object, and <transfer> to manage changes in client sponsorship of a known object.

Currently, 100% of the top domain name registrars in the world have software that has already been tested and certified to be compatible with the Afilias SRS registry. In total, over 375 registrars, representing over 95% of all registration volume worldwide, operate software that has been certified compatible with the Afilias SRS registry. Afilias' EPP Registrar Acceptance Criteria are available in attachment #25b, EPP OT&E Criteria.

Free EPP software support

Afilias analyzes and diagnoses registrar EPP activity log files as needed and is available to assist registrars who may require technical guidance regarding how to fix repetitive errors or exceptions caused by misconfigured client software.

Registrars are responsible for acquiring a TLS/SSL certificate from an approved certificate authority, as the registry-registrar communication channel requires mutual authentication;

Afilias will acquire and maintain the server-side TLS/SSL certificate. The registrar is responsible for developing support for TLS/SSL in their client application. Afilias will provide free guidance for registrars unfamiliar with this requirement.

Registrar data synchronization

There are two methods available for registrars to synchronize their data with the registry:

- Automated synchronization: Registrars can, at any time, use the EPP <info> command to obtain definitive data from the registry for a known object, including domains, hosts (nameservers) and contacts.
- Personalized synchronization: A registrar may contact technical support and request a data file containing all domains (and associated host (nameserver) and contact information) registered by that registrar, within a specified time interval. The data will be formatted as a comma separated values (CSV) file and made available for download using a secure server.

EPP modifications

There are no unique EPP modifications planned for this TLD.

All ICANN TLDs must offer a Sunrise as part of a rights protection program. Afilias uses EPP extensions that allow registrars to submit trademark and other intellectual property rights (IPR) data to the registry. These extensions are:

- An <ipr:name> element that indicates the name of Registered Mark.
- An <ipr:number> element that indicates the registration number of the IPR.
- An <ipr:ccLocality> element that indicates the origin for which the IPR is established (a national or international trademark registry).
- An <ipr:entitlement> element that indicates whether the applicant holds the trademark as the original "OWNER", "CO-OWNER" or "ASSIGNEE".
- An <ipr:appDate> element that indicates the date the Registered Mark was applied for.
- An <ipr:regDate> element that indicates the date the Registered Mark was issued and registered.
- An <ipr:class> element that indicates the class of the registered mark.
- An <ipr:type> element that indicates the Sunrise phase the application applies for.

Note that some of these extensions might be subject to change based on ICANN-developed requirements for the Trademark Clearinghouse.

EPP resourcing plans

Since its founding, Afilias is focused on delivering secure, stable and reliable registry services. Several essential management and staff who designed and launched the Afilias registry in 2001 and expanded the number of TLDs supported, all while maintaining strict service levels over the past decade, are still in place today. This experiential continuity will endure for the implementation and on-going maintenance of this TLD. Afilias operates in a matrix structure, which allows its staff to be allocated to various critical functions in both a dedicated and a shared manner. With a team of specialists and generalists, the Afilias project management methodology allows efficient and effective use of our staff in a focused way.

108 Afilias team members directly contribute to the management and development of the EPP based registry systems. As previously noted, Afilias is an active member of IETF and has a long documented history developing and enhancing EPP. These contributors include 11 developers and 14 QA engineers focused on maintaining and enhancing EPP server side software. These engineers work directly with business staff to timely address existing needs and forecast registry/registrar needs to ensure the Afilias EPP software is effective today and into the future. A team of eight data analysts work with the EPP software system to ensure that the data flowing through EPP is securely and reliably stored in replicated database systems. In addition to the EPP developers, QA engineers, and data analysts, other EPP contributors at Afilias include: Technical Analysts, the Network Operations Center and Data Services team members.

26. Whois: describe

- how the applicant will comply with Whois specifications for data objects, bulk access, and lookups as defined in Specifications 4 and 10 to the Registry Agreement;
- how the Applicant's Whois service will comply with RFC 3912; and
- resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).

A complete answer should include, but is not limited to:

- A high-level Whois system description;
- Relevant network diagram(s);
- IT and infrastructure resources (e.g., servers, switches, routers and other components);

Description of interconnectivity with other registry systems; and

Frequency of synchronization between servers.

To be eligible for a score of 2, answers must also include:

- Provision for Searchable Whois capabilities; and
- A description of potential forms of abuse of this feature, how these risks will be mitigated, and the basis for these descriptions

A complete answer is expected to be no more than 5 pages.

Answers for this question (#26) are provided by Afilias, the back-end provider of registry services for this TLD.

Afilias operates the WHOIS (registration data directory service) infrastructure in accordance with RFCs and global best practices, as it does for the 16 TLDs it currently supports. Designed to be robust and scalable, Afilias' WHOIS service has exceeded all contractual requirements for over a decade. It has extended search capabilities, and methods of limiting abuse.

The WHOIS service operated by Afilias meets and exceeds ICANN's requirements. Specifically, Afilias will:

- Offer a WHOIS service made available on port 43 that is flexible and standards-compliant;
- Comply with all ICANN policies, and meeting or exceeding WHOIS performance requirements in Specification 10 of the new gTLD Registry Agreement;
- Enable a Searchable WHOIS with extensive search capabilities that offers ease of use while enforcing measures to mitigate access abuse, and;
- Employ a team with significant experience managing a compliant WHOIS service.

Such extensive knowledge and experience managing a WHOIS service enables Afilias to offer a comprehensive plan for this TLD that meets the needs of constituents of the domain name industry and Internet users. The service has been tested by our QA team for RFC compliance, and has been used by registrars and many other parties for an extended period of time. Afilias' WHOIS service currently serves almost 500 million WHOIS queries per month, with the capacity already built in to handle an order of magnitude increase in WHOIS queries, and the ability to smoothly scale should greater growth be needed.

WHOIS system description and diagram

The Afilias WHOIS system, depicted in figure 26-a, is designed with robustness, availability, compliance, and performance in mind. Additionally, the system has provisions for detecting abusive usage (e.g., excessive numbers of queries from one source). The WHOIS system is generally intended as a publicly available single object lookup system. Afilias uses an advanced, persistent caching system to ensure extremely fast query response times.

Afilias will develop restricted WHOIS functions based on specific domain policy and regulatory requirements as needed for operating the business (as long as they are standards compliant). It will also be possible for contact and registrant information to be returned according to regulatory requirements. The WHOIS database supports multiple string and field searching through a reliable, free, secure web-based interface.

Data objects, interfaces, access and lookups

Registrars can provide an input form on their public websites through which a visitor is able to perform WHOIS queries. The registry operator can also provide a Web-based search on its site. The input form must accept the string to query, along with the necessary input elements to select the object type and interpretation controls. This input form sends its data to the Afilias port 43 WHOIS server. The results from the WHOIS query are returned by the server and displayed in the visitor's Web browser. The sole purpose of the Web interface is to provide a user-friendly interface for WHOIS queries.

Afilias will provide WHOIS output as per Specification 4 of the new gTLD Registry Agreement. The output for domain records generally consists of the following elements:

- The name of the domain registered and the sponsoring registrar;
- The names of the primary and secondary nameserver(s) for the registered domain name;
- The creation date, registration status and expiration date of the registration;
- The name, postal address, e-mail address, and telephone and fax numbers of the domain name holder;
- The name, postal address, e-mail address, and telephone and fax numbers of the technical contact for the domain name holder;
- The name, postal address, e-mail address, and telephone and fax numbers of the administrative contact for the domain name holder, and;
- The name, postal address, e-mail address, and telephone and fax numbers of the billing contact for the domain name holder.

The following additional features are also present in Afilias' WHOIS service:

- Support for IDNs, including the language tag and the Punycode representation of the IDN in addition to Unicode Hex and Unicode HTML formats;

- Enhanced support for privacy protection relative to the display of confidential information.

Afilias will also provide sophisticated WHOIS search functionality that includes the ability to conduct multiple string and field searches.

Query controls

For all WHOIS queries, a user is required to enter the character string representing the information for which they want to search. The object type and interpretation control parameters to limit the search may also be specified. If object type or interpretation control parameter is not specified, WHOIS will search for the character string in the Name field of the Domain object.

WHOIS queries are required to be either an "exact search" or a "partial search," both of which are insensitive to the case of the input string.

An exact search specifies the full string to search for in the database field. An exact match between the input string and the field value is required.

A partial search specifies the start of the string to search for in the database field. Every record with a search field that starts with the input string is considered a match. By default, if multiple matches are found for a query, then a summary containing up to 50 matching results is presented. A second query is required to retrieve the specific details of one of the matching records.

If only a single match is found, then full details will be provided. Full detail consists of the data in the matching object as well as the data in any associated objects. For example: a query that results in a domain object includes the data from the associated host and contact objects.

WHOIS query controls fall into two categories: those that specify the type of field, and those that modify the interpretation of the input or determine the level of output to provide. Each is described below.

The following keywords restrict a search to a specific object type:

- Domain: Searches only domain objects. The input string is searched in the Name field.
 - Host: Searches only nameserver objects. The input string is searched in the Name field and the IP Address field.
 - Contact: Searches only contact objects. The input string is searched in the ID field.
 - Registrar: Searches only registrar objects. The input string is searched in the Name field.
- By default, if no object type control is specified, then the Name field of the Domain object is searched.

In addition, Afilias WHOIS systems can perform and respond to WHOIS searches by registrant name, postal address and contact names. Deployment of these features is provided as an option to the registry operator, based upon registry policy and business decision making.

Figure 26-b presents the keywords that modify the interpretation of the input or determine the level of output to provide.

By default, if no interpretation control keywords are used, the output will include full details if a single match is found and a summary if multiple matches are found.

Unique TLD requirements

There are no unique WHOIS requirements for this TLD.

Sunrise WHOIS processes

All ICANN TLDs must offer a Sunrise as part of a rights protection program. Afilias uses EPP extensions that allow registrars to submit trademark and other intellectual property rights (IPR) data to the registry. The following corresponding data will be displayed in WHOIS for relevant domains:

- Trademark Name: element that indicates the name of the Registered Mark.
- Trademark Number: element that indicates the registration number of the IPR.
- Trademark Locality: element that indicates the origin for which the IPR is established (a national or international trademark registry).
- Trademark Entitlement: element that indicates whether the applicant holds the trademark as the original "OWNER", "CO-OWNER" or "ASSIGNEE".
- Trademark Application Date: element that indicates the date the Registered Mark was applied for.
- Trademark Registration Date: element that indicates the date the Registered Mark was issued and registered.
- Trademark Class: element that indicates the class of the Registered Mark.
- IPR Type: element that indicates the Sunrise phase the application applies for.

IT and infrastructure resources

All the applications and databases for this TLD will run in a virtual environment hosted by a cluster of servers equipped with the latest Intel Westmere multi-core processors (or a more advanced, stable technology available at the time of deployment). The registry data will be stored on storage arrays of solid-state drives shared over a fast storage area network. The virtual environment allows the infrastructure to easily scale both vertically and horizontally to cater to changing demand. It also facilitates effective utilization of system resources thus reducing energy consumption and carbon footprint.

The applications and servers are supported by network firewalls, routers and switches. The WHOIS system accommodates both IPv4 and IPv6 addresses.

Each of the servers and network devices are equipped with redundant hot-swappable components and multiple connections to ancillary systems. Additionally, 24x7 support agreements with our hardware vendor with a 4-hour response time at all our data centers guarantees replacement of failed parts in the shortest time possible.

Models of system and network devices used are:

- Servers: Cisco UCS B230 blade servers
- SAN storage arrays: IBM Storwize V7000 with Solid State Drives
- Firewalls: Cisco ASA 5585-X
- Load balancers: F5 Big-IP 6900
- Traffic shapers: Procera PacketLogic PL8720
- Routers: Juniper MX40 3D
- Network switches: Cisco Nexus 7010, Nexus 5548, Nexus 2232

There will be at least four virtual machines (VMs) offering WHOIS service. Each VM will run at least two WHOIS server instances - one for registrars and one for the public. All instances of the WHOIS service is made available to registrars and the public are rate limited to mitigate abusive behavior.

Frequency of synchronization between servers

Registration data records from the EPP publisher database will be replicated to the WHOIS system database on a near-real-time basis whenever an update occurs.

Specifications 4 and 10 compliance

The WHOIS service for this TLD will meet or exceed the performance requirements in the new gTLD Registry Agreement, Specification 10. Figure 26-c provides the exact measurements and commitments. Afiliias has a 10 year track record of exceeding WHOIS performance and a skilled team to ensure this continues for all TLDs under management.

The WHOIS service for this TLD will meet or exceed the requirements in the new gTLD Registry Agreement, Specification 4.

RFC 3912 compliance

Afiliias will operate the WHOIS infrastructure in compliance with RFCs and global best practices, as it does with the 16 TLDs Afiliias currently supports.

Afiliias maintains a registry-level centralized WHOIS database that contains information for every registered domain and for all host and contact objects. The WHOIS service will be available on the Internet standard WHOIS port (port 43) in compliance with RFC 3912. The WHOIS service contains data submitted by registrars during the registration process. Changes made to the data by a registrant are submitted to Afiliias by the registrar and are reflected in the WHOIS database and service in near-real-time, by the instance running at the primary data center, and in under ten seconds by the instance running at the secondary data center, thus providing all interested parties with up-to-date information for every domain. This service is compliant with the new gTLD Registry Agreement, Specification 4.

The WHOIS service maintained by Afiliias will be authoritative and complete, as this will be a "thick" registry (detailed domain contact WHOIS is all held at the registry); users do not have to query different registrars for WHOIS information, as there is one central WHOIS system. Additionally, visibility of different types of data is configurable to meet the registry operator's needs.

Searchable WHOIS

Afiliias offers a searchable WHOIS on a web-based Directory Service. Partial match capabilities are offered on the following fields: domain name, registrar ID, and IP address. In addition, Afiliias WHOIS systems can perform and respond to WHOIS searches by registrant name, postal address and contact names.

Providing the ability to search important and high-value fields such as registrant name, address and contact names increases the probability of abusive behavior. An abusive user could script a set of queries to the WHOIS service and access contact data in order to create or sell a list of names and addresses of registrants in this TLD. Making the WHOIS machine readable, while preventing harvesting and mining of WHOIS data, is a key requirement integrated into the Afiliias WHOIS systems. For instance, Afiliias limits search returns to 50 records at a time. If bulk queries were ever necessary (e.g., to comply with any applicable laws, government rules or requirements, requests of law enforcement, or any dispute resolution process), Afiliias makes such query responses available to carefully screened and limited staff members at the registry operator (and customer support staff) via an internal data warehouse. The Afiliias WHOIS system accommodates anonymous access as well as pre-identified and profile-defined uses, with full audit and log capabilities.

The WHOIS service has the ability to tag query responses with labels such as "Do not redistribute" or "Special access granted". This may allow for tiered response and reply scenarios. Further, the WHOIS service is configurable in parameters and fields returned, which allow for flexibility in compliance with various jurisdictions, regulations or laws.

Afiliias offers exact-match capabilities on the following fields: registrar ID, nameserver name,

and nameserver's IP address (only applies to IP addresses stored by the registry, i.e., glue records). Search capabilities are fully available, and results include domain names matching the search criteria (including IDN variants). Afilias manages abuse prevention through rate limiting and CAPTCHA (described below). Queries do not require specialized transformations of internationalized domain names or internationalized data fields

Please see "Query Controls" above for details about search options and capabilities.

Deterring WHOIS abuse

Afilias has adopted two best practices to prevent abuse of the WHOIS service: rate limiting and CAPTCHA.

Abuse of WHOIS services on port 43 and via the Web is subject to an automated rate-limiting system. This ensures that uniformity of service to users is unaffected by a few parties whose activities abuse or otherwise might threaten to overload the WHOIS system.

Abuse of web-based public WHOIS services is subject to the use of CAPTCHA (Completely Automated Public Turing test to tell Computers and Humans Apart) technology. The use of CAPTCHA ensures that uniformity of service to users is unaffected by a few parties whose activities abuse or otherwise might threaten to overload the WHOIS system. The registry operator will adopt a CAPTCHA on its Web-based WHOIS.

Data mining of any sort on the WHOIS system is strictly prohibited, and this prohibition is published in WHOIS output and in terms of service.

For rate limiting on IPv4, there are configurable limits per IP and subnet. For IPv6, the traditional limitations do not apply. Whenever a unique IPv6 IP address exceeds the limit of WHOIS queries per minute, the same rate-limit for the given 64 bits of network prefix that the offending IPv6 IP address falls into will be applied. At the same time, a timer will start and rate-limit validation logic will identify if there are any other IPv6 address within the original 80-bit (<48) prefix. If another offending IPv6 address does fall into the <48 prefix then rate-limit validation logic will penalize any other IPv6 addresses that fall into that given 80-bit (<48) network. As a security precaution, Afilias will not disclose these limits.

Pre-identified and profile-driven role access allows greater granularity and configurability in both access to the WHOIS service, and in volume/frequency of responses returned for queries.

Afilias staff are key participants in the ICANN Security & Stability Advisory Committee's deliberations and outputs on WHOIS, including SAC003, SAC027, SAC033, SAC037, SAC040, and SAC051. Afilias staff are active participants in both technical and policy decision making in ICANN, aimed at restricting abusive behavior.

WHOIS staff resourcing plans

Since its founding, Afilias is focused on delivering secure, stable and reliable registry services. Several essential management and staff who designed and launched the Afilias registry in 2001 and expanded the number of TLDs supported, all while maintaining strict service levels over the past decade, are still in place today. This experiential continuity will endure for the implementation and on-going maintenance of this TLD. Afilias operates in a matrix structure, which allows its staff to be allocated to various critical functions in both a dedicated and a shared manner. With a team of specialists and generalists, the Afilias project management methodology allows efficient and effective use of our staff in a focused way.

Within Afilias, there are 11 staff members who develop and maintain the compliant WHOIS systems. They keep pace with access requirements, thwart abuse, and continually develop software. Of these resources, approximately two staffers are typically required for WHOIS-related code customization. Other resources provide quality assurance, and operations personnel maintain the WHOIS system itself. This team will be responsible for the implementation and on-going maintenance of the new TLD WHOIS service.

27. Registration Life Cycle: provide a detailed description of the proposed registration lifecycle for domain names in the proposed gTLD. The description must:

- explain the various registration states as well as the criteria and procedures that are used to change state;
- describe the typical registration lifecycle of create/update/delete and all intervening steps such as pending, locked, expired, and transferred that may apply;
- clearly explain any time elements that are involved - for instance details of add-grace or redemption grace periods, or notice periods for renewals or transfers; and
- describe resourcing plans for this aspect of the criteria (number and description of personnel roles allocated to this area).

The description of the registration lifecycle should be supplemented by the inclusion of a state diagram, which captures definitions, explanations of trigger points, and transitions from state to state.

If applicable, provide definitions for aspects of the registration lifecycle that are not covered by standard EPP RFCs.

A complete answer is expected to be no more than 5 pages.

THE RESPONSE FOR THIS QUESTION USES ANGLE BRACKETS (THE " < " and " > " CHARACTERS, or < and >), WHICH ICANN INFORMS US (CASE ID 11027) CANNOT BE PROPERLY RENDERED IN TAS DUE TO SECURITY CONCERNS. HENCE, THE ANSWER BELOW AS DISPLAYED IN TAS MAY NOT RENDER THE FULL RESPONSE AS INTENDED. THEREFORE, THE FULL ANSWER TO THIS QUESTION IS ALSO ATTACHED AS A PDF FILE, ACCORDING TO SPECIFIC GUIDANCE FROM ICANN UNDER CASE ID 11027.

Answers for this question (#27) are provided by Afiliias, the back-end provider of registry services for this TLD.

Afiliias has been managing registrations for over a decade. Afiliias has had experience managing registrations for over a decade and supports comprehensive registration lifecycle services including the registration states, all standard grace periods, and can address any modifications required with the introduction of any new ICANN policies.

This TLD will follow the ICANN standard domain lifecycle, as is currently implemented in TLDs such as .ORG and .INFO. The main parts in a domain are: (i) Registration Period; (ii) the Auto-Renew Grace Period; (iii) Redemption Grace Period; and (iv) Pending Delete. As a special requirement to meet the .MUSIC mission established in response to question #18, catering to the needs of the Music Community DotMusic will in the Registration phase conduct data validations for all registrations and additional verifications of eligibility for registrations conducted in the Sunrise and Landrush phases. More details in response to question #20e. The below response includes: a diagram and description of the lifecycle of a domain name in this TLD, including domain creation, transfer protocols, grace period implementation and the respective time frames for each; and the existing resources to support the complete lifecycle of a domain.

As depicted in Figure 27-a, prior to the beginning of the Trademark Claims Service or Sunrise IP protection program[s], Afiliias will support the reservation of names in accordance with the new gTLD Registry Agreement, Specification 5, as described in response to question #22. Registration period.

After the IP protection programs and the general launch, eligible registrants may choose an accredited registrar to register a domain name. The registrar will check availability on the requested domain name and if available, will collect specific objects such as, the required contact and host information from the registrant. The registrar will then provision the information into the registry system using standard Extensible Provisioning Protocol ("EPP") commands through a secure connection to the registry backend service provider.

When the domain is created, the standard five day Add Grace Period begins, the domain and contact information are available in WHOIS, and normal operating EPP domain statuses will apply. Other specifics regarding registration rules for an active domain include:

- The domain must be unique;
- Restricted or reserved domains cannot be registered;
- The domain can be registered from 1-10 years;
- The domain can be renewed at any time for 1-10 years, but cannot exceed 10 years;
- The domain can be explicitly deleted at any time;
- The domain can be transferred from one registrar to another except during the first 60 days following a successful registration or within 60 days following a transfer; and, Contacts and hosts can be modified at any time.

The following describe the domain status values recognized in WHOIS when using the EPP protocol following RFC 5731.

- OK or Active: This is the normal status for a domain that has no pending operations or restrictions.
- Inactive: The domain has no delegated name servers.
- Locked: No action can be taken on the domain. The domain cannot be renewed, transferred, updated, or deleted. No objects such as contacts or hosts can be associated to, or disassociated from the domain. This status includes: Delete Prohibited / Server Delete Prohibited, Update Prohibited / Server Update Prohibited, Transfer Prohibited, Server Transfer Prohibited, Renew Prohibited, Server Renew Prohibited.
- Hold: The domain will not be included in the zone. This status includes: Client Hold, Server Hold.
- Transfer Prohibited: The domain cannot be transferred away from the sponsoring registrar. This status includes: Client Transfer Prohibited, Server Transfer Prohibited.

The following describe the registration operations that apply to the domain name during the registration period.

- a. Domain modifications: This operation allows for modifications or updates to the domain attributes to include:
- i. Registrant Contact

- ii. Admin Contact
- iii. Technical Contact
- iv. Billing Contact
- v. Host or nameservers
- vi. Authorization information
- vii. Associated status values

A domain with the EPP status of Client Update Prohibited or Server Update Prohibited may not be modified until the status is removed.

- b. Domain renewals: This operation extends the registration period of a domain by changing the expiration date. The following rules apply:
- i. A domain can be renewed at any time during its registration term,
 - ii. The registration term cannot exceed a total of 10 years.

A domain with the EPP status of Client Renew Prohibited or Server Renew Prohibited cannot be renewed.

- c. Domain deletions: This operation deletes the domain from the Shared Registry Services (SRS). The following rules apply:
- i. A domain can be deleted at any time during its registration term, if the domain is deleted during the Add Grace Period or the Renew/Extend Grace Period, the sponsoring registrar will receive a credit,
 - ii. A domain cannot be deleted if it has "child" nameservers that are associated to other domains.

A domain with the EPP status of Client Delete Prohibited or Server Delete Prohibited cannot be deleted.

- d. Domain transfers: A transfer of the domain from one registrar to another is conducted by following the steps below.
- i. The registrant must obtain the applicable <authInfo> code from the sponsoring (losing) registrar.
 - Every domain name has an authInfo code as per EPP RFC 5731. The authInfo code is a six- to 16-character code assigned by the registrar at the time the name was created. Its purpose is to aid identification of the domain owner so proper authority can be established (it is the "password" to the domain).
 - Under the Registry-Registrar Agreement, registrars will be required to provide a copy of the authInfo code to the domain registrant upon his or her request.
 - ii. The registrant must provide the authInfo code to the new (gaining) registrar, who will then initiate a domain transfer request. A transfer cannot be initiated without the authInfo code.
 - Every EPP <transfer> command must contain the authInfo code or the request will fail. The authInfo code represents authority to the registry to initiate a transfer.
 - iii. Upon receipt of a valid transfer request, the registry automatically asks the sponsoring (losing) registrar to approve the request within five calendar days.
 - When a registry receives a transfer request the domain cannot be modified, renewed or deleted until the request has been processed. This status must not be combined with either Client Transfer Prohibited or Server Transfer Prohibited status.
 - If the sponsoring (losing) registrar rejects the transfer within five days, the transfer request is cancelled. A new domain transfer request will be required to reinitiate the process.
 - If the sponsoring (losing) registrar does not approve or reject the transfer within five days, the registry automatically approves the request.
 - iv. After a successful transfer, it is strongly recommended that registrars change the authInfo code, so that the prior registrar or registrant cannot use it anymore.
 - v. Registrars must retain all transaction identifiers and codes associated with successful domain object transfers and protect them from disclosure.
 - vi. Once a domain is successfully transferred the status of TRANSFERPERIOD is added to the domain for a period of five days.
 - vii. Successful transfers will result in a one year term extension (resulting in a maximum total of 10 years), which will be charged to the gaining registrar.

e. Bulk transfer: Afiliias, supports bulk transfer functionality within the SRS for situations where ICANN may request the registry to perform a transfer of some or all registered objects (includes domain, contact and host objects) from one registrar to another registrar. Once a bulk transfer has been executed, expiry dates for all domain objects remain the same, and all relevant states of each object type are preserved. In some cases the gaining and the losing registrar as well as the registry must approved bulk transfers. A detailed log is captured for each bulk transfer process and is archived for audit purposes. DotMusic will support ICANN's Transfer Dispute Resolution Process. DotMusic will work with Afiliias to respond to Requests for Enforcement (law enforcement or court orders) and will follow that process.

1. Auto-renew grace period

The Auto-Renew Grace Period displays as AUTORENEWPERIOD in WHOIS. An auto-renew must be requested by the registrant through the sponsoring registrar and occurs if a domain name registration is not explicitly renewed or deleted by the expiration date and is set to a maximum of 45 calendar days. In this circumstance the registration will be automatically renewed by the registry system the first day after the expiration date. If a Delete, Extend, or Transfer occurs within the AUTORENEWPERIOD the following rules apply:

i. Delete. If a domain is deleted the sponsoring registrar at the time of the deletion receives a credit for the auto-renew fee. The domain then moves into the Redemption Grace Period with a status of PENDING DELETE RESTORABLE.

ii. Renew/Extend. A domain can be renewed as long as the total term does not exceed 10 years. The account of the sponsoring registrar at the time of the extension will be charged for the additional number of years the registration is renewed.

iii. Transfer (other than ICANN-approved bulk transfer). If a domain is transferred, the losing registrar is credited for the auto-renew fee, and the year added by the operation is cancelled. As a result of the transfer, the expiration date of the domain is extended by minimum of one year as long as the total term does not exceed 10 years. The gaining registrar is charged for the additional transfer year(s) even in cases where a full year is not added because of the maximum 10 year registration restriction.

2. Redemption grace period

During this period, a domain name is placed in the PENDING DELETE RESTORABLE status when a registrar requests the deletion of a domain that is not within the Add Grace Period. A domain can remain in this state for up to 30 days and will not be included in the zone file. The only action a registrar can take on a domain is to request that it be restored. Any other registrar requests to modify or otherwise update the domain will be rejected. If the domain is restored it moves into PENDING RESTORE and then OK. After 30 days if the domain is not restored it moves into PENDING DELETE SCHEDULED FOR RELEASE before the domain is released back into the pool of available domains.

3. Pending delete

During this period, a domain name is placed in PENDING DELETE SCHEDULED FOR RELEASE status for five days, and all Internet services associated with the domain will remain disabled and domain cannot be restored. After five days the domain is released back into the pool of available domains.

Other grace periods

All ICANN required grace periods will be implemented in the registry backend service provider's system including the Add Grace Period (AGP), Renew/Extend Grace Period (EGP), Transfer Grace Period (TGP), Auto-Renew Grace Period (ARGP), and Redemption Grace Period (RGP). The lengths of grace periods are configurable in the registry system. At this time, the grace periods will be implemented following other gTLDs such as .ORG. More than one of these grace periods may be in effect at any one time. The following are accompanying grace periods to the registration lifecycle.

Add Grace Period

The Add Grace Period displays as ADDPERIOD in WHOIS and is set to five calendar days following the initial registration of a domain. If the domain is deleted by the registrar during this period, the registry provides a credit to the registrar for the cost of the registration. If a Delete, Renew/Extend, or Transfer operation occurs within the five calendar days, the following rules apply.

i. Delete. If a domain is deleted within this period the sponsoring registrar at the time of the deletion is credited for the amount of the registration. The domain is deleted from the registry backend service provider's database and is released back into the pool of available domains.

ii. Renew/Extend. If the domain is renewed within this period and then deleted, the sponsoring registrar will receive a credit for both the registration and the extended amounts. The account of the sponsoring registrar at the time of the renewal will be charged for the initial registration plus the number of years the registration is extended. The expiration date of the domain registration is extended by that number of years as long as the total term does not exceed 10 years.

iii. Transfer (other than ICANN-approved bulk transfer). Transfers under Part A of the ICANN Policy on Transfer of Registrations between registrars may not occur during the ADDPERIOD or at any other time within the first 60 days after the initial registration. Enforcement is the responsibility of the registrar sponsoring the domain name registration and is enforced by the SRS.

Renew / Extend grace period

The Renew / Extend Grace Period displays as RENEWPERIOD in WHOIS and is set to five calendar days following an explicit renewal on the domain by the registrar. If a Delete, Extend, or Transfer occurs within the five calendar days, the following rules apply:

i. Delete. If a domain is deleted within this period the sponsoring registrar at the time of the deletion receives a credit for the renewal fee. The domain then moves into the Redemption Grace Period with a status of PENDING DELETE RESTORABLE.

ii. Renew/Extend. A domain registration can be renewed within this period as long as the total term does not exceed 10 years. The account of the sponsoring registrar at the time of the extension will be charged for the additional number of years the registration is renewed.

iii. Transfer (other than ICANN-approved bulk transfer). If a domain is transferred within the Renew/Extend Grace Period, there is no credit to the losing registrar for the renewal fee. As a result of the transfer, the expiration date of the domain registration is extended by a minimum of one year as long as the total term for the domain does not exceed 10 years.

If a domain is auto-renewed, then extended, and then deleted within the Renew/Extend Grace Period, the registrar will be credited for any auto-renew fee charged and the number of years for the extension. The years that were added to the domain's expiration as a result of the auto-renewal and extension are removed. The deleted domain is moved to the Redemption Grace Period with a status of PENDING DELETE RESTORABLE.

Transfer Grace Period

The Transfer Grace period displays as TRANSFERPERIOD in WHOIS and is set to five calendar days after the successful transfer of domain name registration from one registrar to another registrar. Transfers under Part A of the ICANN Policy on Transfer of Registrations between registrars may not occur during the TRANSFERPERIOD or within the first 60 days after the transfer. If a Delete or Renew/Extend occurs within that five calendar days, the following rules apply:

i. Delete. If the domain is deleted by the new sponsoring registrar during this period, the registry provides a credit to the registrar for the cost of the transfer. The domain then moves into the Redemption Grace Period with a status of PENDING DELETE RESTORABLE.

ii. Renew/Extend. If a domain registration is renewed within the Transfer Grace Period, there is no credit for the transfer. The registrar's account will be charged for the number of years the registration is renewed. The expiration date of the domain registration is extended by the renewal years as long as the total term does not exceed 10 years.

Special considerations

As established in this application .MUSIC is a community TLD with the Music Policy and Copyright Infringement Dispute Resolution Process to solve dispute concerning the established eligibility criteria for domain name registrants under .MUSIC; as described in response to question #20e.

Further, .MUSIC will conduct auctions for multiple registration applications for the same domain name in the Sunrise and Landrush phases; exceptions is the globally Protected marks List that supersedes any registration applications. More details are provided in response to question #18b and #20e. Afilias will manage the domain name auction using existing technology. Upon the completion of the auction, any domain name acquired will then follow the standard lifecycle of a domain.

Registration lifecycle resources

Since its founding, Afilias is focused on delivering secure, stable and reliable registry services. Several essential management and staff who designed and launched the Afilias registry in 2001 and expanded the number of TLDs supported, all while maintaining strict service levels over the past decade, are still in place today. This experiential continuity will endure for the implementation and on-going maintenance of this TLD. Afilias operates in a matrix structure, which allows its staff to be allocated to various critical functions in both a dedicated and a shared manner. With a team of specialists and generalists, the Afilias project management methodology allows efficient and effective use of our staff in a focused way. Virtually all Afilias resource are involved in the registration lifecycle of domains. There are a few areas where registry staff devote resources to registration lifecycle issues:

a. Supporting Registrar Transfer Disputes. The registry operator will have a compliance staffer handle these disputes as they arise; they are very rare in the existing gTLDs.

b. Afilias has its development and quality assurance departments on hand to modify the grace period functionality as needed, if ICANN issues new Consensus Policies or the RFCs change. Afilias has more than 30 staff members in these departments.

28. Abuse Prevention and Mitigation: Applicants should describe the proposed policies and procedures to minimize abusive registrations and other activities that have a negative impact on Internet users. A complete answer should include, but is not limited to:

- An implementation plan to establish and publish on its website a single abuse point of contact responsible for addressing matters requiring expedited attention and providing a timely response to abuse complaints concerning all names registered in the TLD through all registrars of record, including those involving a reseller;
- Policies for handling complaints regarding abuse;
- Proposed measures for removal of orphan glue records for names removed from the zone when

provided with evidence in written form that the glue is present in connection with malicious conduct (see Specification 6); and

- Resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).

To be eligible for a score of 2, answers must include measures to promote Whois accuracy as well as measures from one other area as described below.

- Measures to promote Whois accuracy (can be undertaken by the registry directly or by registrars via requirements in the Registry-Registrar Agreement (RRA)) may include, but are not limited to:
 - Authentication of registrant information as complete and accurate at time of registration. Measures to accomplish this could include performing background checks, verifying all contact information of principals mentioned in registration data, reviewing proof of establishment documentation, and other means
 - Regular monitoring of registration data for accuracy and completeness, employing authentication methods, and establishing policies and procedures to address domain names with inaccurate or incomplete Whois data; and
 - If relying on registrars to enforce measures, establishing policies and procedures to ensure compliance, which may include audits, financial incentives, penalties, or other means. Note that the requirements of the RAA will continue to apply to all ICANN-accredited registrars.
- A description of policies and procedures that define malicious or abusive behavior, capture metrics, and establish Service Level Requirements for resolution, including service levels for responding to law enforcement requests. This may include rapid takedown or suspension systems and sharing information regarding malicious or abusive behavior with industry partners;
- Adequate controls to ensure proper access to domain functions (can be undertaken by the registry directly or by registrars via requirements in the Registry-Registrar Agreement (RRA)) may include, but are not limited to:
 - Requiring multi-factor authentication (i.e., strong passwords, tokens, one-time passwords) from registrants to process update, transfers, and deletion requests;
 - Requiring multiple, unique points of contact to request and/or approve update, transfer, and deletion requests; and
 - Requiring the notification of multiple, unique points of contact when a domain has been updated, transferred, or deleted.

A complete answer is expected to be no more than 20 pages.

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

- Posting a TLD Anti-Abuse Policy that clearly defines abuse, and provide point-of-contact information for reporting suspected abuse;
- Committing to rapid identification and resolution of abuse, including suspensions;
- Ensuring completeness of WHOIS information at the time of registration;
- Performing data validations of WHOIS elements at time of registration and exploring mechanisms for re-evaluation when registrants update such information;
- Publishing and maintaining procedures for removing orphan glue records for names removed from the zone,
- Introducing the .MUSIC Policy & Copyright Infringement Dispute Resolution Process ("MPCIDRP") to ensure eligibility requirements, use and naming policies as established in response to question #20e, and;
- Establishing measures to deter WHOIS abuse, including rate-limiting, determining data syntax validity, and implementing and enforcing requirements from the Registry-Registrar Agreement.

Abuse policy

The Abuse Policy stated below will be enacted under the contractual authority of the registry operator through the Registry-Registrar Agreement, and the obligations will be passed on to and made binding upon registrants. This policy will be posted on the TLD web site along with contact information for registrants or users to report suspected abuse.

The policy is designed to address the malicious use of domain names. The registry operator and its registrars will make reasonable attempts to limit significant harm to Internet users. This policy is not intended to take the place of the Uniform Domain Name Dispute Resolution Policy (UDRP) or the Uniform Rapid Suspension System (URS), and it is not to be used as an alternate form of dispute resolution or as a brand protection mechanism. Its intent is not to burden law-abiding or innocent registrants and domain users; rather, the intent is to deter those who use domain names maliciously by engaging in illegal or fraudulent activity.

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

The below policy is a recent version of the policy that has been used by the .INFO registry since 2008, and the .ORG registry since 2009. It has proven to be an effective and flexible tool.

.MUSIC Anti-Abuse Policy

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

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

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

The policy stated above will be accompanied by notes about how to submit a report to the registry operator's abuse point of contact, and how to report an orphan glue record suspected of being used in connection with malicious conduct (see below).

Abuse point of contact and procedures for handling abuse complaints

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

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

In general, the registry operator will find itself receiving abuse reports from a wide variety of parties, including security researchers and Internet security companies, financial institutions such as banks, Internet users, and law enforcement agencies among others. Some of these parties may provide good forensic data or supporting evidence of the malicious behavior.

In other cases, the party reporting an issue may not be familiar with how to provide such data or proof of malicious behavior. It is expected that a percentage of abuse reports to the registry operator will not be actionable, because there will not be enough evidence to support the complaint (even after investigation), and because some reports or reporters will simply not be credible.

The security function includes a communication and outreach function, with information sharing with industry partners regarding malicious or abusive behavior, in order to ensure coordinated abuse mitigation across multiple TLDs.

Assessing abuse reports requires great care, and the registry operator will rely upon professional, trained investigators who are versed in such matters. The goals are accuracy, good record-keeping, and a zero false-positive rate so as not to harm innocent registrants.

Different types of malicious activities require different methods of investigation and documentation. Further, the registry operator expects to face unexpected or complex situations that call for professional advice, and will rely upon professional, trained investigators as needed.

In general, there are two types of domain abuse that must be addressed:

- a) Compromised domains. These domains have been hacked or otherwise compromised by criminals, and the registrant is not responsible for the malicious activity taking place on the domain. For example, the majority of domain names that host phishing sites are compromised. The goal in such cases is to get word to the registrant (usually via the registrar) that there is a problem that needs attention with the expectation that the registrant will address the problem in a timely manner. Ideally such domains do not get suspended, since suspension would disrupt legitimate activity on the domain.
- b) Malicious registrations. These domains are registered by malefactors for the purpose of abuse. Such domains are generally targets for suspension, since they have no legitimate use.

The standard procedure is that the registry operator will forward a credible alleged case of malicious domain name use to the domain's sponsoring registrar with a request that the registrar investigate the case and act appropriately. The registrar will be provided evidence collected as a result of the investigation conducted by the trained abuse handlers. As part of the investigation, if inaccurate or false WHOIS registrant information is detected, the registrar is notified about this. The registrar is the party with a direct relationship with—and a direct contract with—the registrant. The registrar will also have vital information that the registry operator will not, such as:

- Details about the domain purchase, such as the payment method used (credit card, PayPal, etc.);
- The identity of a proxy-protected registrant;
- The purchaser's IP address;
- Whether there is a reseller involved, and;
- The registrant's past sales history and purchases in other TLDs (insofar as the registrar can determine this).

Registrars do not share the above information with registry operators due to privacy and liability concerns, among others. Because they have more information with which to continue the investigation, and because they have a direct relationship with the registrant, the registrar is in the best position to evaluate alleged abuse. The registrar can determine if the use violates the registrar's legal terms of service or the registry Anti-Abuse Policy, and can decide whether or not to take any action. While the language and terms vary, registrars will be expected to include language in their registrar-registrant contracts that indemnifies the registrar if it takes action, and allows the registrar to suspend or cancel a domain name; this will be in addition to the registry Anti-Abuse Policy. Generally, registrars can act if the registrant violates the registrar's terms of service, or violates ICANN policy, or if illegal activity is involved, or if the use violates the registry's Anti-Abuse Policy.

If a registrar does not take action within a time period indicated by the registry operator (usually 24 hours), the registry operator might then decide to take action itself. At all times, the registry operator reserves the right to act directly and immediately if the potential harm to Internet users seems significant or imminent, with or without notice to the sponsoring registrar.

The registry operator will be prepared to call upon relevant law enforcement bodies as needed. There are certain cases, for example, Illegal pharmacy domains, where the registry operator will contact the Law Enforcement Agencies to share information about these domains, provide all the evidence collected and work closely with them before any action will be taken for suspension. The specific action is often dependent upon the jurisdiction of the registry operator, although the operator in all cases will adhere to applicable laws and regulations.

When valid court orders or seizure warrants are received from courts or law enforcement agencies of relevant jurisdiction, the registry operator will order execution in an expedited fashion. Compliance with these will be a top priority and will be completed as soon as possible and within the defined timelines of the order. There are certain cases where Law Enforcement Agencies request information about a domain including but not limited to:

- Registration information
- History of a domain, including recent updates made
- Other domains associated with a registrant's account
- Patterns of registrant portfolio

Requests for such information is handled on a priority basis and sent back to the requestor as soon as possible. Afiliias sets a goal to respond to such requests within 24 hours.

DotMusic and Afiliias may also engage in proactive screening of its zone for malicious use of the domains in the TLD, and report problems to the sponsoring registrars. DotMusic will from time to time evaluate the necessity in proactive screenings and may take advantage of a combination of the following resources, among others:

- Blocklists of domain names and nameservers published by organizations such as SURBL and Spamhaus.
- Anti-phishing feeds, which will provide URLs of compromised and maliciously registered domains being used for phishing.
- Analysis of registration or DNS query data [DNS query data received by the TLD nameservers.]

The registry operator will keep records and track metrics regarding abuse and abuse reports. These will include:

- Number of abuse reports received by the registry's abuse point of contact described above;
- Number of cases and domains referred to registrars for resolution;
- Number of cases and domains where the registry took direct action;
- Resolution times;
- Number of domains in the TLD that have been blacklisted by major anti-spam blacklist providers, and;
- Phishing site uptimes in the TLD.

Removal of orphan glue records

By definition, orphan glue records used to be glue records. Glue records are related to delegations and are necessary to guide iterative resolvers to delegated nameservers. A glue record becomes an orphan when its parent nameserver record is removed without also removing the corresponding glue record. (Please reference the ICANN SSAC paper SAC048 at: <http://www.icann.org/en/committees/security/sac048.pdf>.) Orphan glue records may be created when a domain (example.tld) is placed on EPP ServerHold or ClientHold status. When placed on Hold, the domain is removed from the zone and will stop resolving. However, any child nameservers (now orphan glue) of that domain (e.g., nsl.example.tld) are left in the zone. It is important to keep these orphan glue records in the zone so that any innocent sites using that nameserver will continue to resolve. This use of Hold status is an essential tool for suspending malicious domains.

Afiliias observes the following procedures, which are being followed by other registries and are generally accepted as DNS best practices. These procedures are also in keeping with ICANN SSAC recommendations.

When a request to delete a domain is received from a registrar, the registry first checks for the existence of glue records. If glue records exist, the registry will check to see if other domains in the registry are using the glue records. If other domains in the registry are using the glue records then the request to delete the domain will fail until no other domains are using the glue records. If no other domains in the registry are using the glue records then the glue records will be removed before the request to delete the domain is satisfied. If no glue records exist then the request to delete the domain will be satisfied.

If a registrar cannot delete a domain because of the existence of glue records that are being used by other domains, then the registrar may refer to the zone file or the "weekly domain hosted by nameserver report" to find out which domains are using the nameserver in question and attempt to contact the corresponding registrar to request that they stop using the nameserver in the glue record. The registry operator does not plan on performing mass updates of the associated DNS records.

The registry operator will accept, evaluate, and respond appropriately to complaints that orphan glue is being used maliciously. Such reports should be made in writing to the registry operator, and may be submitted to the registry's abuse point-of-contact. If it is confirmed that an orphan glue record is being used in connection with malicious conduct, the registry operator will have the orphan glue record removed from the zone file. Afiliias has the technical ability to execute such requests as needed.

Methods to promote WHOIS accuracy

The creation and maintenance of accurate WHOIS records is an important part of registry management. As described in our response to question #26, WHOIS, the registry operator will manage a secure, robust and searchable WHOIS service for this TLD.

WHOIS data accuracy

The registry operator will offer a "thick" registry system. In this model, all key contact details for each domain name will be stored in a central location by the registry. This allows better access to domain data, and provides uniformity in storing the information. The registry operator will ensure that the required fields for WHOIS data (as per the defined policies for the TLD) are enforced at the registry level. This ensures that the registrars are providing required domain registration data. Fields defined by the registry policy to be mandatory are documented as such and must be submitted by registrars. The Afiliias registry system verifies formats for relevant individual data fields (e.g. e-mail, and phone/fax numbers). Only valid country codes are allowed as defined by the ISO 3166 code list. The Afiliias WHOIS system is extensible, and is capable of using the VAULT system, described further below.

To further ensure that registrants under .MUSIC can be reached DotMusic will introduce data validation of some WHOIS elements as part of the .MUSIC policies as described in response to

question #20. DotMusic will explore mechanisms for data re-validation if all validated elements for one registrant are modified, such as could be the case in a registrant transfers.

Similar to the centralized abuse point of contact described above, the registry operator can institute a contact email address which could be utilized by third parties to submit complaints for inaccurate or false WHOIS data detected. DotMusic will in its periodic evaluations of the overall functionality and usability of .MUSIC include assessment of needs for a Whois data accuracy point of contact. DotMusic will work dedicatedly and directly with law-enforcement agencies, authorities, ICANN working Groups, and other security experts in the ongoing development of promoting WHOIS data accuracy. This information will be processed by Afiliás' support department and forwarded to the registrars. The registrars can work with the registrants of those domains to address these complaints. Afiliás will audit registrars on a yearly basis to verify whether the complaints being forwarded are being addressed or not. This functionality, available to all registry operators, is activated based on the registry operator's business policy.

Afiliás also incorporates a spot-check verification system where a randomly selected set of domain names are checked periodically for accuracy of WHOIS data. Afiliás' .PRO registry system incorporates such a verification system whereby 1% of total registrations or 100 domains, whichever number is larger, are spot-checked every month to verify the domain name registrant's critical information provided with the domain registration data. With both a highly qualified corps of engineers and a 24x7 staffed support function, Afiliás will integrate such spot-check functionality into this TLD, based on the registry operator's business policy. Note: This functionality will not work for proxy protected WHOIS information, where registrars or their resellers have the actual registrant data. The solution to that problem lies with either registry or registrar policy, or a change in the general marketplace practices with respect to proxy registrations.

Finally, Afiliás' registry systems have a sophisticated set of billing and pricing functionality which aids registry operators who decide to provide a set of financial incentives to registrars for maintaining or improving WHOIS accuracy. For instance, it is conceivable that the registry operator may decide to provide a discount for the domain registration or renewal fees for validated registrants, or levy a larger cost for the domain registration or renewal of proxy domain names. The Afiliás system has the capability to support such incentives on a configurable basis, towards the goal of promoting better WHOIS accuracy. DotMusic has no specific plans for price discounts, but will consider that as a part of marketing initiatives in cases where the Most Likely scenario registration volume is not met, as discussed in response to questions 45-50.

Role of registrars

As part of the RRA (Registry Registrar Agreement), the registry operator will require the registrar to be responsible for ensuring the input of accurate WHOIS data by their registrants. The Registrar/Registered Name Holder Agreement will include a specific clause to ensure accuracy of WHOIS data, and to give the registrar rights to cancel or suspend registrations if the Registered Name Holder fails to respond to the registrar's query regarding accuracy of data. ICANN's WHOIS Data Problem Reporting System (WDPRS) will be available to those who wish to file WHOIS inaccuracy reports, as per ICANN policy (<http://wdprs.internic.net/>).

Controls to ensure proper access to domain functions

Several measures are in place in the Afiliás registry system to ensure proper access to domain functions, including authentication provisions in the RRA relative to notification and contact updates via use of AUTH-INFO codes.

IP address access control lists, TLS/SSL certificates and proper authentication are used to control access to the registry system. Registrars are only given access to perform operations on the objects they sponsor.

Every domain will have a unique AUTH-INFO code. The AUTH-INFO code is a 6- to 16-character code assigned by the registrar at the time the name is created. Its purpose is to aid identification of the domain owner so proper authority can be established. It is the "password" to the domain name. Registrars must use the domain's password in order to initiate a registrar-to-registrar transfer. It is used to ensure that domain updates (update contact information, transfer, or deletion) are undertaken by the proper registrant, and that this registrant is adequately notified of domain update activity. Only the sponsoring registrar of a domain has access to the domain's AUTH-INFO code stored in the registry, and this is accessible only via encrypted, password-protected channels.

Information about other registry security measures such as encryption and security of registrar channels are confidential to ensure the security of the registry system. The details can be found in the response to question #30b.

.MUSIC Community Specific Protections

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

requirements under .MUSIC policies.

.MUSIC has established specific protection mechanisms as described in the response to question #20e. As a means to cure any disputes concerning adherence to the .MUSIC requirements and policies, DotMUSIC is establishing the .MUSIC Policy & Copyright Infringement Dispute Resolution Process ("MPCIDRP"). All .MUSIC registrants will be bound by this policy by means of the .MUSIC Registration Agreement.

The MPCIDRP may be invoked by any third part in order to solve a dispute with a registrant over the registration or use of the registration in violation of the .MUSIC policies. A dispute filing can take place with any approved MPCIDRP dispute resolution provider and must specify how the domain name is in violation of the purposes contemplated by the definition and qualification of a .MUSIC.

The details of the MPCIDRP will be published prior to the launch of .MUSIC. Details of the process, proceedings, and supplemental rules a complainant must follow will be developed in coordination with respective dispute resolution providers and it will also be published prior to launch of .MUSIC.

Validation and abuse mitigation mechanisms

Afilias has developed advanced validation and abuse mitigation mechanisms. These capabilities and mechanisms are described below. These services and capabilities are discretionary and may be utilized by the registry operator based on their policy and business need.

Afilias has the ability to analyze the registration data for known patterns at the time of registration. A database of these known patterns is developed from domains and other associated objects (e.g., contact information) which have been previously detected and suspended after being flagged as abusive. Any domains matching the defined criteria can be flagged for investigation. Once analyzed and confirmed by the domain anti-abuse team members, these domains may be suspended. This provides proactive detection of abusive domains.

Provisions are available to enable the registry operator to only allow registrations by pre-authorized and verified contacts. These verified contacts are given a unique code that can be used for registration of new domains. Such provision will be used in the case where holders of a mark in the Globally Protected Marks list (a protection mechanism explained in response to question #20e) wish to register their mark under .MUSIC; and it can also be used for release of the reserved country and territory names per response to question #22.

Registrant pre-verification and authentication

As previously mentioned DotMUSIC will validate certain data elements in relation to domain name registrations. The methods used may be modified from time to time as technology in this area advance, and will be selected to avoid too much interruption for the registrant. One of the systems that could be used for validity and identity authentication is VAULT (Validation and Authentication Universal Lookup). It utilizes information obtained from a series of trusted data sources with access to billions of records containing data about individuals for the purpose of providing independent age and id verification as well as the ability to incorporate additional public or private data sources as required. At present it has the following: US Residential Coverage - 90% of Adult Population and also International Coverage - Varies from Country to Country with a minimum of 80% coverage (24 countries, mostly European).

Various verification elements can be used. Examples might include applicant data such as name, address, phone, etc. Multiple methods could be used for verification include integrated solutions utilizing API (XML Application Programming Interface) or sending batches of requests.

- Verification and Authentication requirements would be based on TLD operator requirements or specific criteria.
- Based on required WHOIS Data; registrant contact details (name, address, phone)
- If address/ZIP can be validated by VAULT, the validation process can continue (North America +25 International countries)
- If in-line processing and registration and EPP/API call would go to the verification clearinghouse and return up to 4 challenge questions.
- If two-step registration is required, then registrants would get a link to complete the verification at a separate time. The link could be specific to a domain registration and pre-populated with data about the registrant.
- If WHOIS data is validated a token would be generated and could be given back to the registrar which registered the domain.
- WHOIS data would reflect the Validated Data or some subset, i.e., fields displayed could be first initial and last name, country of registrant and date validated. Other fields could be generic validation fields much like a "privacy service".
- A "Validation Icon" customized script would be sent to the registrants email address. This could be displayed on the website and would be dynamically generated to avoid unauthorized use of the Icon. When clicked on the Icon would should limited WHOIS details i.e. Registrant: jdoe, Country: USA, Date Validated: March 29, 2011, as well as legal disclaimers.
- Validation would be annually renewed, and validation date displayed in the WHOIS.

Abuse prevention resourcing plans

Since its founding, Afilias is focused on delivering secure, stable and reliable registry services. Several essential management and staff who designed and launched the Afilias registry in 2001 and expanded the number of TLDs supported, all while maintaining strict service levels over the past decade, are still in place today. This experiential continuity will endure for the implementation and on-going maintenance of this TLD. Afilias operates in a matrix

structure, which allows its staff to be allocated to various critical functions in both a dedicated and a shared manner. With a team of specialists and generalists, the Afilias project management methodology allows efficient and effective use of our staff in a focused way. Abuse prevention and detection is a function that is staffed across the various groups inside Afilias, and requires a team effort when abuse is either well hidden or widespread, or both. While all of Afilias' 200+ employees are charged with responsibility to report any detected abuse, the engineering and analysis teams, numbering over 30, provide specific support based on the type of abuse and volume and frequency of analysis required. The Afilias security and support teams have the authority to initiate mitigation.

Afilias has developed advanced validation and abuse mitigation mechanisms. These capabilities and mechanisms are described below. These services and capabilities are discretionary and may be utilized by the registry operator based on their policy and business need.

This TLD's anticipated volume of registrations in the first three years of operations is listed in response #46. Afilias and the registry operator's anti-abuse function anticipates the expected volume and type of registrations, and together will adequately cover the staffing needs for this TLD. The registry operator will maintain an abuse response team, which may be a combination of internal staff and outside specialty contractors, adjusting to the needs of the size and type of TLD. The team structure planned for this TLD is based on several years of experience responding to, mitigating, and managing abuse for TLDs of various sizes. The team will generally consist of abuse handlers (probably internal), a junior analyst, (either internal or external), and a senior security consultant (likely an external resource providing the registry operator with extra expertise as needed). These responders will be specially trained in the investigation of abuse complaints, and will have the latitude to act expeditiously to suspend domain names (or apply other remedies) when called for.

The exact resources required to maintain an abuse response team must change with the size and registration procedures of the TLD. An initial abuse handler is necessary as a point of contact for reports, even if a part-time responsibility. The abuse handlers monitor the abuse email address for complaints and evaluate incoming reports from a variety of sources. A large percentage of abuse reports to the registry operator may be unsolicited commercial email. The designated abuse handlers can identify legitimate reports and then decide what action is appropriate, either to act upon them, escalate to a security analyst for closer investigation, or refer them to registrars as per the above-described procedures. A TLD with rare cases of abuse would conform to this structure.

If multiple cases of abuse within the same week occur regularly, the registry operator will consider staffing internally a security analyst to investigate the complaints as they become more frequent. Training an abuse analyst requires 3-6 months and likely requires the active guidance of an experienced senior security analyst for guidance and verification of assessments and recommendations being made.

If this TLD were to regularly experience multiple cases of abuse within the same day, a full-time senior security analyst would likely be necessary. A senior security analyst capable of fulfilling this role should have several years of experience and able to manage and train the internal abuse response team.

The abuse response team will also maintain subscriptions for several security information services, including the blocklists from organizations like SURBL and Spamhaus and anti-phishing and other domain related abuse (malware, fast-flux etc.) feeds. The pricing structure of these services may depend on the size of the domain and some services will include a number of rapid suspension requests for use as needed.

For a large TLD, regular audits of the registry data are required to maintain control over abusive registrations. When a registrar with a significant number of registrations has been compromised or acted maliciously, the registry operator may need to analyze a set of registration or DNS query data. A scan of all the domains of a registrar is conducted only as needed. Scanning and analysis for a large registrar may require as much as a week of full-time effort for a dedicated machine and team.

29. Rights Protection Mechanisms: Applicants must describe how their registry will comply with policies and practices that minimize abusive registrations and other activities that affect the legal rights of others, such as the Uniform Domain Name Dispute Resolution Policy (UDRP), Uniform Rapid Suspension (URS) system, and Trademark Claims and Sunrise services at startup.

A complete answer should include:

- A description of how the registry operator will implement safeguards against allowing unqualified registrations (e.g., registrations made in violation of the registry's eligibility restrictions or policies), and reduce opportunities for behaviors such as phishing or pharming. At a minimum, the registry operator must offer a Sunrise period and a Trademark Claims service during the required time periods, and implement decisions rendered under the URS on an ongoing basis; and

- A description of resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).

>To be eligible for a score of 2, answers must also include additional measures specific to rights protection, such as abusive use policies, takedown procedures, registrant pre-verification, or authentication procedures, or other covenants.

A complete answer is expected to be no more than 10 pages.

Rights protection is a core responsibility of the TLD operator, and is supported by a fully-developed plan for rights protection that includes:

- Establishing mechanisms to prevent unqualified registrations (e.g., registrations made in violation of the registry's eligibility restrictions or policies);
- Implementing a robust Sunrise program, utilizing the Trademark Clearinghouse, the services of one of ICANN's approved dispute resolution providers, a trademark validation agent, and drawing upon sunrise policies and rules used successfully in previous gTLD launches;
- Implementing a professional trademark claims program that utilizes the Trademark Clearinghouse, and drawing upon models of similar programs used successfully in previous TLD launches;
- Complying with the URS requirements;
- Complying with the UDRP;
- Complying with the PDDRP,
- Complying with the RRDRP and;
- Including all ICANN-mandated and independently developed rights protection mechanisms ("RPMs") in the registry-registrar agreement entered into by ICANN-accredited registrars authorized to register names in the TLD.

The response below details the rights protection mechanisms at the launch of the TLD (Sunrise and Trademark Claims Service) which comply with rights protection policies (URS, UDRP, PDDRP, RRDRP, and other ICANN RPMs), outlines additional provisions made for rights protection, and provides the resourcing plans.

Safeguards for rights protection at the launch of the TLD

The launch of this TLD will include the operation of a trademark claims service according to the defined ICANN processes for checking a registration request and alerting trademark holders of potential rights infringement.

Sunrise Period

The Sunrise Period will be an exclusive period of time, prior to the opening of public registration, when trademark and service mark holders will be able to submit registration applications for domain names that correspond to their marks. Following the Sunrise Period, and Landrush Period DotMusic will open registration to first-come-first-serve registrants.

The anticipated Rollout Schedule for the Sunrise Period will be as follows:

Phase 1: 60 days Sunrise Period for trademark holders and service mark holders to submit applications for .MUSIC domain name registrations corresponding to their marks. To maximize fairness multiple registration applications for the same domain name will be decided upon via auctions. A 30 day Quiet Period will follow the sunrise period for testing and evaluation.

Phase 2: 60 days Music Community Member Organization Landrush: a limited-time period reserved for members of DotMusic-accredited Music Community Member Organizations (mCMO). Multiple registration requests for the same string will be decided upon via an auction. A 30 day Quiet Period will follow this phase as well to allow for testing and evaluation.

One month after close of Quiet Period - Registration in the TLD domain will be opened for general availability. Domains will be registered on a first-come-first-serve basis.

Sunrise Period Requirements & Restrictions

To be eligible for participation in the Sunrise Phase of .MUSIC a trademark holder must fulfill the requirements set forth in the 11 January 2012 ICANN Applicant Guidebook, Trademark Clearinghouse Specification, section 7.2; or any subsequent updates thereto.

Currently the Sunrise eligibility requirements (SERs) include: (i) ownership of a mark that satisfies the criteria set forth in section 7.2 of the Trademark Clearing House specifications, (ii) description of international class of goods or services covered by registration; (iii) representation that all provided information is true and correct; and (iv) provision of data sufficient to document rights in the trademark.

The Sunrise Dispute Resolution Policy (SDRP) will allow challenges based on the following four grounds: (i) at time the challenged domain name was registered, the registrants did not hold a trademark registration of national effect (or regional effect) or the trademark had not been court-validated or protected by statute or treaty; (ii) the domain name is not identical to the mark on which the registrant based its Sunrise registration; (iii) the trademark registration on which the registrant based its Sunrise registration is not of national effect (or regional effect) or the trademark had not been court-validated or protected by statute or

treaty; or (iv) the trademark registration on which the domain name registrant based its Sunrise registration did not issue on or before the effective date of the Registry Agreement and was not applied for on or before ICANN announced the applications received. The established grounds may change as ICANN is finalizing Sunrise requirements in its Trademark Clearing House specification.

Sunrise registrations can be made in terms of 1, 2, 3, 5, or 10 year registrations.

Ongoing rights protection mechanisms

Several mechanisms will be in place to protect rights in this TLD. As described in our responses to questions #27 and #28, measures are in place to ensure domain transfers and updates are only initiated by the appropriate domain holder, and an experienced team is available to respond to legal actions by law enforcement or court orders.

This TLD will conform to all ICANN RPMs including URS (defined below), UDRP, PDDRP, and all measures defined in Specification 7 of the new TLD agreement.

Uniform Rapid Suspension (URS)

The registry operator will implement decisions rendered under the URS on an ongoing basis. Per the URS policy posted on ICANN's Web site as of this writing, the registry operator will receive notice of URS actions from the ICANN-approved URS providers. These emails will be directed immediately to the registry operator's support staff, which is on duty 24x7. The support staff will be responsible for creating a ticket for each case, and for executing the directives from the URS provider. All support staff will receive pertinent training.

As per ICANN's URS guidelines, within 24 hours of receipt of the notice of complaint from the URS provider, the registry operator shall "lock" the domain, meaning the registry shall restrict all changes to the registration data, including transfer and deletion of the domain names, but the name will remain in the TLD DNS zone file and will thus continue to resolve. The support staff will "lock" the domain by associating the following EPP statuses with the domain and relevant contact objects:

- ServerUpdateProhibited, with an EPP reason code of "URS"
- ServerDeleteProhibited, with an EPP reason code of "URS"
- ServerTransferProhibited, with an EPP reason code of "URS"
- The registry operator's support staff will then notify the URS provider immediately upon locking the domain name, via email.

The registry operator's support staff will retain all copies of emails from the URS providers, assign them a tracking or ticket number, and will track the status of each opened URS case through to resolution via spreadsheet or database.

The registry operator's support staff will execute further operations upon notice from the URS providers. The URS provider is required to specify the remedy and required actions of the registry operator, with notification to the registrant, the complainant, and the registrar.

As per the URS guidelines, if the complainant prevails, the "registry operator shall suspend the domain name, which shall remain suspended for the balance of the registration period and would not resolve to the original web site. The nameservers shall be redirected to an informational web page provided by the URS provider about the URS. The WHOIS for the domain name shall continue to display all of the information of the original registrant except for the redirection of the nameservers. In addition, the WHOIS shall reflect that the domain name will not be able to be transferred, deleted or modified for the life of the registration."

Community TLD considerations

As described in response to question #20e and #28 DotMusic will implement several policies surrounding .MUSIC to fulfill the mission in support of Music Community needs. The applicable requirements will be validated at time of registration, and in addition ongoing use, naming, and anti-abuse policies are also in place to ensure continued establishment of a safe and secure TLD that is not only operated but used in the interest of the Music Community. A dedicated dispute resolution policy is in place to solve disputes concerning infringement of the .MUSIC Policy.

Rights protection via the RRA

The following will be memorialized and be made binding via the Registry-Registrar and Registrar-Registrant Agreements:

- The registry may reject a registration request or a reservation request, or may delete, revoke, suspend, cancel, or transfer a registration or reservation under the following criteria:
 - a. to enforce registry policies and ICANN requirements; each as amended from time to time;
 - b. that is not accompanied by complete and accurate information as required by ICANN requirements and/or registry policies or where required information is not updated and/or corrected as required by ICANN requirements and/or registry policies;
 - c. to protect the integrity and stability of the registry, its operations, and the TLD system;
 - d. to comply with any applicable law, regulation, holding, order, or decision issued by a court, administrative authority, or dispute resolution service provider with jurisdiction over the registry;
 - e. to establish, assert, or defend the legal rights of the registry or a third party or to avoid any civil or criminal liability on the part of the registry and/or its affiliates, subsidiaries, officers, directors, representatives, employees, contractors, and stockholders;

f. to correct mistakes made by the registry or any accredited registrar in connection with a registration; or
g. as otherwise provided in the Registry-Registrar Agreement and/or the Registrar-Registrant Agreement.

Reducing opportunities for behaviors such as phishing or pharming

In our response to question #28, the registry operator has described its anti-abuse program. Rather than repeating the policies and procedures here, please see our response to question #28 for full details.

With specific respect to phishing and pharming, it should be noted .MUSIC with its specified registration price, (detailed in response to questions #45-50), and restrictions and protections in regards to registrations and usage of the domains (detailed in response to question #20e) under it is considered a low risk target for such attacks. This is confirmed by McAfee's 2011 security report (http://us.mcafee.com/en-us/local/docs/MTMW_Report.pdf) stating that low-priced domains are more vulnerable for such attacks, and restricted TLDs bear low risks. Further, per the Anti-Phishing Working Group surveys and activities that is and will be monitored by DotMusic; the latest study shows that in 2011 only 2% of domain names used for phishing were targeting brand names, corresponding to 5,700 names.

Since all criminal activity (such as phishing and pharming) is a small percentage of domain registrations overall and precluded by the mission, values and policies of DotMusic and .MUSIC, criminal activity is not expected to be a problem. If such activity occurs due to hacking or other compromises, the registry operator will take prompt and effective steps to eliminate the activity.

In the case of this TLD, DotMusic will apply an approach that addresses registered domain names (rather than potentially registered domains). This approach will not infringe upon the rights of eligible registrants to register domains, and allows DotMusic internal controls, as well as community-developed UDRP and URS policies and procedures if needed, to deal with complaints, should there be any.

Afilias is a member of various security fora which provide access to lists of names in each TLD which may be used for malicious purposes. Such identified names will be subject to the TLD anti-abuse policy, including rapid suspensions after due process.

Rights protection resourcing plans

Since its founding, Afilias is focused on delivering secure, stable and reliable registry services. Several essential management and staff who designed and launched the Afilias registry in 2001 and expanded the number of TLDs supported, all while maintaining strict service levels over the past decade, are still in place today. This experiential continuity will endure for the implementation and on-going maintenance of this TLD. Afilias operates in a matrix structure, which allows its staff to be allocated to various critical functions in both a dedicated and a shared manner. With a team of specialists and generalists, the Afilias project management methodology allows efficient and effective use of our staff in a focused way.

Supporting RPMs requires several departments within the registry operator as well as within Afilias. The implementation of Sunrise and the Trademark Claims service and on-going RPM activities will pull from the 102 Afilias staff members of the engineering, product management, development, security and policy teams at Afilias and the support staff of the registry operator, which is on duty 24x7. A trademark validator will also be assigned within the registry operator, whose responsibilities may require as much as 50% of full-time employment if the domains under management were to exceed several million. No additional hardware or software resources are required to support this as Afilias has fully-operational capabilities to manage abuse today.

30A. Security Policy: provide a summary of the security policy for the proposed registry, including but not limited to:

- indication of any independent assessment reports demonstrating security capabilities, and provisions for periodic independent assessment reports to test security capabilities;
- description of any augmented security levels or capabilities commensurate with the nature of the applied for gTLD string, including the identification of any existing international or industry relevant security standards the applicant commits to following (reference site must be provided);
- list of commitments made to registrants concerning security levels.

To be eligible for a score of 2, answers must also include:

- Evidence of an independent assessment report demonstrating effective security controls (e.g., ISO 27001).

A summary of the above should be no more than 20 pages. Note that the complete security policy for the registry is required to be submitted in accordance with 30(b).

The answer to question #30a is provided by Afilias, the back-end provider of registry services for this TLD.

Afilias aggressively and actively protects the registry system from known threats and vulnerabilities, and has deployed an extensive set of security protocols, policies and procedures to thwart compromise. Afilias' robust and detailed plans are continually updated and tested to ensure new threats are mitigated prior to becoming issues. Afilias will continue these rigorous security measures, which include:

- Multiple layers of security and access controls throughout registry and support systems;
- 24x7 monitoring of all registry and DNS systems, support systems and facilities;
- Unique, proven registry design that ensures data integrity by granting only authorized access to the registry system, all while meeting performance requirements;
- Detailed incident and problem management processes for rapid review, communications, and problem resolution, and;
- Yearly external audits by independent, industry-leading firms, as well as twice-yearly internal audits.

Security policies and protocols

Afilias has included security in every element of its service, including facilities, hardware, equipment, connectivity/Internet services, systems, computer systems, organizational security, outage prevention, monitoring, disaster mitigation, and escrow/insurance, from the original design, through development, and finally as part of production deployment. Examples of threats and the confidential and proprietary mitigation procedures are detailed in our response to question #30(b).

There are several important aspects of the security policies and procedures to note:

- Afilias hosts domains in data centers around the world that meet or exceed global best practices.
- Afilias' DNS infrastructure is massively provisioned as part of its DDoS mitigation strategy, thus ensuring sufficient capacity and redundancy to support new gTLDs.
- Diversity is an integral part of all of our software and hardware stability and robustness plan, thus avoiding any single points of failure in our infrastructure.
- Access to any element of our service (applications, infrastructure and data) is only provided on an as-needed basis to employees and a limited set of others to fulfill their job functions. The principle of least privilege is applied.
- All registry components - critical and non-critical - are monitored 24x7 by staff at our NOCs, and the technical staff has detailed plans and procedures that have stood the test of time for addressing even the smallest anomaly. Well-documented incident management procedures are in place to quickly involve the on-call technical and management staff members to address any issues.

Afilias follows the guidelines from the ISO 27001 Information Security Standard (Reference: http://www.iso.org/iso/iso_catalogue/catalogue_tc/catalogue_detail.htm?csnumber=42103) for the management and implementation of its Information Security Management System. Afilias also utilizes the COBIT IT governance framework to facilitate policy development and enable controls for appropriate management of risk (Reference: <http://www.isaca.org/cobit>). Best practices defined in ISO 27002 are followed for defining the security controls within the organization. Afilias continually looks to improve the efficiency and effectiveness of our processes, and follows industry best practices as defined by the IT Infrastructure Library, or ITIL (Reference: <http://www.ital-officialsite.com/>).

The Afilias registry system is located within secure data centers that implement a multitude of security measures both to minimize any potential points of vulnerability and to limit any damage should there be a breach. The characteristics of these data centers are described fully in our response to question #30(b).

The Afilias registry system employs a number of multi-layered measures to prevent unauthorized access to its network and internal systems. Before reaching the registry network, all traffic is required to pass through a firewall system. Packets passing to and from the Internet are inspected, and unauthorized or unexpected attempts to connect to the registry servers are both logged and denied. Management processes are in place to ensure each request is tracked and documented, and regular firewall audits are performed to ensure proper operation. 24x7 monitoring is in place and, if potential malicious activity is detected, appropriate personnel are notified immediately.

Afilias employs a set of security procedures to ensure maximum security on each of its servers, including disabling all unnecessary services and processes and regular application of security-related patches to the operating system and critical system applications. Regular external vulnerability scans are performed to verify that only services intended to be available are accessible.

Regular detailed audits of the server configuration are performed to verify that the configurations comply with current best security practices. Passwords and other access means are changed on a regular schedule and are revoked whenever a staff member's employment is terminated.

Access to registry system

Access to all production systems and software is strictly limited to authorized operations staff members. Access to technical support and network operations teams where necessary are read only and limited only to components required to help troubleshoot customer issues and perform routine checks. Strict change control procedures are in place and are followed each time a change is required to the production hardware/application. User rights are kept to a minimum at all times. In the event of a staff member's employment termination, all access is removed immediately.

Afilias applications use encrypted network communications. Access to the registry server is controlled. Afilias allows access to an authorized registrar only if each of the authentication factors matches the specific requirements of the requested authorization. These mechanisms are also used to secure any web-based tools that allow authorized registrars to access the registry. Additionally, all write transactions in the registry (whether conducted by authorized registrars or the registry's own personnel) are logged.

EPP connections are encrypted using TLS/SSL, and mutually authenticated using both certificate checks and login/password combinations. Web connections are encrypted using TLS/SSL for an encrypted tunnel to the browser, and authenticated to the EPP server using login/password combinations.

All systems are monitored for security breaches from within the data center and without, using both system-based and network-based testing tools. Operations staff also monitor systems for security-related performance anomalies. Triple-redundant continual monitoring ensures multiple detection paths for any potential incident or problem. Details are provided in our response to questions #30(b) and #42. Network Operations and Security Operations teams perform regular audits in search of any potential vulnerability.

To ensure that registrar hosts configured erroneously or maliciously cannot deny service to other registrars, Afilias uses traffic shaping technologies to prevent attacks from any single registrar account, IP address, or subnet. This additional layer of security reduces the likelihood of performance degradation for all registrars, even in the case of a security compromise at a subset of registrars.

There is a clear accountability policy that defines what behaviors are acceptable and unacceptable on the part of non-staff users, staff users, and management. Periodic audits of policies and procedures are performed to ensure that any weaknesses are discovered and addressed. Aggressive escalation procedures and well-defined Incident Response management procedures ensure that decision makers are involved at early stages of any event.

In short, security is a consideration in every aspect of business at Afilias, and this is evidenced in a track record of a decade of secure, stable and reliable service.

Independent assessment

Supporting operational excellence as an example of security practices, Afilias performs a number of internal and external security audits each year of the existing policies, procedures and practices for:

- Access control;
- Security policies;
- Production change control;
- Backups and restores;
- Batch monitoring;
- Intrusion detection, and
- Physical security.

Afilias has an annual Type 2 SSAE 16 audit performed by PricewaterhouseCoopers (PwC). Further, PwC performs testing of the general information technology controls in support of the financial statement audit. A Type 2 report opinion under SSAE 16 covers whether the controls were properly designed, were in place, and operating effectively during the audit period (calendar year). This SSAE 16 audit includes testing of internal controls relevant to Afilias' domain registry system and processes. The report includes testing of key controls related to the following control objectives:

- Controls provide reasonable assurance that registrar account balances and changes to the registrar account balances are authorized, complete, accurate and timely.
- Controls provide reasonable assurance that billable transactions are recorded in the Shared Registry System (SRS) in a complete, accurate and timely manner.
- Controls provide reasonable assurance that revenue is systemically calculated by the Deferred Revenue System (DRS) in a complete, accurate and timely manner.
- Controls provide reasonable assurance that the summary and detail reports, invoices, statements, registrar and registry billing data files, and ICANN transactional reports provided to registry operator(s) are complete, accurate and timely.
- Controls provide reasonable assurance that new applications and changes to existing applications are authorized, tested, approved, properly implemented and documented.
- Controls provide reasonable assurance that changes to existing system software and implementation of new system software are authorized, tested, approved, properly implemented and documented.
- Controls provide reasonable assurance that physical access to data centers is restricted to properly authorized individuals.
- Controls provide reasonable assurance that logical access to system resources is restricted to properly authorized individuals.
- Controls provide reasonable assurance that processing and backups are appropriately

authorized and scheduled and that deviations from scheduled processing and backups are identified and resolved.

The last Type 2 report issued was for the year 2010, and it was unqualified, i.e., all systems were evaluated with no material problems found.

During each year, Afiliias monitors the key controls related to the SSAE controls. Changes or additions to the control objectives or activities can result due to deployment of new services, software enhancements, infrastructure changes or process enhancements. These are noted and after internal review and approval, adjustments are made for the next review.

In addition to the PricewaterhouseCoopers engagement, Afiliias performs internal security audits twice a year. These assessments are constantly being expanded based on risk assessments and changes in business or technology.

Additionally, Afiliias engages an independent third-party security organization, PivotPoint Security, to perform external vulnerability assessments and penetration tests on the sites hosting and managing the Registry infrastructure. These assessments are performed with major infrastructure changes, release of new services or major software enhancements. These independent assessments are performed at least annually. A report from a recent assessment is attached with our response to question #30(b).

Afiliias has engaged with security companies specializing in application and web security testing to ensure the security of web-based applications offered by Afiliias, such as the Web Admin Tool (WAT) for registrars and registry operators.

Finally, Afiliias has engaged IBM's Security services division to perform ISO 27002 gap assessment studies so as to review alignment of Afiliias' procedures and policies with the ISO 27002 standard. Afiliias has since made adjustments to its security procedures and policies based on the recommendations by IBM.

Special TLD considerations

Afiliias' rigorous security practices are regularly reviewed; if there is a need to alter or augment procedures for this TLD, they will be done so in a planned and deliberate manner.

Commitments to registrant protection

With over a decade of experience protecting domain registration data, Afiliias understands registrant security concerns. Afiliias supports a "thick" registry system in which data for all objects are stored in the registry database that is the centralized authoritative source of information. As an active member of IETF (Internet Engineering Task Force), ICANN's SSAC (Security & Stability Advisory Committee), APWG (Anti-Phishing Working Group), MAAWG (Messaging Anti-Abuse Working Group), USENIX, and ISACA (Information Systems Audits and Controls Association), the Afiliias team is highly attuned to the potential threats and leading tools and procedures for mitigating threats. As such, registrants should be confident that:

- Any confidential information stored within the registry will remain confidential;
- The interaction between their registrar and Afiliias is secure;
- The Afiliias DNS system will be reliable and accessible from any location;
- The registry system will abide by all polices, including those that address registrant data;
- Afiliias will not introduce any features or implement technologies that compromise access to the registry system or that compromise registrant security.

Afiliias has directly contributed to the development of the documents listed below and we have implemented them where appropriate. All of these have helped improve registrants' ability to protect their domains name(s) during the domain name lifecycle.

- [SAC049]: SSAC Report on DNS Zone Risk Assessment and Management (03 June 2011)
- [SAC044]: A Registrant's Guide to Protecting Domain Name Registration Accounts (05 November 2010)
- [SAC040]: Measures to Protect Domain Registration Services Against Exploitation or Misuse (19 August 2009)
- [SAC028]: SSAC Advisory on Registrar Impersonation Phishing Attacks (26 May 2008)
- [SAC024]: Report on Domain Name Front Running (February 2008)
- [SAC022]: Domain Name Front Running (SAC022, SAC024) (20 October 2007)
- [SAC011]: Problems caused by the non-renewal of a domain name associated with a DNS Name Server (7 July 2006)
- [SAC010]: Renewal Considerations for Domain Name Registrants (29 June 2006)
- [SAC007]: Domain Name Hijacking Report (SAC007) (12 July 2005)

To protect any unauthorized modification of registrant data, Afiliias mandates TLS/SSL transport (per RFC 5246) and authentication methodologies for access to the registry applications. Authorized registrars are required to supply a list of specific individuals (five to ten people) who are authorized to contact the registry. Each such individual is assigned a pass phrase. Any support requests made by an authorized registrar to registry customer service are authenticated by registry customer service. All failed authentications are logged and reviewed regularly for potential malicious activity. This prevents unauthorized changes or access to registrant data by individuals posing to be registrars or their authorized contacts.

These items reflect an understanding of the importance of balancing data privacy and access for registrants, both individually and as a collective, worldwide user base.

The Afiliias 24/7 Customer Service Center consists of highly trained staff who collectively are proficient in 15 languages, and who are capable of responding to queries from registrants whose

domain name security has been compromised - for example, a victim of domain name hijacking. Afilias provides specialized registrant assistance guides, including specific hand-holding and follow-through in these kinds of commonly occurring circumstances, which can be highly distressing to registrants

Security resourcing plans

Please refer to our response to question #30b for security resourcing plans.

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DIDP Exhibit A2



New gTLD Program
Community Priority Evaluation Report
Report Date: 10 February 2016

Application ID:	1-1115-14110
Applied-for String:	MUSIC
Applicant Name:	DotMusic Limited

Overall Community Priority Evaluation Summary

Community Priority Evaluation Result	Did Not Prevail
<p>Thank you for your participation in the New gTLD Program. After careful consideration and extensive review of the information provided in your application, including documents of support, the Community Priority Evaluation panel determined that the application did not meet the requirements specified in the Applicant Guidebook. Your application did not prevail in Community Priority Evaluation.</p> <p>Your application may still resolve string contention through the other methods as described in Module 4 of the Applicant Guidebook.</p>	

Panel Summary

Overall Scoring	10 Point(s)	
<u>Criteria</u>	<u>Earned</u>	<u>Achievable</u>
#1: Community Establishment	0	4
#2: Nexus between Proposed String and Community	3	4
#3: Registration Policies	4	4
#4: Community Endorsement	3	4
Total	10	16
Minimum Required Total Score to Pass <u>14</u>		

Criterion #1: Community Establishment	0/4 Point(s)
<u>1-A Delineation</u>	<u>0/2 Point(s)</u>
<p>The Community Priority Evaluation panel determined that the community as defined by the application did not meet the criterion for Delineation as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook (AGB), as the community defined in the application does not demonstrate sufficient delineation, organization, or pre-existence. The application received a score of 0 out of 2 points under criterion 1-A: Delineation.</p> <p><u>Delineation</u> Two conditions must be met to fulfill the requirements for delineation: there must be a clear, straightforward membership definition and there must be awareness and recognition of a community (as defined by the applicant) among its members.</p>	

The community defined in the application is “delineated using established NAICS codes that align with the (i) characteristics of the globally recognized, organized Community, and (ii) .MUSIC global rotating multi-stakeholder Advisory Board model of fair representation, irrespective of locale, size or commercial/non-commercial status” (Application, 20A). The applicant lists over 40 categories of community member and identifies each with a North American Industry Classification System (NAICS) code that is further narrowed by the applicant’s requirement that “only those that are defined by and identify with the sub-set of the NAICS code that relates to “music” would qualify as a member of the Community.” According to the application, these categories, with the NAICS code cited by the applicant, are:

- Musical groups and artists (711130)
- Independent music artists, performers, arrangers & composers (711500)
- Music publishers (512230)
- Music recording industries (512290)
- Music recording & rehearsal studios (512240)
- Music distributors, promoters & record labels (512220)
- Music production companies & record producers (512210)
- Live musical producers (711130)
- Musical instrument manufacturers (339992)
- Musical instruments & supplies stores (451140)
- Music stores (451220)
- Music accountants (541211)
- Music lawyers (541110)
- Musical groups & artists (711130)
- Music education & schools (611610)
- Music agents & managers (711400)
- Music promoters & performing arts establishments (711300)
- Music promoters of performing arts with facilities (711310)
- Music promoters of performing arts without facilities (711320)
- Music performing arts companies (711100)
- Other music performing arts companies (711190)
- Music record reproducing companies (334612)
- Music, audio and video equipment manufacturers (334310)
- Music radio networks (515111)
- Music radio stations (515112)
- Music archives & libraries (519120)
- Music business & management consultants (541611)
- Music collection agencies & performance rights organizations (561440)
- Music therapists (621340)
- Music business associations (813910)
- Music coalitions, associations, organizations, information centers & export offices (813920)
- Music unions (813930)
- Music public relations agencies (541820)
- Music journalists & bloggers (711510)
- Internet Music radio station (519130)
- Music broadcasters (515120)
- Music video producers (512110)
- Music marketing services (541613)
- Music & audio engineers (541330)
- Music ticketing (561599)
- Music recreation establishments (722410)
- Music fans/clubs (813410) [Application, 20A]

The Panel notes that for some member categories noted above, the official NAICS code definition refers to a broader industry group or an industry group that is not identical to the one cited by the applicant. For example, “Music accountants” (541211) is defined in the NAICS as “Offices of Certified Public

Accountants”, and “Music lawyers” (541110) are defined as “Offices of Lawyers”.

In addition to the above-named member categories, the applicant also includes in its application a more general definition of its community: “all constituents involved in music creation, production and distribution, including government culture agencies and arts councils and other complementor organizations involved in support activities that are aligned with the .MUSIC mission” (Application, 20D). The application materials make clear that these entities, which may not be included in the list of member categories above, are strictly related to the functioning of those other categories within the defined community’s music-related activities.

The applicant thereby bounds community membership by way of well-defined categories. Therefore the Panel has determined that the applicant provides a clear and straightforward membership definition. The various categories relating to the creation, production, and distribution of music as well as the several other related entities that contribute to these music-related operations are clearly delineated as per AGB guidelines for the first criterion of Delineation.

However, according to the AGB, “community” implies “more of cohesion than a mere commonality of interest” and there should be “an awareness and recognition of a community among its members.” The community as defined in the application does not demonstrate an awareness and recognition among its members. The application materials and further research provide no substantive evidence of what the AGB calls “cohesion” – that is, that the various members of the community as defined by the application are “united or form a whole” (Oxford Dictionaries).

While the Panel acknowledges that many of these individuals would share a “commonality of interest” in music, according to the AGB this is not sufficient to demonstrate the requisite awareness and recognition of a community among its members. While individuals within some of the member categories may show cohesion within a category or across a subset of the member categories, the number of individuals included in the defined community that do not show such cohesion is considerable enough that the community defined as a whole cannot be said to have the cohesion required by the AGB.

The Panel therefore determined that there is insufficient awareness and recognition of a community among the proposed community members, and that they do not therefore cohere as a community as required by the AGB. The defined community as a whole, in all its member categories, does not meet the AGB’s requirement for community awareness and recognition. Therefore, the Panel determined that the community as defined in the application satisfies one of the two conditions to fulfill the requirements for delineation, and therefore does not receive credit for delineation.

Organization

Two conditions must be met to fulfill the requirements for organization: there must be at least one entity mainly dedicated to the community and there must be documented evidence of community activities.

The community as defined in the application is disperse geographically and across a wide array of music-related activities, including all the categories listed in the previous section, such as creation, production, and distribution, among others. The applicant has made reference to, and has documented support from, several organizations that are a dedicated subset of the defined community. However, based on the Panel’s research, there is no entity mainly dedicated to the entire community as defined by the applicant in all its geographic reach and range of categories. Research showed that those organizations that do exist represent members of the defined community only in a limited geographic area or only in certain fields within the community.

According to the AGB, “organized” implies that there is at least one entity mainly dedicated to the community, with documented evidence of community activities.” An “organized” community, according to the AGB, is one that is represented by at least one entity that encompasses the entire community as defined by the applicant. There should, therefore, be at least one entity that encompasses and organizes individuals and organizations in all of the more than 40 member categories included by the application. Based on information provided in the application materials and the Panel’s research, there is no entity that organizes the community defined in the application in all the breadth of categories explicitly defined.

The Panel determined that the community as defined in the application does not satisfy either of the two conditions to fulfill the requirements for organization.

Pre-existence

To fulfill the requirements for pre-existence, the community must have been active prior to September 2007 (when the new gTLD policy recommendations were completed) and must display an awareness and recognition of a community among its members.

The community as defined in the application was not active prior to September 2007. According to section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, the CPE process is conceived to identify qualified community-based applications, while preventing both “false positives” (awarding undue priority to an application that refers to a “community” construed merely to obtain a sought-after generic word as a gTLD string) and “false negatives” (not awarding priority to a qualified community application). The Panel determined that this application refers to a “community” construed to obtain a sought-after generic word as a gTLD string.

The applicant has a very large degree of support from musical organizations. Many of these organizations were active prior to 2007. However, the fact that each organization was active prior to 2007 does not mean that these organizations were active as a community prior to 2007, as required by the AGB guidelines. That is, since those organizations and their members do not themselves form a cohesive community as defined in the AGB, they cannot be considered to be a community that was active as such prior to 2007.

The Panel determined that the community as defined in the application does not fulfill the requirements for pre-existence.

1-B Extension

0/2 Point(s)

The Panel determined that the community as identified in the application did not meet the criterion for Extension specified in section 4.2.3 (Community Priority Evaluation Criteria) of the AGB, as the application did not fulfill the requirements for size, nor demonstrate the longevity of the community. The application received a score of 0 out of 2 points under criterion 1-B: Extension.

Size

Two conditions must be met to fulfill the requirements for size: the community must be of considerable size and must display an awareness and recognition of a community among its members.

The community as defined in the application is of considerable size, both in terms of geographical reach and number of members. According to the applicant:

The Music Community’s geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries... with a Community of considerable size with millions of constituents... (Application, 20A)

However, as previously noted, the community as defined in the application does not show evidence of “cohesion” among its members, as required by the AGB.¹ Therefore, it fails the second criterion for Size.

The Panel determined that the community as defined in the application only satisfies one of the two conditions to fulfill the requirements for size.

Longevity

Two conditions must be met to fulfill the requirements for longevity: the community must demonstrate longevity and must display an awareness and recognition of a community among its members.

According to the application, “The Community has bought, sold, and bartered music for as long

¹As stated previously, according to the AGB, “community” implies “more of cohesion than a mere commonality of interest... There should be: (a) an awareness and recognition of a community among its members...” Failing such qualities, the AGB’s requirements for community establishment are not met.

(“LONGEVITY”) as it has been made”. The Panel acknowledges that as an activity, music has a long history and that many parts of the defined community show longevity. However, because the community is construed, the longevity of the defined community as a whole cannot be demonstrated. According to section 4.2.3 (Community Priority Evaluation Criteria) of the AGB, the CPE process is conceived to identify qualified community-based applications, while preventing both “false positives” (awarding undue priority to an application that refers to a “community” construed merely to get a sought-after generic word as a gTLD string) and “false negatives” (not awarding priority to a qualified community application).

The Panel determined that this application refers to a proposed community construed to obtain a sought-after generic word as a gTLD. As previously stated, the community as defined in the application does not have awareness and recognition among its members. Failing this kind of “cohesion,” the community defined by the application does not meet the AGB’s standards for a community. Therefore, as a construed community, the proposed community cannot meet the AGB’s requirements for longevity.

The Panel determined that the community as defined in the application does not satisfy either of the two conditions to fulfill the requirements for longevity.

Criterion #2: Nexus between Proposed String and Community	3/4 Point(s)
2-A Nexus	2/3 Point(s)
<p>The Panel determined that the application partially met the criterion for Nexus as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the AGB. The string identifies but does not match the name of the community as defined in the application, and it is not a well-known short-form or abbreviation of the community. The application received a score of 2 out of 3 points under criterion 2-A: Nexus.</p>	
<p>To receive a partial score for Nexus, the applied-for string must identify the community. According to the AGB, “Identify” means that the applied for string closely describes the community or the community members, without over-reaching substantially beyond the community.” In addition to meeting the criterion for “identify”, in order to receive the maximum score for Nexus, the applied-for string must match the name of the community or be a well-known short-form or abbreviation of the community.</p>	
<p>Because the community defined in the application is a collection of many categories of individuals and organizations, and because there is no single entity that serves all of these categories in all their geographic breadth, there is no “established name” for the applied-for string to match, as required by the AGB for a full score on Nexus. The community, as defined in the application, includes some entities that are only tangentially related to music, such as accountants and lawyers, and which may not be automatically associated with the gTLD string. However, the applicant has limited the subset of such professionals included in the defined community². Moreover, the applicant has also included “musical groups and artists” and “independent music artists, performers, arrangers & composers” in its defined community. The string MUSIC identifies these member categories, which include individuals and entities involved in the creation of music. Thus the applied-for string does identify the individuals and organizations included in the applicant’s defined community member categories due to their association with music, which the applicant defines as “the art of combining sounds rhythmically, melodically or harmonically” (Application, 20A).</p>	
<p>The Panel determined that the applied-for string identifies (but does not match) the name of the community as defined in the application without over-reaching substantially. It therefore partially meets the requirements for Nexus.</p>	
2-B Uniqueness	1/1 Point(s)

² The applicant lists over 40 categories of community member and identifies each with a North American Industry Classification System (NAICS) code that is further narrowed by the applicant’s requirement that “only those that are defined by and identify with the sub-set of the NAICS code that relates to “music” would qualify as a member of the Community.”

The Community Priority Evaluation panel determined that the application met the criterion for Uniqueness as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the string has no other significant meaning beyond identifying the community described in the application. The application received a maximum score of 1 point under criterion 2-B: Uniqueness.

To fulfill the requirements for Uniqueness, the string must have no other significant meaning beyond identifying the community described in the application. The string as defined in the application demonstrates uniqueness, as the string does not have any other significant meaning beyond identifying the individuals, organizations, and activities associated with the music-related member categories defined by the applicant. The Community Priority Evaluation panel determined that the applied-for string satisfies the condition to fulfill the requirements for uniqueness.

Criterion #3: Registration Policies	4/4 Point(s)
3-A Eligibility	1/1 Point(s)
<p>The Panel determined that the application met the criterion for Eligibility as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the AGB, as eligibility is restricted to community members. The application received a maximum score of 1 point under criterion 3-A: Eligibility.</p> <p>To fulfill the requirements for Eligibility, the registration policies must restrict the eligibility of prospective registrants to community members. According to the applicant, this requirement is met by verifying registrants' participation in one of the defined community member categories:</p> <p style="padding-left: 40px;">Registrants will be verified using Community-organized, unified “criteria taken from holistic perspective with due regard of Community particularities” that “invoke a formal membership” without discrimination, conflict of interest or “likelihood of material detriment to the rights and legitimate interests” of the Community:</p> <p style="padding-left: 40px;">(i) Qualification criteria as delineated by recognized NAICS codes corresponding to Community member classification music entity types. (Application, 20A)</p> <p>The Panel determined that the application satisfies the condition to fulfill the requirements for Eligibility.</p>	
3-B Name Selection	1/1 Point(s)
<p>The Community Priority Evaluation panel determined that the application met the criterion for Name Selection as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as name selection rules are consistent with the articulated community-based purpose of the applied-for TLD. The application received a maximum score of 1 point under criterion 3-B: Name Selection.</p> <p>To fulfill the requirements for Name Selection, the registration policies for name selection for registrants must be consistent with the articulated, community-based purpose of the applied-for gTLD. The applicant has included in its application several name selection rules that are consistent with its community-based purpose, which is “creating a trusted, safe online haven for music consumption” while ensuring that musicians' rights are protected:</p> <p style="padding-left: 40px;">Names Selection Policy – to ensure only music-related names are registered as domains under .MUSIC, with the following restrictions:</p> <ol style="list-style-type: none"> 1) A name of (entire or portion of) the musician, band, company, organization, e.g. the registrants “doing business as” name 2) An acronym representing the registrant 3) A name that recognizes or generally describes the registrant, or 4) A name related to the mission or activities of the registrant <p>The Community Priority Evaluation panel determined that the application satisfied the condition to fulfill the requirements for Name Selection.</p>	
3-C Content and Use	1/1 Point(s)
<p>The Community Priority Evaluation panel determined that the application met the criterion for Content and</p>	

Use as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the rules for content and use are consistent with the articulated community-based purpose of the applied-for TLD. The application received a maximum score of 1 point under criterion 3-C: Content and Use.

To fulfill the requirements for Content and Use, the registration policies for content and use must be consistent with the articulated, community-based purpose of the applied-for gTLD. The application includes several content and use requirements, all of which are consistent with its community-based purpose of “creating a trusted, safe online haven for music consumption” while ensuring that musicians’ rights are protected:

The following use requirements apply:

- Use only for music-related activities
- Comply with applicable laws and regulations and not participate in, facilitate, or further illegal activities
- Do not post or submit content that is illegal, threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, invasive of another’s privacy, or tortious
- Respect the intellectual property rights of others by posting or submitting only content that is owned, licensed, or otherwise have the right to post or submit
- Immediately notify us if there is a security breach, other member noncompliance or illegal activity on .MUSIC sites
- Do not register a domain containing an established music brand’s name in bad faith that might be deemed confusing to Internet users and the Music Community
- Do not use any automated process to access or use the .MUSIC sites or any process, whether automated or manual, to capture data or content from any service for any reason
- Do not use any service or any process to damage, disable, impair, or otherwise attack .MUSIC sites or the networks connected to .MUSIC sites (Application, 20E)

The Community Priority Evaluation panel determined that the application satisfied the condition to fulfill the requirements for Content and Use.

3-D Enforcement **1/1 Point(s)**

The Panel determined that the application meets the criterion for Enforcement as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the AGB. The application provides specific enforcement measures and coherent and appropriate appeals mechanisms. The application received a score of 1 point under criterion 3-D: Enforcement.

Two conditions must be met to fulfill the requirements for Enforcement: the registration policies must include specific enforcement measures constituting a coherent set, and there must be appropriate appeals mechanisms. The applicant outlined policies that include specific enforcement measures for enforcing its policies, including random compliance checks and special monitoring. The application also references a dispute resolution process, and provides a clear description of an appeals process in the Public Interest Commitments (PIC). The PIC was utilized to verify that the applicant has appropriate appeals mechanisms. The Panel determined that the application satisfies both of the two requirements for Enforcement and therefore scores 1 point.

Criterion #4: Community Endorsement **3/4 Point(s)**

Support for or opposition to a CPE gTLD application may come in any of three ways: through an application comment on ICANN’s website, attachment to the application, or by correspondence with ICANN. The Panel reviews these comments and documents and, as applicable, attempts to verify them as per the guidelines published on the ICANN CPE website. Further details and procedures regarding the review and verification process may be found at <http://newgtlds.icann.org/en/applicants/cpe>.

The table below summarizes the review and verification of support and opposition documents for the DotMusic Limited application for the string “MUSIC”. Note that some entities provided multiple letters of support through one or more of the mechanisms noted above. In these cases, each letter is counted separately in the table below. For example, if a letter of support from an entity was received via attachments, and a

separate letter received via correspondence, each letter is counted as reviewed, valid for verification (where appropriate), verification attempted (where appropriate) and successfully verified (where appropriate).

Summary of Review & Verification of Support/Opposition Materials as of 13 October 2015³

	Total Received and Reviewed	Total Valid for Verification	Verification Attempted	Successfully Verified
Application Comments	157	0	0	0
Attachments to 20(f)	150	68	68	40
Correspondence ⁴	331	160	160	40
Grand Total	638	228	228	80

4-A Support

1/2 Point(s)

The Community Priority Evaluation panel has determined that the application partially met the criterion for Support specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as there was documented support from at least one group with relevance. The application received a score of 1 out of 2 points under criterion 4-A: Support.

To receive the maximum score for Support, the applicant is, or has documented support from, the recognized community institution(s)/member organization(s), or has otherwise documented authority to represent the community. In this context, “recognized” refers to the institution(s)/organization(s) that, through membership or otherwise, are clearly recognized by the community members as representative of the community. To receive a partial score for Support, the applicant must have documented support from at least one group with relevance. “Relevance” refers to the communities explicitly and implicitly addressed by the application’s defined community.

The Community Priority Evaluation panel has determined that the applicant was not the recognized community institution(s)/member organization(s), nor did it have documented authority to represent the community, or documented support from the recognized community institution(s)/member organization(s). The panel has not found evidence of a single such organization recognized by all of the defined community’s members as representative of the defined community in its entirety. However, the applicant possesses documented support from many groups with relevance; their verified documentation of support contained a description of the process and rationale used in arriving at the expression of support, showing their understanding of the implications of supporting the application. Despite the wide array of organizational support, however, the applicant does not have the support from the recognized community institution, as noted above, and the Panel has not found evidence that such an organization exists. The Community Priority Evaluation Panel has determined that the applicant partially satisfies the requirements for Support.

4-B Opposition

2/2 Point(s)

³ The table reflects all comments, attachments, and pieces of correspondence received by the Panel as of the date noted pertaining to the application. The Verification Attempted column includes efforts made by the Panel to contact those entities that did not include contact information. ICANN notified the applicant on 4 December 2015 that although the applicant submitted a high volume of correspondence, “Much of this correspondence was submitted well after the deadline...any correspondence dated later than 13 October 2015 or submitted from today on will not go through the Panel’s verification process and may not be considered by the Panel.”

⁴ The Panel reviewed 53 pieces of correspondence that contained 331 individual letters.

The Community Priority Evaluation panel determined that the application met the criterion for Opposition specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application did not receive any relevant verified opposition. The application received the maximum score of 2 points under criterion 4-B: Opposition.

To receive the maximum score for Opposition, the application must not have received any opposition of relevance. To receive a partial score for Opposition, the application must have received opposition from, at most, one group of non-negligible size.

The application did not receive any letters of relevant and verified opposition. The Community Priority Evaluation Panel determined that the applicant satisfied the requirements for Opposition.

Disclaimer: Please note that these Community Priority Evaluation results do not necessarily determine the final result of the application. In limited cases the results might be subject to change. These results do not constitute a waiver or amendment of any provision of the AGB or the Registry Agreement. For updated application status and complete details on the program, please refer to the AGB and the ICANN New gTLDs microsite at <newgtlds.icann.org>.

Exhibit DIDP A3



Resources

- ▶ About ICANN
- ▶ Board
- ▼ Accountability
 - ▼ Accountability Mechanisms
 - Reconsideration
 - ▶ Ombudsman Independent Review
 - ▼ Document Disclosure
 - Disclosure Policy
 - DIDP Response Process
 - ▶ Reviews
 - Expected Standards of Behavior
 - Enhancing ICANN Accountability and Governance
- ▶ Governance
- ▶ Groups
 - Business
- ▶ Contractual Compliance
- ▶ Regulations
- ▶ Registries
 - Operational Metrics
- ▶ Identifier Systems Security, Stability and Resiliency (SSR)
- ▶ ccTLDs
- ▶ Internationalized Domain Names
- ▶ Universal Acceptance Initiative
- ▶ Policy
- ▶ Public Comment
- ▶ Technical Functions
- ▶ Contact
- ▶ Help

ICANN Documentary Information Disclosure Policy

NOTE: With the exception of personal email addresses, phone numbers and mailing addresses, DIDP Requests are otherwise posted in full on ICANN's website, unless there are exceptional circumstances requiring further redaction

ICANN's Documentary Information Disclosure Policy (DIDP) is intended to ensure that information contained in documents concerning ICANN's operational activities and within ICANN's possession, custody or control is made available to the public unless there is a compelling reason for confidentiality.

A principal element of ICANN's approach to transparency and information disclosure is the identification of a comprehensive set of materials that ICANN makes available on its website as a matter of course.

Specifically, ICANN has

- identified many of the categories of documents that are already made public as a matter of due course
- Developed a time frame for responding to requests for information not already publicly available
- identified specific conditions for nondisclosure of information
- Described the mechanism under which requestors may appeal a denial of disclosure

Public Documents

ICANN posts on its website at www.icann.org numerous categories of documents in due course. A list of those categories follows:

- Annual Reports – <http://www.icann.org/en/about/annual-reports>
- Articles of Incorporation – <http://www.icann.org/en/about/governance/articles>
- Board Meeting Transcripts, Minutes and Resolutions – <http://www.icann.org/en/groups/board/meetings>
- Budget – <http://www.icann.org/en/about/financials>
- Bylaws (current) – <http://www.icann.org/en/about/governance/bylaws>
- Bylaws (archives) – <http://www.icann.org/en/about/governance/bylaws/archive>
- Correspondence – <http://www.icann.org/correspondence/>
- Financial Information – <http://www.icann.org/en/about/financials>
- Litigation Documents – <http://www.icann.org/en/news/litigation>
- Major Agreements – <http://www.icann.org/en/about/agreements>
- Monthly Registry Reports – <http://www.icann.org/en/resources/registries/reports>
- Operating Plan – <http://www.icann.org/en/about/planning>
- Policy Documents – <http://www.icann.org/en/general/policy.html>
- Speeches, Presentations & Publications – <http://www.icann.org/presentations>
- Strategic Plan – <http://www.icann.org/en/about/planning>
- Material Information relating to the Address Supporting Organization (ASO) – <http://aso.icann.org/docs> including ASO policy documents, Regional Name Registry (RR) policy documents, guidelines and procedures, meeting agendas and minutes, presentations, routing statistics and information regarding the RRs
- Material Information relating to the Generic Supporting Organization (GNSO) – <http://gnso.icann.org> – including correspondence and presentations, council resolutions, requests for comments, draft documents, policies, reference documents (see <http://gnso.icann.org/reference-documents.html>) and council administration documents (see <http://gnso.icann.org/council/docs.shtml>)
- Material Information relating to the Country Code Names Supporting Organization (ccNSO) – <http://ccnso.icann.org> – including meeting agendas, minutes, reports and presentations
- Material Information relating to the A Large Advisory Committee (ALAC) – <http://a-large.icann.org> – including correspondence, statements and meeting minutes
- Material Information relating to the Governmental Advisory Committee (GAC) – <http://gac.icann.org/web/index.shtml> – including operating principles, gTLD principles, ccTLD principles, principles regarding gTLD Whois issues, communiqués and meeting transcripts and agendas
- Material Information relating to the Root Server Advisory Committee (RSSAC) – <http://www.icann.org/en/groups/rssac> – including meeting minutes and information surrounding ongoing projects
- Material Information relating to the Security and Stability Advisory Committee (SSAC) – <http://www.icann.org/en/groups/ssac> – including its charter, various presentations, work plans, reports and advisories

Responding to Information Requests

If a member of the public requests information not already publicly available, ICANN will respond to the extent feasible to reasonable requests within 30 calendar days of receipt of the request. If a time frame will not be met, ICANN will inform the requester in writing as to when a response will be provided, setting forth the reasons necessary for the extension of time to respond. If ICANN denies the information request, it will provide a written statement of the request or identifying the reasons for the denial.

Defined Conditions for Nondisclosure

ICANN has identified the following set of conditions for the nondisclosure of information:

- Information provided by or to a government or in an official organization or any form of recipient of such information in the expectation that the information will be kept confidential and/or would or likely would materially prejudice ICANN's relationship with that party.
- Information that if disclosed would or would be likely to compromise the integrity of ICANN's deliberative and decision-making process by inhibiting the candid exchange of ideas and communications, including in email documents, memoranda, and other similar communications, or from ICANN Directors, ICANN Directors' Advisors, ICANN staff, ICANN consultants, ICANN contractors, and ICANN agents.
- Information exchanged, prepared for, or derived from the deliberative and decision-making process between ICANN constituents and/or other entities with which ICANN cooperates, that if disclosed would or would be likely to compromise the integrity of the deliberative and decision-making process between ICANN constituents and/or other entities with which ICANN cooperates by inhibiting the candid exchange of ideas and communications.
- Personnel, medical, contractual, remuneration, and similar records relating to an individual's personal information, when the disclosure of such information would or likely would constitute an invasion of personal privacy, as well as proceedings of internal appeal mechanisms and investigations.
- Information provided to ICANN by a party that if disclosed would or would be likely to materially prejudice the commercial interests, financial interests, and/or competitive position of such party or was provided to ICANN pursuant to a nondisclosure agreement or nondisclosure provision within an agreement.
- Confidential business information and/or internal policies and procedures.
- Information that if disclosed would or would be likely to endanger the life, health, or safety of any individual or materially prejudice the administration of justice.
- Information subject to attorney-client, attorney-work product, privilege, or any other applicable privilege or disclosure of which might prejudice any internal, governmental, or legal investigation.
- Drafts of all correspondence, reports, documents, agreements, contracts, emails, or any other forms of communication.
- Information that relates in any way to the security and stability of the Internet, including the operation of the DNS Root, or any changes, modifications, or additions to the root zone.
- Trade secrets and commercial and financial information not publicly disclosed by ICANN.
- Information requests (i) which are not reasonable, (ii) which are excessive or overly burdensome, (iii) complying with which is not feasible, or (iv) are made with an abusive or vexatious purpose or by a vexatious or querulous individual.

Information that falls within any of the conditions set forth above may still be made public if ICANN determines under the particular circumstances that the public interest in disclosing the information outweighs the harm that may be caused by such disclosure. Further, ICANN reserves the right to deny disclosure of information under conditions not designated above if ICANN determines that the harm in disclosing the information outweighs the public interest in disclosing the information.

ICANN shall not be required to create or compile summaries of any documented information, and shall not be required to respond to requests seeking information that is already publicly available.

Appeal of Denials

To the extent a requester chooses to appeal a denial of information from ICANN, the requester may follow the Reconsideration Request procedures or Independent Review procedures, to the extent either is applicable as set forth in Article V, Sections 2 and 3 of the ICANN Bylaws, which can be found at <http://www.icann.org/en/about/governance/bylaws>.

DIDP Requests and Responses

Requests submitted under the DIDP and ICANN responses are available here: <http://www.icann.org/en/about/transparency>.

Guidelines for the Posting of Board Briefing Materials

The posting of Board Briefing Materials on the Board Meeting Minutes page (<http://www.icann.org/en/groups/board/meetings>) is guided by the application of the DIDP. The Guidelines for the Posting of Board Briefing Materials are available at <http://www.icann.org/en/groups/board/documents/briefing-materials-guidelines-21mar11-en.htm>.

To submit a request, send an email to didp@icann.org



YouTube



Twitter



LinkedIn



Flickr



Facebook



RSS Feeds



Community Wiki



ICANN Blog

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Accountability & Transparency

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[Independent Review Process](#)
[Request for Reconsideration](#)
[Ombudsman](#)

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DIDP Exhibit A4

PROCESS FOR RESPONDING TO ICANN'S DOCUMENTARY INFORMATION DISCLOSURE POLICY (DIDP) REQUESTS

The following sets forth the process guidelines for responding to a DIDP Request.

1. Upon receipt of a DIDP Request, ICANN staff performs a review of the Request and identifies what documentary information is requested and the staff members who may be in possession of or have knowledge regarding information responsive to the Request.
2. Staff conducts interviews of the relevant staff member(s) and performs a thorough search for documents responsive to the DIDP Request.
3. Documents collected are reviewed for responsiveness.
4. A review is conducted as to whether the documents identified as responsive to the Request are subject to any of the Defined Conditions for Nondisclosure identified at <http://www.icann.org/en/about/transparency/didp>.
5. To the extent that any responsive documents fall within any Defined Conditions for Nondisclosure, a review is conducted as to whether, under the particular circumstances, the public interest in disclosing the documentary information outweighs the harm that may be caused by such disclosure.
6. Documents that have been determined as responsive and appropriate for public disclosure are posted in the appropriate locations on ICANN's website. To the extent that the publication of any documents is appropriate but premature at the time the Response is due, ICANN will so indicate in its Response to the DIDP Request and notify the Requester upon publication.
7. Staff prepares a Response to the DIDP Request within thirty calendar days from receipt of the Request. The Response will be sent to the Requester by email. The Response and Request will also be posted on the DIDP page at <http://www.icann.org/en/about/transparency> in accordance with the posting guidelines set forth at <http://www.icann.org/en/about/transparency/didp>.

DIDP Exhibit A5

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[IANA STEWARDSHIP](#)

[& ACCOUNTABILITY \(/STEWARDSHIP-ACCOUNTABILITY\)](#)

Resources

- ▶ [About ICANN \(Internet Corporation for Assigned Names and Numbers\) \(/resources/pages/welcome-2012-02-25-en\)](#)

- ▶ [Board \(/resources/pages/board-of-directors-2014-03-19-en\)](#)

- ▶ [Accountability \(/resources\)](#)

Approved Board Resolutions | Regular Meeting of the ICANN (Internet Corporation for Assigned Names and Numbers) Board

10 Mar 2016

1. [Consent Agenda:](#)

a. [Approval of Board Meeting Minutes](#)

b. [Appointment of F-Root Server Operator Representative to the RSSAC \(Root Server System Advisory Committee\)](#)

[Rationale for Resolution 2016.03.10.02](#)

c. [Appointment of Independent Auditors](#)

[Rationale for Resolution 2016.03.10.03](#)

d. [Investment Policy Update](#)

[/accountability\)](#)

[Rationale for Resolution 2016.03.10.04](#)

- ▶ Governance
([/resources](#)
[/pages](#)
[/governance-2012-02-25-en](#))

- e. **Next Steps for the Internationalized Registration Data (WHOIS (WHOIS (pronounced "who is"; not an acronym))) Final Report**
[Rationale for Resolutions 2016.03.10.05 – 2016.03.10.07](#)

- ▶ Groups
([/resources](#)
[/pages/groups-2012-02-06-en](#))

- f. **Board Member Mentorship Program**
[Rationale for Resolution 2016.03.10.08](#)

[Business](#)
([/resources](#)
[/pages/business](#))

- g. **USG IANA (Internet Assigned Numbers Authority) Stewardship Transition – Additional FY16 Expenses and Funding**
[Rationale for Resolution 2016.03.10.09](#)

- ▶ Contractual Compliance
([/resources](#)
[/pages](#)
[/compliance-2012-02-25-en](#))

- h. **Thank You to Local Host of ICANN (Internet Corporation for Assigned Names and Numbers) 55 Meeting**

- i. **Thank You to Sponsors of ICANN (Internet Corporation for Assigned Names and Numbers) 55 Meeting**

- ▶ Registrars
([/resources](#)
[/pages](#)
[/registrars-0d-2012-02-25-en](#))

- j. **Thank You to Interpreters, Staff, Event and Hotel Teams of ICANN (Internet Corporation for Assigned Names and Numbers) 55 Meeting**

2. **Main Agenda:**

- a. **Consideration of .ECO and .HOTEL IRP Declaration**
[Rationale for Resolutions 2016.03.10.10 – 2016.03.10.11](#)

- b. **IANA (Internet Assigned Numbers Authority) Stewardship Transition Proposal from ICG (IANA Stewardship Transition Coordination Group)**
[Rationale for Resolution 2016.03.10.12 – 2016.03.10.15](#)

[Operational Metrics](#)
([/resources](#)
[/pages/metrics-gdd-2015-01-30-en](#))

- c. **Proposal from CCWG on Enhancing ICANN (Internet Corporation for Assigned Names and Numbers) Accountability**
[Rationale for Resolution 2016.03.10.16 – 2016.03.10.19](#)

- ▶ Identifier

- d. **Thank You to Staff**

Systems
 Security, Stability
 (Security,
 Stability and
 Resiliency) and
 Resiliency
 (IS-SSR)
 (/resources
 /pages/is-ssr-
 2014-11-24-en)

▶ ccTLDs
 (/resources
 /pages/cctlds-
 21-2012-02-25-en)

▶ Internationalized
 Domain Names
 (/resources
 /pages
 /idn-2012-02-25-en)

▶ Universal
 Acceptance
 Initiative
 (/resources
 /pages/universal-
 acceptance-
 2012-02-25-en)

▶ Policy
 (/resources
 /pages/policy-
 01-2012-02-25-en)

▶ Public Comment
 (/public-
 comments)

▶ Technical
 Functions
 (/resources
 /pages/technical-

1. Consent Agenda:

a. Approval of Board Meeting Minutes

Resolved (2016.03.10.01), the Board approves the minutes of the 3 February 2016 Regular Meeting of the ICANN (Internet Corporation for Assigned Names and Numbers) Board.

b. Appointment of F-Root Server Operator Representative to the RSSAC (Root Server System Advisory Committee)

Whereas, the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws call for the establishment of a Root Server System Advisory Committee (Advisory Committee) (RSSAC (Root Server System Advisory Committee)) with the role to advise the ICANN (Internet Corporation for Assigned Names and Numbers) community and Board on matters relating to the operation, administration, security, and integrity of the Root Server System of the Internet.

Whereas, the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws call for appointment by the Board of Directors of RSSAC (Root Server System Advisory Committee) members based on recommendations from the RSSAC (Root Server System Advisory Committee) Co-Chairs.

Whereas, the RSSAC (Root Server System Advisory Committee) Co-Chairs recommended for consideration by the Board of Directors the appointment of a representative from the F-root server operator to the RSSAC (Root Server System Advisory Committee).

Resolved (2016.03.10.02), the Board of Directors appoints to the RSSAC (Root Server System Advisory Committee) the representative from F-root server F-root server operator, Brian Reid, through 31 December 2018.

functions-
2015-10-15-en)

- ▶ [Contact \(/resources/pages/contact-2012-02-06-en\)](#)

- ▶ [Help \(/resources/pages/help-2012-02-03-en\)](#)

Rationale for Resolution 2016.03.10.02

In May 2013, the root server operators (RSO) agreed to an initial membership of RSO representatives for [RSSAC \(Root Server System Advisory Committee\)](#), and each RSO nominated an individual. The Board of Directors approved the initial membership of [RSSAC \(Root Server System Advisory Committee\)](#) in July 2013 with staggered terms.

Jim Martin, the F-root server operator representative, served an initial two-year term, which expired on 31 December 2015. On 2 December 2015, the Board of Directors re-appointed him to a full, three-year term expiring on 31 December 2018.

The F-root server operator, Internet Systems Consortium, has requested to change its representative from Jim Martin to Brian Reid for the remainder of the term.

The appointment of this [RSSAC \(Root Server System Advisory Committee\)](#) member is not anticipated to have any fiscal impact on [ICANN \(Internet Corporation for Assigned Names and Numbers\)](#), though there are budgeted resources necessary for ongoing support of the [RSSAC \(Root Server System Advisory Committee\)](#).

This resolution is an organizational administrative function for which no public comment is required. The appointment of [RSSAC \(Root Server System Advisory Committee\)](#) members contributes to the commitment of [ICANN \(Internet Corporation for Assigned Names and Numbers\)](#) to strengthening the security, stability, and resiliency of the [DNS \(Domain Name System\)](#).

c. Appointment of Independent Auditors

Whereas, Article XVI of the [ICANN \(Internet Corporation for Assigned Names and Numbers\) Bylaws](#) ([http://www.icann.org/general/bylaws.htm \(/general/bylaws.htm\)](http://www.icann.org/general/bylaws.htm (/general/bylaws.htm))) requires that after the end of the fiscal year, the books of [ICANN \(Internet](#)

Corporation for Assigned Names and Numbers) must be audited by certified public accountants, which shall be appointed by the Board.

Whereas, the Board Audit Committee has discussed the engagement of the independent auditor for the fiscal year ending 30 June 2016, and has recommended that the Board authorize the President and CEO, or his designee(s), to take all steps necessary to engage BDO LLP and BDO member firms.

Resolved (2016.03.10.03), the Board authorizes the President and CEO, or his designee(s), to take all steps necessary to engage BDO LLP and BDO member firms as the auditors for the financial statements for the fiscal year ending 30 June 2016.

Rationale for Resolution 2016.03.10.03

The audit firm BDO LLP and BDO member firms were engaged for the annual independent audits of the fiscal year ending 30 June 2014 and the fiscal year ending 30 June 2015. Based on the report from staff and the Audit Committee's evaluation of the work performed, the committee has unanimously recommended that the Board authorize the President and CEO, or his designee(s), to take all steps necessary to engage BDO LLP and BDO member firms as ICANN (Internet Corporation for Assigned Names and Numbers)'s annual independent auditor for the fiscal year ended 30 June 2016 for any annual independent audit requirements in any jurisdiction.

The engagement of an independent auditor is in fulfillment of ICANN (Internet Corporation for Assigned Names and Numbers)'s obligations to undertake an audit of ICANN (Internet Corporation for Assigned Names and Numbers)'s financial statements. This furthers ICANN (Internet Corporation for Assigned Names and Numbers)'s accountability to its Bylaws and processes, and the results of the independent auditors work will be publicly available. There is a fiscal impact to the engagement that has already been budgeted. There is no

impact on the security or the stability of the DNS (Domain Name System) as a result of this appointment.

This is an Organizational Administrative Function not requiring public comment.

d. Investment Policy Update

Whereas, the Board Finance Committee requested that an outside expert review the Investment Policy to ensure it is appropriate for ICANN (Internet Corporation for Assigned Names and Numbers).

Whereas, the outside expert completed a review of the ICANN (Internet Corporation for Assigned Names and Numbers) Investment Policy and concluded that overall the Investment Policy continues to support well the conservative philosophy of ICANN (Internet Corporation for Assigned Names and Numbers)'s investment strategy.

Whereas, the outside expert recommends that a few modifications be made to the Investment Policy to enhance and clarify some provisions, but do not change the overall investment strategy.

Resolved (2016.03.10.04), the Board endorses and adopts the ICANN (Internet Corporation for Assigned Names and Numbers) Investment Policy as revised.

Rationale for Resolution 2016.03.10.04

In furtherance of its due diligence in regards to ICANN (Internet Corporation for Assigned Names and Numbers)'s Investment Policy ("Policy"), the Board Finance Committee (BFC) requested staff to engage an investment consulting firm to review the Policy. For this purpose, ICANN (Internet Corporation for Assigned Names and Numbers) used the services of Bridgebay Investment Consultant Services ("Bridgebay"), which had also performed the previous review of

the Policy in 2011 and 2014. As a result of its review process, Bridgebay recommended a few modifications to the Policy, intended to: (i) clarify the description of the Policy's risk profile; (ii) add low-risk allowable assets (money market funds); and (iii) clarify the flexible approach, for rebalancing the assets in accordance with the strategic allocation, and extended the range of allowable investment to enable the manager to increase fixed income for defensive purposes. Bridgebay also made additional suggested revisions to language, including items such as: clarification of required securities grades and update of the accounting standard name for fair value measurements. Bridgebay presented comments, analysis and the suggested changes to the Policy to the BFC during its meeting of 2 February 2016. These limited Policy modifications will enable the investment manager to optimize its asset allocation strategy for ICANN (Internet Corporation for Assigned Names and Numbers)'s Reserve Fund in a conservative, risk-controlled manner.

Adopting the suggested modifications is expected to be in the best interest of ICANN (Internet Corporation for Assigned Names and Numbers) and the ICANN (Internet Corporation for Assigned Names and Numbers) community in that it is meant to enhance and clarify certain aspects of ICANN (Internet Corporation for Assigned Names and Numbers)'s investment strategy. This action is not expected to have any fiscal impact, or any impact on the security, stability and resiliency of the domain name system.

This is an Organizational Administrative Function that does not require public comment.

e. **Next Steps for the Internationalized Registration Data (WHOIS (WHOIS (pronounced "who is"; not an acronym))) Final Report**

Whereas, in 2012, the Board [adopted \(/en/groups/board/documents/resolutions-08nov12-en.htm#1.a\)](/en/groups/board/documents/resolutions-08nov12-en.htm#1.a) an [Action Plan \(/en/groups/board/documents/briefing-materials-1-08nov12-](/en/groups/board/documents/briefing-materials-1-08nov12-)

[en.pdf](#) [PDF, 265 KB] to address the recommendations of the first WHOIS (WHOIS (pronounced "who is"; not an acronym)) Review Team, calling for ICANN (Internet Corporation for Assigned Names and Numbers) to (i) continue to fully enforce existing consensus policy and contractual conditions relating to WHOIS (WHOIS (pronounced "who is"; not an acronym)), and (ii) create an expert working group to determine the fundamental purpose and objectives of collecting, maintaining and providing access to gTLD (generic Top Level Domain) registration data, to serve as a foundation for a Board-initiated GNSO (Generic Names Supporting Organization) policy development process (PDP (Policy Development Process)).

Whereas, the WHOIS (WHOIS (pronounced "who is"; not an acronym)) Policy Review Team, in the [WHOIS \(WHOIS \(pronounced "who is"; not an acronym\)\) RT Final Report \(/en/system/files/files/final-report-11may12-en.pdf\)](#), [PDF, 1.44 MB] highlighted the need to define requirements and develop data models with the following recommendations:

"ICANN (Internet Corporation for Assigned Names and Numbers) should task a working group..., to determine appropriate internationalized domain name registration data requirements and evaluate available solutions; at a minimum, the data requirements should apply to all new gTLDs, and the working group should consider ways to encourage consistency of approach across the gTLD (generic Top Level Domain) and (on a voluntary basis) ccTLD (Country Code Top Level Domain) space..."

And

"The final data model, including (any) requirements for the translation or transliteration of the registration data, should be incorporated in the relevant Registrar and Registry agreements ..."

Whereas, to address these WHOIS (WHOIS (pronounced "who is"; not an acronym)) Review Team recommendations, the Action Plan (/en/groups/board/documents/briefing-materials-1-08nov12-en.pdf) [PDF, 265 KB] called for a series of activities aimed at developing policies and a technical data model and framework for internationalizing WHOIS (WHOIS (pronounced "who is"; not an acronym)), including,

- i. Convening of an expert working group (known as the IRD Working Group) to determine the requirements for the submission and display of internationalized registration data.
- ii. A GNSO (Generic Names Supporting Organization) Policy Development Process (PDP (Policy Development Process)) to determine whether translation or transliteration of contact information is needed.

Whereas, in September 2015, the Board approved (/resources/board-material/resolutions-2015-09-28-en#1.b) a new consensus policy developed by the GNSO (Generic Names Supporting Organization) related to the translation and transliteration of WHOIS (WHOIS (pronounced "who is"; not an acronym)) contact data, for which the implementation planning is currently underway.

Whereas the IRD Working Group produced the IRD Final Report (https://whois.icann.org/sites/default/files/files/ird-expert-wg-final-23sep15-en.pdf), [PDF, 268 KB] that includes the Data Model requested by the Board, and principles and requirements for internationalizing registration data (such as WHOIS (WHOIS (pronounced "who is"; not an acronym)))).

Resolved (2016.03.10.05), the Board hereby receives the IRD Final Report (https://whois.icann.org/sites/default/files/files/ird-expert-wg-final-23sep15-en.pdf) [PDF, 268 KB] and thanks the IRD Working Group for the significant effort and work exerted that produced the proposed data model for internationalizing registration data as reflected in the IRD Final

Report.

Resolved (2016.03.10.06), the Board requests that the GNSO (Generic Names Supporting Organization) Council review the broader policy implications of the IRD Final Report (<https://whois.icann.org/sites/default/files/files/ird-expert-wg-final-23sep15-en.pdf>) [PDF, 268 KB] as they relate to other GNSO (Generic Names Supporting Organization) policy development work on WHOIS (WHOIS (pronounced "who is"; not an acronym)) issues, and, at a minimum, forward the IRD Final Report (<https://whois.icann.org/sites/default/files/files/ird-expert-wg-final-23sep15-en.pdf>) [PDF, 268 KB] as an input to the GNSO (Generic Names Supporting Organization) PDP (Policy Development Process) on the Next Generation Registration Directory Services to Replace WHOIS (WHOIS (pronounced "who is"; not an acronym)) that is currently underway.

Resolved (2016.03.10.07), the President and CEO, or his designee(s), is directed to work with the implementation review team for the new consensus policy on translation and transliteration to consider the IRD Working Group's data model and requirements and incorporate them, where appropriate, to the extent that the IRD's recommendations are consistent with, and facilitate the implementation of the new consensus policy on translation and transliteration.

Rationale for Resolutions 2016.03.10.05 – 2016.03.10.07

Why is the Board addressing the issue?

This resolution continues the Board's attention to the implementation of the Action Plan (</en/groups/board/documents/briefing-materials-1-08nov12-en.pdf>) [PDF, 265 KB] adopted by the Board in response to the WHOIS (WHOIS (pronounced "who is"; not an acronym)) Review Team's recommendations (</en/system/files/files/final-report-11may12-en.pdf>). [PDF, 1.44 MB] This resolution arises out of a series of efforts identified in

the Action Plan commenced at the Board's request with the aim of internationalizing WHOIS (WHOIS (pronounced "who is"; not an acronym)) contact data. It also facilitates the implementation of the recently adopted and related consensus policy on translation and transliteration of WHOIS (WHOIS (pronounced "who is"; not an acronym)) data approved (/resources/board-material/resolutions-2015-09-28-en#1.b) by the Board on 28 September 2015.

What is the proposal being considered?

Under the Affirmation of Commitments (AoC), ICANN (Internet Corporation for Assigned Names and Numbers) is committed to enforcing its existing policy relating to WHOIS (WHOIS (pronounced "who is"; not an acronym)) (subject to applicable laws), which "requires that ICANN (Internet Corporation for Assigned Names and Numbers) implement measures to maintain timely, unrestricted and public access to accurate and complete WHOIS (WHOIS (pronounced "who is"; not an acronym)) information..." The AoC obligates ICANN (Internet Corporation for Assigned Names and Numbers) to organize no less frequently than every three years a community review of WHOIS (WHOIS (pronounced "who is"; not an acronym)) policy and its implementation to assess the extent to which WHOIS (WHOIS (pronounced "who is"; not an acronym)) policy is effective and its implementation meets the legitimate needs of law enforcement and promotes consumer trust. Under this timeline, the second WHOIS (WHOIS (pronounced "who is"; not an acronym)) Review Team is to be convened in late 2016.

In 2012, the first WHOIS (WHOIS (pronounced "who is"; not an acronym)) Review Team recommended in its Final Report (/en/system/files/files/final-report-11may12-en.pdf) [PDF, 1.44 MB] that the Board take measures to improve WHOIS (WHOIS (pronounced "who is"; not an acronym)). Its findings state: "work needs to proceed with priority in coordination with other relevant work beyond ICANN (Internet Corporation for Assigned Names and Numbers)'s ambit, to make internationalized domain name registration data accessible." In response, the

Board adopted a two-prong approach that simultaneously directed ICANN (Internet Corporation for Assigned Names and Numbers) to (1) implement improvements to the current WHOIS (WHOIS (pronounced "who is"; not an acronym)) system based on the Action Plan (/en/groups/board/documents/briefing-materials-1-08nov12-en.pdf) [PDF, 265 KB] that was based on the recommendations of the WHOIS (WHOIS (pronounced "who is"; not an acronym)) Review Team, and (2) launch a new effort, achieved through the creation of the Expert Working Group, to focus on the purpose and provision of gTLD (generic Top Level Domain) directory services, to serve as PDP (Policy Development Process) on the Next Generation Registration Directory Services to Replace WHOIS (WHOIS (pronounced "who is"; not an acronym)) commenced in January 2016 with a call for volunteers (/news/announcement-2016-01-04-en).

The effect of the Board's action today, i.e. forwarding the IRD Final Report (<https://whois.icann.org/sites/default/files/files/ird-expert-wg-final-23sep15-en.pdf>) [PDF, 268 KB] to the GNSO (Generic Names Supporting Organization) for appropriate follow-up policy work, is aimed at internationalizing WHOIS (WHOIS (pronounced "who is"; not an acronym)) contact data, as part of the Action Plan (/en/groups/board/documents/briefing-materials-1-08nov12-en.pdf), [PDF, 265 KB] in order to improve WHOIS (WHOIS (pronounced "who is"; not an acronym)) and enable non US-ASCII script to be included in WHOIS (WHOIS (pronounced "who is"; not an acronym)) records. At a minimum, the PDP (Policy Development Process) on the Next Generation Registration Directory Services to Replace WHOIS (WHOIS (pronounced "who is"; not an acronym)) should take into account the IRD Final Report recommendations.

Today's action also instructs the President and CEO to consider the IRD's technical data model & non-policy related requirements, as appropriate, as part of the implementation of the new consensus policy on translation and transliteration of registration data, to the extent that its findings are consistent

with the new consensus policy, and facilitate its implementation.

What factors did the Board find to be significant?

Internationalization of the Internet's identifiers is a key ICANN (Internet Corporation for Assigned Names and Numbers) priority. Much of the currently accessible domain name registration data (DNRD) (previously referred to as WHOIS (WHOIS (pronounced "who is"; not an acronym)) data) is encoded in free form US-ASCII script. This legacy condition is convenient for WHOIS (WHOIS (pronounced "who is"; not an acronym)) service users who are sufficiently familiar with languages that can be submitted and displayed in US-ASCII to be able to use US-ASCII script to submit registration data, make and receive queries using that script. However, this data is less useful to the WHOIS (WHOIS (pronounced "who is"; not an acronym)) service users who are only familiar with languages that require script support other than US-ASCII for correct submission or display.

The data model recommended by in the IRD Final Report (https://whois.icann.org/sites/default/files/files/ird-expert-wg-final-23sep15-en.pdf) [PDF, 268 KB] creates a standard framework for submitting and displaying internationalized registration data and facilitates the implementation of the new consensus policy on translation and transliteration of contact data.

What significant materials did the Board review?

The Board reviewed the IRD Final Report (https://whois.icann.org/sites/default/files/files/ird-expert-wg-final-23sep15-en.pdf) [PDF, 268 KB] and other briefing materials submitted by staff.

Are there fiscal impacts or ramifications on ICANN (Internet Corporation for Assigned Names and Numbers) (strategic plan, operating plan, or budget)?

The work to improve and internationalize WHOIS (WHOIS

(pronounced "who is"; not an acronym)) is not expected to require additional resources beyond those included in the Board-approved FY16 Operating Plan and Budget, and the FY17 Operating Plan and Budget, when adopted.

Are there any security, stability or resiliency issues relating to the DNS (Domain Name System)?

This action is not expected to have an immediate impact on the security, stability or resiliency of the DNS (Domain Name System), though the outcomes of this work may result in positive impacts, since improvements in the accessibility of WHOIS (WHOIS (pronounced "who is"; not an acronym)) in multiple scripts and dialogues may enable the resolution of technical issues affecting the security, stability or resiliency of the DNS (Domain Name System).

Is public comment required prior to Board action?

As this is a continuation of prior Board actions, this is an Organizational Administrative Action, for which public comment is not necessary prior to adoption.

f. Board Member Mentorship Program

Whereas, on 3 February 2016, the ICANN (Internet Corporation for Assigned Names and Numbers) Board approved the initial set of key performance indicators (KPIs) to measure the Board Performance and Improvement efforts as per the recommendations of the Final Report of the Second Accountability and Transparency Review Team (ATRT2) published on 31 December 2013.

Whereas, the initial set of KPIs encompasses, among other things, the measurement of the effectiveness and success of a New Board Mentorship Program.

Whereas, the Board is engaged in an ongoing process to develop comprehensive and holistic practices to enhance its

performance and measure its effectiveness and improvement efforts over time.

Whereas, the Board recognizes the importance of establishing programs aiming at guiding and supporting the Board members' on-boarding and development processes to improve the Board members' individual skills set and the Board's collegial performance.

Whereas the Board Mentorship Program will ease new Board members into the culture of ICANN (Internet Corporation for Assigned Names and Numbers), as well as into the specifics of their roles.

Whereas the Board Governance Committee (BGC) has recommended that the Board adopt the New Board Mentorship Program as a voluntary-basis program.

Resolved (2016.03.10.08), the Board adopts the New Board Mentorship Program set forth in Attachment A to the Reference Materials to this Board Paper, and agrees with the BGC that the Board Mentorship Program should be assessed, evaluated and reviewed to adapt to the need of the Board to consistently improve its performance over time.

Rationale for Resolution 2016.03.10.08

The implementation of [recommendations \(/en/about/aoc-review/atrt/final-recommendations-31dec13-en.pdf\)](/en/about/aoc-review/atrt/final-recommendations-31dec13-en.pdf) [PDF, 3.46 MB] from the Second Accountability and Transparency Review Team (ATRT2) began in June 2014, shortly after the Board accepted the recommendations.

Since then, the Board Governance Committee, as per Section I.A of the its charter (see [https://www.icann.org/resources/pages/charter-06-2012-02-25-en \(/resources/pages/charter-06-2012-02-25-en\)](https://www.icann.org/resources/pages/charter-06-2012-02-25-en (/resources/pages/charter-06-2012-02-25-en))) has been tasked to review comprehensively the Board's performance and to develop relevant and substantive programs and practices to support the

individual and the collegial improvement efforts and to measure their effectiveness over time.

Mentoring programs are globally recognized as useful practices to enhance productivity and performance and to facilitate the settlement of new recruits into the Organization. Additionally, the mentorship enables experienced, highly competent people to pass their expertise on to others who need to acquire specified skills, in particular, mentoring encourages the development of leadership competencies that are highly desirable at Board level.

Adopting this new Board Mentorship Program will have no direct fiscal impact on ICANN (Internet Corporation for Assigned Names and Numbers) or the community, and will not have an impact of the security, stability and resiliency of the domain name system.

This is an Organization Administrative Function that does not require public comment.

g. **USG IANA (Internet Assigned Numbers Authority) Stewardship Transition – Additional FY16 Expenses and Funding**

Whereas, the Board has approved an expense budget envelopes to support the IANA (Internet Assigned Numbers Authority) Stewardship Transition Project ("Project") during FY15 and FY16, and all approved budget envelopes will have been used after the ICANN (Internet Corporation for Assigned Names and Numbers) Meeting 55 in Marrakech.

Whereas, a Project Cost Support Team is being implemented to produce Project expense estimates for the remainder of FY16 and for FY17 for the Project.

Whereas, it is projected that further Project expenses of up to approximately US\$1.5 million will be incurred while the Project Cost Support Team is producing cost estimates.

Whereas, the Board Finance Committee met on 3 March 2016 and has approved to recommend to the Board to approve an additional Project expense budget envelope of up to US\$1.5 million to cover Project expenses while the Project Cost Support Team is working to produce estimates.

Resolved (2016.03.10.09), the Board approves a budget envelope of up to US\$1.5 million, as an interim measure, to cover the costs of the Project to be incurred until the first estimate is produced, to be funded through a fund release from the Reserve Fund.

Rationale for Resolution 2016.03.10.09

The IANA (Internet Assigned Numbers Authority) Stewardship Transition is a major initiative to which the ICANN (Internet Corporation for Assigned Names and Numbers) Community as a whole is dedicating a significant amount of time and resources. ICANN (Internet Corporation for Assigned Names and Numbers)'s support for the community's work towards a successful completion of the Project (including both the USG IANA (Internet Assigned Numbers Authority) Stewardship transition proposal development and the Cross-Community Working Group on Enhancing ICANN (Internet Corporation for Assigned Names and Numbers) Accountability's work) is critical for ICANN (Internet Corporation for Assigned Names and Numbers).

Considering its exceptional nature and the significant amount of costs anticipated to be incurred, the funding of this Project could not be provided through the Operating Fund. Accordingly, when the Board approved the FY15 and FY16 Operating Plans and Budgets, it included the anticipated funding of the transition initiative costs through a corresponding withdrawal from the Reserve Fund.

The Board previously approved the FY16 Operating Plan and Budget, which included an estimated budget envelope of US\$7 million for the USG IANA (Internet Assigned Numbers

Authority) Stewardship Transition ("The Project") to be funded by the Reserve Fund. As the Project used this entire budget envelope by the end of November 2015, the Board approved additional funding of US\$4.5 million on 2 February 2016 to allow the project to be funded through the ICANN (Internet Corporation for Assigned Names and Numbers) Meeting 55 in Marrakech.

The Board reiterates its 25 June 2015 statement that the Board is "committed to supporting the community in obtaining the advice it needs in developing recommendations in support of the transition process, and also notes the importance of making sure that the funds entrusted to ICANN (Internet Corporation for Assigned Names and Numbers) by the community are used in responsible and efficient ways. Assuring the continuation of cost-control measures over the future work of the independent counsel is encouraged." (See <https://www.icann.org/resources/board-material/resolutions-2015-06-25-en#2.c> ([/resources/board-material/resolutions-2015-06-25-en#2.c](https://www.icann.org/resources/board-material/resolutions-2015-06-25-en#2.c))).

As the community work relative to the accountability track of the Project is expected to continue, further expenses are expected through the remainder of FY16 and during FY17. The implementation planning for other parts of the Project will also continue. Separately, in order to improve visibility on and control of the expenses for this type of project in partnership with the community, a Project Costs Support Team is being formed to produce costs estimates for future work.

The Board Finance Committee has determined that an additional budget envelope of approximately US\$1.5 million needs to be approved by Board to allow ICANN (Internet Corporation for Assigned Names and Numbers) to incur further Project expenses for a short period of time after the end of the ICANN (Internet Corporation for Assigned Names and Numbers) 55 Meeting. This will give the necessary time to the project cost support team to produce estimates. These estimates will then be used by the Board to consider and approve a budget envelope for a longer period of time forward.

As this initiative's expenses and funding are approved by the Board, the ICANN (Internet Corporation for Assigned Names and Numbers) Board is now approving as an additional interim measure a budget envelope of up to US\$1.5 million to be funded through a release from the Reserve Fund to cover the estimated costs to be incurred after the end of the ICANN (Internet Corporation for Assigned Names and Numbers) 55 meeting until such time a cost estimate will be ready. The Board will be asked to approve an additional expense budget envelope for the remainder of FY16, on the basis of the estimated future expenses produced by the Project Cost Support Team.

This action will not have a direct impact on the security, stability and resiliency of the domain name system.

This is an Organizational Administrative Function that does not require public comment.

h. Thank You to Local Host of ICANN (Internet Corporation for Assigned Names and Numbers) 55 Meeting

The Board wishes to extend its thanks to the local host organizer, ANRT, for its support.

i. Thank You to Sponsors of ICANN (Internet Corporation for Assigned Names and Numbers) 55 Meeting

The Board wishes to thank the following sponsors: Verisign, Inc., Nominet UK, NCC Group, PDR Solutions FZC, China Internet Network Information Center (CNNIC), Public Interest Registry, CentralNic, Afilias plc, Radix FZC, Rightside, dotistanbul, fmai, .MA and Office National Des Aeroports.

j. Thank You to Interpreters, Staff, Event and Hotel Teams of ICANN (Internet Corporation for

Assigned Names and Numbers) 55 Meeting

The Board expresses its deepest appreciation to the scribes, interpreters, audiovisual team, technical teams, and the entire ICANN (Internet Corporation for Assigned Names and Numbers) staff for their efforts in facilitating the smooth operation of the meeting.

The Board would also like to thank the management and staff of the Palmeraie Conference Center and Hotels for providing a wonderful facility to hold this event. Special thanks are extended to Patrick Lebufno, Director General Delegue, Palmeraie Conference Center and Hotels; Boubker Bernoussi, Director of Convention Services for Palmeraie Conference Center and Hotels; Loubna El Mekkaoui, Sales Manager for Palmeraie Conference Center and Hotels; Mohamed Aziz, Director, Food and Beverage; Hassan Agouzoul, Executive Chef; Hafsa Aitouhan, Event Manager; and Jamal Drifi, Banquet Director.

2. Main Agenda:

a. Consideration of .ECO and .HOTEL IRP Declaration

Whereas, on 12 February 2016, an Independent Review Process (IRP) Panel (Panel) issued its Final Declaration in the IRPs relating to .HOTEL and .ECO.

Whereas, the Panel declared ICANN (Internet Corporation for Assigned Names and Numbers) to be the prevailing party in both IRPs, and, among other things, declared that the Board's actions or inactions did not in any way violate ICANN (Internet Corporation for Assigned Names and Numbers)'s Articles of Incorporation or Bylaws. (See Final Declaration, ¶¶ 151-156, <https://www.icann.org/en/system/files/files/irp-despegar-online-et-al-final-declaration-12feb16-en.pdf> (/en/system/files/files/irp-despegar-online-et-al-final-declaration-12feb16-en.pdf).) [PDF, 2.16 MB]

Whereas, while the Panel declared ICANN (Internet Corporation for Assigned Names and Numbers) to be the prevailing party in both the .HOTEL and .ECO IRPs, the Panel also suggested that: (1) the Board consider additional measures be added in the future to increase the consistency and predictability of the CPE process and third-party provider evaluations; (2) the Board encourage ICANN (Internet Corporation for Assigned Names and Numbers) staff to be as specific and detailed as possible in responding to requests made pursuant to ICANN (Internet Corporation for Assigned Names and Numbers)'s Documentary Information Disclosure Policy (DIDP); (3) the Board affirm, when appropriate, that ICANN (Internet Corporation for Assigned Names and Numbers)'s activities are conducted through open and transparent processes in conformance with Article IV of ICANN (Internet Corporation for Assigned Names and Numbers)'s Articles of Incorporation; and (4) the Board respond to a letter from the .HOTEL Claimants regarding the portal configuration issue as soon as feasible.

Whereas, in accordance with Article IV, section 3.21 of ICANN (Internet Corporation for Assigned Names and Numbers)'s Bylaws, the Board has considered the Panel's Final Declaration.

Resolved (2016.03.10.10), the Board accepts the following findings of the Panel's Final Declaration: (1) ICANN (Internet Corporation for Assigned Names and Numbers) is the prevailing party in the Despegar Online SRL, Donuts Inc., Famous Four Media Limited, Fegistry LLC, and Radix FZC v. ICANN (Internet Corporation for Assigned Names and Numbers) IRP; (2) ICANN (Internet Corporation for Assigned Names and Numbers) is the prevailing party in the Little Birch, LLC and Minds + Machines Group Limited v. ICANN (Internet Corporation for Assigned Names and Numbers) IRP; (3) the IRP Panel's analysis is limited to declaring whether the Board has acted consistently with the provisions of ICANN (Internet Corporation for Assigned Names and Numbers)'s Articles of Incorporation and Bylaws; (4) the Board (including the Board

Governance Committee) acted consistently with the Articles of Incorporation and Bylaws; (5) the parties shall each bear their own expenses including legal fees; and (6) the IRP costs shall be divided between the parties in a 50% (claimants) / 50% (ICANN (Internet Corporation for Assigned Names and Numbers)) proportion.

Resolved (2016.03.10.11), the Board notes the Panel's suggestions, and: (1) directs the President and CEO, or his designee(s), to ensure that the New gTLD (generic Top Level Domain) Program Reviews take into consideration the issues raised by the Panel as they relate to the consistency and predictability of the CPE process and third-party provider evaluations; (2) encourages ICANN (Internet Corporation for Assigned Names and Numbers) staff to be as specific and detailed as possible in responding to DIDP requests, particularly when not disclosing requested documents; (3) affirms that, as appropriate, ICANN (Internet Corporation for Assigned Names and Numbers) will continue to ensure that its activities are conducted through open and transparent processes in conformance with Article IV of ICANN (Internet Corporation for Assigned Names and Numbers)'s Articles of Incorporation; and (4) directs the President and CEO, or his designee(s), to complete the investigation of the issues alleged by the .HOTEL Claimants regarding the portal configuration as soon as feasible and to provide a report to the Board for consideration following the completion of that investigation.

Rationale for Resolutions 2016.03.10.10 – 2016.03.10.11

Despegar Online SRL, Donuts Inc., Famous Four Media Limited, Fegistry LLC, and Radix FZC (collectively, ".HOTEL Claimants") filed a request for an Independent Review Process (IRP) challenging the Community Priority Evaluation (CPE) Panel Report finding that the one community application for .HOTEL prevailed in CPE (the ".HOTEL IRP"). Specifically, the .HOTEL Claimants filed Reconsideration Request 14-34 seeking reconsideration of the CPE Panel Report, and

Reconsideration Request 14-39 seeking reconsideration of ICANN (Internet Corporation for Assigned Names and Numbers) staff's determination, pursuant to the Documentary Information Disclosure Policy (DIDP), that certain documents related to the CPE Panel Report were not appropriate for disclosure under the DIDP Defined Conditions for Nondisclosure. The Board Governance Committee (BGC) denied Reconsideration Requests 14-34 and 14-39, finding that the .HOTEL Claimants had not stated proper grounds for reconsideration. The .HOTEL IRP challenged the denial of Reconsideration Requests 14-34 and 14-39, and argued that the Board should have take further action with respect to the CPE Panel Report.

Little Birch LLC and Minds + Machines Group Limited (collectively, ".ECO Claimants") filed an IRP Request challenging the CPE Panel Report finding that the one community application for .ECO prevailed in CPE (the ".ECO IRP"). Specifically, the .ECO Claimants filed Reconsideration Request 14-46, seeking reconsideration of the CPE Panel Report. The BGC denied Reconsideration Request 14-46, finding that the .ECO Claimants had not stated proper grounds for reconsideration. The .ECO IRP challenged the denial of Reconsideration Request 14-46, and alleged that ICANN (Internet Corporation for Assigned Names and Numbers) "has failed to act with due diligence and failed to exercise independent judgment" in "adopting" the CPE Panel Report, and requested that ICANN (Internet Corporation for Assigned Names and Numbers) be "required to overturn the CPE in relation to .eco and allow the .ECO Claimants' applications to proceed on their own merits."

On 12 May 2015, the .HOTEL and the .ECO IRPs were consolidated under a single IRP Panel (Panel). The Panel held a telephonic hearing on 7 December 2015. On 12 February 2016, the three-member Panel issued its Final Declaration. After consideration and discussion, pursuant to Article IV, Section 3.21 of the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws, the Board adopts the findings of

the Panel, which are summarized below, and can be found in full at <https://www.icann.org/en/system/files/files/irp-despegar-online-et-al-final-declaration-12feb16-en.pdf> (/en/system/files/files/irp-despegar-online-et-al-final-declaration-12feb16-en.pdf). [PDF, 2.16 MB]

The Panel found that the "analysis, which the Panel is charged with carrying out in this IRP, is one of comparing the actions of the Board with the Articles of Incorporation and Bylaws, and declaring whether the Board has acted consistently with the provisions of those Articles of Incorporation and Bylaws." (Final Declaration at ¶ 58.)

Using the applicable standard of review, the Panel found that: (1) ICANN (Internet Corporation for Assigned Names and Numbers) is the prevailing party in the *Despegar Online SRL, Donuts Inc., Famous Four Media Limited, Fegistry LLC, and Radix FZC v. ICANN (Internet Corporation for Assigned Names and Numbers)* IRP; (2) ICANN (Internet Corporation for Assigned Names and Numbers) is the prevailing party in the *Little Birch, LLC and Minds + Machines Group Limited v. ICANN (Internet Corporation for Assigned Names and Numbers)* IRP; (3) the Board (including the Board Governance Committee) acted consistently with the Articles of Incorporation and Bylaws; (4) the parties shall each bear their own expenses including legal fees; and (5) the IRP costs shall be divided between the parties in a 50% (claimants) / 50% (ICANN (Internet Corporation for Assigned Names and Numbers)) proportion. (See Final Declaration at ¶¶ 151, 154-156, 160.)

More specifically, the Panel found that the .HOTEL IRP "was always going to fail given the clear and thorough reasoning adopted by the BGC in its denial" of Reconsideration Requests 14-34 and 14-39. (Final Declaration at ¶ 155.) And, "[a]s for the .eco IRP, it is clear that the Reconsideration Request [14-46] was misconceived and was little more than an attempt to appeal the CPE decision. Again, therefore, the .eco IRP was always going to fail." (Final Declaration at ¶ 156.)

It should be noted that, while ruling in ICANN (Internet Corporation for Assigned Names and Numbers)'s favor and denying both IRPs, the Panel did make some observations and suggestions for the Board's consideration. In particular, while recognizing that the New gTLD (generic Top Level Domain) Program is near its end "and there is little or nothing that ICANN (Internet Corporation for Assigned Names and Numbers) can do now," the Panel suggested that a system be put in place to ensure that CPE evaluations are conducted "on a consistent and predictable basis by different individual evaluators," and to ensure that ICANN (Internet Corporation for Assigned Names and Numbers)'s core values "flow through...to entities such as the EIU." (*Id.* at ¶¶ 147, 150.) The Panel also noted that ICANN (Internet Corporation for Assigned Names and Numbers) staff could have better explained its determination that certain requested documents were subject to the Defined Conditions for Nondisclosure in the Documentary Information Disclosure Policy (DIDP). (*Id.* at ¶ 110.) The Panel also suggested that "to the extent possible, and compatible with the circumstances and the objects to be achieved by ICANN (Internet Corporation for Assigned Names and Numbers)" in taking a particular decision (*Id.* at ¶ 145), the Board affirm that ICANN (Internet Corporation for Assigned Names and Numbers) carries out its activities "through open and transparent processes" pursuant to Article IV of ICANN (Internet Corporation for Assigned Names and Numbers)'s Articles of Incorporation. In addition, the Panel encouraged ICANN (Internet Corporation for Assigned Names and Numbers) to respond to a letter from the .HOTEL Claimants regarding the portal configuration issue as soon as feasible. (*Id.* at ¶ 134.)

The Board acknowledges the foregoing suggestions by the Panel. The Board has considered the suggestions and notes that it will ensure that the New gTLD (generic Top Level Domain) Program Reviews take into consideration the issues raised by the Panel as they relate to the consistency and predictability of the CPE process and third-party provider

evaluations. The Board also affirms that ICANN (Internet Corporation for Assigned Names and Numbers), as appropriate, will continue to ensure that its activities are conducted through open and transparent processes in conformance with Article IV of ICANN (Internet Corporation for Assigned Names and Numbers)'s Articles of Incorporation. The Board also encourages ICANN (Internet Corporation for Assigned Names and Numbers) staff to be as specific and detailed as possible in responding to DIDP requests, particularly when determining that requested documents will not be disclosed. In this regard, the Board notes that the Cross Community Working Group (CCWG) on Enhancing ICANN (Internet Corporation for Assigned Names and Numbers) Accountability has identified that reviewing and enhancing the DIDP is one of the topics that it will address in Workstream 2. This work, which will be further framed starting at the ICANN55 meeting in Marrakech, is likely to include review of the scope of the DIDP Defined Conditions for Nondisclosure.

Finally, with respect to the Panel's recommendation that ICANN (Internet Corporation for Assigned Names and Numbers) respond to a letter from the .HOTEL Claimants regarding the portal configuration issue as soon as feasible, the Board notes that staff has informed the Board that it is nearing the end of its investigation of this matter. The Board is recently in receipt of two letters from Claimants regarding the portal configuration issue, dated 1 March 2016 and 8 March 2016, respectively. Staff has provided the Board with an update of its investigation into the issues set forth in the letters. The Board has directed the President and CEO, or his designee(s) to complete its investigation into this matter as soon as feasible. The Board notes that out of a matter of equity and fairness, the investigation should include the opportunity for all relevant parties to be heard. The Board expects the staff will prepare a report for the Board following the completion of its investigation, at which time the Board will consider the .HOTEL Claimants request for cancellation of HOTEL Top-Level Domain S.a.r.l.'s application for .HOTEL.

As required, the Board has considered the Final Declaration. As this Board has previously indicated, the Board takes very seriously the results of one of ICANN (Internet Corporation for Assigned Names and Numbers)'s long-standing accountability mechanisms. Accordingly, and for the reasons set forth in this Resolution and Rationale, the Board has accepted the Panel's Final Declaration as indicated above. Adopting the Panel's Final Declaration will have no direct financial impact on the organization and no direct impact on the security, stability or resiliency of the domain name system.

This is an Organizational Administrative function that does not require public comment.

b. IANA (Internet Assigned Numbers Authority) Stewardship Transition Proposal from ICG (IANA Stewardship Transition Coordination Group)

Whereas, on 14 March 2014, the National Telecommunications and Information Administration (NTIA (US National Telecommunications and Information Agency)) of the United States Department of Commerce announced its intention to transition the stewardship of the IANA (Internet Assigned Numbers Authority) Functions to the global multistakeholder community.

Whereas, NTIA (US National Telecommunications and Information Agency) asked ICANN (Internet Corporation for Assigned Names and Numbers) to convene global stakeholders to develop a proposal to transition the current role played by NTIA (US National Telecommunications and Information Agency) in the coordination of the Internet's domain name system (DNS (Domain Name System)). NTIA (US National Telecommunications and Information Agency) required that the proposal for transition must have broad community support and uphold the following principles:

- Support and enhance the multistakeholder model;

- Maintain the security, stability, and resiliency of the Internet DNS (Domain Name System);
- Meet the needs and expectation of the global customers and partners of the IANA (Internet Assigned Numbers Authority) services; and,
- Maintain the openness of the Internet.

NTIA (US National Telecommunications and Information Agency) also stated it would not accept a proposal that replaces the NTIA (US National Telecommunications and Information Agency) role with a government-led or an inter-governmental organization solution.

Whereas, after public input into the design of the process, the IANA (Internet Assigned Numbers Authority) Stewardship Transition Coordination Group (ICG (IANA Stewardship Transition Coordination Group)) was formed, with 30 members representing 13 communities of both direct and indirect stakeholders each selected by their respective communities. The communities represented were the At-Large Advisory Committee (Advisory Committee), Address Supporting Organization (Supporting Organization), Country-Code Names Supporting Organization (Supporting Organization), Governmental Advisory Committee (Advisory Committee), Generic Names Supporting Organization (Supporting Organization), Generic Top-Level Domain Registries, International Chamber of Commerce/Business Action to Support the Information Society, Internet Architecture Board, Internet Engineering Task Force, Internet Society, Number Resource Organization, Root Server System Advisory Committee (Advisory Committee), and the Security (Security – Security, Stability and Resiliency (SSR))and Stability (Security, Stability and Resiliency) Advisory Committee (Advisory Committee). A liaison from the ICANN (Internet Corporation for Assigned Names and Numbers) Board, as well as an IANA (Internet Assigned Numbers Authority) Staff Liaison Expert were also named. The ICG (IANA Stewardship Transition

Coordination Group) is supported by an independent Secretariat.

Whereas, in response to its request, each of those operating communities in turn developed their own team to coordinate the development of a plan to submit to the ICG (IANA Stewardship Transition Coordination Group). The ICG (IANA Stewardship Transition Coordination Group) received plans from the Domain Names communities (developed in the Cross-Community Working Group to Develop an IANA (Internet Assigned Numbers Authority) Stewardship Transition Proposal, or the CWG-Stewardship) in June 2015, the Number Resources community (developed by the Consolidated RIR (Regional Internet Registry) IANA (Internet Assigned Numbers Authority) Stewardship Proposal Team, or CRISP) in January 2015, and the Protocol (Protocol) Parameters community (developed in the IANAPLAN team) in January 2015. The CWG-Stewardship, CRISP and IANAPLAN teams each developed their plans through open consultation processes. The ICG (IANA Stewardship Transition Coordination Group) took these three community-developed plans and assessed them individually and collectively in order to determine whether: (1) the community processes were open and inclusive and if consensus was achieved for the plans; (2) the proposals are complete and clear; (3) the three proposals together are compatible and interoperable, provide appropriate accountability mechanisms, and are workable; and (4) the proposals together meet the NTIA (US National Telecommunications and Information Agency) criteria.

Whereas, the ICG (IANA Stewardship Transition Coordination Group) found that each of its assessment criteria were met, and coordinated the three plans into a single unified Proposal. The Proposal went out for public comment from August-September 2015, and received 157 comments on the combined proposal from a wide variety of stakeholders, including individuals, operational communities, supporting organizations and advisory committees within the ICANN (Internet Corporation for Assigned Names and Numbers) community, businesses and

trade associations, civil society groups, governments, and others from all regions of the world.

Whereas, upon deliberation and consideration of public comments, the ICG ([IANA Stewardship Transition Coordination Group](#)) achieved unanimous support among its members for the Proposal. The ICG ([IANA Stewardship Transition Coordination Group](#)) completed its work on 29 October 2015 and finalized its proposal, with the exception of one item. The CWG-Stewardship plan identified contingencies on the work of the Cross-Community Working Group on Enhancing ICANN ([Internet Corporation for Assigned Names and Numbers](#)) Accountability (CCWG-Accountability), and the ICG ([IANA Stewardship Transition Coordination Group](#)) received confirmation from the CWG-Stewardship on 29 February 2016 that the contingencies had been met.

Whereas, the CCWG-Accountability finalized its report on 10 March 2016, and thus provided the final confirmation to the ICG ([IANA Stewardship Transition Coordination Group](#)) on the meeting of the interdependencies with the CWG-Stewardship's portion of the Proposal.

Whereas, on 10 March 2016, the ICG ([IANA Stewardship Transition Coordination Group](#)) formally transmitted its report to the ICANN ([Internet Corporation for Assigned Names and Numbers](#)) Board for consideration.

Whereas, during the Proposal development process, the Board engaged in each part of the process. The Board monitored the development of all parts of the proposals and provided public comment as appropriate, including commenting on both the first and second versions of the CWG plan, and on 8 September 2015 providing a comment on the ICG ([IANA Stewardship Transition Coordination Group](#)) Proposal noting some specific concerns that should be addressed during the implementation phase. The Board's input to the ICG ([IANA Stewardship Transition Coordination Group](#)) is at <https://comments.ianacg.org/pdf/submission/submission121.pdf>

<https://comments.ianacg.org/pdf/submission/submission121.pdf>). [PDF, 133 KB] A comprehensive list of all the ICANN (Internet Corporation for Assigned Names and Numbers) Board's input into the processes are detailed at <https://www.icann.org/resources/pages/board-input-stewardship-accountability-2015-07-10-en> (</resources/pages/board-input-stewardship-accountability-2015-07-10-en>).

Whereas, on 19 February 2016, the Board held an information call wherein it refreshed its review of the ICG (IANA Stewardship Transition Coordination Group) Proposal in anticipation that the Proposal would soon be delivered.

Resolved (2016.03.10.12), the ICANN (Internet Corporation for Assigned Names and Numbers) Board accepts the ICG (IANA Stewardship Transition Coordination Group)'s IANA (Internet Assigned Numbers Authority) Stewardship Transition Proposal.

Resolved (2016.03.10.13), the Board approves of the transmittal of the Proposal to the National Telecommunications & Information Administration of the United States Department of Commerce in response to NTIA (US National Telecommunications and Information Agency)'s 14 March 2014 announcement.

Resolved (2016.03.10.14), the President and CEO, or his designee, is directed to plan for the implementation of the Proposal so that ICANN (Internet Corporation for Assigned Names and Numbers) is operationally ready to implement in the event NTIA (US National Telecommunications and Information Agency) approves of the Proposal and the IANA (Internet Assigned Numbers Authority) Functions Contract expires.

Resolved (2016.03.10.15), the Board expresses its deep appreciation for the tireless efforts of the ICG (IANA Stewardship Transition Coordination Group) chairs and members in developing the Proposal, as well as the chairs, members and participants in the CWG-Stewardship, CRISP and IANAPLAN teams. The development of the coordinated

Proposal across these four volunteer teams is a true demonstration of the strength and triumph of the multistakeholder model.

Rationale for Resolution 2016.03.10.12 – 2016.03.10.15

The acceptance and transmittal of the ICG (IANA Stewardship Transition Coordination Group)'s IANA (Internet Assigned Numbers Authority) Stewardship Transition Proposal to NTIA (US National Telecommunications and Information Agency) is the culmination of a nearly two-year process. NTIA (US National Telecommunications and Information Agency)'s call for ICANN (Internet Corporation for Assigned Names and Numbers) to convene global stakeholders to develop a proposal to transition the current role played by NTIA (US National Telecommunications and Information Agency) in the coordination of the Internet's unique identifiers has been met. This is the end of the first phase in the path towards the privatization of DNS (Domain Name System) management, a goal since ICANN (Internet Corporation for Assigned Names and Numbers)'s formation.

The global multistakeholder community embraced NTIA (US National Telecommunications and Information Agency)'s call to action, first developing the plan for how the proposal will be developed, at <https://www.icann.org/resources/pages/process-next-steps-2014-06-06-en> (</resources/pages/process-next-steps-2014-06-06-en>) after a call for public input, available at <https://www.icann.org/resources/pages/draft-proposal-2014-04-08-en> (</resources/pages/draft-proposal-2014-04-08-en>). The IANA (Internet Assigned Numbers Authority) Stewardship Transition Coordination Team, or ICG (IANA Stewardship Transition Coordination Group), was formed out of that effort, comprised of individuals selected by each represented community. These 30 individuals represent 13 communities of both direct and indirect stakeholders who together delivered a proposal to recommending a transition plan of NTIA (US National Telecommunications and Information

Agency)'s stewardship of IANA (Internet Assigned Numbers Authority) functions to the Internet community, consistent with the key principles outlined in the NTIA (US National Telecommunications and Information Agency) March 14 announcement. The ICG (IANA Stewardship Transition Coordination Group) membership is identified at <https://www.icann.org/resources/pages/icg-members-2014-07-29-en> (/resources/pages/icg-members-2014-07-29-en). The ICG (IANA Stewardship Transition Coordination Group) documented its work at <https://www.ianacg.org/> (<https://www.ianacg.org/>).

The ICG (IANA Stewardship Transition Coordination Group) called upon the operational communities to develop comprehensive plans for transition of NTIA (US National Telecommunications and Information Agency)'s role as it relates to each of the three functions served under the IANA (Internet Assigned Numbers Authority) Functions Contract. The Request for Transition Proposals, at <https://www.icann.org/news/announcement-2014-09-09-en> (/news/announcement-2014-09-09-en), specified a comprehensive list of requirements, including: descriptions of how the community uses the IANA (Internet Assigned Numbers Authority) functions and existing arrangements; proposed oversight and accountability arrangements post-transition; transition implications; identification of the how the NTIA (US National Telecommunications and Information Agency) criteria are met; and description of community process and consensus assessment.

The operating communities each responded through separate teams. The Domain Names communities formed the Cross-Community Working Group to Develop an IANA (Internet Assigned Numbers Authority) Stewardship Transition Proposal (CWG-Stewardship), <https://community.icann.org/x/37fhAg> (<https://community.icann.org/x/37fhAg>). The Domain Name (Domain Name) Community's report was the result of over 100 calls or meetings, 2 public consultations and more than 4,000 email messages. The final proposal received the consensus

support of the CWG with no objections or minority statements recorded for Chartering Organization consideration.

The Number Resources community formed the Consolidated RIR (Regional Internet Registry) IANA (Internet Assigned Numbers Authority) Stewardship Proposal Team (CRISP), tracked at <https://www.nro.net/nro-and-internet-governance/iana-oversight/consolidated-rir-iana-stewardship-proposal-team-crisp-team> (<https://www.nro.net/nro-and-internet-governance/iana-oversight/consolidated-rir-iana-stewardship-proposal-team-crisp-team>). Within the Number Resources community, each of the five RIRs also performed work to support the CRISP work, and details on those proceedings can be accessed from <https://www.icann.org/en/stewardship/community> ([/en/stewardship/community](https://www.icann.org/en/stewardship/community)). Each region contributed to the community consensus via regionally defined processes suitable to their particular local needs and culture.

The Protocol (Protocol) Parameters community established the IANAPLAN working group to elaborate a response, with a mailing list at <http://www.ietf.org/iana-transition.html> (<http://www.ietf.org/iana-transition.html>). Anyone was welcome to join the conversation and participate in the development. A publicly archived and open mailing list was created to this end and yielded 2,252 emails.

Upon receipt of all three reports, the ICG (IANA Stewardship Transition Coordination Group) reviewed each report to consider if: (1) the community processes were open and inclusive and if consensus was achieved for the plans; (2) the proposals are complete and clear; (3) the three proposals together are compatible and interoperable, provide appropriate accountability mechanisms, and are workable; and (4) the proposals together meet the NTIA (US National Telecommunications and Information Agency) criteria. The ICG (IANA Stewardship Transition Coordination Group) Proposal details the findings on each of these elements and the Board agrees with these findings.

The ICG (IANA Stewardship Transition Coordination Group) received 157 comments on its draft combined proposal from a wide variety of stakeholders, including individuals, operational communities, supporting organizations and advisory committees within the ICANN (Internet Corporation for Assigned Names and Numbers) community, businesses and trade associations, civil society groups, governments, and others from all regions of the world. In support of the proposal, the ICG (IANA Stewardship Transition Coordination Group) produced a comprehensive summary of public comments (<https://www.ianacg.org/icg-files/documents/Public-Comment-Summary-final.pdf> (<https://www.ianacg.org/icg-files/documents/Public-Comment-Summary-final.pdf>) [PDF, 253 KB] to identify the comments received and how they were addressed in the Proposal. The comments, on the whole, also support the ICG (IANA Stewardship Transition Coordination Group)'s findings.

The ICG (IANA Stewardship Transition Coordination Group)'s deliberations were extensive. Seven face-to-face meetings, 26 conference calls and the exchange of 5,627 emails were the tools needed to build the report. To maintain and safeguard the inclusiveness of the process, interpretation services were provided for meetings. Translations of working documents were delivered, and inputs received in languages other than English were also translated. Seven engagement sessions were organized to foster awareness and receive feedback. The ICG (IANA Stewardship Transition Coordination Group) called for input to its work at different phases, including a call for comments to validate community support for how ICG (IANA Stewardship Transition Coordination Group) was performing its work. ICANN (Internet Corporation for Assigned Names and Numbers) in its facilitation of the process provided all resources and support requested by the community to develop a consensus proposal.

The two most important considerations for the Board are on the compatibility and interoperability of the three plans, and whether the proposals meet NTIA (US National Telecommunications and Information Agency)'s criteria.

Compatibility and interoperability

The Board has reviewed all three components of the plan. As the Board stated in its 8 September 2015 comments to the [ICG \(IANA Stewardship Transition Coordination Group\)](#), <https://comments.ianacg.org/pdf/submission/submission121.pdf> (<https://comments.ianacg.org/pdf/submission/submission121.pdf>), [PDF, 133 KB] "While the [ICG \(IANA Stewardship Transition Coordination Group\)](#) has asserted that there are no incompatibilities between the three operational communities' proposals received (also known as the CRISP, CWG-Stewardship, and IANAPLAN responses), there are some implementation details and foreseen complexities that will need further coordination with the communities for clarity. As implementation occurs, ways to address the elements of the proposal may evolve, and in our comments below, we have endeavored to highlight some of these and provide the [ICG \(IANA Stewardship Transition Coordination Group\)](#) with implementation suggestions.

We do not believe that any of these issues poses a threat to the viability of the final [ICG \(IANA Stewardship Transition Coordination Group\)](#) Proposal. We hope that these implementation issues and details can be resolved in the implementation phase, but we urge the community and where needed the [ICG \(IANA Stewardship Transition Coordination Group\)](#) to consider these issues and begin to clarify as soon as practicable in the interests of a smooth [IANA \(Internet Assigned Numbers Authority\)](#) Stewardship Transition."

The areas identified by the Board on potential areas of overlap that require further coordination in the implementation phase include: (1) new service levels and operational changes; (2) jointly managed functions; (3) the relationship between the "Post Transition [IANA \(Internet Assigned Numbers Authority\)](#)" identified perform the naming-related functions and the other operating communities; and (4) transfer to successor operator requirements. [ICANN \(Internet Corporation for Assigned Names and Numbers\)](#) stands ready to work with the

communities to address these issues within the implementation planning phase.

NTIA (US National Telecommunications and Information Agency) Criteria Appear To Be Met

The Board agrees with the ICG (IANA Stewardship Transition Coordination Group)'s determination that the NTIA (US National Telecommunications and Information Agency) criteria have been met through the consensus-supported ICG (IANA Stewardship Transition Coordination Group) Proposal.

1. Support and enhance the multistakeholder model.

The ICG (IANA Stewardship Transition Coordination Group) noted, and the Board agrees, that each of the operating communities modeled their post-transition proposal on the existing arrangements and structures. The arrangements between ICANN (Internet Corporation for Assigned Names and Numbers) and the Protocol (Protocol) Parameters and Numbers Resource communities remain largely unchanged, and the multistakeholder nature of oversight in the naming community will likely be enhanced through the development of community-based standing committees and review processes. The existing IANA (Internet Assigned Numbers Authority) Functions Contract served as the basis for many of the proposed post-transition plans, with enhanced responsibility placed on the multistakeholder community in overseeing the work.

2. Maintain the security, stability, and resiliency of the Internet DNS (Domain Name System).

The Board agrees with the ICG (IANA Stewardship Transition Coordination Group) that the security, stability and resiliency of the Internet DNS (Domain Name System) are maintained through the combined Proposal. There is no change suggested by the Numbers

Resource or Protocol (Protocol) Parameters

communities that could impact the security, stability or resiliency of the DNS (Domain Name System). These proposals are built upon the existing structure.

Though the Names community is calling for the creation of a subsidiary of ICANN (Internet Corporation for Assigned Names and Numbers) to perform the naming function, ICANN (Internet Corporation for Assigned Names and Numbers) agrees with the ICG (IANA Stewardship Transition Coordination Group) that this portion of the proposal also maintains the security, stability and resiliency of the Internet DNS (Domain Name System). There is minimal change contemplated for the technical delivery of the naming-related functions, and the role remains unchanged.

ICANN (Internet Corporation for Assigned Names and Numbers) agrees that it is essential to have a contract in place between ICANN (Internet Corporation for Assigned Names and Numbers) and the Root Zone (Root Zone) Maintainer prior to any expiration of the IANA (Internet Assigned Numbers Authority) Functions Contract, and this is key to security and stability concerns.

3. Meet the needs and expectation of the global customers and partners of the IANA (Internet Assigned Numbers Authority) services.

The Board agrees with the ICG (IANA Stewardship Transition Coordination Group) that this condition has been met. The ICG (IANA Stewardship Transition Coordination Group) stated "All three communities determined that the global customers and partners of the IANA (Internet Assigned Numbers Authority) services and their communities of stakeholders are presently satisfied with the performance of the IANA (Internet Assigned Numbers Authority) functions by the IANA

(Internet Assigned Numbers Authority) department of ICANN (Internet Corporation for Assigned Names and Numbers). The combined proposal is not expected to impact that."

4. *Maintain the openness of the Internet.*

The ICG (IANA Stewardship Transition Coordination Group) determined "The combined proposal requires that the IANA (Internet Assigned Numbers Authority) services, associated policy development processes, and IANA (Internet Assigned Numbers Authority) registries remain fully open and accessible just as they are today." The Board agrees that the ICG (IANA Stewardship Transition Coordination Group) Proposal, though it identifies some organizational changes through which the IANA (Internet Assigned Numbers Authority) Functions will be delivered, otherwise has no impact on the variety of open policy development processes or on the databases and IANA (Internet Assigned Numbers Authority) registries that are available today.

5. *No replacement of the NTIA (US National Telecommunications and Information Agency) role with a government-led or an inter-governmental organization solution.*

NTIA (US National Telecommunications and Information Agency) also specified that its role could not be replaced by a government-led or an inter-governmental organization solution. This condition is met. None of the operating communities define a role for a government-led or inter-governmental organization solution, relying instead on the operating communities and other indirect customers of the IANA (Internet Assigned Numbers Authority) functions to perform the different oversight and accountability roles. The Proposal affirms the role of the multistakeholder community.

Resource Implication

Accepting the Proposal and transmitting the Proposal to NTIA (US National Telecommunications and Information Agency) do not, specifically impose any resource requirements on ICANN (Internet Corporation for Assigned Names and Numbers). However, the planning for implementation that is necessary to be at a place that ICANN (Internet Corporation for Assigned Names and Numbers) is ready to implement these changes if the IANA (Internet Assigned Numbers Authority) Functions Contract expires. That effort requires significant resources, such as systems and reporting updates, funding the development of an affiliate not-for-profit entity, development of changes to ICANN (Internet Corporation for Assigned Names and Numbers)'s Bylaws as well as governing documents for the new entity, completing contracts necessary for the performance of the IANA (Internet Assigned Numbers Authority) functions, and constituting the new community-based groups involved in oversight in the future. Both the community and ICANN (Internet Corporation for Assigned Names and Numbers) will be called upon to devote time to this effort. Fiscally, the implementation planning must proceed with considerations of fiscal responsibility, and the Board looks forward to working with the community to develop cost management tools that will result in better estimation of costs. The Board will use these estimates to guide future budgeting decisions on the IANA (Internet Assigned Numbers Authority) Stewardship Transition work.

During the development of proposal, ICANN (Internet Corporation for Assigned Names and Numbers) provided funding and staff resources for various aspects of the work, including initiating the work of the ICG (IANA Stewardship Transition Coordination Group), travel costs for face-to-face meetings, funding an independent Secretariat to support the ICG (IANA Stewardship Transition Coordination Group), staff support to the CWG-Stewardship, and funding external counsel to advise the CWG in the development of its proposal. The funds expended to date on the collective ICG (IANA

Stewardship Transition Coordination Group) effort helped provide the multistakeholder community with the opportunity to develop the proposals with the levels of independence it said were important. Further, the availability of external advice supported the CWG's debate and dialogue that led to its final recommendations. Providing these resources was an important facet of assuring multistakeholder participation in this work.

DNS (Domain Name System) Impact

The acceptance and transmittal of this Proposal are not expected to have any impact on the security, stability and resiliency of the Internet DNS (Domain Name System). Planning for implementation of the Proposal helps assure that ICANN (Internet Corporation for Assigned Names and Numbers) can continue the performance of the required functions, even in a post-transition environment, with no environment, with no impact on security, stability or resiliency.

Conclusion

Taking this action today is an important affirmation of the multistakeholder model. The global multistakeholder community came together and developed a plan for the transition of the IANA (Internet Assigned Numbers Authority) Functions Stewardship. Issues were debated in multiple fora. Public comments were received, analyzed and incorporated. The resulting Proposal has the consensus of the operating communities impacted by the respective portions, as well. The Proposal also received unanimous consensus from across the 13 communities represented in the ICG (IANA Stewardship Transition Coordination Group).

The Board thanks NTIA (US National Telecommunications and Information Agency) for giving the multistakeholder community the opportunity to develop this Proposal. Accepting this report and transmitting it to NTIA (US National Telecommunications and Information Agency) for consideration is an important step in maintaining accountability to the multistakeholder community,

and the Board serves the public interest in taking this decision.

This is an Organizational Administrative Function that has been subject to multiple levels of public comment.

c. **Proposal from CCWG on Enhancing ICANN (Internet Corporation for Assigned Names and Numbers) Accountability**

Whereas, on 14 March 2014, the National Telecommunications and Information Administration of the United States Department of Commerce announced its intention to transition the stewardship of the IANA (Internet Assigned Numbers Authority) Functions to the global multistakeholder community.

Whereas, NTIA (US National Telecommunications and Information Agency) asked ICANN (Internet Corporation for Assigned Names and Numbers) to convene global stakeholders to develop a proposal to transition the current role performed by NTIA (US National Telecommunications and Information Agency) in the coordination of the Internet's domain name system (DNS (Domain Name System)). NTIA (US National Telecommunications and Information Agency) required that the proposal for transition must have broad community support and uphold the following principles:

- Support and enhance the multistakeholder model;
- Maintain the security, stability, and resiliency of the Internet DNS (Domain Name System);
- Meet the needs and expectation of the global customers and partners of the IANA (Internet Assigned Numbers Authority) services; and,
- Maintain the openness of the Internet.

NTIA (US National Telecommunications and Information Agency) also stated it would not accept a proposal that replaces the NTIA (US National Telecommunications and

Information Agency) role with a government-led or an inter-governmental organization solution.

Whereas, during initial discussions on how to proceed with the transition process, the ICANN (Internet Corporation for Assigned Names and Numbers) multistakeholder community, raised concerns on the impact of the transition on ICANN (Internet Corporation for Assigned Names and Numbers)'s accountability, with the removal of the perceived backstop of NTIA (US National Telecommunications and Information Agency)'s historical role.

Whereas, ICANN (Internet Corporation for Assigned Names and Numbers) supported the community in the development of the Cross-Community Working Group on Enhancing ICANN (Internet Corporation for Assigned Names and Numbers) Accountability (CCWG-Accountability), chartered by the Address Supporting Organization (Supporting Organization), the At-Large Advisory Committee (Advisory Committee), the Country Code Names Supporting Organization (Supporting Organization), the Generic Names Supporting Organization (Supporting Organization), the Governmental Advisory Committee (Advisory Committee) and the Security (Security – Security, Stability and Resiliency (SSR))and Stability (Security, Stability and Resiliency) Advisory Committee (Advisory Committee). The CCWG-Accountability has 28 members from across the Chartering Organizations, with an additional 175 registered participants.

Whereas, the CCWG-Accountability's work was determined to be interrelated with the work to develop a proposal being developed by the IANA (Internet Assigned Numbers Authority) Stewardship Transition Coordination Group (ICG (IANA Stewardship Transition Coordination Group)), the proposal called for by NTIA (US National Telecommunications and Information Agency) in its announcement. ICANN (Internet Corporation for Assigned Names and Numbers) agreed that after the Board considered the CCWG-Accountability proposal, it would be transmitted to NTIA (US National

Telecommunications and Information Agency) to support its evaluation of the ICG (IANA Stewardship Transition Coordination Group)'s proposal.

Whereas, the CCWG-Accountability's work is divided into two phases:

- **Work Stream 1:** focused on mechanisms enhancing ICANN (Internet Corporation for Assigned Names and Numbers) accountability that must be in place or committed to within the time frame of the IANA (Internet Assigned Numbers Authority) Stewardship Transition; and
- **Work Stream 2:** focused on addressing accountability topics for which a timeline for developing solutions and full implementation may extend beyond the IANA (Internet Assigned Numbers Authority) Stewardship Transition.

Whereas, the CCWG-Accountability's deliberations to date have focused on preparing a set of recommendations to fulfill its Work Stream 1 objectives, and defining the topics that will be considered for Work Stream 2. The CCWG-Accountability developed its report in multiple phases and iterations that included participation beyond the CCWG-Accountability, and beyond ICANN (Internet Corporation for Assigned Names and Numbers) as a whole.

Whereas, the CCWG-Accountability requested that counsel external to ICANN (Internet Corporation for Assigned Names and Numbers) be made available to provide advice on the governance issues that the CCWG-Accountability identified as necessary as part of its work. In coordination with ICANN (Internet Corporation for Assigned Names and Numbers), two sets of legal counsel were engaged and have provided advice and counsel directly to the CCWG-Accountability. ICANN (Internet Corporation for Assigned Names and Numbers) funds the work of these two firms.

Whereas, in October 2014, the Board committed to a process

through which it would consider the consensus-based recommendations of the CCWG-Accountability in Resolution 2014.10.16.16 at <https://www.icann.org/resources/board-material/resolutions-2014-10-16-en#2.d> (</resources/board-material/resolutions-2014-10-16-en#2.d>).

Whereas, the Board has been closely following the work of the CCWG-Accountability, including identifying a liaison to the group, and active participation from across the Board in CCWG-Accountability meetings. The Board has participated in the public comment processes on the iterations of the CCWG-Accountability reports, and has provided interim inputs into the deliberations on an ongoing basis. A comprehensive list of all the ICANN (Internet Corporation for Assigned Names and Numbers) Board's input into the process is detailed at <https://www.icann.org/resources/pages/board-input-stewardship-accountability-2015-07-10-en> (</resources/pages/board-input-stewardship-accountability-2015-07-10-en>).

Whereas, on 10 March 2016, the CCWG-Accountability Co-Chairs transmitted its Cross Community Working Group on Enhancing ICANN (Internet Corporation for Assigned Names and Numbers) Accountability (CCWG-Accountability) Work Stream 1 Report ("Report") to the ICANN (Internet Corporation for Assigned Names and Numbers) Board, confirming that the recommendations achieved consensus in the CCWG-Accountability. The Report was approved by five of the Chartering Organizations, with the sixth, the GAC (Governmental Advisory Committee), submitting a statement of non-objection to transmitting the Report to the Board. The CCWG-Accountability also confirmed the support of the Cross-Community Working Group to Develop an IANA (Internet Assigned Numbers Authority) Stewardship Transition Proposal (CWG-Stewardship), the group responsible for developing the Domain Names Community's input into the IANA (Internet Assigned Numbers Authority) Stewardship Transition Coordination Group's proposal. The CWG-Stewardship had identified certain contingencies on the CCWG-Accountability's recommendations, which were confirmed as met.

Resolved (2016.03.10.16), the ICANN (Internet Corporation for Assigned Names and Numbers) Board accepts the Cross Community Working Group on Enhancing ICANN (Internet Corporation for Assigned Names and Numbers) Accountability (CCWG-Accountability) Work Stream 1 Report ("Report").

Resolved (2016.03.10.17), the Board approves of the transmittal of the Report the National Telecommunications & Information Administration of the United States Department of Commerce to accompany the IANA (Internet Assigned Numbers Authority) Stewardship Transition Proposal developed by the IANA (Internet Assigned Numbers Authority) Stewardship Transition Coordination Group.

Resolved (2016.03.10.18), the President and CEO, or his designee, is directed to plan for the implementation of the Report so that ICANN (Internet Corporation for Assigned Names and Numbers) is operationally ready to implement in the event NTIA (US National Telecommunications and Information Agency) approves of the IANA (Internet Assigned Numbers Authority) Stewardship Transition Proposal and the IANA (Internet Assigned Numbers Authority) Functions Contract expires. The Board is committed to working with the community to identify the portions of the CCWG-Accountability recommendations that can be implemented in the event that it is determined that ICANN (Internet Corporation for Assigned Names and Numbers)'s obligations to perform the IANA (Internet Assigned Numbers Authority) Functions will remain under contract with NTIA (US National Telecommunications and Information Agency).

Resolved (2016.03.10.19), the Board expresses its deep appreciation for the tireless efforts of the CCWG-Accountability chairs, rapporteurs, members and participants, as well as the global community that came together in developing the Report. The intensity and level of engagement from across the community, as well as the spirit of cooperation and compromise that led to this Report is a true demonstration of the strength and triumph of the multistakeholder model.

Rationale for Resolution 2016.03.10.16 – 2016.03.10.19

The acceptance of the Cross Community Working Group on Enhancing ICANN (Internet Corporation for Assigned Names and Numbers) Accountability (CCWG-Accountability) Work Stream 1 Report ("Report") represents a milestone in the evolution of the multistakeholder model. The CCWG-Accountability was created out of a call from across the ICANN (Internet Corporation for Assigned Names and Numbers) community on a review of the impacts on ICANN (Internet Corporation for Assigned Names and Numbers)'s accountability with the removal of the perceived backstop from the historical contract with NTIA (US National Telecommunications and Information Agency) in the event the stewardship of the IANA (Internet Assigned Numbers Authority) Functions is transitioned to the multistakeholder community. This Work Stream 1 Report was developed by the 28 members of the CCWG-Accountability, representing six Chartering Organizations, and 175 participants. The development of this Report required over 220 meetings (face-to-face or telephonic), three public comment periods, and more than 13,900 email messages. The dedication of the CCWG-Accountability, including intense debate and resulting compromise from all participants, is an example of what the multistakeholder model can achieve. The CCWG-Accountability work is only part of the coordinated effort to achieve the delivery of a proposal to NTIA (US National Telecommunications and Information Agency) on the IANA (Internet Assigned Numbers Authority) Stewardship Transition.

The CCWG-Accountability Work Stream 1 recommendations have a few main areas of focus:

- A revised Mission Statement for the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws that clarifies what ICANN (Internet Corporation for Assigned Names and Numbers) does, while not changing ICANN (Internet Corporation for Assigned Names and

Numbers)'s historic mission.

- An enhanced Independent Review Process with a broader scope, reaffirming the IRP's power to ensure ICANN (Internet Corporation for Assigned Names and Numbers) stays within its Mission. The IRP will become binding upon ICANN (Internet Corporation for Assigned Names and Numbers).
- Enhancements to the Reconsideration Request process.
- New specific powers for the ICANN (Internet Corporation for Assigned Names and Numbers) community that can be enforced when the usual methods of discussion and dialogue have not effectively built consensus, including the powers to:
 - Reject ICANN (Internet Corporation for Assigned Names and Numbers) Budgets, IANA (Internet Assigned Numbers Authority) Budgets or Strategic/Operating Plans.
 - Reject changes to ICANN (Internet Corporation for Assigned Names and Numbers)'s Standard Bylaws.
 - Approve changes to new Fundamental Bylaws, Articles of Incorporation and ICANN (Internet Corporation for Assigned Names and Numbers)'s sale or other disposition of all or substantially all of ICANN (Internet Corporation for Assigned Names and Numbers)'s assets.
 - Remove an individual ICANN (Internet Corporation for Assigned Names and Numbers) Board Director.
 - Recall the entire ICANN (Internet Corporation for Assigned Names and Numbers) Board.
 - Initiate a binding Independent Review Process on behalf of the Community.
 - Reject ICANN (Internet Corporation for Assigned

Names and Numbers) Board decisions relating to reviews of the IANA (Internet Assigned Numbers Authority) functions, including the triggering of Post-Transition IANA (Internet Assigned Numbers Authority) separation.

- Inspect ICANN (Internet Corporation for Assigned Names and Numbers)'s books and records, and initiate investigatory audits.

The CCWG-Accountability recommendations also describe how the community will come together to exercise their new powers, including paths of escalation and community dialogue. The community will ultimately have the power and standing, through the development of a "designator" structure under California law, to enforce these powers in court, though the escalation paths are designed to reduce the need to ever resort to court for resolution. The Board is supportive of the CCWG-Accountability's focus on internal resolution and the Independent Review Process, as opposed to encouraging the ICANN (Internet Corporation for Assigned Names and Numbers) community to rely upon the judicial system as a regular tool in holding ICANN (Internet Corporation for Assigned Names and Numbers) accountable.

Other areas of the CCWG-Accountability recommendations include the insertion of a commitment to recognition of human rights, incorporating the reviews called for under the Affirmation of Commitments into the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws, modifying the structural reviews to include considerations of SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) Accountability, and affirming the GAC (Governmental Advisory Committee)'s current advisory role and the deference given by the Board, while refining the threshold needed for the Board to not act consistently with GAC (Governmental Advisory Committee) consensus advice. The CCWG-Accountability also specified some elements of accountability that relate to the

CWG-Stewardship's portion of the IANA (Internet Assigned Numbers Authority) Stewardship Transition Proposal.

Finally, the CCWG-Accountability recommendations scope the topics that will be considered within its Work Stream 2, and identify that the Board will consider those continuous improvement recommendations with the same process the Board identified for the Work Stream 1 recommendations.

The CCWG-Accountability produced three drafts of recommendations to reach this final Report. The first draft was out for public comment from 4 May 2015 through 12 June 2015 and received 31 comment submissions. The second draft was out for public comment from 3 August 2015 through 12 September 2015 and received 93 comment submissions. The third draft was out for public comment from 30 November 2015 through 21 December 2015 and received 89 comment submissions. For each of these public comment periods and document releases, the CCWG-Accountability held multiple webinars to describe the mechanisms in the proposal and answer any questions. The CCWG-Accountability also held engagement sessions at each of the ICANN (Internet Corporation for Assigned Names and Numbers) meetings and individual members conducted their own outreach around the globe at regional and national events and conferences.

The CCWG-Accountability relied upon advice provided by two external law firms, Sidley Austin LLP and Adler & Colvin, which were retained after the need for external inputs was determined by the CCWG-Accountability to be essential to its review of ICANN (Internet Corporation for Assigned Names and Numbers)'s governance structure, and to test the legal inputs provided by ICANN (Internet Corporation for Assigned Names and Numbers). ICANN (Internet Corporation for Assigned Names and Numbers) facilitated the engagement process in collaboration with the CCWG-Accountability, and pays the legal fees. When addressing such important and broad issues, the availability of these legal inputs provided the CCWG-Accountability with the tools to perform their work and

have full deliberations. ICANN (Internet Corporation for Assigned Names and Numbers) in its facilitation of the process provided all resources and support requested by the community to develop a consensus report.

Meeting the NTIA (US National Telecommunications and Information Agency) Criteria

The Board agrees that it is important for the CCWG-Accountability recommendations that modify ICANN (Internet Corporation for Assigned Names and Numbers)'s governance structure to uphold the same criteria that NTIA (US National Telecommunications and Information Agency) defined for the transition of the stewardship of the technical IANA (Internet Assigned Numbers Authority) functions. ICANN (Internet Corporation for Assigned Names and Numbers), as the organization that will remain responsible for the performance of the IANA (Internet Assigned Numbers Authority) functions, must have the same safeguards. The Board agrees with the CCWG's assessment that NTIA (US National Telecommunications and Information Agency)'s criteria are met.

1. Support and Enhance the Multistakeholder Model

At Annex 14 of its Report, the CCWG-Accountability identifies the ways in which its recommendations support and enhance the multistakeholder model. The Board agrees that the specific items enumerated in the Report support this criterion. More fundamentally, however, the recommendations as a whole demonstrate more reliance upon the multistakeholder community coming together to influence not just policy, but also ICANN (Internet Corporation for Assigned Names and Numbers)'s governing documents and some of ICANN (Internet Corporation for Assigned Names and Numbers)'s key operational decisions as well, such as planning for budgets and operating plans. The multistakeholder community is given more individual and

collective access to paths of redress, and assurances of the binding nature of those tools. The spirit of this Report is for a community that has more determination over ICANN (Internet Corporation for Assigned Names and Numbers). It will be important that those taking on greater responsibilities continue to consider how to evolve their own accountability efforts, as will be considered in Work Stream 2.

2. *Maintain the Security, Stability (Security, Stability and Resiliency) and Resiliency (Security Stability & Resiliency (SSR)) of the Internet DNS (Domain Name System)*

Along with the items identified by the CCWG-Accountability in Annex 14 of its Report, the Board notes that the security, stability and resiliency of the Internet DNS (Domain Name System) are maintained through the CCWG-Accountability recommendations first and foremost through the affirmation that ICANN (Internet Corporation for Assigned Names and Numbers)'s mission, while clarified, remains unchanged, and any future attempt to change that mission will require both Board and community consent. The CCWG-Accountability has identified that there are core components of ICANN (Internet Corporation for Assigned Names and Numbers)'s budget that will remain operational even if there is a dispute between the community and ICANN (Internet Corporation for Assigned Names and Numbers) on the budget, and those core components include operations that relate to the security and stability of the Internet DNS (Domain Name System).

3. *Meet the needs and expectations of the partners of the IANA (Internet Assigned Numbers Authority) Functions*

Along with the items identified by the CCWG-Accountability in Annex 14 of its report, the

Board notes that this criterion is met by the consideration of the needs of the customers of the IANA (Internet Assigned Numbers Authority) Functions and the coordination of recommendations that complement the IANA (Internet Assigned Numbers Authority) Stewardship Transition Proposal. The needs identified by the CWG-Stewardship have been incorporated into the recommendations, and the CWG-Stewardship has affirmed that its contingencies were met. The CCWG-Accountability also coordinated with the other operating communities to confirm that their concerns on clarification on mission and applicability of independent review processes were addressed.

4. *Maintain the Openness of the Internet*

In addition to the items identified by the CCWG-Accountability in Annex 14 of its Report, the Board agrees that this criterion is met through the development of open processes where community members might wish to engage. Maintaining open processes where community members have not only a voice, but also an opportunity to impact, is expected to enhance ICANN (Internet Corporation for Assigned Names and Numbers)'s accountability and the multistakeholder model itself. Strengthening ICANN (Internet Corporation for Assigned Names and Numbers) through the strengthening of the multistakeholder model is the key way to maintain the openness of the Internet and continued participation in ICANN (Internet Corporation for Assigned Names and Numbers)'s processes. The recognition of the roles of all stakeholders at ICANN (Internet Corporation for Assigned Names and Numbers) is another important aspect of meeting this criterion.

The Board also agrees that the future work scheduled for Work Stream 2, focusing on issues such as enhancing transparency, diversity, community

accountability, and defining how staff can be more accountable to the community also are geared towards continued enhancement of engagement in ICANN (Internet Corporation for Assigned Names and Numbers) and maintaining the model.

5. *No replacement of the NTIA (US National Telecommunications and Information Agency) role with a government-led or an inter-governmental organization solution*

In addition to the CCWG-Accountability's discussion of how this criteria is met, the Board agrees that this criteria is met, again, through a strong grounding in the multistakeholder community. The recommendations reaffirm the role of each of the structures within ICANN (Internet Corporation for Assigned Names and Numbers), and do not create inequalities in how each of the groups participate, even as the ICANN (Internet Corporation for Assigned Names and Numbers) community moves beyond policy development work and into new operational activities. The role of governments in ICANN (Internet Corporation for Assigned Names and Numbers) is affirmed, as well as the Governmental Advisory Committee (Advisory Committee)'s autonomy over its own operating procedures, while at the same time creating more predictability in the Board providing special consideration only to GAC (Governmental Advisory Committee) advice that is within ICANN (Internet Corporation for Assigned Names and Numbers)'s mission and provided with defined consensus.

Minority and Voting Statements

The Board notes that there were five minority statements provided to the CCWG-Accountability on its final Report. Appendix A of the report details both the process that the CCWG-Accountability followed to reach consensus. The

Appendix also includes the minority statements in full.

In the 10 March 2016 letter transmitting the Report to the Board, the Board has been informed by the CCWG-Accountability co-chairs that consensus was reached on the recommendations. Further, the Chartering Organizations have each approved (with one non-objection) to the forwarding of the final Report to the Board for consideration, though the minority statements were provided by those associated with various Chartering Organizations. There were also voting statements provided within the GNSO (Generic Names Supporting Organization) on parts of the recommendations, at times mirroring the issues previously raised in the minority statements. The GAC (Governmental Advisory Committee), in providing its non-objection, noted the support for a large majority of the recommendations and lack of consensus over others.

Given the full process for the development of the Report, the numerous concessions made by all in reaching the consensus recommendations, and the approval (or non-objection) of all of the Chartering Organizations, the Board considers that the existence of these voting and minority statements does not create a barrier to the acceptance of the Report. The Board encourages the CCWG-Accountability to consider if any of the concerns raised in the minority or voting statements can appropriately be addressed within the topics defined for Work Stream 2 or used as guidance in implementation.

Resource Implication

Accepting the Report and transmitting it to NTIA (US National Telecommunications and Information Agency) does not specifically impose any resource requirements on ICANN (Internet Corporation for Assigned Names and Numbers). However, the planning for implementation that is necessary to be in place for ICANN (Internet Corporation for Assigned Names and Numbers) is ready to implement these changes when appropriate. That effort requires significant resources,

including amending ICANN (Internet Corporation for Assigned Names and Numbers)'s Bylaws, supporting the revisions to the Independent Review Process, confirming that processes are in place for the community escalation processes, and other planning as required. The implementation planning for the entirety of the IANA (Internet Assigned Numbers Authority) Stewardship Transition Process is a coordinated effort, with the interrelated operational and accountability requirements within the ICG (IANA Stewardship Transition Coordination Group)'s Proposal and the CCWG-Accountability's Report considered together. Given that there is the possibility that NTIA (US National Telecommunications and Information Agency) may not be able to approve ICG (IANA Stewardship Transition Coordination Group)'s Proposal, if that determination is made, the Board is committed to work with the community to implement those parts of the CCWG-Accountability Report that do not interfere with the obligations ICANN (Internet Corporation for Assigned Names and Numbers) would maintain under an IANA (Internet Assigned Numbers Authority) Functions Contract with NTIA (US National Telecommunications and Information Agency).

Both the community and ICANN (Internet Corporation for Assigned Names and Numbers) will be called upon to devote time to this effort. The implementation planning must proceed with considerations of fiscal responsibility, and the Board looks forward to working with the community to develop cost management tools that will result in better estimation of costs. The Board will use these estimates to guide future budgeting decisions on the CCWG-Accountability work, including implementation and Work Stream 2. As Work Stream 2 proceeds, the Board urges close consideration of the types of legal support needed now that the broad governance changes developed in Work Stream 1 are accepted and on path for implementation, and the issues reserved for Work Stream 2 may not be as legal in nature.

During the development of the Report, ICANN (Internet Corporation for Assigned Names and Numbers) provided

funding and staff resources for all aspects of the work, including things such as travel support and coordination of face-to-face meetings, secretariat support, external counsel, report drafting and graphics, and translations. The funds expended to date on the CCWG-Accountability helped provide the multistakeholder community with the opportunity to develop the Report with the levels of independence it said were important. Further, the availability of external advice supported the CCWG-Accountability's debate and dialogue that led to its final recommendations. Providing these resources was an important facet of assuring multistakeholder participation in this work.

DNS (Domain Name System) Impact

The acceptance and transmittal of this Report are not expected to have any impact on the security, stability and resiliency of the Internet DNS (Domain Name System).

Conclusion

Taking this action today is an important affirmation of the multistakeholder model. The global multistakeholder community came together and developed a plan to enhance the accountability of ICANN (Internet Corporation for Assigned Names and Numbers) to help support the transition of the IANA (Internet Assigned Numbers Authority) Functions Stewardship. Issues were debated in multiple fora. Public comments were received, analyzed and incorporated. Many difficult issues were resolved, with compromises across the community. In the end, the multistakeholder community developed recommendations that reserve to it unprecedented power in ICANN (Internet Corporation for Assigned Names and Numbers), with meaningful and binding escalation paths to enforce these new rights. The CCWG-Accountability also has considered how to make sure the key commitments from the existing Affirmation of Commitments remain in place through incorporation into the Bylaws, and other enhancements to enhance accountability and transparency in ICANN (Internet Corporation for Assigned Names and Numbers)'s operations. The Report is supported by

a consensus of the CCWG-Accountability, and approved by all but one Chartering Organization, which has noted its non-objection to submitting the Report to ICANN (Internet Corporation for Assigned Names and Numbers). Accepting this Report is an important step in maintaining accountability to the multistakeholder community, and the Board serves the public interest in taking this decision.

This is an Organizational Administrative Function that has been subject to multiple levels of public comment.

d. Thank You to Staff

Resolved (2016.03.10.20), the Board thanks the ICANN (Internet Corporation for Assigned Names and Numbers) staff who worked on all aspects of the development of the transition and accountability proposals. This effort has been supported by staff from across the entire organization. The Board also thanks all the staff who supported ICANN (Internet Corporation for Assigned Names and Numbers) during this period of intense activity.

Published on 10 March 2016



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Exhibit DIDP A6

Community Priority Evaluation (CPE) Guidelines

Prepared by The Economist Intelligence Unit

Interconnection between Community Priority Evaluation (CPE) Guidelines and the Applicant Guidebook (AGB)

The CPE Guidelines are an accompanying document to the AGB, and are meant to provide additional clarity around the process and scoring principles outlined in the AGB. This document does not modify the AGB framework, nor does it change the intent or standards laid out in the AGB. The Economist Intelligence Unit (EIU) is committed to evaluating each applicant under the criteria outlined in the AGB. The CPE Guidelines are intended to increase transparency, fairness and predictability around the assessment process.

Criterion #1: Community Establishment

This section relates to the community as explicitly identified and defined according to statements in the application. (The implicit reach of the applied-for string is not considered here, but taken into account when scoring Criterion #2, “Nexus between Proposed String and Community.”)

Measured by

1-A Delineation

1-B Extension

A maximum of 4 points is possible on the Community Establishment criterion, and each sub-criterion has a maximum of 2 possible points.

1-A Delineation

AGB Criteria	Evaluation Guidelines
Scoring	
<p>2= Clearly delineated, organized, and pre-existing community.</p> <p>1= Clearly delineated and pre-existing community, but not fulfilling the requirements for a score of 2.</p> <p>0= Insufficient delineation and pre-existence for a score of 1.</p>	<p>The following questions must be scored when evaluating the application:</p> <p><i>Is the community clearly delineated?</i></p> <p><i>Is there at least one entity mainly dedicated to the community?</i></p> <p><i>Does the entity (referred to above) have documented evidence of community activities?</i></p> <p><i>Has the community been active since at least September 2007?</i></p>
Definitions	
<p>“Community” - Usage of the expression “community” has evolved considerably from its Latin origin – “communitas” meaning “fellowship” – while still implying more of cohesion than a mere commonality of interest. Notably, as “community” is used throughout the application, there should be: (a) an awareness and recognition of a community among its members; (b) some</p>	<p>The “community,” as it relates to Criterion #1, refers to the stated community in the application.</p> <p>Consider the following:</p> <ul style="list-style-type: none"> • <i>Was the entity established to administer the community?</i> • <i>Does the entity’s mission statement clearly identify the community?</i>

<p>understanding of the community’s existence prior to September 2007 (when the new gTLD policy recommendations were completed); and (c) extended tenure or longevity—non-transience—into the future.</p>	<p>Additional research may need to be performed to establish that there is documented evidence of community activities. Research may include reviewing the entity’s web site, including mission statements, charters, reviewing websites of community members (pertaining to groups), if applicable, etc.</p>
<p>"Delineation" relates to the membership of a community, where a clear and straight-forward membership definition scores high, while an unclear, dispersed or unbound definition scores low.</p>	<p>“Delineation” also refers to the extent to which a community has the requisite awareness and recognition from its members.</p> <p>The following non-exhaustive list denotes elements of straight-forward member definitions: fees, skill and/or accreditation requirements, privileges or benefits entitled to members, certifications aligned with community goals, etc.</p>
<p>"Pre-existing" means that a community has been active as such since before the new gTLD policy recommendations were completed in September 2007.</p>	
<p>"Organized" implies that there is at least one entity mainly dedicated to the community, with documented evidence of community activities.</p>	<p>“Mainly” could imply that the entity administering the community may have additional roles/functions beyond administering the community, but one of the key or primary purposes/functions of the entity is to administer a community or a community organization.</p> <p>Consider the following:</p> <ul style="list-style-type: none"> • <i>Was the entity established to administer the community?</i> • <i>Does the entity’s mission statement clearly identify the community?</i>
<p>Criterion 1-A guidelines</p>	
<p>With respect to “Delineation” and “Extension,” it should be noted that a community can consist of legal entities (for example, an association of suppliers of a particular service), of individuals (for example, a language community) or of a logical alliance of communities (for example, an international federation of national communities of a similar nature). All are viable as such, provided the requisite awareness and recognition of the</p>	<p>With respect to the Community, consider the following:</p> <ul style="list-style-type: none"> • <i>Are community members aware of the existence of the community as defined by the applicant?</i> • <i>Do community members recognize the community as defined by the applicant?</i>

<p>community is at hand among the members. Otherwise the application would be seen as not relating to a real community and score 0 on both “Delineation” and “Extension.”</p> <p>With respect to “Delineation,” if an application satisfactorily demonstrates all three relevant parameters (delineation, pre-existing and organized), then it scores a 2.</p>	<ul style="list-style-type: none"> • <i>Is there clear evidence of such awareness and recognition?</i>
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1-B Extension

AGB Criteria	Evaluation Guidelines
Scoring	
<p>Extension:</p> <p>2=Community of considerable size and longevity</p> <p>1=Community of either considerable size or longevity, but not fulfilling the requirements for a score of 2.</p> <p>0=Community of neither considerable size nor longevity</p>	<p>The following questions must be scored when evaluating the application:</p> <p><i>Is the community of considerable size?</i></p> <p><i>Does the community demonstrate longevity?</i></p>
Definitions	
<p>“Extension” relates to the dimensions of the community, regarding its number of members, geographical reach, and foreseeable activity lifetime, as further explained in the following.</p>	
<p>"Size" relates both to the number of members and the geographical reach of the community, and will be scored depending on the context rather than on absolute numbers - a geographic location community may count millions of members in a limited location, a language community may have a million members with some spread over the globe, a community of service providers may have "only" some hundred members although well spread over the globe, just to mention some examples - all these can be regarded as of "considerable size."</p>	<p>Consider the following:</p> <ul style="list-style-type: none"> • <i>Is the designated community large in terms of membership and/or geographic dispersion?</i>

<p>"Longevity" means that the pursuits of a community are of a lasting, non-transient nature.</p>	<p>Consider the following:</p> <ul style="list-style-type: none"> • <i>Is the community a relatively short-lived congregation (e.g. a group that forms to represent a one-off event)?</i> • <i>Is the community forward-looking (i.e. will it continue to exist in the future)?</i>
<p>Criterion 1-B Guidelines</p>	
<p>With respect to "Delineation" and "Extension," it should be noted that a community can consist of legal entities (for example, an association of suppliers of a particular service), of individuals (for example, a language community) or of a logical alliance of communities (for example, an international federation of national communities of a similar nature). All are viable as such, provided the requisite awareness and recognition of the community is at hand among the members. Otherwise the application would be seen as not relating to a real community and score 0 on both "Delineation" and "Extension."</p> <p>With respect to "Extension," if an application satisfactorily demonstrates both community size and longevity, it scores a 2.</p>	

Criterion #2: Nexus between Proposed String and Community

This section evaluates the relevance of the string to the specific community that it claims to represent.

Measured by

2-A Nexus

2-B Uniqueness

A maximum of 4 points is possible on the Nexus criterion, and with the Nexus sub-criterion having a maximum of 3 possible points, and the Uniqueness sub-criterion having a maximum of 1 possible point.

2-A Nexus

AGB Criteria	Evaluation Guidelines
Scoring	
<p>Nexus:</p> <p>3= The string matches the name of the community or is a well-known short-form or abbreviation of the community</p> <p>2= String identifies the community, but does not qualify for a score of 3</p> <p>0= String nexus does not fulfill the requirements for a score of 2</p>	<p>The following question must be scored when evaluating the application:</p> <p style="text-align: center;"><i>Does the string match the name of the community or is it a well-known short-form or abbreviation of the community name? The name may be, but does not need to be, the name of an organization dedicated to the community.</i></p>
Definitions	
<p>“Name” of the community means the established name by which the community is commonly known by others. It may be, but does not need to be, the name of an organization dedicated to the community.</p>	<p>“Others” refers to individuals outside of the community itself, as well as the most knowledgeable individuals in the wider geographic and language environment of direct relevance. It also refers to recognition from other organization(s), such as quasi-official, publicly recognized institutions, or other peer groups.</p>
<p>“Identify” means that the applied for string closely describes the community or the community members, without over-reaching substantially beyond the community.</p>	<p>“Match” is of a higher standard than “identify” and means ‘corresponds to’ or ‘is equal to’.</p> <p>“Identify” does not simply mean ‘describe’, but means ‘closely describes the community’.</p> <p>“Over-reaching substantially” means that the string indicates a wider geographical or thematic remit than the community has.</p>

	<p>Consider the following:</p> <ul style="list-style-type: none"> • <i>Does the string identify a wider or related community of which the applicant is a part, but is not specific to the applicant’s community?</i> • <i>Does the string capture a wider geographical/thematic remit than the community has? The “community” refers to the community as defined by the applicant.</i> • <i>An Internet search should be utilized to help understand whether the string identifies the community and is known by others.</i> • <i>Consider whether the application mission statement, community responses, and websites align.</i>
<p>Criterion 2-A Guidelines</p>	
<p>With respect to “Nexus,” for a score of 3, the essential aspect is that the applied-for string is commonly known by others as the identification / name of the community.</p> <p>With respect to “Nexus,” for a score of 2, the applied-for string should closely describe the community or the community members, without over-reaching substantially beyond the community. As an example, a string could qualify for a score of 2 if it is a noun that the typical community member would naturally be called in the context. If the string appears excessively broad (such as, for example, a globally well-known but local tennis club applying for “.TENNIS”) then it would not qualify for a 2.</p>	

2-B Uniqueness

<p>AGB Criteria</p>	<p>Evaluation Guidelines</p>
<p>Scoring</p>	
<p>Uniqueness: 1=String has no other significant meaning beyond</p>	<p>The following question must be scored when evaluating the application:</p>

<p>identifying the community described in the application. 0=String does not fulfill the requirement for a score of 1.</p>	<p><i>Does the string have any other significant meaning (to the public in general) beyond identifying the community described in the application?</i></p>
<p>Definitions</p>	
<p>“Identify” means that the applied for string closely describes the community or the community members, without over-reaching substantially beyond the community.</p>	<p>“Over-reaching substantially” means that the string indicates a wider geographical or thematic remit than the community has.</p>
<p>“Significant meaning” relates to the public in general, with consideration of the community language context added</p>	<p>Consider the following:</p> <ul style="list-style-type: none"> • <i>Will the public in general immediately think of the applying community when thinking of the applied-for string?</i> • <i>If the string is unfamiliar to the public in general, it may be an indicator of uniqueness.</i> • <i>Is the geography or activity implied by the string?</i> • <i>Is the size and delineation of the community inconsistent with the string?</i> • <i>An internet search should be utilized to find out whether there are repeated and frequent references to legal entities or communities other than the community referenced in the application.</i>
<p>Criterion 2-B Guidelines</p>	
<p>"Uniqueness" will be scored both with regard to the community context and from a general point of view. For example, a string for a particular geographic location community may seem unique from a general perspective, but would not score a 1 for uniqueness if it carries another significant meaning in the common language used in the relevant community location. The phrasing "...beyond identifying the community" in the score of 1 for "uniqueness" implies a requirement that the string does identify the community, i.e. scores</p>	

2 or 3 for "Nexus," in order to be eligible for a score of 1 for "Uniqueness."

It should be noted that "Uniqueness" is only about the meaning of the string - since the evaluation takes place to resolve contention there will obviously be other applications, community-based and/or standard, with identical or confusingly similar strings in the contention set to resolve, so the string will clearly not be "unique" in the sense of "alone."

Criterion #3: Registration Policies

This section evaluates the applicant’s registration policies as indicated in the application. Registration policies are the conditions that the future registry will set for prospective registrants, i.e. those desiring to register second-level domain names under the registry.

Measured by

3-A Eligibility

3-B Name Selection

3-C Content and Use

3-D Enforcement

A maximum of 4 points is possible on the Registration Policies criterion and each sub-criterion has a maximum of 1 possible point.

3-A Eligibility

AGB Criteria	Evaluation Guidelines
Scoring	
Eligibility: 1= Eligibility restricted to community members 0= Largely unrestricted approach to eligibility	The following question must be scored when evaluating the application: <i>Is eligibility for being allowed as a registrant restricted?</i>
Definitions	
“Eligibility” means the qualifications that organizations or individuals must have in order to be allowed as registrants by the registry.	
Criterion 3-A Guidelines	
With respect to “eligibility” the limitation to community “members” can invoke a formal membership but can also be satisfied in other ways, depending on the structure and orientation of the community at hand. For example, for a geographic location community TLD, a limitation to members of the community can be achieved by requiring that the registrant’s physical address be within the boundaries of the location.	

3-B Name Selection

AGB Criteria	Evaluation Guidelines
Scoring	
<p>Name selection: 1= Policies include name selection rules consistent with the articulated community-based purpose of the applied-for TLD 0= Policies do not fulfill the requirements for a score of 1</p>	<p>The following questions must be scored when evaluating the application:</p> <p style="text-align: center;"><i>Do the applicant’s policies include name selection rules?</i></p> <p style="text-align: center;"><i>Are name selection rules consistent with the articulated community-based purpose of the applied-for gTLD?</i></p>
Definitions	
<p>“Name selection” means the conditions that must be fulfilled for any second-level domain name to be deemed acceptable by the registry.</p>	<p>Consider the following:</p> <ul style="list-style-type: none"> • <i>Are the name selection rules consistent with the entity’s mission statement?</i>
Criterion 3-B Guidelines	
<p>With respect to “Name selection,” scoring of applications against these subcriteria will be done from a holistic perspective, with due regard for the particularities of the community explicitly addressed. For example, an application proposing a TLD for a language community may feature strict rules imposing this language for name selection as well as for content and use, scoring 1 on both B and C above. It could nevertheless include forbearance in the enforcement measures for tutorial sites assisting those wishing to learn the language and still score 1 on D. More restrictions do not automatically result in a higher score. The restrictions and corresponding enforcement mechanisms proposed by the applicant should show an alignment with the community-based purpose of the TLD and demonstrate continuing accountability to the community named in the application.</p>	

3-C Content and Use

AGB Criteria	Evaluation Guidelines
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Scoring	
<p>Content and use: 1= Policies include rules for content and use consistent with the articulated community-based purpose of the applied-for TLD 0= Policies do not fulfill the requirements for a score of 1</p>	<p>The following questions must be scored when evaluating the application:</p> <p><i>Do the applicant’s policies include content and use rules?</i></p> <p><i>If yes, are content and use rules consistent with the articulated community-based purpose of the applied-for gTLD?</i></p>
Definitions	
<p>“Content and use” means the restrictions stipulated by the registry as to the content provided in and the use of any second-level domain name in the registry.</p>	<p>Consider the following:</p> <ul style="list-style-type: none"> <i>Are the content and use rules consistent with the applicant’s mission statement?</i>
Criterion 3-C Guidelines	
<p>With respect to “Content and Use,” scoring of applications against these subcriteria will be done from a holistic perspective, with due regard for the particularities of the community explicitly addressed. For example, an application proposing a TLD for a language community may feature strict rules imposing this language for name selection as well as for content and use, scoring 1 on both B and C above. It could nevertheless include forbearance in the enforcement measures for tutorial sites assisting those wishing to learn the language and still score 1 on D. More restrictions do not automatically result in a higher score. The restrictions and corresponding enforcement mechanisms proposed by the applicant should show an alignment with the community-based purpose of the TLD and demonstrate continuing accountability to the community named in the application.</p>	

3-D Enforcement

AGB Criteria	Evaluation Guidelines
Scoring	
<p>Enforcement 1= Policies include specific enforcement measures</p>	<p>The following question must be scored when evaluating the application:</p>

<p>(e.g. investigation practices, penalties, takedown procedures) constituting a coherent set with appropriate appeal mechanisms 0= Policies do not fulfill the requirements for a score of 1</p>	<p><i>Do the policies include specific enforcement measures constituting a coherent set with appropriate appeal mechanisms?</i></p>
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Definitions

<p>“Enforcement” means the tools and provisions set out by the registry to prevent and remedy any breaches of the conditions by registrants.</p>	<p>“Coherent set” refers to enforcement measures that ensure continued accountability to the named community, and can include investigation practices, penalties, and takedown procedures with appropriate appeal mechanisms. This includes screening procedures for registrants, and provisions to prevent and remedy any breaches of its terms by registrants.</p> <p>Consider the following: Do the enforcement measures include:</p> <ul style="list-style-type: none"> • <i>Investigation practices</i> • <i>Penalties</i> • <i>Takedown procedures (e.g., removing the string)</i> • <i>Whether such measures are aligned with the community-based purpose of the TLD</i> • <i>Whether such measures demonstrate continuing accountability to the community named in the application</i>
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Criterion 3-D Guidelines

<p>With respect to “Enforcement,” scoring of applications against these subcriteria will be done from a holistic perspective, with due regard for the particularities of the community explicitly addressed. For example, an application proposing a TLD for a language community may feature strict rules imposing this language for name selection as well as for content and use, scoring 1 on both B and C above. It could nevertheless include forbearance in the enforcement measures for tutorial sites assisting those wishing to learn the language and still score 1 on D. More restrictions do not automatically result in a higher score. The restrictions and corresponding enforcement</p>	
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mechanisms proposed by the applicant should show an alignment with the community-based purpose of the TLD and demonstrate continuing accountability to the community named in the application.	
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Criterion #4: Community Endorsement

This section evaluates community support and/or opposition to the application. Support and opposition will be scored in relation to the communities explicitly addressed in the application, with due regard for communities implicitly addressed by the string.

Measured by

4-A Support

4-B Opposition

A maximum of 4 points is possible on the Community Endorsement criterion and each sub-criterion (Support and Opposition) has a maximum of 2 possible points.

4-A Support

AGB Criteria	Evaluation Guidelines
Scoring	
<p>Support:</p> <p>2= Applicant is, or has documented support from, the recognized community institution(s)/member organization(s), or has otherwise documented authority to represent the community</p> <p>1= Documented support from at least one group with relevance, but insufficient support for a score of 2</p> <p>0= Insufficient proof of support for a score of 1</p>	<p>The following questions must be scored when evaluating the application:</p> <p><i>Is the applicant the recognized community institution or member organization?</i></p> <p>To assess this question please consider the following:</p> <p><i>a. Consider whether the community institution or member organization is the clearly recognized representative of the community.</i></p> <p>If the applicant meets this provision, proceed to Letter(s) of support and their verification. If it does not, or if there is more than one recognized community institution or member organization (and the applicant is one of them), consider the following:</p> <p><i>Does the applicant have documented</i></p>

	<p><i>support from the recognized community institution(s)/member organization(s) to represent the community?</i></p> <p>If the applicant meets this provision, proceed to Letter(s) of support and their verification. If not, consider the following:</p> <p><i>Does the applicant have documented authority to represent the community?</i></p> <p>If the applicant meets this provision, proceed to Letter(s) of support and their verification. If not, consider the following:</p> <p><i>Does the applicant have support from at least one group with relevance?</i></p> <p>If the applicant meets this provision, proceed to Letter(s) of support and their verification.</p> <p>➤ Instructions on letter(s) of support requirements are located below, in Letter(s) of support and their verification</p>
Definitions	
<p>“Recognized” means the institution(s)/organization(s) that, through membership or otherwise, are clearly recognized by the community members as representative of that community.</p>	
<p>“Relevance” and “relevant” refer to the communities explicitly and implicitly addressed. This means that opposition from communities not identified in the application but with an association to the applied for string would be considered relevant.</p>	<p>The institution(s)/organization(s) could be deemed relevant when not identified in the application but has an association to the applied-for string.</p>
Criterion 4-A Guidelines	
<p>With respect to “Support,” it follows that documented support from, for example, the only national association relevant to a particular community on a national level would score a 2 if the string is clearly oriented to that national level, but only a 1 if the string implicitly addresses similar communities in other nations.</p>	<p>Letter(s) of support and their verification: Letter(s) of support must be evaluated to determine both the relevance of the organization and the validity of the documentation and must meet the criteria spelled out below. The letter(s) of support is an input used to determine the relevance of the organization and the validity of</p>

<p>Also with respect to “Support,” the plurals in brackets for a score of 2, relate to cases of multiple institutions/organizations. In such cases there must be documented support from institutions/organizations representing a majority of the overall community addressed in order to score 2.</p> <p>The applicant will score a 1 for “Support” if it does not have support from the majority of the recognized community institutions/member organizations, or does not provide full documentation that it has authority to represent the community with its application. A 0 will be scored on “Support” if the applicant fails to provide documentation showing support from recognized community institutions/community member organizations, or does not provide documentation showing that it has the authority to represent the community. It should be noted, however, that documented support from groups or communities that may be seen as implicitly addressed but have completely different orientations compared to the applicant community will not be required for a score of 2 regarding support.</p> <p>To be taken into account as relevant support, such documentation must contain a description of the process and rationale used in arriving at the expression of support. Consideration of support is not based merely on the number of comments or expressions of support received.</p>	<p>the documentation.</p> <p>Consider the following:</p> <p>Are there multiple institutions/organizations supporting the application, with documented support from institutions/organizations representing a majority of the overall community addressed?</p> <p>Does the applicant have support from the majority of the recognized community institution/member organizations?</p> <p>Has the applicant provided full documentation that it has authority to represent the community with its application?</p> <p>A majority of the overall community may be determined by, but not restricted to, considerations such as headcount, the geographic reach of the organizations, or other features such as the degree of power of the organizations.</p> <p><u>Determining relevance and recognition</u></p> <p><i>Is the organization relevant and/or recognized as per the definitions above?</i></p> <p><u>Letter requirements & validity</u></p> <p><i>Does the letter clearly express the organization’s support for the community-based application?</i></p> <p><i>Does the letter demonstrate the organization’s understanding of the string being requested?</i></p> <p><i>Is the documentation submitted by the applicant valid (i.e. the organization exists and the letter is authentic)?</i></p> <p>To be taken into account as relevant support, such documentation must contain a description of the process and rationale used in arriving at the expression of support. Consideration of support is not based merely on the number of comments or</p>
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	expressions of support received.
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4-B Opposition

AGB Criteria	Evaluation Guidelines
Scoring	
<p>Opposition:</p> <p>2= No opposition of relevance</p> <p>1= Relevant opposition from one group of non-negligible size</p> <p>0= Relevant opposition from two or more groups of non-negligible size</p>	<p>The following question must be scored when evaluating the application:</p> <p style="text-align: center;"><i>Does the application have any opposition that is deemed relevant?</i></p>
Definitions	
<p>“Relevance” and “relevant” refer to the communities explicitly and implicitly addressed. This means that opposition from communities not identified in the application but with an association to the applied for string would be considered relevant.</p>	<p>Consider the following:</p> <p>For “non-negligible” size, “relevant” and “relevance” consider:</p> <ul style="list-style-type: none"> • <i>If the application has opposition from communities that are deemed to be relevant.</i> • <i>If a web search may help determine relevance and size of the objecting organization(s).</i> • <i>If there is opposition by some other reputable organization(s), such as a quasi-official, publicly recognized organization(s) or a peer organization(s)?</i> • <i>If there is opposition from a part of the community explicitly or implicitly addressed?</i>
Criterion 4-B Guidelines	
<p>When scoring “Opposition,” previous objections to the application as well as public comments during the same application round will be taken into account and assessed in this context. There will be no presumption that such objections or comments would prevent a score of 2 or lead to any particular score for “Opposition.” To be taken into account as relevant opposition, such objections or</p>	<p>Letter(s) of opposition and their verification: Letter(s) of opposition should be evaluated to determine both the relevance of the organization and the validity of the documentation and should meet the criteria spelled out below.</p> <p><u>Determining relevance and recognition</u> <i>Is the organization relevant and/or</i></p>

<p>comments must be of a reasoned nature. Sources of opposition that are clearly spurious, unsubstantiated, made for a purpose incompatible with competition objectives, or filed for the purpose of obstruction will not be considered relevant.</p>	<p><i>recognized as per the definitions above?</i></p> <p><u>Letter requirements & validity</u></p> <p><i>Does the letter clearly express the organization's opposition to the applicant's application?</i></p> <p><i>Does the letter demonstrate the organization's understanding of the string being requested?</i></p> <p><i>Is the documentation submitted by the organization valid (i.e. the organization exists and the letter is authentic)?</i></p> <p>To be considered relevant opposition, such documentation should contain a description of the process and rationale used in arriving at the expression of opposition. Consideration of opposition is not based merely on the number of comments or expressions of opposition received.</p>
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Verification of letter(s) of support and opposition

Additional information on the verification of letter(s) of support and opposition:

- Changes in governments may result in new leadership at government agencies. As such, the signatory need only have held the position as of the date the letter was signed or sealed.
- A contact name should be provided in the letter(s) of support or opposition.
- The contact must send an email acknowledging that the letter is authentic, as a verbal acknowledgement is not sufficient.
- In cases where the letter was signed or sealed by an individual who is not currently holding that office or a position of authority, the letter is valid only if the individual was the appropriate authority at the time that the letter was signed or sealed.

About the Community Priority Evaluation Panel and its Processes

The Economist Intelligence Unit (EIU) is the business information arm of The Economist Group, publisher of The Economist. Through a global network of more than 900 analysts and contributors, the EIU continuously assesses political, economic, and business conditions in more than 200 countries. As the world's leading provider of country intelligence, the EIU helps executives, governments, and institutions by providing timely, reliable, and impartial analysis.

The EIU was selected as a Panel Firm for the gTLD evaluation process based on a number of criteria, including:

- The panel will be an internationally recognized firm or organization with significant demonstrated expertise in the evaluation and assessment of proposals in which the relationship of the proposal to a defined public or private community plays an important role.
- The provider must be able to convene a linguistically and culturally diverse panel capable, in the aggregate, of evaluating Applications from a wide variety of different communities.
- The panel must be able to exercise consistent and somewhat subjective judgment in making its evaluations in order to reach conclusions that are compelling and defensible, and
- The panel must be able to document the way in which it has done so in each case.

The evaluation process will respect the principles of fairness, transparency, avoiding potential conflicts of interest, and non-discrimination. Consistency of approach in scoring Applications will be of particular importance.

The following principles characterize the EIU evaluation process for gTLD applications:

- All EIU evaluators must ensure that no conflicts of interest exist.
- All EIU evaluators must undergo training and be fully cognizant of all CPE requirements as listed in the Applicant Guidebook. This process will include a pilot testing process.
- EIU evaluators are selected based on their knowledge of specific countries, regions and/or industries, as they pertain to Applications.
- Language skills will also be considered in the selection of evaluators and the assignment of specific Applications.
- All applications will be evaluated and scored, in the first instance by two evaluators, working independently.
- All Applications will subsequently be reviewed by members of the core project team to verify accuracy and compliance with the AGB, and to ensure consistency of approach across all applications.

- The EIU will work closely with ICANN when questions arise and when additional information may be required to evaluate an application.
- The EIU will fully cooperate with ICANN's quality control process.

Exhibit DIDP A7

**gTLD Applicant
Guidebook**

Version 2012-06-04



4 June 2012

Preamble

New gTLD Program Background

New gTLDs have been in the forefront of ICANN's agenda since its creation. The new gTLD program will open up the top level of the Internet's namespace to foster diversity, encourage competition, and enhance the utility of the DNS.

Currently the namespace consists of 22 gTLDs and over 250 ccTLDs operating on various models. Each of the gTLDs has a designated "registry operator" and, in most cases, a Registry Agreement between the operator (or sponsor) and ICANN. The registry operator is responsible for the technical operation of the TLD, including all of the names registered in that TLD. The gTLDs are served by over 900 registrars, who interact with registrants to perform domain name registration and other related services. The new gTLD program will create a means for prospective registry operators to apply for new gTLDs, and create new options for consumers in the market. When the program launches its first application round, ICANN expects a diverse set of applications for new gTLDs, including IDNs, creating significant potential for new uses and benefit to Internet users across the globe.

The program has its origins in carefully deliberated policy development work by the ICANN community. In October 2007, the Generic Names Supporting Organization (GNSO)—one of the groups that coordinate global Internet policy at ICANN—formally completed its policy development work on new gTLDs and approved a set of 19 policy recommendations. Representatives from a wide variety of stakeholder groups—governments, individuals, civil society, business and intellectual property constituencies, and the technology community—were engaged in discussions for more than 18 months on such questions as the demand, benefits and risks of new gTLDs, the selection criteria that should be applied, how gTLDs should be allocated, and the contractual conditions that should be required for new gTLD registries going forward. The culmination of this policy development process was a decision by the ICANN Board of Directors to adopt the community-developed policy in June 2008. A thorough brief to the policy process and outcomes can be found at <http://gnso.icann.org/issues/new-gtlds>.

ICANN's work next focused on implementation: creating an application and evaluation process for new gTLDs that is aligned with the policy recommendations and provides a clear roadmap for applicants to reach delegation, including Board approval. This implementation work is reflected in the drafts of the applicant guidebook that were released for public comment, and in the explanatory papers giving insight into rationale behind some of the conclusions reached on specific topics. Meaningful community input has led to revisions of the draft applicant guidebook. In parallel, ICANN has established the resources needed to successfully launch and operate the program. This process concluded with the decision by the ICANN Board of Directors in June 2011 to launch the New gTLD Program.

For current information, timelines and activities related to the New gTLD Program, please go to <http://www.icann.org/en/topics/new-gtld-program.htm>.



gTLD Applicant Guidebook

(v. 2012-06-04)

Module 1

4 June 2012

Module 1

Introduction to the gTLD Application Process

This module gives applicants an overview of the process for applying for a new generic top-level domain, and includes instructions on how to complete and submit an application, the supporting documentation an applicant must submit with an application, the fees required, and when and how to submit them.

This module also describes the conditions associated with particular types of applications, and the stages of the application life cycle.

Prospective applicants are encouraged to read and become familiar with the contents of this entire module, as well as the others, before starting the application process to make sure they understand what is required of them and what they can expect at each stage of the application evaluation process.

For the complete set of the supporting documentation and more about the origins, history and details of the policy development background to the New gTLD Program, please see <http://gnso.icann.org/issues/new-gtlds/>.

This Applicant Guidebook is the implementation of Board-approved consensus policy concerning the introduction of new gTLDs, and has been revised extensively via public comment and consultation over a two-year period.

1.1 Application Life Cycle and Timelines

This section provides a description of the stages that an application passes through once it is submitted. Some stages will occur for all applications submitted; others will only occur in specific circumstances. Applicants should be aware of the stages and steps involved in processing applications received.

1.1.1 Application Submission Dates

The user registration and application submission periods open at **00:01 UTC 12 January 2012**.

The user registration period closes at **23:59 UTC 29 March 2012**. New users to TAS will not be accepted beyond this

time. Users already registered will be able to complete the application submission process.

Applicants should be aware that, due to required processing steps (i.e., online user registration, application submission, fee submission, and fee reconciliation) and security measures built into the online application system, it might take substantial time to perform all of the necessary steps to submit a complete application. Accordingly, applicants are encouraged to submit their completed applications and fees as soon as practicable after the Application Submission Period opens. Waiting until the end of this period to begin the process may not provide sufficient time to submit a complete application before the period closes. Accordingly, new user registrations will not be accepted after the date indicated above.

The application submission period closes at **23:59 UTC 12 April 2012**.

To receive consideration, all applications must be submitted electronically through the online application system by the close of the application submission period.

An application will not be considered, in the absence of exceptional circumstances, if:

- It is received after the close of the application submission period.
- The application form is incomplete (either the questions have not been fully answered or required supporting documents are missing). Applicants will not ordinarily be permitted to supplement their applications after submission.
- The evaluation fee has not been paid by the deadline. Refer to Section 1.5 for fee information.

ICANN has gone to significant lengths to ensure that the online application system will be available for the duration of the application submission period. In the event that the system is not available, ICANN will provide alternative instructions for submitting applications on its website.

1.1.2 Application Processing Stages

This subsection provides an overview of the stages involved in processing an application submitted to ICANN. Figure 1-1 provides a simplified depiction of the process. The shortest and most straightforward path is marked with bold lines, while certain stages that may or may not be

applicable in any given case are also shown. A brief description of each stage follows.

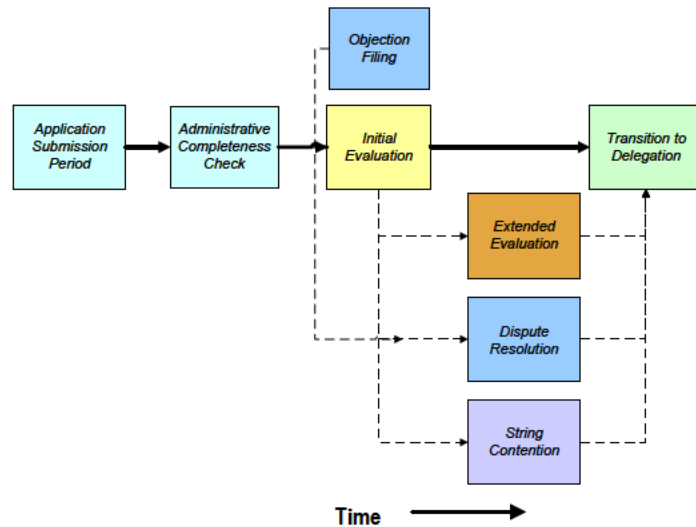


Figure 1-1 – Once submitted to ICANN, applications will pass through multiple stages of processing.

1.1.2.1 Application Submission Period

At the time the application submission period opens, those wishing to submit new gTLD applications can become registered users of the TLD Application System (TAS).

After completing the user registration, applicants will supply a deposit for each requested application slot (see section 1.4), after which they will receive access to the full application form. To complete the application, users will answer a series of questions to provide general information, demonstrate financial capability, and demonstrate technical and operational capability. The supporting documents listed in subsection 1.2.2 of this module must also be submitted through the online application system as instructed in the relevant questions.

Applicants must also submit their evaluation fees during this period. Refer to Section 1.5 of this module for additional information about fees and payments.

Each application slot is for one gTLD. An applicant may submit as many applications as desired; however, there is no means to apply for more than one gTLD in a single application.

Following the close of the application submission period, ICANN will provide applicants with periodic status updates on the progress of their applications.

1.1.2.2 Administrative Completeness Check

Immediately following the close of the application submission period, ICANN will begin checking all applications for completeness. This check ensures that:

- All mandatory questions are answered;
- Required supporting documents are provided in the proper format(s); and
- The evaluation fees have been received.

ICANN will post the public portions of all applications considered complete and ready for evaluation within two weeks of the close of the application submission period. Certain questions relate to internal processes or information: applicant responses to these questions will not be posted. Each question is labeled in the application form as to whether the information will be posted. See posting designations for the full set of questions in the attachment to Module 2.

The administrative completeness check is expected to be completed for all applications in a period of approximately 8 weeks, subject to extension depending on volume. In the event that all applications cannot be processed within this period, ICANN will post updated process information and an estimated timeline.

1.1.2.3 Comment Period

Public comment mechanisms are part of ICANN's policy development, implementation, and operational processes. As a private-public partnership, ICANN is dedicated to: preserving the operational security and stability of the Internet, promoting competition, achieving broad representation of global Internet communities, and developing policy appropriate to its mission through bottom-up, consensus-based processes. This necessarily involves the participation of many stakeholder groups in a public discussion.

ICANN will open a comment period (the Application Comment period) at the time applications are publicly posted on ICANN's website (refer to subsection 1.1.2.2). This period will allow time for the community to review and submit comments on posted application materials

(referred to as “application comments.”) The comment forum will require commenters to associate comments with specific applications and the relevant panel. Application comments received within a 60-day period from the posting of the application materials will be available to the evaluation panels performing the Initial Evaluation reviews. This period is subject to extension, should the volume of applications or other circumstances require. **To be considered by evaluators, comments must be received in the designated comment forum within the stated time period.**

Evaluators will perform due diligence on the application comments (i.e., determine their relevance to the evaluation, verify the accuracy of claims, analyze meaningfulness of references cited) and take the information provided in these comments into consideration. In cases where consideration of the comments has impacted the scoring of the application, the evaluators will seek clarification from the applicant. Statements concerning consideration of application comments that have impacted the evaluation decision will be reflected in the evaluators’ summary reports, which will be published at the end of Extended Evaluation.

Comments received after the 60-day period will be stored and available (along with comments received during the comment period) for other considerations, such as the dispute resolution process, as described below.

In the new gTLD application process, all applicants should be aware that that comment fora are a mechanism for the public to bring relevant information and issues to the attention of those charged with handling new gTLD applications. Anyone may submit a comment in a public comment forum.

Comments and the Formal Objection Process: A distinction should be made between application comments, which may be relevant to ICANN’s task of determining whether applications meet the established criteria, and formal objections that concern matters outside those evaluation criteria. The formal objection process was created to allow a full and fair consideration of objections based on certain limited grounds outside ICANN’s evaluation of applications on their merits (see subsection 3.2).

Public comments will not be considered as formal objections. Comments on matters associated with formal objections will not be considered by panels during Initial Evaluation. These comments will be available to and may

be subsequently considered by an expert panel during a dispute resolution proceeding (see subsection 1.1.2.9). However, in general, application comments have a very limited role in the dispute resolution process.

String Contention: Comments designated for the Community Priority Panel, as relevant to the criteria in Module 4, may be taken into account during a Community Priority Evaluation.

Government Notifications: Governments may provide a notification using the application comment forum to communicate concerns relating to national laws. However, a government's notification of concern will not in itself be deemed to be a formal objection. A notification by a government does not constitute grounds for rejection of a gTLD application. A government may elect to use this comment mechanism to provide such a notification, in addition to or as an alternative to the GAC Early Warning procedure described in subsection 1.1.2.4 below.

Governments may also communicate directly to applicants using the contact information posted in the application, e.g., to send a notification that an applied-for gTLD string might be contrary to a national law, and to try to address any concerns with the applicant.

General Comments: A general public comment forum will remain open through all stages of the evaluation process, to provide a means for the public to bring forward any other relevant information or issues.

1.1.2.4 GAC Early Warning

Concurrent with the 60-day comment period, ICANN's Governmental Advisory Committee (GAC) may issue a GAC Early Warning notice concerning an application. This provides the applicant with an indication that the application is seen as potentially sensitive or problematic by one or more governments.

The GAC Early Warning is a notice only. It is not a formal objection, nor does it directly lead to a process that can result in rejection of the application. However, a GAC Early Warning should be taken seriously as it raises the likelihood that the application could be the subject of GAC Advice on New gTLDs (see subsection 1.1.2.7) or of a formal objection (see subsection 1.1.2.6) at a later stage in the process.

A GAC Early Warning typically results from a notice to the GAC by one or more governments that an application might be problematic, e.g., potentially violate national law or raise sensitivities. A GAC Early Warning may be issued for any reason.¹ The GAC may then send that notice to the Board – constituting the GAC Early Warning. ICANN will notify applicants of GAC Early Warnings as soon as practicable after receipt from the GAC. The GAC Early Warning notice may include a nominated point of contact for further information.

GAC consensus is not required for a GAC Early Warning to be issued. Minimally, the GAC Early Warning must be provided in writing to the ICANN Board, and be clearly labeled as a GAC Early Warning. This may take the form of an email from the GAC Chair to the ICANN Board. For GAC Early Warnings to be most effective, they should include the reason for the warning and identify the objecting countries.

Upon receipt of a GAC Early Warning, the applicant may elect to withdraw the application for a partial refund (see subsection 1.5.1), or may elect to continue with the application (this may include meeting with representatives from the relevant government(s) to try to address the concern). To qualify for the refund described in subsection 1.5.1, the applicant must provide notification to ICANN of its election to withdraw the application within 21 calendar days of the date of GAC Early Warning delivery to the applicant.

To reduce the possibility of a GAC Early Warning, all applicants are encouraged to identify potential sensitivities in advance of application submission, and to work with the relevant parties (including governments) beforehand to mitigate concerns related to the application.

1.1.2.5 Initial Evaluation

Initial Evaluation will begin immediately after the administrative completeness check concludes. All complete applications will be reviewed during Initial Evaluation. At the beginning of this period, background screening on the applying entity and the individuals named in the application will be conducted. Applications

¹ While definitive guidance has not been issued, the GAC has indicated that strings that could raise sensitivities include those that "purport to represent or that embody a particular group of people or interests based on historical, cultural, or social components of identity, such as nationality, race or ethnicity, religion, belief, culture or particular social origin or group, political opinion, membership of a national minority, disability, age, and/or a language or linguistic group (non-exhaustive)" and "those strings that refer to particular sectors, such as those subject to national regulation (such as .bank, .pharmacy) or those that describe or are targeted to a population or industry that is vulnerable to online fraud or abuse."

must pass this step in conjunction with the Initial Evaluation reviews.

There are two main elements of the Initial Evaluation:

1. String reviews (concerning the applied-for gTLD string). String reviews include a determination that the applied-for gTLD string is not likely to cause security or stability problems in the DNS, including problems caused by similarity to existing TLDs or reserved names.
2. Applicant reviews (concerning the entity applying for the gTLD and its proposed registry services). Applicant reviews include a determination of whether the applicant has the requisite technical, operational, and financial capabilities to operate a registry.

By the conclusion of the Initial Evaluation period, ICANN will post notice of all Initial Evaluation results. Depending on the volume of applications received, such notices may be posted in batches over the course of the Initial Evaluation period.

The Initial Evaluation is expected to be completed for all applications in a period of approximately 5 months. If the volume of applications received significantly exceeds 500, applications will be processed in batches and the 5-month timeline will not be met. The first batch will be limited to 500 applications and subsequent batches will be limited to 400 to account for capacity limitations due to managing extended evaluation, string contention, and other processes associated with each previous batch.

If batching is required, a secondary time-stamp process will be employed to establish the batches. (Batching priority will not be given to an application based on the time at which the application was submitted to ICANN, nor will batching priority be established based on a random selection method.)

The secondary time-stamp process will require applicants to obtain a time-stamp through a designated process which will occur after the close of the application submission period. The secondary time stamp process will occur, if required, according to the details to be published on ICANN's website. (Upon the Board's approval of a final designation of the operational details of the "secondary timestamp" batching process, the final plan will be added as a process within the Applicant Guidebook.)

If batching is required, the String Similarity review will be completed on all applications prior to the establishment of evaluation priority batches. For applications identified as part of a contention set, the entire contention set will be kept together in the same batch.

If batches are established, ICANN will post updated process information and an estimated timeline.

Note that the processing constraints will limit delegation rates to a steady state even in the event of an extremely high volume of applications. The annual delegation rate will not exceed 1,000 per year in any case, no matter how many applications are received.²

1.1.2.6 *Objection Filing*

Formal objections to applications can be filed on any of four enumerated grounds, by parties with standing to object. The objection filing period will open after ICANN posts the list of complete applications as described in subsection 1.1.2.2, and will last for approximately 7 months.

Objectors must file such formal objections directly with dispute resolution service providers (DRSPs), not with ICANN. The objection filing period will close following the end of the Initial Evaluation period (refer to subsection 1.1.2.5), with a two-week window of time between the posting of the Initial Evaluation results and the close of the objection filing period. Objections that have been filed during the objection filing period will be addressed in the dispute resolution stage, which is outlined in subsection 1.1.2.9 and discussed in detail in Module 3.

All applicants should be aware that third parties have the opportunity to file objections to any application during the objection filing period. Applicants whose applications are the subject of a formal objection will have an opportunity to file a response according to the dispute resolution service provider's rules and procedures. An applicant wishing to file a formal objection to another application that has been submitted would do so within the objection filing period, following the objection filing procedures in Module 3.

Applicants are encouraged to identify possible regional, cultural, property interests, or other sensitivities regarding TLD strings and their uses before applying and, where

² See "Delegation Rate Scenarios for New gTLDs" at <http://icann.org/en/topics/new-gtlds/delegation-rate-scenarios-new-gtlds-06oct10-en.pdf> for additional discussion.

possible, consult with interested parties to mitigate any concerns in advance.

1.1.2.7 Receipt of GAC Advice on New gTLDs

The GAC may provide public policy advice directly to the ICANN Board on any application. The procedure for GAC Advice on New gTLDs described in Module 3 indicates that, to be considered by the Board during the evaluation process, the GAC Advice on New gTLDs must be submitted by the close of the objection filing period. A GAC Early Warning is not a prerequisite to use of the GAC Advice process.

If the Board receives GAC Advice on New gTLDs stating that it is the consensus of the GAC that a particular application should not proceed, this will create a strong presumption for the ICANN Board that the application should not be approved. If the Board does not act in accordance with this type of advice, it must provide rationale for doing so.

See Module 3 for additional detail on the procedures concerning GAC Advice on New gTLDs.

1.1.2.8 Extended Evaluation

Extended Evaluation is available only to certain applicants that do not pass Initial Evaluation.

Applicants failing certain elements of the Initial Evaluation can request an Extended Evaluation. If the applicant does not pass Initial Evaluation and does not expressly request an Extended Evaluation, the application will proceed no further. The Extended Evaluation period allows for an additional exchange of information between the applicant and evaluators to clarify information contained in the application. The reviews performed in Extended Evaluation do not introduce additional evaluation criteria.

An application may be required to enter an Extended Evaluation if one or more proposed registry services raise technical issues that might adversely affect the security or stability of the DNS. The Extended Evaluation period provides a time frame for these issues to be investigated. Applicants will be informed if such a review is required by the end of the Initial Evaluation period.

Evaluators and any applicable experts consulted will communicate the conclusions resulting from the additional review by the end of the Extended Evaluation period.

At the conclusion of the Extended Evaluation period, ICANN will post summary reports, by panel, from the Initial and Extended Evaluation periods.

If an application passes the Extended Evaluation, it can then proceed to the next relevant stage. If the application does not pass the Extended Evaluation, it will proceed no further.

The Extended Evaluation is expected to be completed for all applications in a period of approximately 5 months, though this timeframe could be increased based on volume. In this event, ICANN will post updated process information and an estimated timeline.

1.1.2.9 Dispute Resolution

Dispute resolution applies only to applicants whose applications are the subject of a formal objection.

Where formal objections are filed and filing fees paid during the objection filing period, independent dispute resolution service providers (DRSPs) will initiate and conclude proceedings based on the objections received. The formal objection procedure exists to provide a path for those who wish to object to an application that has been submitted to ICANN. Dispute resolution service providers serve as the fora to adjudicate the proceedings based on the subject matter and the needed expertise. Consolidation of objections filed will occur where appropriate, at the discretion of the DRSP.

As a result of a dispute resolution proceeding, either the applicant will prevail (in which case the application can proceed to the next relevant stage), or the objector will prevail (in which case either the application will proceed no further or the application will be bound to a contention resolution procedure). In the event of multiple objections, an applicant must prevail in all dispute resolution proceedings concerning the application to proceed to the next relevant stage. Applicants will be notified by the DRSP(s) of the results of dispute resolution proceedings.

Dispute resolution proceedings, where applicable, are expected to be completed for all applications within approximately a 5-month time frame. In the event that volume is such that this timeframe cannot be accommodated, ICANN will work with the dispute resolution service providers to create processing procedures and post updated timeline information.

1.1.2.10 String Contention

String contention applies only when there is more than one qualified application for the same or similar gTLD strings.

String contention refers to the scenario in which there is more than one qualified application for the identical gTLD string or for similar gTLD strings. In this Applicant Guidebook, “similar” means strings so similar that they create a probability of user confusion if more than one of the strings is delegated into the root zone.

Applicants are encouraged to resolve string contention cases among themselves prior to the string contention resolution stage. In the absence of resolution by the contending applicants, string contention cases are resolved either through a community priority evaluation (if a community-based applicant elects it) or through an auction.

In the event of contention between applied-for gTLD strings that represent geographic names, the parties may be required to follow a different process to resolve the contention. See subsection 2.2.1.4 of Module 2 for more information.

Groups of applied-for strings that are either identical or similar are called contention sets. All applicants should be aware that if an application is identified as being part of a contention set, string contention resolution procedures will not begin until all applications in the contention set have completed all aspects of evaluation, including dispute resolution, if applicable.

To illustrate, as shown in Figure 1-2, Applicants A, B, and C all apply for .EXAMPLE and are identified as a contention set. Applicants A and C pass Initial Evaluation, but Applicant B does not. Applicant B requests Extended Evaluation. A third party files an objection to Applicant C’s application, and Applicant C enters the dispute resolution process. Applicant A must wait to see whether Applicants B and C successfully complete the Extended Evaluation and dispute resolution phases, respectively, before it can proceed to the string contention resolution stage. In this example, Applicant B passes the Extended Evaluation, but Applicant C does not prevail in the dispute resolution proceeding. String contention resolution then proceeds between Applicants A and B.

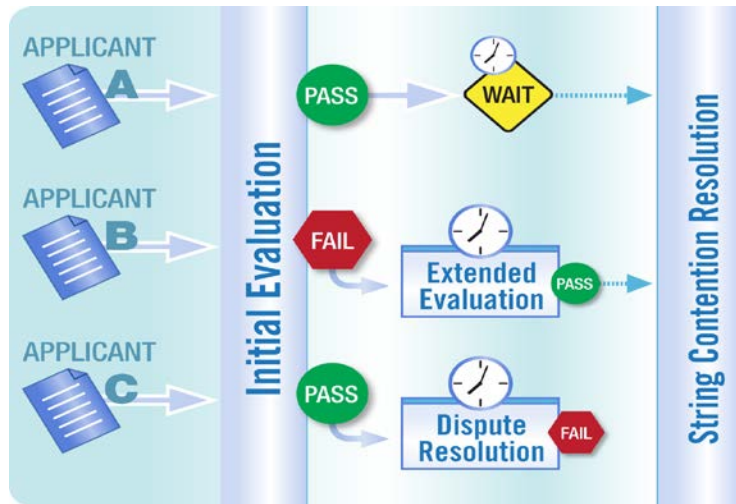


Figure 1-2 – All applications in a contention set must complete all previous evaluation and dispute resolution stages before string contention resolution can begin.

Applicants prevailing in a string contention resolution procedure will proceed toward delegation of the applied-for gTLDs.

String contention resolution for a contention set is estimated to take from 2.5 to 6 months to complete. The time required will vary per case because some contention cases may be resolved in either a community priority evaluation or an auction, while others may require both processes.

1.1.2.11 Transition to Delegation

Applicants successfully completing all the relevant stages outlined in this subsection 1.1.2 are required to carry out a series of concluding steps before delegation of the applied-for gTLD into the root zone. These steps include execution of a registry agreement with ICANN and completion of a pre-delegation technical test to validate information provided in the application.

Following execution of a registry agreement, the prospective registry operator must complete technical set-up and show satisfactory performance on a set of technical tests before delegation of the gTLD into the root zone may be initiated. If the pre-delegation testing requirements are not satisfied so that the gTLD can be delegated into the root zone within the time frame specified in the registry agreement, ICANN may in its sole and absolute discretion elect to terminate the registry agreement.

Once all of these steps have been successfully completed, the applicant is eligible for delegation of its applied-for gTLD into the DNS root zone.

It is expected that the transition to delegation steps can be completed in approximately 2 months, though this could take more time depending on the applicant's level of preparedness for the pre-delegation testing and the volume of applications undergoing these steps concurrently.

1.1.3 Lifecycle Timelines

Based on the estimates for each stage described in this section, the lifecycle for a straightforward application could be approximately 9 months, as follows:

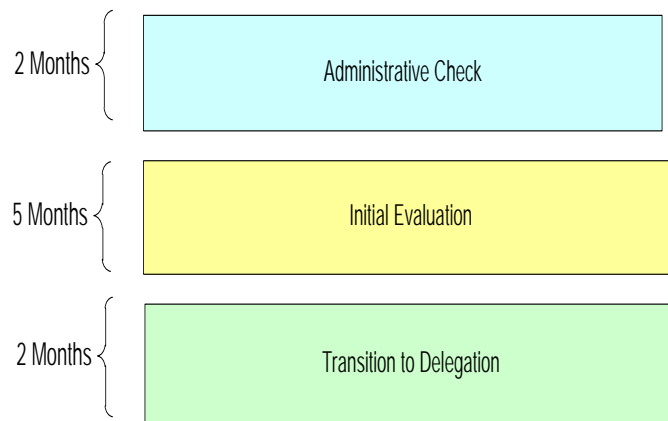


Figure 1-3 – A straightforward application could have an approximate 9-month lifecycle.

The lifecycle for a highly complex application could be much longer, such as 20 months in the example below:

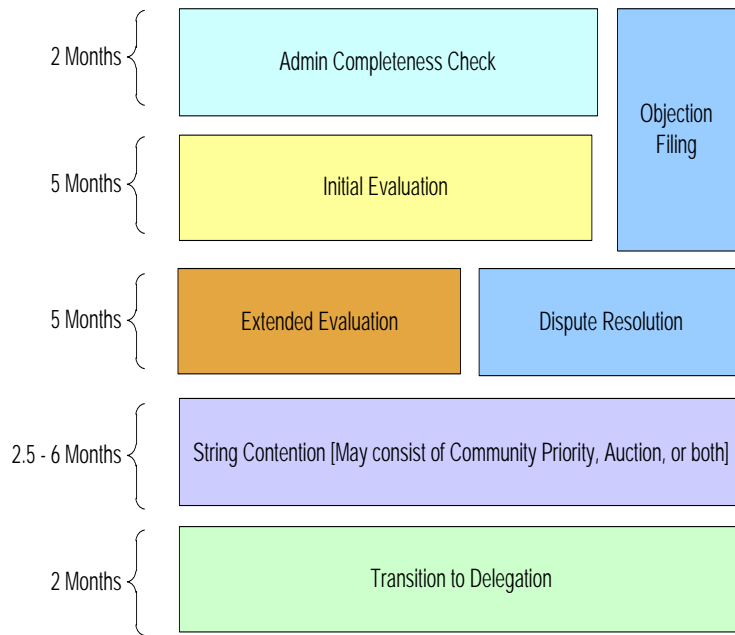


Figure 1-4 – A complex application could have an approximate 20-month lifecycle.

1.1.4 Posting Periods

The results of application reviews will be made available to the public at various stages in the process, as shown below.

Period	Posting Content
During Administrative Completeness Check	Public portions of all applications (posted within 2 weeks of the start of the Administrative Completeness Check).
End of Administrative Completeness Check	Results of Administrative Completeness Check.
GAC Early Warning Period	GAC Early Warnings received.
During Initial Evaluation	Status updates for applications withdrawn or ineligible for further review. Contention sets resulting from String Similarity review.

Period	Posting Content
End of Initial Evaluation	Application status updates with all Initial Evaluation results.
GAC Advice on New gTLDs	GAC Advice received.
End of Extended Evaluation	Application status updates with all Extended Evaluation results. Evaluation summary reports from the Initial and Extended Evaluation periods.
During Objection Filing/Dispute Resolution	Information on filed objections and status updates available via Dispute Resolution Service Provider websites. Notice of all objections posted by ICANN after close of objection filing period.
During Contention Resolution (Community Priority Evaluation)	Results of each Community Priority Evaluation posted as completed.
During Contention Resolution (Auction)	Results from each auction posted as completed.
Transition to Delegation	Registry Agreements posted when executed. Pre-delegation testing status updated.

1.1.5 Sample Application Scenarios

The following scenarios briefly show a variety of ways in which an application may proceed through the evaluation process. The table that follows exemplifies various processes and outcomes. This is not intended to be an exhaustive list of possibilities. There are other possible combinations of paths an application could follow.

Estimated time frames for each scenario are also included, based on current knowledge. Actual time frames may vary depending on several factors, including the total number

of applications received by ICANN during the application submission period. It should be emphasized that most applications are expected to pass through the process in the shortest period of time, i.e., they will not go through extended evaluation, dispute resolution, or string contention resolution processes. Although most of the scenarios below are for processes extending beyond nine months, it is expected that most applications will complete the process within the nine-month timeframe.

Scenario Number	Initial Evaluation	Extended Evaluation	Objection(s) Filed	String Contention	Approved for Delegation Steps	Estimated Elapsed Time
1	Pass	N/A	None	No	Yes	9 months
2	Fail	Pass	None	No	Yes	14 months
3	Pass	N/A	None	Yes	Yes	11.5 – 15 months
4	Pass	N/A	Applicant prevails	No	Yes	14 months
5	Pass	N/A	Objector prevails	N/A	No	12 months
6	Fail	Quit	N/A	N/A	No	7 months
7	Fail	Fail	N/A	N/A	No	12 months
8	Fail	Pass	Applicant prevails	Yes	Yes	16.5 – 20 months
9	Fail	Pass	Applicant prevails	Yes	No	14.5 – 18 months

Scenario 1 – Pass Initial Evaluation, No Objection, No Contention – In the most straightforward case, the application passes Initial Evaluation and there is no need for an Extended Evaluation. No objections are filed during the objection period, so there is no dispute to resolve. As there is no contention for the applied-for gTLD string, the applicant can enter into a registry agreement and the application can proceed toward delegation of the applied-for gTLD. Most applications are expected to complete the process within this timeframe.

Scenario 2 – Extended Evaluation, No Objection, No Contention – In this case, the application fails one or more aspects of the Initial Evaluation. The applicant is eligible for and requests an Extended Evaluation for the appropriate elements. Here, the application passes the Extended Evaluation. As with Scenario 1, no objections are filed

during the objection period, so there is no dispute to resolve. As there is no contention for the gTLD string, the applicant can enter into a registry agreement and the application can proceed toward delegation of the applied-for gTLD.

Scenario 3 – Pass Initial Evaluation, No Objection, Contention – In this case, the application passes the Initial Evaluation so there is no need for Extended Evaluation. No objections are filed during the objection period, so there is no dispute to resolve. However, there are other applications for the same or a similar gTLD string, so there is contention. In this case, the application prevails in the contention resolution, so the applicant can enter into a registry agreement and the application can proceed toward delegation of the applied-for gTLD.

Scenario 4 – Pass Initial Evaluation, Win Objection, No Contention – In this case, the application passes the Initial Evaluation so there is no need for Extended Evaluation. During the objection filing period, an objection is filed on one of the four enumerated grounds by an objector with standing (refer to Module 3, Objection Procedures). The objection is heard by a dispute resolution service provider panel that finds in favor of the applicant. The applicant can enter into a registry agreement and the application can proceed toward delegation of the applied-for gTLD.

Scenario 5 – Pass Initial Evaluation, Lose Objection – In this case, the application passes the Initial Evaluation so there is no need for Extended Evaluation. During the objection period, multiple objections are filed by one or more objectors with standing for one or more of the four enumerated objection grounds. Each objection is heard by a dispute resolution service provider panel. In this case, the panels find in favor of the applicant for most of the objections, but one finds in favor of the objector. As one of the objections has been upheld, the application does not proceed.

Scenario 6 – Fail Initial Evaluation, Applicant Withdraws – In this case, the application fails one or more aspects of the Initial Evaluation. The applicant decides to withdraw the application rather than continuing with Extended Evaluation. The application does not proceed.

Scenario 7 – Fail Initial Evaluation, Fail Extended Evaluation -- In this case, the application fails one or more aspects of the Initial Evaluation. The applicant requests Extended Evaluation for the appropriate elements. However, the

application fails Extended Evaluation also. The application does not proceed.

Scenario 8 – Extended Evaluation, Win Objection, Pass Contention – In this case, the application fails one or more aspects of the Initial Evaluation. The applicant is eligible for and requests an Extended Evaluation for the appropriate elements. Here, the application passes the Extended Evaluation. During the objection filing period, an objection is filed on one of the four enumerated grounds by an objector with standing. The objection is heard by a dispute resolution service provider panel that finds in favor of the applicant. However, there are other applications for the same or a similar gTLD string, so there is contention. In this case, the applicant prevails over other applications in the contention resolution procedure, the applicant can enter into a registry agreement, and the application can proceed toward delegation of the applied-for gTLD.

Scenario 9 – Extended Evaluation, Objection, Fail Contention – In this case, the application fails one or more aspects of the Initial Evaluation. The applicant is eligible for and requests an Extended Evaluation for the appropriate elements. Here, the application passes the Extended Evaluation. During the objection filing period, an objection is filed on one of the four enumerated grounds by an objector with standing. The objection is heard by a dispute resolution service provider that finds in favor of the applicant. However, there are other applications for the same or a similar gTLD string, so there is contention. In this case, another applicant prevails in the contention resolution procedure, and the application does not proceed.

Transition to Delegation – After an application has successfully completed Initial Evaluation, and other stages as applicable, the applicant is required to complete a set of steps leading to delegation of the gTLD, including execution of a registry agreement with ICANN, and completion of pre-delegation testing. Refer to Module 5 for a description of the steps required in this stage.

1.1.6 Subsequent Application Rounds

ICANN's goal is to launch subsequent gTLD application rounds as quickly as possible. The exact timing will be based on experiences gained and changes required after this round is completed. The goal is for the next application round to begin within one year of the close of the application submission period for the initial round.

ICANN has committed to reviewing the effects of the New gTLD Program on the operations of the root zone system after the first application round, and will defer the delegations in a second application round until it is determined that the delegations resulting from the first round did not jeopardize root zone system security or stability.

It is the policy of ICANN that there be subsequent application rounds, and that a systemized manner of applying for gTLDs be developed in the long term.

1.2 Information for All Applicants

1.2.1 Eligibility

Established corporations, organizations, or institutions in good standing may apply for a new gTLD. Applications from individuals or sole proprietorships will not be considered. Applications from or on behalf of yet-to-be-formed legal entities, or applications presupposing the future formation of a legal entity (for example, a pending Joint Venture) will not be considered.

ICANN has designed the New gTLD Program with multiple stakeholder protection mechanisms. Background screening, features of the gTLD Registry Agreement, data and financial escrow mechanisms are all intended to provide registrant and user protections.

The application form requires applicants to provide information on the legal establishment of the applying entity, as well as the identification of directors, officers, partners, and major shareholders of that entity. The names and positions of individuals included in the application will be published as part of the application; other information collected about the individuals will not be published.

Background screening at both the entity level and the individual level will be conducted for all applications to confirm eligibility. This inquiry is conducted on the basis of the information provided in questions 1-11 of the application form. ICANN may take into account information received from any source if it is relevant to the criteria in this section. If requested by ICANN, all applicants will be required to obtain and deliver to ICANN and ICANN's background screening vendor any consents or agreements of the entities and/or individuals named in questions 1-11 of the application form necessary to conduct background screening activities.

ICANN will perform background screening in only two areas: (1) General business diligence and criminal history; and (2) History of cybersquatting behavior. The criteria used for criminal history are aligned with the “crimes of trust” standard sometimes used in the banking and finance industry.

In the absence of exceptional circumstances, applications from any entity with or including any individual with convictions or decisions of the types listed in (a) – (m) below will be automatically disqualified from the program.

- a. within the past ten years, has been convicted of any crime related to financial or corporate governance activities, or has been judged by a court to have committed fraud or breach of fiduciary duty, or has been the subject of a judicial determination that ICANN deems as the substantive equivalent of any of these;
- b. within the past ten years, has been disciplined by any government or industry regulatory body for conduct involving dishonesty or misuse of the funds of others;
- c. within the past ten years has been convicted of any willful tax-related fraud or willful evasion of tax liabilities;
- d. within the past ten years has been convicted of perjury, forswearing, failing to cooperate with a law enforcement investigation, or making false statements to a law enforcement agency or representative;
- e. has ever been convicted of any crime involving the use of computers, telephony systems, telecommunications or the Internet to facilitate the commission of crimes;
- f. has ever been convicted of any crime involving the use of a weapon, force, or the threat of force;
- g. has ever been convicted of any violent or sexual offense victimizing children, the

elderly, or individuals with disabilities;

- h. has ever been convicted of the illegal sale, manufacture, or distribution of pharmaceutical drugs, or been convicted or successfully extradited for any offense described in Article 3 of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988³;
- i. has ever been convicted or successfully extradited for any offense described in the United Nations Convention against Transnational Organized Crime (all Protocols)^{4 5};
- j. has been convicted, within the respective timeframes, of aiding, abetting, facilitating, enabling, conspiring to commit, or failing to report any of the listed crimes above (i.e., within the past 10 years for crimes listed in (a) - (d) above, or ever for the crimes listed in (e) - (i) above);
- k. has entered a guilty plea as part of a plea agreement or has a court case in any jurisdiction with a disposition of Adjudicated Guilty or Adjudication Withheld (or regional equivalents), within the respective timeframes listed above for any of the listed crimes (i.e., within the past 10 years for crimes listed in (a) - (d) above, or ever for the crimes listed in (e) - (i) above);
- l. is the subject of a disqualification imposed by ICANN and in effect at the time the application is considered;
- m. has been involved in a pattern of adverse, final decisions indicating that the applicant

³ <http://www.unodc.org/unodc/en/treaties/illicit-traffic.html>

⁴ <http://www.unodc.org/unodc/en/treaties/CTOC/index.html>

⁵ It is recognized that not all countries have signed on to the UN conventions referenced above. These conventions are being used solely for identification of a list of crimes for which background screening will be performed. It is not necessarily required that an applicant would have been convicted pursuant to the UN convention but merely convicted of a crime listed under these conventions, to trigger these criteria.

or individual named in the application was engaged in cybersquatting as defined in the Uniform Domain Name Dispute Resolution Policy (UDRP), the Anti-Cybersquatting Consumer Protection Act (ACPA), or other equivalent legislation, or was engaged in reverse domain name hijacking under the UDRP or bad faith or reckless disregard under the ACPA or other equivalent legislation. Three or more such decisions with one occurring in the last four years will generally be considered to constitute a pattern.

- n. fails to provide ICANN with the identifying information necessary to confirm identity at the time of application or to resolve questions of identity during the background screening process;
- o. fails to provide a good faith effort to disclose all relevant information relating to items (a) – (m).

Background screening is in place to protect the public interest in the allocation of critical Internet resources, and ICANN reserves the right to deny an otherwise qualified application based on any information identified during the background screening process. For example, a final and legally binding decision obtained by a national law enforcement or consumer protection authority finding that the applicant was engaged in fraudulent and deceptive commercial practices as defined in the Organization for Economic Co-operation and Development (OECD) Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Borders⁶ may cause an application to be rejected. ICANN may also contact the applicant with additional questions based on information obtained in the background screening process.

All applicants are required to provide complete and detailed explanations regarding any of the above events as part of the application. Background screening information will not be made publicly available by ICANN.

Registrar Cross-Ownership -- ICANN-accredited registrars are eligible to apply for a gTLD. However, all gTLD registries

⁶ http://www.oecd.org/document/56/0,3746,en_2649_34267_2515000_1_1_1_1.00.html

are required to abide by a Code of Conduct addressing, *inter alia*, non-discriminatory access for all authorized registrars. ICANN reserves the right to refer any application to the appropriate competition authority relative to any cross-ownership issues.

Legal Compliance -- ICANN must comply with all U.S. laws, rules, and regulations. One such set of regulations is the economic and trade sanctions program administered by the Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury. These sanctions have been imposed on certain countries, as well as individuals and entities that appear on OFAC's List of Specially Designated Nationals and Blocked Persons (the SDN List). ICANN is prohibited from providing most goods or services to residents of sanctioned countries or their governmental entities or to SDNs without an applicable U.S. government authorization or exemption. ICANN generally will not seek a license to provide goods or services to an individual or entity on the SDN List. In the past, when ICANN has been requested to provide services to individuals or entities that are not SDNs, but are residents of sanctioned countries, ICANN has sought and been granted licenses as required. In any given case, however, OFAC could decide not to issue a requested license.

1.2.2 Required Documents

All applicants should be prepared to submit the following documents, which are required to accompany each application:

1. **Proof of legal establishment** – Documentation of the applicant's establishment as a specific type of entity in accordance with the applicable laws of its jurisdiction.
2. **Financial statements** – Applicants must provide audited or independently certified financial statements for the most recently completed fiscal year for the applicant. In some cases, unaudited financial statements may be provided.

As indicated in the relevant questions, supporting documentation should be submitted in the original language. English translations are not required.

All documents must be valid at the time of submission. Refer to the Evaluation Criteria, attached to Module 2, for additional details on the requirements for these documents.

Some types of supporting documentation are required only in certain cases:

1. **Community endorsement** – If an applicant has designated its application as community-based (see section 1.2.3), it will be asked to submit a written endorsement of its application by one or more established institutions representing the community it has named. An applicant may submit written endorsements from multiple institutions. If applicable, this will be submitted in the section of the application concerning the community-based designation.

At least one such endorsement is required for a complete application. The form and content of the endorsement are at the discretion of the party providing the endorsement; however, the letter must identify the applied-for gTLD string and the applying entity, include an express statement of support for the application, and supply the contact information of the entity providing the endorsement.

Written endorsements from individuals need not be submitted with the application, but may be submitted in the application comment forum.

2. **Government support or non-objection** – If an applicant has applied for a gTLD string that is a geographic name (as defined in this Guidebook), the applicant is required to submit documentation of support for or non-objection to its application from the relevant governments or public authorities. Refer to subsection 2.2.1.4 for more information on the requirements for geographic names. If applicable, this will be submitted in the geographic names section of the application.
3. **Documentation of third-party funding commitments** – If an applicant lists funding from third parties in its application, it must provide evidence of commitment by the party committing the funds. If applicable, this will be submitted in the financial section of the application.

1.2.3 Community-Based Designation

All applicants are required to designate whether their application is **community-based**.

1.2.3.1 Definitions

For purposes of this Applicant Guidebook, a **community-based gTLD** is a gTLD that is operated for the benefit of a clearly delineated community. Designation or non-

designation of an application as community-based is entirely at the discretion of the applicant. Any applicant may designate its application as community-based; however, each applicant making this designation is asked to substantiate its status as representative of the community it names in the application by submission of written endorsements in support of the application. Additional information may be requested in the event of a community priority evaluation (refer to section 4.2 of Module 4). An applicant for a community-based gTLD is expected to:

1. Demonstrate an ongoing relationship with a clearly delineated community.
2. Have applied for a gTLD string strongly and specifically related to the community named in the application.
3. Have proposed dedicated registration and use policies for registrants in its proposed gTLD, including appropriate security verification procedures, commensurate with the community-based purpose it has named.
4. Have its application endorsed in writing by one or more established institutions representing the community it has named.

For purposes of differentiation, an application that has not been designated as community-based will be referred to hereinafter in this document as a **standard application**. A standard gTLD can be used for any purpose consistent with the requirements of the application and evaluation criteria, and with the registry agreement. A standard applicant may or may not have a formal relationship with an exclusive registrant or user population. It may or may not employ eligibility or use restrictions. Standard simply means here that the applicant has not designated the application as community-based.

1.2.3.2 Implications of Application Designation

Applicants should understand how their designation as community-based or standard will affect application processing at particular stages, and, if the application is successful, execution of the registry agreement and subsequent obligations as a gTLD registry operator, as described in the following paragraphs.

Objection / Dispute Resolution – All applicants should understand that a formal objection may be filed against any application on community grounds, even if the applicant has not designated itself as community-based or

declared the gTLD to be aimed at a particular community. Refer to Module 3, Objection Procedures.

String Contention – Resolution of string contention may include one or more components, depending on the composition of the contention set and the elections made by community-based applicants.

- A **settlement between the parties** can occur at any time after contention is identified. The parties will be encouraged to meet with an objective to settle the contention. Applicants in contention always have the opportunity to resolve the contention voluntarily, resulting in the withdrawal of one or more applications, before reaching the contention resolution stage.
- A **community priority evaluation** will take place only if a community-based applicant in a contention set elects this option. All community-based applicants in a contention set will be offered this option in the event that there is contention remaining after the applications have successfully completed all previous evaluation stages.
- An **auction** will result for cases of contention not resolved by community priority evaluation or agreement between the parties. Auction occurs as a contention resolution means of last resort. If a community priority evaluation occurs but does not produce a clear winner, an auction will take place to resolve the contention.

Refer to Module 4, String Contention Procedures, for detailed discussions of contention resolution procedures.

Contract Execution and Post-Delegation – A community-based applicant will be subject to certain post-delegation contractual obligations to operate the gTLD in a manner consistent with the restrictions associated with its community-based designation. Material changes to the contract, including changes to the community-based nature of the gTLD and any associated provisions, may only be made with ICANN's approval. The determination of whether to approve changes requested by the applicant will be at ICANN's discretion. Proposed criteria for approving such changes are the subject of policy discussions.

Community-based applications are intended to be a narrow category, for applications where there are

unambiguous associations among the applicant, the community served, and the applied-for gTLD string. Evaluation of an applicant's designation as community-based will occur only in the event of a contention situation that results in a community priority evaluation. However, any applicant designating its application as community-based will, if the application is approved, be bound by the registry agreement to implement the community-based restrictions it has specified in the application. This is true even if there are no contending applicants.

1.2.3.3 Changes to Application Designation

An applicant may not change its designation as standard or community-based once it has submitted a gTLD application for processing.

1.2.4 Notice concerning Technical Acceptance Issues with New gTLDs

All applicants should be aware that approval of an application and entry into a registry agreement with ICANN do not guarantee that a new gTLD will immediately function throughout the Internet. Past experience indicates that network operators may not immediately fully support new top-level domains, even when these domains have been delegated in the DNS root zone, since third-party software modification may be required and may not happen immediately.

Similarly, software applications sometimes attempt to validate domain names and may not recognize new or unknown top-level domains. ICANN has no authority or ability to require that software accept new top-level domains, although it does prominently publicize which top-level domains are valid and has developed a basic tool to assist application providers in the use of current root-zone data.

ICANN encourages applicants to familiarize themselves with these issues and account for them in their startup and launch plans. Successful applicants may find themselves expending considerable efforts working with providers to achieve acceptance of their new top-level domains.

Applicants should review <http://www.icann.org/en/topics/TLD-acceptance/> for background. IDN applicants should also review the material concerning experiences with IDN test strings in the root zone (see <http://idn.icann.org/>).

1.2.5 Notice concerning TLD Delegations

ICANN is only able to create TLDs as delegations in the DNS root zone, expressed using NS records with any corresponding DS records and glue records. There is no policy enabling ICANN to place TLDs as other DNS record types (such as A, MX, or DNAME records) in the root zone.

1.2.6 Terms and Conditions

All applicants must agree to a standard set of Terms and Conditions for the application process. The Terms and Conditions are available in Module 6 of this guidebook.

1.2.7 Notice of Changes to Information

If at any time during the evaluation process information previously submitted by an applicant becomes untrue or inaccurate, the applicant must promptly notify ICANN via submission of the appropriate forms. This includes applicant-specific information such as changes in financial position and changes in ownership or control of the applicant.

ICANN reserves the right to require a re-evaluation of the application in the event of a material change. This could involve additional fees or evaluation in a subsequent application round.

Failure to notify ICANN of any change in circumstances that would render any information provided in the application false or misleading may result in denial of the application.

1.2.8 Voluntary Designation for High Security Zones

An ICANN stakeholder group has considered development of a possible special designation for "High Security Zone Top Level Domains" ("HSTLDs"). The group's Final Report can be found at <http://www.icann.org/en/topics/new-gtlds/hstld-final-report-11mar11-en.pdf>.

The Final Report may be used to inform further work. ICANN will support independent efforts toward developing voluntary high-security TLD designations, which may be available to gTLD applicants wishing to pursue such designations.

1.2.9 Security and Stability

Root Zone Stability: There has been significant study, analysis, and consultation in preparation for launch of the

New gTLD Program, indicating that the addition of gTLDs to the root zone will not negatively impact the security or stability of the DNS.

It is estimated that 200-300 TLDs will be delegated annually, and determined that in no case will more than 1000 new gTLDs be added to the root zone in a year. The delegation rate analysis, consultations with the technical community, and anticipated normal operational upgrade cycles all lead to the conclusion that the new gTLD delegations will have no significant impact on the stability of the root system. Modeling and reporting will continue during, and after, the first application round so that root-scaling discussions can continue and the delegation rates can be managed as the program goes forward.

All applicants should be aware that delegation of any new gTLDs is conditional on the continued absence of significant negative impact on the security or stability of the DNS and the root zone system (including the process for delegating TLDs in the root zone). In the event that there is a reported impact in this regard and processing of applications is delayed, the applicants will be notified in an orderly and timely manner.

1.2.10 Resources for Applicant Assistance

A variety of support resources are available to gTLD applicants. Financial assistance will be available to a limited number of eligible applicants. To request financial assistance, applicants must submit a separate financial assistance application in addition to the gTLD application form.

To be eligible for consideration, all financial assistance applications must be received by **23:59 UTC 12 April 2012**. Financial assistance applications will be evaluated and scored against pre-established criteria.

In addition, ICANN maintains a webpage as an informational resource for applicants seeking assistance, and organizations offering support.

See <http://newgtlds.icann.org/applicants/candidate-support> for details on these resources.

1.2.11 Updates to the Applicant Guidebook

As approved by the ICANN Board of Directors, this Guidebook forms the basis of the New gTLD Program. ICANN reserves the right to make reasonable updates and

changes to the Applicant Guidebook at any time, including as the possible result of new technical standards, reference documents, or policies that might be adopted during the course of the application process. Any such updates or revisions will be posted on ICANN's website.

1.3 Information for Internationalized Domain Name Applicants

Some applied-for gTLD strings are expected to be Internationalized Domain Names (IDNs). IDNs are domain names including characters used in the local representation of languages not written with the basic Latin alphabet (a - z), European-Arabic digits (0 - 9), and the hyphen (-). As described below, IDNs require the insertion of A-labels into the DNS root zone.

1.3.1 IDN-Specific Requirements

An applicant for an IDN string must provide information indicating compliance with the IDNA protocol and other technical requirements. The IDNA protocol and its documentation can be found at <http://icann.org/en/topics/idn/rfcs.htm>.

Applicants must provide applied-for gTLD strings in the form of both a **U-label** (the IDN TLD in local characters) and an **A-label**.

An A-label is the ASCII form of an IDN label. Every IDN A-label begins with the IDNA ACE prefix, "xn--", followed by a string that is a valid output of the Punycode algorithm, making a maximum of 63 total ASCII characters in length. The prefix and string together must conform to all requirements for a label that can be stored in the DNS including conformance to the LDH (host name) rule described in RFC 1034, RFC 1123, and elsewhere.

A U-label is the Unicode form of an IDN label, which a user expects to see displayed in applications.

For example, using the current IDN test string in Cyrillic script, the U-label is <испытание> and the A-label is <xn--80akhbyknj4f>. An A-label must be capable of being produced by conversion from a U-label and a U-label must be capable of being produced by conversion from an A-label.

Applicants for IDN gTLDs will also be required to provide the following at the time of the application:

1. Meaning or restatement of string in English. The applicant will provide a short description of what the string would mean or represent in English.
2. Language of label (ISO 639-1). The applicant will specify the language of the applied-for gTLD string, both according to the ISO codes for the representation of names of languages, and in English.
3. Script of label (ISO 15924). The applicant will specify the script of the applied-for gTLD string, both according to the ISO codes for the representation of names of scripts, and in English.
4. Unicode code points. The applicant will list all the code points contained in the U-label according to its Unicode form.
5. Applicants must further demonstrate that they have made reasonable efforts to ensure that the encoded IDN string does not cause any rendering or operational problems. For example, problems have been identified in strings with characters of mixed right-to-left and left-to-right directionality when numerals are adjacent to the path separator (i.e., the dot).⁷

If an applicant is applying for a string with known issues, it should document steps that will be taken to mitigate these issues in applications. While it is not possible to ensure that all rendering problems are avoided, it is important that as many as possible are identified early and that the potential registry operator is aware of these issues. Applicants can become familiar with these issues by understanding the IDNA protocol (see <http://www.icann.org/en/topics/idn/rfcs.htm>), and by active participation in the IDN wiki (see <http://idn.icann.org/>) where some rendering problems are demonstrated.

6. **[Optional]** - Representation of label in phonetic alphabet. The applicant may choose to provide its applied-for gTLD string notated according to the International Phonetic Alphabet (<http://www.langsci.ucl.ac.uk/ipa/>). Note that this information will not be evaluated or scored. The information, if provided, will be used as a guide to ICANN in responding to inquiries or speaking of the application in public presentations.

⁷ See examples at <http://stupid.domain.name/node/683>

1.3.2 IDN Tables

An IDN table provides the list of characters eligible for registration in domain names according to the registry's policy. It identifies any multiple characters that are considered equivalent for domain name registration purposes ("variant characters"). Variant characters occur where two or more characters can be used interchangeably.

Examples of IDN tables can be found in the Internet Assigned Numbers Authority (IANA) IDN Repository at <http://www.iana.org/procedures/idn-repository.html>.

In the case of an application for an IDN gTLD, IDN tables must be submitted for the language or script for the applied-for gTLD string (the "top level tables"). IDN tables must also be submitted for each language or script in which the applicant intends to offer IDN registrations at the second or lower levels.

Each applicant is responsible for developing its IDN Tables, including specification of any variant characters. Tables must comply with ICANN's IDN Guidelines⁸ and any updates thereto, including:

- Complying with IDN technical standards.
- Employing an inclusion-based approach (i.e., code points not explicitly permitted by the registry are prohibited).
- Defining variant characters.
- Excluding code points not permissible under the guidelines, e.g., line-drawing symbols, pictographic dingbats, structural punctuation marks.
- Developing tables and registration policies in collaboration with relevant stakeholders to address common issues.
- Depositing IDN tables with the IANA Repository for IDN Practices (once the TLD is delegated).

An applicant's IDN tables should help guard against user confusion in the deployment of IDN gTLDs. Applicants are strongly urged to consider specific linguistic and writing system issues that may cause problems when characters are used in domain names, as part of their work of defining variant characters.

⁸ See <http://www.icann.org/en/topics/idn/implementation-guidelines.htm>

To avoid user confusion due to differing practices across TLD registries, it is recommended that applicants cooperate with TLD operators that offer domain name registration with the same or visually similar characters.

As an example, languages or scripts are often shared across geographic boundaries. In some cases, this can cause confusion among the users of the corresponding language or script communities. Visual confusion can also exist in some instances between different scripts (for example, Greek, Cyrillic and Latin).

Applicants will be asked to describe the process used in developing the IDN tables submitted. ICANN may compare an applicant's IDN table with IDN tables for the same languages or scripts that already exist in the IANA repository or have been otherwise submitted to ICANN. If there are inconsistencies that have not been explained in the application, ICANN may ask the applicant to detail the rationale for differences. For applicants that wish to conduct and review such comparisons prior to submitting a table to ICANN, a table comparison tool will be available.

ICANN will accept the applicant's IDN tables based on the factors above.

Once the applied-for string has been delegated as a TLD in the root zone, the applicant is required to submit IDN tables for lodging in the IANA Repository of IDN Practices. For additional information, see existing tables at <http://iana.org/domains/idn-tables/>, and submission guidelines at <http://iana.org/procedures/idn-repository.html>.

1.3.3 IDN Variant TLDs

A variant TLD string results from the substitution of one or more characters in the applied-for gTLD string with variant characters based on the applicant's top level tables.

Each application contains one applied-for gTLD string. The applicant may also declare any variant strings for the TLD in its application. However, no variant gTLD strings will be delegated through the New gTLD Program until variant management solutions are developed and implemented.⁹ Declaring variant strings is informative only and will not imply any right or claim to the declared variant strings.

⁹ The ICANN Board directed that work be pursued on variant management in its resolution on 25 Sep 2010, <http://www.icann.org/en/minutes/resolutions-25sep10-en.htm#2.5>.

When a variant delegation process is established, applicants may be required to submit additional information such as implementation details for the variant TLD management mechanism, and may need to participate in a subsequent evaluation process, which could contain additional fees and review steps.

The following scenarios are possible during the gTLD evaluation process:

- a. Applicant declares variant strings to the applied-for gTLD string in its application. If the application is successful, the applied-for gTLD string will be delegated to the applicant. The declared variant strings are noted for future reference. These declared variant strings will not be delegated to the applicant along with the applied-for gTLD string, nor will the applicant have any right or claim to the declared variant strings.

Variant strings listed in successful gTLD applications will be tagged to the specific application and added to a "Declared Variants List" that will be available on ICANN's website. A list of pending (i.e., declared) variant strings from the IDN ccTLD Fast Track is available at <http://icann.org/en/topics/idn/fast-track/string-evaluation-completion-en.htm>.

ICANN may perform independent analysis on the declared variant strings, and will not necessarily include all strings listed by the applicant on the Declared Variants List.

- b. Multiple applicants apply for strings that are identified by ICANN as variants of one another. These applications will be placed in a contention set and will follow the contention resolution procedures in Module 4.
- c. Applicant submits an application for a gTLD string and does not indicate variants to the applied-for gTLD string. ICANN will not identify variant strings unless scenario (b) above occurs.

Each variant string declared in the application must also conform to the string requirements in section 2.2.1.3.2.

Variant strings declared in the application will be reviewed for consistency with the top-level tables submitted in the application. Should any declared variant strings not be

based on use of variant characters according to the submitted top-level tables, the applicant will be notified and the declared string will no longer be considered part of the application.

Declaration of variant strings in an application does not provide the applicant any right or reservation to a particular string. Variant strings on the Declared Variants List may be subject to subsequent additional review per a process and criteria to be defined.

It should be noted that while variants for second and lower-level registrations are defined freely by the local communities without any ICANN validation, there may be specific rules and validation criteria specified for variant strings to be allowed at the top level. It is expected that the variant information provided by applicants in the first application round will contribute to a better understanding of the issues and assist in determining appropriate review steps and fee levels going forward.

1.4 Submitting an Application

Applicants may complete the application form and submit supporting documents using ICANN's TLD Application System (TAS). To access the system, each applicant must first register as a TAS user.

As TAS users, applicants will be able to provide responses in open text boxes and submit required supporting documents as attachments. Restrictions on the size of attachments as well as the file formats are included in the instructions on the TAS site.

Except where expressly provided within the question, all application materials must be submitted in English.

ICANN will not accept application forms or supporting materials submitted through other means than TAS (that is, hard copy, fax, email), unless such submission is in accordance with specific instructions from ICANN to applicants.

1.4.1 Accessing the TLD Application System

The TAS site will be accessible from the New gTLD webpage (<http://www.icann.org/en/topics/new-gtld-program.htm>), and will be highlighted in communications regarding the opening of the application submission period. Users of TAS will be expected to agree to a standard set of terms of use

including user rights, obligations, and restrictions in relation to the use of the system.

1.4.1.1 User Registration

TAS user registration (creating a TAS user profile) requires submission of preliminary information, which will be used to validate the identity of the parties involved in the application. An overview of the information collected in the user registration process is below:

No.	Questions
1	Full legal name of Applicant
2	Principal business address
3	Phone number of Applicant
4	Fax number of Applicant
5	Website or URL, if applicable
6	Primary Contact: Name, Title, Address, Phone, Fax, Email
7	Secondary Contact: Name, Title, Address, Phone, Fax, Email
8	Proof of legal establishment
9	Trading, subsidiary, or joint venture information
10	Business ID, Tax ID, VAT registration number, or equivalent of Applicant
11	Applicant background: previous convictions, cybersquatting activities
12	Deposit payment confirmation and payer information

A subset of identifying information will be collected from the entity performing the user registration, in addition to the applicant information listed above. The registered user could be, for example, an agent, representative, or

employee who would be completing the application on behalf of the applicant.

The registration process will require the user to request the desired number of application slots. For example, a user intending to submit five gTLD applications would complete five application slot requests, and the system would assign the user a unique ID number for each of the five applications.

Users will also be required to submit a deposit of USD 5,000 per application slot. This deposit amount will be credited against the evaluation fee for each application. The deposit requirement is in place to help reduce the risk of frivolous access to the online application system.

After completing the registration, TAS users will receive access enabling them to enter the rest of the application information into the system. Application slots will be populated with the registration information provided by the applicant, which may not ordinarily be changed once slots have been assigned.

No new user registrations will be accepted after **23:59 UTC 29 March 2012**.

ICANN will take commercially reasonable steps to protect all applicant data submitted from unauthorized access, but cannot warrant against the malicious acts of third parties who may, through system corruption or other means, gain unauthorized access to such data.

1.4.1.2 Application Form

Having obtained the requested application slots, the applicant will complete the remaining application questions. An overview of the areas and questions contained in the form is shown here:

No.	Application and String Information
12	Payment confirmation for remaining evaluation fee amount
13	Applied-for gTLD string
14	IDN string information, if applicable
15	IDN tables, if applicable

16	Mitigation of IDN operational or rendering problems, if applicable
17	Representation of string in International Phonetic Alphabet (Optional)
18	Mission/purpose of the TLD
19	Is the application for a community-based TLD?
20	If community based, describe elements of community and proposed policies
21	Is the application for a geographic name? If geographic, documents of support required
22	Measures for protection of geographic names at second level
23	Registry Services: name and full description of all registry services to be provided
	Technical and Operational Questions (External)
24	Shared registration system (SRS) performance
25	EPP
26	Whois
27	Registration life cycle
28	Abuse prevention & mitigation
29	Rights protection mechanisms
30(a)	Security
	Technical and Operational Questions (Internal)
30(b)	Security
31	Technical overview of proposed registry
32	Architecture

33	Database capabilities
34	Geographic diversity
35	DNS service compliance
36	IPv6 reachability
37	Data backup policies and procedures
38	Escrow
39	Registry continuity
40	Registry transition
41	Failover testing
42	Monitoring and fault escalation processes
43	DNSSEC
44	IDNs (Optional)
	Financial Questions
45	Financial statements
46	Projections template: costs and funding
47	Costs: setup and operating
48	Funding and revenue
49	Contingency planning: barriers, funds, volumes
50	Continuity: continued operations instrument

1.4.2 Customer Service during the Application Process

Assistance will be available to applicants throughout the application process via the Applicant Service Center (ASC). The ASC will be staffed with customer service agents

to answer questions relating to the New gTLD Program, the application process, and TAS.

1.4.3 Backup Application Process

If the online application system is not available, ICANN will provide alternative instructions for submitting applications.

1.5 Fees and Payments

This section describes the fees to be paid by the applicant. Payment instructions are also included here.

1.5.1 gTLD Evaluation Fee

The gTLD evaluation fee is required from all applicants. This fee is in the amount of USD 185,000. The evaluation fee is payable in the form of a 5,000 deposit submitted at the time the user requests an application slot within TAS, and a payment of the remaining 180,000 submitted with the full application. ICANN will not begin its evaluation of an application unless it has received the full gTLD evaluation fee by **23:59 UTC 12 April 2012**.

The gTLD evaluation fee is set to recover costs associated with the new gTLD program. The fee is set to ensure that the program is fully funded and revenue neutral and is not subsidized by existing contributions from ICANN funding sources, including generic TLD registries and registrars, ccTLD contributions and RIR contributions.

The gTLD evaluation fee covers all required reviews in Initial Evaluation and, in most cases, any required reviews in Extended Evaluation. If an extended Registry Services review takes place, an additional fee will be incurred for this review (see section 1.5.2). There is no additional fee to the applicant for Extended Evaluation for geographic names, technical and operational, or financial reviews.

Refunds -- In certain cases, refunds of a portion of the evaluation fee may be available for applications that are withdrawn before the evaluation process is complete. An applicant may request a refund at any time until it has executed a registry agreement with ICANN. The amount of the refund will depend on the point in the process at which the withdrawal is requested, as follows:

Refund Available to Applicant	Percentage of Evaluation Fee	Amount of Refund
Within 21 calendar days of a GAC Early	80%	USD 148,000

Refund Available to Applicant	Percentage of Evaluation Fee	Amount of Refund
Warning		
After posting of applications until posting of Initial Evaluation results	70%	USD 130,000
After posting Initial Evaluation results	35%	USD 65,000
After the applicant has completed Dispute Resolution, Extended Evaluation, or String Contention Resolution(s)	20%	USD 37,000
After the applicant has entered into a registry agreement with ICANN		None

Thus, any applicant that has not been successful is eligible for at least a 20% refund of the evaluation fee if it withdraws its application.

An applicant that wishes to withdraw an application must initiate the process through TAS. Withdrawal of an application is final and irrevocable. Refunds will only be issued to the organization that submitted the original payment. All refunds are paid by wire transfer. Any bank transfer or transaction fees incurred by ICANN, or any unpaid evaluation fees, will be deducted from the amount paid. Any refund paid will be in full satisfaction of ICANN's obligations to the applicant. The applicant will have no entitlement to any additional amounts, including for interest or currency exchange rate changes.

Note on 2000 proof-of-concept round applicants -- Participants in ICANN's proof-of-concept application process in 2000 may be eligible for a credit toward the evaluation fee. The credit is in the amount of USD 86,000 and is subject to:

- submission of documentary proof by the applicant that it is the same entity, a successor in interest to the same entity, or an affiliate of the same entity that applied previously;
- a confirmation that the applicant was not awarded any TLD string pursuant to the 2000 proof-of-concept application round and that the applicant has no legal claims arising from the 2000 proof-of-concept process; and
- submission of an application, which may be modified from the application originally submitted in 2000, for the same TLD string that such entity applied for in the 2000 proof-of-concept application round.

Each participant in the 2000 proof-of-concept application process is eligible for at most one credit. A maximum of one credit may be claimed for any new gTLD application submitted according to the process in this guidebook. Eligibility for this credit is determined by ICANN.

1.5.2 Fees Required in Some Cases

Applicants may be required to pay additional fees in certain cases where specialized process steps are applicable. Those possible additional fees¹⁰ include:

- **Registry Services Review Fee** – If applicable, this fee is payable for additional costs incurred in referring an application to the Registry Services Technical Evaluation Panel (RSTEP) for an extended review. Applicants will be notified if such a fee is due. The fee for a three-member RSTEP review team is anticipated to be USD 50,000. In some cases, five-member panels might be required, or there might be increased scrutiny at a greater cost. The amount of the fee will cover the cost of the RSTEP review. In the event that reviews of proposed registry services can be consolidated across multiple applications or applicants, ICANN will apportion the fees in an equitable manner. In every case, the applicant will be advised of the cost before initiation of the review. Refer to subsection 2.2.3 of Module 2 on Registry Services review.

¹⁰ The estimated fee amounts provided in this section 1.5.2 will be updated upon engagement of panel service providers and establishment of fees.

- **Dispute Resolution Filing Fee** – This amount must accompany any filing of a formal objection and any response that an applicant files to an objection. This fee is payable directly to the applicable dispute resolution service provider in accordance with the provider’s payment instructions. ICANN estimates that filing fees could range from approximately USD 1,000 to USD 5,000 (or more) per party per proceeding. Refer to the appropriate provider for the relevant amount. Refer to Module 3 for dispute resolution procedures.
- **Advance Payment of Costs** – In the event of a formal objection, this amount is payable directly to the applicable dispute resolution service provider in accordance with that provider’s procedures and schedule of costs. Ordinarily, both parties in the dispute resolution proceeding will be required to submit an advance payment of costs in an estimated amount to cover the entire cost of the proceeding. This may be either an hourly fee based on the estimated number of hours the panelists will spend on the case (including review of submissions, facilitation of a hearing, if allowed, and preparation of a decision), or a fixed amount. In cases where disputes are consolidated and there are more than two parties involved, the advance payment will occur according to the dispute resolution service provider’s rules.

The prevailing party in a dispute resolution proceeding will have its advance payment refunded, while the non-prevailing party will not receive a refund and thus will bear the cost of the proceeding. In cases where disputes are consolidated and there are more than two parties involved, the refund of fees will occur according to the dispute resolution service provider’s rules.

ICANN estimates that adjudication fees for a proceeding involving a fixed amount could range from USD 2,000 to USD 8,000 (or more) per proceeding. ICANN further estimates that an hourly rate based proceeding with a one-member panel could range from USD 32,000 to USD 56,000 (or more) and with a three-member panel it could range from USD 70,000 to USD 122,000 (or more). These estimates may be lower if the panel does not call for written submissions beyond the objection and response, and does not allow a hearing. Please

refer to the appropriate provider for the relevant amounts or fee structures.

- **Community Priority Evaluation Fee** – In the event that the applicant participates in a community priority evaluation, this fee is payable as a deposit in an amount to cover the cost of the panel's review of that application (currently estimated at USD 10,000). The deposit is payable to the provider appointed to handle community priority evaluations. Applicants will be notified if such a fee is due. Refer to Section 4.2 of Module 4 for circumstances in which a community priority evaluation may take place. An applicant who scores at or above the threshold for the community priority evaluation will have its deposit refunded.

ICANN will notify the applicants of due dates for payment in respect of additional fees (if applicable). This list does not include fees (annual registry fees) that will be payable to ICANN following execution of a registry agreement.

1.5.3 Payment Methods

Payments to ICANN should be submitted by **wire transfer**. Instructions for making a payment by wire transfer will be available in TAS.¹¹

Payments to Dispute Resolution Service Providers should be submitted in accordance with the provider's instructions.

1.5.4 Requesting a Remittance Form

The TAS interface allows applicants to request issuance of a remittance form for any of the fees payable to ICANN. This service is for the convenience of applicants that require an invoice to process payments.

1.6 Questions about this Applicant Guidebook

For assistance and questions an applicant may have in the process of completing the application form, applicants should use the customer support resources available via the ASC. Applicants who are unsure of the information being sought in a question or the parameters for acceptable documentation are encouraged to communicate these questions through the appropriate

¹¹ Wire transfer is the preferred method of payment as it offers a globally accessible and dependable means for international transfer of funds. This enables ICANN to receive the fee and begin processing applications as quickly as possible.

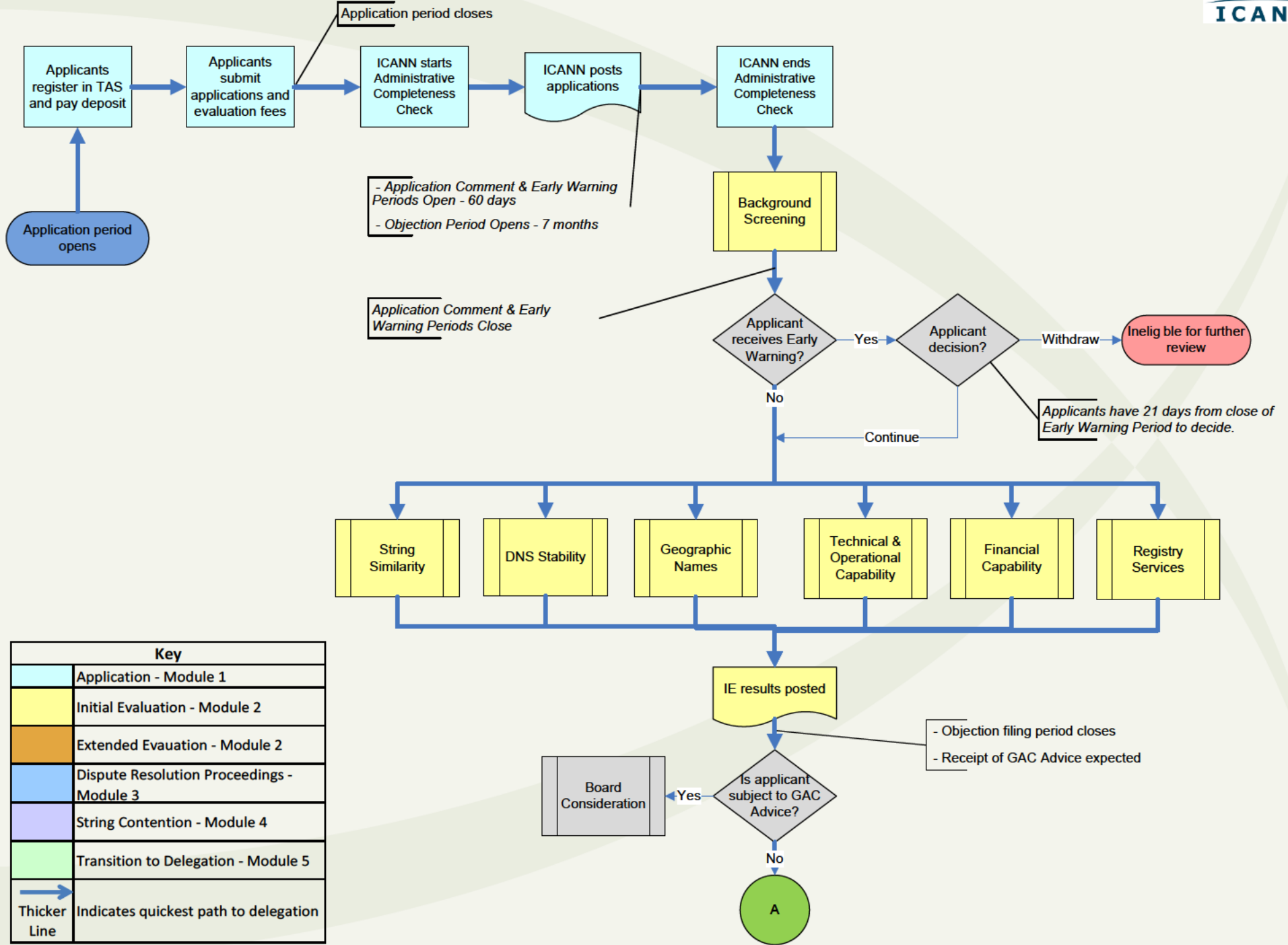
support channels before the application is submitted. This helps avoid the need for exchanges with evaluators to clarify information, which extends the timeframe associated with processing the application.

Currently, questions may be submitted via <newgtld@icann.org>. To provide all applicants equitable access to information, ICANN will make all questions and answers publicly available.

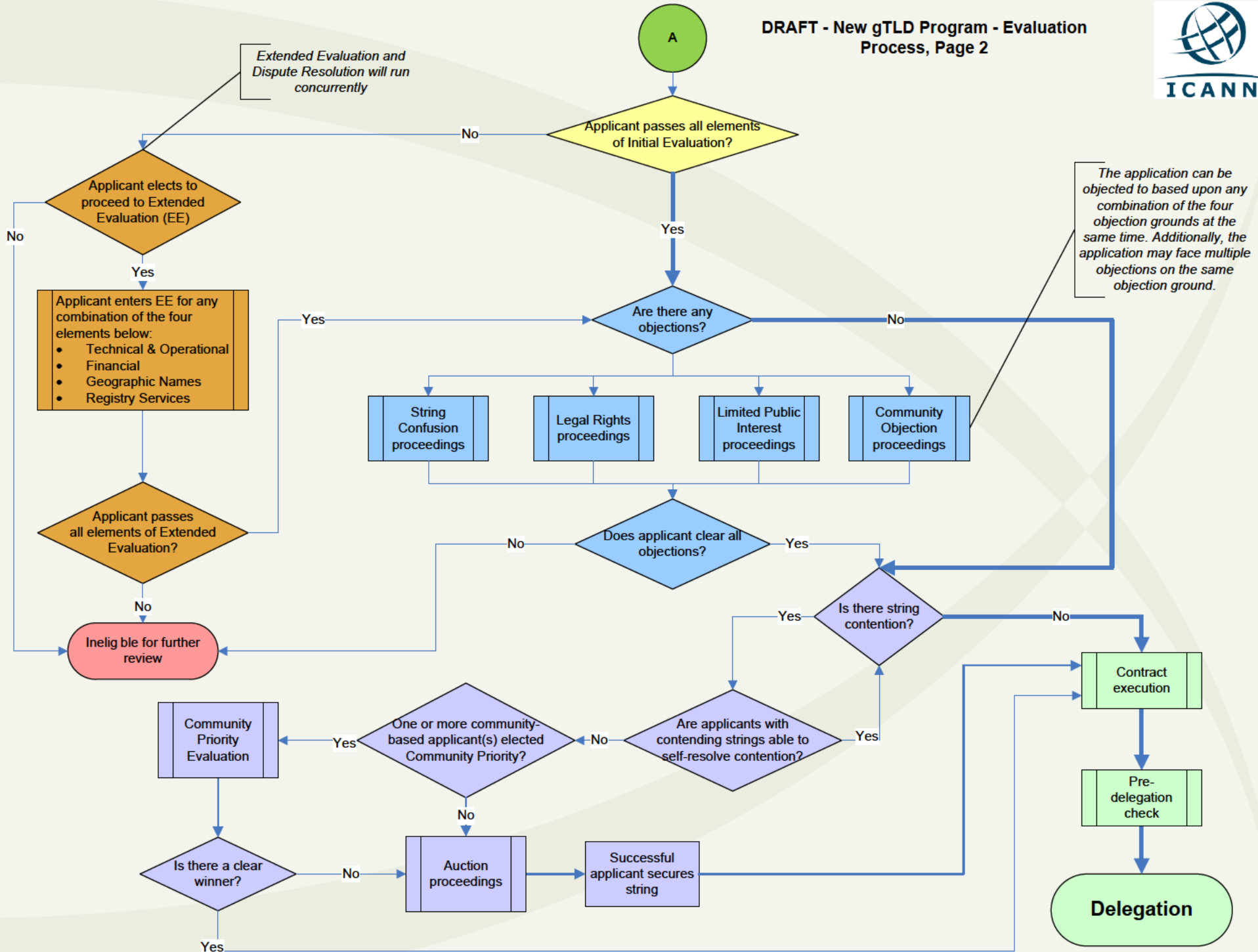
All requests to ICANN for information about the process or issues surrounding preparation of an application must be submitted to the ASC. ICANN will not grant requests from applicants for personal or telephone consultations regarding the preparation of an application. Applicants that contact ICANN for clarification about aspects of the application will be referred to the ASC.

Answers to inquiries will only provide clarification about the application forms and procedures. ICANN will not provide consulting, financial, or legal advice.

DRAFT - New gTLD Program - Evaluation Process



Key	
	Application - Module 1
	Initial Evaluation - Module 2
	Extended Evaluation - Module 2
	Dispute Resolution Proceedings - Module 3
	String Contention - Module 4
	Transition to Delegation - Module 5
	Indicates quickest path to delegation
	Thicker Line





gTLD Applicant Guidebook

(v. 2012-06-04)

Module 2

4 June 2012

Module 2

Evaluation Procedures

This module describes the evaluation procedures and criteria used to determine whether applied-for gTLDs are approved for delegation. All applicants will undergo an Initial Evaluation and those that do not pass all elements may request Extended Evaluation.

The first, required evaluation is the **Initial Evaluation**, during which ICANN assesses an applied-for gTLD string, an applicant's qualifications, and its proposed registry services.

The following assessments are performed in the **Initial Evaluation**:

- String Reviews
 - String similarity
 - Reserved names
 - DNS stability
 - Geographic names
- Applicant Reviews
 - Demonstration of technical and operational capability
 - Demonstration of financial capability
 - Registry services reviews for DNS stability issues

An application must pass all these reviews to pass the Initial Evaluation. Failure to pass any one of these reviews will result in a failure to pass the Initial Evaluation.

Extended Evaluation may be applicable in cases in which an applicant does not pass the Initial Evaluation. See Section 2.3 below.

2.1 Background Screening

Background screening will be conducted in two areas:

- (a) General business diligence and criminal history; and
- (b) History of cybersquatting behavior.

The application must pass both background screening areas to be eligible to proceed. Background screening results are evaluated according to the criteria described in section 1.2.1. Due to the potential sensitive nature of the material, applicant background screening reports will not be published.

The following sections describe the process ICANN will use to perform background screening.

2.1.1 General business diligence and criminal history

Applying entities that are publicly traded corporations listed and in good standing on any of the world's largest 25 stock exchanges (as listed by the World Federation of Exchanges) will be deemed to have passed the general business diligence and criminal history screening. The largest 25 will be based on the domestic market capitalization reported at the end of the most recent calendar year prior to launching each round.¹

Before an entity is listed on an exchange, it must undergo significant due diligence including an investigation by the exchange, regulators, and investment banks. As a publicly listed corporation, an entity is subject to ongoing scrutiny from shareholders, analysts, regulators, and exchanges. All exchanges require monitoring and disclosure of material information about directors, officers, and other key personnel, including criminal behavior. In totality, these requirements meet or exceed the screening ICANN will perform.

For applicants not listed on one of these exchanges, ICANN will submit identifying information for the entity, officers, directors, and major shareholders to an international background screening service. The service provider(s) will use the criteria listed in section 1.2.1 and return results that match these criteria. Only publicly available information will be used in this inquiry.

ICANN is in discussions with INTERPOL to identify ways in which both organizations can collaborate in background screenings of individuals, entities and their identity documents consistent with both organizations' rules and regulations. Note that the applicant is expected to disclose potential problems in meeting the criteria in the application, and provide any clarification or explanation at the time of application submission. Results returned from

¹ See <http://www.world-exchanges.org/statistics/annual/2010/equity-markets/domestic-market-capitalization>

the background screening process will be matched with the disclosures provided by the applicant and those cases will be followed up to resolve issues of discrepancies or potential false positives.

If no hits are returned, the application will generally pass this portion of the background screening.

2.1.2 History of cybersquatting

ICANN will screen applicants against UDRP cases and legal databases as financially feasible for data that may indicate a pattern of cybersquatting behavior pursuant to the criteria listed in section 1.2.1.

The applicant is required to make specific declarations regarding these activities in the application. Results returned during the screening process will be matched with the disclosures provided by the applicant and those instances will be followed up to resolve issues of discrepancies or potential false positives.

If no hits are returned, the application will generally pass this portion of the background screening.

2.2 Initial Evaluation

The Initial Evaluation consists of two types of review. Each type is composed of several elements.

String review: The first review focuses on the applied-for gTLD string to test:

- Whether the applied-for gTLD string is so similar to other strings that it would create a probability of user confusion;
- Whether the applied-for gTLD string might adversely affect DNS security or stability; and
- Whether evidence of requisite government approval is provided in the case of certain geographic names.

Applicant review: The second review focuses on the applicant to test:

- Whether the applicant has the requisite technical, operational, and financial capability to operate a registry; and
- Whether the registry services offered by the applicant might adversely affect DNS security or stability.

2.2.1 String Reviews

In the Initial Evaluation, ICANN reviews every applied-for gTLD string. Those reviews are described in greater detail in the following subsections.

2.2.1.1 String Similarity Review

This review involves a preliminary comparison of each applied-for gTLD string against existing TLDs, Reserved Names (see subsection 2.2.1.2), and other applied-for strings. The objective of this review is to prevent user confusion and loss of confidence in the DNS resulting from delegation of many similar strings.

Note: In this Applicant Guidebook, “similar” means strings so similar that they create a probability of user confusion if more than one of the strings is delegated into the root zone.

The visual similarity check that occurs during Initial Evaluation is intended to augment the objection and dispute resolution process (see Module 3, Dispute Resolution Procedures) that addresses all types of similarity.

This similarity review will be conducted by an independent String Similarity Panel.

2.2.1.1.1 Reviews Performed

The String Similarity Panel’s task is to identify visual string similarities that would create a probability of user confusion.

The panel performs this task of assessing similarities that would lead to user confusion in four sets of circumstances, when comparing:

- Applied-for gTLD strings against existing TLDs and reserved names;
- Applied-for gTLD strings against other applied-for gTLD strings;
- Applied-for gTLD strings against strings requested as IDN ccTLDs; and
- Applied-for 2-character IDN gTLD strings against:
 - Every other single character.
 - Any other 2-character ASCII string (to protect possible future ccTLD delegations).

Similarity to Existing TLDs or Reserved Names – This review involves cross-checking between each applied-for string and the lists of existing TLD strings and Reserved Names to determine whether two strings are so similar to one another that they create a probability of user confusion.

In the simple case in which an applied-for gTLD string is identical to an existing TLD or reserved name, the online application system will not allow the application to be submitted.

Testing for identical strings also takes into consideration the code point variants listed in any relevant IDN table. For example, protocols treat equivalent labels as alternative forms of the same label, just as “foo” and “Foo” are treated as alternative forms of the same label (RFC 3490).

All TLDs currently in the root zone can be found at <http://iana.org/domains/root/db/>.

IDN tables that have been submitted to ICANN are available at <http://www.iana.org/domains/idn-tables/>.

Similarity to Other Applied-for gTLD Strings (String Contention Sets) – All applied-for gTLD strings will be reviewed against one another to identify any similar strings. In performing this review, the String Similarity Panel will create contention sets that may be used in later stages of evaluation.

A contention set contains at least two applied-for strings identical or similar to one another. Refer to Module 4, String Contention Procedures, for more information on contention sets and contention resolution.

ICANN will notify applicants who are part of a contention set as soon as the String Similarity review is completed. (This provides a longer period for contending applicants to reach their own resolution before reaching the contention resolution stage.) These contention sets will also be published on ICANN’s website.

Similarity to TLD strings requested as IDN ccTLDs -- Applied-for gTLD strings will also be reviewed for similarity to TLD strings requested in the IDN ccTLD Fast Track process (see <http://www.icann.org/en/topics/idn/fast-track/>). Should a conflict with a prospective fast-track IDN ccTLD be identified, ICANN will take the following approach to resolving the conflict.

If one of the applications has completed its respective process before the other is lodged, that TLD will be delegated. A gTLD application that has successfully completed all relevant evaluation stages, including dispute resolution and string contention, if applicable, and is eligible for entry into a registry agreement will be considered complete, and therefore would not be disqualified by a newly-filed IDN ccTLD request. Similarly, an IDN ccTLD request that has completed evaluation (i.e., is validated) will be considered complete and therefore would not be disqualified by a newly-filed gTLD application.

In the case where neither application has completed its respective process, where the gTLD application does not have the required approval from the relevant government or public authority, a validated request for an IDN ccTLD will prevail and the gTLD application will not be approved. The term “validated” is defined in the IDN ccTLD Fast Track Process Implementation, which can be found at <http://www.icann.org/en/topics/idn>.

In the case where a gTLD applicant has obtained the support or non-objection of the relevant government or public authority, but is eliminated due to contention with a string requested in the IDN ccTLD Fast Track process, a full refund of the evaluation fee is available to the applicant if the gTLD application was submitted prior to the publication of the ccTLD request.

Review of 2-character IDN strings — In addition to the above reviews, an applied-for gTLD string that is a 2-character IDN string is reviewed by the String Similarity Panel for visual similarity to:

- a) Any one-character label (in any script), and
- b) Any possible two-character ASCII combination.

An applied-for gTLD string that is found to be too similar to a) or b) above will not pass this review.

2.2.1.1.2 Review Methodology

The String Similarity Panel is informed in part by an algorithmic score for the visual similarity between each applied-for string and each of other existing and applied-for TLDs and reserved names. The score will provide one objective measure for consideration by the panel, as part of the process of identifying strings likely to result in user confusion. In general, applicants should expect that a higher visual similarity score suggests a higher probability

that the application will not pass the String Similarity review. However, it should be noted that the score is only indicative and that the final determination of similarity is entirely up to the Panel's judgment.

The algorithm, user guidelines, and additional background information are available to applicants for testing and informational purposes.² Applicants will have the ability to test their strings and obtain algorithmic results through the application system prior to submission of an application.

The algorithm supports the common characters in Arabic, Chinese, Cyrillic, Devanagari, Greek, Japanese, Korean, and Latin scripts. It can also compare strings in different scripts to each other.

The panel will also take into account variant characters, as defined in any relevant language table, in its determinations. For example, strings that are not visually similar but are determined to be variant TLD strings based on an IDN table would be placed in a contention set. Variant TLD strings that are listed as part of the application will also be subject to the string similarity analysis.³

The panel will examine all the algorithm data and perform its own review of similarities between strings and whether they rise to the level of string confusion. In cases of strings in scripts not yet supported by the algorithm, the panel's assessment process is entirely manual.

The panel will use a common standard to test for whether string confusion exists, as follows:

Standard for String Confusion – String confusion exists where a string so nearly resembles another visually that it is likely to deceive or cause confusion. For the likelihood of confusion to exist, it must be probable, not merely possible that confusion will arise in the mind of the average, reasonable Internet user. Mere association, in the sense that the string brings another string to mind, is insufficient to find a likelihood of confusion.

2.2.1.1.3 Outcomes of the String Similarity Review

An application that fails the String Similarity review due to similarity to an existing TLD will not pass the Initial Evaluation,

² See <http://icann.sword-group.com/algorithm/>

³ In the case where an applicant has listed Declared Variants in its application (see subsection 1.3.3), the panel will perform an analysis of the listed strings to confirm that the strings are variants according to the applicant's IDN table. This analysis may include comparison of applicant IDN tables with other existing tables for the same language or script, and forwarding any questions to the applicant.

and no further reviews will be available. Where an application does not pass the String Similarity review, the applicant will be notified as soon as the review is completed.

An application for a string that is found too similar to another applied-for gTLD string will be placed in a contention set.

An application that passes the String Similarity review is still subject to objection by an existing TLD operator or by another gTLD applicant in the current application round. That process requires that a string confusion objection be filed by an objector having the standing to make such an objection. Such category of objection is not limited to visual similarity. Rather, confusion based on any type of similarity (including visual, aural, or similarity of meaning) may be claimed by an objector. Refer to Module 3, Dispute Resolution Procedures, for more information about the objection process.

An applicant may file a formal objection against another gTLD application on string confusion grounds. Such an objection may, if successful, change the configuration of the preliminary contention sets in that the two applied-for gTLD strings will be considered in direct contention with one another (see Module 4, String Contention Procedures). The objection process will not result in removal of an application from a contention set.

2.2.1.2 *Reserved Names and Other Unavailable Strings*

Certain names are not available as gTLD strings, as detailed in this section.

2.2.1.2.1 *Reserved Names*

All applied-for gTLD strings are compared with the list of top-level Reserved Names to ensure that the applied-for gTLD string does not appear on that list.

Top-Level Reserved Names List

<i>AFRINIC</i>	<i>IANA-SERVERS</i>	<i>NRO</i>
<i>ALAC</i>	<i>ICANN</i>	<i>RFC-EDITOR</i>
<i>APNIC</i>	<i>IESG</i>	<i>RIPE</i>
<i>ARIN</i>	<i>IETF</i>	<i>ROOT-SERVERS</i>
<i>ASO</i>	<i>INTERNIC</i>	<i>RSSAC</i>
<i>CCNSO</i>	<i>INVALID</i>	<i>SSAC</i>
<i>EXAMPLE*</i>	<i>IRTF</i>	<i>TEST*</i>
<i>GAC</i>	<i>ISTF</i>	<i>TLD</i>

<i>GNSO</i>	<i>LACNIC</i>	<i>WHOIS</i>
<i>GTLD-SERVERS</i>	<i>LOCAL</i>	<i>WWW</i>
<i>IAB</i>	<i>LOCALHOST</i>	
<i>IANA</i>	<i>NIC</i>	
*Note that in addition to the above strings, ICANN will reserve translations of the terms "test" and "example" in multiple languages. The remainder of the strings are reserved only in the form included above.		

If an applicant enters a Reserved Name as its applied-for gTLD string, the application system will recognize the Reserved Name and will not allow the application to be submitted.

In addition, applied-for gTLD strings are reviewed during the String Similarity review to determine whether they are similar to a Reserved Name. An application for a gTLD string that is identified as too similar to a Reserved Name will not pass this review.

2.2.1.2.2 *Declared Variants*

Names appearing on the Declared Variants List (see section 1.3.3) will be posted on ICANN's website and will be treated essentially the same as Reserved Names, until such time as variant management solutions are developed and variant TLDs are delegated. That is, an application for a gTLD string that is identical or similar to a string on the Declared Variants List will not pass this review.

2.2.1.2.3 *Strings Ineligible for Delegation*

The following names are prohibited from delegation as gTLDs in the initial application round. Future application rounds may differ according to consideration of further policy advice.

These names are not being placed on the Top-Level Reserved Names List, and thus are not part of the string similarity review conducted for names on that list. Refer to subsection 2.2.1.1: where applied-for gTLD strings are reviewed for similarity to existing TLDs and reserved names, the strings listed in this section are not reserved names and accordingly are not incorporated into this review.

Applications for names appearing on the list included in this section will not be approved.

International Olympic Committee		
OLYMPIC	OLYMPIAD	OLYMPIQUE
OLYMPIADE	OLYMPISCH	OLÍMPICO
OLIMPÍADA	أولمبي	أولمبياد
奧林匹克	奧林匹亞	奧林匹克
奧林匹亞	Ολυμπιακοί	Ολυμπιάδα
올림픽	올림픽아드	Олимпийский
Олимпиада		
International Red Cross and Red Crescent Movement		
REDCROSS	REDCRESCENT	REDCRYSTAL
REDLIONANDSUN	MAGENDDAVIDADOM	REDSTAROFDAVID
CROIXROUGE	CROIX-ROUGE	CROISSANTROUGE
CROISSANT-ROUGE	CRISTALROUGE	CRISTAL-ROUGE
מגן דוד אדום	CRUZROJA	MEDIALUNAROJA
CRISTALROJO	Красный Крест	Красный Полумесяц
Красный Кристалл	رمح ألابي لصل	لاله ارمح ألابي
ءارمحل اقرولبل	الكريستلة الحمراء	紅十字
紅十字	紅新月	紅新月
紅水晶	紅水晶	

2.2.1.3 DNS Stability Review

This review determines whether an applied-for gTLD string might cause instability to the DNS. In all cases, this will involve a review for conformance with technical and other requirements for gTLD strings (labels). In some exceptional cases, an extended review may be necessary to investigate possible technical stability problems with the applied-for gTLD string.

Note: All applicants should recognize issues surrounding invalid TLD queries at the root level of the DNS.

Any new TLD registry operator may experience unanticipated queries, and some TLDs may experience a non-trivial load of unanticipated queries. For more information, see the Security and Stability Advisory Committee (SSAC)'s report on this topic at <http://www.icann.org/en/committees/security/sac045.pdf>. Some publicly available statistics are also available at <http://stats.l.root-servers.org/>.

ICANN will take steps to alert applicants of the issues raised in SAC045, and encourage the applicant to prepare to minimize the possibility of operational difficulties that would pose a stability or availability problem for its registrants and users. However, this notice is merely an advisory to applicants and is not part of the evaluation, unless the string raises significant security or stability issues as described in the following section.

2.2.1.3.1 DNS Stability: String Review Procedure

New gTLD labels must not adversely affect the security or stability of the DNS. During the Initial Evaluation period, ICANN will conduct a preliminary review on the set of applied-for gTLD strings to:

- ensure that applied-for gTLD strings comply with the requirements provided in section 2.2.1.3.2, and
- determine whether any strings raise significant security or stability issues that may require further review.

There is a very low probability that extended analysis will be necessary for a string that fully complies with the string requirements in subsection 2.2.1.3.2 of this module. However, the string review process provides an additional safeguard if unanticipated security or stability issues arise concerning an applied-for gTLD string.

In such a case, the DNS Stability Panel will perform an extended review of the applied-for gTLD string during the Initial Evaluation period. The panel will determine whether the string fails to comply with relevant standards or creates a condition that adversely affects the throughput, response time, consistency, or coherence of responses to Internet servers or end systems, and will report on its findings.

If the panel determines that the string complies with relevant standards and does not create the conditions

described above, the application will pass the DNS Stability review.

If the panel determines that the string does not comply with relevant technical standards, or that it creates a condition that adversely affects the throughput, response time, consistency, or coherence of responses to Internet servers or end systems, the application will not pass the Initial Evaluation, and no further reviews are available. In the case where a string is determined likely to cause security or stability problems in the DNS, the applicant will be notified as soon as the DNS Stability review is completed.

2.2.1.3.2 *String Requirements*

ICANN will review each applied-for gTLD string to ensure that it complies with the requirements outlined in the following paragraphs.

If an applied-for gTLD string is found to violate any of these rules, the application will not pass the DNS Stability review. No further reviews are available.

Part I -- Technical Requirements for all Labels (Strings) – The technical requirements for top-level domain labels follow.

- 1.1 The ASCII label (i.e., the label as transmitted on the wire) must be valid as specified in technical standards *Domain Names: Implementation and Specification* (RFC 1035), and *Clarifications to the DNS Specification* (RFC 2181) and any updates thereto. This includes the following:
 - 1.1.1 The label must have no more than 63 characters.
 - 1.1.2 Upper and lower case characters are treated as identical.
- 1.2 The ASCII label must be a valid host name, as specified in the technical standards *DOD Internet Host Table Specification* (RFC 952), *Requirements for Internet Hosts — Application and Support* (RFC 1123), and *Application Techniques for Checking and Transformation of Names* (RFC 3696), *Internationalized Domain Names in Applications (IDNA)*(RFCs 5890-5894), and any updates thereto. This includes the following:
 - 1.2.1 The ASCII label must consist entirely of letters (alphabetic characters a-z), or

- 1.2.2 The label must be a valid IDNA A-label (further restricted as described in Part II below).

Part II -- Requirements for Internationalized Domain Names

– These requirements apply only to prospective top-level domains that contain non-ASCII characters. Applicants for these internationalized top-level domain labels are expected to be familiar with the Internet Engineering Task Force (IETF) IDNA standards, Unicode standards, and the terminology associated with Internationalized Domain Names.

- 2.1 The label must be an A-label as defined in IDNA, converted from (and convertible to) a U-label that is consistent with the definition in IDNA, and further restricted by the following, non-exhaustive, list of limitations:
 - 2.1.1 Must be a valid A-label according to IDNA.
 - 2.1.2 The derived property value of all codepoints used in the U-label, as defined by IDNA, must be PVALID or CONTEXT (accompanied by unambiguous contextual rules).⁴
 - 2.1.3 The general category of all codepoints, as defined by IDNA, must be one of (Li, Lo, Lm, Mn, Mc).
 - 2.1.4 The U-label must be fully compliant with Normalization Form C, as described in *Unicode Standard Annex #15: Unicode Normalization Forms*. See also examples in <http://unicode.org/faq/normalization.html>.
 - 2.1.5 The U-label must consist entirely of characters with the same directional property, or fulfill the requirements of the Bidi rule per RFC 5893.
- 2.2 The label must meet the relevant criteria of the ICANN *Guidelines for the Implementation of Internationalised Domain Names*. See <http://www.icann.org/en/topics/idn/implementation>

⁴ It is expected that conversion tools for IDNA will be available before the Application Submission period begins, and that labels will be checked for validity under IDNA. In this case, labels valid under the previous version of the protocol (IDNA2003) but not under IDNA will not meet this element of the requirements. Labels that are valid under both versions of the protocol will meet this element of the requirements. Labels valid under IDNA but not under IDNA2003 may meet the requirements; however, applicants are strongly advised to note that the duration of the transition period between the two protocols cannot presently be estimated nor guaranteed in any specific timeframe. The development of support for IDNA in the broader software applications environment will occur gradually. During that time, TLD labels that are valid under IDNA, but not under IDNA2003, will have limited functionality.

[n-guidelines.htm](#). This includes the following, non-exhaustive, list of limitations:

- 2.2.1 All code points in a single label must be taken from the same script as determined by the Unicode Standard Annex #24: Unicode Script Property (See <http://www.unicode.org/reports/tr24/>).
- 2.2.2 Exceptions to 2.2.1 are permissible for languages with established orthographies and conventions that require the commingled use of multiple scripts. However, even with this exception, visually confusable characters from different scripts will not be allowed to co-exist in a single set of permissible code points unless a corresponding policy and character table are clearly defined.

Part III - Policy Requirements for Generic Top-Level

Domains – These requirements apply to all prospective top-level domain strings applied for as gTLDs.

- 3.1 Applied-for gTLD strings in ASCII must be composed of three or more visually distinct characters. Two-character ASCII strings are not permitted, to avoid conflicting with current and future country codes based on the ISO 3166-1 standard.
- 3.2 Applied-for gTLD strings in IDN scripts must be composed of two or more visually distinct characters in the script, as appropriate.⁵ Note, however, that a two-character IDN string will not be approved if:
 - 3.2.1 It is visually similar to any one-character label (in any script); or
 - 3.2.2 It is visually similar to any possible two-character ASCII combination.

See the String Similarity review in subsection 2.2.1.1 for additional information on this requirement.

⁵ Note that the Joint ccNSO-GNSO IDN Working Group (JIG) has made recommendations that this section be revised to allow for single-character IDN gTLD labels. See the JIG Final Report at <http://gns0.icann.org/drafts/jig-final-report-30mar11-en.pdf>. Implementation models for these recommendations are being developed for community discussion.

2.2.1.4 Geographic Names Review

Applications for gTLD strings must ensure that appropriate consideration is given to the interests of governments or public authorities in geographic names. The requirements and procedure ICANN will follow in the evaluation process are described in the following paragraphs. Applicants should review these requirements even if they do not believe their intended gTLD string is a geographic name. All applied-for gTLD strings will be reviewed according to the requirements in this section, regardless of whether the application indicates it is for a geographic name.

2.2.1.4.1 Treatment of Country or Territory Names⁶

Applications for strings that are country or territory names will not be approved, as they are not available under the New gTLD Program in this application round. A string shall be considered to be a country or territory name if:

- i. it is an alpha-3 code listed in the ISO 3166-1 standard.
- ii. it is a long-form name listed in the ISO 3166-1 standard, or a translation of the long-form name in any language.
- iii. it is a short-form name listed in the ISO 3166-1 standard, or a translation of the short-form name in any language.
- iv. it is the short- or long-form name association with a code that has been designated as “exceptionally reserved” by the ISO 3166 Maintenance Agency.
- v. it is a separable component of a country name designated on the “Separable Country Names List,” or is a translation of a name appearing on the list, in any language. See the Annex at the end of this module.
- vi. it is a permutation or transposition of any of the names included in items (i) through (v). Permutations include removal of spaces, insertion of punctuation, and addition or

⁶ Country and territory names are excluded from the process based on advice from the Governmental Advisory Committee in recent communiqués providing interpretation of Principle 2.2 of the GAC Principles regarding New gTLDs to indicate that strings which are a meaningful representation or abbreviation of a country or territory name should be handled through the forthcoming ccPDP, and other geographic strings could be allowed in the gTLD space if in agreement with the relevant government or public authority.

removal of grammatical articles like “the.” A transposition is considered a change in the sequence of the long or short-form name, for example, “RepublicCzech” or “IslandsCayman.”

- vii. it is a name by which a country is commonly known, as demonstrated by evidence that the country is recognized by that name by an intergovernmental or treaty organization.

2.2.1.4.2 *Geographic Names Requiring Government Support*

The following types of applied-for strings are considered geographic names and must be accompanied by documentation of support or non-objection from the relevant governments or public authorities:

1. An application for any string that is a representation, in any language, of the capital city name of any country or territory listed in the ISO 3166-1 standard.
2. An application for a city name, where the applicant declares that it intends to use the gTLD for purposes associated with the city name.

City names present challenges because city names may also be generic terms or brand names, and in many cases city names are not unique. Unlike other types of geographic names, there are no established lists that can be used as objective references in the evaluation process. Thus, city names are not universally protected. However, the process does provide a means for cities and applicants to work together where desired.

An application for a city name will be subject to the geographic names requirements (i.e., will require documentation of support or non-objection from the relevant governments or public authorities) if:

- (a) It is clear from applicant statements within the application that the applicant will use the TLD primarily for purposes associated with the city name; and

- (b) The applied-for string is a city name as listed on official city documents.⁷
3. An application for any string that is an exact match of a *sub-national place name*, such as a county, province, or state, listed in the ISO 3166-2 standard.
 4. An application for a string listed as a UNESCO region⁸ or appearing on the “Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings” list.⁹

In the case of an application for a string appearing on either of the lists above, documentation of support will be required from at least 60% of the respective national governments in the region, and there may be no more than one written statement of objection to the application from relevant governments in the region and/or public authorities associated with the continent or the region.

Where the 60% rule is applied, and there are common regions on both lists, the regional composition contained in the “Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings” takes precedence.

An applied-for gTLD string that falls into any of 1 through 4 listed above is considered to represent a geographic name. In the event of any doubt, it is in the applicant’s interest to consult with relevant governments and public authorities and enlist their support or non-objection prior to submission of the application, in order to preclude possible objections and pre-address any ambiguities concerning the string and applicable requirements.

Strings that include but do not match a geographic name (as defined in this section) will not be considered geographic names as defined by section 2.2.1.4.2, and therefore will not require documentation of government support in the evaluation process.

⁷ City governments with concerns about strings that are duplicates, nicknames or close renderings of a city name should not rely on the evaluation process as the primary means of protecting their interests in a string. Rather, a government may elect to file a formal objection to an application that is opposed by the relevant community, or may submit its own application for the string.

⁸ See <http://www.unesco.org/new/en/unesco/worldwide/>.

⁹ See <http://unstats.un.org/unsd/methods/m49/m49regin.htm>.

For each application, the Geographic Names Panel will determine which governments are relevant based on the inputs of the applicant, governments, and its own research and analysis. In the event that there is more than one relevant government or public authority for the applied-for gTLD string, the applicant must provide documentation of support or non-objection from all the relevant governments or public authorities. It is anticipated that this may apply to the case of a sub-national place name.

It is the applicant's responsibility to:

- identify whether its applied-for gTLD string falls into any of the above categories; and
- identify and consult with the relevant governments or public authorities; and
- identify which level of government support is required.

Note: the level of government and which administrative agency is responsible for the filing of letters of support or non-objection is a matter for each national administration to determine. Applicants should consult within the relevant jurisdiction to determine the appropriate level of support.

The requirement to include documentation of support for certain applications does not preclude or exempt applications from being the subject of objections on community grounds (refer to subsection 3.1.1 of Module 3), under which applications may be rejected based on objections showing substantial opposition from the targeted community.

2.2.1.4.3 Documentation Requirements

The documentation of support or non-objection should include a signed letter from the relevant government or public authority. Understanding that this will differ across the respective jurisdictions, the letter could be signed by the minister with the portfolio responsible for domain name administration, ICT, foreign affairs, or the Office of the Prime Minister or President of the relevant jurisdiction; or a senior representative of the agency or department responsible for domain name administration, ICT, foreign affairs, or the Office of the Prime Minister. To assist the applicant in determining who the relevant government or public authority may be for a potential geographic name, the applicant may wish to consult with the relevant

Governmental Advisory Committee (GAC) representative.¹⁰

The letter must clearly express the government's or public authority's support for or non-objection to the applicant's application and demonstrate the government's or public authority's understanding of the string being requested and its intended use.

The letter should also demonstrate the government's or public authority's understanding that the string is being sought through the gTLD application process and that the applicant is willing to accept the conditions under which the string will be available, i.e., entry into a registry agreement with ICANN requiring compliance with consensus policies and payment of fees. (See Module 5 for a discussion of the obligations of a gTLD registry operator.)

A sample letter of support is available as an attachment to this module.

Applicants and governments may conduct discussions concerning government support for an application at any time. Applicants are encouraged to begin such discussions at the earliest possible stage, and enable governments to follow the processes that may be necessary to consider, approve, and generate a letter of support or non-objection.

It is important to note that a government or public authority is under no obligation to provide documentation of support or non-objection in response to a request by an applicant.

It is also possible that a government may withdraw its support for an application at a later time, including after the new gTLD has been delegated, if the registry operator has deviated from the conditions of original support or non-objection. Applicants should be aware that ICANN has committed to governments that, in the event of a dispute between a government (or public authority) and a registry operator that submitted documentation of support from that government or public authority, **ICANN will comply with a legally binding order** from a court in the jurisdiction of the government or public authority that has given support to an application.

2.2.1.4.4 Review Procedure for Geographic Names

A Geographic Names Panel (GNP) will determine whether each applied-for gTLD string represents a geographic

¹⁰ See <https://gacweb.icann.org/display/gacweb/GAC+Members>

name, and verify the relevance and authenticity of the supporting documentation where necessary.

The GNP will review all applications received, not only those where the applicant has noted its applied-for gTLD string as a geographic name. For any application where the GNP determines that the applied-for gTLD string is a country or territory name (as defined in this module), the application will not pass the Geographic Names review and will be denied. No additional reviews will be available.

For any application where the GNP determines that the applied-for gTLD string is not a geographic name requiring government support (as described in this module), the application will pass the Geographic Names review with no additional steps required.

For any application where the GNP determines that the applied-for gTLD string is a geographic name requiring government support, the GNP will confirm that the applicant has provided the required documentation from the relevant governments or public authorities, and that the communication from the government or public authority is legitimate and contains the required content. ICANN may confirm the authenticity of the communication by consulting with the relevant diplomatic authorities or members of ICANN's Governmental Advisory Committee for the government or public authority concerned on the competent authority and appropriate point of contact within their administration for communications.

The GNP may communicate with the signing entity of the letter to confirm their intent and their understanding of the terms on which the support for an application is given.

In cases where an applicant has not provided the required documentation, the applicant will be contacted and notified of the requirement, and given a limited time frame to provide the documentation. If the applicant is able to provide the documentation before the close of the Initial Evaluation period, and the documentation is found to meet the requirements, the applicant will pass the Geographic Names review. If not, the applicant will have additional time to obtain the required documentation; however, if the applicant has not produced the required documentation by the required date (at least 90 calendar days from the date of notice), the application will be considered incomplete and will be ineligible for further review. The applicant may reapply in subsequent application rounds, if desired, subject to the fees and requirements of the specific application rounds.

If there is more than one application for a string representing a certain geographic name as described in this section, and the applications have requisite government approvals, the applications will be suspended pending resolution by the applicants. If the applicants have not reached a resolution by either the date of the end of the application round (as announced by ICANN), or the date on which ICANN opens a subsequent application round, whichever comes first, the applications will be rejected and applicable refunds will be available to applicants according to the conditions described in section 1.5.

However, in the event that a contention set is composed of multiple applications with documentation of support from the same government or public authority, the applications will proceed through the contention resolution procedures described in Module 4 when requested by the government or public authority providing the documentation.

If an application for a string representing a geographic name is in a contention set with applications for similar strings that have not been identified as geographical names, the string contention will be resolved using the string contention procedures described in Module 4.

2.2.2 Applicant Reviews

Concurrent with the applied-for gTLD string reviews described in subsection 2.2.1, ICANN will review the applicant's technical and operational capability, its financial capability, and its proposed registry services. Those reviews are described in greater detail in the following subsections.

2.2.2.1 Technical/Operational Review

In its application, the applicant will respond to a set of questions (see questions 24 – 44 in the Application Form) intended to gather information about the applicant's technical capabilities and its plans for operation of the proposed gTLD.

Applicants are not required to have deployed an actual gTLD registry to pass the Technical/Operational review. It will be necessary, however, for an applicant to demonstrate a clear understanding and accomplishment of some groundwork toward the key technical and operational aspects of a gTLD registry operation. Subsequently, each applicant that passes the technical evaluation and all other steps will be required to complete

a pre-delegation technical test prior to delegation of the new gTLD. Refer to Module 5, Transition to Delegation, for additional information.

2.2.2.2 Financial Review

In its application, the applicant will respond to a set of questions (see questions 45-50 in the Application Form) intended to gather information about the applicant's financial capabilities for operation of a gTLD registry and its financial planning in preparation for long-term stability of the new gTLD.

Because different registry types and purposes may justify different responses to individual questions, evaluators will pay particular attention to the consistency of an application across all criteria. For example, an applicant's scaling plans identifying system hardware to ensure its capacity to operate at a particular volume level should be consistent with its financial plans to secure the necessary equipment. That is, the evaluation criteria scale with the applicant plans to provide flexibility.

2.2.2.3 Evaluation Methodology

Dedicated technical and financial evaluation panels will conduct the technical/operational and financial reviews, according to the established criteria and scoring mechanism included as an attachment to this module. These reviews are conducted on the basis of the information each applicant makes available to ICANN in its response to the questions in the Application Form.

The evaluators may request clarification or additional information during the Initial Evaluation period. For each application, clarifying questions will be consolidated and sent to the applicant from each of the panels. The applicant will thus have an opportunity to clarify or supplement the application in those areas where a request is made by the evaluators. These communications will occur via TAS. Unless otherwise noted, such communications will include a 2-week deadline for the applicant to respond. Any supplemental information provided by the applicant will become part of the application.

It is the applicant's responsibility to ensure that the questions have been fully answered and the required documentation is attached. Evaluators are entitled, but not obliged, to request further information or evidence from an applicant, and are not obliged to take into account any information or evidence that is not made

available in the application and submitted by the due date, unless explicitly requested by the evaluators.

2.2.3 Registry Services Review

Concurrent with the other reviews that occur during the Initial Evaluation period, ICANN will review the applicant's proposed registry services for any possible adverse impact on security or stability. The applicant will be required to provide a list of proposed registry services in its application.

2.2.3.1 Definitions

Registry services are defined as:

1. operations of the registry critical to the following tasks: the receipt of data from registrars concerning registrations of domain names and name servers; provision to registrars of status information relating to the zone servers for the TLD; dissemination of TLD zone files; operation of the registry zone servers; and dissemination of contact and other information concerning domain name server registrations in the TLD as required by the registry agreement;
2. other products or services that the registry operator is required to provide because of the establishment of a consensus policy; and
3. any other products or services that only a registry operator is capable of providing, by reason of its designation as the registry operator.

Proposed registry services will be examined to determine if they might raise significant stability or security issues. Examples of services proposed by existing registries can be found at <http://www.icann.org/en/registries/rsep/>. In most cases, these proposed services successfully pass this inquiry.

Registry services currently provided by gTLD registries can be found in registry agreement appendices. See <http://www.icann.org/en/registries/agreements.htm>.

A full definition of registry services can be found at <http://www.icann.org/en/registries/rsep/rsep.html>.

For purposes of this review, security and stability are defined as follows:

Security – an effect on security by the proposed registry service means (1) the unauthorized disclosure, alteration, insertion or destruction of registry data, or (2) the unauthorized access to or disclosure of information or

resources on the Internet by systems operating in accordance with all applicable standards.

Stability – an effect on stability means that the proposed registry service (1) does not comply with applicable relevant standards that are authoritative and published by a well-established, recognized, and authoritative standards body, such as relevant standards-track or best current practice RFCs sponsored by the IETF, or (2) creates a condition that adversely affects the throughput, response time, consistency, or coherence of responses to Internet servers or end systems, operating in accordance with applicable relevant standards that are authoritative and published by a well-established, recognized and authoritative standards body, such as relevant standards-track or best current practice RFCs and relying on registry operator’s delegation information or provisioning services.

2.2.3.2 Customary Services

The following registry services are customary services offered by a registry operator:

- Receipt of data from registrars concerning registration of domain names and name servers
- Dissemination of TLD zone files
- Dissemination of contact or other information concerning domain name registrations (e.g., port-43 WHOIS, Web-based Whois, RESTful Whois)
- DNS Security Extensions

The applicant must describe whether any of these registry services are intended to be offered in a manner unique to the TLD.

Any additional registry services that are unique to the proposed gTLD registry should be described in detail. Directions for describing the registry services are provided at http://www.icann.org/en/registries/rsep/rrs_sample.html.

2.2.3.3 TLD Zone Contents

ICANN receives a number of inquiries about use of various record types in a registry zone, as entities contemplate different business and technical models. Permissible zone contents for a TLD zone are:

- Apex SOA record.
- Apex NS records and in-bailiwick glue for the TLD’s DNS servers.

- NS records and in-balliwick glue for DNS servers of registered names in the TLD.
- DS records for registered names in the TLD.
- Records associated with signing the TLD zone (i.e., RRSIG, DNSKEY, NSEC, and NSEC3).

An applicant wishing to place any other record types into its TLD zone should describe in detail its proposal in the registry services section of the application. This will be evaluated and could result in an extended evaluation to determine whether the service would create a risk of a meaningful adverse impact on security or stability of the DNS. Applicants should be aware that a service based on use of less-common DNS resource records in the TLD zone, even if approved in the registry services review, might not work as intended for all users due to lack of application support.

2.2.3.4 Methodology

Review of the applicant's proposed registry services will include a preliminary determination of whether any of the proposed registry services could raise significant security or stability issues and require additional consideration.

If the preliminary determination reveals that there may be significant security or stability issues (as defined in subsection 2.2.3.1) surrounding a proposed service, the application will be flagged for an extended review by the Registry Services Technical Evaluation Panel (RSTEP), see <http://www.icann.org/en/registries/rsep/rstep.html>. This review, if applicable, will occur during the Extended Evaluation period (refer to Section 2.3).

In the event that an application is flagged for extended review of one or more registry services, an additional fee to cover the cost of the extended review will be due from the applicant. Applicants will be advised of any additional fees due, which must be received before the additional review begins.

2.2.4 Applicant's Withdrawal of an Application

An applicant who does not pass the Initial Evaluation may withdraw its application at this stage and request a partial refund (refer to subsection 1.5 of Module 1).

2.3 *Extended Evaluation*

An applicant may request an Extended Evaluation if the application has failed to pass the Initial Evaluation elements concerning:

- Geographic names (refer to subsection 2.2.1.4). There is no additional fee for an extended evaluation in this instance.
- Demonstration of technical and operational capability (refer to subsection 2.2.2.1). There is no additional fee for an extended evaluation in this instance.
- Demonstration of financial capability (refer to subsection 2.2.2.2). There is no additional fee for an extended evaluation in this instance.
- Registry services (refer to subsection 2.2.3). Note that this investigation incurs an additional fee (the Registry Services Review Fee) if the applicant wishes to proceed. See Section 1.5 of Module 1 for fee and payment information.

An Extended Evaluation does not imply any change of the evaluation criteria. The same criteria used in the Initial Evaluation will be used to review the application in light of clarifications provided by the applicant.

From the time an applicant receives notice of failure to pass the Initial Evaluation, eligible applicants will have 15 calendar days to submit to ICANN the Notice of Request for Extended Evaluation. If the applicant does not explicitly request the Extended Evaluation (and pay an additional fee in the case of a Registry Services inquiry) the application will not proceed.

2.3.1 *Geographic Names Extended Evaluation*

In the case of an application that has been identified as a geographic name requiring government support, but where the applicant has not provided sufficient evidence of support or non-objection from all relevant governments or public authorities by the end of the Initial Evaluation period, the applicant has additional time in the Extended Evaluation period to obtain and submit this documentation.

If the applicant submits the documentation to the Geographic Names Panel by the required date, the GNP will perform its review of the documentation as detailed in

section 2.2.1.4. If the applicant has not provided the documentation by the required date (at least 90 calendar days from the date of the notice), the application will not pass the Extended Evaluation, and no further reviews are available.

2.3.2 Technical/Operational or Financial Extended Evaluation

The following applies to an Extended Evaluation of an applicant's technical and operational capability or financial capability, as described in subsection 2.2.2.

An applicant who has requested Extended Evaluation will again access the online application system (TAS) and clarify its answers to those questions or sections on which it received a non-passing score (or, in the case of an application where individual questions were passed but the total score was insufficient to pass Initial Evaluation, those questions or sections on which additional points are possible). The answers should be responsive to the evaluator report that indicates the reasons for failure, or provide any amplification that is not a material change to the application. Applicants may not use the Extended Evaluation period to substitute portions of new information for the information submitted in their original applications, i.e., to materially change the application.

An applicant participating in an Extended Evaluation on the Technical / Operational or Financial reviews will have the option to have its application reviewed by the same evaluation panelists who performed the review during the Initial Evaluation period, or to have a different set of panelists perform the review during Extended Evaluation.

The Extended Evaluation allows an additional exchange of information between the evaluators and the applicant to further clarify information contained in the application. This supplemental information will become part of the application record. Such communications will include a deadline for the applicant to respond.

ICANN will notify applicants at the end of the Extended Evaluation period as to whether they have passed. If an application passes Extended Evaluation, it continues to the next stage in the process. If an application does not pass Extended Evaluation, it will proceed no further. No further reviews are available.

2.3.3 Registry Services Extended Evaluation

This section applies to Extended Evaluation of registry services, as described in subsection 2.2.3.

If a proposed registry service has been referred to the Registry Services Technical Evaluation Panel (RSTEP) for an extended review, the RSTEP will form a review team of members with the appropriate qualifications.

The review team will generally consist of three members, depending on the complexity of the registry service proposed. In a 3-member panel, the review could be conducted within 30 to 45 calendar days. In cases where a 5-member panel is needed, this will be identified before the extended evaluation starts. In a 5-member panel, the review could be conducted in 45 calendar days or fewer.

The cost of an RSTEP review will be covered by the applicant through payment of the Registry Services Review Fee. Refer to payment procedures in section 1.5 of Module 1. The RSTEP review will not commence until payment has been received.

If the RSTEP finds that one or more of the applicant's proposed registry services may be introduced without risk of a meaningful adverse effect on security or stability, these services will be included in the applicant's registry agreement with ICANN. If the RSTEP finds that the proposed service would create a risk of a meaningful adverse effect on security or stability, the applicant may elect to proceed with its application without the proposed service, or withdraw its application for the gTLD. In this instance, an applicant has 15 calendar days to notify ICANN of its intent to proceed with the application. If an applicant does not explicitly provide such notice within this time frame, the application will proceed no further.

2.4 Parties Involved in Evaluation

A number of independent experts and groups play a part in performing the various reviews in the evaluation process. A brief description of the various panels, their evaluation roles, and the circumstances under which they work is included in this section.

2.4.1 Panels and Roles

The **String Similarity Panel** will assess whether a proposed gTLD string creates a probability of user confusion due to similarity with any reserved name, any existing TLD, any requested IDN ccTLD, or any new gTLD string applied for in the current application round. This occurs during the String Similarity review in Initial Evaluation. The panel may also review IDN tables submitted by applicants as part of its work.

The **DNS Stability Panel** will determine whether a proposed string might adversely affect the security or stability of the DNS. This occurs during the DNS Stability String review in Initial Evaluation.

The **Geographic Names Panel** will review each application to determine whether the applied-for gTLD represents a geographic name, as defined in this guidebook. In the event that the string is a geographic name requiring government support, the panel will ensure that the required documentation is provided with the application and verify that the documentation is from the relevant governments or public authorities and is authentic.

The **Technical Evaluation Panel** will review the technical components of each application against the criteria in the Applicant Guidebook, along with proposed registry operations, in order to determine whether the applicant is technically and operationally capable of operating a gTLD registry as proposed in the application. This occurs during the Technical/Operational reviews in Initial Evaluation, and may also occur in Extended Evaluation if elected by the applicant.

The **Financial Evaluation Panel** will review each application against the relevant business, financial and organizational criteria contained in the Applicant Guidebook, to determine whether the applicant is financially capable of maintaining a gTLD registry as proposed in the application. This occurs during the Financial review in Initial Evaluation, and may also occur in Extended Evaluation if elected by the applicant.

The **Registry Services Technical Evaluation Panel (RSTEP)** will review proposed registry services in the application to determine if they pose a risk of a meaningful adverse impact on security or stability. This occurs, if applicable, during the Extended Evaluation period.

Members of all panels are required to abide by the established Code of Conduct and Conflict of Interest guidelines included in this module.

2.4.2 Panel Selection Process

ICANN has selected qualified third-party providers to perform the various reviews, based on an extensive selection process.¹¹ In addition to the specific subject matter expertise required for each panel, specified qualifications are required, including:

- The provider must be able to convene – or have the capacity to convene - globally diverse panels and be able to evaluate applications from all regions of the world, including applications for IDN gTLDs.
- The provider should be familiar with the IETF IDNA standards, Unicode standards, relevant RFCs and the terminology associated with IDNs.
- The provider must be able to scale quickly to meet the demands of the evaluation of an unknown number of applications. At present it is not known how many applications will be received, how complex they will be, and whether they will be predominantly for ASCII or non-ASCII gTLDs.
- The provider must be able to evaluate the applications within the required timeframes of Initial and Extended Evaluation.

2.4.3 Code of Conduct Guidelines for Panelists

The purpose of the New gTLD Program (“Program”) Code of Conduct (“Code”) is to prevent real and apparent conflicts of interest and unethical behavior by any Evaluation Panelist (“Panelist”).

Panelists shall conduct themselves as thoughtful, competent, well prepared, and impartial professionals throughout the application process. Panelists are expected to comply with equity and high ethical standards while assuring the Internet community, its constituents, and the public of objectivity, integrity, confidentiality, and credibility. Unethical actions, or even the appearance of compromise, are not acceptable. Panelists are expected

¹¹ <http://newgtlds.icann.org/about/evaluation-panels-selection-process>

to be guided by the following principles in carrying out their respective responsibilities. This Code is intended to summarize the principles and nothing in this Code should be considered as limiting duties, obligations or legal requirements with which Panelists must comply.

Bias -- Panelists shall:

- not advance personal agendas or non-ICANN approved agendas in the evaluation of applications;
- examine facts as they exist and not be influenced by past reputation, media accounts, or unverified statements about the applications being evaluated;
- exclude themselves from participating in the evaluation of an application if, to their knowledge, there is some predisposing factor that could prejudice them with respect to such evaluation; and
- exclude themselves from evaluation activities if they are philosophically opposed to or are on record as having made generic criticism about a specific type of applicant or application.

Compensation/Gifts -- Panelists shall not request or accept any compensation whatsoever or any gifts of substance from the Applicant being reviewed or anyone affiliated with the Applicant. (Gifts of substance would include any gift greater than USD 25 in value).

If the giving of small tokens is important to the Applicant's culture, Panelists may accept these tokens; however, the total of such tokens must not exceed USD 25 in value. If in doubt, the Panelist should err on the side of caution by declining gifts of any kind.

Conflicts of Interest -- Panelists shall act in accordance with the "New gTLD Program Conflicts of Interest Guidelines" (see subsection 2.4.3.1).

Confidentiality -- Confidentiality is an integral part of the evaluation process. Panelists must have access to sensitive information in order to conduct evaluations. Panelists must maintain confidentiality of information entrusted to them by ICANN and the Applicant and any other confidential information provided to them from whatever source,

except when disclosure is legally mandated or has been authorized by ICANN. "Confidential information" includes all elements of the Program and information gathered as part of the process – which includes but is not limited to: documents, interviews, discussions, interpretations, and analyses – related to the review of any new gTLD application.

Affirmation -- All Panelists shall read this Code prior to commencing evaluation services and shall certify in writing that they have done so and understand the Code.

2.4.3.1 Conflict of Interest Guidelines for Panelists

It is recognized that third-party providers may have a large number of employees in several countries serving numerous clients. In fact, it is possible that a number of Panelists may be very well known within the registry / registrar community and have provided professional services to a number of potential applicants.

To safeguard against the potential for inappropriate influence and ensure applications are evaluated in an objective and independent manner, ICANN has established detailed Conflict of Interest guidelines and procedures that will be followed by the Evaluation Panelists. To help ensure that the guidelines are appropriately followed ICANN will:

- Require each Evaluation Panelist (provider and individual) to acknowledge and document understanding of the Conflict of Interest guidelines.
- Require each Evaluation Panelist to disclose all business relationships engaged in at any time during the past six months.
- Where possible, identify and secure primary and backup providers for evaluation panels.
- In conjunction with the Evaluation Panelists, develop and implement a process to identify conflicts and re-assign applications as appropriate to secondary or contingent third party providers to perform the reviews.

Compliance Period -- All Evaluation Panelists must comply with the Conflict of Interest guidelines beginning with the opening date of the Application Submission period and ending with the public announcement by ICANN of the

final outcomes of all the applications from the Applicant in question.

Guidelines -- The following guidelines are the minimum standards with which all Evaluation Panelists must comply. It is recognized that it is impossible to foresee and cover all circumstances in which a potential conflict of interest might arise. In these cases the Evaluation Panelist should evaluate whether the existing facts and circumstances would lead a reasonable person to conclude that there is an actual conflict of interest.

Evaluation Panelists and Immediate Family Members:

- Must not be under contract, have or be included in a current proposal to provide Professional Services for or on behalf of the Applicant during the Compliance Period.
- Must not currently hold or be committed to acquire any interest in a privately-held Applicant.
- Must not currently hold or be committed to acquire more than 1% of any publicly listed Applicant's outstanding equity securities or other ownership interests.
- Must not be involved or have an interest in a joint venture, partnership or other business arrangement with the Applicant.
- Must not have been named in a lawsuit with or against the Applicant.
- Must not be a:
 - Director, officer, or employee, or in any capacity equivalent to that of a member of management of the Applicant;
 - Promoter, underwriter, or voting trustee of the Applicant; or
 - Trustee for any pension or profit-sharing trust of the Applicant.

Definitions--

Evaluation Panelist: An Evaluation Panelist is any individual associated with the review of an application. This includes

any primary, secondary, and contingent third party Panelists engaged by ICANN to review new gTLD applications.

Immediate Family Member: Immediate Family Member is a spouse, spousal equivalent, or dependent (whether or not related) of an Evaluation Panelist.

Professional Services: include, but are not limited to legal services, financial audit, financial planning / investment, outsourced services, consulting services such as business / management / internal audit, tax, information technology, registry / registrar services.

2.4.3.2 Code of Conduct Violations

Evaluation panelist breaches of the Code of Conduct, whether intentional or not, shall be reviewed by ICANN, which may make recommendations for corrective action, if deemed necessary. Serious breaches of the Code may be cause for dismissal of the person, persons or provider committing the infraction.

In a case where ICANN determines that a Panelist has failed to comply with the Code of Conduct, the results of that Panelist's review for all assigned applications will be discarded and the affected applications will undergo a review by new panelists.

Complaints about violations of the Code of Conduct by a Panelist may be brought to the attention of ICANN via the public comment and applicant support mechanisms, throughout the evaluation period. Concerns of applicants regarding panels should be communicated via the defined support channels (see subsection 1.4.2). Concerns of the general public (i.e., non-applicants) can be raised via the public comment forum, as described in Module 1.

2.4.4 Communication Channels

Defined channels for technical support or exchanges of information with ICANN and with evaluation panels are available to applicants during the Initial Evaluation and Extended Evaluation periods. Contacting individual ICANN staff members, Board members, or individuals engaged by ICANN to perform an evaluation role in order to lobby for a particular outcome or to obtain confidential information about applications under review is not appropriate. In the interests of fairness and equivalent treatment for all applicants, any such individual contacts will be referred to the appropriate communication channels.

DRAFT - New gTLD Program – Initial Evaluation and Extended Evaluation



Application is confirmed as complete and ready for evaluation during Administrative Completeness Check

Background Screening
Third-party provider reviews applicant's background.

Initial Evaluation – String Review

Initial Evaluation – Applicant Review

String Similarity
String Similarity Panel reviews applied-for strings to ensure they are not too similar to existing TLDs or Reserved Names.

DNS Stability
All strings reviewed and in extraordinary cases, DNS Stability Panel may perform extended review for possible technical stability issues.

Geographic Names
Geographic Names Panel determines if applied-for string is geographic name requiring government support.

Technical and Operational Capability
Technical and Operational panel reviews applicant's answers to questions and supporting documentation.

Financial Capability
Financial panel reviews applicant's answers to questions and supporting documentation.

Registry Services
Preliminary review of applicant's registry services and referral to RSTEP for further review during Extended Evaluation where necessary

Panel compares all applied-for strings and creates contention sets.

Panel confirms supporting documentation where required.

ICANN will seek to publish contention sets prior to publication of full IE results.

Does applicant pass all elements of Initial Evaluation?

Applicant elects to pursue **Extended Evaluation**?

Extended Evaluation process

Applicant continues to subsequent steps.

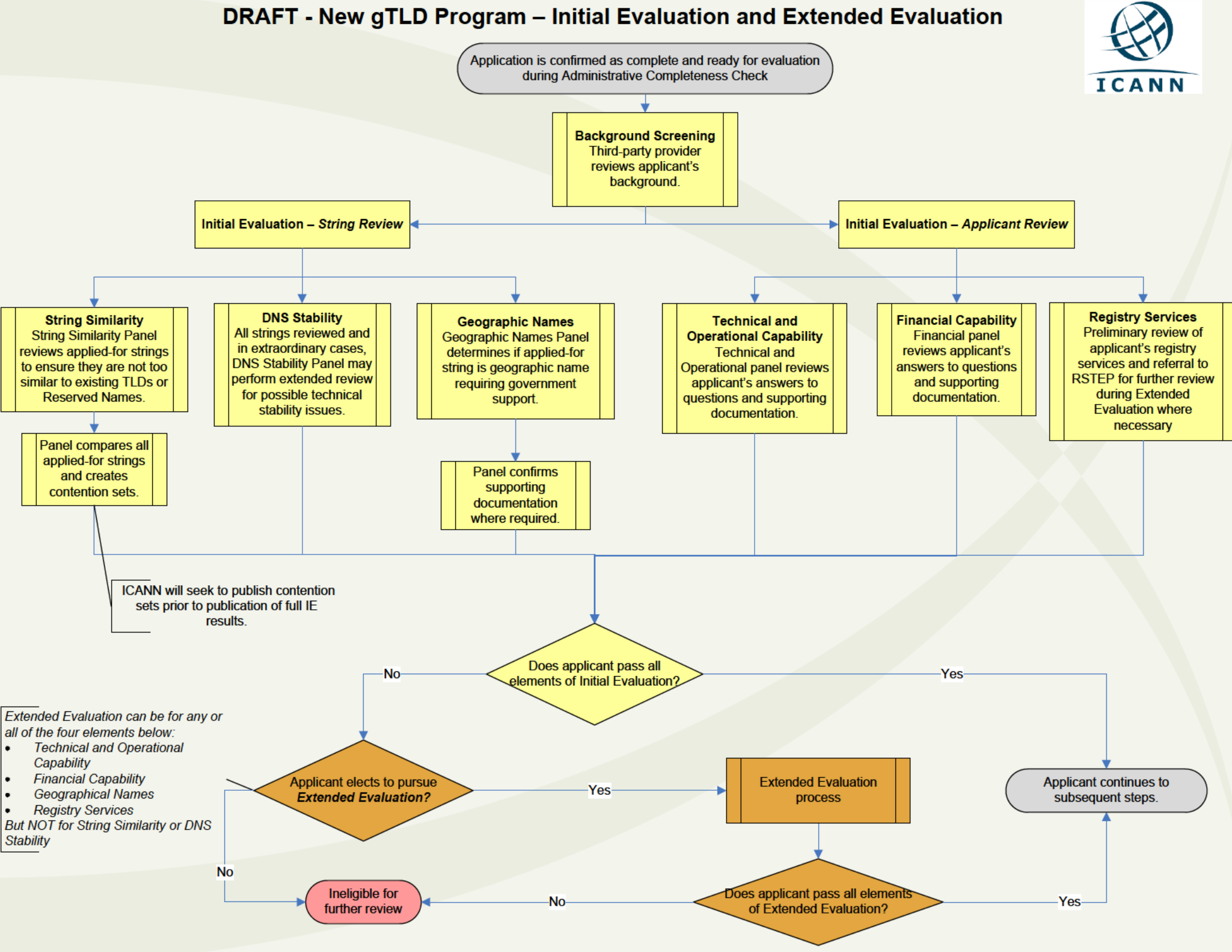
Ineligible for further review

Does applicant pass all elements of Extended Evaluation?

Extended Evaluation can be for any or all of the four elements below:

- Technical and Operational Capability
- Financial Capability
- Geographical Names
- Registry Services

But NOT for String Similarity or DNS Stability



Annex: Separable Country Names List

gTLD application restrictions on country or territory names are tied to listing in property fields of the ISO 3166-1 standard. Notionally, the ISO 3166-1 standard has an “English short name” field which is the common name for a country and can be used for such protections; however, in some cases this does not represent the common name. This registry seeks to add additional protected elements which are derived from definitions in the ISO 3166-1 standard. An explanation of the various classes is included below.

Separable Country Names List

Code	English Short Name	Cl.	Separable Name
ax	Åland Islands	B1	Åland
as	American Samoa	C	Tutuila
		C	Swain's Island
ao	Angola	C	Cabinda
ag	Antigua and Barbuda	A	Antigua
		A	Barbuda
		C	Redonda Island
au	Australia	C	Lord Howe Island
		C	Macquarie Island
		C	Ashmore Island
		C	Cartier Island
		C	Coral Sea Islands
bo	Bolivia, Plurinational State of	B1	Bolivia
bq	Bonaire, Sint Eustatius and Saba	A	Bonaire
		A	Sint Eustatius
		A	Saba
ba	Bosnia and Herzegovina	A	Bosnia
		A	Herzegovina
br	Brazil	C	Fernando de Noronha Island
		C	Martim Vaz Islands
		C	Trinidad Island
io	British Indian Ocean Territory	C	Chagos Archipelago
		C	Diego Garcia
bn	Brunei Darussalam	B1	Brunei
		C	Negara Brunei Darussalam
cv	Cape Verde	C	São Tiago
		C	São Vicente
ky	Cayman Islands	C	Grand Cayman
cl	Chile	C	Easter Island
		C	Juan Fernández Islands
		C	Sala y Gómez Island
		C	San Ambrosio Island
		C	San Félix Island
cc	Cocos (Keeling) Islands	A	Cocos Islands
		A	Keeling Islands
co	Colombia	C	Malpelo Island
		C	San Andrés Island
		C	Providencia Island
km	Comoros	C	Anjouan
		C	Grande Comore
		C	Mohéli
ck	Cook Islands	C	Rarotonga
cr	Costa Rica	C	Coco Island
ec	Ecuador	C	Galápagos Islands
gq	Equatorial Guinea	C	Annobón Island
		C	Bioko Island

		C	Rio Muni
fk	Falkland Islands (Malvinas)	B1	Falkland Islands
		B1	Malvinas
fo	Faroe Islands	A	Faroe
fj	Fiji	C	Vanua Levu
		C	Viti Levu
		C	Rotuma Island
pf	French Polynesia	C	Austral Islands
		C	Gambier Islands
		C	Marquesas Islands
		C	Society Archipelago
		C	Tahiti
		C	Tuamotu Islands
		C	Clipperton Island
tf	French Southern Territories	C	Amsterdam Islands
		C	Crozet Archipelago
		C	Kerguelen Islands
		C	Saint Paul Island
gr	Greece	C	Mount Athos
		B1	**
gd	Grenada	C	Southern Grenadine Islands
		C	Carriacou
gp	Guadeloupe	C	la Désirade
		C	Marie-Galante
		C	les Saintes
hm	Heard Island and McDonald Islands	A	Heard Island
		A	McDonald Islands
va	Holy See (Vatican City State)	A	Holy See
		A	Vatican
hn	Honduras	C	Swan Islands
in	India	C	Amindivi Islands
		C	Andaman Islands
		C	Laccadive Islands
		C	Minicoy Island
		C	Nicobar Islands
ir	Iran, Islamic Republic of	B1	Iran
ki	Kiribati	C	Gilbert Islands
		C	Tarawa
		C	Banaba
		C	Line Islands
		C	Kiritimati
		C	Phoenix Islands
		C	Abariringa
		C	Enderbury Island
kp	Korea, Democratic People's Republic of	C	North Korea
kr	Korea, Republic of	C	South Korea
la	Lao People's Democratic Republic	B1	Laos
mk	Macedonia, the Former Yugoslav Republic of	B1	**
my	Malaysia	C	Sabah
		C	Sarawak
mh	Marshall Islands	C	Jaluit
			Kwajalein
			Majuro
mu	Mauritius	C	Agalega Islands
		C	Cargados Carajos Shoals
		C	Rodrigues Island
fm	Micronesia, Federated States of	B1	Micronesia

		C	Caroline Islands (see also pw)
		C	Chuuk
		C	Kosrae
		C	Pohnpei
		C	Yap
md	Moldova, Republic of	B1	Moldova
		C	Moldava
nc	New Caledonia	C	Loyalty Islands
mp	Northern Mariana Islands	C	Mariana Islands
		C	Saipan
om	Oman	C	Musandam Peninsula
pw	Palau	C	Caroline Islands (see also fm)
		C	Babelthuap
ps	Palestinian Territory, Occupied	B1	Palestine
pg	Papua New Guinea	C	Bismarck Archipelago
		C	Northern Solomon Islands
		C	Bougainville
pn	Pitcairn	C	Ducie Island
		C	Henderson Island
		C	Oeno Island
re	Réunion	C	Bassas da Índia
		C	Europa Island
		C	Glorioso Island
		C	Juan de Nova Island
		C	Tromelin Island
ru	Russian Federation	B1	Russia
		C	Kaliningrad Region
sh	Saint Helena, Ascension, and Tristan de Cunha	A	Saint Helena
		A	Ascension
		A	Tristan de Cunha
		C	Gough Island
		C	Tristan de Cunha Archipelago
kn	Saint Kitts and Nevis	A	Saint Kitts
		A	Nevis
pm	Saint Pierre and Miquelon	A	Saint Pierre
		A	Miquelon
vc	Saint Vincent and the Grenadines	A	Saint Vincent
		A	The Grenadines
		C	Northern Grenadine Islands
		C	Bequia
		C	Saint Vincent Island
ws	Samoa	C	Savai'i
		C	Upolu
st	Sao Tome and Principe	A	Sao Tome
		A	Principe
sc	Seychelles	C	Mahé
		C	Aldabra Islands
		C	Amirante Islands
		C	Cosmoledo Islands
		C	Farquhar Islands
sb	Solomon Islands	C	Santa Cruz Islands
		C	Southern Solomon Islands
		C	Guadalcanal
za	South Africa	C	Marion Island
		C	Prince Edward Island
gs	South Georgia and the South Sandwich Islands	A	South Georgia
		A	South Sandwich Islands

sj	Svalbard and Jan Mayen	A	Svalbard
		A	Jan Mayen
		C	Bear Island
sy	Syrian Arab Republic	B1	Syria
tw	Taiwan, Province of China	B1	Taiwan
		C	Penghu Islands
		C	Pescadores
tz	Tanzania, United Republic of	B1	Tanzania
tl	Timor-Leste	C	Oecussi
to	Tonga	C	Tongatapu
tt	Trinidad and Tobago	A	Trinidad
		A	Tobago
tc	Turks and Caicos Islands	A	Turks Islands
		A	Caicos Islands
tv	Tuvalu	C	Fanafuti
ae	United Arab Emirates	B1	Emirates
us	United States	B2	America
um	United States Minor Outlying Islands	C	Baker Island
		C	Howland Island
		C	Jarvis Island
		C	Johnston Atoll
		C	Kingman Reef
		C	Midway Islands
		C	Palmyra Atoll
		C	Wake Island
		C	Navassa Island
vu	Vanuatu	C	Efate
		C	Santo
ve	Venezuela, Bolivarian Republic of	B1	Venezuela
		C	Bird Island
vg	Virgin Islands, British	B1	Virgin Islands
		C	Anegada
		C	Jost Van Dyke
		C	Tortola
		C	Virgin Gorda
vi	Virgin Islands, US	B1	Virgin Islands
		C	Saint Croix
		C	Saint John
		C	Saint Thomas
wf	Wallis and Futuna	A	Wallis
		A	Futuna
		C	Hoorn Islands
		C	Wallis Islands
		C	Uvea
ye	Yemen	C	Socotra Island

Maintenance

A Separable Country Names Registry will be maintained and published by ICANN Staff.

Each time the ISO 3166-1 standard is updated with a new entry, this registry will be reappraised to identify if the changes to the standard warrant changes to the entries in this registry. Appraisal will be based on the criteria listing in the "Eligibility" section of this document.

Codes reserved by the ISO 3166 Maintenance Agency do not have any implication on this registry, only entries derived from normally assigned codes appearing in ISO 3166-1 are eligible.

If an ISO code is struck off the ISO 3166-1 standard, any entries in this registry deriving from that code must be struck.

Eligibility

Each record in this registry is derived from the following possible properties:

- Class A:** The ISO 3166-1 English Short Name is comprised of multiple, separable parts whereby the country is comprised of distinct sub-entities. Each of these separable parts is eligible in its own right for consideration as a country name. For example, "Antigua and Barbuda" is comprised of "Antigua" and "Barbuda."
- Class B:** The ISO 3166-1 English Short Name (1) or the ISO 3166-1 English Full Name (2) contains additional language as to the type of country the entity is, which is often not used in common usage when referencing the country. For example, one such short name is "The Bolivarian Republic of Venezuela" for a country in common usage referred to as "Venezuela."
- ** Macedonia is a separable name in the context of this list; however, due to the ongoing dispute listed in UN documents between the Hellenic Republic (Greece) and the Former Yugoslav Republic of Macedonia over the name, no country will be afforded attribution or rights to the name "Macedonia" until the dispute over the name has been resolved. See <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N93/240/37/IMG/N9324037.pdf>.
- Class C:** The ISO 3166-1 Remarks column containing synonyms of the country name, or sub-national entities, as denoted by "often referred to as," "includes", "comprises", "variant" or "principal islands".

In the first two cases, the registry listing must be directly derivative from the English Short Name by excising words and articles. These registry listings do not include vernacular or other non-official terms used to denote the country.

Eligibility is calculated in class order. For example, if a term can be derived both from Class A and Class C, it is only listed as Class A.

Attachment to Module 2

Sample Letter of Government Support

[This letter should be provided on official letterhead]

ICANN
Suite 330, 4676 Admiralty Way
Marina del Rey, CA 90292

Attention: New gTLD Evaluation Process

Subject: Letter for support for [TLD requested]

This letter is to confirm that [government entity] fully supports the application for [TLD] submitted to ICANN by [applicant] in the New gTLD Program. As the [Minister/Secretary/position] I confirm that I have the authority of the [x government/public authority] to be writing to you on this matter. [Explanation of government entity, relevant department, division, office, or agency, and what its functions and responsibilities are]

The gTLD will be used to [explain your understanding of how the name will be used by the applicant. This could include policies developed regarding who can register a name, pricing regime and management structures.] [Government/public authority/department] has worked closely with the applicant in the development of this proposal.

The [x government/public authority] supports this application, and in doing so, understands that in the event that the application is successful, [applicant] will be required to enter into a Registry Agreement with ICANN. In doing so, they will be required to pay fees to ICANN and comply with consensus policies developed through the ICANN multi-stakeholder policy processes.

[Government / public authority] further understands that, in the event of a dispute between [government/public authority] and the applicant, ICANN will comply with a legally binding order from a court in the jurisdiction of [government/public authority].

[Optional] This application is being submitted as a community-based application, and as such it is understood that the Registry Agreement will reflect the community restrictions proposed in the application. In the event that we believe the registry is not complying with these restrictions, possible avenues of recourse include the Registry Restrictions Dispute Resolution Procedure.

[Optional] I can advise that in the event that this application is successful [government/public authority] will enter into a separate agreement with the applicant. This agreement will outline the conditions under which we support them in the operation of the TLD, and circumstances under which we would withdraw that support. ICANN will not be a party to this agreement, and enforcement of this agreement lies fully with [government/public authority].

[Government / public authority] understands that the Geographic Names Panel engaged by ICANN will, among other things, conduct due diligence on the authenticity of this documentation. I would request that if additional information is required during this process, that [name and contact details] be contacted in the first instance.

Thank you for the opportunity to support this application.

Yours sincerely

Signature from relevant government/public authority

Attachment to Module 2

Evaluation Questions and Criteria

Since ICANN was founded in 1998 as a not-for-profit, multi-stakeholder organization, one of its key mandates has been to promote competition in the domain name market. ICANN's mission specifically calls for the corporation to maintain and build on processes that will ensure competition and consumer interests – without compromising Internet security and stability. This includes the consideration and implementation of new gTLDs. It is ICANN's goal to make the criteria and evaluation as objective as possible.

While new gTLDs are viewed by ICANN as important to fostering choice, innovation and competition in domain registration services, the decision to launch these coming new gTLD application rounds followed a detailed and lengthy consultation process with all constituencies of the global Internet community.

Any public or private sector organization can apply to create and operate a new gTLD. However the process is not like simply registering or buying a second-level domain name. Instead, the application process is to evaluate and select candidates capable of running a registry, a business that manages top level domains such as, for example, .COM or .INFO. Any successful applicant will need to meet published operational and technical criteria in order to preserve Internet stability and interoperability.

I. Principles of the Technical and Financial New gTLD Evaluation Criteria

- Principles of conservatism. This is the first round of what is to be an ongoing process for the introduction of new TLDs, including Internationalized Domain Names. Therefore, the criteria in this round require applicants to provide a thorough and thoughtful analysis of the technical requirements to operate a registry and the proposed business model.
- The criteria and evaluation should be as objective as possible.
 - With that goal in mind, an important objective of the new TLD process is to diversify the namespace, with different registry business models and target audiences. In some cases, criteria that are objective, but that ignore the differences in business models and target audiences of new registries, will tend to make the process exclusionary. For example, the business model for a registry targeted to a small community need not possess the same robustness in funding and technical infrastructure as a registry intending to compete with large gTLDs. Therefore purely objective criteria such as a requirement for a certain amount of cash on hand will not provide for the flexibility to consider different business models. The process must provide for an objective evaluation framework, but allow for adaptation according to the differing models applicants will present. Within that framework, applicant responses will be evaluated against the criteria in light of the proposed model.
 - Therefore the criteria should be flexible: able to scale with the overall business approach, providing that the planned approach is consistent and coherent, and can withstand highs and lows.

- Criteria can be objective in areas of registrant protection, for example:
 - Providing for funds to continue operations in the event of a registry failure.
 - Adherence to data escrow, registry failover, and continuity planning requirements.
- The evaluation must strike the correct balance between establishing the business and technical competence of the applicant to operate a registry (to serve the interests of registrants), while not asking for the detailed sort of information or making the judgment that a venture capitalist would. ICANN is not seeking to certify business success but instead seeks to encourage innovation while providing certain safeguards for registrants.
- New registries must be added in a way that maintains DNS stability and security. Therefore, ICANN asks several questions so that the applicant can demonstrate an understanding of the technical requirements to operate a registry. ICANN will ask the applicant to demonstrate actual operational technical compliance prior to delegation. This is in line with current prerequisites for the delegation of a TLD.
- Registrant protection is emphasized in both the criteria and the scoring. Examples of this include asking the applicant to:
 - Plan for the occurrence of contingencies and registry failure by putting in place financial resources to fund the ongoing resolution of names while a replacement operator is found or extended notice can be given to registrants,
 - Demonstrate a capability to understand and plan for business contingencies to afford some protections through the marketplace,
 - Adhere to DNS stability and security requirements as described in the technical section, and
 - Provide access to the widest variety of services.

II. Aspects of the Questions Asked in the Application and Evaluation Criteria

The technical and financial questions are intended to inform and guide the applicant in aspects of registry start-up and operation. The established registry operator should find the questions straightforward while inexperienced applicants should find them a natural part of planning.

Evaluation and scoring (detailed below) will emphasize:

- How thorough are the answers? Are they well thought through and do they provide a sufficient basis for evaluation?
- Demonstration of the ability to operate and fund the registry on an ongoing basis:
 - Funding sources to support technical operations in a manner that ensures stability and security and supports planned expenses,
 - Resilience and sustainability in the face of ups and downs, anticipation of contingencies,
 - Funding to carry on operations in the event of failure.

- Demonstration that the technical plan will likely deliver on best practices for a registry and identification of aspects that might raise DNS stability and security issues.
- Ensures plan integration, consistency and compatibility (responses to questions are not evaluated individually but in comparison to others):
 - Funding adequately covers technical requirements,
 - Funding covers costs,
 - Risks are identified and addressed, in comparison to other aspects of the plan.

III. Scoring

Evaluation

- The questions, criteria, scoring and evaluation methodology are to be conducted in accordance with the principles described earlier in section I. With that in mind, globally diverse evaluation panelists will staff evaluation panels. The diversity of evaluators and access to experts in all regions of the world will ensure application evaluations take into account cultural, technical and business norms in the regions from which applications originate.
- Evaluation teams will consist of two independent panels. One will evaluate the applications against the financial criteria. The other will evaluate the applications against the technical & operational criteria. Given the requirement that technical and financial planning be well integrated, the panels will work together and coordinate information transfer where necessary. Other relevant experts (e.g., technical, audit, legal, insurance, finance) in pertinent regions will provide advice as required.
- Precautions will be taken to ensure that no member of the Evaluation Teams will have any interest or association that may be viewed as a real or potential conflict of interest with an applicant or application. All members must adhere to the Code of Conduct and Conflict of Interest guidelines that are found in Module 2.
- Communications between the evaluation teams and the applicants will be through an online interface. During the evaluation, evaluators may pose a set of clarifying questions to an applicant, to which the applicant may respond through the interface.

Confidentiality: ICANN will post applications after the close of the application submission period. The application form notes which parts of the application will be posted.

Scoring

- Responses will be evaluated against each criterion. A score will be assigned according to the scoring schedule linked to each question or set of questions. In several questions, 1 point is the maximum score that may be awarded. In several other questions, 2 points are awarded for a response that exceeds requirements, 1 point is awarded for a response that meets requirements and 0 points are awarded for a response that fails to meet requirements. Each question must receive at least a score of "1," making each a "pass/fail" question.
- In the Continuity question in the financial section(see Question #50), up to 3 points are awarded if an applicant provides, at the application stage, a financial instrument that will guarantee ongoing registry operations in the event of a business failure. This extra

point can serve to guarantee passing the financial criteria for applicants who score the minimum passing score for each of the individual criteria. The purpose of this weighting is to reward applicants who make early arrangements for the protection of registrants and to accept relatively riskier business plans where registrants are protected.

- There are 21 Technical & Operational questions. Each question has a criterion and scoring associated with it. The scoring for each is 0, 1, or 2 points as described above. One of the questions (IDN implementation) is optional. Other than the optional questions, all Technical & Operational criteria must be scored a 1 or more or the application will fail the evaluation.
- The total technical score must be equal to or greater than 22 for the application to pass. That means the applicant can pass by:
 - Receiving a 1 on all questions, including the optional question, and a 2 on at least one mandatory question; or
 - Receiving a 1 on all questions, excluding the optional question and a 2 on at least two mandatory questions.

This scoring methodology requires a minimum passing score for each question and a slightly higher average score than the per question minimum to pass.

- There are six Financial questions and six sets of criteria that are scored by rating the answers to one or more of the questions. For example, the question concerning registry operation costs requires consistency between the technical plans (described in the answers to the Technical & Operational questions) and the costs (described in the answers to the costs question).
- The scoring for each of the Financial criteria is 0, 1 or 2 points as described above with the exception of the Continuity question, for which up to 3 points are possible. All questions must receive at least a 1 or the application will fail the evaluation.
- The total financial score on the six criteria must be 8 or greater for the application to pass. That means the applicant can pass by:
 - Scoring a 3 on the continuity criteria, or
 - Scoring a 2 on any two financial criteria.
- Applications that do not pass Initial Evaluation can enter into an extended evaluation process as described in Module 2. The scoring is the same.

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
Applicant Information	1	Full legal name of the Applicant (the established entity that would enter into a Registry Agreement with ICANN)	Y	Responses to Questions 1 - 12 are required for a complete application. Responses are not scored.			
	2	Address of the principal place of business of the Applicant. This address will be used for contractual purposes. No Post Office boxes are allowed.	Y				
	3	Phone number for the Applicant's principal place of business.	Y				
	4	Fax number for the Applicant's principal place of business.	Y				
	5	Website or URL, if applicable.	Y				
Primary Contact for this Application	6	Name	Y	The primary contact is the individual designated with the primary responsibility for management of the application, including responding to tasks in the TLD Application System (TAS) during the various application phases. Both contacts listed should also be prepared to receive inquiries from the public.			
		Title	Y				
		Date of birth	N				
		Country of birth	N				
		Address	N				
		Phone number	Y				
		Fax number	Y				
		Email address	Y				
Secondary Contact for this Application	7	Name	Y	The secondary contact is listed in the event the primary contact is unavailable to continue with the application process.			
		Title	Y				
		Date of birth	N				
		Country of birth	N				
		Address	N				
		Phone number	Y				
		Fax number	Y				

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		Email address	Y				
Proof of Legal Establishment	8	(a) Legal form of the Applicant. (e.g., partnership, corporation, non-profit institution).	Y				
		(b) State the specific national or other jurisdiction that defines the type of entity identified in 8(a).	Y	In the event of questions regarding proof of establishment, the applicant may be asked for additional details, such as the specific national or other law applying to this type of entity			
		(c) Attach evidence of the applicant's establishment as the type of entity identified in Question 8(a) above, in accordance with the applicable laws identified in Question 8(b).	Y	Applications without valid proof of legal establishment will not be evaluated further. Supporting documentation for proof of legal establishment should be submitted in the original language.			
	9	(a) If the applying entity is publicly traded, provide the exchange and symbol.	Y				
		(b) If the applying entity is a subsidiary, provide the parent company.	Y				
		(c) If the applying entity is a joint venture, list all joint venture partners.	Y				
	10	Business ID, Tax ID, VAT registration number, or equivalent of the Applicant.	N				
Applicant Background	11	(a) Enter the full name, date and country of birth, contact information (permanent residence), and position of all directors (i.e., members of the applicant's Board of Directors, if applicable).	Partial	<p>Applicants should be aware that the names and positions of the individuals listed in response to this question will be published as part of the application. The contact information listed for individuals is for identification purposes only and will not be published as part of the application.</p> <p>Background checks may be conducted on individuals named in the applicant's response to question 11. Any material misstatement or misrepresentation (or omission of material information) may cause the application to be rejected.</p> <p>The applicant certifies that it has obtained permission for the posting of the names and positions of individuals included in this application.</p>			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		(b) Enter the full name, date and country of birth, contact information (permanent residence), and position of all officers and partners. Officers are high-level management officials of a corporation or business, for example, a CEO, vice president, secretary, chief financial officer. Partners would be listed in the context of a partnership or other such form of legal entity.	Partial				
		(c) Enter the full name and contact information of all shareholders holding at least 15% of shares, and percentage held by each. For a shareholder entity, enter the principal place of business. For a shareholder individual, enter the date and country of birth and contact information (permanent residence).	Partial				
		(d) For an applying entity that does not have directors, officers, partners, or shareholders, enter the full name, date and country of birth, contact information (permanent residence), and position of all individuals having overall legal or executive responsibility for the applying entity.	Partial				
		(e) Indicate whether the applicant or any of the individuals named above: <ul style="list-style-type: none"> i. within the past ten years, has been convicted of any crime related to financial or corporate governance activities, or has been judged by a court to have committed fraud or breach of fiduciary duty, or has been the subject of a judicial determination that is the substantive equivalent of any of these; ii. within the past ten years, has been disciplined by any government or industry regulatory body for conduct involving dishonesty or misuse of funds of others; iii. within the past ten years has been convicted of any willful tax-related fraud or willful evasion of tax liabilities; iv. within the past ten years has been convicted of perjury, forswearing, failing to cooperate with a law enforcement investigation, or making false statements to a law enforcement agency or representative; 	N	ICANN may deny an otherwise qualified application based on the background screening process. See section 1.2.1 of the guidebook.			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>v. has ever been convicted of any crime involving the use of computers, telephony systems, telecommunications or the Internet to facilitate the commission of crimes;</p> <p>vi. has ever been convicted of any crime involving the use of a weapon, force, or the threat of force;</p> <p>vii. has ever been convicted of any violent or sexual offense victimizing children, the elderly, or individuals with disabilities;</p> <p>viii. has ever been convicted of the illegal sale, manufacture, or distribution of pharmaceutical drugs, or been convicted or successfully extradited for any offense described in Article 3 of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988;</p> <p>ix. has ever been convicted or successfully extradited for any offense described in the United Nations Convention against Transnational Organized Crime (all Protocols);</p> <p>x. has been convicted, within the respective timeframes, of aiding, abetting, facilitating, enabling, conspiring to commit, or failing to report any of the listed crimes (i.e., within the past 10 years for crimes listed in (i) - (iv) above, or ever for the crimes listed in (v) - (ix) above);</p> <p>xi. has entered a guilty plea as part of a plea agreement or has a court case in any jurisdiction with a disposition of Adjudicated Guilty or Adjudication Withheld (or regional equivalents) within the respective timeframes listed above for any of the listed crimes (i.e., within the past 10 years for crimes listed in (i) - (iv) above, or ever for the crimes listed in (v) - (ix) above);</p> <p>xii. is the subject of a disqualification imposed by ICANN and in effect at the time of this application.</p> <p>If any of the above events have occurred, please provide details.</p>					

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		(f) Indicate whether the applicant or any of the individuals named above have been involved in any decisions indicating that the applicant or individual named in the application was engaged in cybersquatting, as defined in the Uniform Domain Name Dispute Resolution Policy (UDRP), Anti-cybersquatting Consumer Protection Act (ACPA), or other equivalent legislation, or was engaged in reverse domain name hijacking under the UDRP or bad faith or reckless disregard under the ACPA or equivalent legislation.	N	ICANN may deny an otherwise qualified application based on the background screening process. See section 1.2.1 of the guidebook for details.			
		(g) Disclose whether the applicant or any of the individuals named above has been involved in any administrative or other legal proceeding in which allegations of intellectual property infringement relating to registration or use of a domain name have been made. Provide an explanation related to each such instance.	N	ICANN may deny an otherwise qualified application based on the background screening process. See section 1.2.1 of the guidebook for details.			
		(h) Provide an explanation for any additional background information that may be found concerning the applicant or any individual named in the application, which may affect eligibility, including any criminal convictions not identified above.	N				
Evaluation Fee	12	(a) Enter the confirmation information for payment of the evaluation fee (e.g., wire transfer confirmation number).	N	<p>The evaluation fee is paid in the form of a deposit at the time of user registration, and submission of the remaining amount at the time the full application is submitted. The information in question 12 is required for each payment.</p> <p>The full amount in USD must be received by ICANN. Applicant is responsible for all transaction fees and exchange rate fluctuation.</p> <p>Fedwire is the preferred wire mechanism; SWIFT is also acceptable. ACH is not recommended as these funds will take longer to clear and could affect timing of the application processing.</p>			
		(b) Payer name	N				
		(c) Payer address	N				

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		(d) Wiring bank	N				
		(e) Bank address	N				
		(f) Wire date	N				
Applied-for gTLD string	13	Provide the applied-for gTLD string. If applying for an IDN, provide the U-label.	Y	Responses to Questions 13-17 are not scored, but are used for database and validation purposes. The U-label is an IDNA-valid string of Unicode characters, including at least one non-ASCII character.			
	14	(a) If applying for an IDN, provide the A-label (beginning with "xn--").	Y				
		(b) If an IDN, provide the meaning, or restatement of the string in English, that is, a description of the literal meaning of the string in the opinion of the applicant.	Y				
		(c) If an IDN, provide the language of the label (both in English and as referenced by ISO-639-1).	Y				
		(d) If an IDN, provide the script of the label (both in English and as referenced by ISO 15924).	Y				
		(e) If an IDN, list all code points contained in the U-label according to Unicode form.	Y	For example, the string "HELLO" would be listed as U+0048 U+0065 U+006C U+006C U+0066.			
	15	(a) If an IDN, upload IDN tables for the proposed registry. An IDN table must include: <ol style="list-style-type: none"> 1. the applied-for gTLD string relevant to the tables, 2. the script or language designator (as defined in BCP 47), 3. table version number, 4. effective date (DD Month YYYY), and 5. contact name, email address, and phone number. <p>Submission of IDN tables in a standards-based format is encouraged.</p>	Y	In the case of an application for an IDN gTLD, IDN tables must be submitted for the language or script for the applied-for gTLD string. IDN tables must also be submitted for each language or script in which the applicant intends to offer IDN registrations at the second level (see question 44). IDN tables should be submitted in a machine-readable format. The model format described in Section 5 of RFC 4290 would be ideal. The format used by RFC 3743 is an acceptable alternative. Variant generation algorithms that are more complex (such as those with contextual			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
				rules) and cannot be expressed using these table formats should be specified in a manner that could be re-implemented programmatically by ICANN. Ideally, for any complex table formats, a reference code implementation should be provided in conjunction with a description of the generation rules.			
		(b) Describe the process used for development of the IDN tables submitted, including consultations and sources used.	Y				
		(c) List any variants to the applied-for gTLD string according to the relevant IDN tables.	Y	Variant TLD strings will not be delegated as a result of this application. Variant strings will be checked for consistency and, if the application is approved, will be entered on a Declared IDN Variants List to allow for future allocation once a variant management mechanism is established for the top level. Inclusion of variant TLD strings in this application is for information only and confers no right or claim to these strings upon the applicant.			
	16	Describe the applicant's efforts to ensure that there are no known operational or rendering problems concerning the applied-for gTLD string. If such issues are known, describe steps that will be taken to mitigate these issues in software and other applications.	Y				
	17	OPTIONAL. Provide a representation of the label according to the International Phonetic Alphabet (http://www.langsci.ucl.ac.uk/ipa/).	Y	If provided, this information will be used as a guide to ICANN in communications regarding the application.			
Mission/Purpose	18	(a) Describe the mission/purpose of your proposed gTLD.	Y	The information gathered in response to Question 18 is intended to inform the post-launch review of the New gTLD Program, from the perspective of assessing the relative costs and benefits achieved in the expanded gTLD space. For the application to be considered complete, answers to this section must be fulsome and sufficiently quantitative and detailed to inform future study on plans vs. results.			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
				<p>The New gTLD Program will be reviewed, as specified in section 9.3 of the Affirmation of Commitments. This will include consideration of the extent to which the introduction or expansion of gTLDs has promoted competition, consumer trust and consumer choice, as well as effectiveness of (a) the application and evaluation process, and (b) safeguards put in place to mitigate issues involved in the introduction or expansion.</p> <p>The information gathered in this section will be one source of input to help inform this review. This information is not used as part of the evaluation or scoring of the application, except to the extent that the information may overlap with questions or evaluation areas that are scored.</p> <p>An applicant wishing to designate this application as community-based should ensure that these responses are consistent with its responses for question 20 below.</p>			
		(b) How do you expect that your proposed gTLD will benefit registrants, Internet users, and others?	Y	<p>Answers should address the following points:</p> <ul style="list-style-type: none"> i. What is the goal of your proposed gTLD in terms of areas of specialty, service levels, or reputation? ii. What do you anticipate your proposed gTLD will add to the current space, in terms of competition, differentiation, or innovation? iii. What goals does your proposed gTLD have in terms of user experience? iv. Provide a complete description of the applicant's intended registration policies in support of the goals listed above. v. Will your proposed gTLD impose any measures for 			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
				<p>protecting the privacy or confidential information of registrants or users? If so, please describe any such measures.</p> <p>Describe whether and in what ways outreach and communications will help to achieve your projected benefits.</p>			
	18	(c) What operating rules will you adopt to eliminate or minimize social costs (e.g., time or financial resource costs, as well as various types of consumer vulnerabilities)? What other steps will you take to minimize negative consequences/costs imposed upon consumers?	Y	<p>Answers should address the following points:</p> <ul style="list-style-type: none"> i. How will multiple applications for a particular domain name be resolved, for example, by auction or on a first-come/first-serve basis? ii. Explain any cost benefits for registrants you intend to implement (e.g., advantageous pricing, introductory discounts, bulk registration discounts). iii. Note that the Registry Agreement requires that registrars be offered the option to obtain initial domain name registrations for periods of one to ten years at the discretion of the registrar, but no greater than ten years. Additionally, the Registry Agreement requires advance written notice of price increases. Do you intend to make contractual commitments to registrants regarding the magnitude of price escalation? If so, please describe your plans. 			
Community-based Designation	19	Is the application for a community-based TLD?	Y	There is a presumption that the application is a standard application (as defined in the Applicant Guidebook) if this question is left unanswered.			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
				The applicant's designation as standard or community-based cannot be changed once the application is submitted.			
	20	(a) Provide the name and full description of the community that the applicant is committing to serve. In the event that this application is included in a community priority evaluation, it will be scored based on the community identified in response to this question. The name of the community does not have to be formally adopted for the application to be designated as community-based.	Y	<p>Descriptions should include:</p> <ul style="list-style-type: none"> • How the community is delineated from Internet users generally. Such descriptions may include, but are not limited to, the following: membership, registration, or licensing processes, operation in a particular industry, use of a language. • How the community is structured and organized. For a community consisting of an alliance of groups, details about the constituent parts are required. • When the community was established, including the date(s) of formal organization, if any, as well as a description of community activities to date. • The current estimated size of the community, both as to membership and geographic extent. 		<p>Responses to Question 20 will be regarded as firm commitments to the specified community and reflected in the Registry Agreement, provided the application is successful.</p> <p>Responses are not scored in the Initial Evaluation. Responses may be scored in a community priority evaluation, if applicable. Criteria and scoring methodology for the community priority evaluation are described in Module 4 of the Applicant Guidebook.</p>	
		(b) Explain the applicant's relationship to the community identified in 20(a).	Y	<p>Explanations should clearly state:</p> <ul style="list-style-type: none"> • Relations to any community organizations. • Relations to the community and its constituent parts/groups. • Accountability mechanisms of the applicant to the community. 			
		(c) Provide a description of the community-based purpose of the applied-for gTLD.	Y	<p>Descriptions should include:</p> <ul style="list-style-type: none"> • Intended registrants in the TLD. • Intended end-users of the TLD. • Related activities the applicant has carried out or intends to carry out in service of this purpose. • Explanation of how the purpose is of a lasting nature. 			
		(d) Explain the relationship between the applied-for gTLD string and the community identified in 20(a).	Y	<p>Explanations should clearly state:</p> <ul style="list-style-type: none"> • relationship to the established name, if any, of the community. 			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
				<ul style="list-style-type: none"> relationship to the identification of community members. any connotations the string may have beyond the community. 			
		(e) Provide a complete description of the applicant's intended registration policies in support of the community-based purpose of the applied-for gTLD. Policies and enforcement mechanisms are expected to constitute a coherent set.	Y	<p>Descriptions should include proposed policies, if any, on the following:</p> <ul style="list-style-type: none"> Eligibility: who is eligible to register a second-level name in the gTLD, and how will eligibility be determined. Name selection: what types of second-level names may be registered in the gTLD. Content/Use: what restrictions, if any, the registry operator will impose on how a registrant may use its registered name. Enforcement: what investigation practices and mechanisms exist to enforce the policies above, what resources are allocated for enforcement, and what appeal mechanisms are available to registrants. 			
		(f) Attach any written endorsements for the application from established institutions representative of the community identified in 20(a). An applicant may submit written endorsements by multiple institutions, if relevant to the community.	Y	<p>At least one such endorsement is required for a complete application. The form and content of the endorsement are at the discretion of the party providing the endorsement; however, the letter must identify the applied-for gTLD string and the applying entity, include an express statement support for the application, and the supply the contact information of the entity providing the endorsement.</p> <p>Endorsements from institutions not mentioned in the response to 20(b) should be accompanied by a clear description of each such institution's relationship to the community.</p> <p>Endorsements presented as supporting documentation for this question should be submitted in the original language.</p>			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
Geographic Names	21	(a) Is the application for a geographic name?	Y	<p>An applied-for gTLD string is considered a geographic name requiring government support if it is: (a) the capital city name of a country or territory listed in the ISO 3166-1 standard; (b) a city name, where it is clear from statements in the application that the applicant intends to use the gTLD for purposes associated with the city name; (c) a sub-national place name listed in the ISO 3166-2 standard; or (d) a name listed as a UNESCO region or appearing on the "Composition of macro geographic (continental) or regions, geographic sub-regions, and selected economic and other groupings" list. See Module 2 for complete definitions and criteria.</p> <p>An application for a country or territory name, as defined in the Applicant Guidebook, will not be approved.</p>			
		(b) If a geographic name, attach documentation of support or non-objection from all relevant governments or public authorities.	N	<p>See the documentation requirements in Module 2 of the Applicant Guidebook.</p> <p>Documentation presented in response to this question should be submitted in the original language.</p>			
Protection of Geographic Names	22	Describe proposed measures for protection of geographic names at the second and other levels in the applied-for gTLD. This should include any applicable rules and procedures for reservation and/or release of such names.	Y	<p>Applicants should consider and describe how they will incorporate Governmental Advisory Committee (GAC) advice in their management of second-level domain name registrations. See "Principles regarding New gTLDs" at https://gacweb.icann.org/display/GACADV/New+gTLDs.</p> <p>For reference, applicants may draw on existing methodology developed for the reservation and release of country names in the .INFO top-level domain. See the Dot Info Circular at https://gacweb.icann.org/display/GACADV/New+gTLDs.</p> <p>Proposed measures will be posted for public comment as part of the application. However, note that procedures for release of geographic names at the second level</p>			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
				must be separately approved according to Specification 5 of the Registry Agreement. That is, approval of a gTLD application does not constitute approval for release of any geographic names under the Registry Agreement. Such approval must be granted separately by ICANN.			
Registry Services	23	<p>Provide name and full description of all the Registry Services to be provided. Descriptions should include both technical and business components of each proposed service, and address any potential security or stability concerns.</p> <p>The following registry services are customary services offered by a registry operator:</p> <ul style="list-style-type: none"> A. Receipt of data from registrars concerning registration of domain names and name servers. B. Dissemination of TLD zone files. C. Dissemination of contact or other information concerning domain name registrations (e.g., port-43 WHOIS, Web-based Whois, RESTful Whois service). D. Internationalized Domain Names, where offered. E. DNS Security Extensions (DNSSEC). <p>The applicant must describe whether any of these registry services are intended to be offered in a manner unique to the TLD.</p> <p>Additional proposed registry services that are unique to the registry must also be described.</p>	Y	<p>Registry Services are defined as the following: (1) operations of the Registry critical to the following tasks: (i) the receipt of data from registrars concerning registrations of domain names and name servers; (ii) provision to registrars of status information relating to the zone servers for the TLD; (iii) dissemination of TLD zone files; (iv) operation of the Registry zone servers; and (v) dissemination of contact and other information concerning domain name server registrations in the TLD as required by the Registry Agreement; and (2) other products or services that the Registry Operator is required to provide because of the establishment of a Consensus Policy; (3) any other products or services that only a Registry Operator is capable of providing, by reason of its designation as the Registry Operator. A full definition of Registry Services can be found at http://www.icann.org/en/registries/rsep/rsep.html.</p> <p>Security: For purposes of this Applicant Guidebook, an effect on security by the proposed Registry Service means (1) the unauthorized disclosure, alteration, insertion or destruction of Registry Data, or (2) the unauthorized access to or disclosure of information or resources on the Internet by systems operating in accordance with applicable standards.</p> <p>Stability: For purposes of this Applicant Guidebook, an effect on stability shall mean that the proposed Registry Service (1) is not compliant with applicable relevant standards that are authoritative and published by a well-established, recognized and</p>		<p>Responses are not scored. A preliminary assessment will be made to determine if there are potential security or stability issues with any of the applicant's proposed Registry Services. If any such issues are identified, the application will be referred for an extended review. See the description of the Registry Services review process in Module 2 of the Applicant Guidebook. Any information contained in the application may be considered as part of the Registry Services review. If its application is approved, applicant may engage in only those registry services defined in the application, unless a new request is submitted to ICANN in accordance with the Registry Agreement.</p>	

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
				authoritative standards body, such as relevant Standards-Track or Best Current Practice RFCs sponsored by the IETF, or (2) creates a condition that adversely affects the throughput, response time, consistency or coherence of responses to Internet servers or end systems, operating in accordance with applicable relevant standards that are authoritative and published by a well-established, recognized and authoritative standards body, such as relevant Standards-Track or Best Current Practice RFCs and relying on Registry Operator's delegation information or provisioning.			
Demonstration of Technical & Operational Capability (External)	24	<p>Shared Registration System (SRS) Performance: describe</p> <ul style="list-style-type: none"> the plan for operation of a robust and reliable SRS. SRS is a critical registry function for enabling multiple registrars to provide domain name registration services in the TLD. SRS must include the EPP interface to the registry, as well as any other interfaces intended to be provided, if they are critical to the functioning of the registry. Please refer to the requirements in Specification 6 (section 1.2) and Specification 10 (SLA Matrix) attached to the Registry Agreement; and resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>A complete answer should include, but is not limited to:</p> <ul style="list-style-type: none"> A high-level SRS system description; Representative network diagram(s); Number of servers; Description of interconnectivity with other registry systems; Frequency of synchronization between servers; and Synchronization scheme (e.g., hot standby, cold standby). 	Y	<p>The questions in this section (24-44) are intended to give applicants an opportunity to demonstrate their technical and operational capabilities to run a registry. In the event that an applicant chooses to outsource one or more parts of its registry operations, the applicant should still provide the full details of the technical arrangements.</p> <p>Note that the resource plans provided in this section assist in validating the technical and operational plans as well as informing the cost estimates in the Financial section below.</p> <p>Questions 24-30(a) are designed to provide a description of the applicant's intended technical and operational approach for those registry functions that are outward-facing, i.e., interactions with registrars, registrants, and various DNS users. Responses to these questions will be published to allow review by affected parties.</p>	0-1	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> a plan for operating a robust and reliable SRS, one of the five critical registry functions; scalability and performance consistent with the overall business approach, and planned size of the registry; a technical plan that is adequately resourced in the planned costs detailed in the financial section; and evidence of compliance with Specification 6 (section 1.2) to the Registry Agreement. 	<p>1 - meets requirements: Response includes</p> <ol style="list-style-type: none"> An adequate description of SRS that substantially demonstrates the applicant's capabilities and knowledge required to meet this element; Details of a well-developed plan to operate a robust and reliable SRS; SRS plans are sufficient to result in compliance with Specification 6 and Specification 10 to the Registry Agreement; SRS is consistent with the technical, operational and financial approach described in the application; and Demonstrates that adequate technical resources are already on hand, or committed or readily available to carry out this function. <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		A complete answer is expected to be no more than 5 pages. (As a guide, one page contains approximately 4000 characters).					
	25	<p>Extensible Provisioning Protocol (EPP): provide a detailed description of the interface with registrars, including how the applicant will comply with EPP in RFCs 3735 (if applicable), and 5730-5734.</p> <p>If intending to provide proprietary EPP extensions, provide documentation consistent with RFC 3735, including the EPP templates and schemas that will be used.</p> <p>Describe resourcing plans (number and description of personnel roles allocated to this area).</p> <p>A complete answer is expected to be no more than 5 pages. If there are proprietary EPP extensions, a complete answer is also expected to be no more than 5 pages per EPP extension.</p>	Y		0-1	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of this aspect of registry technical requirements;</p> <p>(2) a technical plan scope/scale consistent with the overall business approach and planned size of the registry; and</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section;</p> <p>(4) ability to comply with relevant RFCs;</p> <p>(5) if applicable, a well-documented implementation of any proprietary EPP extensions; and</p> <p>(6) if applicable, how proprietary EPP extensions are consistent with the registration lifecycle as described in Question 27.</p>	<p>1 - meets requirements: Response includes</p> <p>(1) Adequate description of EPP that substantially demonstrates the applicant's capability and knowledge required to meet this element;</p> <p>(2) Sufficient evidence that any proprietary EPP extensions are compliant with RFCs and provide all necessary functionalities for the provision of registry services;</p> <p>(3) EPP interface is consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(4) Demonstrates that technical resources are already on hand, or committed or readily available.</p> <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>
	26	<p>Whois: describe</p> <ul style="list-style-type: none"> • how the applicant will comply with Whois specifications for data objects, bulk access, and lookups as defined in Specifications 4 and 10 to the Registry Agreement; • how the Applicant's Whois service will comply with RFC 3912; and • resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>A complete answer should include, but is not limited to:</p>	Y	The Registry Agreement (Specification 4) requires provision of Whois lookup services for all names registered in the TLD. This is a minimum requirement. Provision for Searchable Whois as defined in the scoring column is a requirement for achieving a score of 2 points.	0-2	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of this aspect of registry technical requirements, (one of the five critical registry functions);</p> <p>(2) a technical plan scope/scale consistent with the overall business approach and planned size of the registry;</p> <p>(3) a technical plan that is adequately resourced in the</p>	<p>2 – exceeds requirements: Response meets all the attributes for a score of 1 and includes:</p> <p>(1) A Searchable Whois service: Whois service includes web-based search capabilities by domain name, registrant name, postal address, contact names, registrar IDs, and Internet Protocol addresses without arbitrary limit. Boolean search capabilities may be offered. The service shall include appropriate precautions to avoid abuse of this feature (e.g., limiting access to legitimate authorized users), and the</p>

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		<ul style="list-style-type: none"> • A high-level Whois system description; • Relevant network diagram(s); • IT and infrastructure resources (e.g., servers, switches, routers and other components); • Description of interconnectivity with other registry systems; and • Frequency of synchronization between servers. <p>To be eligible for a score of 2, answers must also include:</p> <ul style="list-style-type: none"> • Provision for Searchable Whois capabilities; and • A description of potential forms of abuse of this feature, how these risks will be mitigated, and the basis for these descriptions. <p>A complete answer is expected to be no more than 5 pages.</p>				<p>planned costs detailed in the financial section;</p> <p>(4) ability to comply with relevant RFCs;</p> <p>(5) evidence of compliance with Specifications 4 and 10 to the Registry Agreement; and</p> <p>(6) if applicable, a well-documented implementation of Searchable Whois.</p>	<p>application demonstrates compliance with any applicable privacy laws or policies.</p> <p>1 - meets requirements: Response includes</p> <p>(1) adequate description of Whois service that substantially demonstrates the applicant's capability and knowledge required to meet this element;</p> <p>(2) Evidence that Whois services are compliant with RFCs, Specifications 4 and 10 to the Registry Agreement, and any other contractual requirements including all necessary functionalities for user interface;</p> <p>(3) Whois capabilities consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(4) demonstrates an adequate level of resources that are already on hand or readily available to carry out this function.</p> <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>
	27	<p>Registration Life Cycle: provide a detailed description of the proposed registration lifecycle for domain names in the proposed gTLD. The description must:</p> <ul style="list-style-type: none"> • explain the various registration states as well as the criteria and procedures that are used to change state; • describe the typical registration lifecycle of create/update/delete and all intervening steps such as pending, locked, expired, and transferred that may apply; • clearly explain any time elements that are involved - for instance details of add-grace or redemption grace periods, or notice periods for renewals or transfers; and • describe resourcing plans for this aspect of the criteria (number and 	Y		0-1	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of registration lifecycles and states;</p> <p>(2) consistency with any specific commitments made to registrants as adapted to the overall business approach for the proposed gTLD; and</p> <p>(3) the ability to comply with relevant RFCs.</p>	<p>1 - meets requirements: Response includes</p> <p>(1) An adequate description of the registration lifecycle that substantially demonstrates the applicant's capabilities and knowledge required to meet this element;</p> <p>(2) Details of a fully developed registration life cycle with definition of various registration states, transition between the states, and trigger points;</p> <p>(3) A registration lifecycle that is consistent with any commitments to registrants and with technical, operational, and financial plans described in the application; and</p> <p>(4) Demonstrates an adequate level of</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>description of personnel roles allocated to this area).</p> <p>The description of the registration lifecycle should be supplemented by the inclusion of a state diagram, which captures definitions, explanations of trigger points, and transitions from state to state.</p> <p>If applicable, provide definitions for aspects of the registration lifecycle that are not covered by standard EPP RFCs.</p> <p>A complete answer is expected to be no more than 5 pages.</p>					<p>resources that are already on hand or committed or readily available to carry out this function.</p> <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>
	28	<p>Abuse Prevention and Mitigation: Applicants should describe the proposed policies and procedures to minimize abusive registrations and other activities that have a negative impact on Internet users. A complete answer should include, but is not limited to:</p> <ul style="list-style-type: none"> • An implementation plan to establish and publish on its website a single abuse point of contact responsible for addressing matters requiring expedited attention and providing a timely response to abuse complaints concerning all names registered in the TLD through all registrars of record, including those involving a reseller; • Policies for handling complaints regarding abuse; • Proposed measures for removal of orphan glue records for names removed from the zone when provided with evidence in written form that the glue is present in connection with malicious conduct (see Specification 6); and • Resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>To be eligible for a score of 2, answers must include measures to promote Whois accuracy as well as measures from one other area as</p>	Y	Note that, while orphan glue often supports correct and ordinary operation of the DNS, registry operators will be required to take action to remove orphan glue records (as defined at http://www.icann.org/en/committees/security/sac048.pdf) when provided with evidence in written form that such records are present in connection with malicious conduct.	0-2	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> (1) Comprehensive abuse policies, which include clear definitions of what constitutes abuse in the TLD, and procedures that will effectively minimize potential for abuse in the TLD; (2) Plans are adequately resourced in the planned costs detailed in the financial section; (3) Policies and procedures identify and address the abusive use of registered names at startup and on an ongoing basis; and (4) When executed in accordance with the Registry Agreement, plans will result in compliance with contractual requirements. 	<p>2 – exceeds requirements: Response meets all the attributes for a score of 1 and includes:</p> <ol style="list-style-type: none"> (1) Details of measures to promote Whois accuracy, using measures specified here or other measures commensurate in their effectiveness; and (2) Measures from at least one additional area to be eligible for 2 points as described in the question. <p>1 - meets requirements Response includes:</p> <ol style="list-style-type: none"> (1) An adequate description of abuse prevention and mitigation policies and procedures that substantially demonstrates the applicant's capabilities and knowledge required to meet this element; (2) Details of well-developed abuse policies and procedures; (3) Plans are sufficient to result in compliance with contractual requirements; (4) Plans are consistent with the technical, operational, and financial approach described in the application, and any commitments made to registrants; and (5) Demonstrates an adequate level of resources that are on hand, committed, or readily available to

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>described below.</p> <ul style="list-style-type: none"> • Measures to promote Whois accuracy (can be undertaken by the registry directly or by registrars via requirements in the Registry-Registrar Agreement (RRA)) may include, but are not limited to: <ul style="list-style-type: none"> ○ Authentication of registrant information as complete and accurate at time of registration. Measures to accomplish this could include performing background checks, verifying all contact information of principals mentioned in registration data, reviewing proof of establishment documentation, and other means. ○ Regular monitoring of registration data for accuracy and completeness, employing authentication methods, and establishing policies and procedures to address domain names with inaccurate or incomplete Whois data; and ○ If relying on registrars to enforce measures, establishing policies and procedures to ensure compliance, which may include audits, financial incentives, penalties, or other means. Note that the requirements of the RAA will continue to apply to all ICANN-accredited registrars. • A description of policies and procedures that define malicious or abusive behavior, capture metrics, and establish Service Level Requirements for resolution, including service levels for responding to law enforcement requests. This may include rapid takedown or suspension systems and sharing information regarding malicious or abusive behavior with industry partners; • Adequate controls to ensure proper access to domain functions (can be undertaken by the registry directly or by 					<p>carry out this function. 0 – fails requirements Does not meet all the requirements to score 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>registrars via requirements in the Registry-Registrar Agreement (RRA)) may include, but are not limited to:</p> <ul style="list-style-type: none"> o Requiring multi-factor authentication (i.e., strong passwords, tokens, one-time passwords) from registrants to process update, transfers, and deletion requests; o Requiring multiple, unique points of contact to request and/or approve update, transfer, and deletion requests; and o Requiring the notification of multiple, unique points of contact when a domain has been updated, transferred, or deleted. <p>A complete answer is expected to be no more than 20 pages.</p>					
	29	<p>Rights Protection Mechanisms: Applicants must describe how their registry will comply with policies and practices that minimize abusive registrations and other activities that affect the legal rights of others, such as the Uniform Domain Name Dispute Resolution Policy (UDRP), Uniform Rapid Suspension (URS) system, and Trademark Claims and Sunrise services at startup.</p> <p>A complete answer should include:</p> <ul style="list-style-type: none"> • A description of how the registry operator will implement safeguards against allowing unqualified registrations (e.g., registrations made in violation of the registry's eligibility restrictions or policies), and reduce opportunities for behaviors such as phishing or pharming. At a minimum, the registry operator must offer a Sunrise period and a Trademark Claims service during the required time periods, and implement decisions rendered under the URS on an ongoing basis; and • A description of resourcing plans for the 	Y		0-2	<p>Complete answer describes mechanisms designed to:</p> <ul style="list-style-type: none"> (1) prevent abusive registrations, and (2) identify and address the abusive use of registered names on an ongoing basis. 	<p>2 - exceeds requirements: Response meets all attributes for a score of 1 and includes:</p> <ul style="list-style-type: none"> (1) Identification of rights protection as a core objective, supported by a well-developed plan for rights protection; and (2) Mechanisms for providing effective protections that exceed minimum requirements (e.g., RPMs in addition to those required in the registry agreement). <p>1 - meets requirements: Response includes</p> <ul style="list-style-type: none"> (1) An adequate description of RPMs that substantially demonstrates the applicant's capabilities and knowledge required to meet this element; (2) A commitment from the applicant to implement of rights protection mechanisms sufficient to comply with minimum requirements in Specification 7; (3) Plans that are sufficient to result in compliance with contractual requirements;

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</p> <p>To be eligible for a score of 2, answers must also include additional measures specific to rights protection, such as abusive use policies, takedown procedures, registrant pre-verification, or authentication procedures, or other covenants.</p> <p>A complete answer is expected to be no more than 10 pages.</p>					<p>(4) Mechanisms that are consistent with the technical, operational, and financial approach described in the application; and</p> <p>(5) Demonstrates an adequate level of resources that are on hand, committed, or readily available to carry out this function.</p> <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>
	30	<p>(a) Security Policy: provide a summary of the security policy for the proposed registry, including but not limited to:</p> <ul style="list-style-type: none"> • indication of any independent assessment reports demonstrating security capabilities, and provisions for periodic independent assessment reports to test security capabilities; • description of any augmented security levels or capabilities commensurate with the nature of the applied for gTLD string, including the identification of any existing international or industry relevant security standards the applicant commits to following (reference site must be provided); • list of commitments made to registrants concerning security levels. <p>To be eligible for a score of 2, answers must also include:</p> <ul style="list-style-type: none"> • Evidence of an independent assessment report demonstrating effective security controls (e.g., ISO 27001). <p>A summary of the above should be no more than 20 pages. Note that the complete security policy for the registry is required to be submitted in accordance with 30(b).</p>	Y	<p>Criterion 5 calls for security levels to be appropriate for the use and level of trust associated with the TLD string, such as, for example, financial services oriented TLDs. "Financial services" are activities performed by financial institutions, including: 1) the acceptance of deposits and other repayable funds; 2) lending; 3) payment and remittance services; 4) insurance or reinsurance services; 5) brokerage services; 6) investment services and activities; 7) financial leasing; 8) issuance of guarantees and commitments; 9) provision of financial advice; 10) portfolio management and advice; or 11) acting as a financial clearinghouse. Financial services is used as an example only; other strings with exceptional potential to cause harm to consumers would also be expected to deploy appropriate levels of security.</p>	0-2	<p>Complete answer demonstrates:</p> <p>(1) detailed description of processes and solutions deployed to manage logical security across infrastructure and systems, monitoring and detecting threats and security vulnerabilities and taking appropriate steps to resolve them;</p> <p>(2) security capabilities are consistent with the overall business approach and planned size of the registry;</p> <p>(3) a technical plan adequately resourced in the planned costs detailed in the financial section;</p> <p>(4) security measures are consistent with any commitments made to registrants regarding security levels; and</p> <p>(5) security measures are appropriate for the applied-for gTLD string (For example, applications for strings with unique trust implications, such as financial services-oriented strings, would be expected to provide a commensurate level of security).</p>	<p>2 - exceeds requirements: Response meets all attributes for a score of 1 and includes:</p> <p>(1) Evidence of highly developed and detailed security capabilities, with various baseline security levels, independent benchmarking of security metrics, robust periodic security monitoring, and continuous enforcement; and</p> <p>(2) an independent assessment report is provided demonstrating effective security controls are either in place or have been designed, and are commensurate with the applied-for gTLD string. (This could be ISO 27001 certification or other well-established and recognized industry certifications for the registry operation. If new independent standards for demonstration of effective security controls are established, such as the High Security Top Level Domain (HSTLD) designation, this could also be included. An illustrative example of an independent standard is the proposed set of requirements described in http://www.icann.org/en/correspondence/aba-bits-to-beckstrom-crocker-20dec11-en.pdf.)</p> <p>1 - meets requirements: Response includes:</p>

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							(1) Adequate description of security policies and procedures that substantially demonstrates the applicant's capability and knowledge required to meet this element; (2) A description of adequate security capabilities, including enforcement of logical access control, threat analysis, incident response and auditing. Ad-hoc oversight and governance and leading practices being followed; (3) Security capabilities consistent with the technical, operational, and financial approach as described in the application, and any commitments made to registrants; (4) Demonstrates that an adequate level of resources are on hand, committed or readily available to carry out this function; and (5) Proposed security measures are commensurate with the nature of the applied-for gTLD string. 0 - fails requirements: Does not meet all the requirements to score 1.
Demonstration of Technical & Operational Capability (Internal)	30	(b) Security Policy: provide the complete security policy and procedures for the proposed registry, including but not limited to: <ul style="list-style-type: none"> • system (data, server, application / services) and network access control, ensuring systems are maintained in a secure fashion, including details of how they are monitored, logged and backed up; • resources to secure integrity of updates between registry systems and nameservers, and between nameservers, if any; • independent assessment reports demonstrating security capabilities (submitted as attachments), if any; • provisioning and other measures that mitigate risks posed by denial of service attacks; • computer and network incident response 	N	Questions 30(b) – 44 are designed to provide a description of the applicant's intended technical and operational approach for those registry functions that are internal to the infrastructure and operations of the registry. To allow the applicant to provide full details and safeguard proprietary information, responses to these questions will not be published.			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>policies, plans, and processes;</p> <ul style="list-style-type: none"> plans to minimize the risk of unauthorized access to its systems or tampering with registry data; intrusion detection mechanisms, a threat analysis for the proposed registry, the defenses that will be deployed against those threats, and provision for periodic threat analysis updates; details for auditing capability on all network access; physical security approach; identification of department or group responsible for the registry's security organization; background checks conducted on security personnel; description of the main security threats to the registry operation that have been identified; and resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). 					
	31	<p>Technical Overview of Proposed Registry: provide a technical overview of the proposed registry.</p> <p>The technical plan must be adequately resourced, with appropriate expertise and allocation of costs. The applicant will provide financial descriptions of resources in the next section and those resources must be reasonably related to these technical requirements.</p> <p>The overview should include information on the estimated scale of the registry's technical operation, for example, estimates for the number of registration transactions and DNS queries per month should be provided for the first two years of operation.</p> <p>In addition, the overview should account for geographic dispersion of incoming network traffic such as DNS, Whois, and registrar transactions.</p>	N	To the extent this answer is affected by the applicant's intent to outsource various registry operations, the applicant should describe these plans (e.g., taking advantage of economies of scale or existing facilities). However, the response must include specifying the technical plans, estimated scale, and geographic dispersion as required by the question.	0-1	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> complete knowledge and understanding of technical aspects of registry requirements; an adequate level of resiliency for the registry's technical operations; consistency with planned or currently deployed technical/operational solutions; consistency with the overall business approach and planned size of the registry; adequate resourcing for technical plan in the 	<p>1 - meets requirements: Response includes:</p> <ol style="list-style-type: none"> A description that substantially demonstrates the applicant's capabilities and knowledge required to meet this element; Technical plans consistent with the technical, operational, and financial approach as described in the application; Demonstrates an adequate level of resources that are on hand, committed, or readily available to carry out this function. <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>

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		<p>If the registry serves a highly localized registrant base, then traffic might be expected to come mainly from one area.</p> <p>This high-level summary should not repeat answers to questions below. Answers should include a visual diagram(s) to highlight dataflows, to provide context for the overall technical infrastructure. Detailed diagrams for subsequent questions should be able to map back to this high-level diagram(s). The visual diagram(s) can be supplemented with documentation, or a narrative, to explain how all of the Technical & Operational components conform.</p> <p>A complete answer is expected to be no more than 10 pages.</p>				planned costs detailed in the financial section; and (6) consistency with subsequent technical questions.	
	32	<p>Architecture: provide documentation for the system and network architecture that will support registry operations for the proposed scale of the registry. System and network architecture documentation must clearly demonstrate the applicant's ability to operate, manage, and monitor registry systems. Documentation should include multiple diagrams or other components including but not limited to:</p> <ul style="list-style-type: none"> • Detailed network diagram(s) showing the full interplay of registry elements, including but not limited to SRS, DNS, Whois, data escrow, and registry database functions; • Network and associated systems necessary to support registry operations, including: <ul style="list-style-type: none"> ▪ Anticipated TCP / IP addressing scheme, ▪ Hardware (i.e., servers, routers, networking components, virtual machines and key characteristics (CPU and RAM, Disk space, internal network connectivity, and make and model)), ▪ Operating system and versions, and ▪ Software and applications (with version information) necessary to support registry operations, management, and monitoring • General overview of capacity planning, including bandwidth allocation plans; • List of providers / carriers; and • Resourcing plans for the initial 	N		0-2	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> (1) detailed and coherent network architecture; (2) architecture providing resiliency for registry systems; (3) a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry; and (4) a technical plan that is adequately resourced in the planned costs detailed in the financial section. 	<p>2 - exceeds requirements: Response meets all attributes for a score of 1 and includes</p> <ol style="list-style-type: none"> (1) Evidence of highly developed and detailed network architecture that is able to scale well above stated projections for high registration volumes, thereby significantly reducing the risk from unexpected volume surges and demonstrates an ability to adapt quickly to support new technologies and services that are not necessarily envisaged for initial registry startup; and (2) Evidence of a highly available, robust, and secure infrastructure. <p>1 - meets requirements: Response includes</p> <ol style="list-style-type: none"> (1) An adequate description of the architecture that substantially demonstrates the applicant's capabilities and knowledge required to meet this element; (2) Plans for network architecture describe all necessary elements; (3) Descriptions demonstrate adequate network architecture providing robustness and security of the

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</p> <p>To be eligible for a score of 2, answers must also include evidence of a network architecture design that greatly reduces the risk profile of the proposed registry by providing a level of scalability and adaptability (e.g., protection against DDoS attacks) that far exceeds the minimum configuration necessary for the expected volume.</p> <p>A complete answer is expected to be no more than 10 pages.</p>					<p>registry;</p> <p>(4) Bandwidth and SLA are consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(5) Demonstrates an adequate level of resources that are on hand, or committed or readily available to carry out this function.</p> <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>
	33	<p>Database Capabilities: provide details of database capabilities including but not limited to:</p> <ul style="list-style-type: none"> • database software; • storage capacity (both in raw terms [e.g., MB, GB] and in number of registrations / registration transactions); • maximum transaction throughput (in total and by type of transaction); • scalability; • procedures for object creation, editing, and deletion, and user and credential management; • high availability; • change management procedures; • reporting capabilities; and • resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>A registry database data model can be included to provide additional clarity to this response.</p> <p>Note: Database capabilities described should be in reference to registry services and not necessarily related support functions such as Personnel or Accounting, unless such services are inherently intertwined with the delivery of registry services.</p> <p>To be eligible for a score of 2, answers must also</p>	N		0-2	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of database capabilities to meet the registry technical requirements;</p> <p>(2) database capabilities consistent with the overall business approach and planned size of the registry; and</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section.</p>	<p>2 - exceeds requirements: Response meets all attributes for a score of 1 and includes</p> <p>(1) Highly developed and detailed description of database capabilities that are able to scale well above stated projections for high registration volumes, thereby significantly reducing the risk from unexpected volume surges and demonstrates an ability to adapt quickly to support new technologies and services that are not necessarily envisaged for registry startup; and</p> <p>(2) Evidence of comprehensive database capabilities, including high scalability and redundant database infrastructure, regularly reviewed operational and reporting procedures following leading practices.</p> <p>1 - meets requirements: Response includes</p> <p>(1) An adequate description of database capabilities that substantially demonstrates the applicant's capabilities and knowledge required to meet this element;</p> <p>(2) Plans for database capabilities</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>include evidence of database capabilities that greatly reduce the risk profile of the proposed registry by providing a level of scalability and adaptability that far exceeds the minimum configuration necessary for the expected volume.</p> <p>A complete answer is expected to be no more than 5 pages.</p>					<p>describe all necessary elements;</p> <p>(3) Descriptions demonstrate adequate database capabilities, with database throughput, scalability, and database operations with limited operational governance;</p> <p>(4) Database capabilities are consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(5) Demonstrates that an adequate level of resources that are on hand, or committed or readily available to carry out this function.</p> <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>
	34	<p>Geographic Diversity: provide a description of plans for geographic diversity of:</p> <p>a. name servers, and</p> <p>b. operations centers.</p> <p>Answers should include, but are not limited to:</p> <ul style="list-style-type: none"> the intended physical locations of systems, primary and back-up operations centers (including security attributes), and other infrastructure; any registry plans to use Anycast or other topological and geographical diversity measures, in which case, the configuration of the relevant service must be included; resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>To be eligible for a score of 2, answers must also include evidence of a geographic diversity plan that greatly reduces the risk profile of the proposed registry by ensuring the continuance of all vital business functions (as identified in the applicant's continuity plan in Question 39) in the event of a natural or other disaster) at the principal place of business or point of presence.</p>	N		0-2	<p>Complete answer demonstrates:</p> <p>(1) geographic diversity of nameservers and operations centers;</p> <p>(2) proposed geo-diversity measures are consistent with the overall business approach and planned size of the registry; and</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section.</p>	<p>2 - exceeds requirements: Response meets all attributes for a score of 1 and includes</p> <p>(1) Evidence of highly developed measures for geo-diversity of operations, with locations and functions to continue all vital business functions in the event of a natural or other disaster at the principal place of business or point of presence; and</p> <p>(2) A high level of availability, security, and bandwidth.</p> <p>1 - meets requirements: Response includes</p> <p>(1) An adequate description of Geographic Diversity that substantially demonstrates the applicant's capabilities and knowledge required to meet this element;</p> <p>(2) Plans provide adequate geo-diversity of name servers and operations to continue critical registry functions in the event of a temporary outage at the principal place of business or point of presence;</p> <p>(3) Geo-diversity plans are consistent</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		A complete answer is expected to be no more than 5 pages.					with technical, operational, and financial approach as described in the application; and (4) Demonstrates adequate resources that are on hand, or committed or readily available to carry out this function. 0 - fails requirements: Does not meet all the requirements to score 1.
	35	<p>DNS Service: describe the configuration and operation of nameservers, including how the applicant will comply with relevant RFCs.</p> <p>All name servers used for the new gTLD must be operated in compliance with the DNS protocol specifications defined in the relevant RFCs, including but not limited to: 1034, 1035, 1982, 2181, 2182, 2671, 3226, 3596, 3597, 3901, 4343, and 4472.</p> <ul style="list-style-type: none"> • Provide details of the intended DNS Service including, but not limited to: A description of the DNS services to be provided, such as query rates to be supported at initial operation, and reserve capacity of the system. Describe how your nameserver update methods will change at various scales. Describe how DNS performance will change at various scales. • RFCs that will be followed – describe how services are compliant with RFCs and if these are dedicated or shared with any other functions (capacity/performance) or DNS zones. • The resources used to implement the services - describe complete server hardware and software, including network bandwidth and addressing plans for servers. Also include resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). • Demonstrate how the system will 	N	<p>Note that the use of DNS wildcard resource records as described in RFC 4592 or any other method or technology for synthesizing DNS resource records or using redirection within the DNS by the registry is prohibited in the Registry Agreement.</p> <p>Also note that name servers for the new gTLD must comply with IANA Technical requirements for authoritative name servers: http://www.iana.org/procedures/nameserver-requirements.html.</p>	0-1	<p>Complete answer demonstrates:</p> <p>(1) adequate description of configurations of nameservers and compliance with respective DNS protocol-related RFCs;</p> <p>(2) a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry;</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section;</p> <p>(4) evidence of compliance with Specification 6 to the Registry Agreement; and</p> <p>(5) evidence of complete knowledge and understanding of requirements for DNS service, one of the five critical registry functions.</p>	<p>1 - meets requirements: Response includes:</p> <p>(1) Adequate description of DNS service that that substantially demonstrates the applicant's capability and knowledge required to meet this element;</p> <p>(2) Plans are sufficient to result in compliance with DNS protocols (Specification 6, section 1.1) and required performance specifications Specification 10, Service Level Matrix;</p> <p>(3) Plans are consistent with technical, operational, and financial approach as described in the application; and</p> <p>(4) Demonstrates an adequate level of resources that are on hand, or committed or readily available to carry out this function.</p> <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>function - describe how the proposed infrastructure will be able to deliver the performance described in Specification 10 (section 2) attached to the Registry Agreement.</p> <p>Examples of evidence include:</p> <ul style="list-style-type: none"> • Server configuration standard (i.e., planned configuration). • Network addressing and bandwidth for query load and update propagation. • Headroom to meet surges. <p>A complete answer is expected to be no more than 10 pages.</p>					
	36	<p>IPv6 Reachability: provide a description of plans for providing IPv6 transport including, but not limited to:</p> <ul style="list-style-type: none"> • How the registry will support IPv6 access to Whois, Web-based Whois and any other Registration Data Publication Service as described in Specification 6 (section 1.5) to the Registry Agreement. • How the registry will comply with the requirement in Specification 6 for having at least two nameservers reachable over IPv6. • List all services that will be provided over IPv6, and describe the IPv6 connectivity and provider diversity that will be used. • Resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>A complete answer is expected to be no more than 5 pages.</p>	N	IANA nameserver requirements are available at http://www.iana.org/procedures/nameserver-requirements.html .	0-1	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> (1) complete knowledge and understanding of this aspect of registry technical requirements; (2) a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry; (3) a technical plan that is adequately resourced in the planned costs detailed in the financial section; and (4) evidence of compliance with Specification 6 to the Registry Agreement. 	<p>1 - meets requirements: Response includes</p> <ol style="list-style-type: none"> (1) Adequate description of IPv6 reachability that substantially demonstrates the applicant's capability and knowledge required to meet this element; (2) A description of an adequate implementation plan addressing requirements for IPv6 reachability, indicating IPv6 reachability allowing IPv6 transport in the network over two independent IPv6 capable networks in compliance to IPv4 IANA specifications, and Specification 10; (3) IPv6 plans consistent with the technical, operational, and financial approach as described in the application; and (4) Demonstrates an adequate level of resources that are on hand, committed or readily available to carry out this function. <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	37	<p>Data Backup Policies & Procedures: provide</p> <ul style="list-style-type: none"> • details of frequency and procedures for backup of data, • hardware, and systems used for backup, data format, • data backup features, • backup testing procedures, • procedures for retrieval of data/rebuild of database, • storage controls and procedures, and • resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>A complete answer is expected to be no more than 5 pages.</p>	N		0-1	<p>Complete answer demonstrates:</p> <p>(1) detailed backup and retrieval processes deployed;</p> <p>(2) backup and retrieval process and frequency are consistent with the overall business approach and planned size of the registry; and</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section.</p>	<p>1 - meets requirements: Response includes</p> <p>(1) Adequate description of backup policies and procedures that substantially demonstrate the applicant's capabilities and knowledge required to meet this element;</p> <p>(2) A description of leading practices being or to be followed;</p> <p>(3) Backup procedures consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(4) Demonstrates an adequate level of resources that are on hand, or committed or readily available to carry out this function.</p> <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>
	38	<p>Data Escrow: describe</p> <ul style="list-style-type: none"> • how the applicant will comply with the data escrow requirements documented in the Registry Data Escrow Specification (Specification 2 of the Registry Agreement); and • resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>A complete answer is expected to be no more than 5 pages</p>	N		0-1	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of data escrow, one of the five critical registry functions;</p> <p>(2) compliance with Specification 2 of the Registry Agreement;</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section; and</p> <p>(4) the escrow arrangement is consistent with the overall business approach and size/scope of the registry.</p>	<p>1 – meets requirements: Response includes</p> <p>(1) Adequate description of a Data Escrow process that substantially demonstrates the applicant's capability and knowledge required to meet this element;</p> <p>(2) Data escrow plans are sufficient to result in compliance with the Data Escrow Specification (Specification 2 to the Registry Agreement);</p> <p>(3) Escrow capabilities are consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(4) Demonstrates an adequate level of resources that are on hand, committed, or readily available to carry out this function.</p> <p>0 – fails requirements: Does not meet all the requirements to score a 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
	39	<p>Registry Continuity: describe how the applicant will comply with registry continuity obligations as described in Specification 6 (section 3) to the registry agreement. This includes conducting registry operations using diverse, redundant servers to ensure continued operation of critical functions in the case of technical failure.</p> <p>Describe resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area).</p> <p>The response should include, but is not limited to, the following elements of the business continuity plan:</p> <ul style="list-style-type: none"> • Identification of risks and threats to compliance with registry continuity obligations; • Identification and definitions of vital business functions (which may include registry services beyond the five critical registry functions) versus other registry functions and supporting operations and technology; • Definitions of Recovery Point Objectives and Recovery Time Objective; and • Descriptions of testing plans to promote compliance with relevant obligations. <p>To be eligible for a score of 2, answers must also include:</p> <ul style="list-style-type: none"> • A highly detailed plan that provides for leading practice levels of availability; and • Evidence of concrete steps such as a contract with a backup provider (in addition to any currently designated service operator) or a maintained hot site. <p>A complete answer is expected to be no more than 15 pages.</p>	N	<p>For reference, applicants should review the ICANN gTLD Registry Continuity Plan at http://www.icann.org/en/registries/continuity/gtld-registry-continuity-plan-25apr09-en.pdf.</p> <p>A Recovery Point Objective (RPO) refers to the point in time to which data should be recovered following a business disruption or disaster. The RPO allows an organization to define a window of time before a disruption or disaster during which data may be lost and is independent of the time it takes to get a system back on-line. If the RPO of a company is two hours, then when a system is brought back on-line after a disruption/disaster, all data must be restored to a point within two hours before the disaster.</p> <p>A Recovery Time Objective (RTO) is the duration of time within which a process must be restored after a business disruption or disaster to avoid what the entity may deem as unacceptable consequences. For example, pursuant to the draft Registry Agreement DNS service must not be down for longer than 4 hours. At 4 hours ICANN may invoke the use of an Emergency Back End Registry Operator to take over this function. The entity may deem this to be an unacceptable consequence therefore they may set their RTO to be something less than 4 hours and would build continuity plans accordingly.</p> <p>Vital business functions are functions that are critical to the success of the operation. For example, if a registry operator provides an additional service beyond the five critical registry functions, that it deems as central to its TLD, or supports an operation that is central to the TLD, this might be identified as a vital business function.</p>	0-2	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> (1) detailed description showing plans for compliance with registry continuity obligations; (2) a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry; (3) a technical plan that is adequately resourced in the planned costs detailed in the financial section; and (4) evidence of compliance with Specification 6 to the Registry Agreement. 	<p>2 - exceeds requirements: Response meets all attributes for a score of 1 and includes:</p> <ol style="list-style-type: none"> (1) Highly developed and detailed processes for maintaining registry continuity; and (2) Evidence of concrete steps, such as a contract with a backup service provider or a maintained hot site. <p>1 - meets requirements: Response includes:</p> <ol style="list-style-type: none"> (1) Adequate description of a Registry Continuity plan that substantially demonstrates capability and knowledge required to meet this element; (2) Continuity plans are sufficient to result in compliance with requirements (Specification 6); (3) Continuity plans are consistent with the technical, operational, and financial approach as described in the application; and (4) Demonstrates an adequate level of resources that are on hand, committed readily available to carry out this function. <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>
	40	<p>Registry Transition: provide a Service Migration plan (as described in the Registry Transition Processes) that could be followed in the event</p>	N		0-1	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> (1) complete knowledge and 	<p>1 - meets requirements: Response includes</p> <ol style="list-style-type: none"> (1) Adequate description of a registry

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		<p>that it becomes necessary to permanently transition the proposed gTLD to a new operator. The plan must take into account, and be consistent with the vital business functions identified in the previous question.</p> <p>Elements of the plan may include, but are not limited to:</p> <ul style="list-style-type: none"> • Preparatory steps needed for the transition of critical registry functions; • Monitoring during registry transition and efforts to minimize any interruption to critical registry functions during this time; and • Contingency plans in the event that any part of the registry transition is unable to move forward according to the plan. <p>A complete answer is expected to be no more than 10 pages.</p>				<p>understanding of the Registry Transition Processes; and</p> <p>(2) a technical plan scope/scale consistent with the overall business approach and planned size of the registry.</p>	<p>transition plan that substantially demonstrates the applicant's capability and knowledge required to meet this element;</p> <p>(2) A description of an adequate registry transition plan with appropriate monitoring during registry transition; and</p> <p>(3) Transition plan is consistent with the technical, operational, and financial approach as described in the application.</p> <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>
	41	<p>Failover Testing: provide</p> <ul style="list-style-type: none"> • a description of the failover testing plan, including mandatory annual testing of the plan. Examples may include a description of plans to test failover of data centers or operations to alternate sites, from a hot to a cold facility, registry data escrow testing, or other mechanisms. The plan must take into account and be consistent with the vital business functions identified in Question 39; and • resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>The failover testing plan should include, but is not limited to, the following elements:</p> <ul style="list-style-type: none"> • Types of testing (e.g., walkthroughs, takedown of sites) and the frequency of testing; • How results are captured, what is done 	N		0-1	<p>Complete answer demonstrates:</p> <p>(1) complete knowledge and understanding of this aspect of registry technical requirements;</p> <p>(2) a technical plan scope/scale consistent with the overall business approach and planned size of the registry; and</p> <p>(3) a technical plan that is adequately resourced in the planned costs detailed in the financial section.</p>	<p>1 - meets requirements: Response includes</p> <p>(1) An adequate description of a failover testing plan that substantially demonstrates the applicant's capability and knowledge required to meet this element;</p> <p>(2) A description of an adequate failover testing plan with an appropriate level of review and analysis of failover testing results;</p> <p>(3) Failover testing plan is consistent with the technical, operational, and financial approach as described in the application; and</p> <p>(4) Demonstrates an adequate level of resources that are on hand, committed or readily available to carry out this function.</p> <p>0 - fails requirements Does not meet all the requirements to score a 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>with the results, and with whom results are shared;</p> <ul style="list-style-type: none"> • How test plans are updated (e.g., what triggers an update, change management processes for making updates); • Length of time to restore critical registry functions; • Length of time to restore all operations, inclusive of critical registry functions; and • Length of time to migrate from one site to another. <p>A complete answer is expected to be no more than 10 pages.</p>					
	42	<p>Monitoring and Fault Escalation Processes: provide</p> <ul style="list-style-type: none"> • a description of the proposed (or actual) arrangements for monitoring critical registry systems (including SRS, database systems, DNS servers, Whois service, network connectivity, routers and firewalls). This description should explain how these systems are monitored and the mechanisms that will be used for fault escalation and reporting, and should provide details of the proposed support arrangements for these registry systems. • resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>To be eligible for a score of 2, answers must also include:</p> <ul style="list-style-type: none"> • Meeting the fault tolerance / monitoring guidelines described • Evidence of commitment to provide a 24x7 fault response team. <p>A complete answer is expected to be no more than 10 pages.</p>	N		0-2	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> (1) complete knowledge and understanding of this aspect of registry technical requirements; (2) a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry; (3) a technical plan that is adequately resourced in the planned costs detailed in the financial section; and (4) consistency with the commitments made to registrants and registrars regarding system maintenance. 	<p>2 - exceeds requirements: Response meets all attributes for a score of 1 and includes</p> <ol style="list-style-type: none"> (1) Evidence showing highly developed and detailed fault tolerance/monitoring and redundant systems deployed with real-time monitoring tools / dashboard (metrics) deployed and reviewed regularly; (2) A high level of availability that allows for the ability to respond to faults through a 24x7 response team. <p>1 - meets requirements: Response includes</p> <ol style="list-style-type: none"> (1) Adequate description of monitoring and fault escalation processes that substantially demonstrates the applicant's capability and knowledge required to meet this element; (2) Evidence showing adequate fault tolerance/monitoring systems planned with an appropriate level of monitoring and limited periodic review being performed; (3) Plans are consistent with the technical, operational, and financial approach described in the application; and (4) Demonstrates an adequate level of resources that are on hand,

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							committed or readily available to carry out this function. 0 - fails requirements: Does not meet all the requirements to score 1.
	43	<p>DNSSEC: Provide</p> <ul style="list-style-type: none"> The registry's DNSSEC policy statement (DPS), which should include the policies and procedures the proposed registry will follow, for example, for signing the zone file, for verifying and accepting DS records from child domains, and for generating, exchanging, and storing keying material; Describe how the DNSSEC implementation will comply with relevant RFCs, including but not limited to: RFCs 4033, 4034, 4035, 5910, 4509, 4641, and 5155 (the latter will only be required if Hashed Authenticated Denial of Existence will be offered); and resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>A complete answer is expected to be no more than 5 pages. Note, the DPS is required to be submitted as part of the application</p>	N		0-1	<p>Complete answer demonstrates:</p> <ol style="list-style-type: none"> complete knowledge and understanding of this aspect of registry technical requirements, one of the five critical registry functions; a technical plan scope/scale that is consistent with the overall business approach and planned size of the registry; a technical plan that is adequately resourced in the planned costs detailed in the financial section; and an ability to comply with relevant RFCs. 	<p>1 - meets requirements: Response includes</p> <ol style="list-style-type: none"> An adequate description of DNSSEC that substantially demonstrates the applicant's capability and knowledge required to meet this element; Evidence that TLD zone files will be signed at time of launch, in compliance with required RFCs, and registry offers provisioning capabilities to accept public key material from registrants through the SRS ; An adequate description of key management procedures in the proposed TLD, including providing secure encryption key management (generation, exchange, and storage); Technical plan is consistent with the technical, operational, and financial approach as described in the application; and Demonstrates an adequate level of resources that are already on hand, committed or readily available to carry out this function. <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>

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	44	<p>OPTIONAL. IDNs:</p> <ul style="list-style-type: none"> State whether the proposed registry will support the registration of IDN labels in the TLD, and if so, how. For example, explain which characters will be supported, and provide the associated IDN Tables with variant characters identified, along with a corresponding registration policy. This includes public interfaces to the databases such as Whois and EPP. Describe how the IDN implementation will comply with RFCs 5809-5893 as well as the ICANN IDN Guidelines at http://www.icann.org/en/topics/idn/implementation-guidelines.htm. Describe resourcing plans for the initial implementation of, and ongoing maintenance for, this aspect of the criteria (number and description of personnel roles allocated to this area). <p>A complete answer is expected to be no more than 10 pages plus attachments.</p>	N	<p>IDNs are an optional service at time of launch. Absence of IDN implementation or plans will not detract from an applicant's score. Applicants who respond to this question with plans for implementation of IDNs at time of launch will be scored according to the criteria indicated here.</p> <p>IDN tables should be submitted in a machine-readable format. The model format described in Section 5 of RFC 4290 would be ideal. The format used by RFC 3743 is an acceptable alternative. Variant generation algorithms that are more complex (such as those with contextual rules) and cannot be expressed using these table formats should be specified in a manner that could be re-implemented programmatically by ICANN. Ideally, for any complex table formats, a reference code implementation should be provided in conjunction with a description of the generation rules.</p>	0-1	<p>IDNs are an optional service. Complete answer demonstrates: (1) complete knowledge and understanding of this aspect of registry technical requirements; (2) a technical plan that is adequately resourced in the planned costs detailed in the financial section; (3) consistency with the commitments made to registrants and the technical, operational, and financial approach described in the application; (4) issues regarding use of scripts are settled and IDN tables are complete and publicly available; and (5) ability to comply with relevant RFCs.</p>	<p>1 - meets requirements for this optional element: Response includes</p> <ol style="list-style-type: none"> Adequate description of IDN implementation that substantially demonstrates the applicant's capability and knowledge required to meet this element; An adequate description of the IDN procedures, including complete IDN tables, compliance with IDNA/IDN guidelines and RFCs, and periodic monitoring of IDN operations; Evidence of ability to resolve rendering and known IDN issues or spoofing attacks; IDN plans are consistent with the technical, operational, and financial approach as described in the application; and Demonstrates an adequate level of resources that are on hand, committed readily available to carry out this function. <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>
Demonstration of Financial Capability	45	<p>Financial Statements: provide</p> <ul style="list-style-type: none"> audited or independently certified financial statements for the most recently completed fiscal year for the applicant, and audited or unaudited financial statements for the most recently ended interim financial period for the applicant for which this information may be released. <p>For newly-formed applicants, or where financial statements are not audited, provide:</p> <ul style="list-style-type: none"> the latest available unaudited financial statements; and an explanation as to why audited or independently certified financial statements are not available. <p>At a minimum, the financial statements should be provided for the legal entity listed as the applicant.</p>	N	<p>The questions in this section (45-50) are intended to give applicants an opportunity to demonstrate their financial capabilities to run a registry.</p> <p>Supporting documentation for this question should be submitted in the original language.</p>	0-1	<p>Audited or independently certified financial statements are prepared in accordance with International Financial Reporting Standards (IFRS) adopted by the International Accounting Standards Board (IASB) or nationally recognized accounting standards (e.g., GAAP). This will include a balance sheet and income statement reflecting the applicant's financial position and results of operations, a statement of shareholders equity/partner capital, and a cash flow statement. In the event the applicant is an entity newly formed for the purpose of applying for a gTLD and with little to no operating history</p>	<p>1 - meets requirements: Complete audited or independently certified financial statements are provided, at the highest level available in the applicant's jurisdiction. Where such audited or independently certified financial statements are not available, such as for newly-formed entities, the applicant has provided an explanation and has provided, at a minimum, unaudited financial statements.</p> <p>0 - fails requirements: Does not meet all the requirements to score 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>Financial statements are used in the analysis of projections and costs.</p> <p>A complete answer should include:</p> <ul style="list-style-type: none"> • balance sheet; • income statement; • statement of shareholders equity/partner capital; • cash flow statement, and • letter of auditor or independent certification, if applicable. 				(less than one year), the applicant must submit, at a minimum, pro forma financial statements including all components listed in the question. Where audited or independently certified financial statements are not available, applicant has provided an adequate explanation as to the accounting practices in its jurisdiction and has provided, at a minimum, unaudited financial statements.	
	46	<p>Projections Template: provide financial projections for costs and funding using Template 1, Most Likely Scenario (attached).</p> <p>Note, if certain services are outsourced, reflect this in the relevant cost section of the template.</p> <p>The template is intended to provide commonality among TLD applications and thereby facilitate the evaluation process.</p> <p>A complete answer is expected to be no more than 10 pages in addition to the template.</p>	N		0-1	<p>Applicant has provided a thorough model that demonstrates a sustainable business (even if break-even is not achieved through the first three years of operation).</p> <p>Applicant's description of projections development is sufficient to show due diligence.</p>	<p>1 - meets requirements:</p> <p>(1) Financial projections adequately describe the cost, funding and risks for the application</p> <p>(2) Demonstrates resources and plan for sustainable operations; and</p> <p>(3) Financial assumptions about the registry operations, funding and market are identified, explained, and supported.</p> <p>0 - fails requirements: Does not meet all of the requirements to score a 1.</p>
	47	<p>Costs and capital expenditures: in conjunction with the financial projections template, describe and explain:</p> <ul style="list-style-type: none"> • the expected operating costs and capital expenditures of setting up and operating the proposed registry; • any functions to be outsourced, as indicated in the cost section of the template, and the reasons for outsourcing; • any significant variances between years in any category of expected costs; and • a description of the basis / key assumptions including rationale for the costs provided in the projections template. This may include an 	N	This question is based on the template submitted in question 46.	0-2	<p>Costs identified are consistent with the proposed registry services, adequately fund technical requirements, and are consistent with proposed mission/purpose of the registry. Costs projected are reasonable for a registry of size and scope described in the application. Costs identified include the funding costs (interest expenses and fees) related to the continued operations instrument described in Question 50 below.</p>	<p>2 - exceeds requirements: Response meets all of the attributes for a score of 1 and:</p> <p>(1) Estimated costs and assumptions are conservative and consistent with an operation of the registry volume/scope/size as described by the applicant;</p> <p>(2) Estimates are derived from actual examples of previous or existing registry operations or equivalent; and</p> <p>(3) Conservative estimates are based on those experiences and describe a range of anticipated costs and use the high end of those estimates.</p>

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		<p>executive summary or summary outcome of studies, reference data, or other steps taken to develop the responses and validate any assumptions made.</p> <p>As described in the Applicant Guidebook, the information provided will be considered in light of the entire application and the evaluation criteria. Therefore, this answer should agree with the information provided in Template 1 to: 1) maintain registry operations, 2) provide registry services described above, and 3) satisfy the technical requirements described in the Demonstration of Technical & Operational Capability section. Costs should include both fixed and variable costs.</p> <p>To be eligible for a score of two points, answers must demonstrate a conservative estimate of costs based on actual examples of previous or existing registry operations with similar approach and projections for growth and costs or equivalent. Attach reference material for such examples.</p> <p>A complete answer is expected to be no more than 10 pages.</p>				<p>Key assumptions and their rationale are clearly described and may include, but are not limited to:</p> <ul style="list-style-type: none"> • Key components of capital expenditures; • Key components of operating costs, unit operating costs, headcount, number of technical/operating/equipment units, marketing, and other costs; and • Costs of outsourcing, if any. 	<p>1 - meets requirements:</p> <p>(1) Cost elements are reasonable and complete (i.e., cover all of the aspects of registry operations: registry services, technical requirements and other aspects as described by the applicant);</p> <p>(2) Estimated costs and assumptions are consistent and defensible with an operation of the registry volume/scope/size as described by the applicant; and</p> <p>(3) Projections are reasonably aligned with the historical financial statements provided in Question 45.</p> <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>
		<p>(b) Describe anticipated ranges in projected costs. Describe factors that affect those ranges.</p> <p>A complete answer is expected to be no more than 10 pages.</p>	N				
	48	<p>(a) Funding and Revenue: Funding can be derived from several sources (e.g., existing capital or proceeds/revenue from operation of the proposed registry).</p> <p>Describe:</p> <p>I) How existing funds will provide resources for both: a) start-up of operations, and b) ongoing operations;</p> <p>II) the revenue model including projections for transaction volumes and price (if the applicant does not intend to rely on registration revenue in order to cover the costs of the registry's</p>	N	Supporting documentation for this question should be submitted in the original language.	0-2	<p>Funding resources are clearly identified and adequately provide for registry cost projections. Sources of capital funding are clearly identified, held apart from other potential uses of those funds and available. The plan for transition of funding sources from available capital to revenue from operations (if applicable) is described.</p>	<p>2 - exceeds requirements:</p> <p>Response meets all the attributes for a score of 1 and</p> <p>(1) Existing funds (specifically all funds required for start-up) are quantified, on hand, segregated in an account available only to the applicant for purposes of the application only, ;</p> <p>(2) If on-going operations are to be at least partially resourced from existing funds (rather than revenue from on-going operations) that funding is segregated and</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>operation, it must clarify how the funding for the operation will be developed and maintained in a stable and sustainable manner);</p> <p>III) outside sources of funding (the applicant must, where applicable, provide evidence of the commitment by the party committing the funds). Secured vs unsecured funding should be clearly identified, including associated sources of funding (i.e., different types of funding, level and type of security/collateral, and key items) for each type of funding;</p> <p>IV) Any significant variances between years in any category of funding and revenue; and</p> <p>V) A description of the basis / key assumptions including rationale for the funding and revenue provided in the projections template. This may include an executive summary or summary outcome of studies, reference data, or other steps taken to develop the responses and validate any assumptions made; and</p> <p>VI) Assurances that funding and revenue projections cited in this application are consistent with other public and private claims made to promote the business and generate support. To be eligible for a score of 2 points, answers must demonstrate:</p> <p>I) A conservative estimate of funding and revenue; and</p> <p>II) Ongoing operations that are not dependent on projected revenue.</p> <p>A complete answer is expected to be no more than 10 pages.</p>				<p>Outside sources of funding are documented and verified. Examples of evidence for funding sources include, but are not limited to:</p> <ul style="list-style-type: none"> • Executed funding agreements; • A letter of credit; • A commitment letter; or • A bank statement. <p>Funding commitments may be conditional on the approval of the application. Sources of capital funding required to sustain registry operations on an on-going basis are identified. The projected revenues are consistent with the size and projected penetration of the target markets.</p> <p>Key assumptions and their rationale are clearly described and address, at a minimum:</p> <ul style="list-style-type: none"> • Key components of the funding plan and their key terms; and • Price and number of registrations. 	<p>earmarked for this purpose only in an amount adequate for three years operation;</p> <p>(3) If ongoing operations are to be at least partially resourced from revenues, assumptions made are conservative and take into consideration studies, reference data, or other steps taken to develop the response and validate any assumptions made; and</p> <p>(4) Cash flow models are prepared which link funding and revenue assumptions to projected actual business activity.</p> <p>1 - meets requirements:</p> <p>(1) Assurances provided that materials provided to investors and/or lenders are consistent with the projections and assumptions included in the projections templates;</p> <p>(2) Existing funds (specifically all funds required for start-up) are quantified, committed, identified as available to the applicant;</p> <p>(3) If on-going operations are to be at least partially resourced from existing funds (rather than revenue from on-going operations) that funding is quantified and its sources identified in an amount adequate for three years operation;</p> <p>(4) If ongoing operations are to be at least partially resourced from revenues, assumptions made are reasonable and are directly related to projected business volumes, market size and penetration; and</p> <p>(5) Projections are reasonably aligned with the historical financial statements provided in Question 45.</p> <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>(b) Describe anticipated ranges in projected funding and revenue. Describe factors that affect those ranges.</p> <p>A complete answer is expected to be no more than 10 pages.</p>	N				
	49	<p>(a) Contingency Planning: describe your contingency planning:</p> <ul style="list-style-type: none"> Identify any projected barriers/risks to implementation of the business approach described in the application and how they affect cost, funding, revenue, or timeline in your planning; Identify the impact of any particular regulation, law or policy that might impact the Registry Services offering; and Describe the measures to mitigate the key risks as described in this question. <p>A complete answer should include, for each contingency, a clear description of the impact to projected revenue, funding, and costs for the 3-year period presented in Template 1 (Most Likely Scenario).</p> <p>To be eligible for a score of 2 points, answers must demonstrate that action plans and operations are adequately resourced in the existing funding and revenue plan even if contingencies occur.</p> <p>A complete answer is expected to be no more than 10 pages.</p>	N		0-2	<p>Contingencies and risks are identified, quantified, and included in the cost, revenue, and funding analyses. Action plans are identified in the event contingencies occur. The model is resilient in the event those contingencies occur. Responses address the probability and resource impact of the contingencies identified.</p>	<p>2 - exceeds requirements: Response meets all attributes for a score of 1 and:</p> <ol style="list-style-type: none"> Action plans and operations are adequately resourced in the existing funding and revenue plan even if contingencies occur. <p>1 - meets requirements:</p> <ol style="list-style-type: none"> Model adequately identifies the key risks (including operational, business, legal, jurisdictional, financial, and other relevant risks); Response gives consideration to probability and resource impact of contingencies identified; and If resources are not available to fund contingencies in the existing plan, funding sources and a plan for obtaining them are identified. <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>
		<p>(b) Describe your contingency planning where funding sources are so significantly reduced that material deviations from the implementation model are required. In particular, describe:</p> <ul style="list-style-type: none"> how on-going technical requirements will be met; and what alternative funding can be reasonably raised at a later time. <p>Provide an explanation if you do not believe there is any chance of reduced funding.</p>	N				

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>Complete a financial projections template (Template 2, Worst Case Scenario)</p> <p>A complete answer is expected to be no more than 10 pages, in addition to the template.</p>					
		<p>(c) Describe your contingency planning where activity volumes so significantly exceed the high projections that material deviation from the implementation model are required. In particular, how will on-going technical requirements be met?</p> <p>A complete answer is expected to be no more than 10 pages.</p>	N				
	50	<p>(a) Provide a cost estimate for funding critical registry functions on an annual basis, and a rationale for these cost estimates commensurate with the technical, operational, and financial approach described in the application.</p> <p>The critical functions of a registry which must be supported even if an applicant's business and/or funding fails are:</p> <p>(1) DNS resolution for registered domain names</p> <p>Applicants should consider ranges of volume of daily DNS queries (e.g., 0-100M, 100M-1B, 1B+), the incremental costs associated with increasing levels of such queries, and the ability to meet SLA performance metrics.</p> <p>(2) Operation of the Shared Registration System</p> <p>Applicants should consider ranges of volume of daily EPP transactions (e.g., 0-200K, 200K-2M, 2M+), the incremental costs associated with</p>	N	<p>Registrant protection is critical and thus new gTLD applicants are requested to provide evidence indicating that the critical functions will continue to be performed even if the registry fails. Registrant needs are best protected by a clear demonstration that the basic registry functions are sustained for an extended period even in the face of registry failure. Therefore, this section is weighted heavily as a clear, objective measure to protect and serve registrants.</p> <p>The applicant has two tasks associated with adequately making this demonstration of continuity for critical registry functions. First, costs for maintaining critical registrant protection functions are to be estimated (Part a). In evaluating the application, the evaluators will adjudge whether the estimate is reasonable given the systems architecture and overall business approach described elsewhere in the application.</p> <p>The Continuing Operations Instrument (COI) is invoked by ICANN if necessary to pay for an Emergency Back End Registry Operator (EBERO) to maintain the five critical registry functions for a period of three to five years. Thus, the cost estimates are tied to the cost for a third party to provide the functions, not</p>	0-3	<p>Figures provided are based on an accurate estimate of costs. Documented evidence or detailed plan for ability to fund on-going critical registry functions for registrants for a period of three years in the event of registry failure, default or until a successor operator can be designated. Evidence of financial wherewithal to fund this requirement prior to delegation. This requirement must be met prior to or concurrent with the execution of the Registry Agreement.</p>	<p>3 - exceeds requirements: Response meets all the attributes for a score of 1 and:</p> <p>(1) Financial instrument is secured and in place to provide for on-going operations for at least three years in the event of failure.</p> <p>1 - meets requirements:</p> <p>(1) Costs are commensurate with technical, operational, and financial approach as described in the application; and</p> <p>(2) Funding is identified and instrument is described to provide for on-going operations of at least three years in the event of failure.</p> <p>0 - fails requirements: Does not meet all the requirements to score a 1.</p>

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>increasing levels of such queries, and the ability to meet SLA performance metrics.</p> <p>(3) Provision of Whois service</p> <p>Applicants should consider ranges of volume of daily Whois queries (e.g., 0-100K, 100k-1M, 1M+), the incremental costs associated with increasing levels of such queries, and the ability to meet SLA performance metrics for both web-based and port-43 services.</p> <p>(4) Registry data escrow deposits</p> <p>Applicants should consider administration, retention, and transfer fees as well as daily deposit (e.g., full or incremental) handling. Costs may vary depending on the size of the files in escrow (i.e., the size of the registry database).</p> <p>(5) Maintenance of a properly signed zone in accordance with DNSSEC requirements.</p> <p>Applicants should consider ranges of volume of daily DNS queries (e.g., 0-100M, 100M-1B, 1B+), the incremental costs associated with increasing levels of such queries, and the ability to meet SLA performance metrics.</p> <p>List the estimated annual cost for each of these functions (specify currency used).</p> <p>A complete answer is expected to be no more than 10 pages.</p>		<p>to the applicant's actual in-house or subcontracting costs for provision of these functions.</p> <p>Refer to guidelines at http://www.icann.org/en/announcements/announcement-3-23dec11-en.htm regarding estimation of costs. However, the applicant must provide its own estimates and explanation in response to this question.</p>			
		<p>(b) Applicants must provide evidence as to how the funds required for performing these critical registry functions will be available and guaranteed to fund registry operations (for the protection of registrants in the new gTLD) for a</p>	N	<p>Second (Part b), methods of securing the funds required to perform those functions for at least three years are to be described by the applicant in accordance with the criteria below. Two types of instruments will fulfill</p>			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>minimum of three years following the termination of the Registry Agreement. ICANN has identified two methods to fulfill this requirement:</p> <p><u>(i) Irrevocable standby letter of credit (LOC)</u> issued by a reputable financial institution.</p> <ul style="list-style-type: none"> • The amount of the LOC must be equal to or greater than the amount required to fund the registry operations specified above for at least three years. In the event of a draw upon the letter of credit, the actual payout would be tied to the cost of running those functions. • The LOC must name ICANN or its designee as the beneficiary. Any funds paid out would be provided to the designee who is operating the required registry functions. • The LOC must have a term of at least five years from the delegation of the TLD. The LOC may be structured with an annual expiration date if it contains an evergreen provision providing for annual extensions, without amendment, for an indefinite number of periods until the issuing bank informs the beneficiary of its final expiration or until the beneficiary releases the LOC as evidenced in writing. If the expiration date occurs prior to the fifth anniversary of the delegation of the TLD, applicant will be required to obtain a replacement instrument. • The LOC must be issued by a reputable financial institution insured at the highest level in its jurisdiction. Documentation should indicate by whom the issuing institution is insured (i.e., as opposed to by whom the institution is rated). • The LOC will provide that ICANN or its designee shall be unconditionally entitled to a release of funds (full or partial) thereunder upon delivery of written notice by ICANN or its designee. • Applicant should attach an original copy of the executed letter of credit or a draft of the letter of credit containing the full terms and conditions. If not yet executed, the Applicant will be required to provide ICANN with an original copy of the executed LOC prior to or concurrent with the execution of the Registry Agreement. • The LOC must contain at least the following required elements: <ul style="list-style-type: none"> ○ Issuing bank and date of issue. ○ Beneficiary: ICANN / 4676 Admiralty 		<p>this requirement. The applicant must identify which of the two methods is being described. The instrument is required to be in place at the time of the execution of the Registry Agreement.</p> <p>Financial Institution Ratings: The instrument must be issued or held by a financial institution with a rating beginning with "A" (or the equivalent) by any of the following rating agencies: A.M. Best, Dominion Bond Rating Service, Egan-Jones, Fitch Ratings, Kroll Bond Rating Agency, Moody's, Morningstar, Standard & Poor's, and Japan Credit Rating Agency.</p> <p>If an applicant cannot access a financial institution with a rating beginning with "A," but a branch or subsidiary of such an institution exists in the jurisdiction of the applying entity, then the instrument may be issued by the branch or subsidiary or by a local financial institution with an equivalent or higher rating to the branch or subsidiary.</p> <p>If an applicant cannot access any such financial institutions, the instrument may be issued by the highest-rated financial institution in the national jurisdiction of the applying entity, if accepted by ICANN.</p> <p>Execution by ICANN: For any financial instruments that contemplate ICANN being a party, upon the written request of the applicant, ICANN may (but is not obligated to) execute such agreement prior to submission of the applicant's application if the agreement is on terms acceptable to ICANN. ICANN encourages applicants to deliver a written copy of any such agreement (only if it requires ICANN's signature) to ICANN as soon as possible to facilitate ICANN's review. If the financial instrument requires ICANN's signature, then the applicant will receive 3 points for question 50 (for the instrument being "secured and in place") only if ICANN executes the agreement prior to submission of the application. ICANN will determine, in</p>			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>Way, Suite 330 / Marina del Rey, CA 90292 / US, or its designee.</p> <ul style="list-style-type: none"> o Applicant's complete name and address. o LOC identifying number. o Exact amount in USD. o Expiry date. o Address, procedure, and required forms whereby presentation for payment is to be made. o Conditions: <ul style="list-style-type: none"> ▪ Partial drawings from the letter of credit may be made provided that such payment shall reduce the amount under the standby letter of credit. ▪ All payments must be marked with the issuing bank name and the bank's standby letter of credit number. ▪ LOC may not be modified, amended, or amplified by reference to any other document, agreement, or instrument. ▪ The LOC is subject to the International Standby Practices (ISP 98) International Chamber of Commerce (Publication No. 590), or to an alternative standard that has been demonstrated to be reasonably equivalent. <p>(ii) <u>A deposit into an irrevocable cash escrow account held by a reputable financial institution.</u></p> <ul style="list-style-type: none"> • The amount of the deposit must be equal to or greater than the amount required to fund registry operations for at least three years. • Cash is to be held by a third party financial institution which will not allow the funds to be commingled with the Applicant's operating funds or other funds and may only be accessed by ICANN or its designee if certain conditions are met. • The account must be held by a reputable financial institution insured at the highest level in its jurisdiction. Documentation should indicate by whom the issuing institution is insured (i.e., as opposed to by whom the institution is rated). • The escrow agreement relating to the escrow account will provide that ICANN or its designee shall be unconditionally entitled to a release of funds (full or partial) thereunder upon delivery of written notice by ICANN or its designee. • The escrow agreement must have a term 		<p>its sole discretion, whether to execute and become a party to a financial instrument.</p> <p>The financial instrument should be submitted in the original language.</p>			

	#	Question	Included in public posting	Notes	Scoring Range	Criteria	Scoring
		<p>of five years from the delegation of the TLD.</p> <ul style="list-style-type: none"> The funds in the deposit escrow account are not considered to be an asset of ICANN. Any interest earnings less bank fees are to accrue to the deposit, and will be paid back to the applicant upon liquidation of the account to the extent not used to pay the costs and expenses of maintaining the escrow. The deposit plus accrued interest, less any bank fees in respect of the escrow, is to be returned to the applicant if the funds are not used to fund registry functions due to a triggering event or after five years, whichever is greater. The Applicant will be required to provide ICANN an explanation as to the amount of the deposit, the institution that will hold the deposit, and the escrow agreement for the account at the time of submitting an application. Applicant should attach evidence of deposited funds in the escrow account, or evidence of provisional arrangement for deposit of funds. Evidence of deposited funds and terms of escrow agreement must be provided to ICANN prior to or concurrent with the execution of the Registry Agreement. 					

Instructions: TLD Applicant – Financial Projections

The application process requires the applicant to submit two cash basis Financial Projections.

The first projection (Template 1) should show the Financial Projections associated with the Most Likely scenario expected. This projection should include the forecasted registration volume, registration fee, and all costs and capital expenditures expected during the start-up period and during the first three years of operations. Template 1 relates to Question 46 (Projections Template) in the application.

We also ask that applicants show as a separate projection (Template 2) the Financial Projections associated with a realistic Worst Case scenario. Template 2 relates to Question 49 (Contingency Planning) in the application.

For each Projection prepared, please include Comments and Notes on the bottom of the projection (in the area provided) to provide those reviewing these projections with information regarding:

1. Assumptions used, significant variances in Operating Cash Flows and Capital Expenditures from year-to-year;
2. How you plan to fund operations;
3. Contingency planning

As you complete Template 1 and Template 2, please reference data points and/or formulas used in your calculations (where appropriate).

Section I – Projected Cash inflows and outflows

Projected Cash Inflows

Lines A and B. Provide the number of forecasted registrations and the registration fee for years 1, 2, and 3. Leave the *Start-up* column blank. The start-up period is for cash costs and capital expenditures only; there should be no cash projections input to this column.

Line C. Multiply lines A and B to arrive at the *Registration Cash Inflow* for line C.

Line D. Provide projected cash inflows from any other revenue source for years 1, 2, and 3. For any figures provided on line D, please disclose the source in the *Comments/Notes* box of Section I. Note, do not include funding in Line D as that is covered in Section VI.

Line E. Add lines C and D to arrive at the total cash inflow.

Projected Operating Cash Outflows

Start up costs - For all line items (F thru L) Please describe the total period of time this start-up cost is expected to cover in the *Comments/Notes* box.

Line F. Provide the projected labor costs for marketing, customer support, and technical support for start-up, year 1, year 2, and year 3. Note, other labor costs should be put in line *L (Other Costs)* and specify the type of labor and associated projected costs in the *Comments/Notes* box of this section.

Line G. *Marketing Costs* represent the amount spent on advertising, promotions, and other marketing activities. This amount should not include labor costs included in Marketing Labor (line *F*).

Lines H through K. Provide projected costs for facilities, G&A, interests and taxes, and Outsourcing for start-up as well as for years 1, 2, and 3. Be sure to list the type of activities that are being outsourced. You may combine certain activities from the same provider as long as an appropriate description of the services being combined is listed in the *Comments/Notes* box.

Line L. Provide any other projected operating costs for start-up, year 1, year 2, year 3. Be sure to specify the type of cost in the *Comments/Notes* box.

Line M. Add lines *F* through *L* to arrive at the total costs for line *M*.

Line N. Subtract line *E* from line *M* to arrive at the projected net operation number for line *N*.

Section IIa – Breakout of Fixed and Variable Operating Cash Outflows

Line A. Provide the projected variable operating cash outflows including labor and other costs that are not fixed in nature. Variable operating cash outflows are expenditures that fluctuate in relationship with increases or decreases in production or level of operations.

Line B. Provide the projected fixed operating cash outflows. Fixed operating cash outflows are expenditures that do not generally fluctuate in relationship with increases or decreases in production or level of operations. Such costs are generally necessary to be incurred in order to operate the base line operations of the organization or are expected to be incurred based on contractual commitments.

Line C – Add lines *A* and *B* to arrive at total Fixed and Variable Operating Cash Outflows for line *C*. This must equal Total Operating Cash Outflows from Section I, Line *M*.

Section IIb – Breakout of Critical Registry Function Operating Cash Outflows

Lines A – E. Provide the projected cash outflows for the five critical registry functions. If these functions are outsourced, the component of the outsourcing fee representing these functions must be separately identified and provided. These costs are based on the applicant's cost to manage these functions and should be calculated separately from the Continued Operations Instrument (COI) for Question 50.

Line F. If there are other critical registry functions based on the applicant's registry business model then the projected cash outflow for this function must be provided with a description added to the *Comment/Notes* box. This projected cash outflow may also be included in the 3-year reserve.

Line G. Add lines *A* through *F* to arrive at the Total Critical Registry Function Cash Outflows.

Section III – Projected Capital Expenditures

Lines A through C. Provide projected hardware, software, and furniture & equipment capital expenditures for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box.

Line D. Provide any projected capital expenditures as a result of outsourcing. This should be included for start-up and years 1, 2, and 3. Specify the type of expenditure and describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box of Section III.

Line E – Please describe “other” capital expenditures in the *Comments/Notes* box.

Line F. Add lines A through E to arrive at the Total Capital Expenditures.

Section IV – Projected Assets & Liabilities

Lines A through C. Provide projected cash, account receivables, and other current assets for start-up as well as for years 1, 2, and 3. For *Other Current Assets*, specify the type of asset and describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box.

Line D. Add lines A, B, C to arrive at the Total Current Assets.

Lines E through G. Provide projected accounts payable, short-term debt, and other current liabilities for start-up as well as for years 1, 2, and 3. For *Other Current Liabilities*, specify the type of liability and describe the total period of time the start-up up cost is expected to cover in the *Comments/Notes* box.

Line H. Ad lines E through G to arrive at the total current liabilities.

Lines I through K. Provide the projected fixed assets (PP&E), the 3-year reserve, and long-term assets for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box.

Line L. Ad lines I through K to arrive at the total long-term assets.

Line M. Provide the projected long-term debt for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box

Section V – Projected Cash Flow

Cash flow is driven by *Projected Net Operations* (Section I), *Projected Capital Expenditures* (Section III), and *Projected Assets & Liabilities* (Section IV).

Line A. Provide the projected net operating cash flows for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box.

Line B. Provide the projected capital expenditures for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box of Section V.

Lines C through F. Provide the projected change in non-cash current assets, total current liabilities, debt adjustments, and other adjustments for start-up as well as for years 1, 2, and 3. Please describe the total period of time the start-up cost is expected to cover in the *Comments/Notes* box.

Line G. Add lines A through F to arrive at the projected net cash flow for line H.

Section VI – Sources of Funds

Lines A & B. Provide projected funds from debt and equity at start-up. Describe the sources of debt and equity funding as well as the total period of time the start-up is expected to cover in the *Comments/Notes* box. Please also provide evidence the funding (e.g., letter of commitment).

Line C. Add lines A and B to arrive at the total sources of funds for line C.

General Comments – Regarding Assumptions Used, Significant Variances Between Years, etc.

Provide explanations for any significant variances between years (or expected in years beyond the timeframe of the template) in any category of costing or funding.

General Comments – Regarding how the Applicant Plans to Fund Operations

Provide general comments explaining how you will fund operations. Funding should be explained in detail in response to question 48.

General Comments – Regarding Contingencies

Provide general comments to describe your contingency planning. Contingency planning should be explained in detail in response to question 49.

TLD Applicant -- Financial Projections : **Sample**

Comments / Notes

In local currency (unless noted otherwise)

Sec.	Reference / Formula	Start-up Costs	Live / Operational		
			Year 1	Year 2	Year 3
I) Projected Cash Inflows and Outflows					
A) Forecasted registration volume		-	62 000	81 600	105 180
B) Registration Fee		\$ -	\$ 5.00	\$ 5.50	\$ 6.05
C) Registration cash inflows	A * B	-	310 000	448 800	636 339
D) Other cash inflows		-	35 000	48 000	62 000
E) Total Cash Inflows		-	345 000	496 800	698 339

Provide name of local currency used.

Registration was forecasted based on recent market surveys which we have attached and discussed below. We do not anticipate significant increases in Registration Fees subsequent to year 3.

Other cash inflows represent advertising monies expected from display ads on our website.

Projected Operating Cash Outflows

F) Labor:					
i) Marketing Labor		25 000	66 000	72 000	81 000
ii) Customer Support Labor		5 000	68 000	71 000	74 000
iii) Technical Labor		32 000	45 000	47 000	49 000
G) Marketing		40 000	44 000	26 400	31 680
H) Facilities		7 000	10 000	12 000	14 400
I) General & Administrative		14 000	112 000	122 500	136 000
J) Interest and Taxes		27 500	29 000	29 800	30 760
K) Outsourcing Operating Costs, if any (list the type of activities being outsourced):					

Costs are further detailed and explained in response to question 47.

Provide a list and associated cost for each outsourced function.

i) Hot site maintenance		5 000	7 500	7 500	7 500
ii) Partial Registry Functions		32 000	37 500	41 000	43 000
iii) (list type of activities being outsourced)		-	-	-	-
iv) (list type of activities being outsourced)		-	-	-	-
v) (list type of activities being outsourced)		-	-	-	-
vi) (list type of activities being outsourced)		-	-	-	-
L) Other Operating Costs		12 200	18 000	21 600	25 920
M) Total Operating Cash Outflows		199 700	437 000	450 800	493 260
N) Projected Net Operating Cash flow	E - M	(199 700)	(92 000)	46 000	205 079

Outsourcing hot site to ABC Company cost based on number of servers hosted and customer support

Outsourced certain registry and other functions to ABC registry (applicant should list outsourced functions). Costs for each year are based on expected domains under management

Break out of Fixed and Variable Operating Cash Outflows

A) Total Variable Operating Costs		92 000	195 250	198 930	217 416
B) Total Fixed Operating Costs		107 700	241 750	251 870	275 844
C) Total Operating Cash Outflows	= Sec. I) M CHECK	199 700	437 000	450 800	493 260

Variable Costs:
-Start Up equals all labor plus 75% of marketing.
-Years 1 through 3 equal 75% of all labor plus 50% of Marketing and 30% of G&A and Other Operating Costs
Fixed Costs: equals Total Costs less Variable Costs

Check that II) C equals I) N.

Break out of Critical Registry Function Operating Cash Outflows

A) Operation of SRS			5 000	5 500	6 050
B) Provision of Whois			6 000	6 600	7 260
C) DNS Resolution for Registered Domain Names			7 000	7 700	8 470
D) Registry Data Escrow			8 000	8 800	9 680
E) Maintenance of Zone in accordance with DNSSEC			9 000	9 900	10 890
F) Other					
G) Total Critical Function Cash Outflows			35 000	38 500	42 350

Note: these are based on the applicant's cost to manage these functions and should be calculated separately from the Continued Operations Instrument (COI) for Question 50

Commensurate with Question 24
Commensurate with Question 26
Commensurate with Question 35
Commensurate with Question 38
Commensurate with Question 43

Projected Capital Expenditures

A) Hardware		98 000	21 000	16 000	58 000
B) Software		32 000	18 000	24 000	11 000
C) Furniture & Other Equipment		43 000	22 000	14 000	16 000
D) Outsourcing Capital Expenditures, if any (list the type of capital expenditures):					
i)		-	-	-	-
ii)		-	-	-	-
iii)		-	-	-	-
iv)		-	-	-	-
v)		-	-	-	-
vi)		-	-	-	-
E) Other Capital Expenditures					
F) Total Capital Expenditures		173 000	61 000	54 000	85 000

-Hardware & Software have a useful life of 3 years
-Furniture & other equipment have a useful life of 5 years

List and describe each identifiable type of outsourcing.

List and describe each identifiable type of outsourcing.

List and describe each identifiable type of outsourcing.

List and describe each identifiable type of outsourcing.

List and describe each identifiable type of outsourcing.

List and describe each identifiable type of outsourcing.

Projected Assets & Liabilities

A) Cash		668 300	474 300	413 00	471 679
B) Accounts receivable			70 000	106 000	160 000
C) Other current assets			40 000	60 000	80 000
D) Total Current Assets		668 300	584 300	579 00	711 679
E) Accounts payable		41 000	110 000	113 000	125 300
F) Short-term Debt					
G) Other Current Liabilities					
H) Total Current Liabilities		41 000	110 000	113 000	125 300
I) Total Property, Plant & Equipment (PP&E)	= Sec III) F: cumulative Prior Yr - Cur Yr	173 000	234 000	288 000	373 000
J) 3-year Reserve		186 000	186 000	186 000	186 000
K) Other Long-term Assets					
L) Total Long-term Assets		359 000	420 000	474 000	559 000
M) Total Long-term Debt		1 000 000	1 000 000	1 000 000	1 000 000

Should equal amount calculated for Question 50

Principal payments on the line of credit with XYZ Bank will not be incurred until Year 5. Interest will be paid as incurred and is reflected in Sec. I) J.

Projected Cash flow (excl. 3-year Reserve)

A) Net operating cash flows	= Sec. I) N	(199 700)	(92 000)	46 000	205 079
B) Capital expenditures	= Sec. III) FE	(173 000)	(61 000)	(54 000)	(85 000)
C) Change in Non Cash Current Assets	= Sec. IV) (B) C: Prior Yr - Cur Yr	n/a	(110 000)	(56 000)	(74 000)
D) Change in Total Current Liabilities	= Sec. IV) H: Cur Yr - Prior Yr	41 000	69 000	3 000	12 300
E) Debt Adjustments	= Sec. IV) F and M: Cur Yr - Prior Yr	n/a	-	-	-
F) Other Adjustments					
G) Projected Net Cash flow		(331 700)	(194 000)	(61 000)	58 379

The \$41k in Start Up Costs represents an offset of the Accounts Payable reflected in the Projected balance sheet. Subsequent years are based on changes in Current Liabilities where Prior Year is subtracted from the Current year.

Sources of funds

A) Debt:					
i) On-hand at time of application		1 000 000			
ii) Contingent and/or committed but not yet on-hand					
B) Equity:					
i) On-hand at time of application					
ii) Contingent and/or committed but not yet on-hand					
C) Total Sources of funds		1 000 000			

See below for comments on funding. Revenues are further detailed and explained in response to question 48.

General Comments (Notes Regarding Assumptions Used, Significant Variances Between Years, etc.):

We expect the number of registrations to grow at approximately 30% per year with an increase in the registration fee of \$1 per year for the first three years. These volume assumptions are based on the attached (i) market data and (ii) published benchmark registry growth. Fee assumptions are aligned with the growth plan and anticipated demand based on the registration curve. We anticipate our costs will increase at a controlled pace over the first three years except for marketing costs which will be higher in the start-up and first year as we establish our brand name and work to increase registrations. Operating costs are supported by the attached (i) benchmark report for a basket of similar registries and (ii) a build-up of costs based on our current operations. Our capital expenditures will be greatest in the start-up phase and then our need to invest in computer hardware and software will level off after the start-up period. Capital expenses are based on contract drafts and discussions held with vendors. We have included and referenced the hardware costs to support the estimates. Our investment in Furniture and Equipment will be greatest in the start-up period as we build our infrastructure and then decrease in the following periods. Start-up: Our start-up phase is anticipated to comprise [X] months in line with benchmark growth curves indicated by prior start-ups and published market data. Our assumptions were derived from the attached support.

Comments regarding how the Applicant plans to Fund operations:

We have recently negotiated a line of credit with XYZ Bank (a copy of the fully executed line of credit agreement has been included with our application) and this funding will allow us to purchase necessary equipment and pay for employees and other Operating Costs during our start-up period and the first few years of operations. We expect that our business operation will be self funded (i.e. revenue from operations will cover all anticipated costs and capital expenditures) by the second half of our second year in operation; we also expect to become profitable with positive cash flow in year three.

General Comments regarding contingencies:

Although we expect to be cash flow positive by the end of year 2, the recently negotiated line of credit will cover our operating costs for the first 4 years of operation if necessary. We have also entered into an agreement with XYZ Co. to assume our registrants should our business model not have the ability to sustain itself in future years. Agreement with XYZ Co. has been included with our application. A full description of risks and a range of potential outcomes and impacts are included in our responses to Question 49. These responses have quantified the impacts of certain probabilities and our negotiated funding and action plans as shown are adequate to fund our initial start-up period.

Template 1 - Financial Projections: Most Likely						Comments / Notes
In local currency (unless noted otherwise)						Provide name of local currency used.
Sec.	Reference / Formula	Start-up Costs	Live / Operational			
			Year 1	Year 2	Year 3	
I) Projected Cash inflows and outflows						
A)	Forecasted registration volume					
B)	Registration fee					
C)	Registration cash inflows					
D)	Other cash inflows					
	E) Total Cash Inflows					
Projected Operating Cash Outflows						
F) Labor:						
i)	Marketing Labor					
ii)	Customer Support Labor					
iii)	Technical Labor					
G)	Marketing					
H)	Facilities					
I)	General & Administrative					
J)	Interest and Taxes					
K)	Outsourcing Operating Costs, if any (list the type of activities being outsourced):					
i)	(list type of activities being outsourced)					
ii)	(list type of activities being outsourced)					
iii)	(list type of activities being outsourced)					
iv)	(list type of activities being outsourced)					
v)	(list type of activities being outsourced)					
vi)	(list type of activities being outsourced)					
L)	Other Operating costs					
	M) Total Operating Cash Outflows					
	N) Projected Net Operating Cash flow					
IIa) Break out of Fixed and Variable Operating Cash Outflows						
A)	Total Variable Operating Costs					
B)	Total Fixed Operating Costs					
	C) Total Operating Cash Outflows					
		CHECK				
IIb) Break out of Critical Function Operating Cash Outflows						
A)	Operation of SRS					
B)	Provision of Whois					
C)	DNS Resolution for Registered Domain Names					
D)	Registry Data Escrow					
E)	Maintenance of Zone in accordance with DNSSEC					
	G) Total Critical Registry Function Cash Outflows					
	H) 3-year Total					
III) Projected Capital Expenditures						
A)	Hardware					
B)	Software					
C)	Furniture & Other Equipment					
D)	Outsourcing Capital Expenditures, if any (list the type of capital expenditures)					
i)						
ii)						
iii)						
iv)						
v)						
vi)						
E)	Other Capital Expenditures					
	F) Total Capital Expenditures					
IV) Projected Assets & Liabilities						
A) Cash						
B)	Accounts receivable					
C)	Other current assets					
	D) Total Current Assets					
E) Accounts payable						
F)	Short-term Debt					
G)	Other Current Liabilities					
	H) Total Current Liabilities					
I) Total Property, Plant & Equipment (PP&E)						
J)	3-year Reserve					
K)	Other Long-term Assets					
	L) Total Long-term Assets					
M) Total Long-term Debt						
V) Projected Cash flow (excl. 3-year Reserve)						
A) Net operating cash flows						
B)	Capital expenditures					
C)	Change in Non Cash Current Assets	n/a				
D)	Change in Total Current Liabilities					
E)	Debt Adjustments	n/a				
F)	Other Adjustments					
	H) Projected Net Cash flow					
VI) Sources of funds						
A) Debt:						
i)	On-hand at time of application					
ii)	Contingent and/or committed but not yet on-hand					
B) Equity:						
i)	On-hand at time of application					
ii)	Contingent and/or committed but not yet on-hand					
	C) Total Sources of funds					
General Comments (Notes Regarding Assumptions Used, Significant Variances Between Years, etc.):						
Comments regarding how the Applicant plans to Fund operations:						
General Comments regarding contingencies:						

Template 2 - Financial Projections: Worst Case						Comments / Notes
In local currency (unless noted otherwise)			Live / Operational			Provide name of local currency used.
Sec.	Reference / Formula	Start-up Costs	Year 1	Year 2	Year 3	
I)	Projected Cash inflows and outflows					
	A) Forecasted registration volume					
	B) Registration fee					
	C) Registration cash inflows					
	D) Other cash inflows					
	E) Total Cash Inflows					
	Projected Operating Cash Outflows					
	F) Labor:					
	i) Marketing Labor					
	ii) Customer Support Labor					
	iii) Technical Labor					
	G) Marketing					
	H) Facilities					
	I) General & Administrative					
	J) Interest and Taxes					
	K) Outsourcing Operating Costs, if any (list the type of activities being outsourced):					
	i) (list type of activities being outsourced)					
	ii) (list type of activities being outsourced)					
	iii) (list type of activities being outsourced)					
	iv) (list type of activities being outsourced)					
	v) (list type of activities being outsourced)					
	vi) (list type of activities being outsourced)					
	L) Other Operating costs					
	M) Total Operating Cash Outflows					
	N) Projected Net Operating Cash flow					
IIa)	Break out of Fixed and Variable Operating Cash Outflows					
	A) Total Variable Operating Costs					
	B) Total Fixed Operating Costs					
	C) Total Operating Cash Outflows					
		CHECK				
IIb)	Break out of Critical Function Operating Cash Outflows					
	A) Operation of SRS					
	B) Provision of Whois					
	C) DNS Resolution for Registered Domain Names					
	D) Registry Data Escrow					
	E) Maintenance of Zone in accordance with DNSSEC					
	G) Total Critical Registry Function Cash Outflows					
	H) 3-year Total					
III)	Projected Capital Expenditures					
	A) Hardware					
	B) Software					
	C) Furniture & Other Equipment					
	D) Outsourcing Capital Expenditures, if any (list the type of capital expenditures)					
	i)					
	ii)					
	iii)					
	iv)					
	v)					
	vi)					
	E) Other Capital Expenditures					
	F) Total Capital Expenditures					
IV)	Projected Assets & Liabilities					
	A) Cash					
	B) Accounts receivable					
	C) Other current assets					
	D) Total Current Assets					
	E) Accounts payable					
	F) Short-term Debt					
	G) Other Current Liabilities					
	H) Total Current Liabilities					
	I) Total Property, Plant & Equipment (PP&E)					
	J) 3-year Reserve					
	K) Other Long-term Assets					
	L) Total Long-term Assets					
	M) Total Long-term Debt					
V)	Projected Cash flow (excl. 3-year Reserve)					
	A) Net operating cash flows					
	B) Capital expenditures					
	C) Change in Non Cash Current Assets	n/a				
	D) Change in Total Current Liabilities					
	E) Debt Adjustments	n/a				
	F) Other Adjustments					
	G) Projected Net Cash flow					
VI)	Sources of funds					
	A) Debt:					
	i) On-hand at time of application					
	ii) Contingent and/or committed but not yet on-hand					
	B) Equity:					
	i) On-hand at time of application					
	ii) Contingent and/or committed but not yet on-hand					
	C) Total Sources of funds					
General Comments (Notes Regarding Assumptions Used, Significant Variances Between Years, etc.):						
Comments regarding how the Applicant plans to Fund operations:						
General Comments regarding contingencies:						



gTLD Applicant Guidebook

(v. 2012-06-04)

Module 3

4 June 2012

Module 3

Objection Procedures

This module describes two types of mechanisms that may affect an application:

- I. The procedure by which ICANN's Governmental Advisory Committee may provide GAC Advice on New gTLDs to the ICANN Board of Directors concerning a specific application. This module describes the purpose of this procedure, and how GAC Advice on New gTLDs is considered by the ICANN Board once received.
- II. The dispute resolution procedure triggered by a formal objection to an application by a third party. This module describes the purpose of the objection and dispute resolution mechanisms, the grounds for lodging a formal objection to a gTLD application, the general procedures for filing or responding to an objection, and the manner in which dispute resolution proceedings are conducted.

This module also discusses the guiding principles, or standards, that each dispute resolution panel will apply in reaching its expert determination.

All applicants should be aware of the possibility that a formal objection may be filed against any application, and of the procedures and options available in the event of such an objection.

3.1 GAC Advice on New gTLDs

ICANN's Governmental Advisory Committee was formed to consider and provide advice on the activities of ICANN as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN's policies and various laws and international agreements or where they may affect public policy issues.

The process for GAC Advice on New gTLDs is intended to address applications that are identified by governments to be problematic, e.g., that potentially violate national law or raise sensitivities.

GAC members can raise concerns about any application to the GAC. The GAC as a whole will consider concerns

raised by GAC members, and agree on GAC advice to forward to the ICANN Board of Directors.

The GAC can provide advice on any application. For the Board to be able to consider the GAC advice during the evaluation process, the GAC advice would have to be submitted by the close of the Objection Filing Period (see Module 1).

GAC Advice may take one of the following forms:

- I. The GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved.
- II. The GAC advises ICANN that there are concerns about a particular application "dot-example." The ICANN Board is expected to enter into dialogue with the GAC to understand the scope of concerns. The ICANN Board is also expected to provide a rationale for its decision.
- III. The GAC advises ICANN that an application should not proceed unless remediated. This will raise a strong presumption for the Board that the application should not proceed unless there is a remediation method available in the Guidebook (such as securing the approval of one or more governments), that is implemented by the applicant.

Where GAC Advice on New gTLDs is received by the Board concerning an application, ICANN will publish the Advice and endeavor to notify the relevant applicant(s) promptly. The applicant will have a period of 21 calendar days from the publication date in which to submit a response to the ICANN Board.

ICANN will consider the GAC Advice on New gTLDs as soon as practicable. The Board may consult with independent experts, such as those designated to hear objections in the New gTLD Dispute Resolution Procedure, in cases where the issues raised in the GAC advice are pertinent to one of the subject matter areas of the objection procedures. The receipt of GAC advice will not toll the processing of any application (i.e., an application will not be suspended but will continue through the stages of the application process).

3.2 *Public Objection and Dispute Resolution Process*

The independent dispute resolution process is designed to protect certain interests and rights. The process provides a path for formal objections during evaluation of the applications. It allows a party with standing to have its objection considered before a panel of qualified experts.

A formal objection can be filed only on four enumerated grounds, as described in this module. A formal objection initiates a dispute resolution proceeding. In filing an application for a gTLD, the applicant agrees to accept the applicability of this gTLD dispute resolution process. Similarly, an objector accepts the applicability of this gTLD dispute resolution process by filing its objection.

As described in section 3.1 above, ICANN's Governmental Advisory Committee has a designated process for providing advice to the ICANN Board of Directors on matters affecting public policy issues, and these objection procedures would not be applicable in such a case. The GAC may provide advice on any topic and is not limited to the grounds for objection enumerated in the public objection and dispute resolution process.

3.2.1 *Grounds for Objection*

A formal objection may be filed on any one of the following four grounds:

String Confusion Objection – The applied-for gTLD string is confusingly similar to an existing TLD or to another applied-for gTLD string in the same round of applications.

Legal Rights Objection – The applied-for gTLD string infringes the existing legal rights of the objector.

Limited Public Interest Objection – The applied-for gTLD string is contrary to generally accepted legal norms of morality and public order that are recognized under principles of international law.

Community Objection – There is substantial opposition to the gTLD application from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted.

The rationales for these objection grounds are discussed in the final report of the ICANN policy development process for new gTLDs. For more information on this process, see

<http://gnso.icann.org/issues/new-gtlds/pdp-dec05-fr-part-08aug07.htm>.

3.2.2 *Standing to Object*

Objectors must satisfy standing requirements to have their objections considered. As part of the dispute proceedings, all objections will be reviewed by a panel of experts designated by the applicable Dispute Resolution Service Provider (DRSP) to determine whether the objector has standing to object. Standing requirements for the four objection grounds are:

Objection ground	Who may object
String confusion	Existing TLD operator or gTLD applicant in current round. In the case where an IDN ccTLD Fast Track request has been submitted before the public posting of gTLD applications received, and the Fast Track requestor wishes to file a string confusion objection to a gTLD application, the Fast Track requestor will be granted standing.
Legal rights	Rightholders
Limited public interest	No limitations on who may file – however, subject to a “quick look” designed for early conclusion of frivolous and/or abusive objections
Community	Established institution associated with a clearly delineated community

3.2.2.1 *String Confusion Objection*

Two types of entities have standing to object:

- An existing TLD operator may file a string confusion objection to assert string confusion between an applied-for gTLD and the TLD that it currently operates.
- Any gTLD applicant in this application round may file a string confusion objection to assert string confusion between an applied-for gTLD and the gTLD for which it has applied, where string confusion between the two applicants has not already been found in the Initial Evaluation. That is, an applicant does not have standing to object to another application with which it is already in a contention set as a result of the Initial Evaluation.

In the case where an existing TLD operator successfully asserts string confusion with an applicant, the application will be rejected.

In the case where a gTLD applicant successfully asserts string confusion with another applicant, the only possible

outcome is for both applicants to be placed in a contention set and to be referred to a contention resolution procedure (refer to Module 4, String Contention Procedures). If an objection by one gTLD applicant to another gTLD application is unsuccessful, the applicants may both move forward in the process without being considered in direct contention with one another.

3.2.2.2 Legal Rights Objection

A rightsholder has standing to file a legal rights objection. The source and documentation of the existing legal rights the objector is claiming (which may include either registered or unregistered trademarks) are infringed by the applied-for gTLD must be included in the filing.

An intergovernmental organization (IGO) is eligible to file a legal rights objection if it meets the criteria for registration of a .INT domain name¹:

- a) An international treaty between or among national governments must have established the organization; and
- b) The organization that is established must be widely considered to have independent international legal personality and must be the subject of and governed by international law.

The specialized agencies of the UN and the organizations having observer status at the UN General Assembly are also recognized as meeting the criteria.

3.2.2.3 Limited Public Interest Objection

Anyone may file a Limited Public Interest Objection. Due to the inclusive standing base, however, objectors are subject to a "quick look" procedure designed to identify and eliminate frivolous and/or abusive objections. An objection found to be manifestly unfounded and/or an abuse of the right to object may be dismissed at any time.

A Limited Public Interest objection would be manifestly unfounded if it did not fall within one of the categories that have been defined as the grounds for such an objection (see subsection 3.5.3).

A Limited Public Interest objection that is manifestly unfounded may also be an abuse of the right to object. An objection may be framed to fall within one of the

¹ See also <http://www.iana.org/domains/int/policy/>.

accepted categories for Limited Public Interest objections, but other facts may clearly show that the objection is abusive. For example, multiple objections filed by the same or related parties against a single applicant may constitute harassment of the applicant, rather than a legitimate defense of legal norms that are recognized under general principles of international law. An objection that attacks the applicant, rather than the applied-for string, could be an abuse of the right to object.²

The quick look is the Panel's first task, after its appointment by the DRSP and is a review on the merits of the objection. The dismissal of an objection that is manifestly unfounded and/or an abuse of the right to object would be an Expert Determination, rendered in accordance with Article 21 of the New gTLD Dispute Resolution Procedure.

In the case where the quick look review does lead to the dismissal of the objection, the proceedings that normally follow the initial submissions (including payment of the full advance on costs) will not take place, and it is currently contemplated that the filing fee paid by the applicant would be refunded, pursuant to Procedure Article 14(e).

3.2.2.4 Community Objection

Established institutions associated with clearly delineated communities are eligible to file a community objection. The community named by the objector must be a community strongly associated with the applied-for gTLD string in the application that is the subject of the objection. To qualify for standing for a community objection, the objector must prove both of the following:

² The jurisprudence of the European Court of Human Rights offers specific examples of how the term "manifestly ill-founded" has been interpreted in disputes relating to human rights. Article 35(3) of the European Convention on Human Rights provides: "The Court shall declare inadmissible any individual application submitted under Article 34 which it considers incompatible with the provisions of the Convention or the protocols thereto, manifestly ill-founded, or an abuse of the right of application." The ECHR renders reasoned decisions on admissibility, pursuant to Article 35 of the Convention. (Its decisions are published on the Court's website <http://www.echr.coe.int>.) In some cases, the Court briefly states the facts and the law and then announces its decision, without discussion or analysis. E.g., Decision as to the Admissibility of Application No. 34328/96 by Egbert Peree against the Netherlands (1998). In other cases, the Court reviews the facts and the relevant legal rules in detail, providing an analysis to support its conclusion on the admissibility of an application. Examples of such decisions regarding applications alleging violations of Article 10 of the Convention (freedom of expression) include: *Décision sur la recevabilité de la requête no 65831/01 présentée par Roger Garaudy contre la France* (2003); *Décision sur la recevabilité de la requête no 65297/01 présentée par Eduardo Fernando Alves Costa contre le Portugal* (2004).

The jurisprudence of the European Court of Human Rights also provides examples of the abuse of the right of application being sanctioned, in accordance with ECHR Article 35(3). See, for example, *Décision partielle sur la recevabilité de la requête no 61164/00 présentée par Gérard Duringer et autres contre la France et de la requête no 18589/02 contre la France* (2003).

It is an established institution – Factors that may be considered in making this determination include, but are not limited to:

- Level of global recognition of the institution;
- Length of time the institution has been in existence; and
- Public historical evidence of its existence, such as the presence of a formal charter or national or international registration, or validation by a government, inter-governmental organization, or treaty. The institution must not have been established solely in conjunction with the gTLD application process.

It has an ongoing relationship with a clearly delineated community – Factors that may be considered in making this determination include, but are not limited to:

- The presence of mechanisms for participation in activities, membership, and leadership;
- Institutional purpose related to the benefit of the associated community;
- Performance of regular activities that benefit the associated community; and
- The level of formal boundaries around the community.

The panel will perform a balancing of the factors listed above, as well as other relevant information, in making its determination. It is not expected that an objector must demonstrate satisfaction of each and every factor considered in order to satisfy the standing requirements.

3.2.3 Dispute Resolution Service Providers

To trigger a dispute resolution proceeding, an objection must be filed by the posted deadline date, directly with the appropriate DRSP for each objection ground.

- The International Centre for Dispute Resolution has agreed to administer disputes brought pursuant to string confusion objections.
- The Arbitration and Mediation Center of the World Intellectual Property Organization has agreed to administer disputes brought pursuant to legal rights objections.

- The International Center of Expertise of the International Chamber of Commerce has agreed to administer disputes brought pursuant to Limited Public Interest and Community Objections.

ICANN selected DRSPs on the basis of their relevant experience and expertise, as well as their willingness and ability to administer dispute proceedings in the new gTLD Program. The selection process began with a public call for expressions of interest³ followed by dialogue with those candidates who responded. The call for expressions of interest specified several criteria for providers, including established services, subject matter expertise, global capacity, and operational capabilities. An important aspect of the selection process was the ability to recruit panelists who will engender the respect of the parties to the dispute.

3.2.4 Options in the Event of Objection

Applicants whose applications are the subject of an objection have the following options:

The applicant can work to reach a settlement with the objector, resulting in withdrawal of the objection or the application;

The applicant can file a response to the objection and enter the dispute resolution process (refer to Section 3.2); or

The applicant can withdraw, in which case the objector will prevail by default and the application will not proceed further.

If for any reason the applicant does not file a response to an objection, the objector will prevail by default.

3.2.5 Independent Objector

A formal objection to a gTLD application may also be filed by the Independent Objector (IO). The IO does not act on behalf of any particular persons or entities, but acts solely in the best interests of the public who use the global Internet.

In light of this public interest goal, the Independent Objector is limited to filing objections on the grounds of Limited Public Interest and Community.

³ See <http://www.icann.org/en/announcements/announcement-21dec07.htm>.

Neither ICANN staff nor the ICANN Board of Directors has authority to direct or require the IO to file or not file any particular objection. If the IO determines that an objection should be filed, he or she will initiate and prosecute the objection in the public interest.

Mandate and Scope - The IO may file objections against “highly objectionable” gTLD applications to which no objection has been filed. The IO is limited to filing two types of objections: (1) Limited Public Interest objections and (2) Community objections. The IO is granted standing to file objections on these enumerated grounds, notwithstanding the regular standing requirements for such objections (see subsection 3.1.2).

The IO may file a Limited Public Interest objection against an application even if a Community objection has been filed, and vice versa.

The IO may file an objection against an application, notwithstanding the fact that a String Confusion objection or a Legal Rights objection was filed.

Absent extraordinary circumstances, the IO is not permitted to file an objection to an application where an objection has already been filed on the same ground.

The IO may consider public comment when making an independent assessment whether an objection is warranted. The IO will have access to application comments received during the comment period.

In light of the public interest goal noted above, the IO shall not object to an application unless at least one comment in opposition to the application is made in the public sphere.

Selection – The IO will be selected by ICANN, through an open and transparent process, and retained as an independent consultant. The Independent Objector will be an individual with considerable experience and respect in the Internet community, unaffiliated with any gTLD applicant.

Although recommendations for IO candidates from the community are welcomed, the IO must be and remain independent and unaffiliated with any of the gTLD applicants. The various rules of ethics for judges and international arbitrators provide models for the IO to declare and maintain his/her independence.

The IO's (renewable) tenure is limited to the time necessary to carry out his/her duties in connection with a single round of gTLD applications.

Budget and Funding – The IO's budget would comprise two principal elements: (a) salaries and operating expenses, and (b) dispute resolution procedure costs – both of which should be funded from the proceeds of new gTLD applications.

As an objector in dispute resolution proceedings, the IO is required to pay filing and administrative fees, as well as advance payment of costs, just as all other objectors are required to do. Those payments will be refunded by the DRSP in cases where the IO is the prevailing party.

In addition, the IO will incur various expenses in presenting objections before DRSP panels that will not be refunded, regardless of the outcome. These expenses include the fees and expenses of outside counsel (if retained) and the costs of legal research or factual investigations.

3.3 *Filing Procedures*

The information included in this section provides a summary of procedures for filing:

- Objections; and
- Responses to objections.

For a comprehensive statement of filing requirements applicable generally, refer to the New gTLD Dispute Resolution Procedure ("Procedure") included as an attachment to this module. In the event of any discrepancy between the information presented in this module and the Procedure, the Procedure shall prevail.

Note that the rules and procedures of each DRSP specific to each objection ground must also be followed. See <http://newgtlds.icann.org/en/program-status/objection-dispute-resolution>.

3.3.1 *Objection Filing Procedures*

The procedures outlined in this subsection must be followed by any party wishing to file a formal objection to an application that has been posted by ICANN. Should an applicant wish to file a formal objection to another gTLD application, it would follow these same procedures.

- All objections must be filed electronically with the appropriate DRSP by the posted deadline date.

Objections will not be accepted by the DRSPs after this date.

- All objections must be filed in English.
- Each objection must be filed separately. An objector wishing to object to several applications must file a separate objection and pay the accompanying filing fees for each application that is the subject of an objection. If an objector wishes to object to an application on more than one ground, the objector must file separate objections and pay the accompanying filing fees for each objection ground.

Each objection filed by an objector must include:

- The name and contact information of the objector.
- A statement of the objector's basis for standing; that is, why the objector believes it meets the standing requirements to object.
- A description of the basis for the objection, including:
 - A statement giving the specific ground upon which the objection is being filed.
 - A detailed explanation of the validity of the objection and why it should be upheld.
- Copies of any documents that the objector considers to be a basis for the objection.

Objections are limited to 5000 words or 20 pages, whichever is less, excluding attachments.

An objector must provide copies of all submissions to the DRSP associated with the objection proceedings to the applicant.

The DRSP will publish, and regularly update a list on its website identifying all objections as they are filed. ICANN will post on its website a notice of all objections filed once the objection filing period has closed.

3.3.2 Objection Filing Fees

At the time an objection is filed, the objector is required to pay a filing fee in the amount set and published by the relevant DRSP. If the filing fee is not paid, the DRSP will

dismiss the objection without prejudice. See Section 1.5 of Module 1 regarding fees.

Funding from ICANN for objection filing fees, as well as for advance payment of costs (see subsection 3.4.7 below) is available to the At-Large Advisory Committee (ALAC). Funding for ALAC objection filing and dispute resolution fees is contingent on publication by ALAC of its approved process for considering and making objections. At a minimum, the process for objecting to a gTLD application will require: bottom-up development of potential objections, discussion and approval of objections at the Regional At-Large Organization (RALO) level, and a process for consideration and approval of the objection by the At-Large Advisory Committee.

Funding from ICANN for objection filing fees, as well as for advance payment of costs, is available to individual national governments in the amount of USD 50,000 with the guarantee that a minimum of one objection per government will be fully funded by ICANN where requested. ICANN will develop a procedure for application and disbursement of funds.

Funding available from ICANN is to cover costs payable to the dispute resolution service provider and made directly to the dispute resolution service provider; it does not cover other costs such as fees for legal advice.

3.3.3 Response Filing Procedures

Upon notification that ICANN has published the list of all objections filed (refer to subsection 3.3.1), the DRSPs will notify the parties that responses must be filed within 30 calendar days of receipt of that notice. DRSPs will not accept late responses. Any applicant that fails to respond to an objection within the 30-day response period will be in default, which will result in the objector prevailing.

- All responses must be filed in English.
- Each response must be filed separately. That is, an applicant responding to several objections must file a separate response and pay the accompanying filing fee to respond to each objection.
- Responses must be filed electronically.

Each response filed by an applicant must include:

- The name and contact information of the applicant.

- A point-by-point response to the claims made by the objector.
- Any copies of documents that it considers to be a basis for the response.

Responses are limited to 5000 words or 20 pages, whichever is less, excluding attachments.

Each applicant must provide copies of all submissions to the DRSP associated with the objection proceedings to the objector.

3.3.4 Response Filing Fees

At the time an applicant files its response, it is required to pay a filing fee in the amount set and published by the relevant DRSP, which will be the same as the filing fee paid by the objector. If the filing fee is not paid, the response will be disregarded, which will result in the objector prevailing.

3.4 Objection Processing Overview

The information below provides an overview of the process by which DRSPs administer dispute proceedings that have been initiated. For comprehensive information, please refer to the New gTLD Dispute Resolution Procedure (included as an attachment to this module).

3.4.1 Administrative Review

Each DRSP will conduct an administrative review of each objection for compliance with all procedural rules within 14 calendar days of receiving the objection. Depending on the number of objections received, the DRSP may ask ICANN for a short extension of this deadline.

If the DRSP finds that the objection complies with procedural rules, the objection will be deemed filed, and the proceedings will continue. If the DRSP finds that the objection does not comply with procedural rules, the DRSP will dismiss the objection and close the proceedings without prejudice to the objector's right to submit a new objection that complies with procedural rules. The DRSP's review or rejection of the objection will not interrupt the time limit for filing an objection.

3.4.2 Consolidation of Objections

Once the DRSP receives and processes all objections, at its discretion the DRSP may elect to consolidate certain objections. The DRSP shall endeavor to decide upon

consolidation prior to issuing its notice to applicants that the response should be filed and, where appropriate, shall inform the parties of the consolidation in that notice.

An example of a circumstance in which consolidation might occur is multiple objections to the same application based on the same ground.

In assessing whether to consolidate objections, the DRSP will weigh the efficiencies in time, money, effort, and consistency that may be gained by consolidation against the prejudice or inconvenience consolidation may cause. The DRSPs will endeavor to have all objections resolved on a similar timeline. It is intended that no sequencing of objections will be established.

New gTLD applicants and objectors also will be permitted to propose consolidation of objections, but it will be at the DRSP's discretion whether to agree to the proposal.

ICANN continues to strongly encourage all of the DRSPs to consolidate matters whenever practicable.

3.4.3 *Mediation*

The parties to a dispute resolution proceeding are encouraged—but not required—to participate in mediation aimed at settling the dispute. Each DRSP has experts who can be retained as mediators to facilitate this process, should the parties elect to do so, and the DRSPs will communicate with the parties concerning this option and any associated fees.

If a mediator is appointed, that person may not serve on the panel constituted to issue an expert determination in the related dispute.

There are no automatic extensions of time associated with the conduct of negotiations or mediation. The parties may submit joint requests for extensions of time to the DRSP according to its procedures, and the DRSP or the panel, if appointed, will decide whether to grant the requests, although extensions will be discouraged. Absent exceptional circumstances, the parties must limit their requests for extension to 30 calendar days.

The parties are free to negotiate without mediation at any time, or to engage a mutually acceptable mediator of their own accord.

3.4.4 Selection of Expert Panels

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

There will be one expert in proceedings involving a string confusion objection.

There will be one expert, or, if all parties agree, three experts with relevant experience in intellectual property rights disputes in proceedings involving an existing legal rights objection.

There will be three experts recognized as eminent jurists of international reputation, with expertise in relevant fields as appropriate, in proceedings involving a Limited Public Interest objection.

There will be one expert in proceedings involving a community objection.

Neither the experts, the DRSP, ICANN, nor their respective employees, directors, or consultants will be liable to any party in any action for damages or injunctive relief for any act or omission in connection with any proceeding under the dispute resolution procedures.

3.4.5 Adjudication

The panel may decide whether the parties shall submit any written statements in addition to the filed objection and response, and may specify time limits for such submissions.

In order to achieve the goal of resolving disputes rapidly and at reasonable cost, procedures for the production of documents shall be limited. In exceptional cases, the panel may require a party to produce additional evidence.

Disputes will usually be resolved without an in-person hearing. The panel may decide to hold such a hearing only in extraordinary circumstances.

3.4.6 Expert Determination

The DRSPs' final expert determinations will be in writing and will include:

- A summary of the dispute and findings;

- An identification of the prevailing party; and
- The reasoning upon which the expert determination is based.

Unless the panel decides otherwise, each DRSP will publish all decisions rendered by its panels in full on its website.

The findings of the panel will be considered an expert determination and advice that ICANN will accept within the dispute resolution process.

3.4.7 Dispute Resolution Costs

Before acceptance of objections, each DRSP will publish a schedule of costs or statement of how costs will be calculated for the proceedings that it administers under this procedure. These costs cover the fees and expenses of the members of the panel and the DRSP's administrative costs.

ICANN expects that string confusion and legal rights objection proceedings will involve a fixed amount charged by the panelists while Limited Public Interest and community objection proceedings will involve hourly rates charged by the panelists.

Within ten (10) calendar days of constituting the panel, the DRSP will estimate the total costs and request advance payment in full of its costs from both the objector and the applicant. Each party must make its advance payment within ten (10) calendar days of receiving the DRSP's request for payment and submit to the DRSP evidence of such payment. The respective filing fees paid by the parties will be credited against the amounts due for this advance payment of costs.

The DRSP may revise its estimate of the total costs and request additional advance payments from the parties during the resolution proceedings.

Additional fees may be required in specific circumstances; for example, if the DRSP receives supplemental submissions or elects to hold a hearing.

If an objector fails to pay these costs in advance, the DRSP will dismiss its objection and no fees paid by the objector will be refunded.

If an applicant fails to pay these costs in advance, the DSRP will sustain the objection and no fees paid by the applicant will be refunded.

After the hearing has taken place and the panel renders its expert determination, the DRSP will refund the advance payment of costs to the prevailing party.

3.5 Dispute Resolution Principles (Standards)

Each panel will use appropriate general principles (standards) to evaluate the merits of each objection. The principles for adjudication on each type of objection are specified in the paragraphs that follow. The panel may also refer to other relevant rules of international law in connection with the standards.

The objector bears the burden of proof in each case.

The principles outlined below are subject to evolution based on ongoing consultation with DRSPs, legal experts, and the public.

3.5.1 String Confusion Objection

A DRSP panel hearing a string confusion objection will consider whether the applied-for gTLD string is likely to result in string confusion. String confusion exists where a string so nearly resembles another that it is likely to deceive or cause confusion. For a likelihood of confusion to exist, it must be probable, not merely possible that confusion will arise in the mind of the average, reasonable Internet user. Mere association, in the sense that the string brings another string to mind, is insufficient to find a likelihood of confusion.

3.5.2 Legal Rights Objection

In interpreting and giving meaning to GNSO Recommendation 3 (“Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law”), a DRSP panel of experts presiding over a legal rights objection will determine whether the potential use of the applied-for gTLD by the applicant takes unfair advantage of the distinctive character or the reputation of the objector’s registered or unregistered trademark or service mark (“mark”) or IGO name or acronym (as identified in the treaty establishing the organization), or unjustifiably impairs the distinctive character or the reputation of the objector’s mark or IGO name or acronym, or otherwise creates an impermissible likelihood of confusion between the applied-for gTLD and the objector’s mark or IGO name or acronym.

In the case where the objection is based on trademark rights, the panel will consider the following non-exclusive factors:

1. Whether the applied-for gTLD is identical or similar, including in appearance, phonetic sound, or meaning, to the objector's existing mark.
2. Whether the objector's acquisition and use of rights in the mark has been bona fide.
3. Whether and to what extent there is recognition in the relevant sector of the public of the sign corresponding to the gTLD, as the mark of the objector, of the applicant or of a third party.
4. Applicant's intent in applying for the gTLD, including whether the applicant, at the time of application for the gTLD, had knowledge of the objector's mark, or could not have reasonably been unaware of that mark, and including whether the applicant has engaged in a pattern of conduct whereby it applied for or operates TLDs or registrations in TLDs which are identical or confusingly similar to the marks of others.
5. Whether and to what extent the applicant has used, or has made demonstrable preparations to use, the sign corresponding to the gTLD in connection with a bona fide offering of goods or services or a bona fide provision of information in a way that does not interfere with the legitimate exercise by the objector of its mark rights.
6. Whether the applicant has marks or other intellectual property rights in the sign corresponding to the gTLD, and, if so, whether any acquisition of such a right in the sign, and use of the sign, has been bona fide, and whether the purported or likely use of the gTLD by the applicant is consistent with such acquisition or use.
7. Whether and to what extent the applicant has been commonly known by the sign corresponding to the gTLD, and if so, whether any purported or likely use of the gTLD by the applicant is consistent therewith and bona fide.
8. Whether the applicant's intended use of the gTLD would create a likelihood of confusion with the objector's mark as to the source, sponsorship, affiliation, or endorsement of the gTLD.

In the case where a legal rights objection has been filed by an IGO, the panel will consider the following non-exclusive factors:

1. Whether the applied-for gTLD is identical or similar, including in appearance, phonetic sound or meaning, to the name or acronym of the objecting IGO;
2. Historical coexistence of the IGO and the applicant's use of a similar name or acronym. Factors considered may include:
 - a. Level of global recognition of both entities;
 - b. Length of time the entities have been in existence;
 - c. Public historical evidence of their existence, which may include whether the objecting IGO has communicated its name or abbreviation under Article 6^{ter} of the Paris Convention for the Protection of Industrial Property.
3. Whether and to what extent the applicant has used, or has made demonstrable preparations to use, the sign corresponding to the TLD in connection with a bona fide offering of goods or services or a bona fide provision of information in a way that does not interfere with the legitimate exercise of the objecting IGO's name or acronym;
4. Whether and to what extent the applicant has been commonly known by the sign corresponding to the applied-for gTLD, and if so, whether any purported or likely use of the gTLD by the applicant is consistent therewith and bona fide; and
5. Whether the applicant's intended use of the applied-for gTLD would create a likelihood of confusion with the objecting IGO's name or acronym as to the source, sponsorship, affiliation, or endorsement of the TLD.

3.5.3 Limited Public Interest Objection

An expert panel hearing a Limited Public Interest objection will consider whether the applied-for gTLD string is contrary to general principles of international law for morality and public order.

Examples of instruments containing such general principles include:

- The Universal Declaration of Human Rights (UDHR)

- The International Covenant on Civil and Political Rights (ICCPR)
- The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- The International Convention on the Elimination of All Forms of Racial Discrimination
- Declaration on the Elimination of Violence against Women
- The International Covenant on Economic, Social, and Cultural Rights
- The Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment
- The International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families
- Slavery Convention
- Convention on the Prevention and Punishment of the Crime of Genocide
- Convention on the Rights of the Child

Note that these are included to serve as examples, rather than an exhaustive list. It should be noted that these instruments vary in their ratification status. Additionally, states may limit the scope of certain provisions through reservations and declarations indicating how they will interpret and apply certain provisions. National laws not based on principles of international law are not a valid ground for a Limited Public Interest objection.

Under these principles, everyone has the right to freedom of expression, but the exercise of this right carries with it special duties and responsibilities. Accordingly, certain limited restrictions may apply.

The grounds upon which an applied-for gTLD string may be considered contrary to generally accepted legal norms relating to morality and public order that are recognized under principles of international law are:

- Incitement to or promotion of violent lawless action;
- Incitement to or promotion of discrimination based upon race, color, gender, ethnicity, religion or national origin, or other similar types of

discrimination that violate generally accepted legal norms recognized under principles of international law;

- Incitement to or promotion of child pornography or other sexual abuse of children; or
- A determination that an applied-for gTLD string would be contrary to specific principles of international law as reflected in relevant international instruments of law.

The panel will conduct its analysis on the basis of the applied-for gTLD string itself. The panel may, if needed, use as additional context the intended purpose of the TLD as stated in the application.

3.5.4 Community Objection

The four tests described here will enable a DRSP panel to determine whether there is substantial opposition from a significant portion of the community to which the string may be targeted. For an objection to be successful, the objector must prove that:

- The community invoked by the objector is a clearly delineated community; and
- Community opposition to the application is substantial; and
- There is a strong association between the community invoked and the applied-for gTLD string; and
- The application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted. Each of these tests is described in further detail below.

Community – The objector must prove that the community expressing opposition can be regarded as a clearly delineated community. A panel could balance a number of factors to determine this, including but not limited to:

- The level of public recognition of the group as a community at a local and/or global level;
- The level of formal boundaries around the community and what persons or entities are considered to form the community;

- The length of time the community has been in existence;
- The global distribution of the community (this may not apply if the community is territorial); and
- The number of people or entities that make up the community.

If opposition by a number of people/entities is found, but the group represented by the objector is not determined to be a clearly delineated community, the objection will fail.

Substantial Opposition – The objector must prove substantial opposition within the community it has identified itself as representing. A panel could balance a number of factors to determine whether there is substantial opposition, including but not limited to:

- Number of expressions of opposition relative to the composition of the community;
- The representative nature of entities expressing opposition;
- Level of recognized stature or weight among sources of opposition;
- Distribution or diversity among sources of expressions of opposition, including:
 - Regional
 - Subsectors of community
 - Leadership of community
 - Membership of community
- Historical defense of the community in other contexts; and
- Costs incurred by objector in expressing opposition, including other channels the objector may have used to convey opposition.

If some opposition within the community is determined, but it does not meet the standard of substantial opposition, the objection will fail.

Targeting – The objector must prove a strong association between the applied-for gTLD string and the community represented by the objector. Factors that could be

balanced by a panel to determine this include but are not limited to:

- Statements contained in application;
- Other public statements by the applicant;
- Associations by the public.

If opposition by a community is determined, but there is no strong association between the community and the applied-for gTLD string, the objection will fail.

Detriment – The objector must prove that the application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted. An allegation of detriment that consists only of the applicant being delegated the string instead of the objector will not be sufficient for a finding of material detriment.

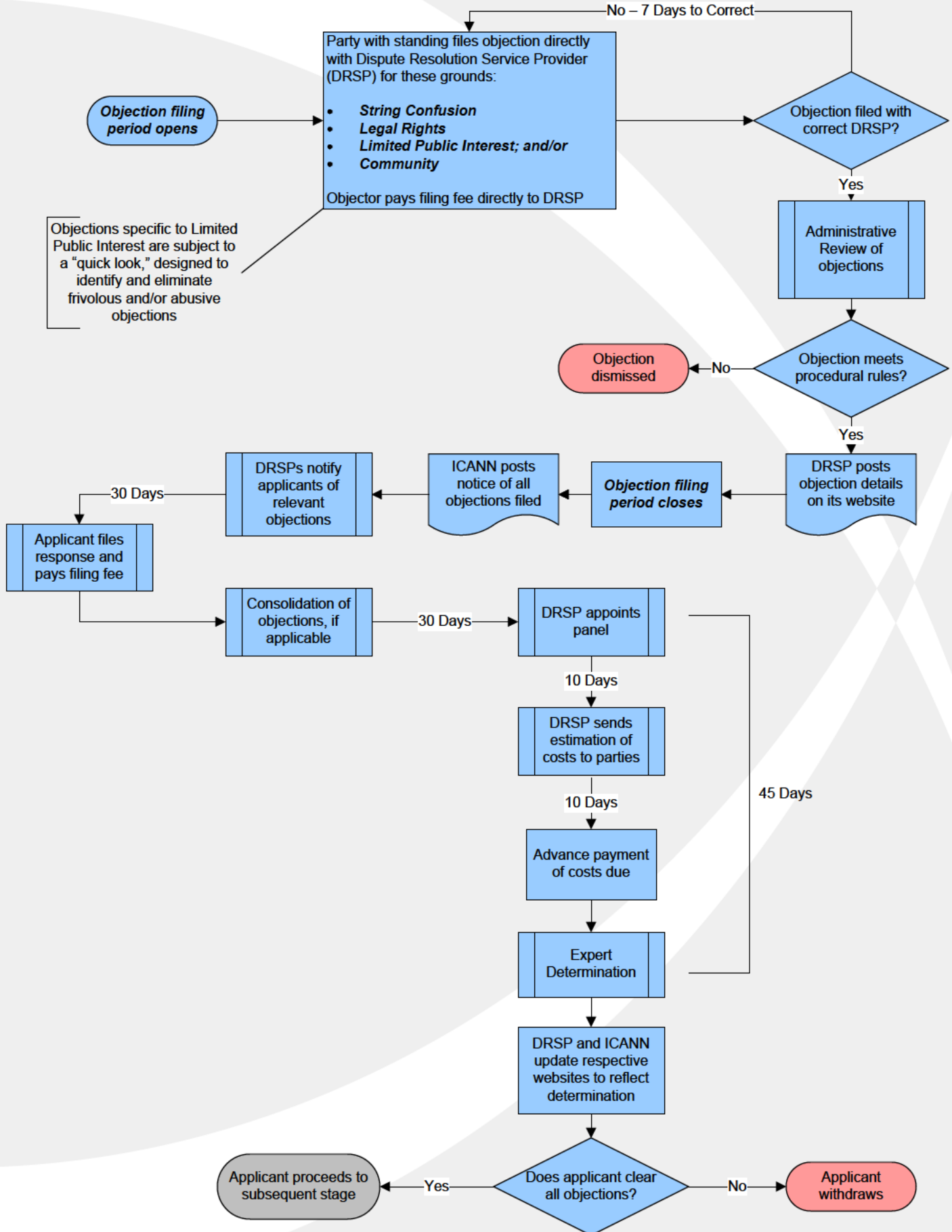
Factors that could be used by a panel in making this determination include but are not limited to:

- Nature and extent of damage to the reputation of the community represented by the objector that would result from the applicant's operation of the applied-for gTLD string;
- Evidence that the applicant is not acting or does not intend to act in accordance with the interests of the community or of users more widely, including evidence that the applicant has not proposed or does not intend to institute effective security protection for user interests;
- Interference with the core activities of the community that would result from the applicant's operation of the applied-for gTLD string;
- Dependence of the community represented by the objector on the DNS for its core activities;
- Nature and extent of concrete or economic damage to the community represented by the objector that would result from the applicant's operation of the applied-for gTLD string; and
- Level of certainty that alleged detrimental outcomes would occur.

If opposition by a community is determined, but there is no likelihood of material detriment to the targeted community resulting from the applicant's operation of the applied-for gTLD, the objection will fail.

The objector must meet all four tests in the standard for the objection to prevail.

DRAFT - New gTLD Program – Objection and Dispute Resolution



Attachment to Module 3

New gTLD Dispute Resolution Procedure

These Procedures were designed with an eye toward timely and efficient dispute resolution. As part of the New gTLD Program, these Procedures apply to all proceedings administered by each of the dispute resolution service providers (DRSP). Each of the DRSPs has a specific set of rules that will also apply to such proceedings.

NEW gTLD DISPUTE RESOLUTION PROCEDURE

Article 1. ICANN's New gTLD Program

- (a) The Internet Corporation for Assigned Names and Numbers ("ICANN") has implemented a program for the introduction of new generic Top-Level Domain Names ("gTLDs") in the internet. There will be a succession of rounds, during which applicants may apply for new gTLDs, in accordance with terms and conditions set by ICANN.
- (b) The new gTLD program includes a dispute resolution procedure, pursuant to which disputes between a person or entity who applies for a new gTLD and a person or entity who objects to that gTLD are resolved in accordance with this New gTLD Dispute Resolution Procedure (the "Procedure").
- (c) Dispute resolution proceedings shall be administered by a Dispute Resolution Service Provider ("DRSP") in accordance with this Procedure and the applicable DRSP Rules that are identified in Article 4(b).
- (d) By applying for a new gTLD, an applicant accepts the applicability of this Procedure and the applicable DRSP's Rules that are identified in Article 4(b); by filing an objection to a new gTLD, an objector accepts the applicability of this Procedure and the applicable DRSP's Rules that are identified in Article 4(b). The parties cannot derogate from this Procedure without the express approval of ICANN and from the applicable DRSP Rules without the express approval of the relevant DRSP.

Article 2. Definitions

- (a) The "Applicant" or "Respondent" is an entity that has applied to ICANN for a new gTLD and that will be the party responding to the Objection.
- (b) The "Objector" is one or more persons or entities who have filed an objection against a new gTLD for which an application has been submitted.
- (c) The "Panel" is the panel of Experts, comprising one or three "Experts," that has been constituted by a DRSP in accordance with this Procedure and the applicable DRSP Rules that are identified in Article 4(b).
- (d) The "Expert Determination" is the decision upon the merits of the Objection that is rendered by a Panel in a proceeding conducted under this Procedure and the applicable DRSP Rules that are identified in Article 4(b).
- (e) The grounds upon which an objection to a new gTLD may be filed are set out in full in Module 3 of the Applicant Guidebook. Such grounds are identified in this Procedure, and are based upon the Final Report on the Introduction of New Generic Top-Level Domains, dated 7 August 2007, issued by the ICANN Generic Names Supporting Organization (GNSO), as follows:
 - (i) "String Confusion Objection" refers to the objection that the string comprising the potential gTLD is confusingly similar to an existing top-level domain or another string applied for in the same round of applications.
 - (ii) "Existing Legal Rights Objection" refers to the objection that the string comprising the potential new gTLD infringes the existing legal rights of others

that are recognized or enforceable under generally accepted and internationally recognized principles of law.

- (iii) "Limited Public Interest Objection" refers to the objection that the string comprising the potential new gTLD is contrary to generally accepted legal norms relating to morality and public order that are recognized under principles of international law.
- (iv) "Community Objection" refers to the objection that there is substantial opposition to the application from a significant portion of the community to which the string may be explicitly or implicitly targeted.
- (f) "DRSP Rules" are the rules of procedure of a particular DRSP that have been identified as being applicable to objection proceedings under this Procedure.

Article 3. Dispute Resolution Service Providers

The various categories of disputes shall be administered by the following DRSPs:

- (a) String Confusion Objections shall be administered by the International Centre for Dispute Resolution.
- (b) Existing Legal Rights Objections shall be administered by the Arbitration and Mediation Center of the World Intellectual Property Organization.
- (c) Limited Public Interest Objections shall be administered by the International Centre for Expertise of the International Chamber of Commerce.
- (d) Community Objections shall be administered by the International Centre for Expertise of the International Chamber of Commerce.

Article 4. Applicable Rules

- (a) All proceedings before the Panel shall be governed by this Procedure and by the DRSP Rules that apply to a particular category of objection. The outcome of the proceedings shall be deemed an Expert Determination, and the members of the Panel shall act as experts.
- (b) The applicable DRSP Rules are the following:
 - (i) For a String Confusion Objection, the applicable DRSP Rules are the ICDR Supplementary Procedures for ICANN's New gTLD Program.
 - (ii) For an Existing Legal Rights Objection, the applicable DRSP Rules are the WIPO Rules for New gTLD Dispute Resolution.
 - (iii) For a Limited Public Interest Objection, the applicable DRSP Rules are the Rules for Expertise of the International Chamber of Commerce (ICC), as supplemented by the ICC as needed.
 - (iv) For a Community Objection, the applicable DRSP Rules are the Rules for Expertise of the International Chamber of Commerce (ICC), as supplemented by the ICC as needed.
- (c) In the event of any discrepancy between this Procedure and the applicable DRSP Rules, this Procedure shall prevail.

- (d) The place of the proceedings, if relevant, shall be the location of the DRSP that is administering the proceedings.
- (e) In all cases, the Panel shall ensure that the parties are treated with equality, and that each party is given a reasonable opportunity to present its position.

Article 5. Language

- (a) The language of all submissions and proceedings under this Procedure shall be English.
- (b) Parties may submit supporting evidence in its original language, provided and subject to the authority of the Panel to determine otherwise, that such evidence is accompanied by a certified or otherwise official English translation of all relevant text.

Article 6. Communications and Time Limits

- (a) All communications by the Parties with the DRSPs and Panels must be submitted electronically. A Party that wishes to make a submission that is not available in electronic form (e.g., evidentiary models) shall request leave from the Panel to do so, and the Panel, in its sole discretion, shall determine whether to accept the non-electronic submission.
- (b) The DRSP, Panel, Applicant, and Objector shall provide copies to one another of all correspondence (apart from confidential correspondence between the Panel and the DRSP and among the Panel) regarding the proceedings.
- (c) For the purpose of determining the date of commencement of a time limit, a notice or other communication shall be deemed to have been received on the day that it is transmitted in accordance with paragraphs (a) and (b) of this Article.
- (d) For the purpose of determining compliance with a time limit, a notice or other communication shall be deemed to have been sent, made or transmitted if it is dispatched in accordance with paragraphs (a) and (b) of this Article prior to or on the day of the expiration of the time limit.
- (e) For the purpose of calculating a period of time under this Procedure, such period shall begin to run on the day following the day when a notice or other communication is received.
- (f) Unless otherwise stated, all time periods provided in the Procedure are calculated on the basis of calendar days

Article 7. Filing of the Objection

- (a) A person wishing to object to a new gTLD for which an application has been submitted may file an objection ("Objection"). Any Objection to a proposed new gTLD must be filed before the published closing date for the Objection Filing period.
- (b) The Objection must be filed with the appropriate DRSP, using a model form made available by that DRSP, with copies to ICANN and the Applicant.
- (c) The electronic addresses for filing Objections (the specific addresses shall be made available once they are created by providers):
 - (i) A String Confusion Objection must be filed at: [●].

- (ii) An Existing Legal Rights Objection must be filed at: [●].
 - (iii) A Limited Public Interest Objection must be filed at: [●].
 - (iv) A Community Objection must be filed at: [●].
- (d) All Objections must be filed separately:
- (i) An Objector who wishes to object to an application on more than one ground must file separate objections with the appropriate DRSP(s).
 - (ii) An Objector who wishes to object to more than one gTLD must file separate objections to each gTLD with the appropriate DRSP(s).
- (e) If an Objection is filed with the wrong DRSP, that DRSP shall promptly notify the Objector of the error and that DRSP shall not process the incorrectly filed Objection. The Objector may then cure the error by filing its Objection with the correct DRSP within seven (7) days of receipt of the error notice, failing which the Objection shall be disregarded. If the Objection is filed with the correct DRSP within seven (7) days of receipt of the error notice but after the lapse of the time for submitting an Objection stipulation by Article 7(a) of this Procedure, it shall be deemed to be within this time limit.

Article 8. Content of the Objection

- (a) The Objection shall contain, *inter alia*, the following information:
- (i) The names and contact information (address, telephone number, email address, etc.) of the Objector;
 - (ii) A statement of the Objector's basis for standing; and
 - (iii) A description of the basis for the Objection, including:
 - (aa) A statement of the ground upon which the Objection is being filed, as stated in Article 2(e) of this Procedure;
 - (bb) An explanation of the validity of the Objection and why the objection should be upheld.
- (b) The substantive portion of the Objection shall be limited to 5,000 words or 20 pages, whichever is less, excluding attachments. The Objector shall also describe and provide copies of any supporting or official documents upon which the Objection is based.
- (c) At the same time as the Objection is filed, the Objector shall pay a filing fee in the amount set in accordance with the applicable DRSP Rules and include evidence of such payment in the Objection. In the event that the filing fee is not paid within ten (10) days of the receipt of the Objection by the DRSP, the Objection shall be dismissed without prejudice.

Article 9. Administrative Review of the Objection

- (a) The DRSP shall conduct an administrative review of the Objection for the purpose of verifying compliance with Articles 5-8 of this Procedure and the applicable DRSP Rules, and inform the Objector, the Applicant and ICANN of the result of its review within

fourteen (14) days of its receipt of the Objection. The DRSP may extend this time limit for reasons explained in the notification of such extension.

- (b) If the DRSP finds that the Objection complies with Articles 5-8 of this Procedure and the applicable DRSP Rules, the DRSP shall confirm that the Objection shall be registered for processing.
- (c) If the DRSP finds that the Objection does not comply with Articles 5-8 of this Procedure and the applicable DRSP Rules, the DRSP shall have the discretion to request that any administrative deficiencies in the Objection be corrected within five (5) days. If the deficiencies in the Objection are cured within the specified period but after the lapse of the time limit for submitting an Objection stipulated by Article 7(a) of this Procedure, the Objection shall be deemed to be within this time limit.
- (d) If the DRSP finds that the Objection does not comply with Articles 5-8 of this Procedure and the applicable DRSP Rules, and the deficiencies in the Objection are not corrected within the period specified in Article 9(c), the DRSP shall dismiss the Objection and close the proceedings, without prejudice to the Objector's submission of a new Objection that complies with this Procedure, provided that the Objection is filed within the deadline for filing such Objections. The DRSP's review of the Objection shall not interrupt the running of the time limit for submitting an Objection stipulated by Article 7(a) of this Procedure.
- (e) Immediately upon registering an Objection for processing, pursuant to Article 9(b), the DRSP shall post the following information about the Objection on its website: (i) the proposed string to which the Objection is directed; (ii) the names of the Objector and the Applicant; (iii) the grounds for the Objection; and (iv) the dates of the DRSP's receipt of the Objection.

Article 10. ICANN's Dispute Announcement

- (a) Within thirty (30) days of the deadline for filing Objections in relation to gTLD applications in a given round, ICANN shall publish a document on its website identifying all of the admissible Objections that have been filed (the "Dispute Announcement"). ICANN shall also directly inform each DRSP of the posting of the Dispute Announcement.
- (b) ICANN shall monitor the progress of all proceedings under this Procedure and shall take steps, where appropriate, to coordinate with any DRSP in relation to individual applications for which objections are pending before more than one DRSP.

Article 11. Response to the Objection

- (a) Upon receipt of the Dispute Announcement, each DRSP shall promptly send a notice to: (i) each Applicant for a new gTLD to which one or more admissible Objections have been filed with that DRSP; and (ii) the respective Objector(s).
- (b) The Applicant shall file a response to each Objection (the "Response"). The Response shall be filed within thirty (30) days of the transmission of the notice by the DRSP pursuant to Article 11(a).
- (c) The Response must be filed with the appropriate DRSP, using a model form made available by that DRSP, with copies to ICANN and the Objector.

- (d) The Response shall contain, inter alia, the following information:
 - (i) The names and contact information (address, telephone number, email address, etc.) of the Applicant; and
 - (ii) A point-by-point response to the statements made in the Objection.
- (e) The substantive portion of the Response shall be limited to 5,000 words or 20 pages, whichever is less, excluding attachments. The Applicant shall also describe and provide copies of any supporting or official documents upon which the Response is based.
- (f) At the same time as the Response is filed, the Applicant shall pay a filing fee in the amount set and published by the relevant DRSP (which shall be the same as the filing fee paid by the Objector) and include evidence of such payment in the Response. In the event that the filing fee is not paid within ten (10) days of the receipt of the Response by the DRSP, the Applicant shall be deemed to be in default, any Response disregarded and the Objection shall be deemed successful.
- (g) If the DRSP finds that the Response does not comply with Articles 11(c) and (d)(1) of this Procedure and the applicable DRSP Rules, the DRSP shall have the discretion to request that any administrative deficiencies in the Response be corrected within five (5) days. If the administrative deficiencies in the Response are cured within the specified period but after the lapse of the time limit for submitting a Response pursuant to this Procedure, the Response shall be deemed to be within this time limit.
- (g) If the Applicant fails to file a Response to the Objection within the 30-day time limit, the Applicant shall be deemed to be in default and the Objection shall be deemed successful. No fees paid by the Applicant will be refunded in case of default.

Article 12. Consolidation of Objections

- (a) The DRSP is encouraged, whenever possible and practicable, and as may be further stipulated in the applicable DRSP Rules, to consolidate Objections, for example, when more than one Objector has filed an Objection to the same gTLD on the same grounds. The DRSP shall endeavor to decide upon consolidation prior to issuing its notice pursuant to Article 11(a) and, where appropriate, shall inform the parties of the consolidation in that notice.
- (b) If the DRSP itself has not decided to consolidate two or more Objections, any Applicant or Objector may propose the consolidation of Objections within seven (7) days of the notice given by the DRSP pursuant to Article 11(a). If, following such a proposal, the DRSP decides to consolidate certain Objections, which decision must be made within 14 days of the notice given by the DRSP pursuant to Article 11(a), the deadline for the Applicant's Response in the consolidated proceeding shall be thirty (30) days from the Applicant's receipt of the DRSP's notice of consolidation.
- (c) In deciding whether to consolidate Objections, the DRSP shall weigh the benefits (in terms of time, cost, consistency of decisions, etc.) that may result from the consolidation against the possible prejudice or inconvenience that the consolidation may cause. The DRSP's determination on consolidation shall be final and not subject to appeal.
- (d) Objections based upon different grounds, as summarized in Article 2(e), shall not be consolidated.

Article 13. The Panel

- (a) The DRSP shall select and appoint the Panel of Expert(s) within thirty (30) days after receiving the Response.
- (b) Number and specific qualifications of Expert(s):
 - (i) There shall be one Expert in proceedings involving a String Confusion Objection.
 - (ii) There shall be one Expert or, if all of the Parties so agree, three Experts with relevant experience in intellectual property rights disputes in proceedings involving an Existing Legal Rights Objection.
 - (iii) There shall be three Experts recognized as eminent jurists of international reputation, one of whom shall be designated as the Chair. The Chair shall be of a nationality different from the nationalities of the Applicant and of the Objector, in proceedings involving a Limited Public Interest Objection.
 - (iv) There shall be one Expert in proceedings involving a Community Objection.
- (c) All Experts acting under this Procedure shall be impartial and independent of the parties. The applicable DRSP Rules stipulate the manner by which each Expert shall confirm and maintain their impartiality and independence.
- (d) The applicable DRSP Rules stipulate the procedures for challenging an Expert and replacing an Expert.
- (e) Unless required by a court of law or authorized in writing by the parties, an Expert shall not act in any capacity whatsoever, in any pending or future proceedings, whether judicial, arbitral or otherwise, relating to the matter referred to expert determination under this Procedure.

Article 14. Costs

- (a) Each DRSP shall determine the costs for the proceedings that it administers under this Procedure in accordance with the applicable DRSP Rules. Such costs shall cover the fees and expenses of the members of the Panel, as well as the administrative fees of the DRSP (the "Costs").
- (b) Within ten (10) days of constituting the Panel, the DRSP shall estimate the total Costs and request the Objector and the Applicant/Respondent each to pay in advance the full amount of the Costs to the DRSP. Each party shall make its advance payment of Costs within ten (10) days of receiving the DRSP's request for payment and submit to the DRSP evidence of such payment. The respective filing fees paid by the Parties shall be credited against the amounts due for this advance payment of Costs.
- (c) The DRSP may revise its estimate of the total Costs and request additional advance payments from the parties during the proceedings.
- (d) Failure to make an advance payment of Costs:
 - (i) If the Objector fails to make the advance payment of Costs, its Objection shall be dismissed and no fees that it has paid shall be refunded.

- (ii) If the Applicant fails to make the advance payment of Costs, the Objection will be deemed to have been sustained and no fees that the Applicant has paid shall be refunded.
- (e) Upon the termination of the proceedings, after the Panel has rendered its Expert Determination, the DRSP shall refund to the prevailing party, as determined by the Panel, its advance payment(s) of Costs.

Article 15. Representation and Assistance

- (a) The parties may be represented or assisted by persons of their choice.
- (b) Each party or party representative shall communicate the name, contact information and function of such persons to the DRSP and the other party (or parties in case of consolidation).

Article 16. Negotiation and Mediation

- (a) The parties are encouraged, but not required, to participate in negotiations and/or mediation at any time throughout the dispute resolution process aimed at settling their dispute amicably.
- (b) Each DRSP shall be able to propose, if requested by the parties, a person who could assist the parties as mediator.
- (c) A person who acts as mediator for the parties shall not serve as an Expert in a dispute between the parties under this Procedure or any other proceeding under this Procedure involving the same gTLD.
- (d) The conduct of negotiations or mediation shall not, *ipso facto*, be the basis for a suspension of the dispute resolution proceedings or the extension of any deadline under this Procedure. Upon the joint request of the parties, the DRSP or (after it has been constituted) the Panel may grant the extension of a deadline or the suspension of the proceedings. Absent exceptional circumstances, such extension or suspension shall not exceed thirty (30) days and shall not delay the administration of any other Objection.
- (e) If, during negotiations and/or mediation, the parties agree on a settlement of the matter referred to the DRSP under this Procedure, the parties shall inform the DRSP, which shall terminate the proceedings, subject to the parties' payment obligation under this Procedure having been satisfied, and inform ICANN and the parties accordingly.

Article 17. Additional Written Submissions

- (a) The Panel may decide whether the parties shall submit any written statements in addition to the Objection and the Response, and it shall fix time limits for such submissions.
- (b) The time limits fixed by the Panel for additional written submissions shall not exceed thirty (30) days, unless the Panel, having consulted the DRSP, determines that exceptional circumstances justify a longer time limit.

Article 18. Evidence

In order to achieve the goal of resolving disputes over new gTLDs rapidly and at reasonable cost, procedures for the production of documents shall be limited. In exceptional cases, the Panel may require a party to provide additional evidence.

Article 19. Hearings

- (a) Disputes under this Procedure and the applicable DRSP Rules will usually be resolved without a hearing.
- (b) The Panel may decide, on its own initiative or at the request of a party, to hold a hearing only in extraordinary circumstances.
- (c) In the event that the Panel decides to hold a hearing:
 - (i) The Panel shall decide how and where the hearing shall be conducted.
 - (ii) In order to expedite the proceedings and minimize costs, the hearing shall be conducted by videoconference if possible.
 - (iii) The hearing shall be limited to one day, unless the Panel decides, in exceptional circumstances, that more than one day is required for the hearing.
 - (iv) The Panel shall decide whether the hearing will be open to the public or conducted in private.

Article 20. Standards

- (a) For each category of Objection identified in Article 2(e), the Panel shall apply the standards that have been defined by ICANN.
- (b) In addition, the Panel may refer to and base its findings upon the statements and documents submitted and any rules or principles that it determines to be applicable.
- (c) The Objector bears the burden of proving that its Objection should be sustained in accordance with the applicable standards.

Article 21. The Expert Determination

- (a) The DRSP and the Panel shall make reasonable efforts to ensure that the Expert Determination is rendered within forty-five (45) days of the constitution of the Panel. In specific circumstances such as consolidated cases and in consultation with the DRSP, if significant additional documentation is requested by the Panel, a brief extension may be allowed.
- (b) The Panel shall submit its Expert Determination in draft form to the DRSP's scrutiny as to form before it is signed, unless such scrutiny is specifically excluded by the applicable DRSP Rules. The modifications proposed by the DRSP to the Panel, if any, shall address only the form of the Expert Determination. The signed Expert Determination shall be communicated to the DRSP, which in turn will communicate that Expert Determination to the Parties and ICANN.
- (c) When the Panel comprises three Experts, the Expert Determination shall be made by a majority of the Experts.

- (d) The Expert Determination shall be in writing, shall identify the prevailing party and shall state the reasons upon which it is based. The remedies available to an Applicant or an Objector pursuant to any proceeding before a Panel shall be limited to the success or dismissal of an Objection and to the refund by the DRSP to the prevailing party, as determined by the Panel in its Expert Determination, of its advance payment(s) of Costs pursuant to Article 14(e) of this Procedure and any relevant provisions of the applicable DRSP Rules.
- (e) The Expert Determination shall state the date when it is made, and it shall be signed by the Expert(s). If any Expert fails to sign the Expert Determination, it shall be accompanied by a statement of the reason for the absence of such signature.
- (f) In addition to providing electronic copies of its Expert Determination, the Panel shall provide a signed hard copy of the Expert Determination to the DRSP, unless the DRSP Rules provide for otherwise.
- (g) Unless the Panel decides otherwise, the Expert Determination shall be published in full on the DRSP's website.

Article 22. Exclusion of Liability

In addition to any exclusion of liability stipulated by the applicable DRSP Rules, neither the Expert(s), nor the DRSP and its employees, nor ICANN and its Board members, employees and consultants shall be liable to any person for any act or omission in connection with any proceeding conducted under this Procedure.

Article 23. Modification of the Procedure

- (a) ICANN may from time to time, in accordance with its Bylaws, modify this Procedure.
- (b) The version of this Procedure that is applicable to a dispute resolution proceeding is the version that was in effect on the day when the relevant application for a new gTLD is submitted.



gTLD Applicant Guidebook

(v. 2012-06-04)

Module 4

4 June 2012

Module 4

String Contention Procedures

This module describes situations in which contention over applied-for gTLD strings occurs, and the methods available to applicants for resolving such contention cases.

4.1 String Contention

String contention occurs when either:

1. Two or more applicants for an identical gTLD string successfully complete all previous stages of the evaluation and dispute resolution processes; or
2. Two or more applicants for similar gTLD strings successfully complete all previous stages of the evaluation and dispute resolution processes, and the similarity of the strings is identified as creating a probability of user confusion if more than one of the strings is delegated.

ICANN will not approve applications for proposed gTLD strings that are identical or that would result in user confusion, called contending strings. If either situation above occurs, such applications will proceed to contention resolution through either community priority evaluation, in certain cases, or through an auction. Both processes are described in this module. A group of applications for contending strings is referred to as a contention set.

(In this Applicant Guidebook, “similar” means strings so similar that they create a probability of user confusion if more than one of the strings is delegated into the root zone.)

4.1.1 Identification of Contention Sets

Contention sets are groups of applications containing identical or similar applied-for gTLD strings. Contention sets are identified during Initial Evaluation, following review of all applied-for gTLD strings. ICANN will publish preliminary contention sets once the String Similarity review is completed, and will update the contention sets as necessary during the evaluation and dispute resolution stages.

Applications for identical gTLD strings will be automatically assigned to a contention set. For example, if Applicant A and Applicant B both apply for .TLDSTRING, they will be identified as being in a contention set. Such testing for identical strings also takes into consideration the code point variants listed in any relevant IDN table. That is, two or more applicants whose applied-for strings or designated variants are variant strings according to an IDN table submitted to ICANN would be considered in direct contention with one another. For example, if one applicant applies for string A and another applies for string B, and strings A and B are variant TLD strings as defined in Module 1, then the two applications are in direct contention.

The String Similarity Panel will also review the entire pool of applied-for strings to determine whether the strings proposed in any two or more applications are so similar that they would create a probability of user confusion if allowed to coexist in the DNS. The panel will make such a determination for each pair of applied-for gTLD strings. The outcome of the String Similarity review described in Module 2 is the identification of contention sets among applications that have direct or indirect contention relationships with one another.

Two strings are in **direct contention** if they are identical or similar to one another. More than two applicants might be represented in a direct contention situation: if four different applicants applied for the same gTLD string, they would all be in direct contention with one another.

Two strings are in **indirect contention** if they are both in direct contention with a third string, but not with one another. The example that follows explains direct and indirect contention in greater detail.

In Figure 4-1, Strings A and B are an example of direct contention. Strings C and G are an example of indirect contention. C and G both contend with B, but not with one another. The figure as a whole is one contention set. A contention set consists of all applications that are linked by string contention to one another, directly or indirectly.

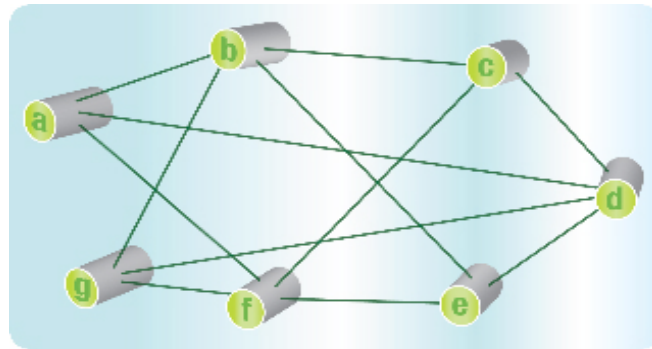


Figure 4-1 – This diagram represents one contention set, featuring both directly and indirectly contending strings.

While preliminary contention sets are determined during Initial Evaluation, the final configuration of the contention sets can only be established once the evaluation and dispute resolution process stages have concluded. This is because any application excluded through those processes might modify a contention set identified earlier.

A contention set may be augmented, split into two sets, or eliminated altogether as a result of an Extended Evaluation or dispute resolution proceeding. The composition of a contention set may also be modified as some applications may be voluntarily withdrawn throughout the process.

Refer to Figure 4-2: In contention set 1, applications D and G are eliminated. Application A is the only remaining application, so there is no contention left to resolve.

In contention set 2, all applications successfully complete Extended Evaluation and Dispute Resolution, so the original contention set remains to be resolved.

In contention set 3, application F is eliminated. Since application F was in direct contention with E and J, but E and J are not in contention with one other, the original contention set splits into two sets: one containing E and K in direct contention, and one containing I and J.

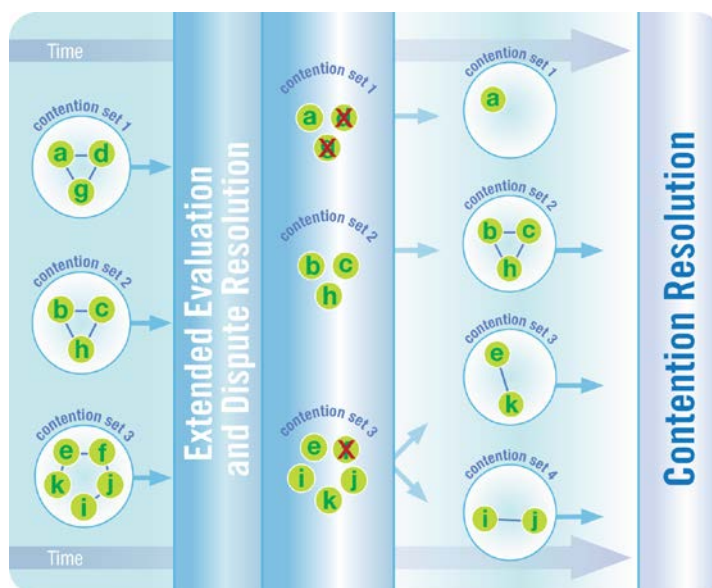


Figure 4-2 – Resolution of string contention cannot begin until all applicants within a contention set have completed all applicable previous stages.

The remaining contention cases must then be resolved through community priority evaluation or by other means, depending on the circumstances. In the string contention resolution stage, ICANN addresses each contention set to achieve an unambiguous resolution.

As described elsewhere in this guidebook, cases of contention might be resolved by community priority evaluation or an agreement among the parties. Absent that, the last-resort contention resolution mechanism will be an auction.

4.1.2 *Impact of String Confusion Dispute Resolution Proceedings on Contention Sets*

If an applicant files a string confusion objection against another application (refer to Module 3), and the panel finds that user confusion is probable (that is, finds in favor of the objector), the two applications will be placed in direct contention with each other. Thus, the outcome of a dispute resolution proceeding based on a string confusion objection would be a new contention set structure for the relevant applications, augmenting the original contention set.

If an applicant files a string confusion objection against another application, and the panel finds that string

confusion does not exist (that is, finds in favor of the responding applicant), the two applications will not be considered in direct contention with one another.

A dispute resolution outcome in the case of a string confusion objection filed by another applicant will not result in removal of an application from a previously established contention set.

4.1.3 Self-Resolution of String Contention

Applicants that are identified as being in contention are encouraged to reach a settlement or agreement among themselves that resolves the contention. This may occur at any stage of the process, once ICANN publicly posts the applications received and the preliminary contention sets on its website.

Applicants may resolve string contention in a manner whereby one or more applicants withdraw their applications. An applicant may not resolve string contention by selecting a new string or by replacing itself with a joint venture. It is understood that applicants may seek to establish joint ventures in their efforts to resolve string contention. However, material changes in applications (for example, combinations of applicants to resolve contention) will require re-evaluation. This might require additional fees or evaluation in a subsequent application round. Applicants are encouraged to resolve contention by combining in a way that does not materially affect the remaining application. Accordingly, new joint ventures must take place in a manner that does not materially change the application, to avoid being subject to re-evaluation.

4.1.4 Possible Contention Resolution Outcomes

An application that has successfully completed all previous stages and is no longer part of a contention set due to changes in the composition of the contention set (as described in subsection 4.1.1) or self-resolution by applicants in the contention set (as described in subsection 4.1.3) may proceed to the next stage.

An application that prevails in a contention resolution procedure, either community priority evaluation or auction, may proceed to the next stage.

In some cases, an applicant who is not the outright winner of a string contention resolution process can still proceed. This situation is explained in the following paragraphs.

If the strings within a given contention set are all identical, the applications are in direct contention with each other and there can only be one winner that proceeds to the next step.

However, where there are both direct and indirect contention situations within a set, more than one string may survive the resolution.

For example, consider a case where string A is in contention with B, and B is in contention with C, but C is not in contention with A. If A wins the contention resolution procedure, B is eliminated but C can proceed since C is not in direct contention with the winner and both strings can coexist in the DNS without risk for confusion.

4.2 Community Priority Evaluation

Community priority evaluation will only occur if a community-based applicant selects this option. Community priority evaluation can begin once all applications in the contention set have completed all previous stages of the process.

The community priority evaluation is an independent analysis. Scores received in the applicant reviews are not carried forward to the community priority evaluation. Each application participating in the community priority evaluation begins with a score of zero.

4.2.1 Eligibility for Community Priority Evaluation

As described in subsection 1.2.3 of Module 1, all applicants are required to identify whether their application type is:

- Community-based; or
- Standard.

Applicants designating their applications as community-based are also asked to respond to a set of questions in the application form to provide relevant information if a community priority evaluation occurs.

Only community-based applicants are eligible to participate in a community priority evaluation.

At the start of the contention resolution stage, all community-based applicants within remaining contention sets will be notified of the opportunity to opt for a community priority evaluation via submission of a deposit by a specified date. Only those applications for which a deposit has been received by the deadline will be scored in the community priority evaluation. Following the evaluation, the deposit will be refunded to applicants that score 14 or higher.

Before the community priority evaluation begins, the applicants who have elected to participate may be asked to provide additional information relevant to the community priority evaluation.

4.2.2 Community Priority Evaluation Procedure

Community priority evaluations for each eligible contention set will be performed by a community priority panel appointed by ICANN to review these applications. The panel's role is to determine whether any of the community-based applications fulfills the community priority criteria. Standard applicants within the contention set, if any, will not participate in the community priority evaluation.

If a single community-based application is found to meet the community priority criteria (see subsection 4.2.3 below), that applicant will be declared to prevail in the community priority evaluation and may proceed. If more than one community-based application is found to meet the criteria, the remaining contention between them will be resolved as follows:

- In the case where the applications are in indirect contention with one another (see subsection 4.1.1), they will both be allowed to proceed to the next stage. In this case, applications that are in direct contention with any of these community-based applications will be eliminated.
- In the case where the applications are in direct contention with one another, these applicants will proceed to an auction. If all parties agree and present a joint request, ICANN may postpone the auction for a three-month period while the parties attempt to reach a settlement before proceeding to auction. This is a one-time option; ICANN will grant no more than one such request for each set of contending applications.

If none of the community-based applications are found to meet the criteria, then all of the parties in the contention set (both standard and community-based applicants) will proceed to an auction.

Results of each community priority evaluation will be posted when completed.

Applicants who are eliminated as a result of a community priority evaluation are eligible for a partial refund of the gTLD evaluation fee (see Module 1).

4.2.3 Community Priority Evaluation Criteria

The Community Priority Panel will review and score the one or more community-based applications having elected the community priority evaluation against four criteria as listed below.

The scoring process is conceived to identify qualified community-based applications, while preventing both “false positives” (awarding undue priority to an application that refers to a “community” construed merely to get a sought-after generic word as a gTLD string) and “false negatives” (not awarding priority to a qualified community application). This calls for a holistic approach, taking multiple criteria into account, as reflected in the process. The scoring will be performed by a panel and be based on information provided in the application plus other relevant information available (such as public information regarding the community represented). The panel may also perform independent research, if deemed necessary to reach informed scoring decisions.

It should be noted that a qualified community application eliminates all directly contending standard applications, regardless of how well qualified the latter may be. This is a fundamental reason for very stringent requirements for qualification of a community-based application, as embodied in the criteria below. Accordingly, a finding by the panel that an application does not meet the scoring threshold to prevail in a community priority evaluation is not necessarily an indication the community itself is in some way inadequate or invalid.

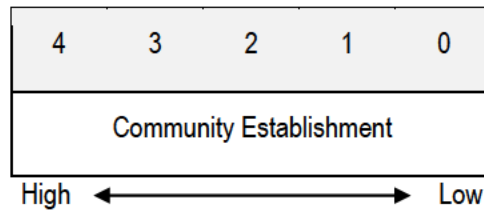
The sequence of the criteria reflects the order in which they will be assessed by the panel. The utmost care has been taken to avoid any “double-counting” - any negative aspect found in assessing an application for one criterion

should only be counted there and should not affect the assessment for other criteria.

An application must score at least 14 points to prevail in a community priority evaluation. The outcome will be determined according to the procedure described in subsection 4.2.2.

Criterion #1: Community Establishment (0-4 points)

A maximum of 4 points is possible on the Community Establishment criterion:



As measured by:

A. Delineation (2)

2	1	0
Clearly delineated, organized, and pre-existing community.	Clearly delineated and pre-existing community, but not fulfilling the requirements for a score of 2.	Insufficient delineation and pre-existence for a score of 1.

B. Extension (2)

2	1	0
Community of considerable size and longevity.	Community of either considerable size or longevity, but not fulfilling the requirements for a score of 2.	Community of neither considerable size nor longevity.

This section relates to the community as explicitly identified and defined according to statements in the application. (The implicit reach of the applied-for string is not

considered here, but taken into account when scoring Criterion #2, "Nexus between Proposed String and Community.")

Criterion 1 Definitions

- "Community" - Usage of the expression "community" has evolved considerably from its Latin origin – "communitas" meaning "fellowship" – while still implying more of cohesion than a mere commonality of interest. Notably, as "community" is used throughout the application, there should be:
(a) an awareness and recognition of a community among its members; (b) some understanding of the community's existence prior to September 2007 (when the new gTLD policy recommendations were completed); and (c) extended tenure or longevity—non-transience—into the future.
- "Delineation" relates to the membership of a community, where a clear and straight-forward membership definition scores high, while an unclear, dispersed or unbound definition scores low.
- "Pre-existing" means that a community has been active as such since before the new gTLD policy recommendations were completed in September 2007.
- "Organized" implies that there is at least one entity mainly dedicated to the community, with documented evidence of community activities.
- "Extension" relates to the dimensions of the community, regarding its number of members, geographical reach, and foreseeable activity lifetime, as further explained in the following.
- "Size" relates both to the number of members and the geographical reach of the community, and will be scored depending on the context rather than on absolute numbers - a geographic location community may count millions of members in a limited location, a language community may have a million members with some spread over the globe, a community of service providers may have "only" some hundred members although well spread over the globe, just to mention some examples - all these can be regarded as of "considerable size."

- "Longevity" means that the pursuits of a community are of a lasting, non-transient nature.

Criterion 1 Guidelines

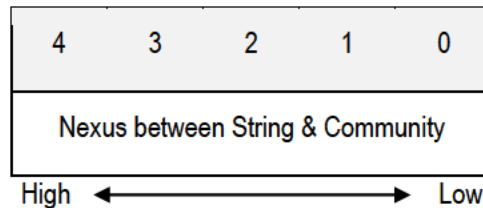
With respect to "Delineation" and "Extension," it should be noted that a community can consist of legal entities (for example, an association of suppliers of a particular service), of individuals (for example, a language community) or of a logical alliance of communities (for example, an international federation of national communities of a similar nature). All are viable as such, provided the requisite awareness and recognition of the community is at hand among the members. Otherwise the application would be seen as not relating to a real community and score 0 on both "Delineation" and "Extension."

With respect to "Delineation," if an application satisfactorily demonstrates all three relevant parameters (delineation, pre-existing and organized), then it scores a 2.

With respect to "Extension," if an application satisfactorily demonstrates both community size and longevity, it scores a 2.

Criterion #2: Nexus between Proposed String and Community (0-4 points)

A maximum of 4 points is possible on the Nexus criterion:



As measured by:

A. Nexus (3)

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

3	2	0
---	---	---

name.

B. Uniqueness (1)

1	0
---	---

String has no other significant meaning beyond identifying the community described in the application.

String does not fulfill the requirement for a score of 1.

This section evaluates the relevance of the string to the specific community that it claims to represent.

Criterion 2 Definitions

- "Name" of the community means the established name by which the community is commonly known by others. It may be, but does not need to be, the name of an organization dedicated to the community.
- "Identify" means that the applied for string closely describes the community or the community members, without over-reaching substantially beyond the community.

Criterion 2 Guidelines

With respect to "Nexus," for a score of 3, the essential aspect is that the applied-for string is commonly known by others as the identification / name of the community.

With respect to "Nexus," for a score of 2, the applied-for string should closely describe the community or the community members, without over-reaching substantially beyond the community. As an example, a string could qualify for a score of 2 if it is a noun that the typical community member would naturally be called in the context. If the string appears excessively broad (such as, for example, a globally well-known but local tennis club applying for ".TENNIS") then it would not qualify for a 2.

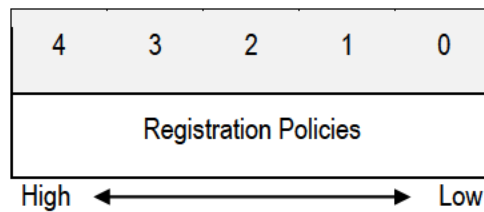
With respect to "Uniqueness," "significant meaning" relates to the public in general, with consideration of the community language context added.

"Uniqueness" will be scored both with regard to the community context and from a general point of view. For example, a string for a particular geographic location community may seem unique from a general perspective, but would not score a 1 for uniqueness if it carries another significant meaning in the common language used in the relevant community location. The phrasing "...beyond identifying the community" in the score of 1 for "uniqueness" implies a requirement that the string does identify the community, i.e. scores 2 or 3 for "Nexus," in order to be eligible for a score of 1 for "Uniqueness."

It should be noted that "Uniqueness" is only about the *meaning* of the string - since the evaluation takes place to resolve contention there will obviously be other applications, community-based and/or standard, with identical or confusingly similar strings in the contention set to resolve, so the string will clearly not be "unique" in the sense of "alone."

Criterion #3: Registration Policies (0-4 points)

A maximum of 4 points is possible on the Registration Policies criterion:



As measured by:

A. Eligibility (1)

1	0
Eligibility restricted to community members.	Largely unrestricted approach to eligibility.

B. Name selection (1)

1	0
Policies include name selection rules consistent with the articulated community-based purpose of the applied-for gTLD.	Policies do not fulfill the requirements for a score of 1.

C. Content and use (1)

1	0
Policies include rules for content and use consistent with the articulated community-based purpose of the applied-for gTLD.	Policies do not fulfill the requirements for a score of 1.

D. Enforcement (1)

1	0
Policies include specific enforcement measures (e.g. investigation practices, penalties, takedown procedures) constituting a coherent set with appropriate appeal mechanisms.	Policies do not fulfill the requirements for a score of 1.

This section evaluates the applicant's registration policies as indicated in the application. Registration policies are the conditions that the future registry will set for prospective registrants, i.e. those desiring to register second-level domain names under the registry.

Criterion 3 Definitions

- "Eligibility" means the qualifications that entities or individuals must have in order to be allowed as registrants by the registry.
- "Name selection" means the conditions that must be fulfilled for any second-level domain name to be deemed acceptable by the registry.
- "Content and use" means the restrictions stipulated by the registry as to the content provided in and the use of any second-level domain name in the registry.
- "Enforcement" means the tools and provisions set out by the registry to prevent and remedy any breaches of the conditions by registrants.

Criterion 3 Guidelines

With respect to "Eligibility," the limitation to community "members" can invoke a formal membership but can also be satisfied in other ways, depending on the structure and orientation of the community at hand. For example, for a geographic location community TLD, a limitation to members of the community can be achieved by requiring that the registrant's physical address is within the boundaries of the location.

With respect to "Name selection," "Content and use," and "Enforcement," scoring of applications against these sub-criteria will be done from a holistic perspective, with due regard for the particularities of the community explicitly addressed. For example, an application proposing a TLD for a language community may feature strict rules imposing this language for name selection as well as for content and use, scoring 1 on both B and C above. It could nevertheless include forbearance in the enforcement measures for tutorial sites assisting those wishing to learn the language and still score 1 on D. More restrictions do not automatically result in a higher score. The restrictions and corresponding enforcement mechanisms proposed by the applicant should show an alignment with the community-based purpose of the TLD and demonstrate continuing accountability to the community named in the application.

Criterion #4: Community Endorsement (0-4 points)

4	3	2	1	0	
Community Endorsement					
High		←————→			Low

As measured by:

A. Support (2)

2	1	0
Applicant is, or has documented support from, the recognized community institution(s)/ member organization(s) or has otherwise documented authority to represent the community.	Documented support from at least one group with relevance, but insufficient support for a score of 2.	Insufficient proof of support for a score of 1.

B. Opposition (2)

2	1	0
No opposition of relevance.	Relevant opposition from one group of non-negligible size.	Relevant opposition from two or more groups of non-negligible size.

This section evaluates community support and/or opposition to the application. Support and opposition will be scored in relation to the communities explicitly addressed as stated in the application, with due regard for the communities implicitly addressed by the string.

Criterion 4 Definitions

- "Recognized" means the institution(s)/organization(s) that, through membership or otherwise, are clearly recognized by

the community members as representative of the community.

- "Relevance" and "relevant" refer to the communities explicitly and implicitly addressed. This means that opposition from communities not identified in the application but with an association to the applied-for string would be considered relevant.

Criterion 4 Guidelines

With respect to "Support," it follows that documented support from, for example, the only national association relevant to a particular community on a national level would score a 2 if the string is clearly oriented to that national level, but only a 1 if the string implicitly addresses similar communities in other nations.

Also with respect to "Support," the plurals in brackets for a score of 2, relate to cases of multiple institutions/organizations. In such cases there must be documented support from institutions/organizations representing a majority of the overall community addressed in order to score 2.

The applicant will score a 1 for "Support" if it does not have support from the majority of the recognized community institutions/member organizations, or does not provide full documentation that it has authority to represent the community with its application. A 0 will be scored on "Support" if the applicant fails to provide documentation showing support from recognized community institutions/community member organizations, or does not provide documentation showing that it has the authority to represent the community. It should be noted, however, that documented support from groups or communities that may be seen as implicitly addressed but have completely different orientations compared to the applicant community will not be required for a score of 2 regarding support.

To be taken into account as relevant support, such documentation must contain a description of the process and rationale used in arriving at the expression of support. Consideration of support is not based merely on the number of comments or expressions of support received.

When scoring "Opposition," previous objections to the application as well as public comments during the same application round will be taken into account and assessed

in this context. There will be no presumption that such objections or comments would prevent a score of 2 or lead to any particular score for “Opposition.” To be taken into account as relevant opposition, such objections or comments must be of a reasoned nature. Sources of opposition that are clearly spurious, unsubstantiated, made for a purpose incompatible with competition objectives, or filed for the purpose of obstruction will not be considered relevant.

4.3 Auction: Mechanism of Last Resort

It is expected that most cases of contention will be resolved by the community priority evaluation, or through voluntary agreement among the involved applicants. Auction is a tie-breaker method for resolving string contention among the applications within a contention set, if the contention has not been resolved by other means.

An auction will not take place to resolve contention in the case where the contending applications are for geographic names (as defined in Module 2). In this case, the applications will be suspended pending resolution by the applicants.

An auction will take place, where contention has not already been resolved, in the case where an application for a geographic name is in a contention set with applications for similar strings that have not been identified as geographic names.

In practice, ICANN expects that most contention cases will be resolved through other means before reaching the auction stage. However, there is a possibility that significant funding will accrue to ICANN as a result of one or more auctions.¹

¹ The purpose of an auction is to resolve contention in a clear, objective manner. It is planned that costs of the new gTLD program will offset by fees, so any funds coming from a last resort contention resolution mechanism such as auctions would result (after paying for the auction process) in additional funding. Any proceeds from auctions will be reserved and earmarked until the uses of funds are determined. Funds must be used in a manner that supports directly ICANN's Mission and Core Values and also allows ICANN to maintain its not for profit status.

Possible uses of auction funds include formation of a foundation with a clear mission and a transparent way to allocate funds to projects that are of interest to the greater Internet community, such as grants to support new gTLD applications or registry operators from communities in subsequent gTLD rounds, the creation of an ICANN-administered/community-based fund for specific projects for the benefit of the Internet community, the creation of a registry continuity fund for the protection of registrants (ensuring that funds would be in place to support the operation of a gTLD registry until a successor could be found), or establishment of a security fund to expand use of secure protocols, conduct research, and support standards development organizations in accordance with ICANN's security and stability mission.

4.3.1 Auction Procedures

An auction of two or more applications within a contention set is conducted as follows. The auctioneer successively increases the prices associated with applications within the contention set, and the respective applicants indicate their willingness to pay these prices. As the prices rise, applicants will successively choose to exit from the auction. When a sufficient number of applications have been eliminated so that no direct contentions remain (i.e., the remaining applications are no longer in contention with one another and all the relevant strings can be delegated as TLDs), the auction will be deemed to conclude. At the auction's conclusion, the applicants with remaining applications will pay the resulting prices and proceed toward delegation. This procedure is referred to as an "ascending-clock auction."

This section provides applicants an informal introduction to the practicalities of participation in an ascending-clock auction. It is intended only as a general introduction and is only preliminary. The detailed set of Auction Rules will be available prior to the commencement of any auction proceedings. If any conflict arises between this module and the auction rules, the auction rules will prevail.

For simplicity, this section will describe the situation where a contention set consists of two or more applications for identical strings.

All auctions will be conducted over the Internet, with participants placing their bids remotely using a web-based software system designed especially for auction. The auction software system will be compatible with current versions of most prevalent browsers, and will not require the local installation of any additional software.

Auction participants ("bidders") will receive instructions for access to the online auction site. Access to the site will be password-protected and bids will be encrypted through SSL. If a bidder temporarily loses connection to the Internet, that bidder may be permitted to submit its bids in a given auction round by fax, according to procedures described

The amount of funding resulting from auctions, if any, will not be known until all relevant applications have completed this step. Thus, a detailed mechanism for allocation of these funds is not being created at present. However, a process can be pre-established to enable community consultation in the event that such funds are collected. This process will include, at a minimum, publication of data on any funds collected, and public comment on any proposed models.

in the auction rules. The auctions will generally be conducted to conclude quickly, ideally in a single day.

The auction will be carried out in a series of auction rounds, as illustrated in Figure 4-3. The sequence of events is as follows:

1. For each auction round, the auctioneer will announce in advance: (1) the start-of-round price, (2) the end-of-round price, and (3) the starting and ending times of the auction round. In the first auction round, the start-of-round price for all bidders in the auction will be USD 0. In later auction rounds, the start-of-round price will be its end-of-round price from the previous auction round.

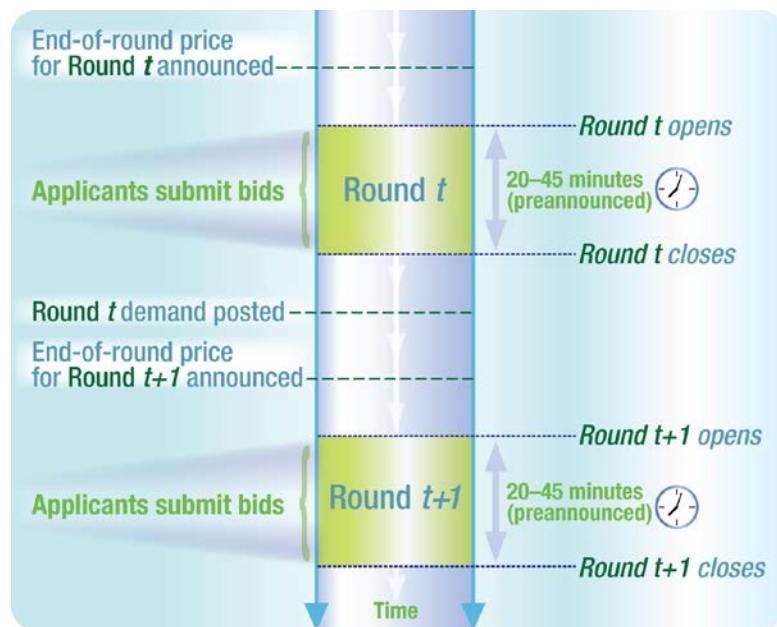


Figure 4-3 – Sequence of events during an ascending-clock auction.

2. During each auction round, bidders will be required to submit a bid or bids representing their willingness to pay within the range of intermediate prices between the start-of-round and end-of-round prices. In this way a bidder indicates its willingness to stay in the auction at all prices through and including the end-of-auction round price, or its wish to exit the auction at a price less than the end-of-auction round price, called the exit bid.
3. Exit is irrevocable. If a bidder exited the auction in a previous auction round, the bidder is not permitted to re-enter in the current auction round.

4. Bidders may submit their bid or bids at any time during the auction round.
5. Only bids that comply with all aspects of the auction rules will be considered valid. If more than one valid bid is submitted by a given bidder within the time limit of the auction round, the auctioneer will treat the last valid submitted bid as the actual bid.
6. At the end of each auction round, bids become the bidders' legally-binding offers to secure the relevant gTLD strings at prices up to the respective bid amounts, subject to closure of the auction in accordance with the auction rules. In later auction rounds, bids may be used to exit from the auction at subsequent higher prices.
7. After each auction round, the auctioneer will disclose the aggregate number of bidders remaining in the auction at the end-of-round prices for the auction round, and will announce the prices and times for the next auction round.
 - Each bid should consist of a single price associated with the application, and such price must be greater than or equal to the start-of-round price.
 - If the bid amount is strictly less than the end-of-round price, then the bid is treated as an exit bid at the specified amount, and it signifies the bidder's binding commitment to pay up to the bid amount if its application is approved.
 - If the bid amount is greater than or equal to the end-of-round price, then the bid signifies that the bidder wishes to remain in the auction at all prices in the current auction round, and it signifies the bidder's binding commitment to pay up to the end-of-round price if its application is approved. Following such bid, the application cannot be eliminated within the current auction round.
 - To the extent that the bid amount exceeds the end-of-round price, then the bid is also treated as a proxy bid to be carried forward to the next auction round. The bidder will be permitted to change the proxy bid amount in the next auction round, and the amount of the proxy bid will not constrain the bidder's ability to submit any valid bid amount in the next auction round.

- No bidder is permitted to submit a bid for any application for which an exit bid was received in a prior auction round. That is, once an application has exited the auction, it may not return.
 - If no valid bid is submitted within a given auction round for an application that remains in the auction, then the bid amount is taken to be the amount of the proxy bid, if any, carried forward from the previous auction round or, if none, the bid is taken to be an exit bid at the start-of-round price for the current auction round.
8. This process continues, with the auctioneer increasing the price range for each given TLD string in each auction round, until there is one remaining bidder at the end-of-round price. After an auction round in which this condition is satisfied, the auction concludes and the auctioneer determines the clearing price. The last remaining application is deemed the successful application, and the associated bidder is obligated to pay the clearing price.

Figure 4-4 illustrates how an auction for five contending applications might progress.

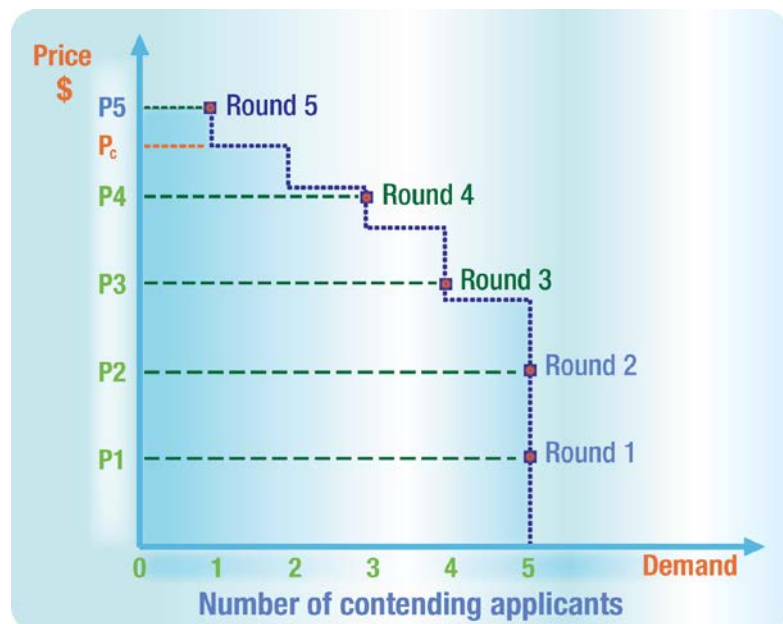


Figure 4-4 – Example of an auction for five mutually-contending applications.

- Before the first auction round, the auctioneer announces the end-of-round price P_1 .
- During Auction round 1, a bid is submitted for each application. In Figure 4-4, all five bidders submit bids of at least P_1 . Since the aggregate demand exceeds one, the auction proceeds to Auction round 2. The auctioneer discloses that five contending applications remained at P_1 and announces the end-of-round price P_2 .
- During Auction round 2, a bid is submitted for each application. In Figure 4-4, all five bidders submit bids of at least P_2 . The auctioneer discloses that five contending applications remained at P_2 and announces the end-of-round price P_3 .
- During Auction round 3, one of the bidders submits an exit bid at slightly below P_3 , while the other four bidders submit bids of at least P_3 . The auctioneer discloses that four contending applications remained at P_3 and announces the end-of-round price P_4 .
- During Auction round 4, one of the bidders submits an exit bid midway between P_3 and P_4 , while the other three remaining bidders submit bids of at least P_4 . The auctioneer discloses that three contending applications remained at P_4 and announces the end-of-auction round price P_5 .
- During Auction round 5, one of the bidders submits an exit bid at slightly above P_4 , and one of the bidders submits an exit bid at P_c midway between P_4 and P_5 . The final bidder submits a bid greater than P_c . Since the aggregate demand at P_5 does not exceed one, the auction concludes in Auction round 5. The application associated with the highest bid in Auction round 5 is deemed the successful application. The clearing price is P_c , as this is the lowest price at which aggregate demand can be met.

To the extent possible, auctions to resolve multiple string contention situations will be conducted simultaneously.

4.3.1.1 Currency

For bids to be comparable, all bids in the auction will be submitted in any integer (whole) number of US dollars.

4.3.1.2 Fees

A bidding deposit will be required of applicants participating in the auction, in an amount to be determined. The bidding deposit must be transmitted by wire transfer to a specified bank account specified by ICANN or its auction provider at a major international bank, to be received in advance of the auction date. The amount of the deposit will determine a bidding limit for each bidder: the bidding deposit will equal 10% of the bidding limit; and the bidder will not be permitted to submit any bid in excess of its bidding limit.

In order to avoid the need for bidders to pre-commit to a particular bidding limit, bidders may be given the option of making a specified deposit that will provide them with unlimited bidding authority for a given application. The amount of the deposit required for unlimited bidding authority will depend on the particular contention set and will be based on an assessment of the possible final prices within the auction.

All deposits from non-defaulting losing bidders will be returned following the close of the auction.

4.3.2 Winning Bid Payments

Any applicant that participates in an auction will be required to sign a bidder agreement that acknowledges its rights and responsibilities in the auction, including that its bids are legally binding commitments to pay the amount bid if it wins (i.e., if its application is approved), and to enter into the prescribed registry agreement with ICANN— together with a specified penalty for defaulting on payment of its winning bid or failing to enter into the required registry agreement.

The winning bidder in any auction will be required to pay the full amount of the final price within 20 business days of the end of the auction. Payment is to be made by wire transfer to the same international bank account as the bidding deposit, and the applicant's bidding deposit will be credited toward the final price.

In the event that a bidder anticipates that it would require a longer payment period than 20 business days due to verifiable government-imposed currency restrictions, the bidder may advise ICANN well in advance of the auction and ICANN will consider applying a longer payment period to all bidders within the same contention set.

Any winning bidder for whom the full amount of the final price is not received within 20 business days of the end of an auction is subject to being declared in default. At their sole discretion, ICANN and its auction provider may delay the declaration of default for a brief period, but only if they are convinced that receipt of full payment is imminent.

Any winning bidder for whom the full amount of the final price is received within 20 business days of the end of an auction retains the obligation to execute the required registry agreement within 90 days of the end of auction. Such winning bidder who does not execute the agreement within 90 days of the end of the auction is subject to being declared in default. At their sole discretion, ICANN and its auction provider may delay the declaration of default for a brief period, but only if they are convinced that execution of the registry agreement is imminent.

4.3.3 Post-Default Procedures

Once declared in default, any winning bidder is subject to immediate forfeiture of its position in the auction and assessment of default penalties. After a winning bidder is declared in default, the remaining bidders will receive an offer to have their applications accepted, one at a time, in descending order of their exit bids. In this way, the next bidder would be declared the winner subject to payment of its last bid price. The same default procedures and penalties are in place for any runner-up bidder receiving such an offer.

Each bidder that is offered the relevant gTLD will be given a specified period—typically, four business days—to respond as to whether it wants the gTLD. A bidder who responds in the affirmative will have 20 business days to submit its full payment. A bidder who declines such an offer cannot revert on that statement, has no further obligations in this context and will not be considered in default.

The penalty for defaulting on a winning bid will equal 10% of the defaulting bid.² Default penalties will be charged against any defaulting applicant's bidding deposit before the associated bidding deposit is returned.

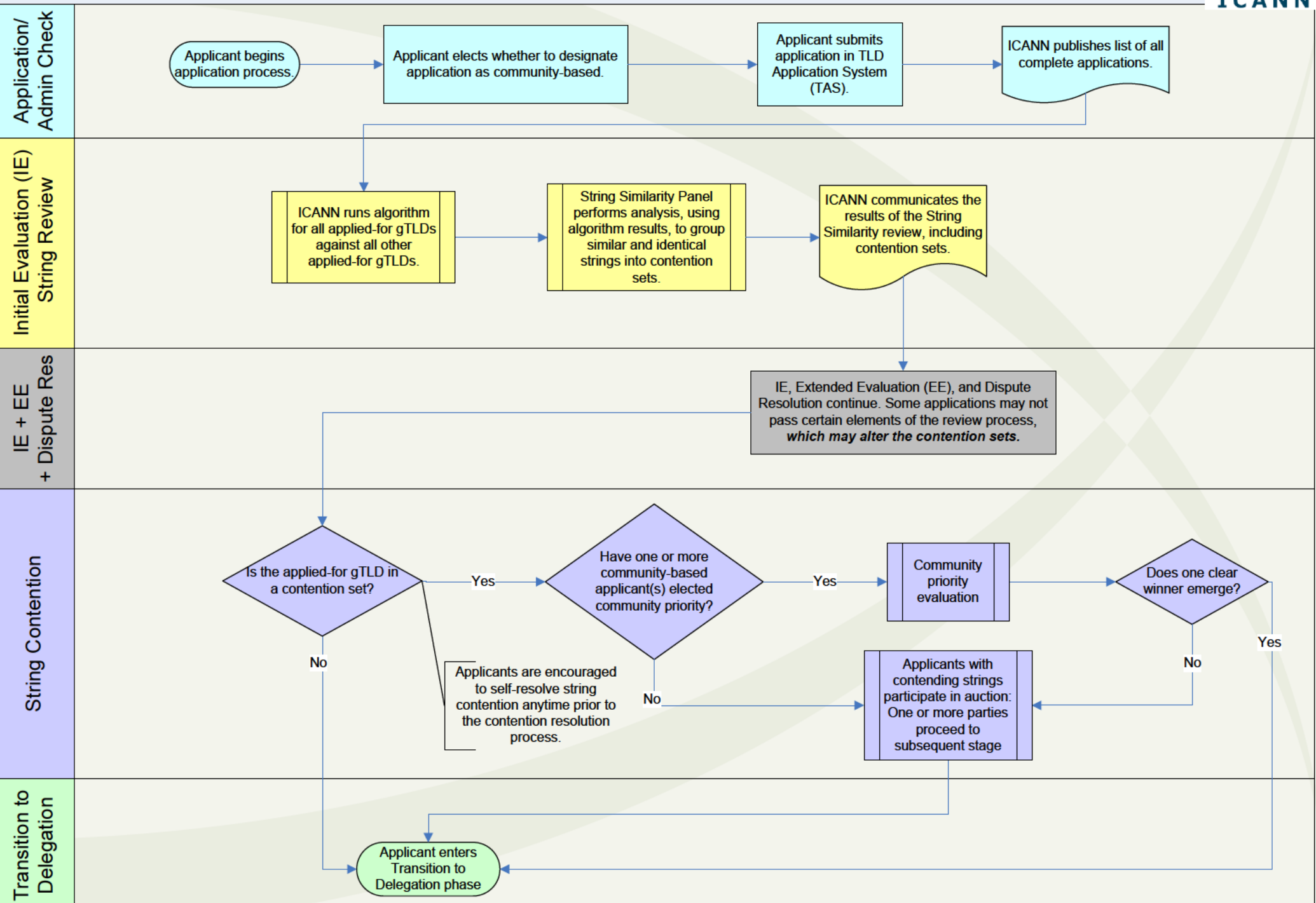
² If bidders were given the option of making a specified deposit that provided them with unlimited bidding authority for a given application and if the winning bidder utilized this option, then the penalty for defaulting on a winning bid will be the lesser of the following: (1) 10% of the defaulting bid, or (2) the specified deposit amount that provided the bidder with unlimited bidding authority.

4.4 *Contention Resolution and Contract Execution*

An applicant that has been declared the winner of a contention resolution process will proceed by entering into the contract execution step. (Refer to section 5.1 of Module 5.)

If a winner of the contention resolution procedure has not executed a contract within 90 calendar days of the decision, ICANN has the right to deny that application and extend an offer to the runner-up applicant, if any, to proceed with its application. For example, in an auction, another applicant who would be considered the runner-up applicant might proceed toward delegation. This offer is at ICANN's option only. The runner-up applicant in a contention resolution process has no automatic right to an applied-for gTLD string if the first place winner does not execute a contract within a specified time. If the winning applicant can demonstrate that it is working diligently and in good faith toward successful completion of the steps necessary for entry into the registry agreement, ICANN may extend the 90-day period at its discretion. Runner-up applicants have no claim of priority over the winning application, even after what might be an extended period of negotiation.

DRAFT - New gTLD Program - String Contention





gTLD Applicant Guidebook

(v. 2012-06-04)

Module 5

4 June 2012

Module 5

Transition to Delegation

This module describes the final steps required of an applicant for completion of the process, including execution of a registry agreement with ICANN and preparing for delegation of the new gTLD into the root zone.

5.1 Registry Agreement

All applicants that have successfully completed the evaluation process—including, if necessary, the dispute resolution and string contention processes—are required to enter into a registry agreement with ICANN before proceeding to delegation.

After the close of each stage in the process, ICANN will send a notification to those successful applicants that are eligible for execution of a registry agreement at that time.

To proceed, applicants will be asked to provide specified information for purposes of executing the registry agreement:

1. Documentation of the applicant's continued operations instrument (see Specification 8 to the agreement).
2. Confirmation of contact information and signatory to the agreement.
3. Notice of any material changes requested to the terms of the agreement.
4. The applicant must report: (i) any ownership interest it holds in any registrar or reseller of registered names, (ii) if known, any ownership interest that a registrar or reseller of registered names holds in the applicant, and (iii) if the applicant controls, is controlled by, or is under common control with any registrar or reseller of registered names. ICANN retains the right to refer an application to a competition authority prior to entry into the registry agreement if it is determined that the registry-registrar cross-ownership

arrangements might raise competition issues. For this purpose "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of securities, as trustee or executor, by serving as a member of a board of directors or equivalent governing body, by contract, by credit arrangement or otherwise.

To ensure that an applicant continues to be a going concern in good legal standing, ICANN reserves the right to ask the applicant to submit additional updated documentation and information before entering into the registry agreement.

ICANN will begin processing registry agreements one month after the date of the notification to successful applicants. Requests will be handled in the order the complete information is received.

Generally, the process will include formal approval of the agreement without requiring additional Board review, so long as: the application passed all evaluation criteria; there are no material changes in circumstances; and there are no material changes to the base agreement. There may be other cases where the Board requests review of an application.

Eligible applicants are expected to have executed the registry agreement within nine (9) months of the notification date. Failure to do so may result in loss of eligibility, at ICANN's discretion. An applicant may request an extension of this time period for up to an additional nine (9) months if it can demonstrate, to ICANN's reasonable satisfaction, that it is working diligently and in good faith toward successfully completing the steps necessary for entry into the registry agreement.

The registry agreement can be reviewed in the attachment to this module. Certain provisions in the agreement are labeled as applicable to governmental and intergovernmental entities only. Private entities, even if supported by a government or IGO, would not ordinarily be eligible for these special provisions.

All successful applicants are expected to enter into the agreement substantially as written. Applicants may request and negotiate terms by exception; however, this extends

the time involved in executing the agreement. In the event that material changes to the agreement are requested, these must first be approved by the ICANN Board of Directors before execution of the agreement.

ICANN's Board of Directors has ultimate responsibility for the New gTLD Program. The Board reserves the right to individually consider an application for a new gTLD to determine whether approval would be in the best interest of the Internet community. Under exceptional circumstances, the Board may individually consider a gTLD application. For example, the Board might individually consider an application as a result of GAC Advice on New gTLDs or of the use of an ICANN accountability mechanism.

5.2 Pre-Delegation Testing

Each applicant will be required to complete pre-delegation technical testing as a prerequisite to delegation into the root zone. This pre-delegation test must be completed within the time period specified in the registry agreement.

The purpose of the pre-delegation technical test is to verify that the applicant has met its commitment to establish registry operations in accordance with the technical and operational criteria described in Module 2.

The test is also intended to indicate that the applicant can operate the gTLD in a stable and secure manner. All applicants will be tested on a pass/fail basis according to the requirements that follow.

The test elements cover both the DNS server operational infrastructure and registry system operations. In many cases the applicant will perform the test elements as instructed and provide documentation of the results to ICANN to demonstrate satisfactory performance. At ICANN's discretion, aspects of the applicant's self-certification documentation can be audited either on-site at the services delivery point of the registry or elsewhere as determined by ICANN.

5.2.1 Testing Procedures

The applicant may initiate the pre-delegation test by submitting to ICANN the Pre-Delegation form and accompanying documents containing all of the following information:

- All name server names and IPv4/IPv6 addresses to be used in serving the new TLD data;
- If using anycast, the list of names and IPv4/IPv6 unicast addresses allowing the identification of each individual server in the anycast sets;
- If IDN is supported, the complete IDN tables used in the registry system;
- A test zone for the new TLD must be signed at test time and the valid key-set to be used at the time of testing must be provided to ICANN in the documentation, as well as the TLD DNSSEC Policy Statement (DPS);
- The executed agreement between the selected escrow agent and the applicant; and
- Self-certification documentation as described below for each test item.

ICANN will review the material submitted and in some cases perform tests in addition to those conducted by the applicant. After testing, ICANN will assemble a report with the outcome of the tests and provide that report to the applicant.

Any clarification request, additional information request, or other request generated in the process will be highlighted and listed in the report sent to the applicant.

ICANN may request the applicant to complete load tests considering an aggregated load where a single entity is performing registry services for multiple TLDs.

Once an applicant has met all of the pre-delegation testing requirements, it is eligible to request delegation of its applied-for gTLD.

If an applicant does not complete the pre-delegation steps within the time period specified in the registry agreement, ICANN reserves the right to terminate the registry agreement.

5.2.2 Test Elements: DNS Infrastructure

The first set of test elements concerns the DNS infrastructure of the new gTLD. In all tests of the DNS infrastructure, all requirements are independent of whether IPv4 or IPv6 is used. All tests shall be done both over IPv4 and IPv6, with reports providing results according to both protocols.

UDP Support -- The DNS infrastructure to which these tests apply comprises the complete set of servers and network infrastructure to be used by the chosen providers to deliver DNS service for the new gTLD to the Internet. The documentation provided by the applicant must include the results from a system performance test indicating available network and server capacity and an estimate of expected capacity during normal operation to ensure stable service as well as to adequately address Distributed Denial of Service (DDoS) attacks.

Self-certification documentation shall include data on load capacity, latency and network reachability.

Load capacity shall be reported using a table, and a corresponding graph, showing percentage of queries responded against an increasing number of queries per second generated from local (to the servers) traffic generators. The table shall include at least 20 data points and loads of UDP-based queries that will cause up to 10% query loss against a randomly selected subset of servers within the applicant's DNS infrastructure. Responses must either contain zone data or be NXDOMAIN or NODATA responses to be considered valid.

Query latency shall be reported in milliseconds as measured by DNS probes located just outside the border routers of the physical network hosting the name servers, from a network topology point of view.

Reachability will be documented by providing information on the transit and peering arrangements for the DNS server locations, listing the AS numbers of the transit providers or peers at each point of presence and available bandwidth at those points of presence.

TCP support -- TCP transport service for DNS queries and responses must be enabled and provisioned for expected load. ICANN will review the capacity self-certification documentation provided by the applicant and will perform TCP reachability and transaction capability tests across a

randomly selected subset of the name servers within the applicant's DNS infrastructure. In case of use of anycast, each individual server in each anycast set will be tested.

Self-certification documentation shall include data on load capacity, latency and external network reachability.

Load capacity shall be reported using a table, and a corresponding graph, showing percentage of queries that generated a valid (zone data, NODATA, or NXDOMAIN) response against an increasing number of queries per second generated from local (to the name servers) traffic generators. The table shall include at least 20 data points and loads that will cause up to 10% query loss (either due to connection timeout or connection reset) against a randomly selected subset of servers within the applicant's DNS infrastructure.

Query latency will be reported in milliseconds as measured by DNS probes located just outside the border routers of the physical network hosting the name servers, from a network topology point of view.

Reachability will be documented by providing records of TCP-based DNS queries from nodes external to the network hosting the servers. These locations may be the same as those used for measuring latency above.

DNSSEC support -- Applicant must demonstrate support for EDNS(0) in its server infrastructure, the ability to return correct DNSSEC-related resource records such as DNSKEY, RRSIG, and NSEC/NSEC3 for the signed zone, and the ability to accept and publish DS resource records from second-level domain administrators. In particular, the applicant must demonstrate its ability to support the full life cycle of KSK and ZSK keys. ICANN will review the self-certification materials as well as test the reachability, response sizes, and DNS transaction capacity for DNS queries using the EDNS(0) protocol extension with the "DNSSEC OK" bit set for a randomly selected subset of all name servers within the applicant's DNS infrastructure. In case of use of anycast, each individual server in each anycast set will be tested.

Load capacity, query latency, and reachability shall be documented as for UDP and TCP above.

5.2.3 Test Elements: Registry Systems

As documented in the registry agreement, registries must provide support for EPP within their Shared Registration System, and provide Whois service both via port 43 and a web interface, in addition to support for the DNS. This section details the requirements for testing these registry systems.

System performance -- The registry system must scale to meet the performance requirements described in Specification 10 of the registry agreement and ICANN will require self-certification of compliance. ICANN will review the self-certification documentation provided by the applicant to verify adherence to these minimum requirements.

Whois support -- Applicant must provision Whois services for the anticipated load. ICANN will verify that Whois data is accessible over IPv4 and IPv6 via both TCP port 43 and via a web interface and review self-certification documentation regarding Whois transaction capacity. Response format according to Specification 4 of the registry agreement and access to Whois (both port 43 and via web) will be tested by ICANN remotely from various points on the Internet over both IPv4 and IPv6.

Self-certification documents shall describe the maximum number of queries per second successfully handled by both the port 43 servers as well as the web interface, together with an applicant-provided load expectation.

Additionally, a description of deployed control functions to detect and mitigate data mining of the Whois database shall be documented.

EPP Support -- As part of a shared registration service, applicant must provision EPP services for the anticipated load. ICANN will verify conformance to appropriate RFCs (including EPP extensions for DNSSEC). ICANN will also review self-certification documentation regarding EPP transaction capacity.

Documentation shall provide a maximum Transaction per Second rate for the EPP interface with 10 data points corresponding to registry database sizes from 0 (empty) to the expected size after one year of operation, as determined by applicant.

Documentation shall also describe measures taken to handle load during initial registry operations, such as a land-rush period.

IPv6 support -- The ability of the registry to support registrars adding, changing, and removing IPv6 DNS records supplied by registrants will be tested by ICANN. If the registry supports EPP access via IPv6, this will be tested by ICANN remotely from various points on the Internet.

DNSSEC support -- ICANN will review the ability of the registry to support registrars adding, changing, and removing DNSSEC-related resource records as well as the registry's overall key management procedures. In particular, the applicant must demonstrate its ability to support the full life cycle of key changes for child domains. Inter-operation of the applicant's secure communication channels with the IANA for trust anchor material exchange will be verified.

The practice and policy document (also known as the DNSSEC Policy Statement or DPS), describing key material storage, access and usage for its own keys is also reviewed as part of this step.

IDN support -- ICANN will verify the complete IDN table(s) used in the registry system. The table(s) must comply with the guidelines in <http://iana.org/procedures/idn-repository.html>.

Requirements related to IDN for Whois are being developed. After these requirements are developed, prospective registries will be expected to comply with published IDN-related Whois requirements as part of pre-delegation testing.

Escrow deposit -- The applicant-provided samples of data deposit that include both a full and an incremental deposit showing correct type and formatting of content will be reviewed. Special attention will be given to the agreement with the escrow provider to ensure that escrowed data can be released within 24 hours should it be necessary. ICANN may, at its option, ask an independent third party to demonstrate the reconstitutability of the registry from escrowed data. ICANN may elect to test the data release process with the escrow agent.

5.3 Delegation Process

Upon notice of successful completion of the ICANN pre-delegation testing, applicants may initiate the process for delegation of the new gTLD into the root zone database.

This will include provision of additional information and completion of additional technical steps required for delegation. Information about the delegation process is available at <http://iana.org/domains/root/>.

5.4 Ongoing Operations

An applicant that is successfully delegated a gTLD will become a “Registry Operator.” In being delegated the role of operating part of the Internet’s domain name system, the applicant will be assuming a number of significant responsibilities. ICANN will hold all new gTLD operators accountable for the performance of their obligations under the registry agreement, and it is important that all applicants understand these responsibilities.

5.4.1 What is Expected of a Registry Operator

The registry agreement defines the obligations of gTLD registry operators. A breach of the registry operator’s obligations may result in ICANN compliance actions up to and including termination of the registry agreement. Prospective applicants are encouraged to review the following brief description of some of these responsibilities.

Note that this is a non-exhaustive list provided to potential applicants as an introduction to the responsibilities of a registry operator. For the complete and authoritative text, please refer to the registry agreement.

A registry operator is obligated to:

Operate the TLD in a stable and secure manner. The registry operator is responsible for the entire technical operation of the TLD. As noted in RFC 1591¹:

“The designated manager must do a satisfactory job of operating the DNS service for the domain. That is, the actual management of the assigning of domain names, delegating subdomains and operating nameservers must be done with technical competence. This includes keeping

¹ See <http://www.rfc-editor.org/rfc/rfc1591.txt>

the central IR² (in the case of top-level domains) or other higher-level domain manager advised of the status of the domain, responding to requests in a timely manner, and operating the database with accuracy, robustness, and resilience.”

The registry operator is required to comply with relevant technical standards in the form of RFCs and other guidelines. Additionally, the registry operator must meet performance specifications in areas such as system downtime and system response times (see Specifications 6 and 10 of the registry agreement).

Comply with consensus policies and temporary policies.

gTLD registry operators are required to comply with consensus policies. Consensus policies may relate to a range of topics such as issues affecting interoperability of the DNS, registry functional and performance specifications, database security and stability, or resolution of disputes over registration of domain names.

To be adopted as a consensus policy, a policy must be developed by the Generic Names Supporting Organization (GNSO)³ following the process in Annex A of the ICANN Bylaws.⁴ The policy development process involves deliberation and collaboration by the various stakeholder groups participating in the process, with multiple opportunities for input and comment by the public, and can take significant time.

Examples of existing consensus policies are the Inter-Registrar Transfer Policy (governing transfers of domain names between registrars), and the Registry Services Evaluation Policy (establishing a review of proposed new registry services for security and stability or competition concerns), although there are several more, as found at <http://www.icann.org/en/general/consensus-policies.htm>.

gTLD registry operators are obligated to comply with both existing consensus policies and those that are developed in the future. Once a consensus policy has been formally adopted, ICANN will provide gTLD registry operators with notice of the requirement to implement the new policy and the effective date.

² IR is a historical reference to “Internet Registry,” a function now performed by ICANN.

³ <http://gns0.icann.org>

⁴ <http://www.icann.org/en/general/bylaws.htm#AnnexA>

In addition, the ICANN Board may, when required by circumstances, establish a temporary policy necessary to maintain the stability or security of registry services or the DNS. In such a case, all gTLD registry operators will be required to comply with the temporary policy for the designated period of time.

For more information, see Specification 1 of the registry agreement.

Implement start-up rights protection measures. The registry operator must implement, at a minimum, a Sunrise period and a Trademark Claims service during the start-up phases for registration in the TLD, as provided in the registry agreement. These mechanisms will be supported by the established Trademark Clearinghouse as indicated by ICANN.

The Sunrise period allows eligible rightsholders an early opportunity to register names in the TLD.

The Trademark Claims service provides notice to potential registrants of existing trademark rights, as well as notice to rightsholders of relevant names registered. Registry operators may continue offering the Trademark Claims service after the relevant start-up phases have concluded.

For more information, see Specification 7 of the registry agreement and the Trademark Clearinghouse model accompanying this module.

Implement post-launch rights protection measures. The registry operator is required to implement decisions made under the Uniform Rapid Suspension (URS) procedure, including suspension of specific domain names within the registry. The registry operator is also required to comply with and implement decisions made according to the Trademark Post-Delegation Dispute Resolution Policy (PDDRP).

The required measures are described fully in the URS and PDDRP procedures accompanying this module. Registry operators may introduce additional rights protection measures relevant to the particular gTLD.

Implement measures for protection of country and territory names in the new gTLD. All new gTLD registry operators are required to provide certain minimum protections for country and territory names, including an initial reservation requirement and establishment of applicable rules and

procedures for release of these names. The rules for release can be developed or agreed to by governments, the GAC, and/or approved by ICANN after a community discussion. Registry operators are encouraged to implement measures for protection of geographical names in addition to those required by the agreement, according to the needs and interests of each gTLD's particular circumstances. (See Specification 5 of the registry agreement).

Pay recurring fees to ICANN. In addition to supporting expenditures made to accomplish the objectives set out in ICANN's mission statement, these funds enable the support required for new gTLDs, including: contractual compliance, registry liaison, increased registrar accreditations, and other registry support activities. The fees include both a fixed component (USD 25,000 annually) and, where the TLD exceeds a transaction volume, a variable fee based on transaction volume. See Article 6 of the registry agreement.

Regularly deposit data into escrow. This serves an important role in registrant protection and continuity for certain instances where the registry or one aspect of the registry operations experiences a system failure or loss of data. (See Specification 2 of the registry agreement.)

Deliver monthly reports in a timely manner. A registry operator must submit a report to ICANN on a monthly basis. The report includes registrar transactions for the month and is used by ICANN for calculation of registrar fees. (See Specification 3 of the registry agreement.)

Provide Whois service. A registry operator must provide a publicly available Whois service for registered domain names in the TLD. (See Specification 4 of the registry agreement.)

Maintain partnerships with ICANN-accredited registrars. A registry operator creates a Registry-Registrar Agreement (RRA) to define requirements for its registrars. This must include certain terms that are specified in the Registry Agreement, and may include additional terms specific to the TLD. A registry operator must provide non-discriminatory access to its registry services to all ICANN-accredited registrars with whom it has entered into an RRA, and who are in compliance with the requirements. This includes providing advance notice of pricing changes to all

registrars, in compliance with the time frames specified in the agreement. (See Article 2 of the registry agreement.)

Maintain an abuse point of contact. A registry operator must maintain and publish on its website a single point of contact responsible for addressing matters requiring expedited attention and providing a timely response to abuse complaints concerning all names registered in the TLD through all registrars of record, including those involving a reseller. A registry operator must also take reasonable steps to investigate and respond to any reports from law enforcement, governmental and quasi-governmental agencies of illegal conduct in connection with the use of the TLD. (See Article 2 and Specification 6 of the registry agreement.)

Cooperate with contractual compliance audits. To maintain a level playing field and a consistent operating environment, ICANN staff performs periodic audits to assess contractual compliance and address any resulting problems. A registry operator must provide documents and information requested by ICANN that are necessary to perform such audits. (See Article 2 of the registry agreement.)

Maintain a Continued Operations Instrument. A registry operator must, at the time of the agreement, have in place a continued operations instrument sufficient to fund basic registry operations for a period of three (3) years. This requirement remains in place for five (5) years after delegation of the TLD, after which time the registry operator is no longer required to maintain the continued operations instrument. (See Specification 8 to the registry agreement.)

Maintain community-based policies and procedures. If the registry operator designated its application as community-based at the time of the application, the registry operator has requirements in its registry agreement to maintain the community-based policies and procedures it specified in its application. The registry operator is bound by the Registry Restrictions Dispute Resolution Procedure with respect to disputes regarding execution of its community-based policies and procedures. (See Article 2 to the registry agreement.)

Have continuity and transition plans in place. This includes performing failover testing on a regular basis. In the event that a transition to a new registry operator becomes necessary, the registry operator is expected to cooperate

by consulting with ICANN on the appropriate successor, providing the data required to enable a smooth transition, and complying with the applicable registry transition procedures. (See Articles 2 and 4 of the registry agreement.)

Make TLD zone files available via a standardized process.

This includes provision of access to the registry's zone file to credentialed users, according to established access, file, and format standards. The registry operator will enter into a standardized form of agreement with zone file users and will accept credential information for users via a clearinghouse. (See Specification 4 of the registry agreement.)

Implement DNSSEC. The registry operator is required to sign the TLD zone files implementing Domain Name System Security Extensions (DNSSEC) in accordance with the relevant technical standards. The registry must accept public key material from registrars for domain names registered in the TLD, and publish a DNSSEC Policy Statement describing key material storage, access, and usage for the registry's keys. (See Specification 6 of the registry agreement.)

5.4.2 What is Expected of ICANN

ICANN will continue to provide support for gTLD registry operators as they launch and maintain registry operations. ICANN's gTLD registry liaison function provides a point of contact for gTLD registry operators for assistance on a continuing basis.

ICANN's contractual compliance function will perform audits on a regular basis to ensure that gTLD registry operators remain in compliance with agreement obligations, as well as investigate any complaints from the community regarding the registry operator's adherence to its contractual obligations. See <http://www.icann.org/en/compliance/> for more information on current contractual compliance activities.

ICANN's Bylaws require ICANN to act in an open and transparent manner, and to provide equitable treatment among registry operators. ICANN is responsible for maintaining the security and stability of the global Internet, and looks forward to a constructive and cooperative relationship with future gTLD registry operators in furtherance of this goal.

Draft – New gTLD Program - Transition to Delegation

(Timeframes are estimates only)

Applicant Doc Prep 1 Month

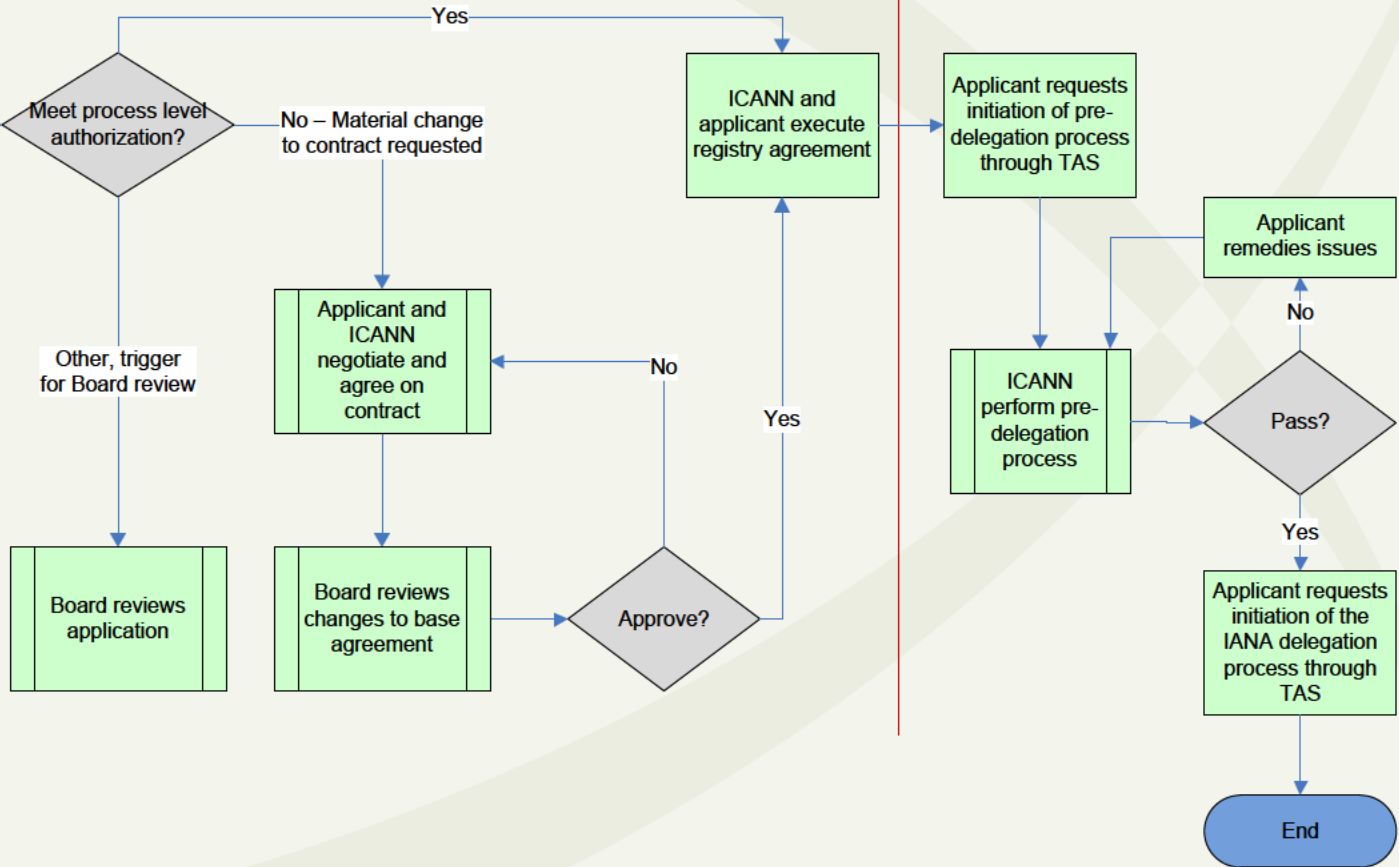
Contracting – 1 day to 9 months

Pre-Delegation Testing – 1 to 12 months

ICANN provides notice of eligibility to applicant

Applicant prepares documentation for contracting

- Includes:
- Material changes in circumstances
 - Continued Operations instrument
 - Designated contracting parties



New gTLD Agreement

This document contains the registry agreement associated with the Applicant Guidebook for New gTLDs.

Successful gTLD applicants would enter into this form of registry agreement with ICANN prior to delegation of the new gTLD. (Note: ICANN reserves the right to make reasonable updates and changes to this proposed agreement during the course of the application process, including as the possible result of new policies that might be adopted during the course of the application process).

REGISTRY AGREEMENT

This REGISTRY AGREEMENT (this “Agreement”) is entered into as of _____ (the “Effective Date”) between Internet Corporation for Assigned Names and Numbers, a California nonprofit public benefit corporation (“ICANN”), and _____, a _____ (“Registry Operator”).

ARTICLE 1.

DELEGATION AND OPERATION OF TOP-LEVEL DOMAIN; REPRESENTATIONS AND WARRANTIES

1.1 Domain and Designation. The Top-Level Domain to which this Agreement applies is _____ (the “TLD”). Upon the Effective Date and until the end of the Term (as defined in Section 4.1), ICANN designates Registry Operator as the registry operator for the TLD, subject to the requirements and necessary approvals for delegation of the TLD and entry into the root-zone.

1.2 Technical Feasibility of String. While ICANN has encouraged and will continue to encourage universal acceptance of all top-level domain strings across the Internet, certain top-level domain strings may encounter difficulty in acceptance by ISPs and webhosters and/or validation by web applications. Registry Operator shall be responsible for ensuring to its satisfaction the technical feasibility of the TLD string prior to entering into this Agreement.

1.3 Representations and Warranties.

(a) Registry Operator represents and warrants to ICANN as follows:

(i) all material information provided and statements made in the registry TLD application, and statements made in writing during the negotiation of this Agreement, were true and correct in all material respects at the time made, and such information or statements continue to be true and correct in all material respects as of the Effective Date except as otherwise previously disclosed in writing by Registry Operator to ICANN;

(ii) Registry Operator is duly organized, validly existing and in good standing under the laws of the jurisdiction set forth in the preamble hereto, and Registry Operator has all requisite power and authority and obtained all necessary approvals to enter into and duly execute and deliver this Agreement; and

(iii) Registry Operator has delivered to ICANN a duly executed instrument that secures the funds required to perform registry functions for the TLD in the event of the termination or expiration of this Agreement (the “Continued Operations Instrument”), and such instrument is a binding obligation of the parties thereto, enforceable against the parties thereto in accordance with its terms.

(b) ICANN represents and warrants to Registry Operator that ICANN is a nonprofit public benefit corporation duly organized, validly existing and in good standing under the laws of the State of California, United States of America. ICANN has all requisite power and authority and obtained all necessary corporate approvals to enter into and duly execute and deliver this Agreement.

ARTICLE 2.

COVENANTS OF REGISTRY OPERATOR

Registry Operator covenants and agrees with ICANN as follows:

2.1 Approved Services; Additional Services. Registry Operator shall be entitled to provide the Registry Services described in clauses (a) and (b) of the first paragraph of Section 2.1 in the specification at [*see specification 6*] (“Specification 6”) and such other Registry Services set forth on Exhibit A (collectively, the “Approved Services”). If Registry Operator desires to provide any Registry Service that is not an Approved Service or is a modification to an Approved Service (each, an “Additional Service”), Registry Operator shall submit a request for approval of such Additional Service pursuant to the Registry Services Evaluation Policy at <http://www.icann.org/en/registries/rsep/rsep.html>, as such policy may be amended from time to time in accordance with the bylaws of ICANN (as amended from time to time, the “ICANN Bylaws”) applicable to Consensus Policies (the “RSEP”). Registry Operator may offer Additional Services only with the written approval of ICANN, and, upon any such approval, such Additional Services shall be deemed Registry Services under this Agreement. In its reasonable discretion, ICANN may require an amendment to this Agreement reflecting the provision of any Additional Service which is approved pursuant to the RSEP, which amendment shall be in a form reasonably acceptable to the parties.

2.2 Compliance with Consensus Policies and Temporary Policies. Registry Operator shall comply with and implement all Consensus Policies and Temporary Policies found at <http://www.icann.org/general/consensus-policies.htm>, as of the Effective Date and as may in the future be developed and adopted in accordance with the ICANN Bylaws, provided such future Consensus Policies and Temporary Policies are adopted in accordance with the procedure and relate to those topics and subject to those limitations set forth at [*see specification 1*]* (“Specification 1”).

2.3 Data Escrow. Registry Operator shall comply with the registry data escrow procedures posted at [*see specification 2*]*.

2.4 Monthly Reporting. Within twenty (20) calendar days following the end of each calendar month, Registry Operator shall deliver to ICANN reports in the format posted in the specification at [*see specification 3*]*.

2.5 Publication of Registration Data. Registry Operator shall provide public access to registration data in accordance with the specification posted at [*see specification 4*]* (“Specification 4”).

2.6 Reserved Names. Except to the extent that ICANN otherwise expressly authorizes in writing, Registry Operator shall comply with the restrictions on registration of character strings set forth at [*see specification 5*]* (“Specification 5”). Registry Operator may establish policies concerning the reservation or blocking of additional character strings within the TLD at its discretion. If Registry Operator is the registrant for any domain names in the Registry TLD (other than the Second-Level Reservations for Registry Operations from Specification 5), such registrations must be through an ICANN accredited registrar. Any such registrations will be considered Transactions (as defined in Section 6.1) for purposes of calculating the Registry-Level Transaction Fee to be paid to ICANN by Registry Operator pursuant to Section 6.1.

2.7 Registry Interoperability and Continuity. Registry Operator shall comply with the Registry Interoperability and Continuity Specifications as set forth in Specification 6.

* Final text will be posted on ICANN website; agreement reference to be replaced by hyperlink.

2.8 Protection of Legal Rights of Third Parties. Registry Operator must specify, and comply with, a process and procedures for launch of the TLD and initial registration-related and ongoing protection of the legal rights of third parties as set forth in the specification at [*see specification 7*]* (“Specification 7”). Registry Operator may, at its election, implement additional protections of the legal rights of third parties. Any changes or modifications to the process and procedures required by Specification 7 following the Effective Date must be approved in advance by ICANN in writing. Registry Operator must comply with all remedies imposed by ICANN pursuant to Section 2 of Specification 7, subject to Registry Operator’s right to challenge such remedies as set forth in the applicable procedure described therein. Registry Operator shall take reasonable steps to investigate and respond to any reports from law enforcement and governmental and quasi-governmental agencies of illegal conduct in connection with the use of the TLD. In responding to such reports, Registry Operator will not be required to take any action in contravention of applicable law.

2.9 Registrars.

(a) Registry Operator must use only ICANN accredited registrars in registering domain names. Registry Operator must provide non-discriminatory access to Registry Services to all ICANN accredited registrars that enter into and are in compliance with the registry-registrar agreement for the TLD; provided, that Registry Operator may establish non-discriminatory criteria for qualification to register names in the TLD that are reasonably related to the proper functioning of the TLD. Registry Operator must use a uniform non-discriminatory agreement with all registrars authorized to register names in the TLD. Such agreement may be revised by Registry Operator from time to time; provided, however, that any such revisions must be approved in advance by ICANN.

(b) If Registry Operator (i) becomes an Affiliate or reseller of an ICANN accredited registrar, or (ii) subcontracts the provision of any Registry Services to an ICANN accredited registrar, registrar reseller or any of their respective Affiliates, then, in either such case of (i) or (ii) above, Registry Operator will give ICANN prompt notice of the contract, transaction or other arrangement that resulted in such affiliation, reseller relationship or subcontract, as applicable, including, if requested by ICANN, copies of any contract relating thereto; provided, that ICANN will not disclose such contracts to any third party other than relevant competition authorities. ICANN reserves the right, but not the obligation, to refer any such contract, transaction or other arrangement to relevant competition authorities in the event that ICANN determines that such contract, transaction or other arrangement might raise competition issues.

(c) For the purposes of this Agreement: (i) “Affiliate” means a person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the person or entity specified, and (ii) “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person or entity, whether through the ownership of securities, as trustee or executor, by serving as an employee or a member of a board of directors or equivalent governing body, by contract, by credit arrangement or otherwise.

2.10 Pricing for Registry Services.

(a) With respect to initial domain name registrations, Registry Operator shall provide ICANN and each ICANN accredited registrar that has executed the registry-registrar agreement for the TLD advance written notice of any price increase (including as a result of the elimination of any refunds, rebates, discounts, product tying or other programs which had the effect of reducing the price charged to registrars, unless such refunds, rebates, discounts, product tying or other programs are of a limited

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duration that is clearly and conspicuously disclosed to the registrar when offered) of no less than thirty (30) calendar days. Registry Operator shall offer registrars the option to obtain initial domain name registrations for periods of one to ten years at the discretion of the registrar, but no greater than ten years.

(b) With respect to renewal of domain name registrations, Registry Operator shall provide ICANN and each ICANN accredited registrar that has executed the registry-registrar agreement for the TLD advance written notice of any price increase (including as a result of the elimination of any refunds, rebates, discounts, product tying, Qualified Marketing Programs or other programs which had the effect of reducing the price charged to registrars) of no less than one hundred eighty (180) calendar days. Notwithstanding the foregoing sentence, with respect to renewal of domain name registrations: (i) Registry Operator need only provide thirty (30) calendar days notice of any price increase if the resulting price is less than or equal to (A) for the period beginning on the Effective Date and ending twelve (12) months following the Effective Date, the initial price charged for registrations in the TLD, or (B) for subsequent periods, a price for which Registry Operator provided a notice pursuant to the first sentence of this Section 2.10(b) within the twelve (12) month period preceding the effective date of the proposed price increase; and (ii) Registry Operator need not provide notice of any price increase for the imposition of the Variable Registry-Level Fee set forth in Section 6.3. Registry Operator shall offer registrars the option to obtain domain name registration renewals at the current price (i.e. the price in place prior to any noticed increase) for periods of one to ten years at the discretion of the registrar, but no greater than ten years.

(c) In addition, Registry Operator must have uniform pricing for renewals of domain name registrations (“Renewal Pricing”). For the purposes of determining Renewal Pricing, the price for each domain registration renewal must be identical to the price of all other domain name registration renewals in place at the time of such renewal, and such price must take into account universal application of any refunds, rebates, discounts, product tying or other programs in place at the time of renewal. The foregoing requirements of this Section 2.10(c) shall not apply for (i) purposes of determining Renewal Pricing if the registrar has provided Registry Operator with documentation that demonstrates that the applicable registrant expressly agreed in its registration agreement with registrar to higher Renewal Pricing at the time of the initial registration of the domain name following clear and conspicuous disclosure of such Renewal Pricing to such registrant, and (ii) discounted Renewal Pricing pursuant to a Qualified Marketing Program (as defined below). The parties acknowledge that the purpose of this Section 2.10(c) is to prohibit abusive and/or discriminatory Renewal Pricing practices imposed by Registry Operator without the written consent of the applicable registrant at the time of the initial registration of the domain and this Section 2.10(c) will be interpreted broadly to prohibit such practices. For purposes of this Section 2.10(c), a “Qualified Marketing Program” is a marketing program pursuant to which Registry Operator offers discounted Renewal Pricing, provided that each of the following criteria is satisfied: (i) the program and related discounts are offered for a period of time not to exceed one hundred eighty (180) calendar days (with consecutive substantially similar programs aggregated for purposes of determining the number of calendar days of the program), (ii) all ICANN accredited registrars are provided the same opportunity to qualify for such discounted Renewal Pricing; and (iii) the intent or effect of the program is not to exclude any particular class(es) of registrations (e.g., registrations held by large corporations) or increase the renewal price of any particular class(es) of registrations. Nothing in this Section 2.10(c) shall limit Registry Operator’s obligations pursuant to Section 2.10(b).

(d) Registry Operator shall provide public query-based DNS lookup service for the TLD (that is, operate the Registry TLD zone servers) at its sole expense.

2.11 Contractual and Operational Compliance Audits.

* Final text will be posted on ICANN website; agreement reference to be replaced by hyperlink.

(a) ICANN may from time to time (not to exceed twice per calendar year) conduct, or engage a third party to conduct, contractual compliance audits to assess compliance by Registry Operator with its representations and warranties contained in Article 1 of this Agreement and its covenants contained in Article 2 of this Agreement. Such audits shall be tailored to achieve the purpose of assessing compliance, and ICANN will (a) give reasonable advance notice of any such audit, which notice shall specify in reasonable detail the categories of documents, data and other information requested by ICANN, and (b) use commercially reasonable efforts to conduct such audit in such a manner as to not unreasonably disrupt the operations of Registry Operator. As part of such audit and upon request by ICANN, Registry Operator shall timely provide all responsive documents, data and any other information necessary to demonstrate Registry Operator's compliance with this Agreement. Upon no less than five (5) business days notice (unless otherwise agreed to by Registry Operator), ICANN may, as part of any contractual compliance audit, conduct site visits during regular business hours to assess compliance by Registry Operator with its representations and warranties contained in Article 1 of this Agreement and its covenants contained in Article 2 of this Agreement.

(b) Any audit conducted pursuant to Section 2.11(a) will be at ICANN's expense, unless (i) Registry Operator (A) controls, is controlled by, is under common control or is otherwise Affiliated with, any ICANN accredited registrar or registrar reseller or any of their respective Affiliates, or (B) has subcontracted the provision of Registry Services to an ICANN accredited registrar or registrar reseller or any of their respective Affiliates, and, in either case of (A) or (B) above, the audit relates to Registry Operator's compliance with Section 2.14, in which case Registry Operator shall reimburse ICANN for all reasonable costs and expenses associated with the portion of the audit related to Registry Operator's compliance with Section 2.14, or (ii) the audit is related to a discrepancy in the fees paid by Registry Operator hereunder in excess of 5% to ICANN's detriment, in which case Registry Operator shall reimburse ICANN for all reasonable costs and expenses associated with the entirety of such audit. In either such case of (i) or (ii) above, such reimbursement will be paid together with the next Registry-Level Fee payment due following the date of transmittal of the cost statement for such audit.

(c) Notwithstanding Section 2.11(a), if Registry Operator is found not to be in compliance with its representations and warranties contained in Article 1 of this Agreement or its covenants contained in Article 2 of this Agreement in two consecutive audits conducted pursuant to this Section 2.11, ICANN may increase the number of such audits to one per calendar quarter.

(d) Registry Operator will give ICANN immediate notice of the commencement of any of the proceedings referenced in Section 4.3(d) or the occurrence of any of the matters specified in Section 4.3(f).

2.12 Continued Operations Instrument. Registry Operator shall comply with the terms and conditions relating to the Continued Operations Instrument set forth in the specification at [*see specification 8*].

2.13 Emergency Transition. Registry Operator agrees that in the event that any of the registry functions set forth in Section 6 of Specification 10 fails for a period longer than the emergency threshold for such function set forth in Section 6 of Specification 10, ICANN may designate an emergency interim registry operator of the registry for the TLD (an "Emergency Operator") in accordance with ICANN's registry transition process (available at _____) (as the same may be amended from time to time, the "Registry Transition Process") until such time as Registry Operator has demonstrated to ICANN's reasonable satisfaction that it can resume operation of the registry for the TLD without the reoccurrence of such failure. Following such demonstration, Registry Operator may transition back into operation of the registry for the TLD pursuant to the procedures set out in the Registry Transition Process,

* Final text will be posted on ICANN website; agreement reference to be replaced by hyperlink.

provided that Registry Operator pays all reasonable costs incurred (i) by ICANN as a result of the designation of the Emergency Operator and (ii) by the Emergency Operator in connection with the operation of the registry for the TLD, which costs shall be documented in reasonable detail in records that shall be made available to Registry Operator. In the event ICANN designates an Emergency Operator pursuant to this Section 2.13 and the Registry Transition Process, Registry Operator shall provide ICANN or any such Emergency Operator with all data (including the data escrowed in accordance with Section 2.3) regarding operations of the registry for the TLD necessary to maintain operations and registry functions that may be reasonably requested by ICANN or such Emergency Operator. Registry Operator agrees that ICANN may make any changes it deems necessary to the IANA database for DNS and WHOIS records with respect to the TLD in the event that an Emergency Operator is designated pursuant to this Section 2.13. In addition, in the event of such failure, ICANN shall retain and may enforce its rights under the Continued Operations Instrument and Alternative Instrument, as applicable.

2.14 Registry Code of Conduct. In connection with the operation of the registry for the TLD, Registry Operator shall comply with the Registry Code of Conduct as set forth in the specification at [*see specification 9*].

2.15 Cooperation with Economic Studies. If ICANN initiates or commissions an economic study on the impact or functioning of new generic top-level domains on the Internet, the DNS or related matters, Registry Operator shall reasonably cooperate with such study, including by delivering to ICANN or its designee conducting such study all data reasonably necessary for the purposes of such study requested by ICANN or its designee, provided, that Registry Operator may withhold any internal analyses or evaluations prepared by Registry Operator with respect to such data. Any data delivered to ICANN or its designee pursuant to this Section 2.15 shall be fully aggregated and anonymized by ICANN or its designee prior to any disclosure of such data to any third party.

2.16 Registry Performance Specifications. Registry Performance Specifications for operation of the TLD will be as set forth in the specification at [*see specification 10*]*. Registry Operator shall comply with such Performance Specifications and, for a period of at least one year, shall keep technical and operational records sufficient to evidence compliance with such specifications for each calendar year during the Term.

2.17 Personal Data. Registry Operator shall (i) notify each ICANN-accredited registrar that is a party to the registry-registrar agreement for the TLD of the purposes for which data about any identified or identifiable natural person (“Personal Data”) submitted to Registry Operator by such registrar is collected and used under this Agreement or otherwise and the intended recipients (or categories of recipients) of such Personal Data, and (ii) require such registrar to obtain the consent of each registrant in the TLD for such collection and use of Personal Data. Registry Operator shall take reasonable steps to protect Personal Data collected from such registrar from loss, misuse, unauthorized disclosure, alteration or destruction. Registry Operator shall not use or authorize the use of Personal Data in a way that is incompatible with the notice provided to registrars.

2.18 [Note: For Community-Based TLDs Only] Obligations of Registry Operator to TLD Community. Registry Operator shall establish registration policies in conformity with the application submitted with respect to the TLD for: (i) naming conventions within the TLD, (ii) requirements for registration by members of the TLD community, and (iii) use of registered domain names in conformity with the stated purpose of the community-based TLD. Registry Operator shall operate the TLD in a manner that allows the TLD community to discuss and participate in the development and modification of policies and practices for the TLD. Registry Operator shall establish procedures for the enforcement of registration policies for the TLD, and resolution of disputes concerning compliance with TLD registration

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policies, and shall enforce such registration policies. Registry Operator agrees to implement and be bound by the Registry Restrictions Dispute Resolution Procedure as set forth at [*insert applicable URL*] with respect to disputes arising pursuant to this Section 2.18.]

ARTICLE 3.

COVENANTS OF ICANN

ICANN covenants and agrees with Registry Operator as follows:

3.1 Open and Transparent. Consistent with ICANN’s expressed mission and core values, ICANN shall operate in an open and transparent manner.

3.2 Equitable Treatment. ICANN shall not apply standards, policies, procedures or practices arbitrarily, unjustifiably, or inequitably and shall not single out Registry Operator for disparate treatment unless justified by substantial and reasonable cause.

3.3 TLD Nameservers. ICANN will use commercially reasonable efforts to ensure that any changes to the TLD nameserver designations submitted to ICANN by Registry Operator (in a format and with required technical elements specified by ICANN at <http://www.iana.org/domains/root/> will be implemented by ICANN within seven (7) calendar days or as promptly as feasible following technical verifications.

3.4 Root-zone Information Publication. ICANN’s publication of root-zone contact information for the TLD will include Registry Operator and its administrative and technical contacts. Any request to modify the contact information for the Registry Operator must be made in the format specified from time to time by ICANN at <http://www.iana.org/domains/root/>.

3.5 Authoritative Root Database. To the extent that ICANN is authorized to set policy with regard to an authoritative root server system, ICANN shall use commercially reasonable efforts to (a) ensure that the authoritative root will point to the top-level domain nameservers designated by Registry Operator for the TLD, (b) maintain a stable, secure, and authoritative publicly available database of relevant information about the TLD, in accordance with ICANN publicly available policies and procedures, and (c) coordinate the Authoritative Root Server System so that it is operated and maintained in a stable and secure manner; provided, that ICANN shall not be in breach of this Agreement and ICANN shall have no liability in the event that any third party (including any governmental entity or internet service provider) blocks or restricts access to the TLD in any jurisdiction.

ARTICLE 4.

TERM AND TERMINATION

4.1 Term. The term of this Agreement will be ten years from the Effective Date (as such term may be extended pursuant to Section 4.2, the “Term”).

4.2 Renewal.

(a) This Agreement will be renewed for successive periods of ten years upon the expiration of the initial Term set forth in Section 4.1 and each successive Term, unless:

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(i) Following notice by ICANN to Registry Operator of a fundamental and material breach of Registry Operator's covenants set forth in Article 2 or breach of its payment obligations under Article 6 of this Agreement, which notice shall include with specificity the details of the alleged breach, and such breach has not been cured within thirty (30) calendar days of such notice, (A) an arbitrator or court has finally determined that Registry Operator has been in fundamental and material breach of such covenant(s) or in breach of its payment obligations, and (B) Registry Operator has failed to comply with such determination and cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court; or

(ii) During the then current Term, Registry Operator shall have been found by an arbitrator (pursuant to Section 5.2 of this Agreement) on at least three (3) separate occasions to have been in fundamental and material breach (whether or not cured) of Registry Operator's covenants set forth in Article 2 or breach of its payment obligations under Article 6 of this Agreement.

(b) Upon the occurrence of the events set forth in Section 4.2(a) (i) or (ii), the Agreement shall terminate at the expiration of the then current Term.

4.3 Termination by ICANN.

(a) ICANN may, upon notice to Registry Operator, terminate this Agreement if: (i) Registry Operator fails to cure (A) any fundamental and material breach of Registry Operator's representations and warranties set forth in Article 1 or covenants set forth in Article 2, or (B) any breach of Registry Operator's payment obligations set forth in Article 6 of this Agreement, each within thirty (30) calendar days after ICANN gives Registry Operator notice of such breach, which notice will include with specificity the details of the alleged breach, (ii) an arbitrator or court has finally determined that Registry Operator is in fundamental and material breach of such covenant(s) or in breach of its payment obligations, and (iii) Registry Operator fails to comply with such determination and cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court.

(b) ICANN may, upon notice to Registry Operator, terminate this Agreement if Registry Operator fails to complete all testing and procedures (identified by ICANN in writing to Registry Operator prior to the date hereof) for delegation of the TLD into the root zone within twelve (12) months of the Effective Date. Registry Operator may request an extension for up to additional twelve (12) months for delegation if it can demonstrate, to ICANN's reasonable satisfaction, that Registry Operator is working diligently and in good faith toward successfully completing the steps necessary for delegation of the TLD. Any fees paid by Registry Operator to ICANN prior to such termination date shall be retained by ICANN in full.

(c) ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator fails to cure a material breach of Registry Operator's obligations set forth in Section 2.12 of this Agreement within thirty (30) calendar days of delivery of notice of such breach by ICANN, or if the Continued Operations Instrument is not in effect for greater than sixty (60) consecutive calendar days at any time following the Effective Date, (ii) an arbitrator or court has finally determined that Registry Operator is in material breach of such covenant, and (iii) Registry Operator fails to cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court.

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(d) ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator makes an assignment for the benefit of creditors or similar act, (ii) attachment, garnishment or similar proceedings are commenced against Registry Operator, which proceedings are a material threat to Registry Operator's ability to operate the registry for the TLD, and are not dismissed within sixty (60) days of their commencement, (iii) a trustee, receiver, liquidator or equivalent is appointed in place of Registry Operator or maintains control over any of Registry Operator's property, (iv) execution is levied upon any property of Registry Operator, (v) proceedings are instituted by or against Registry Operator under any bankruptcy, insolvency, reorganization or other laws relating to the relief of debtors and such proceedings are not dismissed within thirty (30) days of their commencement, or (vi) Registry Operator files for protection under the United States Bankruptcy Code, 11 U.S.C. Section 101 et seq., or a foreign equivalent or liquidates, dissolves or otherwise discontinues its operations or the operation of the TLD.

(e) ICANN may, upon thirty (30) calendar days' notice to Registry Operator, terminate this Agreement pursuant to Section 2 of Specification 7, subject to Registry Operator's right to challenge such termination as set forth in the applicable procedure described therein.

(f) ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator knowingly employs any officer that is convicted of a misdemeanor related to financial activities or of any felony, or is judged by a court of competent jurisdiction to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN reasonably deems as the substantive equivalent of any of the foregoing and such officer is not terminated within thirty (30) calendar days of Registry Operator's knowledge of the foregoing, or (ii) any member of Registry Operator's board of directors or similar governing body is convicted of a misdemeanor related to financial activities or of any felony, or is judged by a court of competent jurisdiction to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN reasonably deems as the substantive equivalent of any of the foregoing and such member is not removed from Registry Operator's board of directors or similar governing body within thirty (30) calendar days of Registry Operator's knowledge of the foregoing.

(g) *[Applicable to intergovernmental organizations or governmental entities only.]*
ICANN may terminate this Agreement pursuant to Section 7.14.

4.4 Termination by Registry Operator.

(a) Registry Operator may terminate this Agreement upon notice to ICANN if, (i) ICANN fails to cure any fundamental and material breach of ICANN's covenants set forth in Article 3, within thirty (30) calendar days after Registry Operator gives ICANN notice of such breach, which notice will include with specificity the details of the alleged breach, (ii) an arbitrator or court has finally determined that ICANN is in fundamental and material breach of such covenants, and (iii) ICANN fails to comply with such determination and cure such breach within ten (10) calendar days or such other time period as may be determined by the arbitrator or court.

(b) Registry Operator may terminate this Agreement for any reason upon one hundred eighty (180) calendar day advance notice to ICANN.

4.5 Transition of Registry upon Termination of Agreement. Upon expiration of the Term pursuant to Section 4.1 or Section 4.2 or any termination of this Agreement pursuant to Section 4.3 or Section 4.4, Registry Operator shall provide ICANN or any successor registry operator that may be designated by ICANN for the TLD in accordance with this Section 4.5 with all data (including the data

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escrowed in accordance with Section 2.3) regarding operations of the registry for the TLD necessary to maintain operations and registry functions that may be reasonably requested by ICANN or such successor registry operator. After consultation with Registry Operator, ICANN shall determine whether or not to transition operation of the TLD to a successor registry operator in its sole discretion and in conformance with the Registry Transition Process; provided, however, that if Registry Operator demonstrates to ICANN's reasonable satisfaction that (i) all domain name registrations in the TLD are registered to, and maintained by, Registry Operator for its own exclusive use, (ii) Registry Operator does not sell, distribute or transfer control or use of any registrations in the TLD to any third party that is not an Affiliate of Registry Operator, and (iii) transitioning operation of the TLD is not necessary to protect the public interest, then ICANN may not transition operation of the TLD to a successor registry operator upon the expiration or termination of this Agreement without the consent of Registry Operator (which shall not be unreasonably withheld, conditioned or delayed). For the avoidance of doubt, the foregoing sentence shall not prohibit ICANN from delegating the TLD pursuant to a future application process for the delegation of top-level domains, subject to any processes and objection procedures instituted by ICANN in connection with such application process intended to protect the rights of third parties. Registry Operator agrees that ICANN may make any changes it deems necessary to the IANA database for DNS and WHOIS records with respect to the TLD in the event of a transition of the TLD pursuant to this Section 4.5. In addition, ICANN or its designee shall retain and may enforce its rights under the Continued Operations Instrument and Alternative Instrument, as applicable, regardless of the reason for termination or expiration of this Agreement.

[Alternative Section 4.5 Transition of Registry upon Termination of Agreement text for intergovernmental organizations or governmental entities or other special circumstances:

“Transition of Registry upon Termination of Agreement. Upon expiration of the Term pursuant to Section 4.1 or Section 4.2 or any termination of this Agreement pursuant to Section 4.3 or Section 4.4, in connection with ICANN's designation of a successor registry operator for the TLD, Registry Operator and ICANN agree to consult each other and work cooperatively to facilitate and implement the transition of the TLD in accordance with this Section 4.5. After consultation with Registry Operator, ICANN shall determine whether or not to transition operation of the TLD to a successor registry operator in its sole discretion and in conformance with the Registry Transition Process. In the event ICANN determines to transition operation of the TLD to a successor registry operator, upon Registry Operator's consent (which shall not be unreasonably withheld, conditioned or delayed), Registry Operator shall provide ICANN or such successor registry operator for the TLD with any data regarding operations of the TLD necessary to maintain operations and registry functions that may be reasonably requested by ICANN or such successor registry operator in addition to data escrowed in accordance with Section 2.3 hereof. In the event that Registry Operator does not consent to provide such data, any registry data related to the TLD shall be returned to Registry Operator, unless otherwise agreed upon by the parties. Registry Operator agrees that ICANN may make any changes it deems necessary to the IANA database for DNS and WHOIS records with respect to the TLD in the event of a transition of the TLD pursuant to this Section 4.5. In addition, ICANN or its designee shall retain and may enforce its rights under the Continued Operations Instrument and Alternative Instrument, as applicable, regardless of the reason for termination or expiration of this Agreement.”]

4.6 Effect of Termination. Upon any expiration of the Term or termination of this Agreement, the obligations and rights of the parties hereto shall cease, provided that such expiration or termination of this Agreement shall not relieve the parties of any obligation or breach of this Agreement accruing prior to such expiration or termination, including, without limitation, all accrued payment obligations arising under Article 6. In addition, Article 5, Article 7, Section 2.12, Section 4.5, and this

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Section 4.6 shall survive the expiration or termination of this Agreement. For the avoidance of doubt, the rights of Registry Operator to operate the registry for the TLD shall immediately cease upon any expiration of the Term or termination of this Agreement.

ARTICLE 5.

DISPUTE RESOLUTION

5.1 Cooperative Engagement. Before either party may initiate arbitration pursuant to Section 5.2 below, ICANN and Registry Operator, following initiation of communications by either party, must attempt to resolve the dispute by engaging in good faith discussion over a period of at least fifteen (15) calendar days.

5.2 Arbitration. Disputes arising under or in connection with this Agreement, including requests for specific performance, will be resolved through binding arbitration conducted pursuant to the rules of the International Court of Arbitration of the International Chamber of Commerce. The arbitration will be conducted in the English language and will occur in Los Angeles County, California. Any arbitration will be in front of a single arbitrator, unless (i) ICANN is seeking punitive or exemplary damages, or operational sanctions, or (ii) the parties agree in writing to a greater number of arbitrators. In either case of clauses (i) or (ii) in the preceding sentence, the arbitration will be in front of three arbitrators with each party selecting one arbitrator and the two selected arbitrators selecting the third arbitrator. In order to expedite the arbitration and limit its cost, the arbitrator(s) shall establish page limits for the parties' filings in conjunction with the arbitration, and should the arbitrator(s) determine that a hearing is necessary, the hearing shall be limited to one (1) calendar day, provided that in any arbitration in which ICANN is seeking punitive or exemplary damages, or operational sanctions, the hearing may be extended for one (1) additional calendar day if agreed upon by the parties or ordered by the arbitrator(s) based on the arbitrator(s) independent determination or the reasonable request of one of the parties thereto. The prevailing party in the arbitration will have the right to recover its costs and reasonable attorneys' fees, which the arbitrator(s) shall include in the awards. In the event the arbitrators determine that Registry Operator has been repeatedly and willfully in fundamental and material breach of its obligations set forth in Article 2, Article 6 or Section 5.4 of this Agreement, ICANN may request the arbitrators award punitive or exemplary damages, or operational sanctions (including without limitation an order temporarily restricting Registry Operator's right to sell new registrations). In any litigation involving ICANN concerning this Agreement, jurisdiction and exclusive venue for such litigation will be in a court located in Los Angeles County, California; however, the parties will also have the right to enforce a judgment of such a court in any court of competent jurisdiction.

[Alternative **Section 5.2 Arbitration** text for intergovernmental organizations or governmental entities or other special circumstances:

“Arbitration. Disputes arising under or in connection with this Agreement, including requests for specific performance, will be resolved through binding arbitration conducted pursuant to the rules of the International Court of Arbitration of the International Chamber of Commerce. The arbitration will be conducted in the English language and will occur in Geneva, Switzerland, unless another location is mutually agreed upon by Registry Operator and ICANN. Any arbitration will be in front of a single arbitrator, unless (i) ICANN is seeking punitive or exemplary damages, or operational sanctions, or (ii) the parties agree in writing to a greater number of arbitrators. In either case of clauses (i) or (ii) in the preceding sentence, the arbitration will be in front of three arbitrators with each party selecting one arbitrator and the two selected arbitrators selecting the third arbitrator. In order to expedite the arbitration and limit its cost, the arbitrator(s) shall establish page limits for the parties' filings in conjunction with the

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arbitration, and should the arbitrator(s) determine that a hearing is necessary, the hearing shall be limited to one (1) calendar day, provided that in any arbitration in which ICANN is seeking punitive or exemplary damages, or operational sanctions, the hearing may be extended for one (1) additional calendar day if agreed upon by the parties or ordered by the arbitrator(s) based on the arbitrator(s) independent determination or the reasonable request of one of the parties thereto. The prevailing party in the arbitration will have the right to recover its costs and reasonable attorneys' fees, which the arbitrator(s) shall include in the awards. In the event the arbitrators determine that Registry Operator has been repeatedly and willfully in fundamental and material breach of its obligations set forth in Article 2, Article 6 or Section 5.4 of this Agreement, ICANN may request the arbitrators award punitive or exemplary damages, or operational sanctions (including without limitation an order temporarily restricting Registry Operator's right to sell new registrations). In any litigation involving ICANN concerning this Agreement, jurisdiction and exclusive venue for such litigation will be in a court located in Geneva, Switzerland, unless an another location is mutually agreed upon by Registry Operator and ICANN; however, the parties will also have the right to enforce a judgment of such a court in any court of competent jurisdiction."}]

5.3 Limitation of Liability. ICANN's aggregate monetary liability for violations of this Agreement will not exceed an amount equal to the Registry-Level Fees paid by Registry Operator to ICANN within the preceding twelve-month period pursuant to this Agreement (excluding the Variable Registry-Level Fee set forth in Section 6.3, if any). Registry Operator's aggregate monetary liability to ICANN for breaches of this Agreement will be limited to an amount equal to the fees paid to ICANN during the preceding twelve-month period (excluding the Variable Registry-Level Fee set forth in Section 6.3, if any), and punitive and exemplary damages, if any, awarded in accordance with Section 5.2. In no event shall either party be liable for special, punitive, exemplary or consequential damages arising out of or in connection with this Agreement or the performance or nonperformance of obligations undertaken in this Agreement, except as provided in Section 5.2. Except as otherwise provided in this Agreement, neither party makes any warranty, express or implied, with respect to the services rendered by itself, its servants or agents, or the results obtained from their work, including, without limitation, any implied warranty of merchantability, non-infringement or fitness for a particular purpose.

5.4 Specific Performance. Registry Operator and ICANN agree that irreparable damage could occur if any of the provisions of this Agreement was not performed in accordance with its specific terms. Accordingly, the parties agree that they each shall be entitled to seek from the arbitrator specific performance of the terms of this Agreement (in addition to any other remedy to which each party is entitled).

ARTICLE 6.

FEES

6.1 Registry-Level Fees. Registry Operator shall pay ICANN a Registry-Level Fee equal to (i) the Registry Fixed Fee of US\$6,250 per calendar quarter and (ii) the Registry-Level Transaction Fee. The Registry-Level Transaction Fee will be equal to the number of annual increments of an initial or renewal domain name registration (at one or more levels, and including renewals associated with transfers from one ICANN-accredited registrar to another, each a "Transaction"), during the applicable calendar quarter multiplied by US\$0.25; provided, however that the Registry-Level Transaction Fee shall not apply until and unless more than 50,000 Transactions have occurred in the TLD during any calendar quarter or any four calendar quarter period (the "Transaction Threshold") and shall apply to each Transaction that occurred during each quarter in which the Transaction Threshold has been met, but shall not apply to each quarter in which the Transaction Threshold has not been met. Registry Operator shall pay the Registry-

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Level Fees on a quarterly basis by the 20th day following the end of each calendar quarter (i.e., on April 20, July 20, October 20 and January 20 for the calendar quarters ending March 31, June 30, September 30 and December 31) of the year to an account designated by ICANN.

6.2 Cost Recovery for RSTEP. Requests by Registry Operator for the approval of Additional Services pursuant to Section 2.1 may be referred by ICANN to the Registry Services Technical Evaluation Panel ("RSTEP") pursuant to that process at <http://www.icann.org/en/registries/rsep/>. In the event that such requests are referred to RSTEP, Registry Operator shall remit to ICANN the invoiced cost of the RSTEP review within ten (10) business days of receipt of a copy of the RSTEP invoice from ICANN, unless ICANN determines, in its sole and absolute discretion, to pay all or any portion of the invoiced cost of such RSTEP review.

6.3 Variable Registry-Level Fee.

(a) If the ICANN accredited registrars (as a group) do not approve pursuant to the terms of their registrar accreditation agreements with ICANN the variable accreditation fees established by the ICANN Board of Directors for any ICANN fiscal year, upon delivery of notice from ICANN, Registry Operator shall pay to ICANN a Variable Registry-Level Fee, which shall be paid on a fiscal quarter basis, and shall accrue as of the beginning of the first fiscal quarter of such ICANN fiscal year. The fee will be calculated and invoiced by ICANN on a quarterly basis, and shall be paid by Registry Operator within sixty (60) calendar days with respect to the first quarter of such ICANN fiscal year and within twenty (20) calendar days with respect to each remaining quarter of such ICANN fiscal year, of receipt of the invoiced amount by ICANN. The Registry Operator may invoice and collect the Variable Registry-Level Fees from the registrars who are party to a registry-registrar agreement with Registry Operator (which agreement may specifically provide for the reimbursement of Variable Registry-Level Fees paid by Registry Operator pursuant to this Section 6.3); provided, that the fees shall be invoiced to all ICANN accredited registrars if invoiced to any. The Variable Registry-Level Fee, if collectible by ICANN, shall be an obligation of Registry Operator and shall be due and payable as provided in this Section 6.3 irrespective of Registry Operator's ability to seek and obtain reimbursement of such fee from registrars. In the event ICANN later collects variable accreditation fees for which Registry Operator has paid ICANN a Variable Registry-Level Fee, ICANN shall reimburse the Registry Operator an appropriate amount of the Variable Registry-Level Fee, as reasonably determined by ICANN. If the ICANN accredited registrars (as a group) do approve pursuant to the terms of their registrar accreditation agreements with ICANN the variable accreditation fees established by the ICANN Board of Directors for a fiscal year, ICANN shall not be entitled to a Variable-Level Fee hereunder for such fiscal year, irrespective of whether the ICANN accredited registrars comply with their payment obligations to ICANN during such fiscal year.

(b) The amount of the Variable Registry-Level Fee will be specified for each registrar, and may include both a per-registrar component and a transactional component. The per-registrar component of the Variable Registry-Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board of Directors for each ICANN fiscal year. The transactional component of the Variable Registry-Level Fee shall be specified by ICANN in accordance with the budget adopted by the ICANN Board of Directors for each ICANN fiscal year but shall not exceed US\$0.25 per domain name registration (including renewals associated with transfers from one ICANN-accredited registrar to another) per year.

6.4 Adjustments to Fees. Notwithstanding any of the fee limitations set forth in this Article 6, commencing upon the expiration of the first year of this Agreement, and upon the expiration of each year thereafter during the Term, the then current fees set forth in Section 6.1 and Section 6.3 may be

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adjusted, at ICANN's discretion, by a percentage equal to the percentage change, if any, in (i) the Consumer Price Index for All Urban Consumers, U.S. City Average (1982-1984 = 100) published by the United States Department of Labor, Bureau of Labor Statistics, or any successor index (the "CPI") for the month which is one (1) month prior to the commencement of the applicable year, over (ii) the CPI published for the month which is one (1) month prior to the commencement of the immediately prior year. In the event of any such increase, ICANN shall provide notice to Registry Operator specifying the amount of such adjustment. Any fee adjustment under this Section 6.4 shall be effective as of the first day of the year in which the above calculation is made.

6.5 Additional Fee on Late Payments. For any payments thirty (30) calendar days or more overdue under this Agreement, Registry Operator shall pay an additional fee on late payments at the rate of 1.5% per month or, if less, the maximum rate permitted by applicable law.

ARTICLE 7.

MISCELLANEOUS

7.1 Indemnification of ICANN.

(a) Registry Operator shall indemnify and defend ICANN and its directors, officers, employees, and agents (collectively, "Indemnitees") from and against any and all third-party claims, damages, liabilities, costs, and expenses, including reasonable legal fees and expenses, arising out of or relating to intellectual property ownership rights with respect to the TLD, the delegation of the TLD to Registry Operator, Registry Operator's operation of the registry for the TLD or Registry Operator's provision of Registry Services, provided that Registry Operator shall not be obligated to indemnify or defend any Indemnitee to the extent the claim, damage, liability, cost or expense arose: (i) due to the actions or omissions of ICANN, its subcontractors, panelists or evaluators specifically related to and occurring during the registry TLD application process (other than actions or omissions requested by or for the benefit of Registry Operator), or (ii) due to a breach by ICANN of any obligation contained in this Agreement or any willful misconduct by ICANN. This Section shall not be deemed to require Registry Operator to reimburse or otherwise indemnify ICANN for costs associated with the negotiation or execution of this Agreement, or with monitoring or management of the parties' respective obligations hereunder. Further, this Section shall not apply to any request for attorney's fees in connection with any litigation or arbitration between or among the parties, which shall be governed by Article 5 or otherwise awarded by a court or arbitrator.

[Alternative **Section 7.1(a)** text for intergovernmental organizations or governmental entities:

"Registry Operator shall use its best efforts to cooperate with ICANN in order to ensure that ICANN does not incur any costs associated with claims, damages, liabilities, costs and expenses, including reasonable legal fees and expenses, arising out of or relating to intellectual property ownership rights with respect to the TLD, the delegation of the TLD to Registry Operator, Registry Operator's operation of the registry for the TLD or Registry Operator's provision of Registry Services, provided that Registry Operator shall not be obligated to provide such cooperation to the extent the claim, damage, liability, cost or expense arose due to a breach by ICANN of any of its obligations contained in this Agreement or any willful misconduct by ICANN. This Section shall not be deemed to require Registry Operator to reimburse or otherwise indemnify ICANN for costs associated with the negotiation or execution of this Agreement, or with monitoring or management of the parties' respective obligations hereunder. Further, this Section shall not apply to any request for attorney's fees in connection with any

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litigation or arbitration between or among the parties, which shall be governed by Article 5 or otherwise awarded by a court or arbitrator.”]

(b) For any claims by ICANN for indemnification whereby multiple registry operators (including Registry Operator) have engaged in the same actions or omissions that gave rise to the claim, Registry Operator’s aggregate liability to indemnify ICANN with respect to such claim shall be limited to a percentage of ICANN’s total claim, calculated by dividing the number of total domain names under registration with Registry Operator within the TLD (which names under registration shall be calculated consistently with Article 6 hereof for any applicable quarter) by the total number of domain names under registration within all top level domains for which the registry operators thereof are engaging in the same acts or omissions giving rise to such claim. For the purposes of reducing Registry Operator’s liability under Section 7.1(a) pursuant to this Section 7.1(b), Registry Operator shall have the burden of identifying the other registry operators that are engaged in the same actions or omissions that gave rise to the claim, and demonstrating, to ICANN’s reasonable satisfaction, such other registry operators’ culpability for such actions or omissions. For the avoidance of doubt, in the event that a registry operator is engaged in the same acts or omissions giving rise to the claims, but such registry operator(s) do not have the same or similar indemnification obligations to ICANN as set forth in Section 7.1(a) above, the number of domains under management by such registry operator(s) shall nonetheless be included in the calculation in the preceding sentence. [*Note: This Section 7.1(b) is inapplicable to intergovernmental organizations or governmental entities.*]

7.2 Indemnification Procedures. If any third-party claim is commenced that is indemnified under Section 7.1 above, ICANN shall provide notice thereof to Registry Operator as promptly as practicable. Registry Operator shall be entitled, if it so elects, in a notice promptly delivered to ICANN, to immediately take control of the defense and investigation of such claim and to employ and engage attorneys reasonably acceptable to ICANN to handle and defend the same, at Registry Operator’s sole cost and expense, provided that in all events ICANN will be entitled to control at its sole cost and expense the litigation of issues concerning the validity or interpretation of ICANN’s policies, Bylaws or conduct. ICANN shall cooperate, at Registry Operator’s cost and expense, in all reasonable respects with Registry Operator and its attorneys in the investigation, trial, and defense of such claim and any appeal arising therefrom, and may, at its own cost and expense, participate, through its attorneys or otherwise, in such investigation, trial and defense of such claim and any appeal arising therefrom. No settlement of a claim that involves a remedy affecting ICANN other than the payment of money in an amount that is fully indemnified by Registry Operator will be entered into without the consent of ICANN. If Registry Operator does not assume full control over the defense of a claim subject to such defense in accordance with this Section 7.2, ICANN will have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of Registry Operator and Registry Operator shall cooperate in such defense. [*Note: This Section 7.2 is inapplicable to intergovernmental organizations or governmental entities.*]

7.3 Defined Terms. For purposes of this Agreement, unless such definitions are amended pursuant to a Consensus Policy at a future date, in which case the following definitions shall be deemed amended and restated in their entirety as set forth in such Consensus Policy, Security and Stability shall be defined as follows:

(a) For the purposes of this Agreement, an effect on “Security” shall mean (1) the unauthorized disclosure, alteration, insertion or destruction of registry data, or (2) the unauthorized access to or disclosure of information or resources on the Internet by systems operating in accordance with all applicable standards.

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(b) For purposes of this Agreement, an effect on “Stability” shall refer to (1) lack of compliance with applicable relevant standards that are authoritative and published by a well-established and recognized Internet standards body, such as the relevant Standards-Track or Best Current Practice Requests for Comments (“RFCs”) sponsored by the Internet Engineering Task Force; or (2) the creation of a condition that adversely affects the throughput, response time, consistency or coherence of responses to Internet servers or end systems operating in accordance with applicable relevant standards that are authoritative and published by a well-established and recognized Internet standards body, such as the relevant Standards-Track or Best Current Practice RFCs, and relying on Registry Operator's delegated information or provisioning of services.

7.4 No Offset. All payments due under this Agreement will be made in a timely manner throughout the Term and notwithstanding the pendency of any dispute (monetary or otherwise) between Registry Operator and ICANN.

7.5 Change in Control; Assignment and Subcontracting. Neither party may assign this Agreement without the prior written approval of the other party, which approval will not be unreasonably withheld. Notwithstanding the foregoing, ICANN may assign this Agreement in conjunction with a reorganization or re-incorporation of ICANN to another nonprofit corporation or similar entity organized in the same legal jurisdiction in which ICANN is currently organized for the same or substantially the same purposes. For purposes of this Section 7.5, a direct or indirect change of control of Registry Operator or any material subcontracting arrangement with respect to the operation of the registry for the TLD shall be deemed an assignment. ICANN shall be deemed to have reasonably withheld its consent to any such a direct or indirect change of control or subcontracting arrangement in the event that ICANN reasonably determines that the person or entity acquiring control of Registry Operator or entering into such subcontracting arrangement (or the ultimate parent entity of such acquiring or subcontracting entity) does not meet the ICANN-adopted registry operator criteria or qualifications then in effect. In addition, without limiting the foregoing, Registry Operator must provide no less than thirty (30) calendar days advance notice to ICANN of any material subcontracting arrangements, and any agreement to subcontract portions of the operations of the TLD must mandate compliance with all covenants, obligations and agreements by Registry Operator hereunder, and Registry Operator shall continue to be bound by such covenants, obligations and agreements. Without limiting the foregoing, Registry Operator must also provide no less than thirty (30) calendar days advance notice to ICANN prior to the consummation of any transaction anticipated to result in a direct or indirect change of control of Registry Operator. Such change of control notification shall include a statement that affirms that the ultimate parent entity of the party acquiring such control meets the ICANN-adopted specification or policy on registry operator criteria then in effect, and affirms that Registry Operator is in compliance with its obligations under this Agreement. Within thirty (30) calendar days of such notification, ICANN may request additional information from Registry Operator establishing compliance with this Agreement, in which case Registry Operator must supply the requested information within fifteen (15) calendar days. If ICANN fails to expressly provide or withhold its consent to any direct or indirect change of control of Registry Operator or any material subcontracting arrangement within thirty (30) (or, if ICANN has requested additional information from Registry Operator as set forth above, sixty (60)) calendar days of the receipt of written notice of such transaction from Registry Operator, ICANN shall be deemed to have consented to such transaction. In connection with any such transaction, Registry Operator shall comply with the Registry Transition Process.

7.6 Amendments and Waivers.

(a) If ICANN determines that an amendment to this Agreement (including to the Specifications referred to herein) and all other registry agreements between ICANN and the Applicable

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Registry Operators (the “Applicable Registry Agreements”) is desirable (each, a “Special Amendment”), ICANN may submit a Special Amendment for approval by the Applicable Registry Operators pursuant to the process set forth in this Section 7.6, provided that a Special Amendment is not a Restricted Amendment (as defined below). Prior to submitting a Special Amendment for such approval, ICANN shall first consult in good faith with the Working Group (as defined below) regarding the form and substance of a Special Amendment. The duration of such consultation shall be reasonably determined by ICANN based on the substance of the Special Amendment. Following such consultation, ICANN may propose the adoption of a Special Amendment by publicly posting such amendment on its website for no less than thirty (30) calendar days (the “Posting Period”) and providing notice of such amendment by ICANN to the Applicable Registry Operators in accordance with Section 7.8. ICANN will consider the public comments submitted on a Special Amendment during the Posting Period (including comments submitted by the Applicable Registry Operators).

(b) If, within two (2) calendar years of the expiration of the Posting Period (the “Approval Period”), (i) the ICANN Board of Directors approves a Special Amendment (which may be in a form different than submitted for public comment) and (ii) such Special Amendment receives Registry Operator Approval (as defined below), such Special Amendment shall be deemed approved (an “Approved Amendment”) by the Applicable Registry Operators (the last date on which such approvals are obtained is herein referred to as the “Amendment Approval Date”) and shall be effective and deemed an amendment to this Agreement upon sixty (60) calendar days notice from ICANN to Registry Operator (the “Amendment Effective Date”). In the event that a Special Amendment is not approved by the ICANN Board of Directors or does not receive Registry Operator Approval within the Approval Period, the Special Amendment will have no effect. The procedure used by ICANN to obtain Registry Operator Approval shall be designed to document the written approval of the Applicable Registry Operators, which may be in electronic form.

(c) During the thirty (30) calendar day period following the Amendment Approval Date, Registry Operator (so long as it did not vote in favor of the Approved Amendment) may apply in writing to ICANN for an exemption from the Approved Amendment (each such request submitted by Registry Operator hereunder, an “Exemption Request”). Each Exemption Request will set forth the basis for such request and provide detailed support for an exemption from the Approved Amendment. An Exemption Request may also include a detailed description and support for any alternatives to, or a variation of, the Approved Amendment proposed by such Registry Operator. An Exemption Request may only be granted upon a clear and convincing showing by Registry Operator that compliance with the Approved Amendment conflicts with applicable laws or would have a material adverse effect on the long-term financial condition or results of operations of Registry Operator. No Exemption Request will be granted if ICANN determines, in its reasonable discretion, that granting such Exemption Request would be materially harmful to registrants or result in the denial of a direct benefit to registrants. Within ninety (90) calendar days of ICANN’s receipt of an Exemption Request, ICANN shall either approve (which approval may be conditioned or consist of alternatives to or a variation of the Approved Amendment) or deny the Exemption Request in writing, during which time the Approved Amendment will not amend this Agreement; provided, that any such conditions, alternatives or variations shall be effective and, to the extent applicable, will amend this Agreement as of the Amendment Effective Date. If the Exemption Request is approved by ICANN, the Approved Amendment will not amend this Agreement. If such Exemption Request is denied by ICANN, the Approved Amendment will amend this Agreement as of the Amendment Effective Date (or, if such date has passed, such Approved Amendment shall be deemed effective immediately on the date of such denial), provided that Registry Operator may, within thirty (30) calendar days following receipt of ICANN’s determination, appeal ICANN’s decision to deny the Exemption Request pursuant to the dispute resolution procedures set forth in Article 5. The Approved

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Amendment will be deemed not to have amended this Agreement during the pendency of the dispute resolution process. For avoidance of doubt, only Exemption Requests submitted by Registry Operator that are approved by ICANN pursuant to this Section 7.6(c) or through an arbitration decision pursuant to Article 5 shall exempt Registry Operator from any Approved Amendment, and no exemption request granted to any other Applicable Registry Operator (whether by ICANN or through arbitration) shall have any effect under this Agreement or exempt Registry Operator from any Approved Amendment.

(d) Except as set forth in this Section 7.6, no amendment, supplement or modification of this Agreement or any provision hereof shall be binding unless executed in writing by both parties, and nothing in this Section 7.6 shall restrict ICANN and Registry Operator from entering into bilateral amendments and modifications to this Agreement negotiated solely between the two parties. No waiver of any provision of this Agreement shall be binding unless evidenced by a writing signed by the party waiving compliance with such provision. No waiver of any of the provisions of this Agreement or failure to enforce any of the provisions hereof shall be deemed or shall constitute a waiver of any other provision hereof, nor shall any such waiver constitute a continuing waiver unless otherwise expressly provided. For the avoidance of doubt, nothing in this Section 7.6 shall be deemed to limit Registry Operator's obligation to comply with Section 2.2.

(e) For purposes of this Section 7.6, the following terms shall have the following meanings:

(i) "Applicable Registry Operators" means, collectively, the registry operators of the top-level domains party to a registry agreement that contains a provision similar to this Section 7.6, including Registry Operator.

(ii) "Registry Operator Approval" means the receipt of each of the following: (A) the affirmative approval of the Applicable Registry Operators whose payments to ICANN accounted for two-thirds of the total amount of fees (converted to U.S. dollars, if applicable) paid to ICANN by all the Applicable Registry Operators during the immediately previous calendar year pursuant to the Applicable Registry Agreements, and (B) the affirmative approval of a majority of the Applicable Registry Operators at the time such approval is obtained. For avoidance of doubt, with respect to clause (B), each Applicable Registry Operator shall have one vote for each top-level domain operated by such Registry Operator pursuant to an Applicable Registry Agreement.

(iii) "Restricted Amendment" means the following: (i) an amendment of Specification 1, (ii) except to the extent addressed in Section 2.10 hereof, an amendment that specifies the price charged by Registry Operator to registrars for domain name registrations, (iii) an amendment to the definition of Registry Services as set forth in the first paragraph of Section 2.1 of Specification 6, or (iv) an amendment to the length of the Term.

(iv) "Working Group" means representatives of the Applicable Registry Operators and other members of the community that ICANN appoints, from time to time, to serve as a working group to consult on amendments to the Applicable Registry Agreements (excluding bilateral amendments pursuant to Section 7.6(d)).

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7.7 No Third-Party Beneficiaries. This Agreement will not be construed to create any obligation by either ICANN or Registry Operator to any non-party to this Agreement, including any registrar or registered name holder.

7.8 General Notices. Except for notices pursuant to Section 7.6, all notices to be given under or in relation to this Agreement will be given either (i) in writing at the address of the appropriate party as set forth below or (ii) via facsimile or electronic mail as provided below, unless that party has given a notice of change of postal or email address, or facsimile number, as provided in this agreement. All notices under Section 7.6 shall be given by both posting of the applicable information on ICANN's web site and transmission of such information to Registry Operator by electronic mail. Any change in the contact information for notice below will be given by the party within thirty (30) calendar days of such change. Notices, designations, determinations, and specifications made under this Agreement will be in the English language. Other than notices under Section 7.6, any notice required by this Agreement will be deemed to have been properly given (i) if in paper form, when delivered in person or via courier service with confirmation of receipt or (ii) if via facsimile or by electronic mail, upon confirmation of receipt by the recipient's facsimile machine or email server, provided that such notice via facsimile or electronic mail shall be followed by a copy sent by regular postal mail service within two (2) business days. Any notice required by Section 7.6 will be deemed to have been given when electronically posted on ICANN's website and upon confirmation of receipt by the email server. In the event other means of notice become practically achievable, such as notice via a secure website, the parties will work together to implement such notice means under this Agreement.

If to ICANN, addressed to:
Internet Corporation for Assigned Names and Numbers
4676 Admiralty Way, Suite 330
Marina Del Rey, California 90292
Telephone: 1-310-823-9358
Facsimile: 1-310-823-8649
Attention: President and CEO

With a Required Copy to: General Counsel
Email: (As specified from time to time.)

If to Registry Operator, addressed to:

[_____]
[_____]
[_____]

Telephone:
Facsimile:
Attention:

With a Required Copy to:
Email: (As specified from time to time.)

7.9 Entire Agreement. This Agreement (including those specifications and documents incorporated by reference to URL locations which form a part of it) constitutes the entire agreement of the parties hereto pertaining to the operation of the TLD and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, between the parties on that subject.

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7.10 English Language Controls. Notwithstanding any translated version of this Agreement and/or specifications that may be provided to Registry Operator, the English language version of this Agreement and all referenced specifications are the official versions that bind the parties hereto. In the event of any conflict or discrepancy between any translated version of this Agreement and the English language version, the English language version controls. Notices, designations, determinations, and specifications made under this Agreement shall be in the English language.

7.11 Ownership Rights. Nothing contained in this Agreement shall be construed as establishing or granting to Registry Operator any property ownership rights or interests in the TLD or the letters, words, symbols or other characters making up the TLD string.

7.12 Severability. This Agreement shall be deemed severable; the invalidity or unenforceability of any term or provision of this Agreement shall not affect the validity or enforceability of the balance of this Agreement or of any other term hereof, which shall remain in full force and effect. If any of the provisions hereof are determined to be invalid or unenforceable, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible.

7.13 Court Orders. ICANN will respect any order from a court of competent jurisdiction, including any orders from any jurisdiction where the consent or non-objection of the government was a requirement for the delegation of the TLD. Notwithstanding any other provision of this Agreement, ICANN's implementation of any such order will not be a breach of this Agreement.

[Note: The following section is applicable to intergovernmental organizations or governmental entities only.]

7.14 Special Provision Relating to Intergovernmental Organizations or Governmental Entities.

(a) ICANN acknowledges that Registry Operator is an entity subject to public international law, including international treaties applicable to Registry Operator (such public international law and treaties, collectively hereinafter the “Applicable Laws”). Nothing in this Agreement and its related specifications shall be construed or interpreted to require Registry Operator to violate Applicable Laws or prevent compliance therewith. The Parties agree that Registry Operator’s compliance with Applicable Laws shall not constitute a breach of this Agreement.

(b) In the event Registry Operator reasonably determines that any provision of this Agreement and its related specifications, or any decisions or policies of ICANN referred to in this Agreement, including but not limited to Temporary Policies and Consensus Policies (such provisions, specifications and policies, collectively hereinafter, “ICANN Requirements”), may conflict with or violate Applicable Law (hereinafter, a “Potential Conflict”), Registry Operator shall provide detailed notice (a “Notice”) of such Potential Conflict to ICANN as early as possible and, in the case of a Potential Conflict with a proposed Consensus Policy, no later than the end of any public comment period on such proposed Consensus Policy. In the event Registry Operator determines that there is Potential Conflict between a proposed Applicable Law and any ICANN Requirement, Registry Operator shall provide detailed Notice of such Potential Conflict to ICANN as early as possible and, in the case of a Potential Conflict with a proposed Consensus Policy, no later than the end of any public comment period on such proposed Consensus Policy.

(c) As soon as practicable following such review, the parties shall attempt to resolve the Potential Conflict by cooperative engagement pursuant to the procedures set forth in Section 5.1. In

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addition, Registry Operator shall use its best efforts to eliminate or minimize any impact arising from such Potential Conflict between Applicable Laws and any ICANN Requirement. If, following such cooperative engagement, Registry Operator determines that the Potential Conflict constitutes an actual conflict between any ICANN Requirement, on the one hand, and Applicable Laws, on the other hand, then ICANN shall waive compliance with such ICANN Requirement (provided that the parties shall negotiate in good faith on a continuous basis thereafter to mitigate or eliminate the effects of such non-compliance on ICANN), unless ICANN reasonably and objectively determines that the failure of Registry Operator to comply with such ICANN Requirement would constitute a threat to the Security and Stability of Registry Services, the Internet or the DNS (hereinafter, an “ICANN Determination”). Following receipt of notice by Registry Operator of such ICANN Determination, Registry Operator shall be afforded a period of ninety (90) calendar days to resolve such conflict with an Applicable Law. If the conflict with an Applicable Law is not resolved to ICANN’s complete satisfaction during such period, Registry Operator shall have the option to submit, within ten (10) calendar days thereafter, the matter to binding arbitration as defined in subsection (d) below. If during such period, Registry Operator does not submit the matter to arbitration pursuant to subsection (d) below, ICANN may, upon notice to Registry Operator, terminate this Agreement with immediate effect.

(d) If Registry Operator disagrees with an ICANN Determination, Registry Operator may submit the matter to binding arbitration pursuant to the provisions of Section 5.2, except that the sole issue presented to the arbitrator for determination will be whether or not ICANN reasonably and objectively reached the ICANN Determination. For the purposes of such arbitration, ICANN shall present evidence to the arbitrator supporting the ICANN Determination. If the arbitrator determines that ICANN did not reasonably and objectively reach the ICANN Determination, then ICANN shall waive Registry Operator’s compliance with the subject ICANN Requirement. If the arbitrators or pre-arbitral referee, as applicable, determine that ICANN did reasonably and objectively reach the ICANN Determination, then, upon notice to Registry Operator, ICANN may terminate this Agreement with immediate effect.

(e) Registry Operator hereby represents and warrants that, to the best of its knowledge as of the date of execution of this Agreement, no existing ICANN Requirement conflicts with or violates any Applicable Law.

(f) Notwithstanding any other provision of this Section 7.14, following an ICANN Determination and prior to a finding by an arbitrator pursuant to Section 7.14(d) above, ICANN may, subject to prior consultations with Registry Operator, take such reasonable technical measures as it deems necessary to ensure the Security and Stability of Registry Services, the Internet and the DNS. These reasonable technical measures shall be taken by ICANN on an interim basis, until the earlier of the date of conclusion of the arbitration procedure referred to in Section 7.14(d) above or the date of complete resolution of the conflict with an Applicable Law. In case Registry Operator disagrees with such technical measures taken by ICANN, Registry Operator may submit the matter to binding arbitration pursuant to the provisions of Section 5.2 above, during which process ICANN may continue to take such technical measures. In the event that ICANN takes such measures, Registry Operator shall pay all costs incurred by ICANN as a result of taking such measures. In addition, in the event that ICANN takes such measures, ICANN shall retain and may enforce its rights under the Continued Operations Instrument and Alternative Instrument, as applicable.

* * * * *

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

By: _____
[_____] President and CEO

Date:

[Registry Operator]

By: _____
[_____] _____
[_____]

Date:

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EXHIBIT A

Approved Services

SPECIFICATION 1

CONSENSUS POLICIES AND TEMPORARY POLICIES SPECIFICATION

1. Consensus Policies.

- 1.1. “*Consensus Policies*” are those policies established (1) pursuant to the procedure set forth in ICANN's Bylaws and due process, and (2) covering those topics listed in Section 1.2 of this document. The Consensus Policy development process and procedure set forth in ICANN's Bylaws may be revised from time to time in accordance with the process set forth therein.
- 1.2. Consensus Policies and the procedures by which they are developed shall be designed to produce, to the extent possible, a consensus of Internet stakeholders, including the operators of gTLDs. Consensus Policies shall relate to one or more of the following:
 - 1.2.1. issues for which uniform or coordinated resolution is reasonably necessary to facilitate interoperability, security and/or stability of the Internet or Domain Name System (“DNS”);
 - 1.2.2. functional and performance specifications for the provision of Registry Services;
 - 1.2.3. Security and Stability of the registry database for the TLD;
 - 1.2.4. registry policies reasonably necessary to implement Consensus Policies relating to registry operations or registrars;
 - 1.2.5. resolution of disputes regarding the registration of domain names (as opposed to the use of such domain names); or
 - 1.2.6. restrictions on cross-ownership of registry operators and registrars or registrar resellers and regulations and restrictions with respect to registry operations and the use of registry and registrar data in the event that a registry operator and a registrar or registrar reseller are affiliated.
- 1.3. Such categories of issues referred to in Section 1.2 shall include, without limitation:
 - 1.3.1. principles for allocation of registered names in the TLD (e.g., first-come/first-served, timely renewal, holding period after expiration);
 - 1.3.2. prohibitions on warehousing of or speculation in domain names by registries or registrars;
 - 1.3.3. reservation of registered names in the TLD that may not be registered initially or that may not be renewed due to reasons reasonably related to (i) avoidance of confusion among or misleading of users, (ii) intellectual property, or (iii) the technical management of the DNS or the Internet (e.g., establishment of reservations of names from registration); and
 - 1.3.4. maintenance of and access to accurate and up-to-date information concerning domain name registrations; and procedures to avoid disruptions of domain name registrations due to suspension or termination of operations by a registry operator or a registrar, including procedures for allocation of responsibility for serving registered domain names in a TLD affected by such a suspension or termination.
- 1.4. In addition to the other limitations on Consensus Policies, they shall not:

- 1.4.1. prescribe or limit the price of Registry Services;
 - 1.4.2. modify the terms or conditions for the renewal or termination of the Registry Agreement;
 - 1.4.3. modify the limitations on Temporary Policies (defined below) or Consensus Policies;
 - 1.4.4. modify the provisions in the registry agreement regarding fees paid by Registry Operator to ICANN; or
 - 1.4.5. modify ICANN's obligations to ensure equitable treatment of registry operators and act in an open and transparent manner.
2. **Temporary Policies.** Registry Operator shall comply with and implement all specifications or policies established by the Board on a temporary basis, if adopted by the Board by a vote of at least two-thirds of its members, so long as the Board reasonably determines that such modifications or amendments are justified and that immediate temporary establishment of a specification or policy on the subject is necessary to maintain the stability or security of Registry Services or the DNS ("*Temporary Policies*").
- 2.1. Such proposed specification or policy shall be as narrowly tailored as feasible to achieve those objectives. In establishing any Temporary Policy, the Board shall state the period of time for which the Temporary Policy is adopted and shall immediately implement the Consensus Policy development process set forth in ICANN's Bylaws.
 - 2.1.1. ICANN shall also issue an advisory statement containing a detailed explanation of its reasons for adopting the Temporary Policy and why the Board believes such Temporary Policy should receive the consensus support of Internet stakeholders.
 - 2.1.2. If the period of time for which the Temporary Policy is adopted exceeds 90 days, the Board shall reaffirm its temporary adoption every 90 days for a total period not to exceed one year, in order to maintain such Temporary Policy in effect until such time as it becomes a Consensus Policy. If the one year period expires or, if during such one year period, the Temporary Policy does not become a Consensus Policy and is not reaffirmed by the Board, Registry Operator shall no longer be required to comply with or implement such Temporary Policy.
3. **Notice and Conflicts.** Registry Operator shall be afforded a reasonable period of time following notice of the establishment of a Consensus Policy or Temporary Policy in which to comply with such policy or specification, taking into account any urgency involved. In the event of a conflict between Registry Services and Consensus Policies or any Temporary Policy, the Consensus Policies or Temporary Policy shall control, but only with respect to subject matter in conflict.

SPECIFICATION 2

DATA ESCROW REQUIREMENTS

Registry Operator will engage an independent entity to act as data escrow agent (“*Escrow Agent*”) for the provision of data escrow services related to the Registry Agreement. The following Technical Specifications set forth in Part A, and Legal Requirements set forth in Part B, will be included in any data escrow agreement between Registry Operator and the Escrow Agent, under which ICANN must be named a third-party beneficiary. In addition to the following requirements, the data escrow agreement may contain other provisions that are not contradictory or intended to subvert the required terms provided below.

PART A – TECHNICAL SPECIFICATIONS

1. **Deposits.** There will be two types of Deposits: Full and Differential. For both types, the universe of Registry objects to be considered for data escrow are those objects necessary in order to offer all of the approved Registry Services.
 - 1.1 “**Full Deposit**” will consist of data that reflects the state of the registry as of 00:00:00 UTC on each Sunday.
 - 1.2 “**Differential Deposit**” means data that reflects all transactions that were not reflected in the last previous Full or Differential Deposit, as the case may be. Each Differential Deposit will contain all database transactions since the previous Deposit was completed as of 00:00:00 UTC of each day, but Sunday. Differential Deposits must include complete Escrow Records as specified below that were not included or changed since the most recent full or Differential Deposit (i.e., newly added or modified domain names).

2. **Schedule for Deposits.** Registry Operator will submit a set of escrow files on a daily basis as follows:
 - 2.1 Each Sunday, a Full Deposit must be submitted to the Escrow Agent by 23:59 UTC.
 - 2.2 The other six days of the week, the corresponding Differential Deposit must be submitted to Escrow Agent by 23:59 UTC.

3. **Escrow Format Specification.**
 - 3.1 **Deposit’s Format.** Registry objects, such as domains, contacts, name servers, registrars, etc. will be compiled into a file constructed as described in draft-arias-noguchi-registry-data-escrow, see [1]. The aforementioned document describes some elements as optional; Registry Operator will include those elements in the Deposits if they are available. Registry Operator will use the draft version available at the time of signing the Agreement, if not already an RFC. Once the specification is published as an RFC, Registry Operator will implement that specification, no later than 180 days after. UTF-8 character encoding will be used.

 - 3.2 **Extensions.** If a Registry Operator offers additional Registry Services that require submission of additional data, not included above, additional “extension schemas” shall be defined in a case by case base to represent that data. These “extension schemas” will be specified as described in [1]. Data related to the “extensions schemas” will be included in the deposit file described in section 3.1. ICANN and the respective Registry shall work together to agree on such new objects’ data escrow specifications.

4. **Processing of Deposit files.** The use of compression is recommended in order to reduce electronic data transfer times, and storage capacity requirements. Data encryption will be used to ensure the privacy of registry escrow data. Files processed for compression and encryption will be in the binary OpenPGP format as per OpenPGP Message Format - RFC 4880, see [2]. Acceptable algorithms for Public-key cryptography, Symmetric-key cryptography, Hash and Compression are those enumerated in RFC 4880, not marked as deprecated in OpenPGP IANA Registry, see [3], that are also royalty-free. The process to follow for a data file in original text format is:
- (1) The file should be compressed. The suggested algorithm for compression is ZIP as per RFC 4880.
 - (2) The compressed data will be encrypted using the escrow agent's public key. The suggested algorithms for Public-key encryption are Elgamal and RSA as per RFC 4880. The suggested algorithms for Symmetric-key encryption are TripleDES, AES128 and CAST5 as per RFC 4880.
 - (3) The file may be split as necessary if, once compressed and encrypted is larger than the file size limit agreed with the escrow agent. Every part of a split file, or the whole file if split is not used, will be called a processed file in this section.
 - (4) A digital signature file will be generated for every processed file using the Registry's private key. The digital signature file will be in binary OpenPGP format as per RFC 4880 [2], and will not be compressed or encrypted. The suggested algorithms for Digital signatures are DSA and RSA as per RFC 4880. The suggested algorithm for Hashes in Digital signatures is SHA256.
 - (5) The processed files and digital signature files will then be transferred to the Escrow Agent through secure electronic mechanisms, such as, SFTP, SCP, HTTPS file upload, etc. as agreed between the Escrow Agent and the Registry Operator. Non-electronic delivery through a physical medium such as CD-ROMs, DVD-ROMs, or USB storage devices may be used if authorized by ICANN.
 - (6) The Escrow Agent will then validate every (processed) transferred data file using the procedure described in section 8.
5. **File Naming Conventions.** Files will be named according to the following convention: {gTLD}_{YYYY-MM-DD}_{type}_S{#}_R{rev}.{ext} where:
- 5.1 {gTLD} is replaced with the gTLD name; in case of an IDN-TLD, the ASCII-compatible form (A-Label) must be used;
 - 5.2 {YYYY-MM-DD} is replaced by the date corresponding to the time used as a timeline watermark for the transactions; i.e. for the Full Deposit corresponding to 2009-08-02T00:00Z, the string to be used would be "2009-08-02";
 - 5.3 {type} is replaced by:
 - (1) "full", if the data represents a Full Deposit;
 - (2) "diff", if the data represents a Differential Deposit;
 - (3) "thin", if the data represents a Bulk Registration Data Access file, as specified in section 3 of Specification 4;
 - 5.4 {#} is replaced by the position of the file in a series of files, beginning with "1"; in case of a lone file, this must be replaced by "1".
 - 5.5 {rev} is replaced by the number of revision (or resend) of the file beginning with "0";
 - 5.6 {ext} is replaced by "sig" if it is a digital signature file of the quasi-homonymous file. Otherwise it is replaced by "ryde".

6. **Distribution of Public Keys.** Each of Registry Operator and Escrow Agent will distribute its public key to the other party (Registry Operator or Escrow Agent, as the case may be) via email to an email address to be specified. Each party will confirm receipt of the other party's public key with a reply email, and the distributing party will subsequently reconfirm the authenticity of the key transmitted via offline methods, like in person meeting, telephone, etc. In this way, public key transmission is authenticated to a user able to send and receive mail via a mail server operated by the distributing party. Escrow Agent, Registry and ICANN will exchange keys by the same procedure.
7. **Notification of Deposits.** Along with the delivery of each Deposit, Registry Operator will deliver to Escrow Agent and to ICANN a written statement (which may be by authenticated e-mail) that includes a copy of the report generated upon creation of the Deposit and states that the Deposit has been inspected by Registry Operator and is complete and accurate. Registry Operator will include the Deposit's "id" and "resend" attributes in its statement. The attributes are explained in [1].
8. **Verification Procedure.**
 - (1) The signature file of each processed file is validated.
 - (2) If processed files are pieces of a bigger file, the latter is put together.
 - (3) Each file obtained in the previous step is then decrypted and uncompressed.
 - (4) Each data file contained in the previous step is then validated against the format defined in [1].
 - (5) If [1] includes a verification process, that will be applied at this step.
If any discrepancy is found in any of the steps, the Deposit will be considered incomplete.
9. **References.**
 - [1] Domain Name Data Escrow Specification (work in progress), <http://tools.ietf.org/html/draft-arias-noguchi-registry-data-escrow>
 - [2] OpenPGP Message Format, <http://www.rfc-editor.org/rfc/rfc4880.txt>
 - [3] OpenPGP parameters, <http://www.iana.org/assignments/pgp-parameters/pgp-parameters.xhtml>

PART B – LEGAL REQUIREMENTS

1. **Escrow Agent.** Prior to entering into an escrow agreement, the Registry Operator must provide notice to ICANN as to the identity of the Escrow Agent, and provide ICANN with contact information and a copy of the relevant escrow agreement, and all amendment thereto. In addition, prior to entering into an escrow agreement, Registry Operator must obtain the consent of ICANN to (a) use the specified Escrow Agent, and (b) enter into the form of escrow agreement provided. ICANN must be expressly designated a third-party beneficiary of the escrow agreement. ICANN reserves the right to withhold its consent to any Escrow Agent, escrow agreement, or any amendment thereto, all in its sole discretion.
2. **Fees.** Registry Operator must pay, or have paid on its behalf, fees to the Escrow Agent directly. If Registry Operator fails to pay any fee by the due date(s), the Escrow Agent will give ICANN written notice of such non-payment and ICANN may pay the past-due fee(s) within ten business days after receipt of the written notice from Escrow Agent. Upon payment of the past-due fees by ICANN, ICANN shall have a claim for such amount against Registry Operator, which Registry Operator shall be required to submit to ICANN together with the next fee payment due under the Registry Agreement.
3. **Ownership.** Ownership of the Deposits during the effective term of the Registry Agreement shall remain with Registry Operator at all times. Thereafter, Registry Operator shall assign any such ownership rights (including intellectual property rights, as the case may be) in such Deposits to ICANN. In the event that during the term of the Registry Agreement any Deposit is released from escrow to ICANN, any intellectual property rights held by Registry Operator in the Deposits will automatically be licensed on a non-exclusive, perpetual, irrevocable, royalty-free, paid-up basis to ICANN or to a party designated in writing by ICANN.
4. **Integrity and Confidentiality.** Escrow Agent will be required to (i) hold and maintain the Deposits in a secure, locked, and environmentally safe facility, which is accessible only to authorized representatives of Escrow Agent, (ii) protect the integrity and confidentiality of the Deposits using commercially reasonable measures and (iii) keep and safeguard each Deposit for one year. ICANN and Registry Operator will be provided the right to inspect Escrow Agent's applicable records upon reasonable prior notice and during normal business hours. Registry Operator and ICANN will be provided with the right to designate a third-party auditor to audit Escrow Agent's compliance with the technical specifications and maintenance requirements of this Specification 2 from time to time.

If Escrow Agent receives a subpoena or any other order from a court or other judicial tribunal pertaining to the disclosure or release of the Deposits, Escrow Agent will promptly notify the Registry Operator and ICANN unless prohibited by law. After notifying the Registry Operator and ICANN, Escrow Agent shall allow sufficient time for Registry Operator or ICANN to challenge any such order, which shall be the responsibility of Registry Operator or ICANN; provided, however, that Escrow Agent does not waive its rights to present its position with respect to any such order. Escrow Agent will cooperate with the Registry Operator or ICANN to support efforts to quash or limit any subpoena, at such party's expense. Any party requesting additional assistance shall pay Escrow Agent's standard charges or as quoted upon submission of a detailed request.

5. **Copies.** Escrow Agent may be permitted to duplicate any Deposit, in order to comply with the terms and provisions of the escrow agreement.
6. **Release of Deposits.** Escrow Agent will make available for electronic download (unless otherwise requested) to ICANN or its designee, within twenty-four hours, at the Registry Operator's expense, all Deposits in Escrow Agent's possession in the event that the Escrow Agent receives a request from Registry Operator to effect such delivery to ICANN, or receives one of the following written notices by ICANN stating that:
- 6.1 the Registry Agreement has expired without renewal, or been terminated; or
 - 6.2 ICANN failed, with respect to (a) any Full Deposit or (b) five Differential Deposits within any calendar month, to receive, within five calendar days after the Deposit's scheduled delivery date, notification of receipt from Escrow Agent; (x) ICANN gave notice to Escrow Agent and Registry Operator of that failure; and (y) ICANN has not, within seven calendar days after such notice, received notice from Escrow Agent that the Deposit has been received; or
 - 6.3 ICANN has received notification from Escrow Agent of failed verification of a Full Deposit or of failed verification of five Differential Deposits within any calendar month and (a) ICANN gave notice to Registry Operator of that receipt; and (b) ICANN has not, within seven calendar days after such notice, received notice from Escrow Agent of verification of a remediated version of such Full Deposit or Differential Deposit; or
 - 6.4 Registry Operator has: (i) ceased to conduct its business in the ordinary course; or (ii) filed for bankruptcy, become insolvent or anything analogous to any of the foregoing under the laws of any jurisdiction anywhere in the world; or
 - 6.5 Registry Operator has experienced a failure of critical registry functions and ICANN has asserted its rights pursuant to Section 2.13 of the Registry Agreement; or
 - 6.6 a competent court, arbitral, legislative, or government agency mandates the release of the Deposits to ICANN.

Unless Escrow Agent has previously released the Registry Operator's Deposits to ICANN or its designee, Escrow Agent will deliver all Deposits to ICANN upon termination of the Registry Agreement or the Escrow Agreement.

7. **Verification of Deposits.**
- 7.1 Within twenty-four hours after receiving each Deposit or corrected Deposit, Escrow Agent must verify the format and completeness of each Deposit and deliver to ICANN a copy of the verification report generated for each Deposit. Reports will be delivered electronically, as specified from time to time by ICANN.
 - 7.2 If Escrow Agent discovers that any Deposit fails the verification procedures, Escrow Agent must notify, either by email, fax or phone, Registry Operator and ICANN of such nonconformity within twenty-four hours after receiving the non-conformant Deposit. Upon notification of such verification failure, Registry Operator must begin developing modifications, updates, corrections, and other fixes of the Deposit necessary for the Deposit to pass the verification procedures and deliver such fixes to Escrow Agent as promptly as possible.
8. **Amendments.** Escrow Agent and Registry Operator shall amend the terms of the Escrow Agreement to conform to this Specification 2 within ten (10) calendar days of any amendment or modification to this Specification 2. In the event of a conflict between this Specification 2 and the Escrow Agreement, this Specification 2 shall control.
9. **Indemnity.** Registry Operator shall indemnify and hold harmless Escrow Agent and each of its directors, officers, agents, employees, members, and stockholders ("Escrow Agent Indemnitees")

absolutely and forever from and against any and all claims, actions, damages, suits, liabilities, obligations, costs, fees, charges, and any other expenses whatsoever, including reasonable attorneys' fees and costs, that may be asserted by a third party against any Escrow Agent Indemnitees in connection with the Escrow Agreement or the performance of Escrow Agent or any Escrow Agent Indemnitees thereunder (with the exception of any claims based on the misrepresentation, negligence, or misconduct of Escrow Agent, its directors, officers, agents, employees, contractors, members, and stockholders). Escrow Agent shall indemnify and hold harmless Registry Operator and ICANN, and each of their respective directors, officers, agents, employees, members, and stockholders ("Indemnitees") absolutely and forever from and against any and all claims, actions, damages, suits, liabilities, obligations, costs, fees, charges, and any other expenses whatsoever, including reasonable attorneys' fees and costs, that may be asserted by a third party against any Indemnitee in connection with the misrepresentation, negligence or misconduct of Escrow Agent, its directors, officers, agents, employees and contractors.

SPECIFICATION 3

FORMAT AND CONTENT FOR REGISTRY OPERATOR MONTHLY REPORTING

Registry Operator shall provide one set of monthly reports per gTLD to _____ with the following content. ICANN may request in the future that the reports be delivered by other means and using other formats. ICANN will use reasonable commercial efforts to preserve the confidentiality of the information reported until three months after the end of the month to which the reports relate.

1. Per-Registrar Transactions Report. This report shall be compiled in a comma separated-value formatted file as specified in RFC 4180. The file shall be named “gTLD-transactions-yyyymm.csv”, where “gTLD” is the gTLD name; in case of an IDN-TLD, the A-label shall be used; “yyyymm” is the year and month being reported. The file shall contain the following fields per registrar:

Field #	Field Name	Description
01	registrar-name	registrar's full corporate name as registered with IANA
02	iana-id	http://www.iana.org/assignments/registrar-ids
03	total-domains	total domains under sponsorship
04	total-nameservers	total name servers registered for TLD
05	net-adds-1-yr	number of domains successfully registered with an initial term of one year (and not deleted within the add grace period)
06	net-adds-2-yr	number of domains successfully registered with an initial term of two years (and not deleted within the add grace period)
07	net-adds-3-yr	number of domains successfully registered with an initial term of three years (and not deleted within the add grace period)
08	net-adds-4-yr	number of domains successfully registered with an initial term of four years (and not deleted within the add grace period)
09	net-adds-5-yr	number of domains successfully registered with an initial term of five years (and not deleted within the add grace period)
10	net-adds-6-yr	number of domains successfully registered with an initial term of six years (and not deleted within the add grace period)
11	net-adds-7-yr	number of domains successfully registered with an initial term of seven years (and not deleted within the add grace period)

12	net-adds-8-yr	number of domains successfully registered with an initial term of eight years (and not deleted within the add grace period)
13	net-adds-9-yr	number of domains successfully registered with an initial term of nine years (and not deleted within the add grace period)
14	net-adds-10-yr	number of domains successfully registered with an initial term of ten years (and not deleted within the add grace period)
15	net-renews-1-yr	number of domains successfully renewed either automatically or by command with a new renewal period of one year (and not deleted within the renew grace period)
16	net-renews-2-yr	number of domains successfully renewed either automatically or by command with a new renewal period of two years (and not deleted within the renew grace period)
17	net-renews-3-yr	number of domains successfully renewed either automatically or by command with a new renewal period of three years (and not deleted within the renew grace period)
18	net-renews-4-yr	number of domains successfully renewed either automatically or by command with a new renewal period of four years (and not deleted within the renew grace period)
19	net-renews-5-yr	number of domains successfully renewed either automatically or by command with a new renewal period of five years (and not deleted within the renew grace period)
20	net-renews-6-yr	number of domains successfully renewed either automatically or by command with a new renewal period of six years (and not deleted within the renew grace period)
21	net-renews-7-yr	number of domains successfully renewed either automatically or by command with a new renewal period of seven years (and not deleted within the renew grace period)
22	net-renews-8-yr	number of domains successfully renewed either automatically or by command with a new renewal period of eight years (and not deleted within the renew grace period)
23	net-renews-9-yr	number of domains successfully renewed either

		automatically or by command with a new renewal period of nine years (and not deleted within the renew grace period)
24	net-renews-10-yr	number of domains successfully renewed either automatically or by command with a new renewal period of ten years (and not deleted within the renew grace period)
25	transfer-gaining-successful	transfers initiated by this registrar that were ack'd by the other registrar – either by command or automatically
26	transfer-gaining-nacked	transfers initiated by this registrar that were n'acked by the other registrar
27	transfer-losing-successful	transfers initiated by another registrar that this registrar ack'd – either by command or automatically
28	transfer-losing-nacked	transfers initiated by another registrar that this registrar n'acked
29	transfer-disputed-won	number of transfer disputes in which this registrar prevailed
30	transfer-disputed-lost	number of transfer disputes this registrar lost
31	transfer-disputed-noddecision	number of transfer disputes involving this registrar with a split or no decision
32	deleted-domains-grace	domains deleted within the add grace period
33	deleted-domains-nograce	domains deleted outside the add grace period
34	restored-domains	domain names restored from redemption period
35	restored-noreport	total number of restored names for which the registrar failed to submit a restore report
36	agp-exemption-requests	total number of AGP (add grace period) exemption requests
37	agp-exemptions-granted	total number of AGP (add grace period) exemption requests granted
38	agp-exempted-domains	total number of names affected by granted AGP (add grace period) exemption requests
39	attempted-adds	number of attempted (successful and failed) domain name create commands

The first line shall include the field names exactly as described in the table above as a “header line” as described in section 2 of RFC 4180. The last line of each report shall include totals for each column across all registrars; the first field of this line shall read “Totals” while the second field shall be left empty in that line. No other lines besides the ones described above shall be included. Line breaks shall be <U+000D, U+000A> as described in RFC 4180.

2. Registry Functions Activity Report. This report shall be compiled in a comma separated-value formatted file as specified in RFC 4180. The file shall be named “gTLD-activity-yyyymm.csv”, where “gTLD” is the gTLD name; in case of an IDN-TLD, the A-label shall be used; “yyyymm” is the year and month being reported. The file shall contain the following fields:

Field #	Field Name	Description
01	operational-registrars	number of operational registrars at the end of the reporting period
02	ramp-up-registrars	number of registrars that have received a password for access to OT&E at the end of the reporting period
03	pre-ramp-up-registrars	number of registrars that have requested access, but have not yet entered the ramp-up period at the end of the reporting period
04	zfa-passwords	number of active zone file access passwords at the end of the reporting period
05	whois-43-queries	number of WHOIS (port-43) queries responded during the reporting period
06	web-whois-queries	number of Web-based Whois queries responded during the reporting period, not including searchable Whois
07	searchable-whois-queries	number of searchable Whois queries responded during the reporting period, if offered
08	dns-udp-queries-received	number of DNS queries received over UDP transport during the reporting period
09	dns-udp-queries-responded	number of DNS queries received over UDP transport that were responded during the reporting period
10	dns-tcp-queries-received	number of DNS queries received over TCP transport during the reporting period
11	dns-tcp-queries-responded	number of DNS queries received over TCP transport that were responded during the reporting period
12	srs-dom-check	number of SRS (EPP and any other interface) domain name “check” requests responded during the reporting period
13	srs-dom-create	number of SRS (EPP and any other interface) domain name “create” requests responded during the reporting period
14	srs-dom-delete	number of SRS (EPP and any other interface) domain name “delete” requests responded during the reporting period
15	srs-dom-info	number of SRS (EPP and any other interface) domain name “info” requests responded during the reporting period
16	srs-dom-renew	number of SRS (EPP and any other interface) domain name

		“renew” requests responded during the reporting period
17	srs-dom-rgp-restore-report	number of SRS (EPP and any other interface) domain name RGP “restore” requests responded during the reporting period
18	srs-dom-rgp-restore-request	number of SRS (EPP and any other interface) domain name RGP “restore” requests delivering a restore report responded during the reporting period
19	srs-dom-transfer-approve	number of SRS (EPP and any other interface) domain name “transfer” requests to approve transfers responded during the reporting period
20	srs-dom-transfer-cancel	number of SRS (EPP and any other interface) domain name “transfer” requests to cancel transfers responded during the reporting period
21	srs-dom-transfer-query	number of SRS (EPP and any other interface) domain name “transfer” requests to query about a transfer responded during the reporting period
22	srs-dom-transfer-reject	number of SRS (EPP and any other interface) domain name “transfer” requests to reject transfers responded during the reporting period
23	srs-dom-transfer-request	number of SRS (EPP and any other interface) domain name “transfer” requests to request transfers responded during the reporting period
24	srs-dom-update	number of SRS (EPP and any other interface) domain name “update” requests (not including RGP restore requests) responded during the reporting period
25	srs-host-check	number of SRS (EPP and any other interface) host “check” requests responded during the reporting period
26	srs-host-create	number of SRS (EPP and any other interface) host “create” requests responded during the reporting period
27	srs-host-delete	number of SRS (EPP and any other interface) host “delete” requests responded during the reporting period
28	srs-host-info	number of SRS (EPP and any other interface) host “info” requests responded during the reporting period
29	srs-host-update	number of SRS (EPP and any other interface) host “update” requests responded during the reporting period
30	srs-cont-check	number of SRS (EPP and any other interface) contact “check” requests responded during the reporting period
31	srs-cont-create	number of SRS (EPP and any other interface) contact “create” requests responded during the reporting period

32	srs-cont-delete	number of SRS (EPP and any other interface) contact “delete” requests responded during the reporting period
33	srs-cont-info	number of SRS (EPP and any other interface) contact “info” requests responded during the reporting period
34	srs-cont-transfer-approve	number of SRS (EPP and any other interface) contact “transfer” requests to approve transfers responded during the reporting period
35	srs-cont-transfer-cancel	number of SRS (EPP and any other interface) contact “transfer” requests to cancel transfers responded during the reporting period
36	srs-cont-transfer-query	number of SRS (EPP and any other interface) contact “transfer” requests to query about a transfer responded during the reporting period
37	srs-cont-transfer-reject	number of SRS (EPP and any other interface) contact “transfer” requests to reject transfers responded during the reporting period
38	srs-cont-transfer-request	number of SRS (EPP and any other interface) contact “transfer” requests to request transfers responded during the reporting period
39	srs-cont-update	number of SRS (EPP and any other interface) contact “update” requests responded during the reporting period

The first line shall include the field names exactly as described in the table above as a “header line” as described in section 2 of RFC 4180. No other lines besides the ones described above shall be included. Line breaks shall be <U+000D, U+000A> as described in RFC 4180.

SPECIFICATION 4

SPECIFICATION FOR REGISTRATION DATA PUBLICATION SERVICES

1. **Registration Data Directory Services.** Until ICANN requires a different protocol, Registry Operator will operate a WHOIS service available via port 43 in accordance with RFC 3912, and a web-based Directory Service at <whois.nic.TLD> providing free public query-based access to at least the following elements in the following format. ICANN reserves the right to specify alternative formats and protocols, and upon such specification, the Registry Operator will implement such alternative specification as soon as reasonably practicable.

1.1. The format of responses shall follow a semi-free text format outline below, followed by a blank line and a legal disclaimer specifying the rights of Registry Operator, and of the user querying the database.

1.2. Each data object shall be represented as a set of key/value pairs, with lines beginning with keys, followed by a colon and a space as delimiters, followed by the value.

1.3. For fields where more than one value exists, multiple key/value pairs with the same key shall be allowed (for example to list multiple name servers). The first key/value pair after a blank line should be considered the start of a new record, and should be considered as identifying that record, and is used to group data, such as hostnames and IP addresses, or a domain name and registrant information, together.

1.4. Domain Name Data:

1.4.1. **Query format:** whois EXAMPLE.TLD

1.4.2. **Response format:**

```

Domain Name: EXAMPLE.TLD
Domain ID: D1234567-TLD
WHOIS Server: whois.example.tld
Referral URL: http://www.example.tld
Updated Date: 2009-05-29T20:13:00Z
Creation Date: 2000-10-08T00:45:00Z
Registry Expiry Date: 2010-10-08T00:44:59Z
Sponsoring Registrar: EXAMPLE REGISTRAR LLC
Sponsoring Registrar IANA ID: 5555555
Domain Status: clientDeleteProhibited
Domain Status: clientRenewProhibited
Domain Status: clientTransferProhibited
Domain Status: serverUpdateProhibited
Registrant ID: 5372808-ERL
Registrant Name: EXAMPLE REGISTRANT
Registrant Organization: EXAMPLE ORGANIZATION
Registrant Street: 123 EXAMPLE STREET
Registrant City: ANYTOWN
Registrant State/Province: AP
Registrant Postal Code: A1A1A1
Registrant Country: EX

```

Registrant Phone: +1.5555551212
Registrant Phone Ext: 1234
Registrant Fax: +1.5555551213
Registrant Fax Ext: 4321
Registrant Email: EMAIL@EXAMPLE.TLD
Admin ID: 5372809-ERL
Admin Name: EXAMPLE REGISTRANT ADMINISTRATIVE
Admin Organization: EXAMPLE REGISTRANT ORGANIZATION
Admin Street: 123 EXAMPLE STREET
Admin City: ANYTOWN
Admin State/Province: AP
Admin Postal Code: A1A1A1
Admin Country: EX
Admin Phone: +1.5555551212
Admin Phone Ext: 1234
Admin Fax: +1.5555551213
Admin Fax Ext:
Admin Email: EMAIL@EXAMPLE.TLD
Tech ID: 5372811-ERL
Tech Name: EXAMPLE REGISTRAR TECHNICAL
Tech Organization: EXAMPLE REGISTRAR LLC
Tech Street: 123 EXAMPLE STREET
Tech City: ANYTOWN
Tech State/Province: AP
Tech Postal Code: A1A1A1
Tech Country: EX
Tech Phone: +1.1235551234
Tech Phone Ext: 1234
Tech Fax: +1.5555551213
Tech Fax Ext: 93
Tech Email: EMAIL@EXAMPLE.TLD
Name Server: NS01.EXAMPLEREGISTRAR.TLD
Name Server: NS02.EXAMPLEREGISTRAR.TLD
DNSSEC: signedDelegation
DNSSEC: unsigned
>>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<

1.5. Registrar Data:

1.5.1. **Query format:** whois "registrar Example Registrar, Inc."

1.5.2. **Response format:**

Registrar Name: Example Registrar, Inc.
Street: 1234 Admiralty Way
City: Marina del Rey
State/Province: CA
Postal Code: 90292
Country: US
Phone Number: +1.3105551212
Fax Number: +1.3105551213

Email: registrar@example.tld
 WHOIS Server: whois.example-registrar.tld
 Referral URL: http://www.example-registrar.tld
 Admin Contact: Joe Registrar
 Phone Number: +1.3105551213
 Fax Number: +1.3105551213
 Email: joeregistrar@example-registrar.tld
 Admin Contact: Jane Registrar
 Phone Number: +1.3105551214
 Fax Number: +1.3105551213
 Email: janeregistrar@example-registrar.tld
 Technical Contact: John Geek
 Phone Number: +1.3105551215
 Fax Number: +1.3105551216
 Email: johngeek@example-registrar.tld
 >>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<

1.6. Nameserver Data:

1.6.1. **Query format:** whois "NS1.EXAMPLE.TLD" or whois "nameserver (IP Address)"

1.6.2. **Response format:**

Server Name: NS1.EXAMPLE.TLD
 IP Address: 192.0.2.123
 IP Address: 2001:0DB8::1
 Registrar: Example Registrar, Inc.
 WHOIS Server: whois.example-registrar.tld
 Referral URL: http://www.example-registrar.tld
 >>> Last update of WHOIS database: 2009-05-29T20:15:00Z <<<

1.7. The format of the following data fields: domain status, individual and organizational names, address, street, city, state/province, postal code, country, telephone and fax numbers, email addresses, date and times should conform to the mappings specified in EPP RFCs 5730-5734 so that the display of this information (or values return in WHOIS responses) can be uniformly processed and understood.

1.8. **Searchability.** Offering searchability capabilities on the Directory Services is optional but if offered by the Registry Operator it shall comply with the specification described in this section.

1.8.1. Registry Operator will offer searchability on the web-based Directory Service.

1.8.2. Registry Operator will offer partial match capabilities, at least, on the following fields: domain name, contacts and registrant's name, and contact and registrant's postal address, including all the sub-fields described in EPP (e.g., street, city, state or province, etc.).

1.8.3. Registry Operator will offer exact-match capabilities, at least, on the following fields: registrar id, name server name, and name server's IP address (only applies to IP addresses stored by the registry, i.e., glue records).

1.8.4. Registry Operator will offer Boolean search capabilities supporting, at least, the following logical operators to join a set of search criteria: AND, OR, NOT.

1.8.5. Search results will include domain names matching the search criteria.

1.8.6. Registry Operator will: 1) implement appropriate measures to avoid abuse of this feature (e.g., permitting access only to legitimate authorized users); and 2) ensure the feature is in compliance with any applicable privacy laws or policies.

2. Zone File Access

2.1. Third-Party Access

2.1.1. **Zone File Access Agreement.** Registry Operator will enter into an agreement with any Internet user that will allow such user to access an Internet host server or servers designated by Registry Operator and download zone file data. The agreement will be standardized, facilitated and administered by a Centralized Zone Data Access Provider (the “CZDA Provider”). Registry Operator will provide access to zone file data per Section 2.1.3 and do so using the file format described in Section 2.1.4. Notwithstanding the foregoing, (a) the CZDA Provider may reject the request for access of any user that does not satisfy the credentialing requirements in Section 2.1.2 below; (b) Registry Operator may reject the request for access of any user that does not provide correct or legitimate credentials under Section 2.1.2 or where Registry Operator reasonably believes will violate the terms of Section 2.1.5. below; and, (c) Registry Operator may revoke access of any user if Registry Operator has evidence to support that the user has violated the terms of Section 2.1.5.

2.1.2. **Credentialing Requirements.** Registry Operator, through the facilitation of the CZDA Provider, will request each user to provide it with information sufficient to correctly identify and locate the user. Such user information will include, without limitation, company name, contact name, address, telephone number, facsimile number, email address, and the Internet host machine name and IP address.

2.1.3. **Grant of Access.** Each Registry Operator will provide the Zone File FTP (or other Registry supported) service for an ICANN-specified and managed URL (specifically, <TLD>.zda.icann.org where <TLD> is the TLD for which the registry is responsible) for the user to access the Registry’s zone data archives. Registry Operator will grant the user a non-exclusive, non-transferable, limited right to access Registry Operator’s Zone File FTP server, and to transfer a copy of the top-level domain zone files, and any associated cryptographic checksum files no more than once per 24 hour period using FTP, or other data transport and access protocols that may be prescribed by ICANN. For every zone file access server, the zone files are in the top-level directory called <zone>.zone.gz, with <zone>.zone.gz.md5 and <zone>.zone.gz.sig to verify downloads. If the Registry Operator also provides historical data, it will use the naming pattern <zone>-yyyymmdd.zone.gz, etc.

2.1.4. **File Format Standard.** Registry Operator will provide zone files using a sub-format of the standard Master File format as originally defined in RFC 1035, Section 5, including all the records present in the actual zone used in the public DNS. Sub-format is as follows:

1. Each record must include all fields in one line as: <domain-name> <TTL> <class> <type> <RDATA>.
2. Class and Type must use the standard mnemonics and must be in lower case.

3. TTL must be present as a decimal integer.
4. Use of /X and /DDD inside domain names is allowed.
5. All domain names must be in lower case.
6. Must use exactly one tab as separator of fields inside a record.
7. All domain names must be fully qualified.
8. No \$ORIGIN directives.
9. No use of "@" to denote current origin.
10. No use of "blank domain names" at the beginning of a record to continue the use of the domain name in the previous record.
11. No \$INCLUDE directives.
12. No \$TTL directives.
13. No use of parentheses, e.g., to continue the list of fields in a record across a line boundary.
14. No use of comments.
15. No blank lines.
16. The SOA record should be present at the top and (duplicated at) the end of the zone file.
17. With the exception of the SOA record, all the records in a file must be in alphabetical order.
18. One zone per file. If a TLD divides its DNS data into multiple zones, each goes into a separate file named as above, with all the files combined using tar into a file called <tld>.zone.tar.

2.1.5. Use of Data by User. Registry Operator will permit user to use the zone file for lawful purposes; provided that, (a) user takes all reasonable steps to protect against unauthorized access to and use and disclosure of the data, and (b) under no circumstances will Registry Operator be required or permitted to allow user to use the data to, (i) allow, enable, or otherwise support the transmission by e-mail, telephone, or facsimile of mass unsolicited, commercial advertising or solicitations to entities other than user's own existing customers, or (ii) enable high volume, automated, electronic processes that send queries or data to the systems of Registry Operator or any ICANN-accredited registrar.

2.1.6. Term of Use. Registry Operator, through CZDA Provider, will provide each user with access to the zone file for a period of not less than three (3) months. Registry Operator will allow users to renew their Grant of Access.

2.1.7. No Fee for Access. Registry Operator will provide, and CZDA Provider will facilitate, access to the zone file to user at no cost.

2.2 Co-operation

2.2.1. Assistance. Registry Operator will co-operate and provide reasonable assistance to ICANN and the CZDA Provider to facilitate and maintain the efficient access of zone file data by permitted users as contemplated under this Schedule.

2.3 ICANN Access. Registry Operator shall provide bulk access to the zone files for the TLD to ICANN or its designee on a continuous basis in the manner ICANN may reasonably specify from time to time.

2.4 Emergency Operator Access. Registry Operator shall provide bulk access to the zone files for the TLD to the Emergency Operators designated by ICANN on a continuous basis in the manner ICANN may reasonably specify from time to time.

3. Bulk Registration Data Access to ICANN

3.1. Periodic Access to Thin Registration Data. In order to verify and ensure the operational stability of Registry Services as well as to facilitate compliance checks on accredited registrars, Registry Operator will provide ICANN on a weekly basis (the day to be designated by ICANN) with up-to-date Registration Data as specified below. Data will include data committed as of 00:00:00 UTC on the day previous to the one designated for retrieval by ICANN.

3.1.1. Contents. Registry Operator will provide, at least, the following data for all registered domain names: domain name, domain name repository object id (roid), registrar id (IANA ID), statuses, last updated date, creation date, expiration date, and name server names. For sponsoring registrars, at least, it will provide: registrar name, registrar repository object id (roid), hostname of registrar Whois server, and URL of registrar.

3.1.2. Format. The data will be provided in the format specified in Specification 2 for Data Escrow (including encryption, signing, etc.) but including only the fields mentioned in the previous section, i.e., the file will only contain Domain and Registrar objects with the fields mentioned above. Registry Operator has the option to provide a full deposit file instead as specified in Specification 2.

3.1.3. Access. Registry Operator will have the file(s) ready for download as of 00:00:00 UTC on the day designated for retrieval by ICANN. The file(s) will be made available for download by SFTP, though ICANN may request other means in the future.

3.2. Exceptional Access to Thick Registration Data. In case of a registrar failure, de-accreditation, court order, etc. that prompts the temporary or definitive transfer of its domain names to another registrar, at the request of ICANN, Registry Operator will provide ICANN with up-to-date data for the domain names of the losing registrar. The data will be provided in the format specified in Specification 2 for Data Escrow. The file will only contain data related to the domain names of the losing registrar. Registry Operator will provide the data within 2 business days. Unless otherwise agreed by Registry Operator and ICANN, the file will be made available for download by ICANN in the same manner as the data specified in Section 3.1. of this Specification.

SPECIFICATION 5

SCHEDULE OF RESERVED NAMES AT THE SECOND LEVEL IN GTLD REGISTRIES

Except to the extent that ICANN otherwise expressly authorizes in writing, Registry Operator shall reserve (i.e., Registry Operator shall not register, delegate, use or otherwise make available such labels to any third party, but may register such labels in its own name in order to withhold them from delegation or use) names formed with the following labels from initial (i.e. other than renewal) registration within the TLD:

1. **Example. The label “EXAMPLE”** shall be reserved at the second level and at all other levels within the TLD at which Registry Operator makes registrations.
2. **Two-character labels.** All two-character labels shall be initially reserved. The reservation of a two-character label string may be released to the extent that Registry Operator reaches agreement with the government and country-code manager. The Registry Operator may also propose release of these reservations based on its implementation of measures to avoid confusion with the corresponding country codes.
3. **Tagged Domain Names.** Labels may only include hyphens in the third and fourth position if they represent valid internationalized domain names in their ASCII encoding (for example "xn--ndk061n").
4. **Second-Level Reservations for Registry Operations.** The following names are reserved for use in connection with the operation of the registry for the TLD. Registry Operator may use them, but upon conclusion of Registry Operator's designation as operator of the registry for the TLD they shall be transferred as specified by ICANN: NIC, WWW, IRIS and WHOIS.
5. **Country and Territory Names.** The country and territory names contained in the following internationally recognized lists shall be initially reserved at the second level and at all other levels within the TLD at which the Registry Operator provides for registrations:
 - 5.1. the short form (in English) of all country and territory names contained on the ISO 3166-1 list, as updated from time to time, including the European Union, which is exceptionally reserved on the ISO 3166-1 list, and its scope extended in August 1999 to any application needing to represent the name European Union
<http://www.iso.org/iso/support/country_codes/iso_3166_code_lists/iso-3166-1_decoding_table.htm#EU>;
 - 5.2. the United Nations Group of Experts on Geographical Names, Technical Reference Manual for the Standardization of Geographical Names, Part III Names of Countries of the World; and
 - 5.3. the list of United Nations member states in 6 official United Nations languages prepared by the Working Group on Country Names of the United Nations Conference on the Standardization of Geographical Names;

provided, that the reservation of specific country and territory names may be released to the extent that Registry Operator reaches agreement with the applicable government(s), provided, further, that

Registry Operator may also propose release of these reservations, subject to review by ICANN's Governmental Advisory Committee and approval by ICANN.

SPECIFICATION 6

REGISTRY INTEROPERABILITY AND CONTINUITY SPECIFICATIONS

1. Standards Compliance

1.1. **DNS.** Registry Operator shall comply with relevant existing RFCs and those published in the future by the Internet Engineering Task Force (IETF) including all successor standards, modifications or additions thereto relating to the DNS and name server operations including without limitation RFCs 1034, 1035, 1982, 2181, 2182, 2671, 3226, 3596, 3597, 4343, and 5966.

1.2. **EPP.** Registry Operator shall comply with relevant existing RFCs and those published in the future by the Internet Engineering Task Force (IETF) including all successor standards, modifications or additions thereto relating to the provisioning and management of domain names using the Extensible Provisioning Protocol (EPP) in conformance with RFCs 5910, 5730, 5731, 5732, 5733 and 5734. If Registry Operator implements Registry Grace Period (RGP), it will comply with RFC 3915 and its successors. If Registry Operator requires the use of functionality outside the base EPP RFCs, Registry Operator must document EPP extensions in Internet-Draft format following the guidelines described in RFC 3735. Registry Operator will provide and update the relevant documentation of all the EPP Objects and Extensions supported to ICANN prior to deployment.

1.3. **DNSSEC.** Registry Operator shall sign its TLD zone files implementing Domain Name System Security Extensions (“DNSSEC”). During the Term, Registry Operator shall comply with RFCs 4033, 4034, 4035, 4509 and their successors, and follow the best practices described in RFC 4641 and its successors. If Registry Operator implements Hashed Authenticated Denial of Existence for DNS Security Extensions, it shall comply with RFC 5155 and its successors. Registry Operator shall accept public-key material from child domain names in a secure manner according to industry best practices. Registry shall also publish in its website the DNSSEC Practice Statements (DPS) describing critical security controls and procedures for key material storage, access and usage for its own keys and secure acceptance of registrants’ public-key material. Registry Operator shall publish its DPS following the format described in “DPS-framework” (currently in draft format, see <http://tools.ietf.org/html/draft-ietf-dnsop-dnssec-dps-framework>) within 180 days after the “DPS-framework” becomes an RFC.

1.4. **IDN.** If the Registry Operator offers Internationalized Domain Names (“IDNs”), it shall comply with RFCs 5890, 5891, 5892, 5893 and their successors. Registry Operator shall comply with the ICANN IDN Guidelines at <http://www.icann.org/en/topics/idn/implementation-guidelines.htm>, as they may be amended, modified, or superseded from time to time. Registry Operator shall publish and keep updated its IDN Tables and IDN Registration Rules in the IANA Repository of IDN Practices as specified in the ICANN IDN Guidelines.

1.5. **IPv6.** Registry Operator shall be able to accept IPv6 addresses as glue records in its Registry System and publish them in the DNS. Registry Operator shall offer public IPv6 transport for, at least, two of the Registry’s name servers listed in the root zone with the corresponding IPv6 addresses registered with IANA. Registry Operator should follow “DNS IPv6 Transport Operational Guidelines” as described in BCP 91 and the recommendations and considerations described in RFC 4472. Registry Operator shall offer public IPv6 transport for its Registration Data Publication Services as defined in Specification 4 of this Agreement; e.g. Whois (RFC 3912), Web based Whois. Registry Operator shall offer public IPv6 transport for its Shared Registration System (SRS) to any Registrar, no later than six months after receiving the first request in writing from a gTLD accredited Registrar willing to operate with the SRS over IPv6.

2. Registry Services

2.1. **Registry Services.** “Registry Services” are, for purposes of the Registry Agreement, defined as the following: (a) those services that are operations of the registry critical to the following tasks: the receipt of data from registrars concerning registrations of domain names and name servers; provision to registrars of status information relating to the zone servers for the TLD; dissemination of TLD zone files; operation of the registry DNS servers; and dissemination of contact and other information concerning domain name server registrations in the TLD as required by this Agreement; (b) other products or services that the Registry Operator is required to provide because of the establishment of a Consensus Policy as defined in Specification 1; (c) any other products or services that only a registry operator is capable of providing, by reason of its designation as the registry operator; and (d) material changes to any Registry Service within the scope of (a), (b) or (c) above.

2.2. **Wildcard Prohibition.** For domain names which are either not registered, or the registrant has not supplied valid records such as NS records for listing in the DNS zone file, or their status does not allow them to be published in the DNS, the use of DNS wildcard Resource Records as described in RFCs 1034 and 4592 or any other method or technology for synthesizing DNS Resources Records or using redirection within the DNS by the Registry is prohibited. When queried for such domain names the authoritative name servers must return a “Name Error” response (also known as NXDOMAIN), RCODE 3 as described in RFC 1035 and related RFCs. This provision applies for all DNS zone files at all levels in the DNS tree for which the Registry Operator (or an affiliate engaged in providing Registration Services) maintains data, arranges for such maintenance, or derives revenue from such maintenance.

3. Registry Continuity

3.1. **High Availability.** Registry Operator will conduct its operations using network and geographically diverse, redundant servers (including network-level redundancy, end-node level redundancy and the implementation of a load balancing scheme where applicable) to ensure continued operation in the case of technical failure (widespread or local), or an extraordinary occurrence or circumstance beyond the control of the Registry Operator.

3.2. **Extraordinary Event.** Registry Operator will use commercially reasonable efforts to restore the critical functions of the registry within 24 hours after the termination of an extraordinary event beyond the control of the Registry Operator and restore full system functionality within a maximum of 48 hours following such event, depending on the type of critical function involved. Outages due to such an event will not be considered a lack of service availability.

3.3. **Business Continuity.** Registry Operator shall maintain a business continuity plan, which will provide for the maintenance of Registry Services in the event of an extraordinary event beyond the control of the Registry Operator or business failure of Registry Operator, and may include the designation of a Registry Services continuity provider. If such plan includes the designation of a Registry Services continuity provider, Registry Operator shall provide the name and contact information for such Registry Services continuity provider to ICANN. In the case of an extraordinary event beyond the control of the Registry Operator where the Registry Operator cannot be contacted, Registry Operator consents that ICANN may contact the designated Registry Services continuity provider, if one exists. Registry Operator shall conduct Registry Services Continuity testing at least once per year.

4. Abuse Mitigation

4.1. **Abuse Contact.** Registry Operator shall provide to ICANN and publish on its website its accurate contact details including a valid email and mailing address as well as a primary contact for handling inquiries related to malicious conduct in the TLD, and will provide ICANN with prompt notice of any changes to such contact details.

4.2. **Malicious Use of Orphan Glue Records.** Registry Operators shall take action to remove orphan glue records (as defined at <http://www.icann.org/en/committees/security/sac048.pdf>) when provided with evidence in written form that such records are present in connection with malicious conduct.

5. Supported Initial and Renewal Registration Periods

5.1. **Initial Registration Periods.** Initial registrations of registered names may be made in the registry in one (1) year increments for up to a maximum of ten (10) years. For the avoidance of doubt, initial registrations of registered names may not exceed ten (10) years.

5.2. **Renewal Periods.** Renewal of registered names may be made in one (1) year increments for up to a maximum of ten (10) years. For the avoidance of doubt, renewal of registered names may not extend their registration period beyond ten (10) years from the time of the renewal.

SPECIFICATION 7

MINIMUM REQUIREMENTS FOR RIGHTS PROTECTION MECHANISMS

1. **Rights Protection Mechanisms.** Registry Operator shall implement and adhere to any rights protection mechanisms (“RPMs”) that may be mandated from time to time by ICANN. In addition to such RPMs, Registry Operator may develop and implement additional RPMs that discourage or prevent registration of domain names that violate or abuse another party’s legal rights. Registry Operator will include all ICANN mandated and independently developed RPMs in the registry-registrar agreement entered into by ICANN-accredited registrars authorized to register names in the TLD. Registry Operator shall implement in accordance with requirements established by ICANN each of the mandatory RPMs set forth in the Trademark Clearinghouse (posted at [url to be inserted when final Trademark Clearinghouse is adopted]), which may be revised by ICANN from time to time. Registry Operator shall not mandate that any owner of applicable intellectual property rights use any other trademark information aggregation, notification, or validation service in addition to or instead of the ICANN-designated Trademark Clearinghouse.

2. **Dispute Resolution Mechanisms.** Registry Operator will comply with the following dispute resolution mechanisms as they may be revised from time to time:

- a. the Trademark Post-Delegation Dispute Resolution Procedure (PDDRP) and the Registration Restriction Dispute Resolution Procedure (RRDRP) adopted by ICANN (posted at [urls to be inserted when final procedure is adopted]). Registry Operator agrees to implement and adhere to any remedies ICANN imposes (which may include any reasonable remedy, including for the avoidance of doubt, the termination of the Registry Agreement pursuant to Section 4.3(e) of the Registry Agreement) following a determination by any PDDRP or RRDRP panel and to be bound by any such determination; and
- b. the Uniform Rapid Suspension system (“URS”) adopted by ICANN (posted at [url to be inserted]), including the implementation of determinations issued by URS examiners.

SPECIFICATION 8

CONTINUED OPERATIONS INSTRUMENT

1. The Continued Operations Instrument shall (a) provide for sufficient financial resources to ensure the continued operation of the critical registry functions related to the TLD set forth in Section [__] of the Applicant Guidebook posted at [url to be inserted upon finalization of Applicant Guidebook] (which is hereby incorporated by reference into this Specification 8) for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period of one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6th) anniversary of the Effective Date, and (b) be in the form of either (i) an irrevocable standby letter of credit, or (ii) an irrevocable cash escrow deposit, each meeting the requirements set forth in Section [__] of the Applicant Guidebook posted at [url to be inserted upon finalization of Applicant Guidebook] (which is hereby incorporated by reference into this Specification 8). Registry Operator shall use its best efforts to take all actions necessary or advisable to maintain in effect the Continued Operations Instrument for a period of six (6) years from the Effective Date, and to maintain ICANN as a third party beneficiary thereof. Registry Operator shall provide to ICANN copies of all final documents relating to the Continued Operations Instrument and shall keep ICANN reasonably informed of material developments relating to the Continued Operations Instrument. Registry Operator shall not agree to, or permit, any amendment of, or waiver under, the Continued Operations Instrument or other documentation relating thereto without the prior written consent of ICANN (such consent not to be unreasonably withheld). The Continued Operations Instrument shall expressly state that ICANN may access the financial resources of the Continued Operations Instrument pursuant to Section 2.13 or Section 4.5 [*insert for government entity*: or Section 7.14] of the Registry Agreement.
2. If, notwithstanding the use of best efforts by Registry Operator to satisfy its obligations under the preceding paragraph, the Continued Operations Instrument expires or is terminated by another party thereto, in whole or in part, for any reason, prior to the sixth anniversary of the Effective Date, Registry Operator shall promptly (i) notify ICANN of such expiration or termination and the reasons therefor and (ii) arrange for an alternative instrument that provides for sufficient financial resources to ensure the continued operation of the Registry Services related to the TLD for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period of one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6) anniversary of the Effective Date (an “Alternative Instrument”). Any such Alternative Instrument shall be on terms no less favorable to ICANN than the Continued Operations Instrument and shall otherwise be in form and substance reasonably acceptable to ICANN.
3. Notwithstanding anything to the contrary contained in this Specification 8, at any time, Registry Operator may replace the Continued Operations Instrument with an alternative

instrument that (i) provides for sufficient financial resources to ensure the continued operation of the Registry Services related to the TLD for a period of three (3) years following any termination of this Agreement on or prior to the fifth anniversary of the Effective Date or for a period one (1) year following any termination of this Agreement after the fifth anniversary of the Effective Date but prior to or on the sixth (6) anniversary of the Effective Date, and (ii) contains terms no less favorable to ICANN than the Continued Operations Instrument and is otherwise in form and substance reasonably acceptable to ICANN. In the event Registry Operation replaces the Continued Operations Instrument either pursuant to paragraph 2 or this paragraph 3, the terms of this Specification 8 shall no longer apply with respect to the original Continuing Operations Instrument, but shall thereafter apply with respect to such replacement instrument(s).

SPECIFICATION 9

Registry Operator Code of Conduct

1. In connection with the operation of the registry for the TLD, Registry Operator will not, and will not allow any parent, subsidiary, Affiliate, subcontractor or other related entity, to the extent such party is engaged in the provision of Registry Services with respect to the TLD (each, a “Registry Related Party”), to:
 - a. directly or indirectly show any preference or provide any special consideration to any registrar with respect to operational access to registry systems and related registry services, unless comparable opportunities to qualify for such preferences or considerations are made available to all registrars on substantially similar terms and subject to substantially similar conditions;
 - b. register domain names in its own right, except for names registered through an ICANN accredited registrar that are reasonably necessary for the management, operations and purpose of the TLD, provided, that Registry Operator may reserve names from registration pursuant to Section 2.6 of the Registry Agreement;
 - c. register names in the TLD or sub-domains of the TLD based upon proprietary access to information about searches or resolution requests by consumers for domain names not yet registered (commonly known as, "front-running");
 - d. allow any Affiliated registrar to disclose user data to Registry Operator or any Registry Related Party, except as necessary for the management and operations of the TLD, unless all unrelated third parties (including other registry operators) are given equivalent access to such user data on substantially similar terms and subject to substantially similar conditions; or
 - e. disclose confidential registry data or confidential information about its Registry Services or operations to any employee of any DNS services provider, except as necessary for the management and operations of the TLD, unless all unrelated third parties (including other registry operators) are given equivalent access to such confidential registry data or confidential information on substantially similar terms and subject to substantially similar conditions.
2. If Registry Operator or a Registry Related Party also operates as a provider of registrar or registrar-reseller services, Registry Operator will, or will cause such Registry Related Party to, ensure that such services are offered through a legal entity separate from Registry Operator, and maintain separate books of accounts with respect to its registrar or registrar-reseller operations.
3. Registry Operator will conduct internal reviews at least once per calendar year to

- ensure compliance with this Code of Conduct. Within twenty (20) calendar days following the end of each calendar year, Registry Operator will provide the results of the internal review, along with a certification executed by an executive officer of Registry Operator certifying as to Registry Operator's compliance with this Code of Conduct, via email to an address to be provided by ICANN. (ICANN may specify in the future the form and contents of such reports or that the reports be delivered by other reasonable means.) Registry Operator agrees that ICANN may publicly post such results and certification.
4. Nothing set forth herein shall: (i) limit ICANN from conducting investigations of claims of Registry Operator's non-compliance with this Code of Conduct; or (ii) provide grounds for Registry Operator to refuse to cooperate with ICANN investigations of claims of Registry Operator's non-compliance with this Code of Conduct.
 5. Nothing set forth herein shall limit the ability of Registry Operator or any Registry Related Party, to enter into arms-length transactions in the ordinary course of business with a registrar or reseller with respect to products and services unrelated in all respects to the TLD.
 6. Registry Operator may request an exemption to this Code of Conduct, and such exemption may be granted by ICANN in ICANN's reasonable discretion, if Registry Operator demonstrates to ICANN's reasonable satisfaction that (i) all domain name registrations in the TLD are registered to, and maintained by, Registry Operator for its own exclusive use, (ii) Registry Operator does not sell, distribute or transfer control or use of any registrations in the TLD to any third party that is not an Affiliate of Registry Operator, and (iii) application of this Code of Conduct to the TLD is not necessary to protect the public interest.

SPECIFICATION 10

REGISTRY PERFORMANCE SPECIFICATIONS

1. Definitions

- 1.1. **DNS.** Refers to the Domain Name System as specified in RFCs 1034, 1035, and related RFCs.
- 1.2. **DNSSEC proper resolution.** There is a valid DNSSEC chain of trust from the root trust anchor to a particular domain name, e.g., a TLD, a domain name registered under a TLD, etc.
- 1.3. **EPP.** Refers to the Extensible Provisioning Protocol as specified in RFC 5730 and related RFCs.
- 1.4. **IP address.** Refers to IPv4 or IPv6 addresses without making any distinction between the two. When there is need to make a distinction, IPv4 or IPv6 is used.
- 1.5. **Probes.** Network hosts used to perform (DNS, EPP, etc.) tests (see below) that are located at various global locations.
- 1.6. **RDDS.** Registration Data Directory Services refers to the collective of WHOIS and Web-based WHOIS services as defined in Specification 4 of this Agreement.
- 1.7. **RTT.** Round-Trip Time or **RTT** refers to the time measured from the sending of the first bit of the first packet of the sequence of packets needed to make a request until the reception of the last bit of the last packet of the sequence needed to receive the response. If the client does not receive the whole sequence of packets needed to consider the response as received, the request will be considered unanswered.
- 1.8. **SLR.** Service Level Requirement is the level of service expected for a certain parameter being measured in a Service Level Agreement (SLA).

2. Service Level Agreement Matrix

	Parameter	SLR (monthly basis)
DNS	DNS service availability	0 min downtime = 100% availability
	DNS name server availability	≤ 432 min of downtime (≈ 99%)
	TCP DNS resolution RTT	≤ 1500 ms, for at least 95% of the queries
	UDP DNS resolution RTT	≤ 500 ms, for at least 95% of the queries
	DNS update time	≤ 60 min, for at least 95% of the probes
RDDS	RDDS availability	≤ 864 min of downtime (≈ 98%)
	RDDS query RTT	≤ 2000 ms, for at least 95% of the queries
	RDDS update time	≤ 60 min, for at least 95% of the probes
EPP	EPP service availability	≤ 864 min of downtime (≈ 98%)
	EPP session-command RTT	≤ 4000 ms, for at least 90% of the commands
	EPP query-command RTT	≤ 2000 ms, for at least 90% of the commands
	EPP transform-command RTT	≤ 4000 ms, for at least 90% of the commands

Registry Operator is encouraged to do maintenance for the different services at the times and dates of statistically lower traffic for each service. However, note that there is no provision for planned outages or similar; any downtime, be it for maintenance or due to system failures, will be noted simply as downtime and counted for SLA purposes.

3. DNS

- 3.1. **DNS service availability.** Refers to the ability of the group of listed-as-authoritative name servers of a particular domain name (e.g., a TLD), to answer DNS queries from DNS probes. For the service to be considered available at a particular moment, at least, two of the delegated name servers registered in the DNS must have successful results from “**DNS tests**” to each of their public-DNS registered “**IP addresses**” to which the name server resolves. If 51% or more of the DNS testing probes see the service as unavailable during a given time, the DNS service will be considered unavailable.
- 3.2. **DNS name server availability.** Refers to the ability of a public-DNS registered “**IP address**” of a particular name server listed as authoritative for a domain name, to answer DNS queries from an Internet user. All the public DNS-registered “**IP address**” of all name servers of the domain name being monitored shall be tested individually. If 51% or more of the DNS testing probes get undefined/unanswered results from “**DNS tests**” to a name server “**IP address**” during a given time, the name server “**IP address**” will be considered unavailable.
- 3.3. **UDP DNS resolution RTT.** Refers to the **RTT** of the sequence of two packets, the UDP DNS query and the corresponding UDP DNS response. If the **RTT** is 5 times greater than the time specified in the relevant **SLR**, the **RTT** will be considered undefined.
- 3.4. **TCP DNS resolution RTT.** Refers to the **RTT** of the sequence of packets from the start of the TCP connection to its end, including the reception of the DNS response for only one DNS query. If the **RTT** is 5 times greater than the time specified in the relevant **SLR**, the **RTT** will be considered undefined.
- 3.5. **DNS resolution RTT.** Refers to either “**UDP DNS resolution RTT**” or “**TCP DNS resolution RTT**”.
- 3.6. **DNS update time.** Refers to the time measured from the reception of an EPP confirmation to a transform command on a domain name, until the name servers of the parent domain name answer “**DNS queries**” with data consistent with the change made. This only applies for changes to DNS information.
- 3.7. **DNS test.** Means one non-recursive DNS query sent to a particular “**IP address**” (via UDP or TCP). If DNSSEC is offered in the queried DNS zone, for a query to be considered answered, the signatures must be positively verified against a corresponding DS record published in the parent zone or, if the parent is not signed, against a statically configured Trust Anchor. The answer to the query must contain the corresponding information from the Registry System, otherwise the query will be considered unanswered. A query with a “**DNS resolution RTT**” 5 times higher than the corresponding **SLR**, will be considered unanswered. The possible results to a DNS test are: a number in milliseconds corresponding to the “**DNS resolution RTT**” or, undefined/unanswered.
- 3.8. **Measuring DNS parameters.** Every minute, every DNS probe will make an UDP or TCP “**DNS test**” to each of the public-DNS registered “**IP addresses**” of the name servers of the domain

name being monitored. If a “**DNS test**” result is undefined/unanswered, the tested IP will be considered unavailable from that probe until it is time to make a new test.

3.9. **Collating the results from DNS probes.** The minimum number of active testing probes to consider a measurement valid is 20 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.

3.10. **Distribution of UDP and TCP queries.** DNS probes will send UDP or TCP “**DNS test**” approximating the distribution of these queries.

3.11. **Placement of DNS probes.** Probes for measuring DNS parameters shall be placed as near as possible to the DNS resolvers on the networks with the most users across the different geographic regions; care shall be taken not to deploy probes behind high propagation-delay links, such as satellite links.

4. **RDDS**

4.1. **RDDS availability.** Refers to the ability of all the RDDS services for the TLD, to respond to queries from an Internet user with appropriate data from the relevant Registry System. If 51% or more of the RDDS testing probes see any of the RDDS services as unavailable during a given time, the RDDS will be considered unavailable.

4.2. **WHOIS query RTT.** Refers to the **RTT** of the sequence of packets from the start of the TCP connection to its end, including the reception of the WHOIS response. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.

4.3. **Web-based-WHOIS query RTT.** Refers to the **RTT** of the sequence of packets from the start of the TCP connection to its end, including the reception of the HTTP response for only one HTTP request. If Registry Operator implements a multiple-step process to get to the information, only the last step shall be measured. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.

4.4. **RDDS query RTT.** Refers to the collective of “**WHOIS query RTT**” and “**Web-based-WHOIS query RTT**”.

4.5. **RDDS update time.** Refers to the time measured from the reception of an EPP confirmation to a transform command on a domain name, host or contact, up until the servers of the RDDS services reflect the changes made.

4.6. **RDDS test.** Means one query sent to a particular “**IP address**” of one of the servers of one of the RDDS services. Queries shall be about existing objects in the Registry System and the responses must contain the corresponding information otherwise the query will be considered unanswered. Queries with an **RTT** 5 times higher than the corresponding SLR will be considered as unanswered. The possible results to an RDDS test are: a number in milliseconds corresponding to the **RTT** or undefined/unanswered.

4.7. **Measuring RDDS parameters.** Every 5 minutes, RDDS probes will select one IP address from all the public-DNS registered “**IP addresses**” of the servers for each RDDS service of the TLD being monitored and make an “**RDDS test**” to each one. If an “**RDDS test**” result is

undefined/unanswered, the corresponding RDDS service will be considered as unavailable from that probe until it is time to make a new test.

4.8. **Collating the results from RDDS probes.** The minimum number of active testing probes to consider a measurement valid is 10 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.

4.9. **Placement of RDDS probes.** Probes for measuring RDDS parameters shall be placed inside the networks with the most users across the different geographic regions; care shall be taken not to deploy probes behind high propagation-delay links, such as satellite links.

5. **EPP**

5.1. **EPP service availability.** Refers to the ability of the TLD EPP servers as a group, to respond to commands from the Registry accredited Registrars, who already have credentials to the servers. The response shall include appropriate data from the Registry System. An EPP command with “**EPP command RTT**” 5 times higher than the corresponding SLR will be considered as unanswered. If 51% or more of the EPP testing probes see the EPP service as unavailable during a given time, the EPP service will be considered unavailable.

5.2. **EPP session-command RTT.** Refers to the **RTT** of the sequence of packets that includes the sending of a session command plus the reception of the EPP response for only one EPP session command. For the login command it will include packets needed for starting the TCP session. For the logout command it will include packets needed for closing the TCP session. EPP session commands are those described in section 2.9.1 of EPP RFC 5730. If the **RTT** is 5 times or more the corresponding SLR, the **RTT** will be considered undefined.

5.3. **EPP query-command RTT.** Refers to the **RTT** of the sequence of packets that includes the sending of a query command plus the reception of the EPP response for only one EPP query command. It does not include packets needed for the start or close of either the EPP or the TCP session. EPP query commands are those described in section 2.9.2 of EPP RFC 5730. If the **RTT** is 5-times or more the corresponding SLR, the **RTT** will be considered undefined.

5.4. **EPP transform-command RTT.** Refers to the **RTT** of the sequence of packets that includes the sending of a transform command plus the reception of the EPP response for only one EPP transform command. It does not include packets needed for the start or close of either the EPP or the TCP session. EPP transform commands are those described in section 2.9.3 of EPP RFC 5730. If the **RTT** is 5 times or more the corresponding SLR, the **RTT** will be considered undefined.

5.5. **EPP command RTT.** Refers to “**EPP session-command RTT**”, “**EPP query-command RTT**” or “**EPP transform-command RTT**”.

5.6. **EPP test.** Means one EPP command sent to a particular “**IP address**” for one of the EPP servers. Query and transform commands, with the exception of “create”, shall be about existing objects in the Registry System. The response shall include appropriate data from the Registry System. The possible results to an EPP test are: a number in milliseconds corresponding to the “**EPP command RTT**” or undefined/unanswered.

5.7. **Measuring EPP parameters.** Every 5 minutes, EPP probes will select one “**IP address**“ of the EPP servers of the TLD being monitored and make an “**EPP test**”; every time they should alternate between the 3 different types of commands and between the commands inside each category. If an “**EPP test**” result is undefined/unanswered, the EPP service will be considered as unavailable from that probe until it is time to make a new test.

5.8. **Collating the results from EPP probes.** The minimum number of active testing probes to consider a measurement valid is 5 at any given measurement period, otherwise the measurements will be discarded and will be considered inconclusive; during this situation no fault will be flagged against the SLRs.

5.9. **Placement of EPP probes.** Probes for measuring EPP parameters shall be placed inside or close to Registrars points of access to the Internet across the different geographic regions; care shall be taken not to deploy probes behind high propagation-delay links, such as satellite links.

6. **Emergency Thresholds**

The following matrix presents the Emergency Thresholds that, if reached by any of the services mentioned above for a TLD, would cause the Emergency Transition of the Critical Functions as specified in Section 2.13. of this Agreement.

Critical Function	Emergency Threshold
DNS service (all servers)	4-hour downtime / week
DNSSEC proper resolution	4-hour downtime / week
EPP	24-hour downtime / week
RDDS (WHOIS/Web-based WHOIS)	24-hour downtime / week
Data Escrow	Breach of the Registry Agreement caused by missing escrow deposits as described in Specification 2, Part B, Section 6.

7. **Emergency Escalation**

Escalation is strictly for purposes of notifying and investigating possible or potential issues in relation to monitored services. The initiation of any escalation and the subsequent cooperative investigations do not in themselves imply that a monitored service has failed its performance requirements.

Escalations shall be carried out between ICANN and Registry Operators, Registrars and Registry Operator, and Registrars and ICANN. Registry Operators and ICANN must provide said emergency operations departments. Current contacts must be maintained between ICANN and Registry Operators and published to Registrars, where relevant to their role in escalations, prior to any processing of an Emergency Escalation by all related parties, and kept current at all times.

7.1. **Emergency Escalation initiated by ICANN**

Upon reaching 10% of the Emergency thresholds as described in Section 6, ICANN’s emergency operations will initiate an Emergency Escalation with the relevant Registry Operator. An Emergency Escalation consists of the following minimum elements: electronic (i.e., email or SMS) and/or voice contact notification to the Registry Operator’s emergency operations department with detailed information concerning the issue being escalated, including evidence of monitoring failures, cooperative trouble-shooting of the monitoring failure between ICANN staff and the Registry Operator, and the

commitment to begin the process of rectifying issues with either the monitoring service or the service being monitoring.

7.2. Emergency Escalation initiated by Registrars

Registry Operator will maintain an emergency operations departments prepared to handle emergency requests from registrars. In the event that a registrar is unable to conduct EPP transactions with the Registry because of a fault with the Registry Service and is unable to either contact (through ICANN mandated methods of communication) the Registry Operator, or the Registry Operator is unable or unwilling to address the fault, the registrar may initiate an Emergency Escalation to the emergency operations department of ICANN. ICANN then may initiate an Emergency Escalation with the Registry Operator as explained above.

7.3. Notifications of Outages and Maintenance

In the event that a Registry Operator plans maintenance, they will provide related notice to the ICANN emergency operations department, at least, 24 hours ahead of that maintenance. ICANN's emergency operations department will note planned maintenance times, and suspend Emergency Escalation services for the monitored services during the expected maintenance outage period.

If Registry Operator declares an outage, as per their contractual obligations with ICANN, on services under SLA and performance requirements, it will notify the ICANN emergency operations department. During that declared outage, ICANN's emergency operations department will note and suspend Emergency Escalation services for the monitored services involved.

8. Covenants of Performance Measurement

8.1. **No interference.** Registry Operator shall not interfere with measurement **Probes**, including any form of preferential treatment of the requests for the monitored services. Registry Operator shall respond to the measurement tests described in this Specification as it would do with any other request from Internet users (for DNS and RDDS) or registrars (for EPP).

8.2. **ICANN testing registrar.** Registry Operator agrees that ICANN will have a testing registrar used for purposes of measuring the **SLRs** described above. Registry Operator agrees to not provide any differentiated treatment for the testing registrar other than no billing of the transactions. ICANN shall not use the registrar for registering domain names (or other registry objects) for itself or others, except for the purposes of verifying contractual compliance with the conditions described in this Agreement.

TRADEMARK CLEARINGHOUSE
4 JUNE 2012

1. PURPOSE OF CLEARINGHOUSE

- 1.1 The Trademark Clearinghouse is a central repository for information to be authenticated, stored, and disseminated, pertaining to the rights of trademark holders. ICANN will enter into an arms-length contract with service provider or providers, awarding the right to serve as a Trademark Clearinghouse Service Provider, i.e., to accept, authenticate, validate and facilitate the transmission of information related to certain trademarks.
- 1.2 The Clearinghouse will be required to separate its two primary functions: (i) authentication and validation of the trademarks in the Clearinghouse; and (ii) serving as a database to provide information to the new gTLD registries to support pre-launch Sunrise or Trademark Claims Services. Whether the same provider could serve both functions or whether two providers will be determined in the tender process.
- 1.3 The Registry shall only need to connect with one centralized database to obtain the information it needs to conduct its Sunrise or Trademark Claims Services regardless of the details of the Trademark Clearinghouse Service Provider's contract(s) with ICANN.
- 1.4 Trademark Clearinghouse Service Provider may provide ancillary services, as long as those services and any data used for those services are kept separate from the Clearinghouse database.
- 1.5 The Clearinghouse database will be a repository of authenticated information and disseminator of the information to a limited number of recipients. Its functions will be performed in accordance with a limited charter, and will not have any discretionary powers other than what will be set out in the charter with respect to authentication and validation. The Clearinghouse administrator(s) cannot create policy. Before material changes are made to the Clearinghouse functions, they will be reviewed through the ICANN public participation model.
- 1.6 Inclusion in the Clearinghouse is not proof of any right, nor does it create any legal rights. Failure to submit trademarks into the Clearinghouse should not be perceived to be lack of vigilance by trademark holders or a waiver of any rights, nor can any negative influence be drawn from such failure.

2. SERVICE PROVIDERS

- 2.1 The selection of Trademark Clearinghouse Service Provider(s) will be subject to predetermined criteria, but the foremost considerations will be the ability to store, authenticate, validate and disseminate the data at the highest level of technical stability

and security without interference with the integrity or timeliness of the registration process or registry operations.

2.2 Functions – Authentication/Validation; Database Administration. Public commentary has suggested that the best way to protect the integrity of the data and to avoid concerns that arise through sole-source providers would be to separate the functions of database administration and data authentication/validation.

2.2.1 One entity will authenticate registrations ensuring the word marks qualify as registered or are court-validated word marks or word marks that are protected by statute or treaty. This entity would also be asked to ensure that proof of use of marks is provided, which can be demonstrated by furnishing a signed declaration and one specimen of current use.

2.2.2 The second entity will maintain the database and provide Sunrise and Trademark Claims Services (described below).

2.3 Discretion will be used, balancing effectiveness, security and other important factors, to determine whether ICANN will contract with one or two entities - one to authenticate and validate, and the other to, administer in order to preserve integrity of the data.

2.4 Contractual Relationship.

2.4.1 The Clearinghouse shall be separate and independent from ICANN. It will operate based on market needs and collect fees from those who use its services. ICANN may coordinate or specify interfaces used by registries and registrars, and provide some oversight or quality assurance function to ensure rights protection goals are appropriately met.

2.4.2 The Trademark Clearinghouse Service Provider(s) (authenticator/validator and administrator) will be selected through an open and transparent process to ensure low costs and reliable, consistent service for all those utilizing the Clearinghouse services.

2.4.3 The Service Provider(s) providing the authentication of the trademarks submitted into the Clearinghouse shall adhere to rigorous standards and requirements that would be specified in an ICANN contractual agreement.

2.4.4 The contract shall include service level requirements, customer service availability (with the goal of seven days per week, 24 hours per day, 365 days per year), data escrow requirements, and equal access requirements for all persons and entities required to access the Trademark Clearinghouse database.

- 2.4.5 To the extent practicable, the contract should also include indemnification by Service Provider for errors such as false positives for participants such as Registries, ICANN, Registrants and Registrars.
- 2.5. Service Provider Requirements. The Clearinghouse Service Provider(s) should utilize regional marks authentication service providers (whether directly or through sub-contractors) to take advantage of local experts who understand the nuances of the trademark in question. Examples of specific performance criteria details in the contract award criteria and service-level-agreements are:
 - 2.5.1 provide 24 hour accessibility seven days a week (database administrator);
 - 2.5.2 employ systems that are technically reliable and secure (database administrator);
 - 2.5.3 use globally accessible and scalable systems so that multiple marks from multiple sources in multiple languages can be accommodated and sufficiently cataloged (database administrator and validator);
 - 2.5.4 accept submissions from all over the world - the entry point for trademark holders to submit their data into the Clearinghouse database could be regional entities or one entity;
 - 2.5.5 allow for multiple languages, with exact implementation details to be determined;
 - 2.5.6 provide access to the Registrants to verify and research Trademark Claims Notices;
 - 2.5.7 have the relevant experience in database administration, validation or authentication, as well as accessibility to and knowledge of the various relevant trademark laws (database administrator and authenticator); and
 - 2.5.8 ensure through performance requirements, including those involving interface with registries and registrars, that neither domain name registration timeliness, nor registry or registrar operations will be hindered (database administrator).

3. CRITERIA FOR TRADEMARK INCLUSION IN CLEARINGHOUSE

- 3.1 The trademark holder will submit to one entity – a single entity for entry will facilitate access to the entire Clearinghouse database. If regional entry points are used, ICANN will publish an information page describing how to locate regional submission points. Regardless of the entry point into the Clearinghouse, the authentication procedures established will be uniform.
- 3.2 The standards for inclusion in the Clearinghouse are:
 - 3.2.1 Nationally or regionally registered word marks from all jurisdictions.
 - 3.2.2 Any word mark that has been validated through a court of law or other judicial proceeding.

- 3.2.3 Any word mark protected by a statute or treaty in effect at the time the mark is submitted to the Clearinghouse for inclusion.
 - 3.2.4 Other marks that constitute intellectual property.
 - 3.2.5 Protections afforded to trademark registrations do not extend to applications for registrations, marks within any opposition period or registered marks that were the subject of successful invalidation, cancellation or rectification proceedings.
- 3.3 The type of data supporting entry of a registered word mark into the Clearinghouse must include a copy of the registration or the relevant ownership information, including the requisite registration number(s), the jurisdictions where the registrations have issued, and the name of the owner of record.
- 3.4 Data supporting entry of a judicially validated word mark into the Clearinghouse must include the court documents, properly entered by the court, evidencing the validation of a given word mark.
- 3.5 Data supporting entry into the Clearinghouse of word marks protected by a statute or treaty in effect at the time the mark is submitted to the Clearinghouse for inclusion, must include a copy of the relevant portion of the statute or treaty and evidence of its effective date.
- 3.6 Data supporting entry into the Clearinghouse of marks that constitute intellectual property of types other than those set forth in sections 3.2.1-3.2.3 above shall be determined by the registry operator and the Clearinghouse based on the services any given registry operator chooses to provide.
- 3.7 Registrations that include top level extensions such as “icann.org” or “.icann” as the word mark will not be permitted in the Clearinghouse regardless of whether that mark has been registered or it has been otherwise validated or protected (e.g., if a mark existed for icann.org or .icann, neither will not be permitted in the Clearinghouse).
- 3.8 All mark holders seeking to have their marks included in the Clearinghouse will be required to submit a declaration, affidavit, or other sworn statement that the information provided is true and current and has not been supplied for an improper purpose. The mark holder will also be required to attest that it will keep the information supplied to the Clearinghouse current so that if, during the time the mark is included in the Clearinghouse, a registration gets cancelled or is transferred to another entity, or in the case of a court- or Clearinghouse-validated mark the holder abandons use of the mark, the mark holder has an affirmative obligation to notify the Clearinghouse. There will be penalties for failing to keep information current. Moreover, it is anticipated that there will be a process whereby registrations can be

removed from the Clearinghouse if it is discovered that the marks are procured by fraud or if the data is inaccurate.

- 3.9 As an additional safeguard, the data will have to be renewed periodically by any mark holder wishing to remain in the Clearinghouse. Electronic submission should facilitate this process and minimize the cost associated with it. The reason for periodic authentication is to streamline the efficiencies of the Clearinghouse and the information the registry operators will need to process and limit the marks at issue to the ones that are in use.

4. USE OF CLEARINGHOUSE DATA

- 4.1 All mark holders seeking to have their marks included in the Clearinghouse will have to consent to the use of their information by the Clearinghouse. However, such consent would extend only to use in connection with the stated purpose of the Trademark Clearinghouse Database for Sunrise or Trademark Claims services. The reason for such a provision would be to presently prevent the Clearinghouse from using the data in other ways without permission. There shall be no bar on the Trademark Clearinghouse Service Provider or other third party service providers providing ancillary services on a non-exclusive basis.
- 4.2 In order not to create a competitive advantage, the data in the Trademark Clearinghouse should be licensed to competitors interested in providing ancillary services on equal and non-discriminatory terms and on commercially reasonable terms if the mark holders agree. Accordingly, two licensing options will be offered to the mark holder: (a) a license to use its data for all required features of the Trademark Clearinghouse, with no permitted use of such data for ancillary services either by the Trademark Clearinghouse Service Provider or any other entity; or (b) license to use its data for the mandatory features of the Trademark Clearinghouse and for any ancillary uses reasonably related to the protection of marks in new gTLDs, which would include a license to allow the Clearinghouse to license the use and data in the Trademark Clearinghouse to competitors that also provide those ancillary services. The specific implementation details will be determined, and all terms and conditions related to the provision of such services shall be included in the Trademark Clearinghouse Service Provider's contract with ICANN and subject to ICANN review.
- 4.3 Access by a prospective registrant to verify and research Trademark Claims Notices shall not be considered an ancillary service, and shall be provided at no cost to the Registrant. Misuse of the data by the service providers would be grounds for immediate termination.

5. DATA AUTHENTICATION AND VALIDATION GUIDELINES

- 5.1 One core function for inclusion in the Clearinghouse would be to authenticate that the data meets certain minimum criteria. As such, the following minimum criteria are suggested:
- 5.1.1 An acceptable list of data authentication sources, i.e. the web sites of patent and trademark offices throughout the world, third party providers who can obtain information from various trademark offices;
 - 5.1.2 Name, address and contact information of the applicant is accurate, current and matches that of the registered owner of the trademarks listed;
 - 5.1.3 Electronic contact information is provided and accurate;
 - 5.1.4 The registration numbers and countries match the information in the respective trademark office database for that registration number.
- 5.2 For validation of marks by the Clearinghouse that were not protected via a court, statute or treaty, the mark holder shall be required to provide evidence of use of the mark in connection with the bona fide offering for sale of goods or services prior to application for inclusion in the Clearinghouse. Acceptable evidence of use will be a signed declaration and a single specimen of current use, which might consist of labels, tags, containers, advertising, brochures, screen shots, or something else that evidences current use.

6. MANDATORY RIGHTS PROTECTION MECHANISMS

All new gTLD registries will be required to use the Trademark Clearinghouse to support its pre-launch or initial launch period rights protection mechanisms (RPMs). These RPMs, at a minimum, must consist of a Trademark Claims service and a Sunrise process.

- 6.1 Trademark Claims service
- 6.1.1 New gTLD Registry Operators must provide Trademark Claims services during an initial launch period for marks in the Trademark Clearinghouse. This launch period must occur for at least the first 60 days that registration is open for general registration.
 - 6.1.2 A Trademark Claims service is intended to provide clear notice to the prospective registrant of the scope of the mark holder's rights in order to minimize the chilling effect on registrants (Trademark Claims Notice). A form that describes the required elements is attached. The specific statement by

prospective registrant warrants that: (i) the prospective registrant has received notification that the mark(s) is included in the Clearinghouse; (ii) the prospective registrant has received and understood the notice; and (iii) to the best of the prospective registrant's knowledge, the registration and use of the requested domain name will not infringe on the rights that are the subject of the notice.

- 6.1.3 The Trademark Claims Notice should provide the prospective registrant access to the Trademark Clearinghouse Database information referenced in the Trademark Claims Notice to enhance understanding of the Trademark rights being claimed by the trademark holder. These links (or other sources) shall be provided in real time without cost to the prospective registrant. Preferably, the Trademark Claims Notice should be provided in the language used for the rest of the interaction with the registrar or registry, but it is anticipated that at the very least in the most appropriate UN-sponsored language (as specified by the prospective registrant or registrar/registry).
- 6.1.4 If the domain name is registered in the Clearinghouse, the registrar (again through an interface with the Clearinghouse) will promptly notify the mark holders(s) of the registration after it is effectuated.
- 6.1.5 The Trademark Clearinghouse Database will be structured to report to registries when registrants are attempting to register a domain name that is considered an "Identical Match" with the mark in the Clearinghouse. "Identical Match" means that the domain name consists of the complete and identical textual elements of the mark. In this regard: (a) spaces contained within a mark that are either replaced by hyphens (and vice versa) or omitted; (b) only certain special characters contained within a trademark are spelled out with appropriate words describing it (@ and &); (c) punctuation or special characters contained within a mark that are unable to be used in a second-level domain name may either be (i) omitted or (ii) replaced by spaces, hyphens or underscores and still be considered identical matches; and (d) no plural and no "marks contained" would qualify for inclusion.

6.2 Sunrise service

- 6.2.1 Sunrise registration services must be offered for a minimum of 30 days during the pre-launch phase and notice must be provided to all trademark holders in the Clearinghouse if someone is seeking a sunrise registration. This notice will be provided to holders of marks in the Clearinghouse that are an Identical Match to the name to be registered during Sunrise.
- 6.2.2 Sunrise Registration Process. For a Sunrise service, sunrise eligibility requirements (SERs) will be met as a minimum requirement, verified by Clearinghouse data, and

incorporate a Sunrise Dispute Resolution Policy (SDRP).

- 6.2.3 The proposed SERs include: (i) ownership of a mark (that satisfies the criteria in section 7.2 below), (ii) optional registry elected requirements re: international class of goods or services covered by registration; (iii) representation that all provided information is true and correct; and (iv) provision of data sufficient to document rights in the trademark.
- 6.2.4 The proposed SDRP must allow challenges based on at least the following four grounds: (i) at time the challenged domain name was registered, the registrant did not hold a trademark registration of national effect (or regional effect) or the trademark had not been court-validated or protected by statute or treaty; (ii) the domain name is not identical to the mark on which the registrant based its Sunrise registration; (iii) the trademark registration on which the registrant based its Sunrise registration is not of national effect (or regional effect) or the trademark had not been court-validated or protected by statute or treaty; or (iv) the trademark registration on which the domain name registrant based its Sunrise registration did not issue on or before the effective date of the Registry Agreement and was not applied for on or before ICANN announced the applications received.
- 6.2.5 The Clearinghouse will maintain the SERs, validate and authenticate marks, as applicable, and hear challenges.

7. PROTECTION FOR MARKS IN CLEARINGHOUSE

The scope of registered marks that must be honored by registries in providing Trademarks Claims services is broader than those that must be honored by registries in Sunrise services.

- 7.1 For Trademark Claims services - Registries must recognize and honor all word marks that have been or are: (i) nationally or regionally registered; (ii) court-validated; or (iii) specifically protected by a statute or treaty in effect at the time the mark is submitted to the Clearinghouse for inclusion. No demonstration of use is required.
- 7.2 For Sunrise services - Registries must recognize and honor all word marks: (i) nationally or regionally registered and for which proof of use – which can be a declaration and a single specimen of current use – was submitted to, and validated by, the Trademark Clearinghouse; or (ii) that have been court-validated; or (iii) that are specifically protected by a statute or treaty currently in effect and that was in effect on or before 26 June 2008.

8. COSTS OF CLEARINGHOUSE

Costs should be completely borne by the parties utilizing the services. Trademark holders will pay to register the Clearinghouse, and registries will pay for Trademark Claims and Sunrise services. Registrars and others who avail themselves of Clearinghouse services will pay the Clearinghouse directly.

TRADEMARK NOTICE

[In English and the language of the registration agreement]

You have received this Trademark Notice because you have applied for a domain name which matches at least one trademark record submitted to the Trademark Clearinghouse.

You may or may not be entitled to register the domain name depending on your intended use and whether it is the same or significantly overlaps with the trademarks listed below.

Your rights to register this domain name may or may not be protected as noncommercial use or "fair use" by the laws of your country. [in bold italics or all caps]

Please read the trademark information below carefully, including the trademarks, jurisdictions, and goods and service for which the trademarks are registered. Please be aware that not all jurisdictions review trademark applications closely, so some of the trademark information below may exist in a national or regional registry which does not conduct a thorough or substantive review of trademark rights prior to registration.

If you have questions, you may want to consult an attorney or legal expert on trademarks and intellectual property for guidance.

If you continue with this registration, you represent that, you have received and you understand this notice and to the best of your knowledge, your registration and use of the requested domain name will not infringe on the trademark rights listed below.

The following [number] Trademarks are listed in the Trademark Clearinghouse:

1. Mark: Jurisdiction: Goods: [click here for more if maximum character count is exceeded] International Class of Goods and Services or Equivalent if applicable: Trademark Registrant: Trademark Registrant Contact:

[with links to the TM registrations as listed in the TM Clearinghouse]

2. Mark: Jurisdiction: Goods: [click here for more if maximum character count is exceeded] International Class of Goods and Services or Equivalent if applicable: Trademark Registrant:

Trademark Registrant Contact:

***** [with links to the TM registrations as listed in the TM Clearinghouse]

X. 1. Mark: Jurisdiction: Goods: [click here for more if maximum character count is exceeded] International Class of Goods and Services or Equivalent if applicable: Trademark Registrant: Trademark Registrant Contact:

**UNIFORM RAPID SUSPENSION SYSTEM (“URS”)
4 JUNE 2012**

DRAFT PROCEDURE

1. Complaint

1.1 Filing the Complaint

- a) Proceedings are initiated by electronically filing with a URS Provider a Complaint outlining the trademark rights and the actions complained of entitling the trademark holder to relief.
- b) Each Complaint must be accompanied by the appropriate fee, which is under consideration. The fees will be non-refundable.
- c) One Complaint is acceptable for multiple related companies against one Registrant, but only if the companies complaining are related. Multiple Registrants can be named in one Complaint only if it can be shown that they are in some way related. There will not be a minimum number of domain names imposed as a prerequisite to filing.

1.2 Contents of the Complaint

The form of the Complaint will be simple and as formulaic as possible. There will be a Form Complaint. The Form Complaint shall include space for the following:

- 1.2.1 Name, email address and other contact information for the Complaining Party (Parties).
- 1.2.2 Name, email address and contact information for any person authorized to act on behalf of Complaining Parties.
- 1.2.3 Name of Registrant (i.e. relevant information available from Whois) and Whois listed available contact information for the relevant domain name(s).
- 1.2.4 The specific domain name(s) that are the subject of the Complaint. For each domain name, the Complainant shall include a copy of the currently available Whois information and a description and copy, if available, of the offending portion of the website content associated with each domain name that is the subject of the Complaint.
- 1.2.5 The specific trademark/service marks upon which the Complaint is based and pursuant to which the Complaining Parties are asserting their rights to them, for which goods and in connection with what services.
- 1.2.6 A statement of the grounds upon which the Complaint is based setting forth facts showing that the Complaining Party is entitled to relief, namely:

1.2.6.1. that the registered domain name is identical or confusingly similar to a word mark: (i) for which the Complainant holds a valid national or regional registration and that is in current use; or (ii) that has been validated through court proceedings; or (iii) that is specifically protected by a statute or treaty in effect at the time the URS complaint is filed.

- a. Use can be shown by demonstrating that evidence of use – which can be a declaration and one specimen of current use in commerce - was submitted to, and validated by, the Trademark Clearinghouse)
- b. Proof of use may also be submitted directly with the URS Complaint.

and

1.2.6.2. that the Registrant has no legitimate right or interest to the domain name; and

1.2.6.3. that the domain was registered and is being used in bad faith.

A non-exclusive list of circumstances that demonstrate bad faith registration and use by the Registrant include:

- a. Registrant has registered or acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of documented out-of pocket costs directly related to the domain name; or
- b. Registrant has registered the domain name in order to prevent the trademark holder or service mark from reflecting the mark in a corresponding domain name, provided that Registrant has engaged in a pattern of such conduct; or
- c. Registrant registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- d. By using the domain name Registrant has intentionally attempted to attract for commercial gain, Internet users to Registrant's web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of Registrant's web site or location or of a product or service on that web site or location.

1.2.7 A box in which the Complainant may submit up to 500 words of explanatory free form text.

1.2.8. An attestation that the Complaint is not being filed for any improper basis and that there is a sufficient good faith basis for filing the Complaint.

2. Fees

2.1 URS Provider will charge fees to the Complainant. Fees are thought to be in the range of USD 300 per proceeding, but will ultimately be set by the Provider.

2.2 Complaints listing fifteen (15) or more disputed domain names registered by the same registrant will be subject to a Response Fee which will be refundable to the prevailing party. Under no circumstances shall the Response Fee exceed the fee charged to the Complainant.

3. Administrative Review

3.1 Complaints will be subjected to an initial administrative review by the URS Provider for compliance with the filing requirements. This is a review to determine that the Complaint contains all of the necessary information, and is not a determination as to whether a *prima facie* case has been established.

3.2 The Administrative Review shall be conducted within two (2) business days of submission of the Complaint to the URS Provider.

3.3 Given the rapid nature of this Procedure, and the intended low level of required fees, there will be no opportunity to correct inadequacies in the filing requirements.

3.4 If a Complaint is deemed non-compliant with filing requirements, the Complaint will be dismissed without prejudice to the Complainant filing a new complaint. The initial filing fee shall not be refunded in these circumstances.

4. Notice and Locking of Domain

4.1 Upon completion of the Administrative Review, the URS Provider must immediately notify the registry operator (via email) ("Notice of Complaint") after the Complaint has been deemed compliant with the filing requirements. Within 24 hours of receipt of the Notice of Complaint from the URS Provider, the registry operator shall "lock" the domain, meaning the registry shall restrict all changes to the registration data, including transfer and deletion of the domain names, but the name will continue to resolve. The registry operator will notify the URS Provider immediately upon locking the domain name ("Notice of Lock").

4.2 Within 24 hours after receiving Notice of Lock from the registry operator, the URS Provider shall notify the Registrant of the Complaint, sending a hard copy of the Notice of Complaint to the addresses listed in the Whois contact information, and providing an electronic copy of the Complaint, advising of the locked status, as well as the potential

effects if the Registrant fails to respond and defend against the Complaint. Notices must be clear and understandable to Registrants located globally. The Notice of Complaint shall be in English and translated by the Provider into the predominant language used in the registrant's country or territory.

- 4.3 All Notices to the Registrant shall be sent through email, fax (where available) and postal mail. The Complaint and accompanying exhibits, if any, shall be served electronically.
- 4.4 The URS Provider shall also electronically notify the registrar of record for the domain name at issue via the addresses the registrar has on file with ICANN.

5. The Response

- 5.1 A Registrant will have 14 calendar days from the date the URS Provider sent its Notice of Complaint to the Registrant to electronically file a Response with the URS Provider. Upon receipt, the Provider will electronically send a copy of the Response, and accompanying exhibits, if any, to the Complainant.
- 5.2 No filing fee will be charged if the Registrant files its Response prior to being declared in default or not more than thirty (30) days following a Determination. For Responses filed more than thirty (30) days after a Determination, the Registrant should pay a reasonable non-refundable fee for re-examination, plus a Response Fee as set forth in section 2.2 above if the Complaint lists twenty-six (26) or more disputed domain names against the same registrant. The Response Fee will be refundable to the prevailing party.
- 5.3 Upon request by the Registrant, a limited extension of time to respond may be granted by the URS Provider if there is a good faith basis for doing so. In no event shall the extension be for more than seven (7) calendar days.
- 5.4 The Response shall be no longer than 2,500 words, excluding attachments, and the content of the Response should include the following:
 - 5.4.1 Confirmation of Registrant data.
 - 5.4.2 Specific admission or denial of each of the grounds upon which the Complaint is based.
 - 5.4.3 Any defense which contradicts the Complainant's claims.
 - 5.4.4 A statement that the contents are true and accurate.
- 5.5 In keeping with the intended expedited nature of the URS and the remedy afforded to a successful Complainant, affirmative claims for relief by the Registrant will not be permitted except for an allegation that the Complainant has filed an abusive Complaint.
- 5.6 Once the Response is filed, and the URS Provider determines that the Response is compliant with the filing requirements of a Response (which shall be on the same day),

the Complaint, Response and supporting materials will immediately be sent to a qualified Examiner, selected by the URS Provider, for review and Determination. All materials submitted are considered by the Examiner.

- 5.7 The Response can contain any facts refuting the claim of bad faith registration by setting out any of the following circumstances:
- 5.7.1 Before any notice to Registrant of the dispute, Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
 - 5.7.2 Registrant (as an individual, business or other organization) has been commonly known by the domain name, even if Registrant has acquired no trademark or service mark rights; or
 - 5.7.3 Registrant is making a legitimate or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Such claims, if found by the Examiner to be proved based on its evaluation of all evidence, shall result in a finding in favor of the Registrant.

- 5.8 The Registrant may also assert Defenses to the Complaint to demonstrate that the Registrant's use of the domain name is not in bad faith by showing, for example, one of the following:
- 5.8.1 The domain name is generic or descriptive and the Registrant is making fair use of it.
 - 5.8.2 The domain name sites are operated solely in tribute to or in criticism of a person or business that is found by the Examiner to be fair use.
 - 5.8.3 Registrant's holding of the domain name is consistent with an express term of a written agreement entered into by the disputing Parties and that is still in effect.
 - 5.8.4 The domain name is not part of a wider pattern or series of abusive registrations because the Domain Name is of a significantly different type or character to other domain names registered by the Registrant.
- 5.9 Other factors for the Examiner to consider:
- 5.9.1 Trading in domain names for profit, and holding a large portfolio of domain names, are of themselves not indicia of bad faith under the URS. Such conduct, however, may be abusive in a given case depending on the circumstances of the dispute. The Examiner must review each case on its merits.
 - 5.9.2 Sale of traffic (i.e. connecting domain names to parking pages and earning click-per-view revenue) does not in and of itself constitute bad faith under the URS.

Such conduct, however, may be abusive in a given case depending on the circumstances of the dispute. The Examiner will take into account:

5.9.2.1. the nature of the domain name;

5.9.2.2. the nature of the advertising links on any parking page associated with the domain name; and

5.9.2.3. that the use of the domain name is ultimately the Registrant's responsibility.

6. Default

- 6.1 If at the expiration of the 14-day answer period (or extended period if granted), the Registrant does not submit an answer, the Complaint proceeds to Default.
- 6.2 In either case, the Provider shall provide Notice of Default via email to the Complainant and Registrant, and via mail and fax to Registrant. During the Default period, the Registrant will be prohibited from changing content found on the site to argue that it is now a legitimate use and will also be prohibited from changing the Whois information.
- 6.3 All Default cases proceed to Examination for review on the merits of the claim.
- 6.4 If after Examination in Default cases, the Examiner rules in favor of Complainant, Registrant shall have the right to seek relief from Default via de novo review by filing a Response at any time up to six months after the date of the Notice of Default. The Registrant will also be entitled to request an extension of an additional six months if the extension is requested before the expiration of the initial six-month period.
- 6.5 If a Response is filed after: (i) the Respondent was in Default (so long as the Response is filed in accordance with 6.4 above); and (ii) proper notice is provided in accordance with the notice requirements set forth above, the domain name shall again resolve to the original IP address as soon as practical, but shall remain locked as if the Response had been filed in a timely manner before Default. The filing of a Response after Default is not an appeal; the case is considered as if responded to in a timely manner.
- 6.5 If after Examination in Default case, the Examiner rules in favor of Registrant, the Provider shall notify the Registry Operator to unlock the name and return full control of the domain name registration to the Registrant.

7. Examiners

- 7.1 One Examiner selected by the Provider will preside over a URS proceeding.
- 7.2 Examiners should have demonstrable relevant legal background, such as in trademark law, and shall be trained and certified in URS proceedings. Specifically, Examiners shall be provided with instructions on the URS elements and defenses and how to conduct the examination of a URS proceeding.

- 7.3 Examiners used by any given URS Provider shall be rotated to the extent feasible to avoid “forum or examiner shopping.” URS Providers are strongly encouraged to work equally with all certified Examiners, with reasonable exceptions (such as language needs, non-performance, or malfeasance) to be determined on a case by case analysis.

8. Examination Standards and Burden of Proof

- 8.1 The standards that the qualified Examiner shall apply when rendering its Determination are whether:
- 8.1.2 The registered domain name is identical or confusingly similar to a word mark: (i) for which the Complainant holds a valid national or regional registration and that is in current use; or (ii) that has been validated through court proceedings; or (iii) that is specifically protected by a statute or treaty currently in effect and that was in effect at the time the URS Complaint is filed; and
- 8.1.2.1 Use can be shown by demonstrating that evidence of use – which can be a declaration and one specimen of current use – was submitted to, and validated by, the Trademark Clearinghouse.
- 8.1.2.2 Proof of use may also be submitted directly with the URS Complaint.
- 8.1.2 The Registrant has no legitimate right or interest to the domain name; and
- 8.1.3 The domain was registered and is being used in a bad faith.
- 8.2 The burden of proof shall be clear and convincing evidence.
- 8.3 For a URS matter to conclude in favor of the Complainant, the Examiner shall render a Determination that there is no genuine issue of material fact. Such Determination may include that: (i) the Complainant has rights to the name; and (ii) the Registrant has no rights or legitimate interest in the name. This means that the Complainant must present adequate evidence to substantiate its trademark rights in the domain name (e.g., evidence of a trademark registration and evidence that the domain name was registered and is being used in bad faith in violation of the URS).
- 8.4 If the Examiner finds that the Complainant has not met its burden, or that genuine issues of material fact remain in regards to any of the elements, the Examiner will reject the Complaint under the relief available under the URS. That is, the Complaint shall be dismissed if the Examiner finds that evidence was presented or is available to the Examiner to indicate that the use of the domain name in question is a non-infringing use or fair use of the trademark.
- 8.5 Where there is any genuine contestable issue as to whether a domain name registration and use of a trademark are in bad faith, the Complaint will be denied, the URS proceeding will be terminated without prejudice, e.g., a UDRP, court proceeding or

another URS may be filed. The URS is not intended for use in any proceedings with open questions of fact, but only clear cases of trademark abuse.

- 8.6 To restate in another way, if the Examiner finds that all three standards are satisfied by clear and convincing evidence and that there is no genuine contestable issue, then the Examiner shall issue a Determination in favor of the Complainant. If the Examiner finds that any of the standards have not been satisfied, then the Examiner shall deny the relief requested, thereby terminating the URS proceeding without prejudice to the Complainant to proceed with an action in court of competent jurisdiction or under the UDRP.

9. Determination

- 9.1 There will be no discovery or hearing; the evidence will be the materials submitted with the Complaint and the Response, and those materials will serve as the entire record used by the Examiner to make a Determination.
- 9.2 If the Complainant satisfies the burden of proof, the Examiner will issue a Determination in favor of the Complainant. The Determination will be published on the URS Provider's website. However, there should be no other preclusive effect of the Determination other than the URS proceeding to which it is rendered.
- 9.3 If the Complainant does not satisfy the burden of proof, the URS proceeding is terminated and full control of the domain name registration shall be returned to the Registrant.
- 9.4 Determinations resulting from URS proceedings will be published by the service provider in a format specified by ICANN.
- 9.5 Determinations shall also be emailed by the URS Provider to the Registrant, the Complainant, the Registrar, and the Registry Operator, and shall specify the remedy and required actions of the registry operator to comply with the Determination.
- 9.6 To conduct URS proceedings on an expedited basis, examination should begin immediately upon the earlier of the expiration of a fourteen (14) day Response period (or extended period if granted), or upon the submission of the Response. A Determination shall be rendered on an expedited basis, with the stated goal that it be rendered within three (3) business days from when Examination began. Absent extraordinary circumstances, however, Determinations must be issued no later than five (5) days after the Response is filed. Implementation details will be developed to accommodate the needs of service providers once they are selected. (The tender offer for potential service providers will indicate that timeliness will be a factor in the award decision.)

10. Remedy

- 10.1 If the Determination is in favor of the Complainant, the decision shall be immediately transmitted to the registry operator.

- 10.2 Immediately upon receipt of the Determination, the registry operator shall suspend the domain name, which shall remain suspended for the balance of the registration period and would not resolve to the original web site. The nameservers shall be redirected to an informational web page provided by the URS Provider about the URS. The URS Provider shall not be allowed to offer any other services on such page, nor shall it directly or indirectly use the web page for advertising purposes (either for itself or any other third party). The Whois for the domain name shall continue to display all of the information of the original Registrant except for the redirection of the nameservers. In addition, the Whois shall reflect that the domain name will not be able to be transferred, deleted or modified for the life of the registration.
- 10.3 There shall be an option for a successful Complainant to extend the registration period for one additional year at commercial rates.
- 10.4 No other remedies should be available in the event of a Determination in favor of the Complainant.

11. Abusive Complaints

- 11.1 The URS shall incorporate penalties for abuse of the process by trademark holders.
- 11.2 In the event a party is deemed to have filed two (2) abusive Complaints, or one (1) “deliberate material falsehood,” that party shall be barred from utilizing the URS for one-year following the date of issuance of a Determination finding a complainant to have: (i) filed its second abusive complaint; or (ii) filed a deliberate material falsehood.
- 11.3 A Complaint may be deemed abusive if the Examiner determines:
 - 11.3.1 it was presented solely for improper purpose such as to harass, cause unnecessary delay, or needlessly increase the cost of doing business; and
 - 11.3.2 (i) the claims or other assertions were not warranted by any existing law or the URS standards; or (ii) the factual contentions lacked any evidentiary support
- 11.4 An Examiner may find that Complaint contained a deliberate material falsehood if it contained an assertion of fact, which at the time it was made, was made with the knowledge that it was false and which, if true, would have an impact on the outcome on the URS proceeding.
- 11.5 Two findings of “deliberate material falsehood” shall permanently bar the party from utilizing the URS.
- 11.6 URS Providers shall be required to develop a process for identifying and tracking barred parties, and parties whom Examiners have determined submitted abusive complaints or deliberate material falsehoods.

- 11.7 The dismissal of a complaint for administrative reasons or a ruling on the merits, in itself, shall not be evidence of filing an abusive complaint.
- 11.8 A finding that filing of a complaint was abusive or contained a deliberate materially falsehood can be appealed solely on the grounds that an Examiner abused his/her discretion, or acted in an arbitrary or capricious manner.

12. Appeal

- 12.1 Either party shall have a right to seek a de novo appeal of the Determination based on the existing record within the URS proceeding for a reasonable fee to cover the costs of the appeal. An appellant must identify the specific grounds on which the party is appealing, including why the appellant claims the Examiner's Determination was incorrect.
- 12.2 The fees for an appeal shall be borne by the appellant. A limited right to introduce new admissible evidence that is material to the Determination will be allowed upon payment of an additional fee, provided the evidence clearly pre-dates the filing of the Complaint. The Appeal Panel, to be selected by the Provider, may request, in its sole discretion, further statements or documents from either of the Parties.
- 12.3 Filing an appeal shall not change the domain name's resolution. For example, if the domain name no longer resolves to the original nameservers because of a Determination in favor of the Complainant, the domain name shall continue to point to the informational page provided by the URS Provider. If the domain name resolves to the original nameservers because of a Determination in favor of the registrant, it shall continue to resolve during the appeal process.
- 12.4 An appeal must be filed within 14 days after a Determination is issued and any Response must be filed 14 days after an appeal is filed.
- 12.5 If a respondent has sought relief from Default by filing a Response within six months (or the extended period if applicable) of issuance of initial Determination, an appeal must be filed within 14 days from date the second Determination is issued and any Response must be filed 14 days after the appeal is filed.
- 12.6 Notice of appeal and findings by the appeal panel shall be sent by the URS Provider via e-mail to the Registrant, the Complainant, the Registrar, and the Registry Operator.
- 12.7 The Providers' rules and procedures for appeals, other than those stated above, shall apply.

13. Other Available Remedies

The URS Determination shall not preclude any other remedies available to the appellant, such as UDRP (if appellant is the Complainant), or other remedies as may be available in a court of competition jurisdiction. A URS Determination for or against a party shall not prejudice the

party in UDRP or any other proceedings.

14. Review of URS

A review of the URS procedure will be initiated one year after the first Examiner Determination is issued. Upon completion of the review, a report shall be published regarding the usage of the procedure, including statistical information, and posted for public comment on the usefulness and effectiveness of the procedure.

TRADEMARK POST-DELEGATION DISPUTE RESOLUTION PROCEDURE (TRADEMARK PDDRP)
4 JUNE 2012

1. Parties to the Dispute

The parties to the dispute will be the trademark holder and the gTLD registry operator. ICANN shall not be a party.

2. Applicable Rules

2.1 This procedure is intended to cover Trademark post-delegation dispute resolution proceedings generally. To the extent more than one Trademark PDDRP provider ("Provider") is selected to implement the Trademark PDDRP, each Provider may have additional rules that must be followed when filing a Complaint. The following are general procedures to be followed by all Providers.

2.2 In the Registry Agreement, the registry operator agrees to participate in all post-delegation procedures and be bound by the resulting Determinations.

3. Language

3.1 The language of all submissions and proceedings under the procedure will be English.

3.2 Parties may submit supporting evidence in their original language, provided and subject to the authority of the Expert Panel to determine otherwise, that such evidence is accompanied by an English translation of all relevant text.

4. Communications and Time Limits

4.1 All communications with the Provider must be submitted electronically.

4.2 For the purpose of determining the date of commencement of a time limit, a notice or other communication will be deemed to have been received on the day that it is transmitted to the appropriate contact person designated by the parties.

4.3 For the purpose of determining compliance with a time limit, a notice or other communication will be deemed to have been sent, made or transmitted on the day that it is dispatched.

4.4 For the purpose of calculating a period of time under this procedure, such period will begin to run on the day following the date of receipt of a notice or other communication.

4.5 All references to day limits shall be considered as calendar days unless otherwise specified.

5. Standing

- 5.1 The mandatory administrative proceeding will commence when a third-party complainant (“Complainant”) has filed a Complaint with a Provider asserting that the Complainant is a trademark holder (which may include either registered or unregistered marks as defined below) claiming that one or more of its marks have been infringed, and thereby the Complainant has been harmed, by the registry operator’s manner of operation or use of the gTLD.
- 5.2 Before proceeding to the merits of a dispute, and before the Respondent is required to submit a substantive Response, or pay any fees, the Provider shall appoint a special one-person Panel to perform an initial “threshold” review (“Threshold Review Panel”).

6. Standards

For purposes of these standards, “registry operator” shall include entities directly or indirectly controlling, controlled by or under common control with a registry operator, whether by ownership or control of voting securities, by contract or otherwise where ‘control’ means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether by ownership or control of voting securities, by contract or otherwise.

6.1 Top Level:

A complainant must assert and prove, by clear and convincing evidence, that the registry operator’s affirmative conduct in its operation or use of its gTLD string that is identical or confusingly similar to the complainant’s mark, causes or materially contributes to the gTLD doing one of the following:

(a) taking unfair advantage of the distinctive character or the reputation of the complainant’s mark; or

(b) impairing the distinctive character or the reputation of the complainant’s mark; or

(c) creating a likelihood of confusion with the complainant’s mark.

An example of infringement at the top-level is where a TLD string is identical to a trademark and then the registry operator holds itself out as the beneficiary of the mark.

6.2 Second Level

Complainants are required to prove, by clear and convincing evidence that, through the registry operator’s affirmative conduct:

(a) there is a substantial pattern or practice of specific bad faith intent by the registry operator to profit from the sale of trademark infringing domain names; and

(b) the registry operator's bad faith intent to profit from the systematic registration of domain names within the gTLD that are identical or confusingly similar to the complainant's mark, which:

(i) takes unfair advantage of the distinctive character or the reputation of the complainant's mark; or

(ii) impairs the distinctive character or the reputation of the complainant's mark, or

(iii) creates a likelihood of confusion with the complainant's mark.

In other words, it is not sufficient to show that the registry operator is on notice of possible trademark infringement through registrations in the gTLD. The registry operator is not liable under the PDDRP solely because: (i) infringing names are in its registry; or (ii) the registry operator knows that infringing names are in its registry; or (iii) the registry operator did not monitor the registrations within its registry.

A registry operator is not liable under the PDDRP for any domain name registration that: (i) is registered by a person or entity that is unaffiliated with the registry operator; (ii) is registered without the direct or indirect encouragement, inducement, initiation or direction of any person or entity affiliated with the registry operator; and (iii) provides no direct or indirect benefit to the registry operator other than the typical registration fee (which may include other fees collected incidental to the registration process for value added services such as enhanced registration security).

An example of infringement at the second level is where a registry operator has a pattern or practice of actively and systematically encouraging registrants to register second level domain names and to take unfair advantage of the trademark to the extent and degree that bad faith is apparent. Another example of infringement at the second level is where a registry operator has a pattern or practice of acting as the registrant or beneficial user of infringing registrations, to monetize and profit in bad faith.

7. Complaint

7.1 Filing:

The Complaint will be filed electronically. Once the Administrative Review has been completed and the Provider deems the Complaint to be in compliance, the Provider will electronically serve the Complaint and serve a paper notice on the registry operator that is the subject of the Complaint ("Notice of Complaint") consistent with the contact information listed in the Registry Agreement.

7.2 Content:

7.2.1 The name and contact information, including address, phone, and email address, of the Complainant, and, to the best of Complainant's knowledge, the name and address of the current owner of the registration.

- 7.2.2 The name and contact information, including address, phone, and email address of any person authorized to act on behalf of Complainant.
- 7.2.3 A statement of the nature of the dispute, and any relevant evidence, which shall include:
- (a) The particular legal rights claim being asserted, the marks that form the basis for the dispute and a short and plain statement of the basis upon which the Complaint is being filed.
 - (b) A detailed explanation of how the Complainant's claim meets the requirements for filing a claim pursuant to that particular ground or standard.
 - (c) A detailed explanation of the validity of the Complaint and why the Complainant is entitled to relief.
 - (d) A statement that the Complainant has at least 30 days prior to filing the Complaint notified the registry operator in writing of: (i) its specific concerns and specific conduct it believes is resulting in infringement of Complainant's trademarks and (ii) its willingness to meet to resolve the issue.
 - (e) An explanation of how the mark is used by the Complainant (including the type of goods/services, period and territory of use – including all on-line usage) or otherwise protected by statute, treaty or has been validated by a court or the Clearinghouse.
 - (f) Copies of any documents that the Complainant considers to evidence its basis for relief, including evidence of current use of the Trademark at issue in the Complaint and domain name registrations.
 - (g) A statement that the proceedings are not being brought for any improper purpose.
 - (h) A statement describing how the registration at issue has harmed the trademark owner.
- 7.3 Complaints will be limited 5,000 words and 20 pages, excluding attachments, unless the Provider determines that additional material is necessary.
- 7.4 At the same time the Complaint is filed, the Complainant will pay a non-refundable filing fee in the amount set in accordance with the applicable Provider rules. In the event that the filing fee is not paid within 10 days of the receipt of the Complaint by the Provider, the Complaint will be dismissed without prejudice.

8. Administrative Review of the Complaint

- 8.1 All Complaints will be reviewed by the Provider within five (5) business days of submission to the Provider to determine whether the Complaint contains all necessary information and complies with the procedural rules.
- 8.2 If the Provider finds that the Complaint complies with procedural rules, the Complaint will be deemed filed, and the proceedings will continue to the Threshold Review. If the Provider finds that the Complaint does not comply with procedural rules, it will electronically notify the Complainant of such non-compliance and provide the Complainant five (5) business days to submit an amended Complaint. If the Provider does not receive an amended Complaint within the five (5) business days provided, it will dismiss the Complaint and close the proceedings without prejudice to the Complainant's submission of a new Complaint that complies with procedural rules. Filing fees will not be refunded.
- 8.3 If deemed compliant, the Provider will electronically serve the Complaint on the registry operator and serve the Notice of Complaint consistent with the contact information listed in the Registry Agreement.

9. Threshold Review

- 9.1 Provider shall establish a Threshold Review Panel, consisting of one panelist selected by the Provider, for each proceeding within five (5) business days after completion of Administrative Review and the Complaint has been deemed compliant with procedural rules.
- 9.2 The Threshold Review Panel shall be tasked with determining whether the Complainant satisfies the following criteria:
 - 9.2.1 The Complainant is a holder of a word mark that: (i) is nationally or regionally registered and that is in current use; or (ii) has been validated through court proceedings; or (iii) that is specifically protected by a statute or treaty at the time the PDDRP complaint is filed;
 - 9.2.1.1 Use can be shown by demonstrating that evidence of use – which can be a declaration and one specimen of current use – was submitted to, and validated by, the Trademark Clearinghouse
 - 9.2.1.2 Proof of use may also be submitted directly with the Complaint.
 - 9.2.2 The Complainant has asserted that it has been materially harmed as a result of trademark infringement;
 - 9.2.3 The Complainant has asserted facts with sufficient specificity that, if everything the Complainant asserted is true, states a claim under the Top Level Standards herein
OR

The Complainant has asserted facts with sufficient specificity that, if everything the Complainant asserted is true, states a claim under the Second Level Standards herein;

9.2.4 The Complainant has asserted that: (i) at least 30 days prior to filing the Complaint the Complainant notified the registry operator in writing of its specific concerns and specific conduct it believes is resulting in infringement of Complainant's trademarks, and its willingness to meet to resolve the issue; (ii) whether the registry operator responded to the Complainant's notice of specific concerns; and (iii) if the registry operator did respond, that the Complainant attempted to engage in good faith discussions to resolve the issue prior to initiating the PDDRP.

9.3 Within ten (10) business days of date Provider served Notice of Complaint, the registry operator shall have the opportunity, but is not required, to submit papers to support its position as to the Complainant's standing at the Threshold Review stage. If the registry operator chooses to file such papers, it must pay a filing fee.

9.4 If the registry operator submits papers, the Complainant shall have ten (10) business days to submit an opposition.

9.5 The Threshold Review Panel shall have ten (10) business days from due date of Complainant's opposition or the due date of the registry operator's papers if none were filed, to issue Threshold Determination.

9.6 Provider shall electronically serve the Threshold Determination on all parties.

9.7 If the Complainant has not satisfied the Threshold Review criteria, the Provider will dismiss the proceedings on the grounds that the Complainant lacks standing and declare that the registry operator is the prevailing party.

9.8 If the Threshold Review Panel determines that the Complainant has standing and satisfied the criteria then the Provider will commence the proceedings on the merits.

10. Response to the Complaint

10.1 The registry operator must file a Response to each Complaint within forty-five (45) days after the date of the Threshold Review Panel Declaration.

10.2 The Response will comply with the rules for filing of a Complaint and will contain the name and contact information for the registry operator, as well as a point-by-point response to the statements made in the Complaint.

10.3 The Response must be filed with the Provider and the Provider must serve it upon the Complainant in electronic form with a hard-copy notice that it has been served.

- 10.4 Service of the Response will be deemed effective, and the time will start to run for a Reply, upon confirmation that the electronic Response and hard-copy notice of the Response was sent by the Provider to the addresses provided by the Complainant.
- 10.5 If the registry operator believes the Complaint is without merit, it will affirmatively plead in its Response the specific grounds for the claim.

11. Reply

- 11.1 The Complainant is permitted ten (10) days from Service of the Response to submit a Reply addressing the statements made in the Response showing why the Complaint is not “without merit.” A Reply may not introduce new facts or evidence into the record, but shall only be used to address statements made in the Response. Any new facts or evidence introduced in a Response shall be disregarded by the Expert Panel.
- 11.2 Once the Complaint, Response and Reply (as necessary) are filed and served, a Panel will be appointed and provided with all submissions.

12. Default

- 12.1 If the registry operator fails to respond to the Complaint, it will be deemed to be in default.
- 12.2 Limited rights to set aside the finding of default will be established by the Provider, but in no event will they be permitted absent a showing of good cause to set aside the finding of default.
- 12.3 The Provider shall provide notice of Default via email to the Complainant and registry operator.
- 12.4 All Default cases shall proceed to Expert Determination on the merits.

13. Expert Panel

- 13.1 The Provider shall establish an Expert Panel within 21 days after receiving the Reply, or if no Reply is filed, within 21 days after the Reply was due to be filed.
- 13.2 The Provider shall appoint a one-person Expert Panel, unless any party requests a three- member Expert Panel. No Threshold Panel member shall serve as an Expert Panel member in the same Trademark PDDRP proceeding.
- 13.3 In the case where either party requests a three-member Expert Panel, each party (or each side of the dispute if a matter has been consolidated) shall select an Expert and the two selected Experts shall select the third Expert Panel member. Such selection shall be made pursuant to the Providers rules or procedures. Trademark PDDRP panelists within a Provider shall be rotated to the extent feasible.

- 13.4 Expert Panel member must be independent of the parties to the post-delegation challenge. Each Provider will follow its adopted procedures for requiring such independence, including procedures for challenging and replacing a panelist for lack of independence.

14. Costs

- 14.1 The Provider will estimate the costs for the proceedings that it administers under this procedure in accordance with the applicable Provider rules. Such costs will be estimated to cover the administrative fees of the Provider, the Threshold Review Panel and the Expert Panel, and are intended to be reasonable.
- 14.2 The Complainant shall be required to pay the filing fee as set forth above in the “Complaint” section, and shall be required to submit the full amount of the Provider estimated administrative fees, the Threshold Review Panel fees and the Expert Panel fees at the outset of the proceedings. Fifty percent of that full amount shall be in cash (or cash equivalent) to cover the Complainant’s share of the proceedings and the other 50% shall be in either cash (or cash equivalent), or in bond, to cover the registry operator’s share if the registry operator prevails.
- 14.3 If the Panel declares the Complainant to be the prevailing party, the registry operator is required to reimburse Complainant for all Panel and Provider fees incurred. Failure to do shall be deemed a violation of the Trademark PDDRP and a breach of the Registry Agreement, subject to remedies available under the Agreement up to and including termination.

15. Discovery

- 15.1 Whether and to what extent discovery is allowed is at the discretion of the Panel, whether made on the Panel’s own accord, or upon request from the Parties.
- 15.2 If permitted, discovery will be limited to that for which each Party has a substantial need.
- 15.3 In extraordinary circumstances, the Provider may appoint experts to be paid for by the Parties, request live or written witness testimony, or request limited exchange of documents.
- 15.4 At the close of discovery, if permitted by the Expert Panel, the Parties will make a final evidentiary submission, the timing and sequence to be determined by the Provider in consultation with the Expert Panel.

16. Hearings

- 16.1 Disputes under this Procedure will be resolved without a hearing unless either party requests a hearing or the Expert Panel determines on its own initiative that one is necessary.

- 16.2 If a hearing is held, videoconferences or teleconferences should be used if at all possible. If not possible, then the Expert Panel will select a place for hearing if the Parties cannot agree.
- 16.3 Hearings should last no more than one day, except in the most extraordinary circumstances.
- 16.4 All dispute resolution proceedings will be conducted in English.

17. Burden of Proof

The Complainant bears the burden of proving the allegations in the Complaint; the burden must be by clear and convincing evidence.

18. Remedies

- 18.1 Since registrants are not a party to the action, a recommended remedy cannot take the form of deleting, transferring or suspending registrations (except to the extent registrants have been shown to be officers, directors, agents, employees, or entities under common control with a registry operator).
- 18.2 Recommended remedies will not include monetary damages or sanctions to be paid to any party other than fees awarded pursuant to section 14.
- 18.3 The Expert Panel may recommend a variety of graduated enforcement tools against the registry operator if it the Expert Panel determines that the registry operator is liable under this Trademark PDDRP, including:
 - 18.3.1 Remedial measures for the registry to employ to ensure against allowing future infringing registrations, which may be in addition to what is required under the registry agreement, except that the remedial measures shall not:
 - (a) Require the Registry Operator to monitor registrations not related to the names at issue in the PDDRP proceeding; or
 - (b) Direct actions by the registry operator that are contrary to those required under the Registry Agreement;
 - 18.3.2 Suspension of accepting new domain name registrations in the gTLD until such time as the violation(s) identified in the Determination is(are) cured or a set period of time;

OR,

- 18.3.3 In extraordinary circumstances where the registry operator acted with malice, providing for the termination of a Registry Agreement.

- 18.4 In making its recommendation of the appropriate remedy, the Expert Panel will consider the ongoing harm to the Complainant, as well as the harm the remedies will create for other, unrelated, good faith domain name registrants operating within the gTLD.
- 18.5 The Expert Panel may also determine whether the Complaint was filed “without merit,” and, if so, award the appropriate sanctions on a graduated scale, including:
 - 18.5.1 Temporary bans from filing Complaints;
 - 18.5.2 Imposition of costs of registry operator, including reasonable attorney fees; and
 - 18.5.3 Permanent bans from filing Complaints after being banned temporarily.
- 18.6 Imposition of remedies shall be at the discretion of ICANN, but absent extraordinary circumstances, those remedies will be in line with the remedies recommended by the Expert Panel.

19. The Expert Panel Determination

- 19.1 The Provider and the Expert Panel will make reasonable efforts to ensure that the Expert Determination is issued within 45 days of the appointment of the Expert Panel and absent good cause, in no event later than 60 days after the appointment of the Expert Panel.
- 19.2 The Expert Panel will render a written Determination. The Expert Determination will state whether or not the Complaint is factually founded and provide the reasons for that Determination. The Expert Determination should be publicly available and searchable on the Provider’s web site.
- 19.3 The Expert Determination may further include a recommendation of specific remedies. Costs and fees to the Provider, to the extent not already paid, will be paid within thirty (30) days of the Expert Panel’s Determination.
- 19.4 The Expert Determination shall state which party is the prevailing party.
- 19.5 While the Expert Determination that a registry operator is liable under the standards of the Trademark PDDRP shall be taken into consideration, ICANN will have the authority to impose the remedies, if any, that ICANN deems appropriate given the circumstances of each matter.

20. Appeal of Expert Determination

- 20.1 Either party shall have a right to seek a de novo appeal of the Expert Determination of liability or recommended remedy based on the existing record within the Trademark PDDRP proceeding for a reasonable fee to cover the costs of the appeal.
- 20.2 An appeal must be filed with the Provider and served on all parties within 20 days after an Expert Determination is issued and a response to the appeal must be filed within 20

days after the appeal. Manner and calculation of service deadlines shall in consistent with those set forth in Section 4 above, "Communication and Time Limits."

- 20.3 A three-member Appeal Panel is to be selected by the Provider, but no member of the Appeal Panel shall also have been an Expert Panel member.
- 20.4 The fees for an appeal in the first instance shall be borne by the appellant.
- 20.5 A limited right to introduce new admissible evidence that is material to the Determination will be allowed upon payment of an additional fee, provided the evidence clearly pre-dates the filing of the Complaint.
- 20.6 The Appeal Panel may request at its sole discretion, further statements or evidence from any party regardless of whether the evidence pre-dates the filing of the Complaint if the Appeal Panel determines such evidence is relevant.
- 20.7 The prevailing party shall be entitled to an award of costs of appeal.
- 20.8 The Providers rules and procedures for appeals, other than those stated above, shall apply.

21. Challenge of a Remedy

- 21.1 ICANN shall not implement a remedy for violation of the Trademark PDDRP for at least 20 days after the issuance of an Expert Determination, providing time for an appeal to be filed.
- 21.2 If an appeal is filed, ICANN shall stay its implementation of a remedy pending resolution of the appeal.
- 21.3 If ICANN decides to implement a remedy for violation of the Trademark PDDRP, ICANN will wait ten (10) business days (as observed in the location of its principal office) after notifying the registry operator of its decision. ICANN will then implement the decision unless it has received from the registry operator during that ten (10) business-day period official documentation that the registry operator has either: (a) commenced a lawsuit against the Complainant in a court of competent jurisdiction challenging the Expert Determination of liability against the registry operator, or (b) challenged the intended remedy by initiating dispute resolution under the provisions of its Registry Agreement. If ICANN receives such documentation within the ten (10) business day period, it will not seek to implement the remedy in furtherance of the Trademark PDDRP until it receives: (i) evidence of a resolution between the Complainant and the registry operator; (ii) evidence that registry operator's lawsuit against Complainant has been dismissed or withdrawn; or (iii) a copy of an order from the dispute resolution provider selected pursuant to the Registry Agreement dismissing the dispute against ICANN whether by reason of agreement of the parties or upon determination of the merits.

- 21.4 The registry operator may challenge ICANN's imposition of a remedy imposed in furtherance of an Expert Determination that the registry operator is liable under the PDDRP, to the extent a challenge is warranted, by initiating dispute resolution under the provisions of its Registry Agreement. Any arbitration shall be determined in accordance with the parties' respective rights and duties under the Registry Agreement. Neither the Expert Determination nor the decision of ICANN to implement a remedy is intended to prejudice the registry operator in any way in the determination of the arbitration dispute. Any remedy involving a termination of the Registry Agreement must be according to the terms and conditions of the termination provision of the Registry Agreement.
- 21.5 Nothing herein shall be deemed to prohibit ICANN from imposing remedies at any time and of any nature it is otherwise entitled to impose for a registry operator's non-compliance with its Registry Agreement.

22. Availability of Court or Other Administrative Proceedings

- 22.1 The Trademark PDDRP is not intended as an exclusive procedure and does not preclude individuals from seeking remedies in courts of law, including, as applicable, review of an Expert Determination as to liability.
- 22.2 In those cases where a Party submits documented proof to the Provider that a Court action involving the same Parties, facts and circumstances as the Trademark PDDRP was instituted prior to the filing date of the Complaint in the Trademark PDDRP, the Provider shall suspend or terminate the Trademark PDDRP.

REGISTRY RESTRICTIONS DISPUTE RESOLUTION PROCEDURE (RRDRP)¹
4 JUNE 2012

1. Parties to the Dispute

The parties to the dispute will be the harmed established institution and the gTLD registry operator. ICANN shall not be a party.

2. Applicable Rules

2.1 This procedure is intended to cover these dispute resolution proceedings generally. To the extent more than one RRDRP provider (“Provider”) is selected to implement the RRDRP, each Provider may have additional rules and procedures that must be followed when filing a Complaint. The following are the general procedure to be followed by all Providers.

2.2 In any new community-based gTLD registry agreement, the registry operator shall be required to agree to participate in the RRDRP and be bound by the resulting Determinations.

3. Language

3.1 The language of all submissions and proceedings under the procedure will be English.

3.2 Parties may submit supporting evidence in their original language, provided and subject to the authority of the RRDRP Expert Panel to determine otherwise, that such evidence is accompanied by an English translation of all relevant text.

4. Communications and Time Limits

4.1 All communications with the Provider must be filed electronically.

4.2 For the purpose of determining the date of commencement of a time limit, a notice or other communication will be deemed to have been received on the day that it is transmitted to the appropriate contact person designated by the parties.

4.3 For the purpose of determining compliance with a time limit, a notice or other communication will be deemed to have been sent, made or transmitted on the day that it is dispatched.

¹ Initial complaints that a Registry has failed to comply with registration restrictions shall be processed through a Registry Restriction Problem Report System (RRPRS) using an online form similar to the Whois Data Problem Report System (WDPRS) at InterNIC.net. A nominal processing fee could serve to decrease frivolous complaints. The registry operator shall receive a copy of the complaint and will be required to take reasonable steps to investigate (and remedy if warranted) the reported non-compliance. The Complainant will have the option to escalate the complaint in accordance with this RRDRP, if the alleged non-compliance continues. Failure by the Registry to address the complaint to complainant’s satisfaction does not itself give the complainant standing to file an RRDRP complaint.

- 4.4 For the purpose of calculating a period of time under this procedure, such period will begin to run on the day following the date of receipt of a notice or other communication.
- 4.5 All references to day limits shall be considered as calendar days unless otherwise specified.

5. Standing

- 5.1 The mandatory administrative proceeding will commence when a third-party complainant (“Complainant”) has filed a Complaint with a Provider asserting that the Complainant is a harmed established institution as a result of the community-based gTLD registry operator not complying with the registration restrictions set out in the Registry Agreement.
- 5.2 Established institutions associated with defined communities are eligible to file a community objection. The “defined community” must be a community related to the gTLD string in the application that is the subject of the dispute. To qualify for standing for a community claim, the Complainant must prove both: it is an established institution, and has an ongoing relationship with a defined community that consists of a restricted population that the gTLD supports.
- 5.3 Complainants must have filed a claim through the Registry Restriction Problem Report System (RRPRS) to have standing to file an RRDRP.
- 5.4 The Panel will determine standing and the Expert Determination will include a statement of the Complainant’s standing.

6. Standards

- 6.1 For a claim to be successful, the claims must prove that:
 - 6.1.1 The community invoked by the objector is a defined community;
 - 6.1.2 There is a strong association between the community invoked and the gTLD label or string;
 - 6.1.3 The TLD operator violated the terms of the community-based restrictions in its agreement;
 - 6.1.4 There is a measureable harm to the Complainant and the community named by the objector.

7. Complaint

- 7.1 Filing:

The Complaint will be filed electronically. Once the Administrative Review has been completed and the Provider deems the Complaint to be in compliance, the Provider will electronically serve the Complaint and serve a hard copy and fax notice on the registry operator consistent with the contact information listed in the Registry Agreement.

7.2 Content:

- 7.2.1 The name and contact information, including address, phone, and email address, of the Complainant, the registry operator and, to the best of Complainant's knowledge, the name and address of the current owner of the registration.
- 7.2.2 The name and contact information, including address, phone, and email address of any person authorized to act on behalf of Complainant.
- 7.2.3 A statement of the nature of the dispute, which must include:
 - 7.2.3.1 The particular registration restrictions in the Registry Agreement with which the registry operator is failing to comply; and
 - 7.2.3.2 A detailed explanation of how the registry operator's failure to comply with the identified registration restrictions has caused harm to the complainant.
- 7.2.4 A statement that the proceedings are not being brought for any improper purpose.
- 7.2.5 A statement that the Complainant has filed a claim through the RRPRS and that the RRPRS process has concluded.
- 7.2.6 A statement that Complainant has not filed a Trademark Post-Delegation Dispute Resolution Procedure (PDDRP) complaint relating to the same or similar facts or circumstances.

7.3 Complaints will be limited to 5,000 words and 20 pages, excluding attachments, unless the Provider determines that additional material is necessary.

7.4 Any supporting documents should be filed with the Complaint.

7.5 At the same time the Complaint is filed, the Complainant will pay a filing fee in the amount set in accordance with the applicable Provider rules. In the event that the filing fee is not paid within 10 days of the receipt of the Complaint by the Provider, the Complaint will be dismissed without prejudice to the Complainant to file another complaint.

8. Administrative Review of the Complaint

8.1 All Complaints will be reviewed within five (5) business days of submission by panelists designated by the applicable Provider to determine whether the Complainant has complied with the procedural rules.

- 8.2 If the Provider finds that the Complaint complies with procedural rules, the Complaint will be deemed filed, and the proceedings will continue. If the Provider finds that the Complaint does not comply with procedural rules, it will electronically notify the Complainant of such non-compliance and provide the Complainant five (5) business days to submit an amended Complaint. If the Provider does not receive an amended Complaint within the five (5) business days provided, it will dismiss the Complaint and close the proceedings without prejudice to the Complainant's submission of a new Complaint that complies with procedural rules. Filing fees will not be refunded if the Complaint is deemed not in compliance.
- 8.3 If deemed compliant, the Provider will electronically serve the Complaint on the registry operator and serve a paper notice on the registry operator that is the subject of the Complaint consistent with the contact information listed in the Registry Agreement.

9. Response to the Complaint

- 9.1 The registry operator must file a response to each Complaint within thirty (30) days of service the Complaint.
- 9.2 The Response will comply with the rules for filing of a Complaint and will contain the names and contact information for the registry operator, as well as a point by point response to the statements made in the Complaint.
- 9.3 The Response must be electronically filed with the Provider and the Provider must serve it upon the Complainant in electronic form with a hard-copy notice that it has been served.
- 9.4 Service of the Response will be deemed effective, and the time will start to run for a Reply, upon electronic transmission of the Response.
- 9.5 If the registry operator believes the Complaint is without merit, it will affirmatively plead in its Response the specific grounds for the claim.
- 9.6 At the same time the Response is filed, the registry operator will pay a filing fee in the amount set in accordance with the applicable Provider rules. In the event that the filing fee is not paid within ten (10) days of the receipt of the Response by the Provider, the Response will be deemed improper and not considered in the proceedings, but the matter will proceed to Determination.

10 Reply

- 10.1 The Complainant is permitted ten (10) days from Service of the Response to submit a Reply addressing the statements made in the Response showing why the Complaint is not "without merit." A Reply may not introduce new facts or evidence into the record, but shall only be used to address statements made in the Response. Any new facts or evidence introduced in a Response shall be disregarded by the Expert Panel.
- 10.2 Once the Complaint, Response and Reply (as necessary) are filed and served, a Panel will be appointed and provided with all submissions.

11. Default

- 11.1 If the registry operator fails to respond to the Complaint, it will be deemed to be in default.
- 11.2 Limited rights to set aside the finding of default will be established by the Provider, but in no event will it be permitted absent a showing of good cause to set aside the finding of Default.
- 11.3 The Provider shall provide Notice of Default via email to the Complainant and registry operator.
- 11.4 All Default cases shall proceed to Expert Determination on the merits.

12. Expert Panel

- 12.1 The Provider shall select and appoint a single-member Expert Panel within (21) days after receiving the Reply, or if no Reply is filed, within 21 days after the Reply was due to be filed.
- 12.2 The Provider will appoint a one-person Expert Panel unless any party requests a three-member Expert Panel.
- 12.3 In the case where either party requests a three-member Expert Panel, each party (or each side of the dispute if a matter has been consolidated) shall select an Expert and the two selected Experts shall select the third Expert Panel member. Such selection shall be made pursuant to the Provider's rules or procedures. RRDRP panelists within a Provider shall be rotated to the extent feasible.
- 12.4 Expert Panel members must be independent of the parties to the post-delegation challenge. Each Provider will follow its adopted procedures for requiring such independence, including procedures for challenging and replacing an Expert for lack of independence.

13. Costs

- 13.1 The Provider will estimate the costs for the proceedings that it administers under this procedure in accordance with the applicable Provider Rules. Such costs will cover the administrative fees, including the Filing and Response Fee, of the Provider, and the Expert Panel fees, and are intended to be reasonable.
- 13.2 The Complainant shall be required to pay the Filing fee as set forth above in the "Complaint" section, and shall be required to submit the full amount of the other Provider-estimated administrative fees, including the Response Fee, and the Expert Panel fees at the outset of the proceedings. Fifty percent of that full amount shall be in cash (or cash equivalent) to cover the Complainant's share of the proceedings and the other 50% shall be in either cash (or cash equivalent), or in bond, to cover the registry operator's share if the registry operator prevails.

- 13.3 If the Panel declares the Complainant to be the prevailing party, the registry operator is required to reimburse Complainant for all Panel and Provider fees incurred, including the Filing Fee. Failure to do so shall be deemed a violation of the RRDRP and a breach of the Registry Agreement, subject to remedies available under the Agreement up to and including termination.
- 13.4 If the Panel declares the registry operator to be the prevailing party, the Provider shall reimburse the registry operator for its Response Fee.

14. Discovery/Evidence

- 14.1 In order to achieve the goal of resolving disputes rapidly and at a reasonable cost, discovery will generally not be permitted. In exceptional cases, the Expert Panel may require a party to provide additional evidence.
- 14.2 If permitted, discovery will be limited to that for which each Party has a substantial need.
- 14.3 Without a specific request from the Parties, but only in extraordinary circumstances, the Expert Panel may request that the Provider appoint experts to be paid for by the Parties, request live or written witness testimony, or request limited exchange of documents.

15. Hearings

- 15.1 Disputes under this RRDRP will usually be resolved without a hearing.
- 15.2 The Expert Panel may decide on its own initiative, or at the request of a party, to hold a hearing. However, the presumption is that the Expert Panel will render Determinations based on written submissions and without a hearing.
- 15.3 If a request for a hearing is granted, videoconferences or teleconferences should be used if at all possible. If not possible, then the Expert Panel will select a place for hearing if the parties cannot agree.
- 15.4 Hearings should last no more than one day, except in the most exceptional circumstances.
- 15.5 If the Expert Panel grants one party's request for a hearing, notwithstanding the other party's opposition, the Expert Panel is encouraged to apportion the hearing costs to the requesting party as the Expert Panel deems appropriate.
- 15.6 All dispute resolution proceedings will be conducted in English.

16. Burden of Proof

The Complainant bears the burden of proving its claim; the burden should be by a preponderance of the evidence.

17. Recommended Remedies

- 17.1 Since registrants of domain names registered in violation of the agreement restriction are not a party to the action, a recommended remedy cannot take the form of deleting, transferring or suspending registrations that were made in violation of the agreement restrictions (except to the extent registrants have been shown to be officers, directors, agents, employees, or entities under common control with a registry operator).
- 17.2 Recommended remedies will not include monetary damages or sanctions to be paid to any party other than fees awarded pursuant to section 13.
- 17.3 The Expert Panel may recommend a variety of graduated enforcement tools against the registry operator if the Expert Panel determines that the registry operator allowed registrations outside the scope of its promised limitations, including:
- 17.3.1 Remedial measures, which may be in addition to requirements under the registry agreement, for the registry to employ to ensure against allowing future registrations that do not comply with community-based limitations; except that the remedial measures shall not:
- (a) Require the registry operator to monitor registrations not related to the names at issue in the RRDRP proceeding, or
 - (b) direct actions by the registry operator that are contrary to those required under the registry agreement
- 17.3.2 Suspension of accepting new domain name registrations in the gTLD until such time as the violation(s) identified in the Determination is(are) cured or a set period of time;
- OR,
- 17.3.3 In extraordinary circumstances where the registry operator acted with malice providing for the termination of a registry agreement.
- 17.3 In making its recommendation of the appropriate remedy, the Expert Panel will consider the ongoing harm to the Complainant, as well as the harm the remedies will create for other, unrelated, good faith domain name registrants operating within the gTLD.

18. The Expert Determination

- 18.1 The Provider and the Expert Panel will make reasonable efforts to ensure that the Expert Determination is rendered within 45 days of the appointment of the Expert Panel and absent good cause, in no event later than 60 days after the appointment of the Expert Panel.
- 18.2 The Expert Panel will render a written Determination. The Expert Determination will state whether or not the Complaint is factually founded and provide the reasons for its

Determination. The Expert Determination should be publicly available and searchable on the Provider's web site.

- 18.3 The Expert Determination may further include a recommendation of specific remedies. Costs and fees to the Provider, to the extent not already paid, will be paid within thirty (30) days of the Expert Determination.
- 18.4 The Expert Determination shall state which party is the prevailing party.
- 18.5 While the Expert Determination that a community-based restricted gTLD registry operator was not meeting its obligations to police the registration and use of domains within the applicable restrictions shall be considered, ICANN shall have the authority to impose the remedies ICANN deems appropriate, given the circumstances of each matter.

19. Appeal of Expert Determination

- 19.1 Either party shall have a right to seek a de novo appeal of the Expert Determination based on the existing record within the RDRP proceeding for a reasonable fee to cover the costs of the appeal.
- 19.2 An appeal must be filed with the Provider and served on all parties within 20 days after an Expert Determination is issued and a response to the appeal must be filed within 20 days after the appeal. Manner and calculation of service deadlines shall in consistent with those set forth in Section 4 above, "Communication and Time Limits."
- 19.3 A three-member Appeal Panel is to be selected by the Provider, but no member of the Appeal Panel shall also have been an Expert Panel member.
- 19.4 The fees for an appeal in the first instance shall be borne by the appellant.
- 19.5 A limited right to introduce new admissible evidence that is material to the Determination will be allowed upon payment of an additional fee, provided the evidence clearly pre-dates the filing of the Complaint.
- 19.6 The Appeal Panel may request at its sole discretion, further statements or evidence from any party regardless of whether the evidence pre-dates the filing of the Complaint if the Appeal Panel determines such evidence is relevant.
- 19.7 The prevailing party shall be entitled to an award of costs of appeal.
- 19.8 The Providers rules and procedures for appeals, other than those stated above, shall apply.

20. Breach

- 20.1 If the Expert determines that the registry operator is in breach, ICANN will then proceed to notify the registry operator that it is in breach. The registry operator will be given the opportunity to cure the breach as called for in the Registry Agreement.

- 20.2 If registry operator fails to cure the breach then both parties are entitled to utilize the options available to them under the registry agreement, and ICANN may consider the recommended remedies set forth in the Expert Determination when taking action.
- 20.3 Nothing herein shall be deemed to prohibit ICANN from imposing remedies at any time and of any nature it is otherwise entitled to impose for a registry operator's non-compliance with its Registry Agreement.

21. Availability of Court or Other Administrative Proceedings

- 21.1 The RRDRP is not intended as an exclusive procedure and does not preclude individuals from seeking remedies in courts of law, including, as applicable, review of an Expert Determination as to liability.
- 21.2 The parties are encouraged, but not required to participate in informal negotiations and/or mediation at any time throughout the dispute resolution process but the conduct of any such settlement negotiation is not, standing alone, a reason to suspend any deadline under the proceedings.



gTLD Applicant Guidebook

(v. 2012-06-04)

Module 6

4 June 2012

Module 6

Top-Level Domain Application - Terms and Conditions

By submitting this application through ICANN's online interface for a generic Top Level Domain (gTLD) (this application), applicant (including all parent companies, subsidiaries, affiliates, agents, contractors, employees and any and all others acting on its behalf) agrees to the following terms and conditions (these terms and conditions) without modification. Applicant understands and agrees that these terms and conditions are binding on applicant and are a material part of this application.

1. Applicant warrants that the statements and representations contained in the application (including any documents submitted and oral statements made and confirmed in writing in connection with the application) are true and accurate and complete in all material respects, and that ICANN may rely on those statements and representations fully in evaluating this application. Applicant acknowledges that any material misstatement or misrepresentation (or omission of material information) may cause ICANN and the evaluators to reject the application without a refund of any fees paid by Applicant. Applicant agrees to notify ICANN in writing of any change in circumstances that would render any information provided in the application false or misleading.
2. Applicant warrants that it has the requisite organizational power and authority to make this application on behalf of applicant, and is able to make all agreements, representations, waivers, and understandings stated in these terms and conditions and to enter into the form of registry agreement as posted with these terms and conditions.
3. Applicant acknowledges and agrees that ICANN has the right to determine not to proceed with any and all applications for new gTLDs, and that there is no assurance that any additional gTLDs will be created. The decision to review, consider and approve an application to establish one or more

gTLDs and to delegate new gTLDs after such approval is entirely at ICANN's discretion. ICANN reserves the right to reject any application that ICANN is prohibited from considering under applicable law or policy, in which case any fees submitted in connection with such application will be returned to the applicant.

4. Applicant agrees to pay all fees that are associated with this application. These fees include the evaluation fee (which is to be paid in conjunction with the submission of this application), and any fees associated with the progress of the application to the extended evaluation stages of the review and consideration process with respect to the application, including any and all fees as may be required in conjunction with the dispute resolution process as set forth in the application. Applicant acknowledges that the initial fee due upon submission of the application is only to obtain consideration of an application. ICANN makes no assurances that an application will be approved or will result in the delegation of a gTLD proposed in an application. Applicant acknowledges that if it fails to pay fees within the designated time period at any stage of the application review and consideration process, applicant will forfeit any fees paid up to that point and the application will be cancelled. Except as expressly provided in this Application Guidebook, ICANN is not obligated to reimburse an applicant for or to return any fees paid to ICANN in connection with the application process.
5. Applicant shall indemnify, defend, and hold harmless ICANN (including its affiliates, subsidiaries, directors, officers, employees, consultants, evaluators, and agents, collectively the ICANN Affiliated Parties) from and against any and all third-party claims, damages, liabilities, costs, and expenses, including legal fees and expenses, arising out of or relating to: (a) ICANN's or an ICANN Affiliated Party's consideration of the application, and any approval rejection or withdrawal of the application; and/or (b) ICANN's or an ICANN Affiliated Party's reliance on information provided by applicant in the application.

6. Applicant hereby releases ICANN and the ICANN Affiliated Parties from any and all claims by applicant that arise out of, are based upon, or are in any way related to, any action, or failure to act, by ICANN or any ICANN Affiliated Party in connection with ICANN's or an ICANN Affiliated Party's review of this application, investigation or verification, any characterization or description of applicant or the information in this application, any withdrawal of this application or the decision by ICANN to recommend, or not to recommend, the approval of applicant's gTLD application. APPLICANT AGREES NOT TO CHALLENGE, IN COURT OR IN ANY OTHER JUDICIAL FORA, ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION, AND IRREVOCABLY WAIVES ANY RIGHT TO SUE OR PROCEED IN COURT OR ANY OTHER JUDICIAL FORA ON THE BASIS OF ANY OTHER LEGAL CLAIM AGAINST ICANN AND ICANN AFFILIATED PARTIES WITH RESPECT TO THE APPLICATION. APPLICANT ACKNOWLEDGES AND ACCEPTS THAT APPLICANT'S NONENTITLEMENT TO PURSUE ANY RIGHTS, REMEDIES, OR LEGAL CLAIMS AGAINST ICANN OR THE ICANN AFFILIATED PARTIES IN COURT OR ANY OTHER JUDICIAL FORA WITH RESPECT TO THE APPLICATION SHALL MEAN THAT APPLICANT WILL FOREGO ANY RECOVERY OF ANY APPLICATION FEES, MONIES INVESTED IN BUSINESS INFRASTRUCTURE OR OTHER STARTUP COSTS AND ANY AND ALL PROFITS THAT APPLICANT MAY EXPECT TO REALIZE FROM THE OPERATION OF A REGISTRY FOR THE TLD; PROVIDED, THAT APPLICANT MAY UTILIZE ANY ACCOUNTABILITY MECHANISM SET FORTH IN ICANN'S BYLAWS FOR PURPOSES OF CHALLENGING ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION. APPLICANT ACKNOWLEDGES THAT ANY ICANN AFFILIATED PARTY IS AN EXPRESS THIRD PARTY BENEFICIARY OF THIS SECTION 6 AND MAY ENFORCE EACH PROVISION OF THIS SECTION 6 AGAINST APPLICANT.

7. Applicant hereby authorizes ICANN to publish on ICANN's website, and to disclose or publicize in any other manner, any materials submitted to, or obtained or generated by, ICANN and the ICANN Affiliated Parties in connection with the application, including evaluations, analyses and any other

materials prepared in connection with the evaluation of the application; provided, however, that information will not be disclosed or published to the extent that this Applicant Guidebook expressly states that such information will be kept confidential, except as required by law or judicial process. Except for information afforded confidential treatment, applicant understands and acknowledges that ICANN does not and will not keep the remaining portion of the application or materials submitted with the application confidential.

8. Applicant certifies that it has obtained permission for the posting of any personally identifying information included in this application or materials submitted with this application. Applicant acknowledges that the information that ICANN posts may remain in the public domain in perpetuity, at ICANN's discretion. Applicant acknowledges that ICANN will handle personal information collected in accordance with its gTLD Program privacy statement <http://newgtlds.icann.org/en/applicants/agb/program-privacy>, which is incorporated herein by this reference. If requested by ICANN, Applicant will be required to obtain and deliver to ICANN and ICANN's background screening vendor any consents or agreements of the entities and/or individuals named in questions 1-11 of the application form necessary to conduct these background screening activities. In addition, Applicant acknowledges that to allow ICANN to conduct thorough background screening investigations:
 - a. Applicant may be required to provide documented consent for release of records to ICANN by organizations or government agencies;
 - b. Applicant may be required to obtain specific government records directly and supply those records to ICANN for review;
 - c. Additional identifying information may be required to resolve questions of identity of individuals within the applicant organization;

- d. Applicant may be requested to supply certain information in the original language as well as in English.
9. Applicant gives ICANN permission to use applicant's name in ICANN's public announcements (including informational web pages) relating to Applicant's application and any action taken by ICANN related thereto.
10. Applicant understands and agrees that it will acquire rights in connection with a gTLD only in the event that it enters into a registry agreement with ICANN, and that applicant's rights in connection with such gTLD will be limited to those expressly stated in the registry agreement. In the event ICANN agrees to recommend the approval of the application for applicant's proposed gTLD, applicant agrees to enter into the registry agreement with ICANN in the form published in connection with the application materials. (Note: ICANN reserves the right to make reasonable updates and changes to this proposed draft agreement during the course of the application process, including as the possible result of new policies that might be adopted during the course of the application process). Applicant may not resell, assign, or transfer any of applicant's rights or obligations in connection with the application.
11. Applicant authorizes ICANN to:
 - a. Contact any person, group, or entity to request, obtain, and discuss any documentation or other information that, in ICANN's sole judgment, may be pertinent to the application;
 - b. Consult with persons of ICANN's choosing regarding the information in the application or otherwise coming into ICANN's possession, provided, however, that ICANN will use reasonable efforts to ensure that such persons maintain the confidentiality of information in the application that this Applicant Guidebook expressly states will be kept confidential.

12. For the convenience of applicants around the world, the application materials published by ICANN in the English language have been translated into certain other languages frequently used around the world. Applicant recognizes that the English language version of the application materials (of which these terms and conditions is a part) is the version that binds the parties, that such translations are non-official interpretations and may not be relied upon as accurate in all respects, and that in the event of any conflict between the translated versions of the application materials and the English language version, the English language version controls.
13. Applicant understands that ICANN has a long-standing relationship with Jones Day, an international law firm, and that ICANN intends to continue to be represented by Jones Day throughout the application process and the resulting delegation of TLDs. ICANN does not know whether any particular applicant is or is not a client of Jones Day. To the extent that Applicant is a Jones Day client, by submitting this application, Applicant agrees to execute a waiver permitting Jones Day to represent ICANN adverse to Applicant in the matter. Applicant further agrees that by submitting its Application, Applicant is agreeing to execute waivers or take similar reasonable actions to permit other law and consulting firms retained by ICANN in connection with the review and evaluation of its application to represent ICANN adverse to Applicant in the matter.
14. ICANN reserves the right to make reasonable updates and changes to this applicant guidebook and to the application process, including the process for withdrawal of applications, at any time by posting notice of such updates and changes to the ICANN website, including as the possible result of new policies that might be adopted or advice to ICANN from ICANN advisory committees during the course of the application process. Applicant acknowledges that ICANN may make such updates and changes and agrees that its application will be subject to any such updates and changes. In the event that Applicant has completed and submitted its application prior to

such updates or changes and Applicant can demonstrate to ICANN that compliance with such updates or changes would present a material hardship to Applicant, then ICANN will work with Applicant in good faith to attempt to make reasonable accommodations in order to mitigate any negative consequences for Applicant to the extent possible consistent with ICANN's mission to ensure the stable and secure operation of the Internet's unique identifier systems.

Exhibit DIDP A8


Statement of Work Under Contractor Consulting Agreement

The Economist Intelligence Unit, NA, Incorporated ("Panel Firm") and the Internet Corporation for Assigned Names and Numbers (ICANN) agree to perform the services outlined in Exhibit B-1 (Statement of Work) and in accordance with the New gTLD Program Consulting Agreement dated July 26, 2011 by and between the Panel Firm and ICANN.

Internet Corporation for Assigned Names and Numbers

The Economist Intelligence Unit, NA, Incorporated

By: 
Signature

By: 
Signature

Print Name: John O. Jeffrey

Print Name: Vinay Shah

Title: General Counsel & Secretary

Title: CFO

Date: 6 October 2011

Date: Oct 5, 2011

Exhibit B1 – Additional Services

Statement of Work –Application Review Simulation Exercise

ICANN desires to engage The Economist Intelligence Unit, NA, Inc. (referred to herein as “Panel Firm”) to develop and document their evaluation approach via an Evaluator Guide and perform application review simulation exercises to test and update the Evaluator Guide. This SOW specifically addresses the Geographic Names and Community Priority evaluation panels.

The objective of this work is to validate the evaluation approach among panels of the same type and inform the training and quality control panels of both the approach and process so they may complete their respective development efforts.

Deliverables:

The Panel Firm will provide to ICANN the following Deliverables related to simulation preparation, execution, and resultant outcomes. The Panel Firm will issue the final Deliverables following receipt of comments (feedback) from ICANN.

Non-Responsive Information Redacted; Relates to Other Scope of Work Not Related to Community Priority Evaluation

2. A Community Priority evaluation guide

The evaluation guide is the Panel Firm’s approach for performing evaluation as per the respective requirements defined by the New gTLD Applicant Guidebook (AGB). By extension, the evaluation guide will also be the mechanism by which Panel Firm’s evaluators will perform their work. It will be provided to ICANN’s consultant responsible for developing evaluation panel training for incorporation into the training guides.

3. A list of recommendations for Applicant Guidebook (AGB) supplemental notes to applicants

In order to minimize the need for asking clarification questions of New gTLD Applicants, ICANN intends to create and publish supplemental notes as part of their applicant guidance materials. In the process of evaluation simulation exercises, panels will identify and document recommendations for content to be included in the supplemental notes. Such notes are intended to better inform applicants and solicit complete, clear, and concise application responses, thereby improving the evaluation process and results.

Non-Responsive Information Redacted; Relates to Other Scope of Work Not Related to Community Priority Evaluation

Exhibit B1 – Additional Services

Statement of Work –Application Review Simulation Exercise

Non-Responsive Information Redacted; Relates to Other Scope of Work Not Related to Community Priority Evaluation

5. A Community Priority evaluation processing flow chart

ICANN will use a Quality Control panel to review evaluation processes of the various panels. In order to inform the QC panel of the processes to be used by the evaluation panel, ICANN wishes each panel to document their respective evaluation processes. This is separate from the evaluation approach, which is one detailed component of the broader evaluation process.

6. Training Content and Approach

The evaluation firms will be responsible for providing input into the development of training. As such, the main deliverables are a Training Model, an Evaluator Skill & Experience Profile, and Instructor Examples/Cases. Below is an explanation of each:

Training Model- This model is an overview of how the Panel Firm intends to train their teams. In addition, this model should reference any systems and/or materials that the Panel Firm will use to train their teams.

Evaluator Skill & Experience Profile- An experience profile should be developed for each of the main functions within the evaluation process. For example, there could be a profile for the analysts used to validate the authenticity of governmental documents. This profile is intended to be role based rather than a separate profile for each resource. ICANN intends to provide a template for the Panel Firm to complete.

Instructor Examples/Cases- Examples or cases of simulation material that may come from an applicant. These examples will be consumed during the actual Core Team training in subsequent project phases.

Approach and Scope of Engagement:

This engagement is expected to last approximately ten (10) weeks from September 26, 2011 to December 5, 2011 in accordance with the schedule outlined below. **Confidential Business Information**

Confidential Business Information

Actual hours will be invoiced to ICANN monthly. The Economist Intelligence Unit will manage against the scope and estimated hours provided in this Amendment, and inform ICANN if a change in scope or estimated hours may occur. Changes in scope and estimated hours must be agreed upon in writing ahead of time by both the Economist Intelligence Unit and ICANN.

Exhibit B1 – Additional Services

Statement of Work – Application Review Simulation Exercise

Schedule & Level of Effort:

Task	Estimated Level of Effort (hours)	Duration/Date
Non-Responsive Information Redacted; Relates to Other Scope of Work Not Related to Community Priority Evaluation		
Non Responsive information Redacted; Relates to Other Scope of Work Not Related to Community Priority Evaluation Concurrent CPE "kickoff meeting"	32	1 November 2011
Non-Responsive Information Redacted; Relates to Other Scope of Work Not Related to Community Priority Evaluation		
Provide Non-Responsive Information Redacted; Relates to Other Scope of Work Not Related to Community Priority Evaluation CPE Process flows	12	4 November 2011
Evaluator Skill & Experience Profile	8	4 November 2011
Non-Responsive Information Redacted; Relates to Other Scope of Work Not Related to Community Priority Evaluation		
Create a draft CPE Evaluator Guide	Confidential Business Information	24 October-14 November 2011
ICANN provides CPE mock application materials		11 November 2011
Panel Firm performs CPE simulation (3 mock applications)		11-18 November 2011
CPE Simulation Debrief		21 November 2011
Update CPE evaluator guide		21-28 November 2011
Provide Final CPE "content" deliverables: <ul style="list-style-type: none"> • Evaluator guide to ICANN/Training Consultant • AGB supplemental notes 		29 November 2011
Instructor Examples/Cases		5 December 2011
TOTAL ESTIMATED LEVEL OF EFFORT		

Confidential Business Information

Assumptions:

ICANN shall provide information necessary for the Panel Firm to perform the obligations in the Agreement including:

Exhibit B1 – Additional Services

Statement of Work –Application Review Simulation Exercise

- **Non-Responsive Information Redacted; Relates to Other Scope of Work Not Related to Community Priority Evaluation**
- 3 “mock” Community Priority application responses for Consultant simulation exercise
- Guidance as required on relevant sections of the AGB
- Timely feedback on draft documents
- Participation in simulation debrief meetings

New gTLD Program Consulting Agreement

This Consulting Master Services Agreement (together with the Exhibits and Attachments hereto, this "Agreement") is effective as of July 26, 2011 (the "Effective Date"), by and between the Internet Corporation for Assigned Names and Numbers ("ICANN"), a California nonprofit public benefit corporation, with its principal offices located at 4676 Admiralty Way, Suite 330, Marina del Rey, CA, USA 90292 and The Economist Intelligence Unit, NA, Incorporated, with its principal offices located at 750 Third Avenue, 5th Floor, New York, NY 10017, hereinafter referred to as "Contractor".

WHEREAS, Contractor and ICANN desire to enter into an agreement for the performance by Contractor of certain professional consulting services in connection with activities being conducted by ICANN.

NOW THEREFORE, in consideration of the foregoing, the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **SERVICES:** Contractor shall provide to ICANN such professional consulting services as are set forth in statements of work (each a "Statement of Work") signed by and in a form acceptable to both parties, which shall set forth the manner of the work which will be provided to ICANN pursuant to this Agreement (the "Services") and the products and materials to be produced by Contractor pursuant to the Services (the "Products"). Any Services provided hereunder shall be rendered by Contractor in a manner consistent with industry standards, and shall be provided in accordance with all applicable laws. Contractor's Services shall not be exclusive to ICANN, provided that during the term of Contractor's engagement hereunder, Contractor will not render services that prevent, interfere or conflict with, or delay the prompt performance of the Services.

2. **TERM:** Contractor shall render the Services on the date or dates set forth on any Statements of Work entered into hereunder.

3. **COMPENSATION:** Subject to all the provisions of this Agreement, including, but not limited to, the "Supplemental Terms" (attached hereto as Exhibit A) and any and all Statements of Work, ICANN agrees to pay Contractor as full and complete consideration for Contractor's services hereunder, and Contractor agrees to accept, the sum as set out in the applicable Statement of Work, payable in US Dollars for the Services, which shall be paid in accordance with the payment schedule set forth in such Statement of Work.

4. **RIGHTS:**

(a) In consideration of the amounts payable by ICANN pursuant to Section 3, and subject to Section 4(b), Contractor assigns to ICANN exclusive ownership rights, in perpetuity of all copyright in and to the Products.

(b) Notwithstanding any provision of this Agreement, any and all rights (including without limitation copyright, trademarks and rights in data) in and to any content, data, brands and materials included in the Products that are in existence prior to the commencement of the Services to be provided under any and all Statements of Work (the "Pre-Existing Materials") shall not be transferred to ICANN and shall remain the exclusive property of Contractor or its licensors. Contractor grants to ICANN a non-exclusive, perpetual, royalty free license (including the right to sublicense to other parties) to use, reproduce, modify and distribute any Pre-Existing Materials on condition that: (i) such Pre-Existing Materials are used as part of the Products they are provided within and only as required in order to use the Products; and (ii) no modification shall be made that misrepresents or distorts the content or meaning of such Pre-Existing Materials.

(c) The transfer in Section 4(a) shall, subject to Section 4(b), include the right to apply for any and all patents arising from the Products and to register any copyright subsisting therein (collectively, the "Legal Rights")

(d) Save as set out in any applicable Statement of Work, Contractor will not be entitled to any royalty, commission or other payment with respect to the Products or Legal Rights in addition to the fees payable for the services to be provided under such Statement of Work.

(e) Contractor warrants that all Products will be Contractor's original work and do not infringe any copyrights, trade secrets, trademarks, patents or other proprietary rights of any third party.

5. INDEPENDENT CONTRACTOR STATUS: Contractor acknowledges and agrees that Contractor is an Independent Contractor and that Contractor's employees or agents, if any, are not employees or agents of ICANN for any purpose, including but not limited to national or local withholding or employer taxation obligations. Contractor agrees to indemnify and hold ICANN harmless (including attorney's fees and costs incurred by ICANN) should Contractor fail to meet Contractor's obligations with respect to its employees with regard to the payment or withholding of social security and other taxes, federal and state (or other such political or governmental subdivision) income taxes, unemployment insurance, and similar items should ICANN be held liable or responsible therefore. Contractor retains the sole right to control or direct the manner in which the Services are to be performed. Without limiting the foregoing, ICANN retains the right to inspect, to stop work, to prescribe alterations, and generally supervise Contractor's work to insure its conformity with the applicable Statement of Work. Contractor acknowledges that Contractor has no authority for or on behalf of ICANN to make, enter into or amend any contracts or agreements or to take any action which would impose liability on ICANN, without the express written consent of an authorized officer of ICANN. Contractor represents to ICANN that Contractor is engaged in an independent calling and will comply with all laws regarding business permits and licenses that may be required to carry out Contractor's obligations under this Agreement.

6. IMMIGRATION LAW: With respect to each of Contractor's employees who render services to ICANN hereunder, Contractor shall be responsible for compliance with all applicable immigration laws, including the U.S. Immigration Reform and Control Act of 1986, and with all employment eligibility verification provisions required by law.

7. INTERPRETATION: In the event of a conflict between: (i) this Agreement; and (ii) any Statement(s) of Work, the terms of the applicable Statement of Work shall prevail.

[signature page follows]

The parties shall indicate their acceptance of this Agreement by signing in the appropriate space provided below.

INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

By: AKRAM ATALLAH
Signature

AKRAM ATALLAH, COO
Print Name and Title

Date: 8/9/11

THE ECONOMIST INTELLIGENCE UNIT, NA, INCORPORATED

By: [Signature]
Signature

J. Past Dir. Operations
Print Name and Title

Date: 7/26/2011

EXHIBIT A
SUPPLEMENTAL TERMS

1. **RIGHTS OBLIGATIONS:** Except as set forth in the applicable Statement of Work, Contractor agrees that ICANN shall have the exclusive right, but not the obligation, to register copyright and file applications for patents throughout the world to protect ICANN's Legal Rights in and to the Products and that Contractor shall, upon the request of ICANN, perform (at no cost to Contractor) such legal acts and execute and deliver to ICANN, any such documents, applications and assignments reasonably requested by ICANN to register ICANN's Legal Rights in and to the Products.

2. **FORCE MAJEURE:** In the event of an occurrence of an event of force majeure, as the term is generally understood, ICANN shall have the right to suspend this Agreement and shall have the right, but not the obligation, to extend this Agreement by the length of any such suspension. If an event of force majeure continues for eight (8) consecutive weeks, ICANN shall have the right to terminate this Agreement.

3. **WARRANTIES:** Contractor represents and warrants to ICANN as follows:
 - (a) Contractor is fully authorized to enter into, and perform its obligations under this Agreement. This Agreement creates lawful, valid, and binding obligations, enforceable against Contractor in accordance with its terms.

 - (b) Contractor has the right to grant all rights granted herein, including but not limited to all necessary literary, artistic, musical and/or intellectual property rights, and is free to enter into and fully perform this Agreement.

 - (c) The exercise of rights granted herein, the performance of the Services and the delivery of the Products will not infringe on any of the following rights of any third party: copyright, trademark, or other intellectual property rights.

 - (d) Contractor has not entered and shall not enter into any arrangement or agreement that will interfere or conflict with the rights granted to ICANN hereunder.

Confidential Business Information

Confidential Business Information

5. CONFIDENTIALITY

(a) Each party acknowledges that it may disclose Confidential Information (as defined below) to the other in connection with this Agreement. The party receiving the Confidential Information will: (i) maintain it in confidence, except to the extent necessary to carry out the purposes of this Agreement, in which event confidentiality and use restrictions will be imposed upon the parties to whom such disclosures are made; (ii) use at least the same degree of care in maintaining its secrecy as it uses in maintaining the secrecy of its own Confidential Information, but in no event less than a reasonable degree of care; (iii) at the disclosing party's option, destroy or return all copies, notes, packages, diagrams, computer memory media and all other materials containing any portion of the Confidential Information to the disclosing party promptly following the earlier of (A) such party's request, (B) completion of the intended use of the Confidential Information, or (C) termination of this Agreement; and (iv) not use the Confidential Information other than for purposes of fulfilling its obligations under this Agreement. "Confidential Information" means all proprietary, secret or confidential information or data relating to either of the parties and its operations, employees, products or services, and any Personal Information. "Personal Information" means personally identifiable information relating to such party's employees, consumers and potential consumers. Each party will notify

the other party immediately upon discovery of any lost or altered Confidential Information.

(b) Information will not be considered Confidential Information to the extent, but only to the extent, that such information: (i) is already known to the receiving party free of any restriction at the time it is obtained from the other party; (ii) is subsequently learned from an independent third party free of any restriction and without breach of this Agreement; (iii) becomes publicly available through no wrongful act of either party; (iv) is independently developed by one party without reference to any Confidential Information of the other; or (v) is required to be disclosed by law, regulation, court order or subpoena, provided that the disclosing party will exercise reasonable efforts to notify the other party prior to disclosure. The parties agree also that the existence and terms of this Agreement are confidential and shall not be disclosed by either party without prior consent in writing by the other party.

6. SURVIVING OBLIGATIONS: The parties' representations, warranties, and indemnity obligations shall remain in effect following the termination or expiration of this Agreement.

7. ASSIGNMENT: Neither party may without prior consent in writing assign this Agreement or any of its rights or obligations hereunder.

8. REMEDIES: In recognition of the relative risks and benefits of this Agreement to both ICANN and Contractor, ICANN agrees that, to the fullest extent permitted by law, except for claims for indemnification under Section 4, any liability of Contractor (including its consultants, employees, and agents) for damages to ICANN shall be limited to an amount equal to the total amount paid to Contractor pursuant to this Agreement. EXCEPT FOR CLAIMS FOR INDEMNIFICATION UNDER SECTION 4, IN NO EVENT SHALL ANY PARTY TO THIS AGREEMENT OR ANY OF ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR SUBCONTRACTORS BE LIABLE TO THE OTHER PARTY UNDER ANY THEORY OF TORT, CONTRACT, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR LOST PROFITS, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL DAMAGES OR THE LIKE, EACH OF WHICH IS HEREBY EXCLUDED BY AGREEMENT OF THE PARTIES REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER EITHER PARTY OR ANY ENTITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9. TERMINATION:

(a) Each Party shall have the right to terminate this Agreement or any Statement of Work for convenience. Termination under this provision will be effective thirty (30) days after written notice by one party to the other; provided, that ICANN will be required to make payment for all work in progress and Products actually delivered under any active Statement of Work in the event of a termination of this Agreement or the applicable Statement of Work pursuant to this Section 9(a); and, provided, further, that, without prejudice to the generality of Section 7 of the Agreement to which these Supplemental Terms are attached, the termination provisions of each Statement of Work, if any, will supersede this Section 9(a).

(b) Each party shall have the right to terminate this Agreement if such party has a good faith belief, based on the facts then available, that the other party has engaged in any of the following conduct: fraud, misappropriation or embezzlement of funds, or gross misconduct. Termination under this provision shall be effective immediately upon receipt of notice by the relevant party.

(c) Other Provisions: Either party shall have the right to terminate this Agreement pursuant to other provisions contained throughout this Agreement, including but not limited to Section 2 (if ICANN) of these Supplemental Terms. Nothing contained within this provision shall negate or override its rights to terminate contained within other provisions herein, and it may elect at its option the most favorable applicable termination provision or provisions contained within this Agreement.

10. DEFAULT:

(a) If either party fails, refuses or neglects to perform any of its material obligations hereunder, for any reason other than incapacity, such party shall be in "default" of this Agreement. If either party refuses or states that it will refuse to comply with any of its material obligations hereunder, such refusal or statement may be treated by the other party as an immediate default, regardless of whether the time for performance of such obligation or obligations has arrived. Further, a party may, at any time, make a written request for the other party to confirm in writing its intentions and willingness to comply with its obligations hereunder, either generally or with respect to any particular matter. If, within five (5) days from delivery of such request at the address for notices set forth herein (exclusive of Saturdays, Sundays and federal holidays), the recipient of the request fails to deliver the requested information to the other party, such failure may be treated by such other party as an immediate default.

(b) Either party may suspend this Agreement with respect to performance of its obligations while any default of the other party continues.

11. CURING PROVISION: Neither party shall bring or make any claim that the other party has breached any of the provisions hereunder unless such party has first made a written demand to cure such failure, and the other party has not satisfied the obligations within ten (10) business days of receipt of such demand. The written demand shall specify the provision claimed to be breached, the date such obligation or performance was to have been satisfied and any other identifying specifics.

12. MISCELLANEOUS:

(a) No Implied Waiver: No failure on the part of ICANN or Contractor to exercise and no delay in exercising, and no course of dealing with respect to any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege under this Agreement preclude the exercise of any other right, power or privilege.

(b) Counterparts: This Agreement may be executed in two or more counterparts (and by different parties on separate counterparts) each of which shall be an original, but all of which together shall constitute one and the same instrument.

(c) No Violation of Law: If any provision of this Agreement shall be deemed invalid or unenforceable as written, it shall be construed, to the greatest extent possible, in a manner which shall render it valid and enforceable, and any limitations on the scope or duration of any such provision necessary to make it valid and enforceable shall be deemed to a part hereof; no invalidity or unenforceability shall affect any other portion of this Agreement.

(d) Choice of Law and Submission to Jurisdiction: This Agreement shall be governed by applicable U.S. federal law and by the laws of the State of California applicable to contracts entered into and to be wholly performed within the State of California. Contractor and ICANN hereby submit and consent to the jurisdiction of the State and Federal Courts located in Los Angeles County, California, USA.

(e) Paragraph Headings: Paragraph headings contained in this Agreement are for convenience and shall not be considered for any purpose in construing this Agreement.

13. NOTICES: Any notice given under this Agreement will be in writing and will be effective (a) upon receipt if (i) delivered by hand or (ii) sent via overnight mail by a nationally recognized express delivery service; or (b) three (3) days after deposit in the U.S. mail, postage prepaid, certified mail return receipt requested, when addressed as follows:

To ICANN:
Internet Corporation for Assigned Names
and Numbers
4676 Admiralty Way, Suite 330
Marina del Rey, California 90292

Attn: General Counsel

To Contractor:
The Economist Intelligence Unit, NA,
Incorporated
750 Third Avenue, 5th Floor, New York,
NY 10017

Attn: Contracts Manager, Americas

with a copy to:

Group General Counsel, The Economist
Group, 25 St James's Street, London
SW1 A 1HG

14. ENTIRE AGREEMENT: This Agreement cancels and supersedes all prior negotiations and understandings between ICANN and Contractor relating hereto. This Agreement is not valid or binding unless and until in writing and signed by a duly authorized officer of ICANN and Contractor. No amendment, modification, extension, release, discharge or waiver of this Agreement, or any provision hereof, shall be valid or binding unless in writing and signed by a duly authorized officer of ICANN and Contractor. No oral agreement shall be binding on ICANN or Contractor unless and until reduced to writing and signed by a duly authorized officer of ICANN and Contractor.

Appendix 1
Form of Notice and Acknowledgement

[Name of Third Party]
Address Attention:

The advice, recommendations and information in the document included with this notice were prepared for the sole benefit of the Internet Corporation for Assigned Names and Numbers (ICANN), based on the specific facts and circumstances of ICANN, and its use is limited to the scope of The Economist Intelligence Unit, NA, Incorporated's ("EIU") engagement for ICANN. It has been provided to you for informational purposes only and you are not authorized by EIU to rely upon it and any such reliance by you or anyone else shall be at your or their own risk. You acknowledge and agree that EIU accepts no responsibility or liability in respect of the advice, recommendations or other information in such document to any person or organization other than ICANN. You shall have no right to disclose the advice, recommendations or other information in such document to anyone else without including a copy of this notice and, unless disclosure is required by law or to fulfill a professional obligation required under applicable professional standards, obtaining a signed acknowledgement of this notice from the party to whom disclosure is made and you provide a copy thereof to ICANN and EIU. You acknowledge and agree that you will be responsible for any damages suffered by EIU as a result of your failure to comply with the terms of this notice.

Please acknowledge your acceptance of the foregoing by signing and returning to us a copy of this letter.

Very truly yours,

ICANN

By: _____
Name:
Title:

Accepted and Agreed to on this ___ day of ___, 20__ by:
[Name of Third Party]

By: _____
Name:
Title:

March 12th 2012

Statement of Work No:[2]

ICANN New gTLD Program

**Application Evaluation Services – Community Priority Evaluation
and Geographic Names**

March 12th, 2012

Mr. Akram Atallah
Chief Operating Officer
Internet Corporation for Assigned Names & Numbers
4676 Admiralty Way, Suite 330
Marina del Rey, CA 90292

Mr. Atallah,

The Economist Intelligence Unit, NA, Incorporated ("Panel Firm") will provide the Internet Corporation for Assigned Names and Numbers ("ICANN") with professional services to assist in the new Generic Top-Level Domain (gTLD) program in relation to the Community Priority and Geographic Names Panels. This Statement of Work ("SOW") outlines the activities to be performed and work product to be provided along with anticipated professional fees and expenses. The engagement team is expected to begin work on or about June 2012 with targeted completion of this SOW within 12 to 20 months from that date. If these dates change due to changes or other circumstances impacting the gTLD program, ICANN and Panel Firm will adjust dates and the start time accordingly (and anticipated professional fees and expenses to the extent applicable) via a Change Request. It is acknowledged that any modification of professional fees and expenses may impact the allocation of applications to Panel Firm.

1. Background

This SOW is entered into pursuant to the *New gTLD Program Consulting Services Agreement* between Panel Firm and ICANN dated 26 July 2011 ("**Master Agreement**").

Unless expressly defined in this SOW, any capitalized terms will have the meaning given to them in the Master Agreement. In this SOW, "Panelist" has the same meaning as "Panelist" or "Evaluation Panelist" in Section 2.4.3 of the Applicant Guidebook.

2. Scope and Objectives

The objectives of this SOW are to outline the scope, approach, activities and deliverables related to providing panel evaluation assistance to ascertain whether each application assigned to Panel Firm (subject to any conflict handling) has successfully met the criteria set forth in the *19 September 2011 New gTLD Applicant Guidebook* ("**Applicant Guidebook**"). Panel evaluation services will be conducted by applying scoring or other criteria in the Applicant Guidebook as well as the guidance provided in the mandatory evaluator training and the gTLD Evaluation Principles Guide provided by ICANN and developed for evaluation panels. Panel Firm will provide evaluation panel services to ICANN during the opening round¹ ("round one") of the new gTLD application program for the following appointed panel(s):

- **Community Priority Evaluation Panel**

This panel will be responsible for reviewing each (subject to conflicts as dealt with below) community-based application in Contention Sets, where community priority evaluation has been elected, to determine if the application fulfils the community priority criteria pursuant to the requirements outlined in Applicant Guidebook Section 4.2 Community Priority Evaluation.

The review will occur during the String Contention resolution period following the end of Initial Evaluation and/or Extended Evaluation, if applicable. The objectives and scope of the community priority evaluation panel will be to score the assigned application on the four criteria described in the Applicant Guidebook. The results of this review will be comprised of individual scoring for each criteria, including rationale, and a panel summary for each application reviewed in a format defined by ICANN and agreed on by Panel Firm. The summary includes an overall pass/fail result. The Panel Firm will consider application information forwarded by ICANN, including Community Priority panel application comments.

Non-Responsive Information Redacted; Relates to Other Scope of Work Not Related to Community Priority Evaluation

¹ "opening round" is distinct from an application batch. The opening round may be broken-up into multiple batches at ICANN's discretion. This SOW covers services provided in all batches that comprise the first initial application round under the Applicant Guidebook.

3. Approach, Activities and Deliverables

Panel Evaluation Approach and Activities

As part of the String Contention phase, Panel Firm will perform the panel evaluation services outlined above for assigned applications. ICANN's new gTLD Program Office ("**Program Office**") will assign applications for evaluation by Panel Firms generally based on a number of factors such as conflicts of interest with a particular applicant, scalability or capacity to complete timely evaluations. ICANN reserves the right to allocate applications to Panel Firm as it deems appropriate to ensure all application processing considerations and requirements are being met.

Note: "Panellist" has the same meaning as "Panelist" or "Evaluation Panelist" in Section 2.4.3 of the Applicant Guidebook.

The approach for evaluating each application is as follows:

String Contention Periods:

Note, the String Contention periods will occur in two separate phases. The first phase will run concurrent with Extended Evaluation and will cover applications that have passed Initial Evaluation and do not have any Objection(s) filed against them or associated GAC Advice presented to the Board. The second phase will run after the Extended Evaluation and Dispute Resolution Periods have closed and the Board has addressed any associated GAC Advice.

Review and Evaluate: Community Priority Evaluation (CPE)

The approach begins with the review and evaluation of the questions, related responses and supporting documentation provided by the applicants for each application. Panellists will perform the evaluation and analysis of the applicant's responses to the Community questions against the established criteria in the Applicant Guidebook and will follow the procedures outlined in the gTLD Evaluation Principles guide.

The detailed activities and analysis for the CPE during the String Contention resolution period are as follows:

1. Review each question, response and supporting documentation (where relevant). Note that ICANN will provide to Panel Firm all relevant and necessary information submitted to it as part of the application as well as supplemental material in support of the application as relates to its community status. Where Panel Firm determines

that additional application information or supporting material that ICANN has received is necessary to conduct the Community Priority Evaluation and requests that material, ICANN will provide it subject to any restrictions.

2. Establish that there is adequate information and supporting documentation to provide a basis for evaluation. If the information and supporting information is inadequate, Panellists will escalate to management according to the established Program Office processes. Adequate information and supporting documentation is defined as follows:
 - a. Complete – the response and supporting documentation provided by the applicant is sufficient for the Panel to perform the review
 - b. Appropriate – the response and supporting documentation provided by the applicant is relevant to the specific question and/or set of questions
3. Determine whether additional subject-matter support is required to interpret the supporting documentation provided by the applicant. For example, if the supporting documentation provided is in a language other than English, Panel Firm may translate the documentation or provide a subject-matter professional who would be similarly capable of reviewing and analysing the documentation. In addition, if the response and/or supporting documentation require additional technical expertise due to additional complexity, uniqueness, etc., Panel Firm will provide the necessary skill sets to review and analyse the documentation.
4. Evaluate the provided response and supporting documentation (where relevant) to each question to ascertain compliance to the Application criteria
5. Provide a recommended score according to the scoring schedule linked to each question or set of questions (i.e., 0 – fails requirement, 1/2- meets requirements, 2/3 exceeds requirements).

Non-Responsive Information Redacted; Relates to Other Scope of Work Not Related to Community Priority Evaluation

Document and Summarize

As part of the overall panel evaluation approach, Panel Firm will document their evaluation activities and results and provide a summary of the analysis performed to reach the recommended result—Non-Responsive Information Redacted Relates to Other Scope of Work Not Related to Community Priority Evaluation or a score, for Community Priority applicants—by question or area in the application. Documentation of the evaluation activities and results will be prepared and a summary of the rationale for each score will be documented in the TLD Application System (TAS) according to guidelines established by the Program Office and agreed on by Panel Firm.

The detailed activities to document and summarize the Community Priority evaluation and analysis are as follows:

1. Document the evaluation and analysis for each question to demonstrate how the Panellist determined a score for each question based on the established criteria
2. Provide a summary of the rationale and recommended score for each question.

Complete and Support

As part of the overall panel evaluation approach, Panel Firm will perform an internal management/quality control review of the completed evaluation activities and approve the rationale and recommended result—Non-Responsive Information Redacted; Relates to Other Scope of Work Not Related to Community Priority Evaluation or a score, for Community Priority applicants—prior to submitting to ICANN. In addition, Panellists and/or Panel Firm management will also provide ad-hoc support and documentation as requested by ICANN's Quality Control function as part of the overall gTLD evaluation quality control process (see Quality Control below).

The detailed activities to complete and support the Community Priority Evaluation and analysis are as follows:

1. Review the evaluation and analysis performed by the Panellists and the summary of the rationale and recommended scores based on overall reasonableness and adherence to the established criteria in the Applicant Guidebook and the gTLD Evaluation Principles guide.
2. Approve the rationale and recommended scores to finalize and complete the evaluation
3. Provide an overall summary of the evaluation, rationale, and recommended scores to ICANN for final review and approval

Non-Responsive Information Redacted; Relates to Other Scope of Work Not Related to Community
Priority Evaluation

Quality Control

Panel Firm acknowledges that consistency of application processing is a key success factor for the new gTLD program. As such, ICANN is requiring certain critical phases of application processing be subject to a Quality Control (QC) program.

The QC program will consist of procedural/administrative completeness checks. It is planned that the QC program will review a total of 35% of applications for procedural completeness.

Further details of Panel Firm's obligations under the QC program are described in Section 8 below

Panel Evaluation Key Deliverables

The key deliverables for panel evaluations are as follows:

- A completed Evaluator Template (from the New gTLD Evaluation Principles guide) for each application reviewed;
- A summary of the rationale and recommended score for each question for CPE applicants; and
- Non-Responsive Information Redacted; Relates to Other Scope of Work Not Related to Community Priority Evaluation

In general, the above will be captured via TAS or as otherwise reasonably requested in the event of the Contingency Plan in Section 7 below.

A matrix outlining the program responsibilities for the above steps and deliverables is contained in Exhibit C of this SOW.

** Note: While the detailed documentation of the evaluation analysis is not a key deliverable to ICANN, Panel Firm will provide copies of application evaluation work paper documentation to ICANN if requested. Refer to Section 9(B). Retention Requirements.

Project Management Approach

Panel Firm will provide on-going project management support in an effort to facilitate the completion of evaluation activities to be on time and within budget (to the extent within Panel Firm's control). As part of the overall gTLD program, Panel Firm's project management team will work with the Program Office to ensure that the evaluations are completed consistently and completely in adherence to the Applicant Guidebook and in accordance with processes established by the Program Office.

Panel Firm will establish a project management approach to manage, coordinate and monitor the evaluation activities based on Panel Firm's proprietary engagement management standards and ICANN's gTLD Program Governance requirements. Panel Firm will tailor certain project management processes to directly support the Program Office governance processes. These include:

- Status reporting – Panel Firm will manage evaluation activities progress for each application and provide reasonable on-going status updates to the Program Office as defined in the governance procedures and agreed on by Panel Firm. Panel Firm will manage resources and overall capacity for its evaluation services and provide status update reports to the Program Office as reasonably requested.
- Conflict check - Panel Firm will implement a process to identify and communicate potential conflicts of interest to support Program Office application allocation process
- Other support – Panel Firm will provide support, as reasonably requested by the Program Office, as it relates to its appointed evaluation panels including:
 - Issue management – the processes to ensure program level issues are identified and resolved in a timely manner to minimize the impact to the execution of the gTLD Program.
 - Vendor management – the processes necessary to manage all aspects of the vendor relationship including contract administration and performance.
 - Resource and budgeting – the processes to manage scheduling (scalability & capacity) of resources and program budget across all phases of the gTLD program.

- o Communication – the processes to manage communication between various key stakeholders to ensure accurate and timely flow of information as reasonably required
- o Continuous Improvement – the processes to identify and implement improvements to the overall gTLD program. Panel firms, during status reporting, will provide feedback on process improvement opportunities as they are identified

Project Management Reporting

- Provide on-going status reports to Program Office to monitor progress, capacity, budget, and other areas as highlighted above.

An overview matrix summarizing the program responsibilities and deliverables is contained in Exhibit C of this SOW.

4. Conflict of Interest and Code of Conduct

Note: “Panellist” has the same meaning as “Panelist” or “Evaluation Panelist” in Section 2.4.3 of the Applicant Guidebook.

Panel Firm will ensure that its Panellists are advised and made aware of their obligation to comply with the Conflict of Interest Guidelines and Code of Conduct Guidelines (as set out in Section 2.4.3 of the Applicant Guidebook).

Each Panellist assigned is expected to have read and perform services in compliance with Conflict of Interest Guidelines and Code of Conduct Guidelines. ICANN may require Panellists to submit a signed acknowledgement in the format set out in Exhibit B of this SOW. ICANN may alternatively permit Panel Firm to collect and manage individual Panellists’ signed acknowledgement consistent with Exhibit B of this SOW within its own consolidated and documented central register which ICANN (or its nominated QC service provider) may request to inspect and verify compliance.

In accordance with the Conflict of Interest Guidelines, Panel Firm will confirm its implementation of a satisfactory Conflict of Interest monitoring and disclosure protocol with ICANN.

Panel Firm will require that it and each Panellist working under this Statement of Work during the Compliance Period (as defined in the Applicant Guidebook) must:

- (a) Not engage in any direct or indirect communication with any Applicant regarding the gTLD application process; and
- (b) Obtain ICANN’s prior written approval (which will not be unreasonably withheld or delayed) in relation to the content of any proposed press release or other public communication concerning the evaluation services, reference to ICANN as a

customer of the Panel Firm or any other subject matter under this SOW prior to any release or publication.

Panel Firm shall be entitled to decline any assigned application or applications it considers, in good faith, will raise the prospect of a conflict of interest or is inconsistent with its professional obligations or requirements. Panel Firm will promptly notify ICANN where it wishes to excuse itself from an assigned application or applications due to conflict or professional obligations. ICANN will re-assign any such application or applications to be evaluated by another panel firm.

ICANN understands that Panel Firm may discuss confidential information regarding gTLD application process handling, co-ordination and process improvements with other panel firms. Confidential information that specifically identifies an applicant or the commercial terms and conditions of the Master Agreement or this SOW must not be disclosed or shared with other panels firms.

5. Personnel and Contractors

Panel Firm will notify ICANN of any Panellists or project management personnel, including sub-contractors, being removed from this engagement within a commercially reasonable time frame after such event (e.g. no less than 30 days where practical, otherwise as soon practical) unless such removal is part of Panel Firm's ordinary resource management and scaling activities. In addition, ICANN reserves the right to:

- a. Direct the prompt removal of any Panellist or sub-contractor from the performance of evaluation services by written notice due to any material or ongoing breach of either the Code of Conduct or Conflict of Interest Guidelines by that individual;
- (b) By written notice for any other reasonable grounds in the interests of the new gTLD Program as determined by ICANN; and
- (c) Interview and reasonably reject/approve replacement candidates.

Panel Firm must:

- (a) Ensure that Panellists assigned to conduct evaluations have successfully completed the relevant new gTLD panellist training developed by ICANN;
- (b) Agree to be bound by the TLD Application System (TAS) Terms of Use (in the form set out in Exhibit A to this SOW and as may be generally amended by ICANN from time to time) in connection with any use of the TAS to perform the evaluation services under this SOW; and
- (c) Comply with the confidentiality obligations under the Master Agreement with ICANN.

Where Panel Firm engages independent third party sub-contractors to assist with the evaluation services, Panel Firm will ensure that each contractor is contractually bound by an obligation of confidentiality broadly consistent with the confidentiality obligations of the Panel Firm under the Master Agreement.

6. Service-Level Agreements

Unless otherwise indicated, to ensure ICANN is able to meet all published timelines in the Applicant Guidebook, Panel firm will comply with the following service level metrics:

- The initial set of Panellists for round one must successfully complete the gTLD Training Program
- Any subsequent Panellist joining at a later date must successfully complete the gTLD training program prior to commencing evaluation analysis
- A Conflict of Interest report (format and detail as determined by ICANN and agreed by Panel Firm) must be completed and submitted to ICANN within four weeks after the close of the Application Window, which is expected to be 12 April 2012
- Community Priority Panel -final evaluation results for an application will be provided to ICANN within 15 business days from being assigned. Note: time extensions as agreed will be allowed to address permitted exceptions such as clarifications by ICANN or from the Applicant.
- Non-Responsive Information Redacted; Relates to Other Scope of Work Not Related to Community Priority Evaluation

7. gTLD Program Contingencies

In addition to the termination provisions set forth in the Master Agreement, ICANN reserves the right, without prejudice to Panel Firm's rights in respect of fees and costs, to notify the Panel Firm that evaluation services under this SOW will be suspended or terminated (as the case may be) where ICANN determines that the New gTLD Program is being suspended or terminated due to external contingencies impacting the continuation of the New gTLD Program. This includes, but is not limited to, litigation initiated by a governmental authority or regulatory agency, a determination or directive from a court, governmental authority or regulatory agency with competent jurisdiction, or a threat to the security or stability of the Internet or the Domain Name System (DNS).

As noted in the Applicant Guidebook, if a significant number of applications are received beyond stated processing capacity, ICANN will invoke a batching process. Under these circumstances the processes and timelines outlined in this SOW (along, potentially, with the fees) will be impacted. ICANN will work with Panel Firm to determine the impact and agree upon a mutually acceptable approach.

In the event that the TLD Application System is or becomes unavailable for an unscheduled or extended period (including due to unauthorized security intrusions, hacking or denial of service attacks), ICANN will invoke its processing contingency plan and work with panels to receive evaluation results via an alternate, secure mechanism. Under these circumstances the processes and timelines outlined in this SOW may be impacted.

8. gTLD Program Quality Control (QC)

Panel Firm will reasonably co-operate and provide reasonably requested documentation to ICANN and its appointed independent Quality Control service provider for the purposes of helping it to verify that Panel Firm's evaluation services have been and are performed in accordance with QC Guidelines. ICANN agrees that its appointed independent Quality Control service provider will be bound by at least the same confidentiality undertakings as Panel Firm.

Reasonable written notice will be given to Panel Firm prior to any QC request.

The detailed activities to provide support to on-going gTLD evaluation process Quality Control requirements include the following:

1. For each completed application review, Panel Firm will complete an ICANN provided Application Evaluation Process Log (AEP Log) to confirm that all activities in the evaluation process have been properly completed. ICANN will agree upon the contents of the AEP Log with Panel Firm prior to commencement of evaluations.
2. For each application selected for procedural completeness review, the Panel Firm will provide evidence that all steps described above in "Panel Evaluation Approach and Activities" have been completed.
3. Access to working papers as required verifying Panel Firm's compliance.

Panellists and managers shall be available to participate in a resolution process in the event a discrepancy is found during QC. The above tasks are subject to change. Notification of any change will be communicated by ICANN and agreed to with Panel Firm.

9. Advisories and ICANN policies

(A) Security

Panel Firm will access ICANN's TLD Application System ("TAS") from a secure device (to an agreed level of security), and take reasonable security precautions within Panel Firm's networks and devices that are used to connect to TAS.

Panel Firm will either comply with reasonable written data security requirements that ICANN may provide from time to time in connection with performing the evaluation services or provide an explanation of why it is unable or unwilling to do so.

To the extent compliance with data security requirements results in a material change to the scope of services, schedule and/or fees/expenses for such services, ICANN will work with the Panel Firm to discuss the impact and agree a revision of costs and time schedules to reflect such circumstances, and formalise such changes via a Change Request

(B) Retention Requirements

All source documents created by Panel Firm or a Panellist in connection with any evaluation services (including Panel Firm and Panellist working papers and notes) must be retained for a minimum of 5 years from the completion of application reviews for the opening round. Panel Firm will provide copies of application evaluation working paper documentation to ICANN if requested.

(C) Advisories and Compliance

To the extent ICANN publishes or updates reasonable advisories and/or policies and notifies such advisories/policies/updates from time to time to evaluation panellists and the Panel Firm in relation to the performance of Evaluation Services, the Panel Firm will either comply with such advisories and/or policies or provide an explanation of why it is unable or unwilling so to do. Panel firm acknowledges that non-compliance with updates to reasonable advisories and/or policies may impact the allocation of applications for evaluation.

To the extent compliance with any new advisory or ICANN policy results in a material change to the scope of services, schedule and/or fees/expenses for such services, ICANN will work with the Panel Firm to discuss the impact and agree a revision of costs and time schedules to reflect such circumstances, and formalise such changes via a Change Request.

10. Terms and Conditions

This SOW is governed by the terms and conditions of the Master Agreement which are incorporated by reference.

The following provisions are agreed to be supplemental to the terms and conditions of the Master Agreement ("**Supplemental SOW Terms**"). To the extent of any inconsistency between the Supplemental SOW Terms and the Master Agreement, the Supplemental SOW Terms will prevail.

(a) Fees

In the event that Panel Firm evaluation services under this SOW are suspended or terminated by ICANN for any reason other than for breach by Panel Firm of the SOW or Master Agreement terms, Panel Firm will be entitled to full payment for services performed under this SOW up to the time of notification of suspension or termination of services.

(b) Panel Firm's role and use of the Panel Firm's name

The parties acknowledge and agree the following in relation to Panel Firm's role under this SOW:-

- (i) the Panel Firm acts as a service provider to ICANN, assessing applications and recommending an outcome, as well as to provide (as applicable) a written explanation setting out its rationale;
- (ii) ICANN will be free in its complete discretion to decide whether to follow Panel Firm's determination and to issue a decision on that basis or not;
- (iii) ICANN will be solely responsible to applicants and other interested parties for the decisions it decides to issue and the Panel Firm shall have no responsibility nor liability to ICANN for any decision issued by ICANN except to the extent the Panel Firm's evaluation and recommendation of a relevant application constitutes wilful misconduct or is fraudulent, negligent or in breach of any of the Panel Firm obligations under this SOW;
- (iv) each decision and all associated materials must be issued by ICANN in its own name only, without any reference to the Panel Firm unless agreed in writing in advance;
- (v) ICANN will make no use of the Panel Firm's name, brand or logo without its prior approval in writing, and where so approved, ICANN shall refer to EIU as an "Appointed Evaluation Panel Firm"; and
- (vi) ICANN will not identify Panel Firm evaluation services with any individual or specific applicants, applications or results of the evaluation except in accordance with this SOW and the Master Agreement.
- (vii) ICANN shall procure that each applicant agrees in advance that it will accept ICANN's final decision and waives any rights it may have to take any action against ICANN and its service providers (including, for the avoidance of any doubt, the Panel Firm).

11. Professional Fees

Confidential Business Information

Fees

Confidential Business Information

12. Change Control

(a) A "Change Request" is a request to amend this SOW or any document attached to it or referred to in this SOW. Either party may initiate a Change Request in writing. A Change Request will document details of the impact that the proposed change will have on any of the terms of this SOW and include, if relevant, any additional costs or timing changes.

(b) On receipt of a Change Request either party will use reasonable commercial efforts to respond within 5 business days (or other agreed extended period) of receipt as to their acceptance or otherwise of the Change Request.

(c) A Change Request shall become a "SOW Amendment" when the Change Request is agreed and signed by authorized representatives of both parties. An agreed SOW Amendment will be incorporated into this SOW and will amend this SOW as documented and agreed. The reasonable costs of implementing a SOW Amendment and any

amendments to the Professional Fees (if any) will be borne as set out in the SOW Amendment.

(d) If either party is unwilling to accept a Change Request suggested by the other (or any term of any Change Request) then this SOW will continue unchanged.

For Economist Intelligence Unit (Panel Firm)

For ICANN



Name: Vinay Shah

Name: AKRAM ATALLAH

Title: Finance Director

Title: COO

Date: March 16, 2012

Date: 3/19/12

[Exhibit A]

TLD Application System (TAS) Terms of Use & Privacy Statement

TLD APPLICATION SYSTEM (TAS) – TERMS OF USE – PANEL FIRM

THE FOLLOWING TERMS OF USE GOVERN ANY ACCESS OR USE OF THE INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS' ("ICANN") TLD APPLICATION SYSTEM ("TAS") BY EVALUATION PANEL FIRMS. PANEL FIRM AGREES TO BE BOUND BY AND COMPLY WITH THESE TERMS OF USE.

1. DEFINITIONS

"Commencement Date" means the date that the User receives a user name and password to access the TAS.

"Panel Firm" or "You" means an evaluation panel firm appointed by ICANN to evaluate assigned TLD application(s) under ICANN's new gTLD Program.

"User" means an authorized employee or contractor of a Panel Firm who has been provided access to the TAS.

2. AUTHORITY

You represent and warrant that Users are an employee or contractor of Panel Firm and have been authorized to access TAS on behalf of Panel Firm.

3. USE LICENSE

3.1 License Grant. Subject to complying with these Terms of Use, ICANN grants to You from the Commencement Date, a limited, non sublicenseable, non-exclusive, non-transferable license to use the TAS ("License") for the sole purpose of reviewing and evaluating TLD application(s) assigned to Panel Firm.

3.2 Username and Password. You agree that any User TAS log in and password must not be shared. You are responsible for maintaining the confidentiality of User account log in and password information, and for the security of User's computer to access the TAS. In the event of a breach of security, You agree to immediately instruct Users to change their password and to promptly (and in any event, within one business day) notify ICANN of such breach in writing. You will remain liable for compliance with these Terms of Use and any use or activity of the TAS under your Users' log in access (including any violations of these Terms of Use or if You allow another individual or organization to access or use the TAS using your Users' log in credentials).

3.3 Restrictions. You must not: (a) reverse engineer, disassemble, decompile or otherwise attempt to access or determine TAS source code; (b) re distribute or sublicense access to the TAS, or any part thereof, to any third party; (c) engage in any malicious or illegal behavior in connection with access or use of the TAS (including without limitation, submitting malicious code or engaging in other activity designed to compromise the availability, security or data of the TAS); (d) remove, modify or obscure any copyright, trademark or other proprietary rights notices that are contained in or on software accessed under this License; or (e) allow, assist or permit a third party to do any of the foregoing.

3.4 Technical Support. ICANN or a third party on ICANN's behalf will provide technical support for TAS services.

4. INTELLECTUAL PROPERTY RIGHTS

The TAS and all intellectual property rights therein, is licensed to You, not sold. All rights in the TAS not provided to You under these Terms of Use are expressly retained by ICANN and its licensors.

5. PERSONAL INFORMATION

You acknowledge that any personal or identifying information You consent to submit to the TAS is collected, stored and used for the purposes of processing and evaluating an application under ICANN's new gTLD Program. ICANN will handle personal information collected in accordance with its gTLD Program privacy statement at <http://newgtlds.icann.org/en/applicants/agnb/program-privacy>, which is incorporated herein by this reference.

6. TERMINATION

6.1 ICANN may terminate the License if You commit a breach of any of the Terms of Use and if capable of remedy, fail to remedy the breach within fourteen (14) calendar days of receiving written notice from ICANN. Notwithstanding the foregoing, ICANN may immediately terminate the License if (a) You commit a breach of Section 3.3 or Section 8 of the Terms of Use, or (b) the contract between Panel Firm and ICANN with respect to the provision of evaluation services is terminated.

6.2 You may terminate the License and your personal login by written or email notification to ICANN via ICANN's customer support contact address.

6.3 In the event of termination, You must cease using the TAS. You further acknowledge that ICANN may terminate your Users' password, account and use of the TAS immediately upon the effective date of termination.

7. DISCLAIMER & LIMITATION OF LIABILITY

7.1 USE OF THE TAS AND THIS LICENSE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. TO THE FULLEST EXTENT PERMITTED BY LAW, ICANN, ITS OFFICERS, DIRECTORS, EMPLOYEES, LICENSORS AND AGENTS DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, IN CONNECTION WITH THE TAS AND AN APPLICANT'S OR USER'S USE OF THE TAS. ICANN MAKES NO WARRANTIES OR REPRESENTATIONS ABOUT THE FITNESS FOR USE, NON INFRINGEMENT, AVAILABILITY OR RELIABILITY OF THE TAS OR THAT THE TAS IS ERROR FREE.

7.2 IN NO EVENT SHALL ICANN, ITS OFFICERS, DIRECTORS, EMPLOYEES, LICENSORS OR AGENTS, BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES WHATSOEVER RESULTING FROM ANY (I) ERRORS, MISTAKES, OR INACCURACIES IN THE TAS OR TAS DATA, (II) INJURY OR DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM ACCESS TO AND USE OF THE TAS, (III) INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM THE TAS, (IV) BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE, WHICH MAYBE TRANSMITTED TO OR THROUGH THE TAS BY ANY THIRD PARTY, (V) DENIAL OF SERVICE OR ANY MALICIOUS SECURITY EXPLOIT INVOLVING THE TAS, AND/OR (VI) LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF ANY USE, COMPROMISE OR LOSS OF PERSONAL DATA AND CONTENT POSTED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE VIA THE TAS, WHETHER BASED ON WARRANTY, CONTRACT, TORT, OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT APPLICANT OR USER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW IN ANY APPLICABLE JURISDICTION.

8. THIRD PARTY PROVIDER SUBLICENSE TERMS

The TAS incorporates software licensed from Microsoft Corporation. You agree to the following terms and conditions in relation to use of these Microsoft products in accessing or using the TAS:

8.1 High Risk Use. You must not use the software under this License in any application or situation where the software failure could lead to death or serious bodily injury of any person, or to severe physical or environmental damage.

8.2 You must not remove any copyright, trademark, or patent notices contained in or on the software products under this License. You have no right under this agreement to use any Microsoft logos in any manner whatsoever. You must use the appropriate trademark, product descriptor, and trademark symbol (either "TM" or "®") and clearly indicate Microsoft's (or Microsoft's suppliers') ownership of such marks whenever a Microsoft product is first referenced in any written or visual communication. A listing of Microsoft's trademarks can be found at <http://www.microsoft.com/trademarks>. You must not undertake any action that will interfere with or diminish Microsoft's (or Microsoft's suppliers') right, title and/or interest in the trademark(s) or trade name(s). At Microsoft's request, You must provide samples of all your written or visual materials that use a Microsoft product name.

8.3 You acknowledge that your name, address, and country in which you are located may be provided to Microsoft in monthly end use reports under Microsoft sublicense requirements.

9. GENERAL

9.1 ICANN may modify these Terms of Use via written or electronic notice to You. Any access or use of the TAS by You, following such notification, will be treated as your acceptance of the revised Terms of Use.

9.2 Sections 4 to 9 survive any termination or expiry of the License.

9.3 Any non English translation of these Terms of Use that ICANN may make available are for convenience only. In the event of any inconsistency between the translated version and the English version, the English version of these Terms of Use will prevail.

9.4 These Terms of Use are governed by the laws of the State of California.

New gTLD Program

Personal Data Privacy Statement

The Internet Corporation for Assigned Names and Numbers ("ICANN") respects and is committed to ensuring the protection of personal information collected from the Applicant and new gTLD Program participants, including users of the TLD Application System ("User"), and used in connection with new gTLD Program application process (the "Program"). ICANN will handle all personal information provided under the Program as described in this Personal Data Privacy Statement ("Privacy Statement").

By participating in the Program, including using the TLD Application System ("TAS"), the User and the Applicant accept the practices described in this Privacy Statement. In addition to this Privacy Statement, ICANN has established Terms of Use that set forth the general rules and policies governing the use of the TAS. You can review the Terms of Use by visiting www.icann.org/ >.

1. International Transfers

The Program may be operated and administered entirely outside the jurisdiction where the User and/or Applicant are domiciled. Please note that any personal information provided to ICANN in connection with the Program will be transferred to and processed in the United States. On his/her own behalf, and on behalf of the Applicant and each of its relevant personnel, the User hereby consents to these transfers, and is solely responsible for ensuring that the personal information provided to ICANN and its designees complies with the laws of the User's and Applicant's jurisdiction(s).

2. Personal Information Collection and Use

Application submission. The Program application submission generally involves the collection and use of minimal personal information. The types of personal information ICANN collects will be: name, postal address, telephone number, and email address. This personal information is used to initially process and administer the Program application, including background checks of certain Applicant's personnel. This information will also be used by ICANN, its service providers, and agents to provide general support services and to process TLD applications for the Program.

Application administration: As part of the application process, ICANN may request certain personal information about the Applicant's directors and officers, and other relevant personnel, such as full name, date of birth, city and country of primary residence and country of birth. ICANN and its service providers use this information to conduct necessary background checks and other evaluations as part of the Program's application process, in accordance with the requirements of the <Applicant Guidebook Terms and Conditions>. This use is based on consent provided by agreeing to the <TAS Terms of Use > and the <Applicant Guidebook Terms and Conditions>. In certain circumstances, the results of initial background checks may require ICANN to request additional personal information to conclude necessary background checks or other Program application evaluations.

Support information. ICANN receives personal information as part of general support queries, email, feedback, comment or other communications with our Customer Service Center or other ICANN staff regarding the Program. ICANN may retain those communications in order to process inquiries, respond to requests and improve the TAS. ICANN may include your personal information in publishing your comments or feedback on the ICANN website for the benefit of others or to comply with ICANN's accountability and transparency principles located at <http://www.icann.org/en/accountability/overview-en.htm> and disclosure policies located at <http://www.icann.org/en/transparency/didp-en.htm>. ICANN may monitor or record your call or communication sessions with the Applicant Support Center for quality assurance and staff training purposes, or as a record of communication.

Sensitive personal information. ICANN does not collect sensitive personal information (e.g. personal medical or health information, racial or ethnic origin, or political opinions, etc.) in connection with the Program. You will be notified if such sensitive personal information is necessary in connection with the Program, such as to conduct further background checks.

In addition, when using the TAS, ICANN may collect the following types of non-identifying information:

Automatically logged information: The TAS automatically records information that the browser sends whenever the TAS is used. This information may include information such as IP address, browser type, internet service provider (ISP), date/time stamp, page viewed, and other similar data. ICANN uses this information to administer the TAS, general web page analytics, track the use of TAS and to develop Program support. This information is not linked to personally identifiable information.

Cookies: Cookies and other user tracking devices (e.g., local shared objects) may be stored on the User's computer when using TAS. A cookie is a small text file that is stored on a user's computer for record keeping purposes. ICANN uses session ID cookies to confirm that a User is logged in. These cookies terminate once the User closes the browser. ICANN may also deploy persistent cookies to improve TAS, including by storing user preferences and tracking user trends. While most browsers are set to accept cookies and other tracking devices by default, Users are always free to decline cookies if the browser permits, but some parts of TAS may not work properly. The browser manufacturer has information on changing the default setting for that specific browser. The User acknowledges the use of such tracking devices as noted in this Privacy Statement, and hereby consents to having such tracking devices stored on the User's computer.

3. Sharing of Personal Information

ICANN will share personal information with Program evaluation panelists, contractors and other agents for the purpose of processing TLD applications on ICANN's behalf, and providing other services for the Program. ICANN requires that these parties agree to handle this information in compliance with appropriate confidentiality obligations and security measures.

ICANN will provide personal information to third parties, government authorities and agencies as and when required to: (i) comply with applicable laws, regulations, legal process or enforceable governmental request; (ii) protect ICANN's or a third party's legal rights; (iii) receive contracted services or use of licensed products from third party providers; (iv) comply with any court order or legal proceeding; (v) comply with ICANN's accountability and transparency principles and disclosure policy; (vi) detect, prevent or otherwise address fraud or other criminal activity or errors, security or technical issues; or (vii) protect against imminent harm to the rights, property or safety of ICANN, our users or the public as required or permitted by law.

ICANN will not sell or otherwise share any personal information with third parties for marketing purposes. ICANN will not provide any personal information to third parties for commercial services in relation to the Program unless the User and/or the relevant Applicant personnel have given specific permission or direction.

4. Information Security and Integrity

ICANN will use industry standard safeguards, including firewalls, security patches and anti virus programs to protect the confidentiality of personal information collected as part of the Program. When using TAS, personal information will be encrypted using secure socket layer technology ("SSL").

Access to personal information is restricted to ICANN staff, contractors and agents who need to know this information to manage the Program activities on behalf of ICANN. ICANN staff, contractors and agents will be bound by confidentiality obligations and, where appropriate, they may be subject to discipline, including termination and prosecution, if they breach these confidentiality obligations.

ICANN will take reasonable steps to ensure that personal information collected is relevant to its intended use and is complete.

ICANN's Program website contain links to other third party websites which are subject to the respective privacy policies of those third parties. ICANN is not responsible for the privacy practices of such linked third party sites, and their owners and operators.

Due to the open communication nature of the Internet, ICANN cannot represent, warrant or guarantee that communications stored on ICANN servers will be free from unauthorized access by third parties, loss, misuse or alterations. While ICANN will take reasonable and appropriate security measures noted above to protect against unauthorized access, disclosure, alteration or destruction of personal information received, ICANN DISCLAIMS ANY AND ALL LIABILITY FOR UNAUTHORIZED ACCESS OR USE OR COMPROMISE OF YOUR PERSONAL INFORMATION SUBMITTED THROUGH THE TAS. USERS AND APPLICANTS ARE HEREBY ADVISED THAT THEY SUBMIT SUCH PERSONAL INFORMATION AT THEIR OWN RISK.

5. Accessing and Updating Personal Information

The User and other authorized Applicant personnel may view stored personal information in relation to the Applicant and User profile, or a TLD application by accessing the relevant information screens within the TAS. As submitted information is used in evaluation checks and processes, submitted information cannot be modified without contacting our Customer Service Center. ICANN will endeavor to respond to requests to access, correct or update any other personal information ICANN retain in connection with the Program. Requests may be sent by email to our Customer Service Center at newgtld@icann.org.

ICANN will retain personal information stored on our servers in accordance with our general archival practices.

6. Changes to this Privacy Statement

Please note that ICANN may revise this Privacy Statement from time to time throughout the Program. ICANN will post any Privacy Statement changes on the Program's website. If the changes are material, ICANN may also provide notification via email according to the registered TAS log in email for the Applicant. The Applicant's continued participation in the Program application process, including the User's use of TAS, after such change will be deemed acceptance by the User and the Applicant of the revised Privacy Statement.

7. Questions or Contacting ICANN

If you have any questions about this Privacy Statement, please feel free to contact ICANN at newgtld@icann.org or write to:

Att: Customer Service Center
ICANN
4676 Admiralty Way, Suite 330

Marina del Rey, CA 90292 6601
USA

Last revision: December 30, 2011 [to view archived versions, click <here>]

Exhibit B

Panelist Acknowledgement Form

I acknowledge and confirm that:

- (a) I have read and understand the Guidelines listed below; and
- (b) I must always comply with these Guidelines in connection with my performance of any Panellist evaluation work for ICANN's new gTLD Program.

<u>Guidelines</u>	<u>Initials</u>
Code of Conduct (Applicant Guidebook Section 2.4.3)	_____
Conflict of Interest (Applicant Guidebook Section 2.4.3)	_____
TAS Terms of Use	_____

Name: _____

Signature: _____

Panel Firm: _____

Date: _____

Instructions:

1. A completed and signed form must be received and maintained by Panel Firm before a personal login for the TAS will be issued to a Panellist.
2. On request, Panel Firm will provide a copy of this form to ICANN's new gTLD Program Office.

If you have any questions in regards to this Form, please contact ICANN's new gTLD Program Office.

Exhibit C

Program Responsibilities

The following table is intended to be a general summary of key program responsibilities outlined in this SOW. This table is not intended to be an exhaustive list or replace other responsibilities set out in this SOW.

Evaluation Process Task		ICANN	Panel
0 Pre-Evaluation			
0.1	Agree to Code of Conduct		✓
0.2	Training participation and certification of evaluation panelists		✓
Conflict of Interest			
0.3	Agree to conflict of interest policy		✓
0.4	Provide list of Applicants	✓	
0.5	Complete conflict of interest check against Applicant listing		✓
1 String Contention Procedures and Evaluation (Initial and Extended Evaluation, as applicable)			
1.1	Assign Application(s) to Panels	✓	
1.2	Collect & Provide Application Comments	✓	
1.3	Read & Consider Application Comments in Evaluation		✓
1.4	Request Clarifications to Applicant as Necessary		✓
1.5	Provide Clarifications to Applicant & Obtain Response	✓	
1.6	Consider Clarification Responses in Evaluation		✓
1.7	Evaluate & Score Question, Provide Summary		✓
1.8	Complete all Required Evaluation Templates		✓
1.9	Maintain evaluation documentation per ICANN retention policies		✓
1.10	Provide Evaluation Results, Summaries & Templates to ICANN		✓
2 Program Management			
2.1	Manage/Scale Resources based on application volume	✓	✓
2.2	Report Status (using required templates)		✓
2.3	Attend status & ad hoc meetings	✓	✓
Quality Control			
2.4	Perform Issue Management	✓	✓
2.5	Document Issues (using required templates)	✓	✓
2.6	Attend issue tracking meetings	✓	✓
2.7	Perform QC Process Reviews	✓	
2.8	Respond to QC Info Requests		✓
2.9	Participate in QC Reconciliation as Applicable		✓
Continuous Improvement (CI)			
2.10	Manage CI Processes/Implement Changes	✓	
2.11	Adopt & Integrate Changes	✓	✓
2.12	Participate in CI Meetings	✓	✓

Exhibit D

Confidential Business Information

Statement of Work Amendment #1

ICANN New gTLD Program

Application Evaluation Services – Community Priority Evaluation and Geographic Names

The Internet Corporation for Assigned Names and Numbers (“ICANN”) and The Economist Intelligence Unit, NA, Incorporated (“Panel Firm” or “EIU”) agree to amend **Statement of Work No.2** between the parties dated 12 March 2012 (“SOW”) pursuant to their *New gTLD Program Consulting Services Agreement* dated 26 July 2011, in accordance with the terms of this Statement of Work Amendment (“**Amendment**”) and commencing from 21 December 2012 (the “**Amendment Effective Date**”).

Unless otherwise defined in this Amendment, all capitalized terms have the meaning given to them in the Agreement and the SOW.

The parties agree to the following:

Confidential Business Information


Confidential Business Information

Non-Responsive Information Redacted; Relates to Other Scope of Work Not Related to Community Priority Evaluation; Confidential Business Information

Confidential Business Information

Confidential Business Information

ICANN

By: 
Signature
Print Name: Akram Atallah
Title: Chief Operating Officer
Date: May 21, 2013

EIU

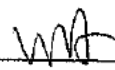
By: 
Signature
Print Name: Vinay Shah
Title: CFO
Date: Feb 25, 2013

EXHIBIT A

Refer to attached Statement of Work No.2 dated March 12th 2012 (revised 21 December 2012).
This version incorporates all changes agreed under this Amendment.

Exhibit DIDP A9

ICANN ICANN Email List Archives

[comments-new-gtld-auction-rules-16dec13]

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European Commission comments - ICANN Auction Rules in the new gTLD program

- *To:* <comments-new-gtld-auction-rules-16dec13@xxxxxxxx>
- *Subject:* European Commission comments - ICANN Auction Rules in the new gTLD program
- *From:* <Linda.Corugedo-Steneberg@xxxxxxxxxxxx>
- *Date:* Tue, 4 Feb 2014 14:58:41 +0000

Dear ICANN,

The European Commission appreciates the opportunity to comment on the recently updated ICANN's New gTLD Auction Rules and welcomes ICANN's interest in the community views expressed in Buenos Aires, including at the GAC and Public Forum.

Please find below our comments.

Best regards

Linda CORUGEDO STENEBERG
DIRECTOR

[cid:image001.gif@01CF20CF.7DAF3FF0]

European Commission

Communications networks, Content and Technologies Directorate-General, DG
CONNECT

Cooperation, Directorate D
EU GAC representative

BU 25 06/24

B-1049 Brussels/Belgium

+32 22996383

Mobile Contact Information Redacted

linda.corugedo_steneberg@xxxxxxxxxxxx<<mailto:linda.corugedo-steneberg@xxxxxxxxxxxx>>

Public Comment on new gTLD Auction Rules

1. General comments

We are deeply concerned about the implications that the Auction Rules in the gTLD program may have for the protection of public policy interests, competition, openness and innovation. As a general principle, ICANN should implement Auction Rules that are consistent with its Bylaws, its non-for profit status, the objectives of the new gTLD Program and the Applicant Guidebook to promote competition, diversity, innovation and consumer choice. As expressed in several comments already submitted during the comment period, the current

Auction Rules are advantageous for portfolio applicants rather than for small, innovative and community applicants, which is at odds with the "diversity and innovation" policy that ICANN seeks to promote. It would be desirable to give these applicants a more even playing field when they come up against larger portfolio holders in the contention process. Also, ICANN's auction rules has not yet proven convincing to the community and deserves being revisited in light of the input received.

2. Relevant GAC advice

The European Commission regards positively the explicit mention in the Auction Rules of the need to "resolve any applicable GAC advice" prior to the participation in the auction process, as part of the applicant's "eligibility" criteria, but regrets the lack of reference to "community applications" or applications with community support, despite the reiterated GAC advice. In this regard the European Commission seizes this opportunity to recall the following passages of recent GAC advice:

* "The GAC advises the board that in those cases where a community, which is clearly impacted by a set of new gTLD applications in contention, has expressed a collective and clear opinion on those applications, such opinion should be duly taken into account, together with all other relevant information." (Beijing Communiqué)

* "The GAC reiterates its advice from the Beijing Communiqué regarding preferential treatment for all applications which have demonstrable community support, while noting community concerns over the high costs for pursuing a Community Objection process as well as over the high threshold for passing Community Priority Evaluation". (Durban Communiqué)

* "The GAC requests a briefing on the public policy implications of holding auctions to resolve string contention (including community applications)." (Buenos Aires Communiqué).

It is essential that the outcome of the briefing on the public policy implications of holding auctions requested in the Buenos Aires GAC Communiqué and the reflections of the GAC on this particular issue are fully taken into account when defining the Auction Rules. Particularly, the auction process should not be initiated until the GAC's briefing request is duly addressed by the ICANN Board.

3. ALAC - Community applications statement

It is important to make a specific reference to the At-Large Community (ALAC) statement of 9.08.2013 on preferential treatment for community applications in string contention; ALAC stressed that some of the new gTLD applications that are intended for communities and have wide public support were not submitted as community applications; those applications are currently in contention with others not designed for the benefit of specific communities and driven purely by commercial considerations. In this regard the European Commission (consistent with its position in the GAC) fully endorses the GAC view that community applications and applications with community support should be given preferential treatment in the new gTLD string contention resolution process, and remind the clear above mentioned GAC Beijing and Durban Communiqués.

4. Security and consumer protection

Security and consumer protection are fundamental public policy objectives. Therefore we endorse those comments proposing that the winning applicant is contractually required to ensure that all security related gTLDs adopt technologies that improve the level of trust of Internet users. A "secure" gTLD implies that the resources offered are truly secure and operating under specific policies that warrant a dedicated level of security to end users. It is therefore contrary to this public policy interest that the winning applicant is decided through an auction process that may simply favour deep pocket applications.

Therefore we will repeat again our concern about the negative impact that auctions may have for the preservation and enhancement of the operational stability, reliability, security and global interoperability of the Internet, as expressed during the Buenos Aires GAC meeting: "The European Commission believes that in the new gTLD program, ICANN should aim not just to maintain, but also enhance the level of consumer protection and confidence in gTLDs. ICANN should therefore take this social and community responsibility into account in their implementation plan. It is our understanding that trusted domains such as .safe, .secure and .security risks being awarded to applicants based only upon the price they are willing to pay in an auction. We therefore urge ICANN, in the interest of fostering innovative solutions that enhance global security, not to allow purely commercial interests to prevail in the delegation of these domains.

5. Negotiations between applicants prior to the Auction process

Over and above, there seems not to be any incentive for financially strong applicants to solve the contention "through voluntary agreement among the involved applicants". This solution places an unnecessary burden on applicants and departs from the artificial assumption that parties are eager to negotiate.

6. Destination (use) of Auction funds

We also note the lack of clarity as regards the destination of the significant funds that ICANN will receive as a result of these auctions; it is therefore highly recommended that ICANN begins a consultation process with the community to determine the allocation of the funds gathered through this process, with a focus on its use for community support, capacity building and engagement of stakeholders in least developed nations.

7. Unilateral powers to modify Auction Rules

ICANN shall not be entitled in its sole discretion to amend these Auction Rules "for any auction at any time and for any reason prior to the deposit deadline for that auction". The abovementioned unilateral power to change the rules currently under negotiation only contributes to increase applicants' uncertainty. The European Commission fully supports that "Any proposed changes, at a minimum, should be announced publicly at least 30 days in advance of any auction, and should be for good cause based on exigent circumstances".

We are confident that community input received will allow ICANN to amend the current draft Auction Rules (version 2013.12.12) in a manner consistent with ICANN's objectives and fully rooted in the principle of fairness.



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Exhibit DIDP A10

Online Pirates Thrive on Legitimate Ad Dollars

By Associated Press | June 03, 2014 1:11 PM EDT

Movie and music piracy thrives online in part because crafty website operators receive advertising dollars from major companies like Comcast, Ford and McDonald's.

That's the conclusion of several recent reports that shed light on Internet piracy's funding sources.

Content thieves attract visitors with the promise of free downloads and streams of the latest hit movies, TV shows and songs. Then they profit by pulling in advertising from around the Internet, often concealing their illicit activities so advertising brands remain unaware.

- Pirate Bay Founder Arrested in Sweden
- 84% of Content Consumed in Spain is Pirated
- U.K. Program Looks to Cut Off Pirates' Ad Dollars

Pirate websites run ads that are sometimes covered up by other graphics. They automatically launch legitimate-looking websites as pop-up windows that advertisers don't realize are associated with piracy. At the end of the day, the pirate website operators still receive a check for serving up a number of views and clicks.

The illicit activity is estimated to generate millions of dollars annually. That's only a small portion of the roughly \$40 billion of online ad spending every year. Yet it is helping to feed the creation of millions of copyright-infringing websites that provide stolen content to a growing global audience.

"(Companies) placed their ads on the assumption that they were going to be on high-quality sites and they're not," said Mark Berns, vice president of MediaLink LLC, a consulting firm that produced a study looking into the practice called "Good Money Gone Bad."

The study, commissioned for the Digital Citizen's Alliance, a Washington-based group that advocates for a safer Internet, sampled 596 of the worst-offending websites. Researchers discovered that the infringing websites were displaying ads from 89 premium brands like Walmart, McDonald's, Google, Microsoft and Ford.

"It's certainly fair to say that millions of dollars in revenue from premium brand ads are supporting content theft sites," Berns said.

That's similar to an estimate from DoubleVerify, an online fraud protection company. According to a DoubleVerify report released last May, rogue website operators cheat

mainstream advertisers out of \$6.8 million each month, mainly by "laundering" ad traffic in ways that are hard to detect.

"There's growing awareness of the unscrupulous tactics that sites will go to to collect their dollars," said DoubleVerify chief operating officer Matt McLaughlin.

Several advertisers and top technology firms that operate ad networks -- like Google and Microsoft -- say the fraud is difficult to stop. Ads for Google's Chromecast streaming device and Microsoft's Bing search engine were among those that appeared on pirate websites.

Microsoft said in a statement that while it monitors where its ads end up, it sometimes relies on others bringing infractions to its attention "to take actions on non-compliant sites."

Google said it invests significant resources to keep its and its partners' ads from appearing on pirate sites and requires users of its AdSense service to agree to its anti-piracy policies. "When we find violators of these policies, we'll take the appropriate actions - including blacklisting URLs and, in some cases, ending our relationships with publishers -- as quickly as possible," a spokesman said in a statement.

Several companies listed in the report as having advertised on pirate websites declined to comment, including Comcast, Ford, Toyota, McDonald's, L.L. Bean, Cablevision, Time Warner Cable, and Target.

Dish Network said in a statement that it applies "industry-leading standards ... to continually take measures that prevent our advertising from appearing on pirate sites."

Wal-Mart Stores Inc. spokesman Dan Toporek said the company had blocked tvboxnow.com, a website the Alliance report found had received its ads. Toporek said the Walmart logo may have been used by a third party that wasn't so careful.

Yet it is easy to find legitimate advertisers on websites that peddle in copyright infringement.

When The Associated Press typed in the Web address WWW.UPLOADHOUSE.COM -- a domain that Google said it removed 97 times from its search results because of copyright infringement notices -- one of the first ads on the home page was for an HP Chromebook 11, "made with Google."

Content theft website operators are based all over the world in countries like Russia, Australia and Indonesia. Most shy away from attention. Several people who registered websites identified by Google's Transparency Report as frequent targets of copyright notices didn't respond to messages seeking comment.

The AP received an anonymous response from the email address listed as belonging to the registrant of piracy website SevenTorrents.org. The respondent said that while some advertisers prevent their ads from going on the site, others don't.

"Famous advertising companies like RightMedia blocked this site, I just let other advertisers which do not use those services (place) ads," the respondent wrote. "They

are paying."

The person did not provide their name or location. According to a search on Whois.net, the site is registered to "Mike" in the Adygea republic of Russia.

The respondent also directed The AP to look at the "About Us" section of the website.

The section reads: "We make it easy for those users who are looking for pirated movies to find what they are looking for." At the same time, the site disavows wrongdoing. "I do not encourage or support people who rip or upload these stuff."

The site displayed ads from companies including Citrix Systems Inc., the food delivery service Seamless, shipping company DHL and Mormon.org.

Advertising industry groups are fighting the problem, with limited success.

The Interactive Advertising Bureau's chief operating officer, Patrick Dolan, said in an e-mail interview that despite efforts at certifying ad networks that follow strict guidelines, it's an insurmountable task to track the trillions of ads and millions of websites.

"New sites are created every day, names change, URLs change," he said. "It's impossible to always stop the ads appearing in real time."

John Montgomery, chief operating officer of major ad-buying agency GroupM Interaction, said that by blacklisting some 4,000 pirate websites, his digital ad agencies withheld some \$8 million from pirate websites operators in 2012 and \$13 million in 2013.

But he says GroupM and other advertising agencies need to get better at choking off the flow of funds.

"We're only one agencies group, accounting for 10 percent of (digital advertising) buying," he says. "If we had a more sophisticated list we could have withheld more."

Content owners believe more can be done.

"This is a solvable problem," said Ruth Vitale, executive director of Creative Future, a newly formed piracy-fighting group of movie studios, production companies and creative worker unions. She urged studios and creative workers to speak up. "The creative community hasn't demanded it ... But if our rights are to be respected online, that has to change."

Exhibit DIDP A11

The average piracy site makes \$4.4M each year on ads from Amazon, Lego, etc.

BARRY LEVINE ([HTTP://VENTUREBEAT.COM/AUTHOR/BARRY-LEVINE/](http://venturebeat.com/author/barry-levine/)) FEBRUARY 18, 2014 6:00 PM

TAGS: ADVERTISING ([HTTP://VENTUREBEAT.COM/TAG/ADVERTISING/](http://venturebeat.com/tag/advertising/)), CONTENT PIRACY ([HTTP://VENTUREBEAT.COM/TAG/CONTENT-PIRACY/](http://venturebeat.com/tag/content-piracy/)), DIGITAL CITIZENS ALLIANCE ([HTTP://VENTUREBEAT.COM/TAG/DIGITAL-CITIZENS-ALLIANCE/](http://venturebeat.com/tag/digital-citizens-alliance/))

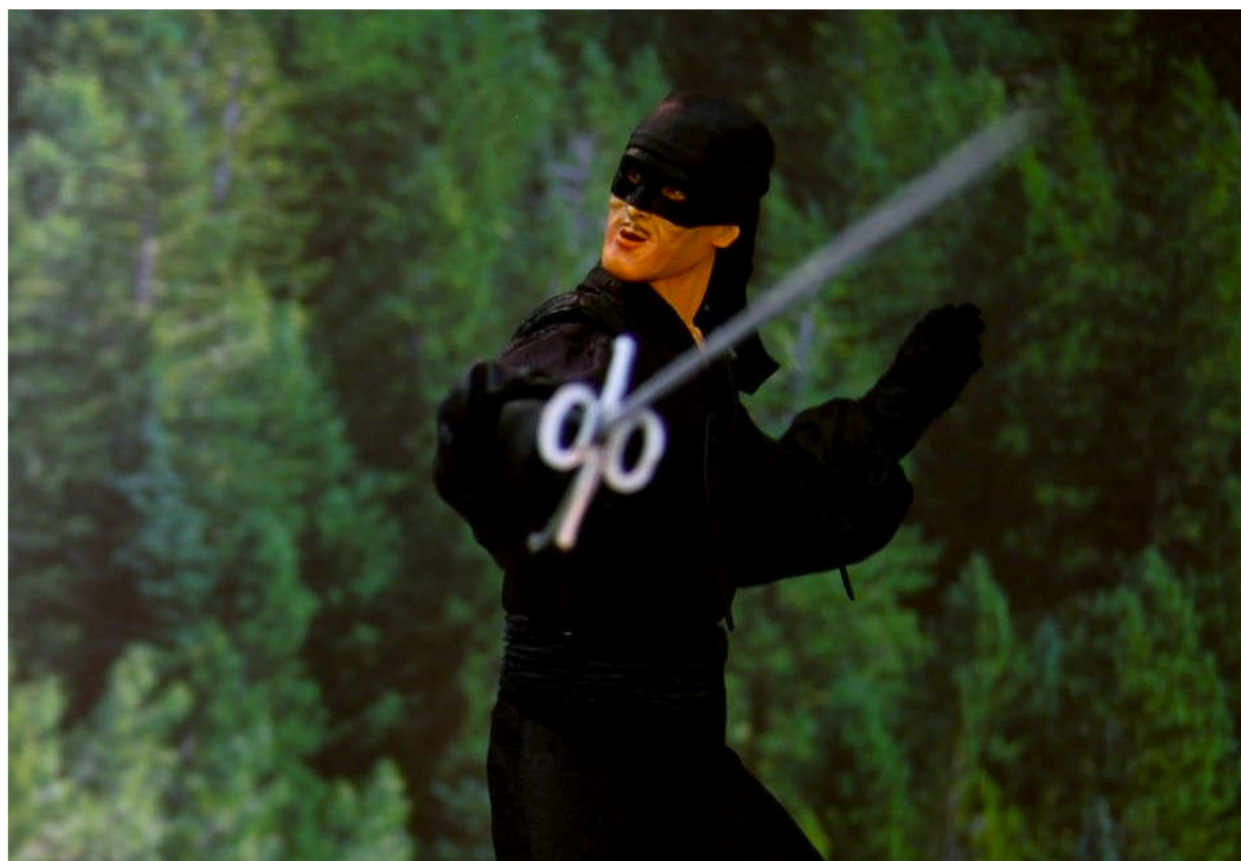


Image Credit: JD Hancock/Flickr (<http://www.flickr.com/photos/jdhancock/4906605522/sizes/o/in/photolist-8tzCSW-4cTQ9-32coRU-6HBfmz-bw3132-6HBeJx-4p3qea-b4LDkk-b4LCQH-6ePn7f-b4LCt8-b4LDdk-b4LDeK-b4LCzg-6VMitw-7c446q-6aPxHG-7bZcuX-d6wA6d-cbfBwu-5Vbxyd-8z42wA-d9Wmf1-aEsV1c-83aRyX-5DVe5b-aEwKms-akHLKA/>)

Pirated movies and TV shows are only part of the story of lost income for creators. A new report released Tuesday points the finger directly at the ad networks serving those sites.

“Good Money Gone Bad (<http://www.digitalcitizensalliance.org/cac/alliance/content.aspx?page=FollowTheProfit>),” a report from the Digital Citizens Alliance (<http://www.digitalcitizensalliance.org/cac/alliance/default.aspx>) (DCA), estimates that content theft sites earned about a quarter of a billion dollars last year from ads.

“Crime can pay,” the report noted, “when you can steal other people’s content.”

The 30 largest pirate sites — the report focused on movie and TV content — will make an average of \$4.4 million annually from ads.

BitTorrent (<http://venturebeat.com/2013/04/24/bittorrent-accelerator-fights-off-piracy-reputation-with-innovation/>) and P2P portal sites, among the most popular site types, can rake in more than \$6 million per year from ads, and even a small site could see more than \$100,000. Since their content is priceless, literally, these sites can have profit margins in the vicinity of 80 percent to 94 percent.

Nearly 600 sites were investigated for the study, which was conducted for DCA by research firm MediaLink LLC. Sites excluded from consideration included porn and hate sites and those with user-generated content. Almost 30 percent of the large sites had ads from premium brands such as Amazon, Lego, McDonalds, and Whole Foods.

Automated Ad Placement

Deputy Executive Director Adam Benson told VentureBeat, “A lot of companies have no idea that their ads are showing up on those sites.”

The key reason: An estimated 53 percent of U.S. online display ad placement was automated last year, as per media strategy firm Magna Global, and that figure is expected to hit 83 percent by 2017.

Way back in the last century, users of the early Internet often shrugged off content piracy (<http://venturebeat.com/2012/06/05/piracy-battle-map-infographic/>). But the scale and damage is different now, the report says:

"The harm caused by content theft now extends well beyond the music and movie industries. It robs designers who rely on the Internet to sell their creations, hurts brands that find themselves associated with illegal and inappropriate sexual and violent content, funds online criminals and provides seed money for other illegal activities."

What to do? The report recommends that advertisers, their networks, and exchanges beef up their voluntary best-practice standards, using automated filters to sift out content-theft sites. A best practices effort, however, was also attempted in 2012 (<http://www.adweek.com/news/technology/ad-industry-takes-major-step-fight-online-piracy-140014>). Benson said that this time, the conversation can at least begin with "some hard numbers."

More information:

Digital Citizens Alliance

Digital Citizens is a consumer-oriented coalition focused on educating the public and policy makers on the threats that consumers face on the Internet and the importance for Internet stakeholders – individuals, government and industr... read more » (<http://www.vbprofiles.com/companies/53050dd60018a2045300e417>)

VB New! Track **Digital Citizens Alliance's Landscape** to stay on top of the industry in 3 minutes a day. Understand the entire ecosystem, monitor innovation, and track deal flows. Learn more (<http://pages.vbprofiles.com/VBLandscapes>).

More: Breaking news from Microsoft's biggest event of the year (<http://bit.ly/1Uzzegh>).

When mobsters meet hackers: the new and improved bank heist

REUTERS (/AUTHOR/REUTERS) MARCH 31, 2016 04:53 AM



Above: Bank

Image Credit: Shutterstock (<http://www.shutterstock.com/pic-362054459/stock-photo-bank-building.html?src=ngGSbS2lJPxDoUMAPc2C1A-1-118>)

(By Jeremy Wagstaff and Jim Finkle, Reuters) — No need for stocking masks and sawn-off shotguns.

The unprecedented heist of \$81 million from the U.S. account of Bangladesh's central bank is the latest among increasingly large thefts by criminals who have leveraged the speed and anonymity of hacking to revolutionize burgling banks.

Hundreds of millions of dollars, and perhaps much more, have been stolen from banks and financial services companies in recent years because of this alliance of traditional and digital criminals, with many victims not reporting the thefts for fear of reputational damage.

Typically, security and cyber-crime experts say, hackers break into the computer

systems of financial institutions and make, or incite others to make, fraudulent transactions to pliant accounts. Organized crime then uses techniques developed over decades to launder the money, giving the alliance much higher rewards than a hold-up or bank vault robbery, with much less risk.

“The internet has made it easier for criminals to get inside banks,” said Shane Shook, an independent security consultant. “Criminals are moving away from consumer-targeted attacks to much more substantial bank hacks because it takes less effort to get more money.”

There’s no evidence that old-fashioned bank robberies are in the decline. But there are increasing instances of the cyber variety of the crime.

Last year, researchers at Russian security software maker Kaspersky Lab publicized the activities of the prolific Carbanak gang, which it says hacked into banks, then ordered fraudulent money transfers and also forced ATMs to spit out cash. Kaspersky estimates the group hit as many as 100 banks, with losses averaging from \$2.5 million to \$10 million per heist.

A Turkish computer hacker pleaded guilty in a U.S. court in March to one of the most astonishing crimes in this category: “Cashing crews” pulled \$40 million out of automated teller machines in 24 countries over a 10-hour period. The 2013 heist was accomplished with the precision of a Hollywood drama, thanks to hackers who breached financial networks, then inflated balances on prepaid debit cards.

In another case, Russian banks lost more than \$25 million over the past six months to a hacker group infecting their computers using tainted phishing emails, according to Russian security firm Group IB.

The malware gave the hackers access to the bank’s inner network, allowing them to craft seemingly authentic transfer requests via networks including the same SWIFT messaging system used in the Bangladesh Bank attack.

“It (the malware) provides remote access to the attacker. Then the attacker manually orders fraudulent transfers over SWIFT or other payment systems,” said Dmitry Volkov, head of cyber intelligence for Group IB.

In the Bangladesh case, the bank says unknown hackers used malware to access the central bank’s computers and spoof messages to the U.S. Federal Reserve Bank. They transferred \$81 million from the central bank’s account at the New York Fed to Philippine banks.

The funds were then passed on to casinos and handed over in cash to a junket operator in Manila, according to testimony at a senate hearing in the Philippines.

A transfer of \$20 million to an entity in Sri Lanka was reported as suspicious because of a spelling mistake in its name and reversed.

Unreported heists

Cyber fraud experts say they expect more big heists because the industry has yet to properly defend itself.

“The fact is that most of the breaches that happen don’t get reported,” said Bryce Boland, chief Asia Pacific security officer of computer security company FireEye.

One senior banking security executive, who declined to be identified because he was not authorized to speak to the media, said he had worked on three cases of cyber thefts that his bank clients had not reported to regulatory authorities. He said the largest involved about \$20 million.

In many jurisdictions, banks and financial services companies were not required to report breaches unless there’s a material impact, Boland said. The definition is left vague enough so that many are not reported at all.

Boland said that while 20 percent of his banking customers had been targeted in the second half of last year, FireEye had also found cases of financial services companies not realizing they had been breached, in one case leaving the attackers inside their computers for five years.

An ongoing Senate hearing in the Philippines is still struggling to determine how the stolen money was laundered, with another hearing scheduled for next week. In most cases the heists go unpunished and the perpetrators remain a mystery.

FireEye’s Boland said the company has compiled detailed dossiers on six of the groups behind attacks on financial services companies, but he said he had less complete data on 600 other groups.

Not all focus on extracting money, he added. Hackers aimed at specific institutions, often at specific individuals, and often for financially useful data — inside information on mergers and acquisitions, for example, or data that could be used to create fake credit cards.

(Editing by Raju Gopalakrishnan)

Exhibit DIDP A12

USC Annenberg *Innovation Lab*

USC Annenberg Lab Ad Transparency Report

January 5, 2013

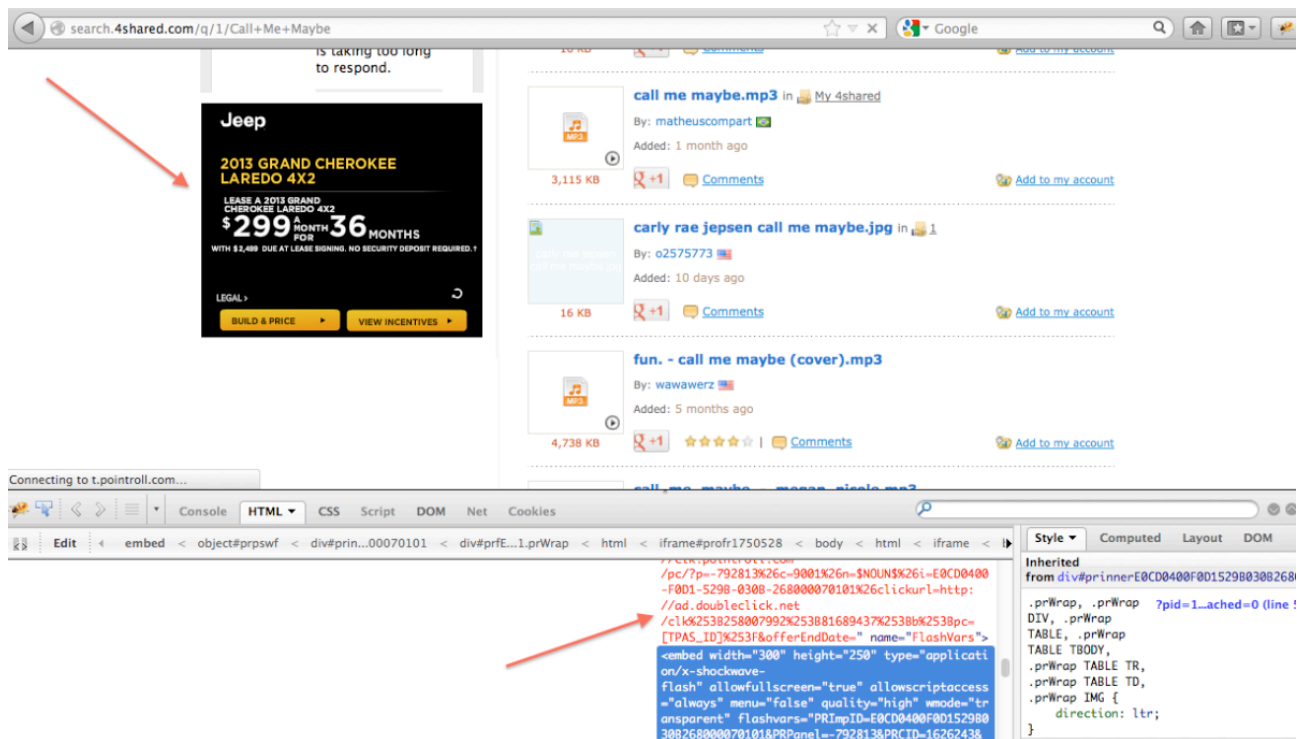
This is the first in a monthly series of reports from the Annenberg Innovation Lab at the University of Southern California that details support by Online Ad Networks of the major pirate movie and music sites around the world. The advertising business has always been a key part of the creative economy from the birth of radio. Advertising dollars have financed the production of television, music and even video games. The rise of ad-supported pirate networks is a relatively new phenomenon stemming from the birth of peer to peer (P2P) Internet sites in 2001. In the last five years, a large number of new advertising networks now service the seemingly infinite advertising inventory of the broadband era. Much of that inventory sits on more than 150,000 pirate entertainment sites. The top ten advertising networks placing the most advertisements to Illicit file sharing sites are:¹

1. [Openx](#)
2. [Google](#) (including Double Click)
3. [Exoclick](#)
4. [Sumotorrent](#)
5. [Propellerads](#)
6. [Yahoo](#) (including Right Media)
7. [Media Shakers](#)
8. [Yesads](#)
9. [Infolinks](#)
10. [tribalfusion.com](#)

The list of top infringing sites was compiled using the [Google Transparency Report](#) of domains with the most Digital Millennium Copyright Act (DMCA) takedown requests.

A recent report, "[The Six Business Models of Copyright Infringement](#)", funded by Google and the firm PRS for Music on Brands, investigated advertising networks and their support of the major pirate movie and music sites around the world. The report found that advertising financed 86% of the P2P search sites that feature illegally distributed content. This finding clearly indicates that many major brands are not aware that they are, in fact, the key source of funds for the piracy industry. It is the goal of this "transparency report" to aid in helping these brands steer their advertising dollars away from sites that exploit film, television and music artists for what appears to be criminal gain.

The report, which will name the top offenders on a monthly basis, was compiled from multiple sources and will identify the top ten advertising networks that place the most advertisements on Illicit file sharing sites. It makes use of an Internet bot that scrapes the Ad Network HTML identifier contained in each advertisement.



A list of the top ten brands appearing on Illicit file sharing sites will appear in the coming months.

Methodology

Advertising network code appearing in the HTML and Javascript URL locations where alleged infringement were occurring was collected from third party sources and from data contained in the Google Transparency report on an ongoing basis for the past twelve months. This data included a vast number of URL locations where alleged infringement were occurring, including youtube.com and blogspot.com data that is not included in the Google Transparency report. This data contains the precise URL location of the alleged infringements. Using server software the HTML and Javascript contained in the precise URL location was captured. Where possible a screen shot of the page was captured. Using the server software, the captured HTML and Javascript was analyzed to determine if there was Advertising Networks Code appearing at those URL locations. The Domain Name represented in the Advertising Network Code associated with the captured HTML and Javascript was then used to determine, to the best of our knowledge, the Advertising Network distributing the advertisements, if any, appearing at the URL location where the alleged infringement was occurring. It is our observation that advertisements flowing from Advertising Exchanges are essentially fungible and the Advertising Network originating the Advertisement may not be the Advertising Network delivering the Advertisement on the page where the Advertising Network Code was detected. In some instances, we used network protocol analyzers to determine the actual server locations where the Advertisements were originating.

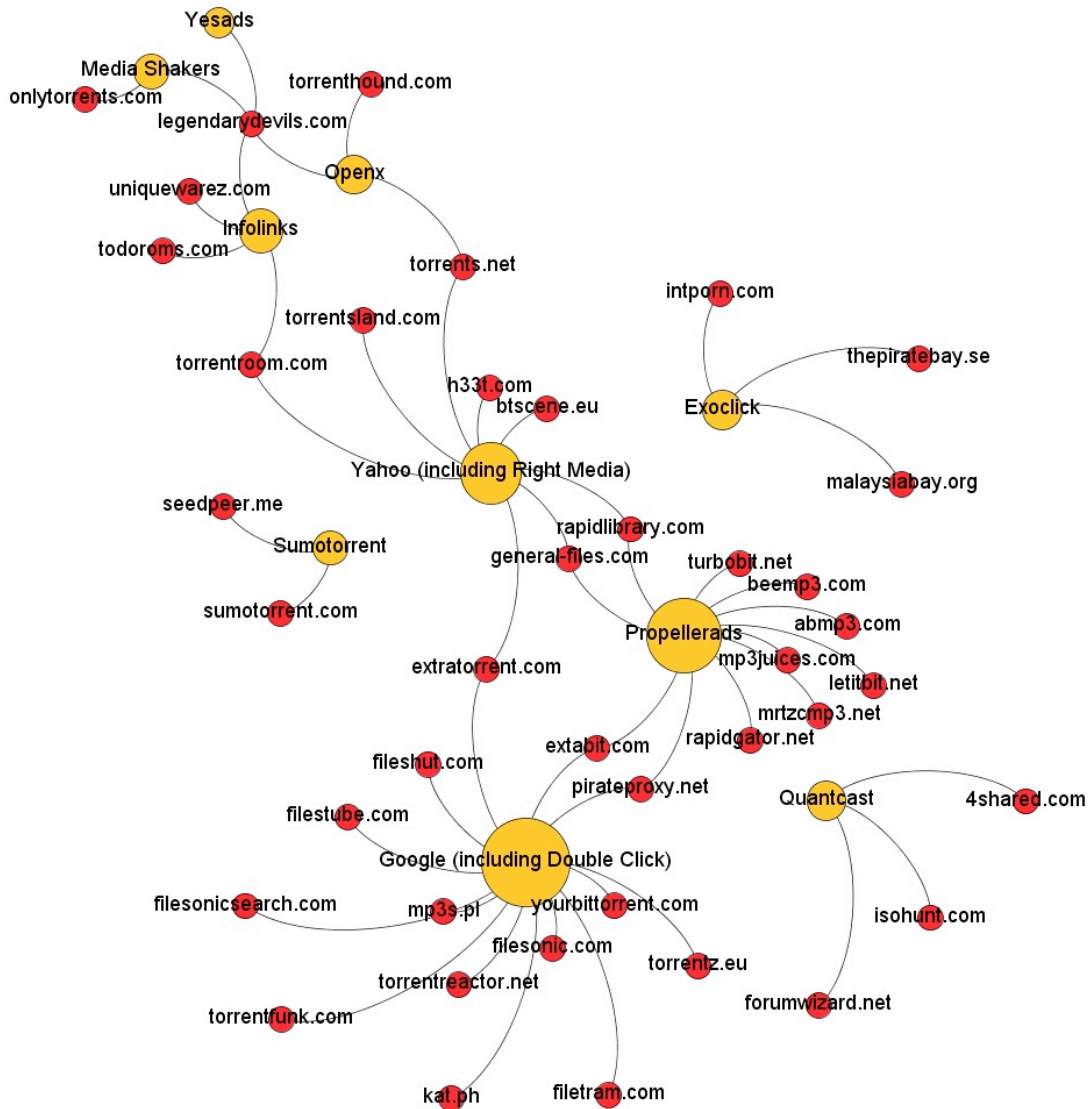
In late December 2012, domains appearing in the alleged infringing sites in the Google Transparency Report were then compared to determine the frequency of Advertising Networks that appeared on these domains for the preceding twelve months. We do not dispute that the landscape may be different today but the focus of this study was to take a historical snapshot now that the Google Transparency Report provides more direction to determine what websites are alleged to be trafficking in stolen intellectual property. We should also note that Google has chosen not to include alleged infringement data for youtube.com and blogspot.com in the Google Transparency report. In our estimation, the inclusion of that data would provide a more accurate view of the landscape.

Going Forward

With the limited tools available and the lack of accessible information to make absolutely definitive determinations, the study relied upon techniques that produced a result that in our best estimation represents the pattern of observed activity. We look forward to working with industry participants to improve our methodology. The data produced by the Google Transparency report contains a vast number of indications of alleged infringement. In development is technology to ingest the entire report as it is updated for real-time processing and reporting.

We are aware of the critique made by Google upon the original release of our findings. They wrote, "In addition to sites that participate in our network, millions of advertisers and publishers use our DoubleClick technology to manage their digital advertising, not just on our network but across the whole web. Advertisers and publishers ultimately decide how to use this technology and we cannot "see" where all these ads appear (nor do we have a revenue share). However, when we do become aware of DoubleClick technology powering ads on copyright-violating sites, we contact the affected advertisers and publishers to take action." However, we need to point out that the instances of Double Click ad code in our data was less than 9% of the total instances of Google advertising code found on the illicit sites. Most of the Google code was from the domains googleadservices.com, googletag.pubads and googlesyndication.com. We are however encouraged that Google has recently increased it's efforts to let advertisers know when their ads are appearing on illicit sites. We assume that effort will be reflected in the January data that we will publish in early February.

Data Visualization



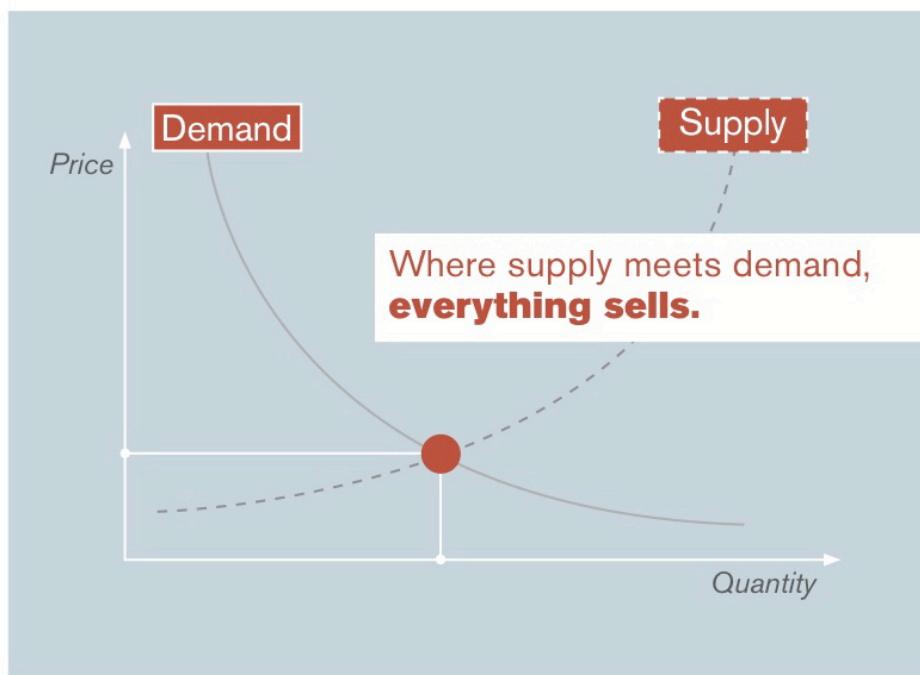
This network graph demonstrates the connections between the top ten advertising networks and some of the larger illicit file sharing sites included in the sample presented in the Annenberg Innovation Lab Transparency Report. It serves as an alternative way to conceptualize the data at the heart of the examination.

Advertising networks are presented in orange and illicit file sharing sites in red. Connections between the nodes represent the presence of ads on the associated sites. Node size for each advertising network is scaled to the number of illicit file sharing sites

each is linked to, the more connections the bigger the circle. More connected advertising networks are situated closer to the center of the graph.

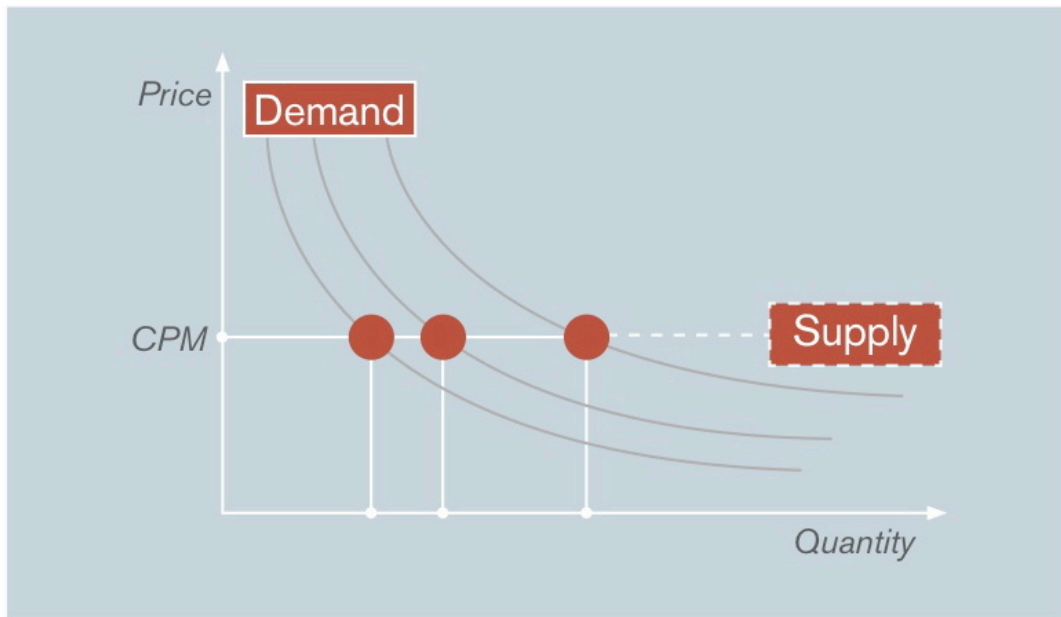
Findings

In the most recent Google Transparency Report, Filestube.com had more than 2,300,000 specific URLs cited for copyright infringement. It appears that large illicit file sharing sites distribute illegal content and continue to steal trademarked, copyrighted content and siphon millions of dollars away from the creative community, making it much harder for artists to make a living. Unlike the legitimate ad supported content sites like Spotify, Pandora or Hulu, the illicit file sharing sites do not return capital to create new content or sustain the creative economy. It appears that many brand advertisers are either unaware that their ad dollars are financing a parasitic business or have decided that the advantages to be gained by targeting a young demographic on illicit file sharing sites trumps their corporate social responsibility. But in a deeper way, the almost infinite ad inventory sitting on the 150,000 illicit file sharing sites named by Google harms the entire media industry by devaluing the worth of legitimate ad inventory. An August 2012 report from Comscore, “The Economics of On Line Advertising” delineates the problem.



In Adam Smith’s classic economy (above) supply is limited and at a certain clearing price everything sells. But as Comscore points out: “In digital media, the marginal cost of adding

new programming or advertising inventory is very low, and has been trending lower for years, as the costs of computer processing and storage have plummeted.” This produces a new supply-demand equation.



In this world, the unlimited supply of ad units on illicit file sharing sites devalues all advertising inventory on the Internet.

The Annenberg Innovation Lab does not propose any particular solution to this dilemma. We do believe that some sort of best practices code of conduct by brands, agencies and advertising networks would be productive. As a prominent Google executive has told us, “following the money is exactly the right focus”. As we have been tracking more than 100 advertising networks over the course of this research, we have come to believe that the lack of transparency in the advertising network industry is a classic case of market failure. It is perhaps a good place for academic research. We believe that both the prominent advertising networks and the major brands do not want to be perceived “to be evil.” In that regard, any mutual assistance we might provide to the industry is freely offered.

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ⁱ In late February we have had productive talks with Quantcast about our January and February Ad Reports. They have given us access to code, which differentiates between their free, publicly available, self-serve measurement product and their actual revenue-generating advertising product.

We now believe that Quantcast was incorrectly identified as being among the top ten Ad Networks placing ads on infringing piracy sites. Quantcast is undertaking extensive efforts to maintain a global block list of infringing sites, and in the course of our discussions, we were able to help them find and block two additional sites.

Quantcast and USC Annenberg Innovation Lab intend to continue working together to ensure that ads are not placed on infringing sites.

Exhibit DIDP A13



USC Annenberg Lab Ad Transparency Report

Fifth Edition

June 12th 2013

This is the fifth in the ongoing series of Annenberg Innovation Lab's Ad transparency report. Same as the previous editions, this version draws from dataset taken from one month of observation of the top 500 URLs with the most [Digital Millennium Copyright Act](#) (DMCA) takedowns as supplied by [Google's Transparency Report](#). Together with the previous four editions, this report demonstrates both stability and change among advertisers serving non-DMCA compliant websites.

For the month of May the top ten advertising networks on illicit file sharing sites are as follows:

1. Propellerads
2. ExoClick
3. Admxr
4. Wigetmedia
5. Adcash
6. Sumotorrent
7. Adtransfer
8. Zedo (Newcomer)
9. Adexprt (Newcomer)
10. Infolinks

From this month's findings, Propellerads once again retained the number one position with Exoclick holding steady at number two. Wigetmedia remains on the list as number three, as well as Admxr who moved up to the fourth place from eighth in the previous month. Adtransfer, which first appeared in the February edition, came back in May and is holding the seventh position in ranking. In this month's report, Zedo and Adexprt are newcomers, which haven't previously appeared on the report. Adcash, AdMxr and Infolinks have maintained their positions in the ranking.

The one really striking new development in the Ad Piracy world is the decision by Bit Torrent to sell ads on its uTorrent Platform. According to Bit Torrent, the uTorrent client is serving over five billion ads every month. While most of these ads are for Poker software or other non-branded

companies, if major brands start using the platform, uTorrent would certainly move to the top of our survey of brand advertising on Pirate sites.

Brands

While display advertisements provide important funding for content producers and DMCA compliant distributors they can also subsidize illicit file sharing websites. Compounding this problem is the opaque nature of on-demand bidding and ad placement which means brands that *do not* support illicit file-sharing can come to have adverts placed on non-DMCA compliant websites.

In an effort to capture the extent of this process a team at the Innovation Lab coded a sample of screenshots in order to identify major brands whose ads have appeared on file-sharing sites, with advertisements linked to the following brands appearing on the sampled URLs. This is only a sample and is not meant to indicate which brands appear most often on infringing sites.

Ad Council	LG
Allstate	Life Lock
Amazon	Loft
AT&T	Lysol
Best Western	Microsoft
Blackberry	Nextag
Capital One	Nobu Hotel-Caesars Palace
Clear	Southwest Airlines
Deer Park	Spanx
Evony	Strayer University
Flash Player HD	Travelocity
Gameforce	Turbo Tax
Goodyear	USAGC
GoTo Meeting	Verizon
GovMint.com	Video Performer
Gumdrop Pacifier	Visa
Host Palace	Western Union
Host Palace Internet Service	Yahoo Sports
ILivid	ZipCar
Keller	7-11

Besides these major brands numerous small businesses and services also appeared within the sample.

These results were obtained using a cookie-free browser. We stress that they should not be taken as representative of all brands which appear on file-sharing sites. Users may see different

products or services depending on a number of factors including previous browsing history and opt-ins to data exchanges or tracking services.

Methodology

Ad networks identified in this report were isolated by scraping and examining samples of HTML and Javascript code taken from URLs identified by the Google Transparency Report. Drawing from a sample of sub-URLs within each site the raw code of each page was examined and compared against a database of known advertiser tags to determine which networks were involved in a specific site. Visual corroboration was provided by capturing screenshots displaying the advertisements in question, these screenshots also formed the basis for the aforementioned brand identification process.

In some instances the presence of ad code does not always mean that the network is actively serving advertisements to the URL in question. In an attempt to address this situation and to ensure that our methodology discriminates between advertising tags and similarly structured analytic tools, the Innovation Lab has been and continues to be willing to engage in dialogue with members of the advertising community in order to ensure the ongoing fairness of the report. This serves as a corroboration to the code analysis which ensures that the networks identified are actively serving adverts to the URL in question.

The image shows a browser window with a search result for 'Jeep' on 4shared.com. The ad displays '2013 GRAND CHEROKEE LAREDO 4X2' with a lease offer of '\$299 MONTH FOR 36 MONTHS'. A red arrow points from the ad to the developer tools below. The developer tools show the HTML code for the ad, with a red arrow pointing to a specific line of code: `<script src="/pc/?p=792813k26c-9001k26c-SNUNSK261-E0CD0400-F001-5298-0308-268000070101k26c&clickurl=http://ad.doubleclick.net/click?ad=38258007992k253881689437k2538k2538pc-TPAS_ID7k253F&offerEndDate=" name="FlashVars">`. The developer tools also show the 'Style' panel with various CSS rules.

Going Forward

Given the complex nature of online advertisements and the fluid nature of the marketplace the Innovation Lab aims to continue publication of these reports for the foreseeable future. It is our

hope that this information will serve three distinct purposes. Given that many advertising networks have a ban on illicit file-sharing written into their terms of use this report should serve as a mechanism to highlight possible violations among clients. For those seeking to purchase advertisements the Ad Report is also a helpful guide to determine which networks serve sites that align with a client's needs. Finally for the general public the report serves as an educational opportunity, demonstrating the complexity of the online advertising business and as a tool for understanding the role which ads place in content creation and dissemination. In order to strive towards these goals the lab welcomes any and all dialogue with advertisers, networks or members of the public who are seeking clarification or more information about the report or other projects hosted within the organization.

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Exhibit DIDP A14

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Online Advertising Transparency Report

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Advertising Transparency Report

Large Pirate sites distribute illegal content and continue to steal trademarked, copyrighted content and siphon millions of dollars away from the creative community, making it much harder for artists to make a living. We do not believe that government regulation alone is the answer to the Piracy problem, but rather that the self-regulation of major sectors like the online advertising industry could make it harder for the “Kim Dotcom’s” of the world to unfairly exploit artists. We look forward to working with advertising agencies and networks in the coming months to address this issue.

[Download the May Report \(pdf\)](#)[Download the April Report \(pdf\)](#)[Download the March Report \(pdf\)](#)[Download the February Report \(pdf\)](#)[Download the January Report \(pdf\)](#)

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Exhibit DIDP A15



AN ANALYSIS OF PIRACY WEBSITE ADVERTISING IN BRAZIL AND ITS LINKAGES TO CHILD EXPLOITATION MATERIAL

Dr. Paul A. Watters

December 2015



AN ANALYSIS OF PIRACY WEBSITE ADVERTISING IN BRAZIL AND ITS LINKAGES TO CHILD EXPLOITATION MATERIAL

Disclaimer: The views and opinions expressed herein are solely those of the author and do not necessarily reflect the official position of ECPAT International.

December, 2015

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Abstract

A number of recent studies have investigated the role that advertising plays in funding and sustaining piracy sites. In this study, the composition of advertising on piracy websites in Brazil was analysed, measuring both mainstream and “high-risk” ads¹ using samples generated from the most-complained about sites, as well as the most popular sites (among Brazilians). The results indicated that high-risk ads pose significant problems for Brazilian users, especially children, who may be harmed by exposure to ads promoting the sex industry, gambling, scams and malware.

Links between Brazil-focused piracy websites and Child Exploitation Material (CEM) are also documented. Policy options for dealing with this issue are discussed. CEM poses a threat not only to the children depicted in it but also to children who might be exposed to it. Indeed any viewer who is exposed to CEM is in jeopardy in a number of ways.

The Author

Dr Paul A. Watters is Professor of Information Technology at Massey University and CEO of Cyber Inc. His research interests include cybercrime, security & intelligence, film piracy, and strategies to reduce demand for child abuse material. He previously worked at the University of Ballarat, the Medical Research Council (UK) and Macquarie University. His work has been cited 1,933 times (h-index=21, i-10 index=52). Professor Watters has worked closely with government and industry on many projects, including Westpac, IBM, the Australian Federal Police (AFP), the Attorney General's Department and the Motion Picture Association. He has received three prestigious Australian Research Council grants.

1 Defined as categories which include malware, downloading sites, gambling, scams and the sex industry.

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ECPAT International

ECPAT International² is a global network of organisations working together for the elimination of child prostitution, child pornography and the trafficking of children for sexual purposes. It seeks to ensure that children everywhere enjoy their fundamental rights free and secure from all forms of commercial sexual exploitation.

There are as many as 1.8 million children exploited in prostitution or pornography worldwide and human trafficking alone as an illegal industry generates billions of US dollars. It is believed that nearly 80% of all trafficking worldwide is for sexual exploitation, with over 20% of the victims being children. All children have the right to live free from all forms of sexual exploitation. However, social tolerance to the sexual exploitation of children is increasing. There are millions of child sexual abuse images on the Internet, and that number is growing.

ECPAT works to build collaboration among local organisations and the broader child rights community to form a global social movement for the protection of children from sexual exploitation. The global ECPAT Network is currently composed of 85 members in 77 countries. Its membership reflects the richness and diversity of experience, knowledge and perspectives that arise from working in widely different contexts.

2 For more information, please see www.ecpat.net.

1 INTRODUCTION

To what extent might piracy websites³ be contributing to the contemporary challenges concerning the prevention of child exploitation in Brazil?

A large number of websites, including piracy websites, use advertising as a revenue source to fund their operations (Garz et al, 2015). They make available “space” on their pages (similar to traditional highway banners or billboards) for advertisers to promote their products and services. Historically, advertisers paid websites directly to “lease” this space, and they would pay revenue to the website based on the number of pageviews, or the number of users who clicked on the ad. These days, the buying and selling of website advertising space is very complex, as a number of intermediaries are now involved – advertising networks take ad placement requests from advertisers, and display them across a range of websites, based on matching the interests of the advertiser and the user. Every user’s interests can be tracked by the use of cookies, cross-referenced with other sites that they visit, or search terms that they enter. This enables ad networks that also operate search engines to implement “behavioural advertising”. A further complication is that advertisers can now engage an ad exchange, which seeks to place advertising across multiple ad networks. Each of these developments has placed further distance between the advertiser and the website which is selected to host their advertising. This had led to greater marketplace efficiencies, but also to a loss of control by advertisers.

3 Piracy sites are those which are primarily or wholly associated with facilitating downloads of infringing content. These include sites which provide magnet links or torrent file downloads, file-locker sites and the like. A well-known example would be The Pirate Bay site.

A number of recent studies have looked at the links between online advertising of various kinds, and how profits from displaying these ads fund and sustain piracy (Watters, 2015). These studies have either focused on mainstream advertisers (Taplin, 2013), or high risk advertising, where the ads have the potential to harm the user.

High risk ad categories include malware, downloading sites, gambling, scams and the sex industry. Studies into high risk ads have been undertaken within many countries in the Asia Pacific, including Australia, New Zealand, Canada, Singapore, Malaysia, Taiwan, Hong Kong, Singapore, Vietnam, Indonesia and the Philippines (Watters, 2015; Watters, 2014).⁴ The results of these studies have been used by governments, NGOs and the private sector to guide appropriate policy responses, including regulation (whether by government or by the advertising industry itself), as well as building awareness around the risk of visiting these sites, especially by children.

In trying to understand the scale and scope of high risk advertising in a country like Brazil, a number of approaches have been developed. These aim to model how a user might encounter different types of advertising or be exposed to CEM or links to CEM while searching for pirated material.

In executing the research, representative snapshots were constructed - typically comprising several thousand samples of the kinds of ads most likely to be served to users in a particular country. Two approaches for analysis were developed:

4 These reports can be downloaded from Social Science Research Network (SSRN). http://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=2166409.

1. The *most-complained about sites*. These are sites indexed by Google that rights holders have identified as being largely concerned with piracy, and where Google has investigated and found that they are in breach of the Digital Millennium Copyright Act (hereinafter DMCA). This provides independent verification⁵ of the rogue nature of such sites, but it does not always follow that the most-complained about sites are always the most popular, particularly in local language sites. This is the approach utilised by Watters et al (2014) for a New Zealand case study; and
2. The *most popular sites*. By using an information-seeking behaviour model, we made use of the Google search engine to identify those sites which are the most relevant given a search term, such as “download free movies”. Furthermore, we used the snowball sampling technique to construct a set of terms for further searches, to find even more sites. Such data can also be supplemented through the use of site lists provided by experts, e.g. lists of sites which have been the subject of civil action or criminal prosecution.

By combining measures of popularity and alleged infringement, it is possible to arrive at an informed snapshot of high risk ad prevalence in a particular market. In some countries, researchers have looked only at the most-complained about sites (especially in relation to Hollywood movies and TV), but this study *also* investigated the most popular sites when using the local language for searching.

In this paper, both types of data collection and analysis were utilised, to understand the advertising landscape, the mainstream and high risk aspects of that environment, and the links that exist between piracy sites and CEM.

1.1 Background

Brazil is the eighth largest economy in the world as measured by GDP.⁶ Total ad spend in Brazil is now US\$20.64b,⁷ with 14.7% of that being digital spend, representing an increase of 15% year-on-year. Mobile advertising is also growing rapidly, at 120% p.a., and now represents 18.1% of digital ad spending. Even a small fraction of this advertising market could be used to fund significant piracy operations, and make significant profits for organised crime (Treverton, 2009).

Being a large and vibrant economy, Brazil has faced a number of challenges in policing intellectual property. A National Council against Piracy and Intellectual Property Crimes (CNCP) has the overall remit to promote intellectual property rights through education, enforcement and policy initiatives.⁸

Additionally, concerns regarding online child exploitation and trafficking have frequently been expressed by Brazilian law enforcement, Government and NGOs. In a recent operation (Operation Darknet), 55 people were arrested in Brazil for participating in a significant CEM “ring”.⁹ Six children were rescued from their abusers during the operation. This incident was not an isolated one, and points to a significant and emerging problem for Brazil, as well as many other countries globally. Whether the problem has existed for a long time, and is

5 A number of studies (e.g. Urban & Quilter, 2006) have shown that Google sometimes processes DMCA mistakenly. According to its own documentation, Google removes 97% of the sites which are reported to it. Google also notifies the site owners (where it is able to) regarding the takedown, and provides an appeal process where false positives have been flagged for removal. An error rate of 3% is thought to be reasonable.

6 <http://tinyurl.com/osxljfm>

7 <http://www.emarketer.com/Article/Total-Media-Ad-Spending-Brazil-Pass-20-Billion-This-Year/1012339>

8 http://www.wipo.int/wipo_magazine/en/2006/05/article_0003.html

9 <http://www.dailymail.co.uk/news/article-2795299/brazilian-police-crack-open-haul-child-pornography-dark-internet-rescue-six-children-abuse.html>

only now receiving investigative attention, or whether the internet is fuelling a rise in technology-enhanced crime, systematic research is required to understand the scale and severity of the problem.

In the following sections, separate studies targeting the most-complained about sites, the most popular sites, and links to child exploitation sites are explored from within Brazil. A disturbing snapshot emerges. Policy options which may help to ameliorate (or minimise) the harms due to advertising, in particular, are outlined.

2 MOST-COMPLAINED ABOUT SITES

To build a database of the sites most-complained about by rightsholders, the Google Transparency Report¹⁰ was used. This Report, among others, lists all of the URLs removed from the Google Index, whenever a complaint from a rightsholder is upheld, i.e., when Google determines that the URL does contain or links to allegedly pirated material.¹¹ In the United States, this process is governed by the Digital Millennium Copyright Act (DMCA). It is interesting to note that the number of complaints upheld by Google almost doubles every year. Note that even when Google chooses to remove a URL from its index, that site is still accessible through the Internet, and could also potentially be found by using other search engines.

In the Report, it is possible to identify the top domains against which complaints have been upheld. These sites range from torrent sites (which host links to pirated content), through to streaming sites, and file locker sites, where URLs for pirated content are made accessible through search engines, but physically downloaded from the locker site. In some cases, the same logical site is hosted on a number of different physical / top-level domains, in order to circumvent legal avenues for takedowns and DMCA complaints.

The methodology used in this study was first outlined by Watters (2014). The basic process is that a URL from each top infringing domain is downloaded a number of times (typically 10 page impressions), and the advertising networks and advertisers are identified. Furthermore, each advertisement is assigned

a category (mainstream or high risk), and the high risk ads are further divided into a number of sub-categories: malware, sex industry, gambling, download site or scams. A semi-automated system has been developed to assist in processing the large volumes of data involved in this kind of analysis.

In this study, the Top 100 most-complained about websites (for the month of September 2015) identified by Google were analysed. They are listed in Appendix A. A simulated user was created using a Virtual Private Network (VPN) connected to Brazil, such that each requested website (and its advertising networks) would “see” a Brazilian user, and content would be customized appropriately.

From the 1,000 pages sampled, a total of 709 advertising items were identified. Table 1 shows the number of advertising items. Note that the automated process for identifying advertising items relies on a database of known multinational advertising networks, and may not be reliable for all locations. This is why every page downloaded is manually analysed for visible ads.

A typical page on one of these sites might include a number of banner ads to the top, left and right of the page, with the main text instructing a user how to download a pirated movie occupying the mid-section. For example, on one search for the site extratorrent.work, with the search term "Disney", a link to a torrent containing a number of Disney children's movies is returned, and a preview of one movie is embedded in the page. Overlaid on this movie preview is an ad for the "Reality Kings" pornography website, with a penis depicted entering a woman's mouth. The same search on thepiratebay.gd also provides a list of Disney torrents, but with further explicit images of nude and semi-nude women promoting pornography websites. Disney was

10 <http://www.google.com/transparencyreport/>

11 Note that Google only undertakes basis informational rather than legal checks (<http://www.google.com/transparencyreport/removals/copyright/faq/>). Google does not adjudicate for fair use, and webmasters may not be notified their pages are removed from search, and counter-notification processes may be beyond the means of many ordinary web users.

selected as a search term because it is the brand that most parents would identify with as encapsulating childhood. Pirates also know this, and make available pirated versions of many of Disney's movies. There is no suggestion that Disney is in any way negligent or responsible for the behaviour of pirates or ad networks. Using Disney as a search term provides insights into ad networks that display pornography in response to searches for children's movies.

The point about “visible ads” may require some explanation. A great many ad networks are active on websites collecting data about browsing habits which they pass on or use to improve their own algorithms, without this being apparent to the browser. Herps et al (2013b) found that Google, for example, had trackers on 86% of the top sites accessed by Australians, and this pattern would be similar globally.

In this study, the actual number of visible ads was 1,402. Of these, some 1,315 were categorized as high risk (93.79%), while 87 were identified as mainstream (6.21%). These results are comparable to other countries where the most-complained about sites have been investigated.¹² A further breakdown of high risk ads into different categories is shown in Table 2.

It can be noted that the most frequent high risk ads were found to belong to the sex industry category (45.15%), followed by download services (25.55%) and scams (13.69%).

Table 3 provides a list of the most prevalent advertised brands identified.

Table 1 – Top Advertising Networks (Most Complained About)

Advertising Network	Items
ads.exoclick.com	103
main.exoclick.com	83
syndication.exoclick.com	83
ads.torrentco.com	80
waptrick.me	80
ad.zumads.com	30
ad.propellerads.com	30
track.adnetwork.vn	20
delivery.adnetwork.vn	20
www.adcash.com	20
unblockw.com	20
ads.clicksor.com	20
www.liveadoptimizer.com	20
ads.livedirsets.org	10
srv.juiceadv.com	10
ww.googletagservices.com	10
adserver.adreactor.com	10
cdn.popcash.net	10
stafaband.info	10
games.waptrick.me	10
iweb2.mangapicgallery.com	10
go.arbopl.bbelements.com	10
www.mangago.me	10

Table 2 – High Risk Ads Categories (Most Complained About)

Category	%
Sex	45.15
Malware	8.82
Download	25.55
Gambling	3.80
Scams	13.69

¹² These reports can be downloaded from SSRN. [http://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=2166409-](http://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=2166409)

**Table 3 – Most Advertised Mainstream Brands
(Most Complained About)**

Advertiser	N
Radiorage	12
Sling	10
Allin1Convert	10
Alibaba	10
Google Apps	8
imesh	3
ERV Travel	3
Amazon	1
CfS Medical	1
Weatherblink	1
Godaddy	1
Cadillac	1
Lifelock	1
Identity Guard	1
Paypal	1
Crowne Plaza	1
Marriott	1
VectorVest	1

3 MOST POPULAR SITES

In this study, a user model was developed, to replicate how people search for pirated content by means of search engines within Brazil, *only* in the local language. The approach was based on the snowball sampling technique, where a Portuguese seed term was used to find piracy sites on Google Brazil. When a piracy site is identified, any new Portuguese terms associated with piracy were then added to the term list, until no further sites were found (up to a limit of 50). Ten impressions were made of each page. These sites are shown in Appendix B.

A total of 2,088 advertising items were identified in this study. The advertising networks and other tools responsible are shown in Table 4. Once more major brands are listed. Yet in almost the reverse situation of the most-complained about sites, there were relatively few visible ads – 320 in total.

Also, the proportion of mainstream to high risk was reversed: a majority of ads in the most popular sites were mainstream (65.63%) versus 34.38% for high risk. Perhaps the most astonishing result was that there was no sex advertising at all on the local language sites, even though there was significant local language sex advertising on the most complained about sites. Table 5 provides a list of the mainstream advertisers identified in this study, and Table 6 provides a breakdown of the high risk ad categories.

Table 4 – Top Advertising Networks (Most Popular)

Advertising Networks	N
www.baixarcdstorrent.com.br	1540
i.imgur.com	50
adf.ly	48

Advertising Networks	N
goo.gl	40
www.baixaki.com.br	40
4.bp.blogspot.com	30
ads.egrana.com.br	25
cdn.adf.ly	20
humornerd.com	20
ad2.adsafiliados.com.br	20
zoomads.org	19
www.adcash.com	18
cdn.popcash.net	10
downloadfilmesgratis.org	10
www.cpmaffiliation.com	10
baixarfilmestorrents.org	10
www.comando-filmes.com	10
www.gospelparabaixar.com	10
baixarfilmesviatorrents.com	10
www.themediافire.com	10
scarytorrent.com.br	10
www.baixarcdstops.com	10
adprovider.adlure.net	10
www.downloadsfull.net	10
bdv.bidvertiser.com	10
1.bp.blogspot.com	10
www.doutormp3.com	10
www.bidvertiser.com	10
www.grandetorrent.com	10
www.animaniacos.org	10
ww.facebook.com	10
torrentgames.biz	10
www.vytorcads.com	10
anoxxx.com	8

Table 5 – Most Advertised Mainstream Brands (Most Popular)

Advertiser	N
Ford	60
Buscape	50
SEB COC	10
Brastemp	10
Xero	10
Netshoes	10
Nike	10
GVT	10
Dell	10
Jeep	10
Testlife	10
Zoom	10

Table 6 – High Risk Ads Categories (Most Popular)

Category	%
Sex	0.00
Malware	27.27
Download	45.45
Gambling	0.00
Scams	27.27

4 LINKS TO CHILD EXPLOITATION MATERIAL

Piracy websites are known to provide links to CEM (Fournier et al, 2014). In a longitudinal study, Prichard et al (2012) found that the term “pthc” (pre-teen hardcore) was consistently more frequently searched for than Harry Potter movies on what was the then #2 most popular torrent site. Other studies (e.g. Rutgaizer et al, 2012) have consistently linked piracy sites and CEM.

In the current two studies reported in the previous sections, some quite startling differences were observed: when the most complained-about sites were reviewed, the sex industry was the top high risk advertiser (and high risk advertising was the dominant category), yet for the most popular local language sites, there was no sex industry advertising. It is not clear why there should be such a difference: perhaps rights holders do not fully use the available intelligence to generate a very clear view of the sites which are actually making the most revenue and/or pose the greatest risk.

One particular category of sex industry website was quite prominent from this sample: manga, or Japanese comics. This category or genre of manga is known to depict simulated sexual acts between adults and children, between children or between children and animals. In many countries, such as the United States and the United Kingdom, obscenity laws cover the depiction of child sexual abuse in cartoon format; in a highly-publicised case, Christopher Handley, an American citizen, pleaded guilty to possessing manga books depicting child sex abuse, even though he possessed no other types of CEM¹³. He received a sentence of 6 months. Yet in Japan, while the possession of CEM has recently been criminalized, it only concerns materials where “real children are being depicted”, therefore this does not cover

13 <http://www.wired.com/2009/05/manga-porn/>

CEM in manga.¹⁴ The UN Special Rapporteur on the sale of children, child prostitution and child pornography recently urged the Japanese authorities to outlaw manga containing extreme child pornographic content.¹⁵

In the study of the most complained about sites, a number of manga piracy sites appear in the Top 100 (including mangapark.me, ranked #23). While many of the titles appear with non-CEM themes, mangapark.me hosts 487 “adult” titles, in which a number deal directly with CEM.

The prevalence of mainstream versus high risk advertising on the mangapark.me site was examined for the pages included in the sample, and 100% of the ads displayed were mainstream. Table 7 below shows the list of brands advertised.

Table 7 – Most Advertised Mainstream Brands on a CEM title on Mangapark.me

Advertiser	N
Teach.org	5
Ford	4
Legalzoom	3
Godaddy	2
Vectorvest	2
Microsoft	2
Dodge	2
Verizon	2
Fuelperks	2
Adobe	1
Cathay Pacific	1
Chevrolet	1

14 <http://www.aljazeera.com/indepth/opinion/2014/08/manga-anime-japan-still-treatin-201484145420634173.html>

15 <http://www.theguardian.com/world/2015/oct/27/japan-urged-to-ban-manga-child-abuse-images>

Advertiser	N
Wyndham Grand Resorts	1
Clear Care	1
Gerber Life	1
Olive Garden	1
UPS	1
Nissan	1
SmokeyBear.com	1
Zatarains	1
CBS All Access	1
Unopar	1
Westwing Home and Living	1
Salvation Army	1
Western Pest Services	1
Discovertheforest.org	1

The links between piracy sites, CEM and advertising appear to be quite strong; these links are not exclusive, since advertising of some kind appears on all piracy sites. Consider the case of a CEM user who may use a search engine to identify torrents that contain CEM, and then visit the piracy site. On the piracy site, the user is able to download a torrent, or in some cases, view the material by clicking on a series of links to reveal a preview gallery. At each step, the user is exposed to a range of advertising which the advertising networks deem to be relevant to the user. In some cases, information from the search engine may be combined with referrer pages and other observable data linked through cookies to refine the relevance further. Also, once the user is on the piracy site, they can click on the username of someone sharing CEM material, and see other files that this person has uploaded. As files become more popular with users in terms of downloads, they then tend to rank higher in search results.

The unexpected link to CEM comes in the form of image previews, which users also tend to upload in order for other users to verify that they will be downloading CEM (since there are a large number of fake files on piracy sites; Watters & Layton, 2011). This means that mainstream ad networks placing ads on image hosting sites

used for CEM previews may place ads alongside CEM images, especially when there is a “match” found between the interests of the user, and the advertiser.

To illustrate, one of the terms used by Fournier et al (2014) in their analysis of the CEM peer-to-peer ecosystem, was used in this study to seed an image search on a popular search engine. This returned a number of results which contained links to piracy sites. The first of these was a link to torrenthound.com. On the results page, only sex industry advertising was present. Taking the name of the image sets, a set of results was also returned from thepiratebay.la. The advertising displayed here was also high risk – sex industry and malware downloads. Clicking through further to the detail page for the first torrent, again sex industry advertising. Note that in most cases, the advertising is localized for Brazilian users, in Portuguese.

Unexpectedly, while users could just click the magnet link or download the torrent to obtain the material, a link to an image hosting service is also supplied (imgbox.com). This allows the user to verify that they will be downloading CEM. Yet it is at this stage that mainstream advertising once again (unwittingly) becomes linked to CEM: mainstream ads are placed on the pages where image previews are made available.

Thus, mainstream advertisers are being placed alongside CEM. Two particular examples merit a mention: ads for Nissan motor vehicles and Jockey underwear both were found on this preview page for CEM material. Mainstream advertisers would clearly not want their brands to be damaged in this way, yet the advertising networks and image hosting services have become unsuspecting players in the CEM ecosystem. The images displayed appear to have been produced by a US corporation which lists its WHOIS registration data as being in Russia. The lack of verification or validation of WHOIS registration data is a serious and ongoing impediment to cybercrime investigations, as much of it is fake (Watters et al, 2013b).

5 DISCUSSION

This report analysed piracy sites that are available to Brazilians, by simulating users searching for infringing content on either the most complained about sites (globally), or by searching using the country's official language on a local search engine. While the most complained about sites had primarily high risk advertising, of which a majority was promoting the sex industry, the local language sites had mainly mainstream ads, with nothing displayed from the sex industry. A key question which needs to be answered by further research is whether Brazilians tend to use global piracy sites, or prefer to search for pirated content in Portuguese on local sites. Given the significant amount of sex industry advertising on piracy sites, it is likely that this may become a pathway for young people to become exposed to CEM.

The manga sites in the most complained about category only had mainstream advertisers, including a range of technology companies, car manufacturers and not-for-profit organisations. Hopefully, the realisation that their advertising spending is facilitating access to CEM will ensure that such organisations pay closer attention to their marketing policies. This may be easier said than done: historically, advertisers simply leased ad space on a set of known websites, and when this approach didn't scale with the rise of internet advertising, advertising networks took over the role of bringing together advertisers and ad space. Yet, further complications have arisen over time: new entities, such as ad exchanges play a further intermediary role, allowing advertisers to purchase ad space targeted at quite specific demographics identified by behavioural profiles constructed by these exchanges. Ad networks, agencies and exchanges may be able to differentiate themselves in the marketplace by offering

guarantees that major brands will not appear alongside pornography, gambling, or indeed, be used to support the distribution of CEM.

In terms of policy responses, there are a number of options. From a harm minimisation perspective, given that the most complained about sites contain mostly high risk ads, approaches such as regulatory site blocking are likely to have an impact. A potential risk from this strategy is that users are pushed further towards the fringes of the internet, leaving them more exposed to advertising which may be even more harmful.

Another approach could be to have some sort of reporting mechanism through which the advertisers could be made aware that their ads are being placed on CEM sites, so that they could take direct action. As a result, their marketing teams would have to give a public explanation as well as identify the advertising networks who actually supply the ads. If the advertising networks withdrew from placing ads on these sites, then the sites would have no revenue to fund their illicit operations, and might be forced to close. This approach has been pioneered in the UK, where the City of London Police maintain a list of known illegal sites, known as the Infringing Website List (IWL), that advertising firms can use to ensure that advertising is not sent to those sites.¹⁶ It has resulted in a reduction of mainstream advertising on piracy sites when viewed by British users.

¹⁶ <http://www.bbc.com/news/technology-26788800>

6 CONCLUSION

This report points to ways in which piracy websites are being nurtured by revenues from both mainstream and high risk advertisements and how these same sites – which are known to be popular with children and young people – are thereby exposing the latter to materials which are likely to be extremely damaging to them as well as to adults who might likewise be exposed.

The Brazilian advertising industry has a major responsibility to act against local advertising networks which are placing ads on known piracy websites. If self-regulation is failing, then the Federal Government should step in.

In addition the brands themselves need to take more responsibility for ensuring that their advertising spend does not unintentionally

support sites which pose these type of threats to children and young people. How ironic that advertisers like Teach.org – setup to promote the teaching of young people – should be associated with a CEM title on a piracy site.

The difference between the types of advertising appearing on the most complained about sites and the sites which are most popular with Brazilians seems to suggest a disparity in the level of scrutiny and attention which ought to be addressed.

Bearing this in mind, could a system be established which regularly monitors the advertisements appearing on piracy websites in Brazil and provides timely advice both to the brands and to the advertising networks?

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APPENDIX A

TOP 100 MOST-COMPLAINED ABOUT WEBSITES – Google Transparency Sites for September 2015

1. <http://leg.ninja/>
2. <http://rapidgator.net/>
3. <http://uploaded.net/>
4. <https://myzuka.org/>
5. <http://mp3facebook.com/>
6. <http://rg.to/>
7. <http://freedsound.com/>
8. <http://mp3skull.cr/>
9. <http://mangaeden.com/>
10. <http://muzofox.net/>
11. <http://mp3mp3.me/>
12. <http://extratorrents.space/>
13. <http://extratorrent.tv/>
14. <http://extratorrent.website/>
15. <http://extratorrent.ninja/>
16. <http://extratorrent.club/>
17. <http://extratorrent.space/>
18. <http://extratorrent.work/>
19. <http://extratorrents.pw/>
20. <http://thepiratebay.gd/>
21. <http://extratorrent.mobi/>
22. <http://extratorrents.link/>
23. <http://mangapark.me/>
24. <http://extratorrentz.net/>
25. <http://extratorrentz.org/>
26. <http://1080pdownloads.eu/>
27. <http://extratorrent.ee/>
28. <http://extratorrent.ru/>
29. <http://extratorrenti.com/>
30. <http://filesoo.com/>
31. <http://extratorrentonline.com/>
32. <http://getmp3songspk.com/>
33. <http://extratorrentlive.com/>
34. <http://extratorrent.so/>
35. <http://extratorrents.website/>
36. <http://extratorrent.at/>
37. <http://extratorrent.ch/>
38. <http://extratorrent.be/>
39. <http://mretraproxy.com/>
40. <http://extratorrente.net/>
41. <http://extratorrent.click/>
42. <http://extratorrent.net/>
43. <http://extratorrent.info/>
44. <http://extratorrent.im/>
45. <http://extra-torrent.work/>
46. <http://extratorrentdownload.gq/>
47. <http://extratorrents.xyz/>
48. <http://extratorrentsoft.ru/>
49. <http://extratorrent.rocks/>
50. <http://extratorrent.com/>
51. <http://extratorrentdownload.cf/>
52. <http://share-online.biz/>
53. <http://extratorrent.org/>
54. <http://extratorrents.cf/>
55. <http://extratorrents.tk/>
56. <http://mp3facebook.com/>
57. <http://tekstowo.pl/>
58. <http://seedpeer.eu/>
59. <http://uploadable.ch/>
60. <http://abelhas.pt/>
61. <http://ytsre.eu/>
62. <http://chomikuj.pl/>

63. <http://mp3juices.is/>
64. <http://zmusic.mobi/>
65. <http://watchtvseries.ch/>
66. <http://tpbproxy.co/>
67. <http://pirateproxy.sx/>
68. <http://ketomob.com/>
69. <http://torrentz.eu/>
70. <http://limetorrents.cc/>
71. <http://oboom.com/>
72. <http://nestapaband.com/>
73. <http://piratebay.to/>
74. <http://mega.co.nz/>
75. <http://torrentz.me/>
76. <http://4shared.com/>
77. <http://waptrick.me/>
78. <http://theproxypirate.net/>
79. <http://mp3with.me/>
80. <http://intporn.org/>
81. <http://torrents.de/>
82. <http://mangago.me/>
83. <http://kat.cr/>
84. <http://intporn.com/>
85. <http://fileshark.pl/>
86. <http://freefilmshd.gq/>
87. <http://tpb.space/>
88. <http://piratebays.eu/>
89. <http://4shared-china.com/>
90. <http://mangachapter.me/>
91. <http://mangatalks.com/>
92. <http://thetorrent.org/>
93. <http://mp3song.rocks/>
94. <http://ul.to/>
95. <http://btsdl.cc/>
96. <http://kickass-torrents.kim/>
97. <http://musicaddict.com/>
98. <http://getmemp3.com/>
99. <http://rapidshare.com/>
100. <http://kickasstorrentdownload.link/>

APPENDIX B

TOP 50 MOST POPULAR SITES

1. <http://www.filmesetorrent.com/>
2. <http://series-torrent.org/>
3. <http://www.filmesviatorrents.com.br/>
4. <http://www.piratefilmestorrent.com/>
5. <http://www.clubedotorrent.org/>
6. <http://baixarfilmesviatorrents.com/>
7. <http://www.filmesetorrent.net/>
8. <http://www.rapidotorrents.com/>
9. <http://www.thepiratejogos.com.br/>
10. <http://www.baixarcdstorrent.com.br/>
11. <http://scarytorrent.com.br/>
12. <http://www.melhorestorrentbrasil.com/>
13. <http://www.telecinetorrent.com/>
14. <http://www.gamestorrent.biz/>
15. <http://www.comando-filmes.com/2015/08/dragon-ball-super-hd-720p-fullhd-1080p-legendado-download-torrent.html>
16. <http://www.thepiratefilmeshd.com/>
17. <http://www.filmesnotorrent.com/>
18. <http://www.filmestorrentseries.net/>
19. <http://www.thepiratebrazil.org/>
20. <http://aztorrents.net/>
21. <http://www.baixarmegagamestorrent.com/>
22. <http://music-torrent.net/>
23. <http://baixarfilmestorrents.org/>
24. <http://www.thepiratefilmes.com/2015/08/a-serie-divergente-insurgente-2015-bdrip-blu-ray-1080p-5-1-ch-dublado-download-torrent.html>
25. <http://7torrents.info/Movies/Default.aspx>
26. <http://www.meutorrent.net/>
27. <http://www.baixartorrent.net/>
28. <http://torrentsxd.com/>
29. <http://www.hipertorrent.com/>
30. <http://teutorrent.com/>
31. <http://www.torrentdosfilmes.com/>
32. <http://www.wolverdonfilmes.com/2015/08/vingadores-era-de-ultron-torrent-2015-web-dl-720p-1080p-dual-audio-download/>
33. <https://yts.to/browse-movies/>
34. <http://cinemacultura.com/>
35. <http://torrentgames.biz/>
36. <http://baixarcsetorrent.com/>
37. <http://www.filmesdublados torrent.com/>
38. <http://www.baixarjogoscompletoviatorrent.com/>
39. <http://www.soparabox360.com/>
40. <http://www.grandetorrent.com/>
41. <http://www.ytsbr.com/>
42. <http://universeseries.com.br/>
43. <http://www.filmestorrent.org/breaking-bad-1a-a-5a-temporadas/>
44. <http://www.torrentfilmeshd.org/>
45. <http://www.btsdl.cc/>
46. <http://www.oficialtorrentgames.com/>
47. <http://www.filmestorrentslife.com/>
48. <http://www.seriesintorrent.com/>
49. <http://www.moviesviatorrents.com/2015/08/download-a-passagem-torrent-bluray-rip-1080p-legendado-2005/>
50. <http://baixakifilmes.net/a-serie-divergente-insurgente-2015-blu-ray-3d-1080p-dublado-download-torrent/>



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Exhibit DIDP A16

gTLD String: MUSIC

Applicant Entity Name: DotMusic Limited

Application ID#: 1-1115-14110

SPECIFICATION 11 PUBLIC INTEREST COMMITMENTS (“PIC”)

1. Registry Operator will use only ICANN accredited registrars that are party to the Registrar Accreditation Agreement approved by the ICANN Board of Directors on [date to be determined at time of contracting], 2013(or any subsequent form of Registrar Accreditation Agreement approved by the ICANN Board of Directors) in registering domain names. A list of such registrars shall be maintained by ICANN on ICANN’s website.

2. Registry Operator will operate the registry for the TLD in compliance with all commitments, statements of intent and business plans stated in the following sections of Registry Operator’s application to ICANN for the TLD, which commitments, statements of intent and business plans are hereby incorporated by reference into this Agreement. Registry Operator’s obligations pursuant to this paragraph shall be enforceable by ICANN and through the Public Interest Commitment Dispute Resolution Process established by ICANN ((posted at [url to be inserted when final procedure is adopted]), as it may be amended by ICANN from time to time, the “PICDRP”). Registry Operator shall comply with the PICDRP. Registry Operator agrees to implement and adhere to any remedies ICANN imposes (which may include any reasonable remedy, including for the avoidance of doubt, the termination of the Registry Agreement pursuant to Section 4.3(e) of the Registry Agreement) following a determination by any PICDRP panel and to be bound by any such determination.

ENUMERATED DOTMUSIC PUBLIC INTEREST COMMITMENTS

The DotMusic Public Interest Commitments (consistent with the principles, policies and safeguards set forth in DotMusic’s Application) are enumerated below. These are binding contractual commitments, responsive to the PIC Program that bind DotMusic, to the global music community and the public interest. These commitments can be enforced through the ICANN PICDRP. DotMusic affirms its commitment to run a responsible TLD under a community-based governance structure, consistent with the following commitments and obligations:

1. A commitment to serve the best interests of the global music community by enforcing the enhanced safeguards -- including enhanced copyright protection provisions recommended by the music industry -- to protect intellectual property and ensure that .MUSIC is launched in a safe, trusted and manner so that monies flow through legally-licensed .MUSIC sites and Community members as opposed to rogue unlicensed pirate sites or bad actors;
2. A commitment to authenticate .MUSIC registrants to increase trust, security and safety as explicitly stated in DotMusic’s Application;
3. A commitment to not discriminate against any legitimate members of the global music community by adhering to the DotMusic Eligibility policy of non-discrimination that restricts eligibility to Music Community members -- as explicitly stated in DotMusic’s Application -- that have an active, non-tangential relationship with the applied-for string and also have the requisite awareness of the music community they identify with as part of the registration process. This public interest commitment ensures the inclusion of the entire global music community that the string .MUSIC connotes;

4. A commitment that DotMusic Limited will incorporate policies that ensure .MUSIC is highly relevant to the string's subject-matter of music. DotMusic Limited commits to adhere to its Eligibility and Content and Use policies as explicitly stated in DotMusic's Application, which mandate that only legal music-related content can be posted on .MUSIC domains and that only legal music-related activities can be conducted in regards to the registrant usage of .MUSIC domains. DotMusic Limited commits to its Eligibility policy as explicitly stated in DotMusic's Application to exclude those with a passive, casual or peripheral association with the applied-for string;
5. A commitment that the string will be launched under a multi-stakeholder governance structure of representation that includes all music constituents represented by the string, irrespective of type, size or locale, including commercial, non-commercial and amateur constituents, as explicitly stated in DotMusic's Application.

As explicitly stated in its Application, DotMusic commits to:

- i. uphold its Community definition of a "logical alliance of communities of similar nature that relate to music" to incorporate all Music Community members;
 - ii. accredit eligible non-negligible music organizations of relevance without discrimination if they meet the Music Community Member Organization (MCMO) Accreditation criteria;
 - iii. to give members of MCMOs priority to register a .MUSIC domain during the MCMO Launch Phase to help launch .MUSIC responsibly and drive adoption;
 - iv. to allow all legitimate members of the Community as defined to register a .MUSIC domain;
 - v. maintain a rotating, global Advisory Committee ("Policy Advisory Board" "PAB") consisting of and representing all multi-stakeholder constituent types.
6. A commitment to align all Registration Policies (Eligibility; Naming Conditions; Content & Use; Enforcement Measures & Appeals Mechanisms) to its community-based purpose as explicitly stated in DotMusic's Application;
7. A commitment to enforce all Registration Policies with both proactive and reactive enforcement measures, including appropriate appeals mechanisms to fix compliance issues governed under the music-tailored .MUSIC Policy & Copyright Infringement Dispute Resolution Process ("MPCIDRP") as explicitly stated in DotMusic's Application. DotMusic commits that appeals mechanisms will also be administered by independent dispute resolution providers that includes, but is not limited to, the National Arbitration Forum ("NAF"); and
8. A commitment to introduce innovative services that would serve the best interests of the global music community, which may include Premium Channels (which organize all Community members according to their classification type) and a Song Music Licensing Registry (a comprehensive song database registry which will enable quick, simple and legal music licensing at a global scale) as explicitly stated in DotMusic's Application.

Disclaimer*

The following appendix is not part of the Public Interest Commitments (PIC) document. It is provided here at the request of the applicant as clarification to the information provided in the PIC. Unlike the commitments listed in the PIC, the information listed in this appendix would not be included in the Registry Agreement should this applicant be invited to contracting.

*Added 8 May 2015

Appendix: PIC Clarification

HOW THE PIC IS ALIGNED WITH DOTMUSIC'S .MUSIC APPLICATION AND WHY EACH COMMITMENT SERVES THE PUBLIC INTEREST AND MUSIC COMMUNITY

DotMusic Limited (.MUSIC™) is a Community Applicant with: music-tailored Registration Policies consistent with its articulated community-based purpose; enhanced safeguards that protect intellectual property and create a safe haven for legal music consumption and licensing; a multi-stakeholder governance structure representing all constituents connoted by the .MUSIC string, regardless of type, size or local and commercial, non-commercial or amateur status DotMusic's community-based Application will serve the public interest and the global Music Community by providing a safe, authenticated and trusted unique online identifier. (See Appendix A for the DotMusic's .MUSIC community-based Application's specifications).¹

Per the DotMusic Application:²

The .MUSIC mission and purpose is:

- *Creating a trusted, safe online haven for music consumption*
- *Establishing a safe home on the Internet for Music Community members regardless of locale or size*
- *Protecting intellectual property and fighting piracy*
- *Supporting musicians' welfare, rights & fair compensation*
- *Promoting music and the arts, cultural diversity and music education*
- *Following a multi-stakeholder approach of fair representation of all types of global music constituents, including a rotating regional advisory board working in the best interests of the Music Community*

The Music Community encompasses global reaching commercial and non-commercial stakeholders, and amateur stakeholders...

...DotMusic has been an accessible and transparently visible .MUSIC [community] applicant since 2008 communicating its intentions publicly at music events, online through its website and social media outreach, and through mainstream and non-mainstream media. The .MUSIC registration policies and protection mechanisms have been developed using a bottom-up, multi-stakeholder methodology with input from international Music Community members in both the commercial and non-commercial sector.

DotMusic serves the Community without conflicts of interest and is accountable to the Community by establishing a Music Community Advisory Committee with representation from each constituency in the Community. The Committee will advise and provide perspective on .MUSIC issues such as broad policy matters and introductions of new services to meet the Community needs...

...DotMusic has developed policies to protect intellectual property, fight piracy and ensure .MUSIC domains are allocated in fair methods so that music consumers and Internet users are assured the highest level of trust and authenticity when they visit a .MUSIC domain.

A Global Protected Marks List (GPML) will reserve all major music brands and established artists, such as RIAA-certified platinum-selling bands...

¹ DotMusic's community-based gTLD application specifications for applied-for string music, http://music.us/icann/DotMusic_Application_Specifications_Matrix.pdf

² <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/downloadapplication/1392?t:ac=1392>

...Balanced domain registration restrictions and an inclusive, delineated Community definition ensures the entire Music Community can register .MUSIC domains, provides fairness in .MUSIC domain availability, offers a branding advantage, avoid conflicts of interest, anti-competitive concerns and anti-trust actions. (Application Answer to Question 20c)

.MUSIC relates to the Community by representing all constituents involved in music creation, production and distribution, including government culture agencies and arts councils and other complementor organizations involved in support activities that are aligned with the .MUSIC mission. (Application Answer to Question o 20d)

Globally Protected Marks List (GPML) will ensure major music brands and established artists, such as RIAA-certified platinum-selling bands, are protected not cybersquatted. These are reserved at all times. (Application Answer to Question 20d)

DotMusic understands the difficulties faced by the content industries to cope with changes created by the digital revolution. DotMusic's neutral multi-stakeholder governance of equal representation of all music constituents is based on gaining stakeholder consensus to enable the development of a domain Industry standard in .MUSIC that serves registrants and Internet users and assures that rightful entities can own and leverage their .MUSIC domain to eliminate cybersquatting and piracy issues, while building trust with consumers to ensure commercial activities are trusted and monies flow to the music community not pirates or unlicensed sites. (Application Answer to Question 18c iii)

Below, DotMusic provides detailed rationale how the DotMusic Application serves the global public interest as explicitly stated in DotMusic's Application. DotMusic commits to incorporate the following parts in its registry agreements as binding commitments to ensure DotMusic serves the global public interest and the global Music Community:

- A. Commitment of Community all-inclusiveness, non-discrimination and multi-stakeholder governance: The applied-for string (.MUSIC) will be governed under a multi-stakeholder model and will be restricted to only members of the Community (defined in the Application as “a strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music”) who have an active, non-tangential relationship with the applied-for string and the requisite awareness and recognition that they are a part of the defined Community.**

DotMusic commits not to exclude legitimate members of the global Music Community as defined in the Application -- “a strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music.” (Application Answer to Question 20a).

Per the DotMusic Application:

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

“likelihood of material detriment to the rights and legitimate interests” of the Community.
(Application Answer to Question 20a)

DotMusic’s community definition – a “strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music” (See Application, 20a) – matches the applied-for string because it represents the entire global music community and allows all constituents, including commercial, non-commercial and amateur stakeholders, to register a .MUSIC domain without any conflict of interests, over-reaching or discrimination. The community definition is all-encompassing and is aligned with Wikipedia’s “Music Community” definition (See Appendix I):

*Music community is defined as a logical alliance of interdependent communities that are related to music, which include commercial participants...and non-commercial participants. UNESCO identifies the music community as a “community of identity” implying common identifiable characteristics and cohesive attributes, such as sharing a music culture, norms and subscribing to common ideals related to music... defined....by common values, cohesive norms and interconnected structures to build a community identity ... The music community is not defined as much by demographic indicators such as race, gender, and income level, as it is by common values, cohesive norms and interconnected structures to build a community identity. It refers to music-related individuals and organizations in a shared environment with shared understandings and practices, modes of production and distribution. The shared organisation of collective musical activities, identity and community value is created as result of infrastructure and a shared set of common values...The music community shares a cohesive and interconnected structure of artistic expression, with diverse subcultures and socio-economic interactions between music creators, their value chain, distribution channel and fans subscribing to common ideals. Under such structured context music consumption becomes possible regardless whether the transaction is commercial and non-commercial.*³

DotMusic has documented support from recognized community institution(s)/member organization(s) that collectively represent a majority of the overall community. The Community definition is a logical alliance of strictly delineated and organized communities of a similar nature relating to music. This defined Community and the expressions of support for the DotMusic Application represent a majority of the overall music community with a clear and straightforward membership. The requisite awareness of the community is clear: participation in the Community, the logical alliance of communities of similar nature related to music, -- a symbiotic, interconnected eco-system that functions because of the awareness and recognition of its members. The delineated community exists through its members participation within the logical alliance of communities related to music (the “Community” definition).

Music community members participate in a shared system of creation, distribution and promotion of music with common norms and communal behavior e.g. commonly-known and established norms in regards to how music entities perform, record, distribute, share and consume music, including a shared legal framework in a regulated sector governed by common copyright law under the Berne Convention, which was established and agreed upon by over 167 international governments⁴ with shared rules and communal regulations.⁵

³ Music Community. In *Wikipedia*. Retrieved November 26, 2014, from https://en.wikipedia.org/wiki/Music_community

⁴ http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=15

⁵ The Berne Convention for the Protection of Literary and Artistic Works, usually known as the Berne Convention, is an international agreement governing copyright, which was first accepted in Berne, Switzerland, in 1886 – See http://www.wipo.int/treaties/en/text.jsp?file_id=283698

The Community as defined in the DotMusic Application has at least one entity mainly dedicated to the entire global community. For example, the DotMusic Application includes an “international federation of national communities of a similar nature,” which relates to global governments and music culture covering all constituent types without discrimination. The International Federation of Arts Councils and Culture Agencies (IFACCA) is the only international federation that represents government culture agencies and councils globally.⁶ Their activities include events (world and mini summits, meetings, symposiums, forums, networking events etc.), ACORN (the Arts and Culture Online Readers News Service), research assistance, information exchange, organizing the WorldCP cultural database, and administering the most comprehensive international listing of news and contacts for arts councils and ministries of culture globally. IFACCA’s membership covers the majority of music entities globally, regardless whether they are commercial, non-commercial or amateurs. Music, as an art form, falls under the jurisdiction of each country’s Ministry of Culture governmental agency or arts/music council. IFACCA is the world’s only “global network of national arts funding agencies.” The degree of power and influence of government agencies with respect to music surpasses any organization type because collectively these are the agencies that: (i) provide the majority of funding for music-related activities globally; (ii) regulate copyright law; and (iii) encompass all the music entities that fall under their country, regardless whether these entities are commercial, non-commercial or amateurs. IFACCA is globally recognized by its strategic partners, such as UNESCO, a United Nations agency representing 195 member states and the European Commission.⁷

In fact, in addition to IFACCA there are several other entities that are mainly dedicated to the Community as defined by the Application. Another such organization that has supported the launch of a community-based .music top-level domain is the International Music Council (IMC) founded in 1949 by UNESCO. The IMC represents over 200 million music constituents from over 150 countries and over 1000 organizations.⁸

The applied-for string entirely matches and captures the name of the Community defined i.e. the string entirely represents all possible music community members under the Community definition.

The .MUSIC Community, as established and delineated in Question 20, represents the majority of the overall Community and ensures that its expressions of support cover a balanced, diverse and representative blend of Community stakeholders, including constituents representing over 70 governments culture agencies and/or arts councils, over 35 countries’ music information centers, music export offices, country-led music coalitions, digital distributors representing most of the music distributed on the leading legal music stores, music associations and organizations representing the interests of many Community members, and other entities. (Application Answer to Question 18c iii)

The process by which DotMusic has received its support is through its global communication outreach campaign. Pursuant to its Mission, DotMusic has been conducting extensive outreach to the Community since 2008 to brand itself and its mission to convey the benefits of .MUSIC and requesting Community support letters. Since 2008 DotMusic has led Music Community efforts to the ICANN community through dedicated participation at ICANN meetings and other DNS/new TLD related events. The Music Community Member Organization (mCMO) domain allocation method during the Landrush phase was created by DotMusic to allow Community members to register through established Community organizations. During the General Registration phase the TLD is open to all Community members for registration but also restricted by Eligibility, Use and other Policies, including enhanced safeguards.

⁶ http://www.ifacca.org/membership/current_members/

⁷ http://www.ifacca.org/strategic_partners/

⁸ <http://www.imc-cim.org/about-imc-separator/who-we-are.html>

DotMusic has been a strong Community supporter and participant as demonstrated in its ongoing efforts to build a sustainable TLD with policies dedicated to match the needs of the Community using a multistakeholder model, while ensuring it is implemented in a manner fulfilling DNS and ICANN technical, political and legal requirements.

DotMusic has publicly branded itself in an open, transparent and accessible manner through differentiated .MUSIC-related sites, social media, online marketing and through tens of thousands of web discussions/media mentions. Over 1,500,000 have signed the .MUSIC Initiative petition; over 5 million have liked/retweeted DotMusic in popular social media sites; and a significant number of leading mCMOs have signed support/interest letters as shown in response to this question. (Application Answer to Question 20f⁹)

DotMusic's process and rationale behind the expressions of support and the creation of its Registration Policies (Eligibility; Name Selection; Content and Use; Enforcement; and other Enhanced Safeguards) was established through DotMusic's ongoing, decade-long public community outreach campaign and interactions with the Community:

The .MUSIC mission and purpose has been established by interactions with Community members through numerous outreach activities and upon experiences gained in previous ICANN new gTLD launches. The mission/purpose is consistent with ICANN's Affirmation of Commitments (AoC) and Basic Principles of the International Music Registry (IMR - with participants including RIAA, IFPI, SCAPR, ACTRA, SAMRO, IRSC, ECAD, CIAM), including:

- *the "vital importance of transparency, openness and non-discrimination"¹⁰*
- *"ensuring accountability, transparency and the interests of global Internet users", "enhancing the operational stability, reliability, resiliency, security, and global interoperability of the DNS" and "promoting competition, consumer trust, and consumer choice" while "adequately addressing consumer protection, malicious abuse, and rights protection issues"¹¹ (Application Answer to Question 20c)*

A complete list of events relating to the ongoing outreach campaign can be found on www.music.us/events.htm. (Application Answer to Question 20b)

According to the Application, DotMusic will continue its outreach (See Appendix H for Global Outreach Music Community Communication Campaign and Events) to ensure community adoption of .MUSIC:

DotMusic will continue its active outreach and participation efforts in the Community and anticipates receipt of additional support letters from Community members throughout and beyond the ICANN TLD evaluation process. (Application Answer to Question 20b)

Registration Eligibility is restricted to members belonging to the Community as defined in the Application. Per the DotMusic Application Community definition, these Community members must belong to the "strictly delineated and organized...logical alliance...of "communities related to music." Community members of DotMusic-Accredited Music Community Member Organizations (MCMOs) will be given priority to register .MUSIC domains during the MCMO Launch Phase prior to General Registration to help drive industry adoption and ensure that rightful owners register their names (See Appendix B for current DotMusic's MCMOs).

⁹ <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/downloadattachment/140935?t:ac=1392> , Pg.3 and Pg.4

¹⁰ www.internationalmusicregistry.org/portal/en/basic_principles.html

¹¹ www.icann.org/en/about/agreements/aoc/affirmation-of-commitments-30sep09-en.htm

DOMAIN ALLOCATION, INDUSTRY STANDARDS & CONSUMER TRUST

DotMusic has incorporated enhanced safeguards, such as...MCMO domain allocation...a new methodology of assigning domain names to the rightful owners. (Application Answer to Question 20a)

The DotMusic Eligibility Registration Policy to restrict .MUSIC only to music Community members was made public by DotMusic in February 2011 in Billboard magazine, the recognized music industry trade publication:

Organizing the music industry on the web can only be accomplished by utilizing the root of the Internet Domain Name System (DNS). Not only does a .MUSIC Top-Level Domain bring consistency, organization and centralization, it also assures ownership and control still remains in the hands of the music industry.

.MUSIC is being launched as a community-based domain. This means that only members of the music community will be able to register the domain. [The] decision to launch .MUSIC as an exclusive, community-based domain was strategic and integral to ensuring that .MUSIC websites create a trusted Internet zone for music consumption. An example of a TLD that has enjoyed success using this approach is .EDU for education.

Verifying members has shown to increase trust, credibility and the sense of true community. The .MUSIC domain will be exclusive only to authentic music community members...By incorporating efficient registration policy-making and domain name authentication, monies will flow directly into the pockets of artists and the music community, not to pirates or unlicensed illegitimate websites.

By using this quality-driven strategy, as opposed to focusing on maximizing the quantity of total domain registrations, weaknesses become strengths and problems become solutions.

The .MUSIC domain will serve as a badge of trust, safety and credibility to the music consumer. By allowing only verified music community members to register their domain, .MUSIC will ensure it will be used in a safe and responsible manner. Confidential consumer data, security and stability are a priority. Stricter guidelines for registration will also help protect Internet users from malware, phishing or any other malicious behavior that can arise as well as increase trust.

The objective with .MUSIC was to connect a Top-Level Domain with a purpose-driven initiative that is committed in creating value for the music community and making a difference that matters for artists. The mission of the .MUSIC initiative is focused on the music community owning and controlling their home and brand on the Web in a transparent, accountable, trusted way, while experiencing the benefits of the .MUSIC network effect.¹²

To qualify as MCMOs, Music Community Member Organizations will require .music-accreditation from DotMusic (See Appendix C for .music Accreditation requirements and accreditation application form¹³). The MCMO criteria are consistent with ICANN Applicant Guidebook's criteria for Community

¹² Constantine Roussos, Billboard, How .music Will Save the Industry, <http://www.billboard.com/biz/articles/news/1179256/constantine-roussos-guest-post-how-music-will-save-the-industry>, February 15, 2011

¹³.music Accreditation Requirements for Music Community Member Organizations (MCMO), http://music.us/DotMusic_Music_Community_MCMO_Application.pdf, Section 2.0, Pg.2

Establishment.¹⁴ Community members can register a .music domain through an MCMO during the MCMO Launch Phase if the MCMO meets the Accreditation criteria:

1. *Clear delineation: The Community organization must have clear and straightforward membership and the requisite awareness and recognition from those members.*
2. *Organized: The Community organization must administer the community members and have membership rules (e.g. Terms of Service or Membership Code of Conduct).*
3. *Community organization must relate to music in a non-tangential or non-peripheral manner.*
4. *Membership aligns with the Nexus of the Community and the String, which is explicitly relevant to music. Any tangential or implicit associations with the Nexus of the Community and the String will not be regarded as delineated memberships since they would be considered unclear, dispersed or unbound. Such unclear, dispersed or unbound tangential relationships would not constitute a qualifying membership of an accredited MCMO and would be ineligible for registration.*
5. *Community organization activities are aligned with the .MUSIC Mission and Purpose.*
6. *Membership is of non-negligible size.*
7. *Membership geographic dispersion is either international or national (i.e. organizations with merely local memberships do not qualify).*
8. *Forward-looking longevity: Membership pursuits are of a lasting, non-transient nature (i.e. will continue to exist in the future).*
9. *Membership activities must be involved in the legal production and/or the distribution and/or the promotion of music (i.e. of the same nature).*
10. *The Community organization's functions must legally comply with the string's regulated sector in relation to copyright and clearly abide to the sector's clearly, delineated systems to ensure fair compensation and proper allocation of royalties to Community rights holders. (See MCMO Accreditation Requirements¹⁵)*

As stated in DotMusic's Application, the Community must have the requisite awareness and recognition from its members, who in turn must meet clear and straight-forward membership criteria with the Community.

.MUSIC relates to the Community by representing all constituents involved in music creation, production and distribution. (Application Answer to Question 20d)

The Community and the .MUSIC string share a core value system of artistic expression with diverse, niche subcultures and socio-economic interactions between music creators, their value chain, distribution channel, and ultimately engaging fans as well as other music constituents subscribing to common ideals. (Application Answer to Question 20d)

As mentioned in the Application, “registrants will be verified using Community-organized, unified “criteria taken from holistic perspective with due regard of Community particularities” that “invoke a formal membership (Application Answer to Question 20a).”

¹⁴ Applicant Guidebook, Community Establishment, <http://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>, Pg. 194-196 and CPE Final Guidelines, <http://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf>, Pg. 3-5

¹⁵ music Accreditation Requirements for Music Community Member Organizations (MCMO), [http://music.us/DotMusic Music Community MCMO Application.pdf](http://music.us/DotMusic%20Music%20Community%20MCMO%20Application.pdf), Section 2.0, Pg.2. If DotMusic determines that a MCMO applicant does not fulfill the MCMO Accreditation criteria then the MCMO applicant that was rejected eligibility can appeal the decision by filing a Music Community Member Organization (MCMO) Eligibility Reconsideration Request with the National Arbitration Forum Dispute Resolution Provider (See <http://domains.adrforum.com/resource.aspx?id=2190>, Pg.5)

The defined Community is delineated and organized because it operates in a regulated sector that uses numerous globally-recognized standards and classification systems, which identify who the individual songwriters, publishers and rights holders are and which songs they are associated with so that Community members are appropriately compensated, regardless whether the constituent is a commercial, non-commercial or amateur entity:

The “MUSIC” string is commonly used in classification systems such as ISMN,¹⁶ ISRC,¹⁷ ISWC,¹⁸ ISNI¹⁹. (Application Answer to Question 20a)

DotMusic has sorted the Community definition according to recognized criteria: existing classification systems that are used to clearly define and identify entity types. To ensure non-discrimination of music constituents and to guarantee that only music entities are automatically associated with the gTLD, DotMusic requires that the entity type is music-related with the requisite awareness of the symbiotic and interdependent nature of the Community consistent with the Community definition in DotMusic’s Application.

DotMusic expects that the substantial majority of all of its registrations will originate from the music entity type classified as “Musical groups and artists” (e.g. See North American Industrial Classification System (NAICS) code 711130²⁰ or the United Nations Industrial Classification (ISIC) code 9214²¹). All music constituent types that are associated with the string must have a relationship with “music” and have the requisite awareness of DotMusic’s defined Community to be part of the Community. In accordance with its articulated community-based purpose, DotMusic commits that all music constituent types are eligible for registration.

DotMusic has required all music entity types to be “music”-related. For example, all eligible entities delineated and organized under constituent types (using NAICS as a reference for clearly classifying

¹⁶ The International Standard Music Number (ISMN) is a unique number for the identification of all notated music publications from all over the world. The ISMN is an ISO certified global standard number (ISO 10957:2009). See <http://www.ismn-international.org/whatis.html> and

http://www.iso.org/iso/home/store/catalogue_ics/catalogue_detail_ics.htm?csnumber=43173

¹⁷ The ISRC (International Standard Recording Code) is the international identification system for sound recordings and music video recordings. The ISRC is an ISO certified global standard number (ISO 3901:2001) and is managed by the IFPI. See <http://isrc.ifpi.org>, <https://www.usisrc.org/about/index.html> and http://www.iso.org/iso/catalogue_detail?csnumber=23401

¹⁸ The ISWC (International Standard Musical Work Code) is a unique, permanent and internationally recognized reference number for the identification of musical works. The ISWC has been approved by ISO (International Organization for Standardisation) as a global standard (ISO 15707:2001) and is managed by CISAC. See <http://www.iswc.org/en/faq.html> and http://www.iso.org/iso/catalogue_detail?csnumber=28780

¹⁹ The International Standard Name Identifier (ISNI) is the ISO certified global standard number (ISO 27729) for identifying the millions of contributors to creative works and those active in their distribution. ISNI holds public records of over 8 million identities and 490,000 organizations. See <http://www.isni.org/> and http://www.iso.org/iso/catalogue_detail?csnumber=44292

²⁰ The equivalent code for the NAICS code for “Musical groups and artists” (See <http://unstats.un.org/unsd/cr/registry/regcssm.asp?Cl=230&Lg=1&Co=711130>) under the United Nations International Standard of Industrial Classification (ISIC) is “Musicians and musical groups” with code 9214, See <https://unstats.un.org/unsd/cr/registry/regso2.asp?Cl=17&Co=9214&Lg=1>

²¹ See <http://www.census.gov/econ/isp/sampler.php?naicscode=711130&naicslevel=6>. The corresponding code relating to music-related activities according to the United Nations International Standard Industrial Classification (ISIC) is 592 (“sound recording and music publishing activities”), See

http://unstats.un.org/unsd/publication/seriesM/seriesm_4rev4e.pdf Pg. 209 and

<http://unstats.un.org/unsd/cr/registry/regcs.asp?Cl=27&Co=592&Lg=1>. According to the United Nations, “NAICS does provides more comparability to ISIC” and “NAICS is more detailed and recognizes many more high-tech and service industries,” See <http://unstats.un.org/unsd/class/intercop/expertgroup/1998/ac63-10.pdf>, Pg.8

constituent types) must have an association with the gTLD and “music” with respect to their primary activity. This is because the string naturally identifies all entities involved in music. For example, the NAICS code for “lawyers” is 541110. According to DotMusic’s Application, .music is only restricted to the “music” Community and excludes any peripheral entities. DotMusic’s Application has added the word “music” next to the DotMusic-selected NAICS code to ensure that the eligible Community members are automatically associated with the string. In this example, eligibility is restricted to “*Music lawyers (541110)*” (See Application Answer to Question 20a below) i.e. general, non-music lawyers are prohibited from registration because they are peripheral entities not automatically associated with the gTLD.

This serves the public interest because it increases the music-focused relevancy of the string and ensures that registrants eligible under .music match and are automatically associated the .music applied-for string i.e. there is an alignment between the proposed string and DotMusic’s Community definition.²² This music-only eligibility is also in alignment with the Content & Use requirement that any content and usage must be music-only. This coherent set of restrictions serves the public interest because it is consistent with the string’s articulated community-based purpose tailored for music. According to the Application:

The Community served is defined as music stakeholders being structurally organized using pre-existing, strictly delineated classes and recognized criteria to clearly organize the Community classified by:

- *North American Industrial Classification System codes (NAICS²³) used by the Census Bureau and Federal statistical agencies as the classification standard for the purpose of collecting, analyzing, and publishing statistical data related to the U.S.*
- *United Nations International Standard Industrial Classification (ISIC) system²⁴ to “delineate according to what is the customary combination of activities”²⁵ such as those representing the Community.*

The Music Community is strictly delineated using established NAICS codes that align with the (i) characteristics of the globally recognized, organized Community, and (ii) .MUSIC global rotating multi-stakeholder Advisory Board model of fair representation, irrespective of locale, size or commercial/non-commercial status, organized with the following delineation (corresponding NAICS code in parenthesis):

- *Musical groups and artists (711130)*
- *Independent music artists, performers, arrangers & composers (711500)*
- *Music publishers (512230)*
- *Music recording industries (512290)*
- *Music recording & rehearsal studios (512240)*
- *Music distributors, promoters & record labels (512220)*
- *Music production companies & record producers (512210)*
- *Live musical producers (711130)*
- *Musical instrument manufacturers (339992)*
- *Musical instruments & supplies stores (451140)*
- *Music stores (451220)*
- *Music accountants (541211)*

²² Community Definition: A strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music (“MCMOs”). See Application Answer to Question 20a

²³ <http://www.census.gov/eos/www/naics>

²⁴ http://www.unstats.un.org/unsd/publication/seriesM/seriesm_4rev4e.pdf

²⁵ <http://www.unstats.un.org/unsd/class/family/family2.asp?Cl=17>

- Music lawyers (541110)
 - Music education & schools (611610)
 - Music agents & managers (711400)
 - Music promoters & performing arts establishments (711300)
 - Music promoters of performing arts with facilities (711310)
 - Music promoters of performing arts without facilities (711320)
 - Music performing arts companies (711100)
 - Other music performing arts companies (711190)
 - Music record reproducing companies (334612)
 - Music, audio and video equipment manufacturers (334310)
 - Music radio networks (515111)
 - Music radio stations (515112)
 - Music archives & libraries (519120)
 - Music business & management consultants (541611)
 - Music collection agencies & performance rights organizations (561440)
 - Music therapists (621340)
 - Music business associations (813910)
 - Music coalitions, associations, organizations, information centers & export offices (813920)
 - Music unions (813930)
 - Music public relations agencies (541820)
 - Music journalists & bloggers (711510)
 - Internet Music radio station (519130)
 - Music broadcasters (515120)
 - Music video producers (512110)
 - Music marketing services (541613)
 - Music & audio engineers (541330)
 - Music ticketing (561599)
 - Music recreation establishments (722410)
 - Music fans/clubs (813410)
- (Application Answer to Question 20a)

The defined Community -- the clearly delineated and organized logical alliance of communities related to music -- represents the entire global Music Community in terms of size, locale extension and type:

The Music Community encompasses global reaching commercial and non-commercial stakeholders, and amateur stakeholders. (Application Answer to Question 20c)

.MUSIC relates to the Community by representing all constituents involved in music creation, production and distribution... aligned with the .MUSIC mission. (Application Answer to Question 20d)

The Music Community's geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents. (Application Answer to Question 20a)

While the exact size of the global Music Community as defined is unknown (there is no evidence providing an exact, finite number because amateur entities are also included in the Community's definition), it is in the considerable millions as explicitly stated in the DotMusic Application. DotMusic's definition of the Community and mutually-inclusive Registration Policies ensure that eligible members are only music-related and associated with the string. This is because the string identifies all constituents involved in music. Music-only participation optimizes the relevancy of .music domains to the string and entirely matches the nexus

between the string and Community defined. The Community Definition, Eligibility Criteria and Content & Requirement ensure that peripheral industries and entities not related to music are excluded so that the string and the defined Community matches and aligns in a consistent manner per the Application's community-based purpose i.e. only entities with music-related activities are able to register .music domains.

While some music constituent types in DotMusic's definition and classification might comprise a minority in numbers (e.g. music lawyers) when compared to the primary and core constituent classification type (music groups and artists), the inclusion of every music constituent type is paramount to the purpose of the string. Every music constituent type critically contributes to the function and operation of the music sector within a regulated framework given the symbiotic overlapping nature of the Community as defined and structured. Music would not function as it does today without the participation of all music constituent types. The inclusion of all music constituent types serves the public interest because it ensures the Community matches the nexus of the string without discrimination, while excluding peripheral, casual entities with a tangential relationship with the Community defined who would not otherwise have any fundamental need for a .music domain given the string's articulated community-based purpose and the string's Content and Use requirements that mandate that usage only relates to music activities and licensed, legitimate music content.

As highlighted by the Council of Europe, it is imperative to serve the public interest by protecting the communities that are affiliated with the sensitive strings. This means not discriminating against Community members with legitimate interests to register a .music domain.

"Community" connotes a collection of people bound together by common practices, norms and interests.²⁶ UNESCO, a specialized agency of the United Nations, identifies "music" as a Community of Identity implying common identifiable characteristics such as having in common a culture such as music. Community of Identity "implies common identifiable characteristics or attributes such as having in common a culture. By culture we mean: language, music, religion and customs."²⁷

The string will include all music entity types as defined in the Application and will also be governed under a multi-stakeholder governance model of fair representation irrespective of type, size or locale. The .MUSIC Policy Advisory Board (PAB) will ensure the string is run in the best interests of the Community:

The rotating, global Advisory Committee will represent all Community stakeholder groups... The Committee will operate under Bylaws central to the .MUSIC Mission, Core Values, and commitment to serve the Community and public interest. (Application Answer to Question 20b)

The .MUSIC string is a public resource and should be shared by all global Music Community members. Any exclusion or discrimination against legitimate Music Community members would not serve the global public interest and be considered anti-competitive. DotMusic serves the global public interest by including the entire global Music Community without discrimination and ensuring that each type of global music constituent, regardless of size or locale, has a seat on table of the diverse multi-stakeholder model of .music governance which ensures fair representation. The incorporation of the Policy Advisory Board (PAB) also ensures continued accountability to the global public interest and the Community at-large, especially the string's sector. With respect to .MUSIC's governance structure and Community establishment, the Community structure is aligned with DotMusic's rotating, global Advisory Committee representing all multi-stakeholder constituent types.

The Community defined serves the public interest because it is pre-existing, is forward looking and is not a proposed community that was construed to favor a limited oligopoly of a select few music organizations (at

²⁶ Michael Urban, Getting By on the Blues: Music, Culture, and Community in a Transitional Russia, <http://onlinelibrary.wiley.com/doi/10.1111/0036-0341.00235/abstract>, 2002

²⁷ UNESCO, Understanding the Community, http://www.unesco.org/education/aladin/paldin/pdf/course01/unit_06.pdf, Pg. 3-5

the expense of a significant portion of legitimate community members that would be excluded even if they are associated with the string) or construed to obtain a sought-after generic word as a gTLD.

According to the Application:

The Community has bought, sold, and bartered music for as long (“LONGEVITY”) as it has been made (R. Burnett, International Music Industry, 1996 and P. Gronow, International History of the Recording Industry, 1998). The Community is a delineated network where production and distribution of music occur in a process relying on labor division and technology. Under such structured context music consumption becomes possible regardless whether the transaction is commercial and non-commercial (M. Talbot, Business of Music, 2002). The foundation for the structured and strictly delineated Community only resulted from the interplay between the growing music publishing business and an emerging public music concert culture in the 18th century. (Application Answer to Question 20a).

Some pre-existing examples of community members include Breitkopf & Härtel, the world’s oldest publishing house founded in 1719²⁸ and Zildjian, the world’s oldest music company founded in 1623.²⁹

The clearly delineated and organized logical alliance of communities related to music will continue to grow over time, especially in developing regions which are under-represented and are forecasted to have the highest growth rate in the music sector given the increasing number of Internet users from that region and a proliferation of new legal online music services which are highly limited in those regions (There are only over 450 recognized legal music services online, the majority of which is offered in developed nations³⁰). According to the IFPI 2014 Digital Music Report:

*New services with big global ambitions are launching, such as Beats and iTunes Radio — services that we hope will soon spread around the world. Meanwhile, the existing international services, such as Deezer, Google Play, iTunes, Spotify and YouTube are generating income in many new markets following their global expansion. The competition is intense and consumer choice is ever-widening — these are very positive dynamics in the development of the digital music landscape...The music industry has become a mixed economy of diverse consumer channels and revenue streams. This has been an amazing transformation, dramatically expanding the way artists reach their fans across the globe... Digital music, on a global scale, is going to the next level. Emerging markets have huge potential, and, through digital, the music business is moving to unlock it. Most of these territories are seeing internet and mobile music penetration soaring, with rising demand for handheld devices. The great news is that a wide variety of licensed music services are available to meet this demand. Emerging music markets also need new ways of thinking in the digital world, particularly in countries with undeveloped payment systems and low credit card usage... None of these exciting developments changes the fact that there is still one overriding obstacle to market development in most emerging markets — and that is rampant digital piracy... Our focus on creating a fair playing field, supported by strong laws and effective enforcement, remains undiminished.*³¹

The definition of the Community and the policies for the applied-for string match the composition and needs of the global Music Community. All components of the Application’s Community Definition, Delineation and Registration Policies are not mutually exclusive. They must all be met to ensure eligibility and a successful .music domain registration.

²⁸ <http://www.breitkopf.com/news/start>

²⁹ <http://zildjian.com/About/History/Background>

³⁰ <http://www.ifpi.org/downloads/Digital-Music-Report-2014.pdf>, Pg. 44

³¹ <http://www.ifpi.org/downloads/Digital-Music-Report-2014.pdf>, Pg. 5

The .MUSIC string is restricted to only music Community members with the requisite awareness of the Community as explicitly stated in DotMusic's Application. DotMusic's policies serve the public interest by enabling and fostering the same intense competition and choice that exists in the music sector while leveling the playing field and accommodating new markets and the opportunity for global music growth. By including all types of legitimate music members, DotMusic will ensure that its policies are aligned with its Mission and would serve the global public interest.

- B. Commitment to Enhanced Safeguards protect intellectual property, fight piracy and exclude bad actors and non-music related entities with a tangential relationship with the Community to prevent registration abuse and misuse. These Enhanced Safeguards will reinforce trust under an authenticated top-level domain identifier; enable Community adoption of an Industry Standard for official music websites; increase credible music-related relevancy and quality control under .MUSIC domains to outrank pirated sites in search engine result pages; and to protect Intellectual Property ("IP") by creating a safe haven for legal music consumption and licensing under the .music gTLD ensuring monies flow through legally-licensed .MUSIC sites and Community members not rogue unlicensed pirate sites or bad actors.**

.MUSIC is a string that relates to a highly regulated sector pertaining to copyright and intellectual property regulated by government. The global Music Community is highly reliant on the Domain Name System (DNS) for the core of its activities including monetization, marketing and distribution. The global Music Community continues to experience significant economic harm from mass copyright infringement from pirate sites and networks. In addition, the global Music Community is vulnerable to malicious abuse from cybersquatters, impersonators and bad actors given the popularity of music. This is why entities with a casual, tangential relationship with music (i.e. without the requisite awareness of belonging to the Community) or those entities belonging to pirate networks or unlicensed networks are entirely excluded from the Music Community definition. According to NetNames, the cost of digitally pirated music and other Internet-distributed media is \$75 billion per year. 432 million internet users regularly pirate content and consume 24% of all Internet bandwidth across North America, Europe by infringing digital content. In fact 98% of data transferred using Peer-to-Peer (P2P) networks is copyrighted.³²

According to the European Commission, the digital distribution of music has resulted in a significant decline in the income of songwriters and recording artists.³³ According to the IFPI's 2013 Digital Music Report, the availability of digital distribution channels has made it easy to distribute music on a mass scale without obtaining a license.³⁴ DMCA takedown procedures are ineffective in combating illegal distribution. Although the physical marketplace continues to be displaced by the digital marketplace, the digital marketplace has not reached a level of economic maturity sufficient to provide songwriters and recording artists with an income comparable to that earned when physical distribution was the norm.³⁵ According to the RIAA:

³² <http://www.netnames.com/services/online-brand-protection/digital-piracy-protection>

³³ Luis Aguiar and Bertin Martens, European Commission, Institute for Prospective Technological Studies Digital Economy Working Paper 2013, Digital Music Consumption on the Internet: Evidence from Clickstream Data, <ftp://ftp.jrc.es/pub/EURdoc/JRC79605.pdf>, P.16-17

³⁴ IFPI 2013 Digital Music Report 2013, Engine of a Digital World, http://www.ifpi.org/downloads/dmr2013-full-report_english.pdf, P.9

³⁵ Jay Rosenthal (NMPA) and Christos P. Badavas (HFA), http://copyright.gov/docs/musiclicensingstudy/comments/Docket2014_3/NMPA_HFA_MLS_2014.pdf, 2014, Pg.35

As several of the creative content and IP industries have stated³⁶ the notice and takedown system of the DMCA for today's Internet is simply antiquated, deficient, ineffective and, as judicially interpreted,³⁷ so weakened that it no longer strikes the careful balance sought by Congress. As evidenced by data in various filings and studies, the current system is resource intensive, doesn't result in meaningful protection, doesn't keep down infringing material in any meaningful respect, and has resulted in unintended consequences.³⁸ To reiterate, locking both creators and intermediaries into an old, ineffective system creates inefficiencies, squelches innovation and stunts the growth of new Internet services that consumers demand, while also limiting the ability to properly address the potential abuse that the current system may inadvertently incentivize.³⁹

Today many cybercriminals are using domain names to conduct malicious activities by registering them under phony information to remain anonymous or under a trustworthy name to appear to be legitimate with the intention of exploiting the name in bad faith by confusing Internet users.

DotMusic is the only .music Applicant that fulfills and exceeds the Enhanced Safeguards⁴⁰ that were endorsed by the following music organizations:⁴¹

- American Association for Independent Music (A2IM)
- American Federation of Musicians (AFM)
- American Society of Composers, Authors and Publishers (ASCAP)
- Broadcast Music, Inc. (BMI)
- Recording Industry Association of America (RIAA)
- International Confederation of Music Publishers (ICMP)
- International Confederation of Societies of Authors and Composers (CISAC)
- International Federation of the Phonographic Industry (IFPI)
- National Music Publishers' Association (NMPA)
- SESAC

³⁶ See comments submitted by A2IM, ASCAP, BMI, NMPA, RIAA and SGA, <http://www.ntia.doc.gov/federal-register-notice/2013/comments-received-department-commerce-green-paper-11132013>, 2013

³⁷ See *UMG Recordings, Inc. v. Veoh Networks Inc.*, 665 F. Supp. 2d 1099 (2009), *UMG Recordings, Inc. v. Shelter Capital Partners LLC*, 667 F.3d 1022 (9th Cir. 2011); *Capitol Records, Inc. v. MP3Tunes, LLC*, 611 F. Supp. 2d 342 (SDNY 2009). *Viacom, Inc. v. YouTube, Inc.*, 718 F. Supp. 2d 514 (SDNY. 2010), *aff'd in part, rev'd in part, and remanded*, 676 F.3d 19 (2d Cir. 2012), reaffirmed, 107 USPQ 2d BNA 1157 (SDNY. 2013), currently on appeal to the Second Circuit, is another example of misinterpretation of the statute, although that decision was reversed in part on appeal. See response by creative content organizations to the Department of Commerce Notice of Inquiry on Copyright Policy, Innovation and the Internet Economy (October 5, 2010) at [http://ntia.doc.gov/files/ntia/comments/100910448-0448-01/attachments/Copyright%20NOI%20\(revised\)%20-%20121310%20\(3334319\).pdf](http://ntia.doc.gov/files/ntia/comments/100910448-0448-01/attachments/Copyright%20NOI%20(revised)%20-%20121310%20(3334319).pdf)

³⁸ For filings, *see, e.g.*, the joint filing with NMPA, RIAA and the Motion Picture Association of America ("MPAA") dated August 10, 2012 ("Joint IPEC Submission"), in response to the request for written submissions issued by the office of the Intellectual Property Enforcement Coordinator (IPEC) in 77 Fed. Reg. 38,088 (June 26, 2012), the Joint DOC Submission, RIAA Comments, MPAA Comments. For academic papers and third party studies, *see, e.g.*, Boyden, Bruce, *The Failure of the DMCA Notice and Takedown System: A Twentieth Century Solution to a Twenty-First Century Problem*, December 2013, available at <http://cpip.gmu.edu/wp-content/uploads/2013/08/Bruce-Boyden-The-Failure-of-the-DMCA-Notice-and-Takedown-System1.pdf>; Lauinger, Tobias et al., *Clickonomics: Determining the Effect of Anti-Piracy Measures for One-Click Hosting*, available at <http://www.iseclab.org/papers/clickonomics.pdf>; Millard Brown Digital for the MPAA, *Understanding the Role of Search in Online Piracy*, September 2013, available at <http://www.mpaa.org/Resources/38bc8dba-fe31-4a93-a867-97955ab8a357.pdf>

³⁹ Victoria Shekler, Recording Industry Association of America, "Copyright Policy, Creativity, and Innovation in the Digital Economy," http://www.uspto.gov/ip/global/copyrights/comments/ascap_bmi_cmpa_nsai_nmpa_riaa_sesac_post-meeting_comments.pdf, Pg.8

⁴⁰ http://www.onlineaccountability.net/pdf/2012_Mar06_EnhancedSafeguards.PDF

⁴¹ http://www.onlineaccountability.net/pdf/2012_Aug09_Enhanced_Safeguards_Endorsing_Organizations.PDF

These Enhanced Safeguards include:

- Mandatory two-step authentication for all members, encompassing personal validation via phone and email
- MCMO Launch Phase Domain Allocation: During this phase, a .MUSIC registration is only valid if registrants are verified members of .music accredited Music Community Member Organizations (MCMOs)
- Acceptable Use Policy (AUP) certification by registrants that .music will be used only for licensed, legitimate activities, and not to facilitate piracy or counterfeiting
- Proactive auditing with appropriate remediation steps should follow when violations are detected.
- Prompt, accessible mechanisms for right holder complaints via the DotMusic's .MUSIC Policy & Copyright Infringement Dispute Resolution Process ("MPCIDRP") that the AUP is being violated or that piracy, counterfeiting or other abuses are being enabled. Complaints trigger an expeditious investigation, with prompt notice to registrants, a reasonable opportunity for them to respond and swift corrective action when violations are found.
- Predictable consequences for registrants who violate AUP certification, allow infringing activities, falsify registrant contact data, etc. Potential consequences include cancellation of the registered domain where the abuse occurs; possible cancellation of other domains registered by same or affiliated parties; and bar on future registrations by same or affiliated registrant, in the case of serial offenders.
- Seats at the table for right holders as registry policies reflecting these safeguards are further developed, implemented, and enforced. DotMusic incorporates a music community multi-stakeholder governance model with a Policy Advisory Board Committee for all music constituent types
- Capability and commitment to implement Enhanced Safeguards effectively

DotMusic's Mission is to create an Industry Standard for trusted and authenticated official music sites under the verified .music signal post restricted to the global Music Community. According to the Application:

Music Community members need to be able to distinguish themselves from illegal and right infringing websites, a critical factor for the Music Community to ensure that monies flow to the right holders. (Application Answer to Question 20c)

Even the U.S Supreme Court, in discussing the intent of the U.S. Copyright Clause, stated that "*evidence from the founding... suggests that inducing dissemination was viewed as an appropriate means to promote science*"⁴² which highlights how a trusted and authenticated .MUSIC used to distribute legitimate music content can serve the public interest.

To eliminate abuse by bad actors who engage in intellectual property infringement, fraud and deception (while, in parallel, preventing any registrations from casual entities with tangential relationships with music), DotMusic is has incorporated music-tailored Enhanced Safeguards in its Registration Policies that exceed what is considered standard for gTLDs and what is required by ICANN:

DotMusic has incorporated enhanced policies to ensure only eligible members of the Music Community who comply with the values, purpose and mission of the TLD can participate; to ensure domains are used in a manner benefiting the Community; to protect intellectual property; and to safeguard domains from malicious conduct and copyright infringement.

⁴² *Golan v. Holder*, 609 F. 3d 1076, 21. <http://www.supremecourt.gov/opinions/11pdf/10-545.pdf> P.3

The policies are built to match Music Community needs, based on years of feedback from Music Community members and on experience from the previous ICANN new gTLD introductions, as well as established to ensure a higher level of security for .MUSIC than what is considered standard for gTLDs. (Application Answer to Question 20e)

These Enhanced Policies include:

- i. **Eligibility:** Only members of the Community can register a .music domain and must have a clear membership with the defined Community.

As explicitly stated in DotMusic's Application, all members of the Community must have a clear membership and the requisite awareness and recognition of the Community they belong to since they have taken pro-active affirmative action to be part of the Community defined (i.e. they opted-in the Community in a formal, straight-forward manner). These eligibility policies ensure that casual entities with a tangential relationship with music and pirates are excluded since they compromise the Purpose of the applied-for string and would not otherwise have a legitimate claim or reason to register a .music especially given the growing number of other alternative, non-restrictive TLD options they can choose from.

If a member is determined not to be a member of the Community then the registrant would be violating DotMusic's Eligibility criteria resulting in the suspension of the registered .music domain. The registrant can appeal the suspension and be given reasonable time to fix their incompliance:

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

The string will be launched according to different priority-based phases to ensure fairness of allocation, to ensure that famous music brands (and those entities with verifiable music-related trademarks) are protected and to drive industry adoption and awareness.

These phases were designed to ensure that allocation was done in a fair, responsible and organized manner. According to the Application:

SUNRISE LAUNCH W/ TRADEMARK VALIDATION

This is the first phase of .MUSIC domain registration. It is a phase designed to protect trademarks in the roll-out of .MUSIC. The Sunrise is the time when regional, national and international trademark and service mark holders can apply for .MUSIC domains. The eligibility requirements will be verified, and multiple registration applications for the same string will be auctioned, except for GPML entries that supersede any other sunrise registration applications. The Sunrise Challenge Process solves disputes concerning domains registered under the Sunrise Policy.

MUSIC COMMUNITY MEMBER ORGANIZATION (MCMO) LANDRUSH LAUNCH

This is the second phase of .MUSIC domain registration. It is a limited-time period reserved for members of DotMusic-accredited music Community Member Organizations (mCMO). Unique registrations will be granted to the sole registrant and delegated at the close of the time period; multiple registration requests for the same string will go through an auction.

LANDRUSH LAUNCH

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

GENERAL AVAILABILITY

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

The first phase, called the Sunrise Launch, is reserved for those music brands that are listed under the DotMusic Globally Protected Marks List⁴³ (GPML) and those entities with valid music trademarks. If there are multiple requests for entities with valid music trademarks then these will be resolved by auction. GPML registration supersedes any valid music trademark the trademark is owned by the legitimate owner of the famous name in the GPML. This policy was adopted to prevent 3rd-parties from manipulating the trademark allocation method to register a famous music name without being the legitimate owner of the famous brand name (See Appendix D for GPML).

The second registration period is called the MCMO Landrush Launch for music Community members belonging to .music-accredited⁴⁴ Music Community Member Organizations. All major digital retailers, such as Apple iTunes, have thousands of artist names which conflict because they are identical or confusingly similar (See Appendix E for artist naming conflict examples of identical or confusingly similar artists who share the same artist name according to music data aggregator MusicBrainz). For example, there are over 10 artists called Bliss globally distributed on major digital retailers. On the same token there are over 10 artists called Rain globally who are distributed on digital music retailers or music streaming services. This is also confirmed by Rovi, a company which manages music artist metadata databases for some of the world's largest digital music retailers (such as Apple iTunes) and popular music apps (such as Shazam). According to the Wall Street Journal:

The last decade's digital revolution not only transformed the way people listen to music, it changed the way bands establish identities. In the past, identically named acts often carved out livings in separate regions, oblivious or indifferent to one another. Now, it takes only moments for a musician to create an online profile and upload songs, which can potentially reach listeners around the world.”

“There are about 1.4 million artist names, including 29 individual musicians named John Williams, in the database of Rovi Corp, which owns Web sites including AllMusic.com and licenses editorial content to Apple's iTunes and other music services. Last year, Rovi added an average of 6,521 new names a month to its database. And the repeats are piling up. Eighteen acts, past and present, laid claim to the most common name in Rovi's files: Bliss.

⁴³ DotMusic's Globally Protected Marks List, <http://music.us/icann/GPML.pdf>

⁴⁴ music Accreditation Requirements for Music Community Member Organizations (MCMO), [http://music.us/DotMusic Music Community MCMO Application.pdf](http://music.us/DotMusic_Music_Community_MCMO_Application.pdf) , Section 2.0, Pg.2

*Next up: Mirage and One, with 15 iterations each, followed by Gemini, Legacy, Paradox and Rain.*⁴⁵

There are also cases of popular artists involved in disputes over their names, including famous bands such as Bush⁴⁶ and One Direction. According to the Hollywood Reporter:

*With only so many great band names out there, the history of pop music is replete with disputes: Dinosaur vs. Dinosaur Jr., Death from Above vs. Death from Above 1979, Galaxie 500 vs. Galaxie. In some instances, bands simply agree to change their name. For instance, Pink Floyd was originally called The Tea Set before finding out about a band with the same name. Same goes for The Grateful Dead, originally called The Warlocks, or The Chemical Brothers, originally called The Dust Brothers. Other times, bands have been forced to add prefixes or suffixes to make a distinction to an existing band: See The Charlatans UK, The English Beat or Wham UK.*⁴⁷

To enhance fairness, equal opportunity for registration and to serve the public interest, multiple registration requests for the same name made by different entities during the MCMO Launch Phase will be resolved by auction.

Because the string identifies all music constituents – commercial, non-commercial and amateurs – many will not have a verifiable membership with a community organization. The Landrush Launch phase will enable all the remaining global music community entities not belonging to a verifiable community organization to register a .music domain. Just like in the MCMO Landrush phase multiple registration requests for the same name will be resolved through auctions.

The last phase, General Availability, will make .music domains available to the entire global music community as defined on a first-come, first-serve basis, regardless whether community members belong to a community organization or not, just as long as they can identify the community they belong to which is consistent with the definition of the Community: “the strictly delineation and organized logical alliance of communities related to music.” All Community members are aware of and recognize their inclusion in the defined Community because of their active participation in this clearly defined Community. This ensures inclusion of the entire global community the string represents and exclusion of unrelated-entities not associated with the music string. This way there is a clear alignment between the string .MUSIC and the Community defined.

Furthermore, beyond identifying what community they belong to, all global Music Community members must authenticate themselves through a two-step email and phone validation process to ensure accountability, safety and quality control:

REGISTRY DATA VALIDATION

While DotMusic will hold the thick WHOIS data provided through registrars, we will also validate elements of the received WHOIS data:

- 1) The registrant’s email address through validation links*
- 2) The registrant’s phone number through validated PIN-codes*

⁴⁵ Wall Street Journal, From ABBA to ZZ Top, All the Good Band Names Are Taken. Internet Age Raises Stakes for Being First, <http://online.wsj.com/news/articles/SB20001424052748703357104575045584007339958>, February 17, 2010

⁴⁶ http://exclaim.ca/MusicSchool/NeedToKnow/how_to_understand_naming_issues

⁴⁷ <http://www.hollywoodreporter.com/thr-esq/simon-cowells-record-label-sued-310179>

Upon successful completion of these two steps, DotMusic will provide the registrant their Music Community membership details; used to join/access the Premium Channels. (Application Answer to Question 20e)

This is the same two-factor authentication process conducted by many popular banks to ensure safety and to prevent fraudsters and impersonators from malicious conduct or illegitimate activity.

DotMusic is the only .music Applicant that uses this mandatory two-step factor authentication method tied to the Name Selection and the Content and Use policies and the .music Eligibility process. This authentication methodology describes the verification process DotMusic will use to determine that community members are who they say they are and are validated. The importance of MCMOs and the two-step validation process is rooted in the community-based purpose of ensuring .music is a trusted, music-related TLD that is restricted to community members, who have fulfilled all Eligibility, Name Selection and Content and Use criteria and have passed identity verifications to eliminate abuse and fraud. This is to serve the public interest and to ensure .music will be used in a manner that is aligned with .music’s articulated community-based purpose. Each MCMO will be given access to the database of registrants that have been verified in association with their membership with them. If an MCMO does not acknowledge a registrant as a verified member then the registrant will be in compliance with the Registration Policies and will be given opportunity to appeal and “fix” their in compliance or else their registration would be terminated:

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

- ii. Name Selection: To prevent cybersquatting, impersonation and bad actors from registering a Music Community member’s name, DotMusic requires that a registrant follows naming conditions which only allows members to register domains with their name (or part thereof) or acronym or “Doing Business As” or description recognizing them. According to the Application:

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

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

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

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

Also DotMusic’s Policies reiterate that the:

“Globally Protected Marks List (GPML) will ensure major music brands and established artists, such as RIAA-certified platinum-selling bands, are protected not cybersquatted. These are reserved at all times.” (Application Answer to Question 20e)

The Name Selection policy was developed to prevent registration of domain names by 3rd parties that have no rights to the names registered. In conjunction the Globally Protected Marks List, the naming conditions will protect famous music brands from cybersquatting while reducing the loopholes that allow music fan registration of famous music artist names if they do not use them in bad faith.⁴⁸

- iii. **Content & Use:** To keep content relevant, ensure higher quality content and prevent registrants from engaging in unrelated activities on .music domains, DotMusic requires that registrants engage in only music-related activities in relation to the Use of the .music domain. Furthermore, to prevent unrelated content, DotMusic requires that registrants only post music-related content:

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

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

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

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

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

Content and Use policies, in conjunction with the registrant authentication, Eligibility and Name Selection policies, will also help increase the search ranking of .MUSIC domains. According to Google, its search engine will highly weigh trust, security and high quality content (i.e. content that is considered relevant, safe and legitimate) as ranking signals for its search engine results.⁴⁹

Parking pages are also prohibited because they provide a low level of engagement with users and are treated by search engines as low quality sites which never appear in the top of search engine results for popular terms:

⁴⁸ There are UDRP domain name dispute cases that music fans have prevailed over famous music artists These include UDRP cases ruling against Lady Gaga (LadyGaga.org, See <http://domains.adrforum.com/domains/decisions/1403808.htm>), Van Halen (EdwardVanHalen.com, See <http://www.wipo.int/amc/en/domains/decisions/html/2000/d2000-1313.html>), Bruce Springsteen (BruceSpringsteen.com, See <http://www.wipo.int/amc/en/domains/decisions/html/2000/d2000-1532.html>) and Tupac Shakur (Tupac.com, See <http://www.disputes.org/decisions/0348.htm>).

⁴⁹ See Google, <http://insidesearch.blogspot.com/2012/08/an-update-to-our-search-algorithms.html> and <http://googlewebmastercentral.blogspot.com/2014/08/https-as-ranking-signal.html>

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

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

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

Any .music domain name which is challenged by 3rd-parties to have unlicensed content will be locked temporarily and then terminated if the registrant does not appeal the challenge with the Registry and fix the compliance matter. The registrant can appeal the 3rd-party challenge to fix the compliance matter if the registrant believes they are in compliance and not violating any copyright violation. Any repeat offenders will be subject to an indefinite ban from registration:

If a Registrant is found out of compliance with any of the .MUSIC Policies the registrant will be notified that the domain will be placed on registry lock. The registrant will have a reasonable time period to fix the compliance matter or the domain will be terminated. Repeat offenders will be placed on a special monitoring list that DotMusic staff will conduct additional compliance checks against. DotMusic holds the right to prohibit repeat offenders from registering .MUSIC domains for a period of time or indefinitely. (Application Answer to Question 20e)

The following Content and Use requirements apply:

- *Use only for music-related activities*
- *Comply with applicable laws and regulations and not participate in, facilitate, or further illegal activities*
- *Do not post or submit content that is illegal, threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, invasive of another's privacy, or tortious*
- *Respect the intellectual property rights of others by posting or submitting only content that is owned, licensed, or otherwise have the right to post or submit*
- *Immediately notify us if there is a security breach, other member incompliance or illegal activity on .MUSIC sites*
- *Do not register a domain containing an established music brand's name in bad faith that might be deemed confusing to Internet users and the Music Community*
- *Do not use any automated process to access or use the .MUSIC sites or any process, whether automated or manual, to capture data or content from any service for any reason*
- *Do not use any service or any process to damage, disable, impair, or otherwise attack .MUSIC sites or the networks connected to .MUSIC sites (Application Answer to Question 20e)*

If there is a non-spurious and reasonable allegation/notification of Content/Use policy incompliance, then DotMusic places the domain in lockdown/takedown mode. If the registrant does not fix the compliance matter in a reasonable time then the domain is terminated. Repeat offenders will be blacklisted. Also, this

enforcement applies to other policies as well, such as Eligibility, Name Selection, the music Globally Protected Marks List, Parking Pages and other restrictions DotMusic has to serve the global music community and public interest in a meaningful and music-tailored manner. These Content & Use policies will provide a better quality and safer user experience and are in alignment with DotMusic’s Mission to ensure that .music will be a trusted domain. These policies also safeguard the Community since they (i) prevent domain hopping; (ii) take down mass copyright infringers; (iii) confirm that the poster of music content has the expressed authorization to post music-related content; (iv) place permanent blocks on domains registered by blacklisted mass copyright infringers; strengthen copyright and trademark enforcement by facilitating complaint submissions from trusted senders; promote transparency by including the true name and address of operator if domain makes available any music owned or posted by a third party, while also preventing the abuse of privacy and proxy services to conduct illegal activities.

According to the DotMusic Application, the “.MUSIC Mission and Purpose is creating a trusted, safe online haven for music consumption” and “protecting intellectual property and fighting piracy.” The TLD will be exclusive to the Community and “will incorporate enhanced safeguards and Use policies to protect creators, intellectual property and rights holders.”

DotMusic has developed “policies to protect intellectual property, fight piracy and ensure .MUSIC domains are allocated using fair methods so that music consumers and Internet users are assured the highest level of trust and authenticity when they visit a .MUSIC domain.”

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

“DotMusic will review all policies and processes on a regular basis with involvement from the .MUSIC Advisory Committee⁵⁰ [PAB].” (See Application Answer to Question 20).

DotMusic has a Content and Use registration policy agreement focused on protecting copyright “tailored to solve issues currently related to intellectual property infringement. Registrants that do not accept and abide by the registration agreement are disqualified from domain registrations.” Registrants must:

- i. “Respect the intellectual property rights of others by posting or submitting only content that is owned, licensed, or otherwise have the right to post or submit.”
- ii. “Immediately notify [DotMusic] if there is a security breach, other member incompliance or illegal activity on .MUSIC sites;”
- iii. “Do not register a domain containing an established music brand’s name in bad faith that might be deemed confusing to Internet users and the Music Community.” (See Application Answer to Question 20).

“Any allegation that a domain is not used for legitimate music purposes or otherwise infringes on the .MUSIC Policies shall be enforced under the provisions of the .MUSIC Policy & Copyright Infringement Dispute Resolution Process (“MPCIDRP”). If a Registrant is found out of compliance with any of the .MUSIC Policies the registrant will be notified that the domain will be placed on registry lock. The registrant will have a reasonable time period to fix the compliance matter or the domain will be terminated.”

⁵⁰ DotMusic will be launched under a community-based, multi-stakeholder governance structure of fair representation encompassing all music constituent types.

Repeat offenders will be placed on a special monitoring list. DotMusic holds the right to prohibit repeat offenders from registering .MUSIC domains.”

“DotMusic reserves the right to deny, cancel or transfer any registration that it deems necessary, in its discretion, to protect the integrity and stability of the registry... DotMusic reserves the right to freeze a domain during resolution of a dispute. DotMusic reserves the right to terminate a domain for failure by the registrant to demonstrate it meets .MUSIC policies.” (See Application Answer to Question 20).

A global music community coalition led by the RIAA “on behalf of over 15 national and international trade associations” -- who “represent the people that write, sing, record, manufacture, distribute and/or license over 80% of the world’s music”⁵¹ -- expressed its support for .MUSIC to be under a “community” application model, including encouraging statements in support of DotMusic’s policies that stated that the coalition “was encouraged to see” that DotMusic “included several measures to deter and address copyright infringement within that TLD.”⁵² DotMusic has incorporated all RIAA-recommended copyright protection provisions in its policies that are subject to the Music Policy & Copyright Infringement Dispute Resolution Process (“MPCIDRP”) in the case of disputes. These enhanced safeguard provisions to protection copyright and intellectual property to protect the global music community and serve the global public interest by instilling consumer trust and safety include:

Stopping Domain Hopping:

All domains that trusted senders (such as the RIAA or other legitimate, globally-recognized and relevant music organizations) have sent over 10K notices against will be on the block domain list, which will continually be updated, unless there is evidence that the domain has been authorized by most of the applicable rights holders to use the content in question. At least a two third (2/3) vote from the .MUSIC Advisory Committee is required to permit the domain to remain live.

Take Down Policies:

Development and application of policies that:

- Make it a violation of .MUSIC policies if registrant does not comply with DotMusic’s Content and Use policy to protect copyright. A notice about one piece of content on site being abused will require registrant to search for and remove all instances of that content on/available via their site i.e. registrant will be given reasonable time to fix the compliance matter or else will have their domain terminated;
- Require a stringent repeat infringer policy.

The takedown process and timeline after complaint is received about a pirate engaging in mass copyright infringement on a .MUSIC domain is as follows:

1. The DotMusic Registry receives complaint.
2. The DotMusic compliance team assesses whether the complaint is legitimate/reasoned or spurious in nature. The decision is made within 2-7 days depending on the complexity of the complaint.
3. If the complaint is accepted then the registrar is notified that the domain will be frozen and suspended. The registrar had to agree to the DotMusic TOS beforehand so has to follow our policies. The registrar has 7 days to notify the registrant and wait for a response from the registrant. If the issue is not resolved within 7 days then the registrar notifies DotMusic that the issue was not resolved.

⁵¹ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf> , Pg.3, Appendix A

⁵² <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf> , Pg.1

4. Upon notification of the registrar that the issue was not resolved then DotMusic notifies Afiliias to suspend and lockdown the domain name. The action response to suspend and lockdown the domain by Afiliias is within 48hrs. The registrant can no longer transfer the domain and cannot make any changes to their domain. The registrant then has 2 weeks to fix the compliance matter.
5. If the compliance matter is not resolved then the domain is terminated.
6. The registrant can appeal the decision with NAF or WIPO within 30 days after the domain is terminated. It will cost them a few thousand dollars but the odds are stacked up against them to prevail since the registrant must prove that the takedown and termination was not of reasoned nature.
7. UDRP cases usually take 60 days to be decided. The typical timeline for a UDRP case, from filing of a complaint to completion of the process is 60 days, (which is relatively short compared to the uncertain timelines with court litigation). Also, only one document needs to be submitted by the Complainant, and one Response filed by the Respondent. Once a complaint has been filed, a Respondent has 20 days to respond, and WIPO/NAF will assign a Panelist within 5 days after a response has been made. Panelists are required to issue a decision to the relevant domain name registrar within 14 days of being assigned, and then the registrar is required to carry out the decision within 10 days.

Authorization:

Confirmation that “content that they otherwise have the right to post” means that the poster has express authorization to post the content.

Permanent Block:

Blocked domains will not be made available for registration by any third party unless there is a two third (2/3) vote by the Advisory Committee to permit the string to be put back in the pool for registration.

Privacy / Proxy:

Requirement that privacy/proxy services will be compliant with DotMusic’s Name Selection policy (mandating that the domain is the name of the registrant, their acronym, “doing business as,” description of their mission or activities) and discloses the beneficial registrant as per DotMusic’s Registration Policies. If such disclosure is not made then the registrant will not be allowed to proceed with registration. If the domain is deemed incompliant while the domain is live then the domain will be suspended and the registrant will be given reasonable time to fix the compliance matter. If the registrant fails to fix the compliance matter then the domain will be terminated.

True name and address:

If a .MUSIC domain makes available any music owned or posted by a third party via the site (directly or indirectly), the domain must prominently post on the site the true name of the website operator, a contact person at the operator, phone number, physical address, and email address at which the contact person may be contacted.

Trusted Sender Complaint:

If .MUSIC receives a complaint from a trusted sender (such as the RIAA or any other legitimate, globally-recognized and relevant music organization), then DotMusic will investigate the complaint and suspend the domain, giving the registrant reasonable time to fix the compliance matter. The site will be suspended during the pendency of any dispute resolution that may occur regarding the complaint. The domain will be terminated if the registrant does not fix the compliance matter or fails to respond to the complaint.

- iv. **Pricing:** In tandem with the verification and other restricted registration requirements, DotMusic will incorporate a moderate, competitive price setting as another Enhanced Safeguard to protect .music from abuse:

The .MUSIC registration fee will adopt a moderate, competitive pricing point taking into consideration Community feedback and outreach, the TLD's premium value proposition, differentiation, security and safety concerns, and other significant factors such as:

- 1) *Most Community members are price sensitive since they operate in a highly competitive, fragmented environment with decreasing average music consumer spending that is aggravated by rampant piracy and competition from other forms of entertainment and substitute products/services.*
- 2) *As illustrated by the McAfee's 2011 "Mapping the Mal Web" Report⁵³, pricing is one of the most influential factors considered by registrants aiming to conduct malicious activity and abuse. Low priced domains have a higher likelihood for abuse. Prices in the middle to higher end are enough of a sufficient financial barrier to entry to reduce the number of registrants offering low quality content not useful to most Internet users, such as parking pages. Premium pricing will also help reduce cybersquatting and piracy. Registrants are more likely to register a cheaper domain to conduct illegal activity since it is less financially risky.*

DotMusic will not be low price leader in the domain space because low price leadership will have an adverse effect on DotMusic's objective to brand .MUSIC as a differentiated, value-added domain. Competing on price alone is not an effective strategy for DotMusic because it usually leads to commoditization and a low-margin business that relies primarily on the core benefit of the TLD: the branded music-themed meaning of a novelty domain extension. Adopting a moderate, competitive pricing strategy will complement DotMusic's goal to continually invest in the TLD to create innovative services, provide new offerings, opportunities and benefits to registrants beyond a branded TLD and achieve augmented and potential product differentiation. Furthermore, DotMusic's goal is to align consumer perception of a differentiated TLD with an optimal domain price that communicates the premium nature of .MUSIC, its unique value proposition and benefits.

The .MUSIC price will also include registrant participation in the .MUSIC Premium Channels. DotMusic will offer the Music Community an affordable domain to build a unique and exclusive presence online, ensuring the cost of the domain is optimally priced to prevent malicious behavior and abuse traditionally experienced in lower priced domains and domains that lack enhanced safeguards. (Application Answer to Question 18c ii)

By appropriately setting a moderate price for a .music registration, a necessary economic barrier will be raised to prevent bad actors from registration while not being too costly for legitimate Music Community members. The price will deter bad actors from registering .music domain and force them to look at cheaper top-level domain alternatives to conduct malicious activities from.

Non-regulated sector specific strings (such as .COM or newly applied-for strings, such as .WEB or .ONLINE) should be globally-accessible and open. However, strings in a regulated sector that relate to niche industries that are highly dependent on copyright monetization on the Internet and are reliant on the DNS for core activities must be protected with appropriate enhanced safeguards under a multi-stakeholder community

⁵³ http://us.mcafee.com/en-us/local/docs/MTMW_Report.pdf

model of governance. A highly sensitive .music domain which is vulnerable to abuse and piracy cannot be served as an open string without restrictions or appropriate authentication of registrants.

An open string without enhanced safeguards to protect intellectual property will not have the wide support of the Music Community nor would it have the support of ICANN’s Government Advisory Committee (GAC) which has reiterated its support for community Applications “with demonstrable support” and re-affirmed the position of DotMusic’s Application that enhanced safeguards for .music’s regulated sector serve the global public interest and must be a mandatory public commitment.⁵⁴ DotMusic exceeds the safeguards contained in the ICANN NGPC Resolutions that pertained to Category 1 Advice. GAC agrees that DotMusic’s Community-based commitments are aligned to serve the public interest and advised ICANN to give “preferential treatment for all applications which have demonstrable community support” such as DotMusic. Furthermore, in a letter⁵⁵ sent to ICANN on February 4th, 2014, the Director of the European Commission of the EU fully endorsed the “GAC view that community applications and applications with community support should be given preferential treatment” because they serve the public interest. At the Singapore ICANN meeting in March 2014, GAC reiterated that advice advised ICANN “to protect the public interest and improve outcomes for communities.”⁵⁶ ICANN approved this GAC advice in Resolutions to take “better account of community views and improving outcomes for communities.”⁵⁷ As such, the exclusion of entities which have a tangential relationship with music serves the global public interest since it mitigates abuse and fulfills the Mission of DotMusic to launch a safe, trusted and authenticated community-based .music top-level domain.

The objective of DotMusic is to incorporate registration-related policies with Enhanced Safeguards. Given the popularity and sensitive nature of the regulated applied-for string, DotMusic has ensured that weak policies that are vulnerable to abuse – including the lack of appropriate safeguards and controls – are not contained in the DotMusic Application. DotMusic’s strategy of the incorporation of Enhanced Safeguards in its Registration Policies ensures that unintended consequences, which create opportunities for rampant abuse and misuse of DNS-related registration services by bad actors, are eliminated in a proactive manner under strict enforcement measures. This Public Interest Commitment will ensure that the Community controls .MUSIC and that monies flow to the Community through legally-licensed .MUSIC sites and Community organizations.

C. Commitment to incorporate coherent and music-specific Enforcement measures, including appropriate appeals mechanisms to ensure that DotMusic is accountable to the Community.

Sensitive strings that are vulnerable to intellectual property infringement, such as .music, will be subject to significant abuse. Reactive enforcement policies are not enough to protect the interests of music creators. This is consistent with the findings outlined by the Economist in its most recent Special Report on Cyber Security that “prevention is better than cure” and its recommendations to incorporate proactive, defensive policies and enforcement rather than relying on merely reactive enforcement policies to prevent malicious abuse:

Companies, markets and countries are increasingly under attack from cyber-criminals. They need to get much better at protecting themselves... Securing cyberspace is hard because the architecture of the internet was designed to promote connectivity, not security. Its founders focused on getting it to

⁵⁴ ICANN NGPC Resolutions, <https://www.icann.org/en/system/files/files/resolutions-new-gtld-annex-2-05feb14-en.pdf>, Annex 2, February 5th, 2014

⁵⁵ <http://forum.icann.org/lists/comments-new-gtld-auction-rules-16dec13/msg00016.html>

⁵⁶ <https://gacweb.icann.org/download/attachments/27132037/Final%20Communique%20-%20Singapore%202014.pdf?version=2&modificationDate=1396429776778&api=v2> (Pg.4, Section 3, 1a)

⁵⁷ GAC Register #18, <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-annex-1-10sep13-en.pdf>

work and did not worry much about threats... A recent estimate by the Centre for Strategic and International Studies (CSIS) puts the annual global cost of digital crime and intellectual-property theft at \$445 billion... All too often breaches are caused by simple blunders... Over the next few years billions of new devices will be fitted with tiny computers that connect them to the web and make them more useful dubbed “the internet of things.”⁵⁸ Cybercrimes often involve multiple jurisdictions, which makes investigations complicated and time-consuming. And good cybersleuths are hard to find.⁵⁹ Ideally, organizations should avoid catching an infection in the first place – but that requires them to get better at a basic security hygiene.⁶⁰ The rise of organized crime on the internet and the imminent arrival of the internet of things will only increase concerns about widening the security gap. Prevention is better than cure. More vigilance and better defenses can make cyberspace a lot safer.⁶¹

ICANN’s new gTLD Program launch has the potential to create new opportunities and to better integrate the creative sectors with the digital economy. However the launch also poses serious threats to those engaged in creating, producing and disseminating creative music works. The music sector has historically been vulnerable to online theft, infringement and other fraud. It continues to experience unacceptably high levels of such abuse. If .music is launched without adequate safeguards, it would likely become a haven for continued and increased copyright infringement, criminal and illegal activity. That would be disastrous for the creative global music sectors, jobs, economic growth and competitiveness.

DotMusic has incorporated proactive Enhanced Safeguards to reduce these serious risks (See Section B, Commitment to Enhanced Safeguards), while maximizing the potential benefits of a trusted .music that will foster a haven for legal music consumption and licensing. In addition, DotMusic’s Registration Policies include specific both coherent proactive and reactive Enforcement measures with appropriate appeals mechanisms. DotMusic’s Enforcement Registration Policy exceeds minimum requirements mandated by ICANN because .music’s community-based purpose is to ensure proper enforcement of DotMusic’s Enhanced Safeguards (See B, Enhanced Safeguards Commitment) and appropriate Community accountability mechanisms (such as the Policy Advisory Board/Committee and appeals mechanisms). DotMusic has incorporated comprehensive Enforcement measures consistent with its community-based purpose and aligned with its music-tailored .MUSIC Policy & Copyright Infringement Dispute Resolution Process (“MPCIDRP”) which goes beyond the ICANN UDRP/URS/PDDRP/RRDRP which are established under the new gTLD Program.

According to the Application:

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

⁵⁸ Martin Giles, The Economist Special Report on Cyber Security, Defending the Digital Frontier, <http://www.economist.com/news/special-report/21606416-companies-markets-and-countries-are-increasingly-under-attack-cyber-criminals>. Cisco’s Internet Business Solutions Group (IBSG) predicts some 25 billion devices will be connected by 2015, and 50 billion by 2020, <http://share.cisco.com/internet-of-things.html>

⁵⁹ Martin Giles, The Economist Special Report on Cyber Security, Hackers Inc, <http://www.economist.com/news/special-report/21606421-cyber-attackers-have-multiplied-and-become-far-more-professional-hackers-inc>

⁶⁰ Martin Giles, The Economist Special Report on Cyber Security, Digital Disease Control, Basic Security Hygiene Goes A Long Way, <http://www.economist.com/news/special-report/21606417-basic-security-hygiene-goes-long-way-digital-disease-control>

⁶¹ Martin Giles, The Economist Special Report on Cyber Security, Remedies: Prevention Is Better Than Cure, <http://www.economist.com/news/special-report/21606424-more-vigilance-and-better-defences-can-make-cyberspace-lot-safer-prevention-better>

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

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

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

If a registrant is found out of compliance with any of the .MUSIC Policies the registrant will be notified that the domain will be placed on registry lock. The registrant will have a reasonable time period to fix the compliance matter or the domain will be terminated. Repeat offenders of Policies will be placed on a special monitoring list that DotMusic will conduct additional compliance checks against. DotMusic holds the right to prohibit repeat offenders from registering .MUSIC domains for a period of time or indefinitely. DotMusic will review all policies and processes on a regular basis with involvement from the .MUSIC Advisory Committee and discussed publicly at Community events. (Application Answer to Question 18b)

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

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

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

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

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

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

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

DotMusic will review all policies and processes on a regular basis with involvement from the .MUSIC Advisory Committee and will present them publicly to enable Music Community constituents to provide feedback. DotMusic will also conduct registrar and registrant surveys based

on the level of registrant satisfaction concerning .MUSIC usability and how to improve value proposition.

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

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

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

- Posting a TLD Anti-Abuse Policy that clearly defines abuse, and provide point-of-contact information for reporting suspected abuse;*
- Committing to rapid identification and resolution of abuse, including suspensions;*
- Ensuring completeness of WHOIS information at the time of registration;*
- Performing data validations of WHOIS elements at time of registration and exploring mechanisms for re-evaluation when registrants update such information;*
- Publishing and maintaining procedures for removing orphan glue records for names removed from the zone,*
- Introducing the .MUSIC Policy & Copyright Infringement Dispute Resolution Process ("MPCIDRP") to ensure eligibility requirements, use and naming policies as established in response to question #20e, and;*
- Establishing measures to deter WHOIS abuse, including rate-limiting, determining data syntax validity, and implementing and enforcing requirements from the Registry-Registrar Agreement.*

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

the intent is to deter those who use domain names maliciously by engaging in illegal or fraudulent activity.

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

.MUSIC Anti-Abuse Policy:

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

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

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

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

The policy stated above will be accompanied by notes about how to submit a report to the registry operator's abuse point of contact, and how to report an orphan glue record suspected of being used in connection with malicious conduct (see below).

Abuse point of contact and procedures for handling abuse complaints:

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

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

.MUSIC Community Specific Protections:

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

.MUSIC has established specific protection mechanisms as described in the response to question #20e. As a means to cure any disputes concerning adherence to the .MUSIC requirements and policies, DotMUSIC is establishing the .MUSIC Policy & Copyright Infringement Dispute Resolution Process ("MPCIDRP"). All .MUSIC registrants will be bound by this policy by means of the .MUSIC Registration Agreement.

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

According to the DotMusic Application:

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

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

“DotMusic will review all policies and processes on a regular basis with involvement from the .MUSIC Advisory Committee⁶² [PAB].” (Application Answer to Question 20).

DotMusic has a Content and Use registration policy agreement focused on protecting copyright “tailored to solve issues currently related to intellectual property infringement. Registrants that do not accept and abide by the registration agreement are disqualified from domain registrations.” Registrants must:

- iv. “Respect the intellectual property rights of others by posting or submitting only content that is owned, licensed, or otherwise have the right to post or submit;”
- v. “Immediately notify [DotMusic] if there is a security breach, other member incompliance or illegal activity on .MUSIC sites;”
- vi. “Do not register a domain containing an established music brand’s name in bad faith that might be deemed confusing to Internet users and the Music Community.” (Application Answer to Question 20).

Any allegation that a domain is not used for legitimate music purposes or otherwise infringes on the .MUSIC Policies shall be enforced under the provisions of the .MUSIC Policy & Copyright Infringement Dispute Resolution Process (“MPCIDRP”). If a Registrant is found out of compliance with any of the .MUSIC Policies the registrant will be notified that the domain will be placed on registry lock. The registrant will have a reasonable time period to fix the compliance matter or the domain will be terminated. Repeat offenders will be placed on a special monitoring list. DotMusic holds the right to prohibit repeat offenders from registering .MUSIC domains. (Application Answer to Question 20).

“DotMusic reserves the right to deny, cancel or transfer any registration that it deems necessary, in its discretion, to protect the integrity and stability of the registry... DotMusic reserves the right to freeze a domain during resolution of a dispute. DotMusic reserves the right to terminate a domain for failure by the registrant to demonstrate it meets .MUSIC policies.” (Application Answer to Question 20).

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

⁶² DotMusic will be launched under a community-based, multi-stakeholder governance structure of fair representation encompassing all music constituent types. The RIAA will be given a seat on the table with representation on the PAB.

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

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

- (i) Random compliance checks on registered domains:

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

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

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

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

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

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

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

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

.MUSIC Community Specific Protections:

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

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

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

The DotMusic MPCIDRP Dispute Resolution Provider is the National Arbitration Forum. Comprehensive Dispute Resolution Processes and Appeals Mechanisms have been created under the music-tailored MPCIDRP. The MPCIDRP is music-tailored process beyond what is mandated by ICANN for new gTLD registries for challenges pertaining to registrant Registration Policy compliance and intellectual property infringement (which includes both trademark and copyright violations). Appeals mechanisms available under the MPCIDRP include:

i. Reinstatement Reconsideration

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

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

ii. Copyright Infringement Appeal

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

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

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

iv. Geographic Public Interest Appeal

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

v. Policy Advisory Board (PAB) Decision Appeal

A majority of the PAB may direct the Registry to take action against a Registrant for registrations that substantially and negatively affect the objectives of the .MUSIC Registry. This PAB determination and Registry implementation can be appealed by a Registrant with the National

Arbitration Forum. A PAB Decision Appeal must be brought within 30 days of the Registry's final determination. (See Appendix F and National Arbitration Forum Dispute Resolution Provider's MPCIDRP page for .music⁶³).

D. Commitment to Innovation and Solving Community Problems to Support the Community

DotMusic will serve the public interest and the global Music Community by offering innovative services that would provide solutions for .music registrants and that would increase music discovery, networking opportunities and an array of options for legal monetization and licensing on a global scale. These purpose-driven innovative services include the Premium Channels and the Music Licensing Song Registry.

According to the Application:

DotMusic will also provide non-registry services and activities which have been established through ongoing outreach efforts. Community members need to be able to distinguish themselves from illegal or unlicensed sites. Ensuring monies flow to rightful owners and the Music Community is critical to the .MUSIC Mission. Purpose-driven services and activities are:

- 1. Development of Music Community Social Network Premium Domain Channels (Channels) sorted by category types, e.g. genres. It will leverage Search Engine Optimization (SEO) best practices to improve .MUSIC website search result rankings. The objective is for .MUSIC domains to signal a badge of trust that enables search engines to provide music consumers more relevant and safer search results while reducing infringing and unlicensed rogue sites. Premium Channel development will also include a global Song Registry*
- 2. Promoting arts and music through sponsorships, events and Music Community activities; Enriching society with artistic and cultural diversity;*
- 3. Advancing music education and the study of music in school curriculum by donating proceeds of domain registrations to relevant causes*
- 4. Re-inventing music discovery and search innovation by leading the way to establish the Industry standard for official music sites to benefit the at-large global Music Community and the Internet*
- 5. Enabling legal music licensing via a global Song Registry akin to the International Music Registry (IMR - www.wipo.int/imr) & Global Repertoire Database (GRD - www.globalrepertoiredatabase.com /International Copyright Enterprise) initiatives.*
(Application Answer to Question 18a)

PREMIUM CHANNELS

DotMusic has conducted an extensive communications outreach campaign and research activities within the Community to identify needs for value-added services beyond .MUSIC domains. It has been affirmed that the Community has a need for

- (i) a faster, easier and simpler way to license songs on a global basis and*

⁶³ National Arbitration Forum (NAF), The .MUSIC Policy & Copyright Infringement Dispute Resolution Process ("MPCIDRP"), <http://domains.adrforum.com/main.aspx?itemID=2195>. Please download the DotMusic MPCIDRP document at <http://domains.adrforum.com/resource.aspx?id=2190> for more detail on DotMusic's specific appeals/reconsideration request mechanisms under the MPCIDRP.

- (ii) differentiated online resources of information about music, containing regional, national and local Community member information, powered by their associated dynamic content, services or products.

Premium Channels will offer opportunities to promote cultural diversity and unique music content. The level of information and content shared in the Premium Channels will be at the sole discretion of registrants. Registrants can promote themselves, their content, share contact information, communicate, network and engage in commerce with music consumers and each other.

Unlike using search engines, the Premium Channels will provide Internet users a quick and intuitive search mechanism through direct navigation discovery. For example, a music consumer searching for “reggae music” can directly visit “www.reggae.music” to find registrants that offer reggae-related music, content, services and products. Premium Channels will:

- *Promote Community members*
- *Increase legal commerce/business/collaboration*
- *Facilitate the sharing of contact information & enable more efficient communication*
- *Provide a quick and intuitive reference to music-related content through direct navigation*
- *Offer networking opportunities & increased exposure*
- *Promote cultural diversity, the arts & music education*
- *Differentiate Community members from each other*
- *Promote interaction, communication & support amongst the Community*
- *Promote music innovation*

The Premium Channels will also include the development of a global Song Registry to facilitate a faster, easier and simpler way to legally license registrant songs. (Application Answer to Question 18a)

DotMusic is the only .music applicant that will incorporate Premium Channels to increase music discovery and opportunities for .music registrants to build their music identities online, connect with other artists, professionals or companies and provide possibilities for business deals or new ventures.

At registration, all .music registrants will be required to choose their classification type sorted based on NAICS codes under these four categories:

- (i) Musicians or (ii) Musical Groups (both these categories will represent a substantial majority of .music registrations. They are classified as *Musical Groups and Artists* under NAICS code 711130 which is equivalent to *Musicians and Musical Groups* under ISIC code 9214 – See Application Answer to Question 20a);
- (iii) Music Professionals (See Application Answer to Question 20a to see to see how these types of music entities are sorted based on corresponding NAICS codes); or
- (iv) Music Companies (See Application Answer to Question 20a to see to see how these types of music entities are sorted based on corresponding NAICS codes)

The Premium Channels will be delineated and organized using .music premium domains. For example, Musicians or Musical Groups will be able to categorize their .music identity beyond their parent classification type based on genre, language and location⁶⁴ e.g. a French rock artist from Paris, France will

⁶⁴ According to the DotMusic Application: *DotMusic will block all country and territory names as registrations under .MUSIC. To accomplish this DotMusic will prior to launch (i) place the names on a reserved list that can solely be released as second-level registrations under .MUSIC by an agreement with the respective country or territory and*

be able to list their .music domain identity in five (5) Premium Channels (using their Community ID number that they will receive after completing registration authentication): www.Artist.music, www.Rock.music, www.Paris.music, and www.France.music (See Appendix G for Premium Channel examples).

Other entity categories include the Music Professionals entity classification (e.g. a music lawyer registrant would be found under the www.lawyer.music Premium Channel) or the Music Companies entity classification (e.g. a record label registrant would be found under the www.recordlabel.music Premium Channel). These Premium Channels will increase .music registrant discovery and achieve better search engine ranking because of improved music-related relevancy and higher quality content.

In addition to Premium Channels, DotMusic will also incorporate a Song Registry consistent with its community-based purpose to create a safe haven for legal music consumption and licensing:

The Premium Channels will also include the development of a global Song Registry to facilitate a faster, easier and simpler way to legally license registrant songs... DotMusic will provide Premium Channels and a Song Registry where the Community and Internet users can network, share information and engage in commerce in a trusted, secure ecosystem – a safe haven for legal music consumption and song licensing ensuring monies flow to the Community not unlicensed sites. (Application Answer to Question 18b i)

STRATEGIC INNOVATION - Fostering open innovation by building Premium Channels and developing a Premium Channel global Song Registry to enable easier, faster and simpler way to license music... Community buy-in is critical to establish these legal standards to facilitate safer, trusted and enhanced commerce on the web while fighting piracy and unlicensed sites. The music-themed domain is built with usage policies that will enable taking down infringing sites, protecting trademarks and help the exploitation of copyrights by providing a safe haven for legal music distribution, consumption and licensing. (Application Answer to Question 18c iii)

Community buy-in is critical to establish these legal standards to facilitate safer, trusted and enhanced commerce on the web while fighting piracy and unlicensed sites. The music-themed domain is built with usage policies that will enable taking down infringing sites, protecting trademarks and help the exploitation of copyrights by providing a safe haven for legal music distribution, consumption and licensing.

The goal is to create a secure Industry standard domain matching Community needs with enhanced safeguards not available in current TLDs. Standards save money and drive productivity. The music-themed TLD will be launched in an intuitive, simple manner to leverage the interoperability, effectiveness and efficiency of the open web and the DNS. By using the same standards communicating data becomes easier and cheaper ensuring more revenue is distributed across the whole digital music supply chain to the rightful entities not rogue sites. The DotMusic Song Registry will also benefit the Community by enabling registrants to legally license their works territorially in a simple, fast and easy way. This way IP can be utilized and commercialized more efficiently to assist the Community to better serve an entire music value chain globally. (Application Answer to Question 18c iii)

with ICANN; and (ii) include in its registration policies that country and territory names are prohibited at lower levels... DotMusic will be working closely with the International Federation of Arts Councils and Culture Agencies, with national members from over 70 countries comprised of governments' Ministries of Culture and Arts Councils covering all continents, to ensure country names protection and the promotion of government-related cultural and music initiatives (Application Answer to Question 22).

DotMusic has submitted public comments to the U.S. Library of Congress pertaining to the need of a comprehensive global Song Registry for music licensing.⁶⁵ According to the U.S. Library of Congress:

*The digital age offers increased possibilities for broadened dissemination of music and sound recordings in ways unimaginable in prior eras. However, technological, institutional, and legal impediments to increased access have created daunting challenges for libraries and archives.*⁶⁶

*An efficient, low-cost or gratis system is needed for licensing to libraries and archives digital files of music content not available in the commercial marketplace at a reasonable rate that would allow them to more effectively perform dissemination services.*⁶⁷

There is a growing need for a global, comprehensive database of information related to music works, which will enable a quick, easy and simple to pay for music in a marketplace that requires efficiency and speed. Global access to complete information about music works does not yet exist. The DotMusic Song Registry could provide a solution since today it is challenge to license music because of the difficulties of locating or identifying who owns specific song rights in order to clear the song for licensing purposes. The DotMusic Song Registry will serve the public interest by providing a comprehensive music licensing registry that provides proper attribution to music works on a global scale.

The Chairman of the Recording Industry Association of America, Cary Sherman, emphasized the need for a micro-licensing platform to make it easier for occasional users of music to get proper licensing at a reasonable rate:

So many uses of music go unlicensed, and it's a lost opportunity in so many ways. It's obviously lost revenue. The fact is that so many businesses and individuals use music to enhance their products, their services, their events, shows music's value. We aren't talking about music-centric businesses -- those are taken care of. We're talking about the app developer who wants to use a clip of music in the background. Or the wedding videographer who wants to include music in his videos. Or the company that wants to use music in presentations at corporate retreats.

*Many of these businesses want licenses, but haven't a clue how to get them. We haven't done a very good job of making it easy for them. Technology now makes it feasible to offer easy-to-get licenses for all our music, for all kinds of uses; and creating a market for that could mean many millions of dollars of new revenue each year. Our collective future is looking brighter. And our future is collective. Never before have the interests of record companies and publishers been more closely aligned. Never before have we been as interdependent as we are right now. We're in this together.*⁶⁸

The DotMusic Song Registry will enable music licensing clearance by providing reliable and updated information on what rights holder owns what rights in what territory. This way, licensees will be able to find the appropriate rights holders to obtain license clearance and to determine terms of use. Such a

⁶⁵ DotMusic's Public Comments to the Library of Congress at http://www.copyright.gov/docs/musiclicensingstudy/comments/Docket2014_3/DotMusic_MLS_2014.pdf. See Library of Congress Music Licensing Study, <http://copyright.gov/docs/musiclicensingstudy>

⁶⁶ Gregory A. Lukow, Library of Congress, http://www.copyright.gov/docs/musiclicensingstudy/comments/Docket2014_3/Library_of_Congress_MLS_2014.pdf, 2014, P.1

⁶⁷ Ibid, P.5

⁶⁸ Ed Christman, *RIAA & NMPA Eyeing Simplified Music Licensing System, Could Unlock 'Millions' in New Revenue*, Billboard (June 13, 2013), <http://www.billboard.com/biz/articles/news/record-labels/1566550/riaa-nmpa-eyeing-simplified-music-licensing-system-could>

comprehensive music registry with a globally-connected database is needed because of the licensing demand that exists in the marketplace to license music repertoires of works in different territories under different media formats. The music registry will include all .music registrant creators associated with a music-related copyright to enable the remuneration and attribution of music rights for efficient compensation by assigning authoritative unique IDs - Globally Unique Identifiers (GUI) - to match rights with works.

Steve Marks, the Chief of Digital Business and General Counsel of the RIAA, emphasizes:

*The musical work licensing systems that were developed for early twentieth century uses are being pressed beyond their limits by new technologies, consumer demands and business models requiring licenses for use of musical works as part of finished music products.*⁶⁹

Today's Domain Name System (DNS), which at its core is a reliable globally-distributed system, can provide this music marketplace licensing solution because the DNS already uses unique IP addresses assigned to each computer that is registered with ICANN. Such a music song registry is essential to meet the demands of the proliferation of music works and User Generated Content related to music. The .MUSIC registry will enable the efficient recording and enumeration of music works so that attribution and compensation is directly tied to rights holders, whether this is to obtain permission for direct licensing or to process a statutory license payment.

The DotMusic Song Registry will serve the public interest because it is dedicated in promoting and protecting the ability of .music registrant creators who seek to earn a living from their creativity. DotMusic's objective is to ensure that authors and creators are entitled to fair compensation for their creative work. DotMusic reaffirms these Public Interest Commitments which are aligned with DotMusic articulated community-based purpose and principles of non-discrimination, collaboration and ensuring fair compensation.

The DotMusic Song Registry will adopt universal standards for the identification of musical works and sound recordings. Currently, the music sector has numerous international standards for the identification of music to facilitate legal music monetization globally:

- The International Standard Music Number (ISMN⁷⁰);
- International Standard Name Identifier (ISNI⁷¹);
- International Standard Musical Work Code (ISWC⁷²);
- International Standard Recording Code (ISRC⁷³); and

⁶⁹ Steven Marks, Recording Industry Association of America (RIAA), http://www.copyright.gov/docs/musiclicensingstudy/comments/Docket2014_3/Recording_Industry_Association_of_America_MLS_2014.pdf, P.6

⁷⁰ The International Standard Music Number (ISMN) is a unique number for the identification of all notated music publications from all over the world. The ISMN is an ISO certified global standard number (ISO 10957:2009). See <http://www.ismn-international.org/whatis.html> and http://www.iso.org/iso/home/store/catalogue_ics/catalogue_detail_ics.htm?csnumber=43173

⁷¹ The International Standard Name Identifier (ISNI) is the ISO certified global standard number (ISO 27729) for identifying the millions of contributors to creative works and those active in their distribution. ISNI holds public records of over 8 million identities and 490,000 organizations. See <http://www.isni.org/> and http://www.iso.org/iso/catalogue_detail?csnumber=44292

⁷² The ISWC (International Standard Musical Work Code) is a unique, permanent and internationally recognized reference number for the identification of musical works. The ISWC has been approved by ISO (International Organization for Standardisation) as a global standard (ISO 15707:2001) and is managed by CISAC. See <http://www.iswc.org/en/faq.html> and http://www.iso.org/iso/catalogue_detail?csnumber=28780

- International Standard Audiovisual Number (ISAN⁷⁴)

The objective of DotMusic's authenticated, verified and trusted community-based .MUSIC domain and its Song Registry is to create new Industry standards for the legal distribution and monetization of music. This will benefit the Music Community by facilitating a more efficient system of trusted data exchange between the Community and prospective licensees. This will help spur legitimate licensing monetization in a safe, credible and effective manner. Such standards (which require the exact matching and identification of music works associated with their corresponding rights holders) will benefit the licensing process by making it easier, more accurate, and more efficient. The objective of DotMusic is for the .music top-level domain to be adopted as a globally-recognized Industry standard for official, trusted and validated music domains (such as in the case of other music-related international standards such as ISMN, ISNI, ISAN, ISRC and ISWC). This adoption will benefit the global Music Community and serve the public interest.

3. Registry Operator agrees to perform following specific public interest commitments, which commitments shall be enforceable by ICANN and through the PICDRP. Registry Operator shall comply with the PICDRP. Registry Operator agrees to implement and adhere to any remedies ICANN imposes (which may include any reasonable remedy, including for the avoidance of doubt, the termination of the Registry Agreement pursuant to Section 4.3(e) of the Registry Agreement) following a determination by any PICDRP panel and to be bound by any such determination.

The DotMusic Application will serve the global public interest and the global Music Community. It does not require any additional commitments beyond what is contained in its Application.

⁷³ The ISRC (International Standard Recording Code) is the international identification system for sound recordings and music video recordings. The ISRC is an ISO certified global standard number (ISO 3901:2001) and is managed by the IFPI. See <http://isrc.ifpi.org>, <https://www.usisrc.org/about/index.html> and http://www.iso.org/iso/catalogue_detail?csnumber=23401

⁷⁴ See <http://www.isan.org/about/> and http://www.iso.org/iso/catalogue_detail?csnumber=28779 and http://www.iso.org/iso/catalogue_detail?csnumber=35581

Appendix A

.music Application Specifications

DotMusic Limited .MUSIC community application overview and policies

	DotMusic Limited
"Also Known As"	.MUSIC™
Application ID	1-1115-14110
Total Top-Level Domain Applications	1 (Focused)
Type of Application	Community (Restricted)
.music-focused Social Media Presence	Extensive
Policy Advisory Board & Constituent Governance Seats	Yes
Community Member Organization Eligibility Requirement	Only during MCMO Launch Phase¹
Community Member Organization Resellers/Partners	Yes
Music Organization Accreditation Requirements	Yes. Eligible organizations get priority in MCMO Phase
Who Can Register (Eligibility)	Entire global Music Community with requisite awareness of community
Phone & Email Two-Step Authentication	Yes
Protect Famous Music Artist/Brand Names	Music Globally Protected Marks List (GPML)
Domain Naming Conditions	Yes. 1. Entity name (or portion of); or 2. Doing Business As; or 3. Acronym (AKA); or 4. Name recognizing entity; or 5. Name describing entity
Use:	
<i>Only Legal Music Activities</i>	Yes. Only legal music activities allowed
<i>Only Music-Related Activity Usage</i>	Yes. Only music usage allowed
<i>Prohibits registering of domain with established artist's/brand's name</i>	Yes
Content:	
<i>Only Music-Related Content</i>	Yes. Only music content allowed
<i>Quality Content Control (Parking Pages)</i>	Yes. Parking pages are not allowed
Enforcement & Appeals Mechanisms	Extensive & coherent set tailored to music
IP, Registration Policy Compliance & Appeals Provider	National Arbitration Forum (NAF)
Music-Focused Registration Policy Dispute Resolution	MPCIDRP
Music-tailored Copyright Protection Provisions	Extensive. Agreed to all RIAA safeguards and provisions.²
Community Definition	Organized & delineated logical alliance of music communities
Community Size	Majority. Considerable millions of members.
No Relevant Opposition*	No relevant opposition. Only applicant without a community objection.
.music-focused Social Media Engagement	Extensive. 5+ million across all media
.music Community TLD Support Petition	1.5+ million signed petition
Public Community Outreach Campaign	200+ public events (2008-Present)
Trademark for .music	Yes. Over 40 countries and regions
Community Premium Channels	Yes. Sorted by Type, Genre, Language, Geography, Keyword.³
Global Legal Song Licensing Registry based on DNS	Yes

¹ DotMusic gives [priority](#) to members of Music Organizations during MCMO Phase. During General Availability [all](#) Community members (including non-MCMO members) can register .MUSIC.

² DotMusic has more enhanced safeguards than all .MUSIC applicants combined. DotMusic has incorporated [all](#) RIAA P protection provisions that include stopping domain hopping, takedown policies, authorizations, permanent blocks, privacy/proxy, true name/address and trusted sender complaint policies.

³ The Premium Channels available to all validated community members are sorted/delineated according to NAICS community type (Musician/Band/Professional/Company), Genre (e.g www Rock music), Language (e.g French music), Geography (e.g London music / France.music) and Keywords (e.g Lyrics.music).

* According to ICANN's Final CPE Guidelines: "The evaluation process will respect the principles of fairness, transparency, avoiding potential conflicts of interest, and non-discrimination." (P.22)
 "To be taken into account as relevant opposition, such objections or comments must be of a reasoned nature. Sources of opposition that are clearly spurious, unsubstantiated, made for a purpose incompatible with competition objectives, or filed for the purpose of obstruction will not be considered relevant." (P.20). "The following principles characterize the EIU evaluation process for gTLD applications:
 All EIU evaluators must ensure that no conflicts of interest exist." (P.22) Any opposition filed by a competitor applicant or a competitor's supporter is a conflict of interest and is not considered relevant.

For More Info on .MUSIC™ (DotMusic) visit:

www.music.us

Appendix B

Community Definition, Community Majority Rationale & Serving Public Interest

List of Music Community Member Organizations (“MCMOs”)*

*MCMO List will be updated as more organizations are expected to become eligible .music-accredited Music Community Member Organizations



MUSIC COMMUNITY DEFINITION, MCMOs AND SERVING PUBLIC INTEREST

Music Community Definition and Global Music Community Representation/Inclusion

The definition of the Community is “a strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music.” (See Application Answer to Question 20a, the “Community”). Supporting music-related organizations of relevance constituting a majority of the Community are referred to in the Application as Music Community Member Organizations (“MCMOs”). MCMOs require .music-accreditation¹ from DotMusic which meet community-based criteria consistent with ICANN Applicant Guidebook’s criteria for Community Establishment.²

Members of MCMOs will be able to register their domains during a priority-based phase. This eligibility launch phase policy serves the public interest because it safeguards music entities that are already established and have a strong presence online. Furthermore, the objective of prioritizing registration for members of recognized MCMOs is to spur music community and industry adoption, while preventing cybersquatting of names. However, since a portion of the Community does not belong to eligible MCMOs, DotMusic will allow community members that do not belong to MCMOs to register domains just as long as they belong and identify themselves to a music community and have a requisite awareness of that community that they identify with. This way DotMusic serves both the global public interest and the music community because its eligibility policies do not discriminate against legitimate community members or exclude a significant portion of the community that would naturally associate itself with the string.

DotMusic’s definition of the Community covers all Community members associated with the string with a requisite awareness of the Community validated through their straight-forward association with a music-related community they identify with. The Music Community’s geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents (Application Answer to Question 20a).

As mentioned in the Application, “registrants will be verified using Community-organized, unified “criteria taken from holistic perspective with due regard of Community particularities” that “invoke a formal membership (Application Answer to Question 20a).” The defined Community represents all music-related entities with a clear and straightforward membership with the Community involved in the legal production, promotion, performance and distribution of music worldwide.

¹.music Accreditation Requirements for Music Community Member Organizations (MCMO), http://music.us/DotMusic_Music_Community_MCMO_Application.pdf, Section 2.0, Pg.2

² Applicant Guidebook, Community Establishment, <http://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>, Pg. 194-196 and CPE Final Guidelines, <http://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf>, Pg. 3-5

The defined Community and expressions of support serve the public interest because they represent a majority of the overall music community with a clear and straightforward association and the requisite awareness of participation in the Community as defined.

DotMusic's MCMOs collectively represent a majority of the Community. They include, but are not limited to "digital distributors representing most of the music distributed on the leading legal music stores (See Rationale in Application Answer to Question 20f)." These music distributor MCMOs (also known as aggregators) **represent the majority of music produced, marketed, distributed, performed and consumed globally** and are responsible for compensating artists, rights holders and labels after a sale is generated on any of the legal digital music stores, such as iTunes. Some examples include Tunecore (which represents 60% of all new digital music sales. Tunecore is also affiliated with ASCAP, BMI and SESAC and registers songs in over 60 countries³), Reverbnation (the world's largest music community and a leading music distributor with over 3.87 million musicians, venues labels and industry professionals), CD Baby (the world's largest online distributor of independent music, with over 400,000 albums and 4 million tracks in its catalog). Another example is the world's leading legal digital lyrics distributor Lyricfind which covers a majority of music lyrics worldwide (Lyricfind tracks, reports, and pays royalties to 2,000 music publishers, including all four majors – EMI Music Publishing, Universal Music Publishing Group, Warner/Chappell Music Publishing, and Sony/ATV Music Publishing). Other organizations include Adev, a network with over 36 billion views annually, which administrates and manages over 6 million music copyrights across 26.5 million music videos for Youtube creators.⁴ Its Content ID services are all-encompassing, from indie artists to major publishers. Adev partners include the world's largest music companies, such as Universal, Sony/ATV, Warner Chappel, BMG and Imagem. Another global music rights administration network is INDmusic, a music community of over 3.9 million network members, over 1900 channel music partners and a network reach of over 3.5 billion monthly network views, covering popular platforms such as Youtube, Soundcloud and Dailymotion.⁵

DotMusic's digital music distributors and supporting organizations (which include overlapping community members that also belong to other music organizations) represent over 90% -- a majority -- of all music distributed and consumed globally. Ingrooves, a DotMusic supporter is associated with Universal Music Group (Universal has 32.8% music market share⁶ and affiliated with Ingrooves⁷). Likewise, TheOrchard, another DotMusic supporter is associated with Sony Music (Sony Music has 29.1% music market share⁸ and affiliated with TheOrchard⁹). Furthermore, the DotMusic supporting organization LyricFind is associated with the music lyrics licensing of 2,000 music publishers, including all four majors – EMI Music Publishing, Universal Music Publishing Group, Warner/Chappell Music

³ http://www.tunecore.com/index/what_is_tunecore

⁴ <http://www.adrev.net>

⁵ <http://www.indmusicnetwork.com>

⁶ <http://www.billboard.com/biz/articles/news/1510504/universal-music-still-market-top-dog-in-2012>

⁷ <http://www.universalmusic.com/corporate/detail/544>

⁸ <http://www.billboard.com/biz/articles/news/1510504/universal-music-still-market-top-dog-in-2012>

⁹ <http://www.billboard.com/biz/articles/news/1098586/orchard-ioda-merging-sony-music-to-invest-in-new-company-sources>

Publishing, and Sony/ATV Music Publishing.¹⁰ William Morris Endeavour (WME), the world's largest entertainment agency, represents artists and songwriters associated with independent and major label as well as major publishers. WME diverse talent includes leading multi-platinum selling artists such as Adele, Alanis Morissette, Aretha Franklin, Backstreet Boys, Barry Manilow, Beastie Boys, Billy Idol, Brian Setzer, Bruno Mars, Calvin Harris, Carly Rae Jepsen, CeeLo, Chris Cornell, Ciara, Deadmau5, Depeche Mode, Drake, Duran Duran, Eddie Vedder, Foo Fighters, Gnarls Barkley, Goo Goo Dolls, Ice Cube, James Blake, Jane's Addiction, Janet Jackson, Josh Groban, Justin Timberlake, The Killers, Lady Gaga, LL Cool J, LMFAO, Lynyrd Skynyrd, Morrissey, Nas, Neil Diamond, Nine Inch Nails, Norah Jones, Pearl Jam, Pet Shop Boys, Pete Dinklage, Peter Dinklage, Peter Dinklage, Peter Dinklage, Pharrell Williams, The Prodigy, Psy, Rage Against The Machine, Red Hot Chili Peppers, Rihanna, Roger Waters, Selena Gomez, Seth McFarlane, Sex Pistols, Sheryl Crow, Slash, Snoop Dogg, Soundgarden, System of a Down, Tom Waits, Tom Petty & The Heartbreakers, Trent Reznor, Usher, Weird Al Yankovic, Yanni, Ziggy Marley and many others.¹¹ This structure of the Community is strictly organized and delineated through diverse symbiotic and overlapping communities related to music.¹²

Other examples include MCMOs representing the global independent music community and a majority of music released internationally. These include the Worldwide Independent Network (WIN)¹³ representing the global independent music community; Merlin (Merlin)¹⁴ a global rights agency representing 20,000 labels in 39 countries; the Association of Independent Music (AIM)¹⁵; the Independent Music Companies Association (Impala)¹⁶ representing over 4,000 international music labels; and the American Association of Independent Music (A2IM)¹⁷ with Label members representing the U.S independent music community and Associate members including Apple iTunes (the world's largest music retailer with 63% global music market share,¹⁸ 37 million songs¹⁹ and a community of 800 million registered member accounts²⁰), Spotify (a music streaming company available in 58 countries with 30 million songs and 50 million members²¹), Pandora (the world's largest internet music radio company with 250 registered members²²), Vevo (the world's leading all-premium music video and entertainment platform with 8 billion monthly views globally²³) and others.

¹⁰ <http://www.lyricfind.com/about-lyricfind/>

¹¹ <http://www.wmeentertainment.com/0/cta/music/>

¹² For example, Lady Gaga – represented by DotMusic supporting organization William Morris Endeavor – is also a member of numerous overlapping music organizations and music communities such as Vevo. Other examples of overlapping communities that Lady Gaga is represented through include a major label, a performance rights organization, a major publisher and numerous collection societies and so forth. DotMusic's community represents a majority of the community taking into consideration these symbiotic, overlapping memberships that illustrate a strictly delineated and organized community based on a logical alliance of communities of similar nature related to music (See definition of the community in Q20a).

¹³ <http://winformusic.org>

¹⁴ <http://www.merlinnetwork.org>

¹⁵ <http://www.musicindie.com/home>

¹⁶ <http://www.impalamusic.org/node/15>

¹⁷ <http://a2im.org>

¹⁸ <http://appleinsider.com/articles/13/04/16/apples-itunes-rules-digital-music-market-with-63-share>

¹⁹ <https://www.apple.com/itunes/features/>

²⁰ <http://www.cnet.com/news/apple-itunes-nears-800-million-mark/>

²¹ <https://press.spotify.com/us/information/>

²² <http://www.cnet.com/news/like-a-rolling-milestone-pandora-hits-250m-registered-users/>

²³ <http://www.vevo.com/c/EN/US/about>

The DotMusic Application serves the global public interest because it has at least one entity that is dedicated to the community

According to the Applicant Guidebook: “*With respect to “Delineation” and “Extension,” it should be noted that a community can consist of...a logical alliance of communities (for example, an international federation of national communities of a similar nature... viable as such, provided the requisite awareness and recognition of the community is at hand among the members.*” (AGB, 4-12). The community as defined in the DotMusic application has at least one entity mainly dedicated to the community which has supported DotMusic, which include several “international federation of national communities of a similar nature.”

Dedicated Community: International Federation of Arts Councils and Culture Agencies (IFACCA):

Another example is the only international federation of national communities relating to government culture agencies and arts councils which have an integral association with music globally (See support letter from the International Federation of Arts Councils and Culture Agencies - IFACCA).

The International Federation of Arts Councils and Culture Agencies (IFACCA) is the only international federation that represents government culture agencies and arts councils globally, institutions that play the most pivotal role with respect to music.²⁴ IFACCA’s membership – which has formal membership fees -- covers the majority of music entities globally, regardless whether they are commercial, non-commercial or amateurs. The size of the community represented is in the considerable millions. Government ministry of culture and council agencies related to music cover a majority of the overall community with respect to headcount and geographic reach. The “Size” covered reaches over a hundred million music entities i.e. “considerable size with millions of constituents” per Application Answer to Question 20a. The string “music” falls under the jurisdiction of each country’s Ministry of Culture governmental agency or arts/music council (emphasis added). The degree of power and influence of government ministry of culture and council agencies with respect to music surpasses any organization type since these agencies (i) provide the majority of funding for music-related activities; (ii) regulate copyright law; and (iii) encompass all the music entities that fall under their country, regardless whether these entities are commercial, non-commercial or amateurs. IFACCA is globally recognized by its strategic partners, such as UNESCO, a United Nations agency representing 195 member states and the European Commission.²⁵ The UNESCO strategic partnership²⁶ is relevant, especially since UNESCO founded the International Music Council (the “IMC”) in 1949, which represents over 200 million music constituents from over 150 countries and over 1000 organizations globally.²⁷

For example, government activities in the clearly delineated and organized music community include setting statutory royalty rates. For example, in the United States, mechanical royalties are based on a

²⁴ http://www.ifacca.org/membership/current_members/

²⁵ http://www.ifacca.org/strategic_partners/

²⁶ http://www.ifacca.org/strategic_partners/

²⁷ <http://www.imc-cim.org/about-imc-separator/who-we-are.html>

"statutory rate" set by the U.S. Congress. This rate is increased to follow changes in the economy, usually based on the Consumer Price Index. Currently, the mechanical statutory rate is \$0.091 for songs five minutes or less in length or \$.0175 per minute for songs that are over five minutes long.²⁸

Ministries of culture and arts councils (that comprise IFACCA's membership) support musicians, musical performances, independent music artists, non-commercial musical expression and education in their respective countries. The 165 ministries of culture and arts councils that comprise IFACCA's membership support the "performing arts" and music specifically. Without the financial and logistical support of arts councils and the ministries of culture, the music community would be adversely affected, and in some countries, may not exist in any appreciable manner. For example, the Ministry of Culture 2011 budget for the small country state of Cyprus for culture funding was €34,876,522 with critical support of music activities.²⁹ Other small government Ministries of Culture, such as Albania,³⁰ or government Ministries of Culture and Arts Councils from countries with larger populations, such as India,³¹ all provide critical support and substantial advocacy for music. Such government institutions also collaborate and advocate through their funded country-based pavilion initiatives at Midem, the world's largest music conference.³² Therefore, while it seems quite obvious, out of caution, Objector submits the following evidence to support the direct association, and strong correlation, of IFACCA members with the music community and the string, .MUSIC.

Government ministries and arts councils provide critical support for the music community, including commercial music organizations and a significant portion of the community that Objector asserts Applicant is discriminating against - fans, DIY and independent artists and music bloggers. By way of example, government ministries' and arts councils' substantial connection to and support of "music" is noted in the reports of funding and support for music. Some examples to showcase the degree of power of the IFACCA's membership towards the string and global and national music are music investment and music funding (Annual reports by governments and councils):

- New Zealand Ministry of Culture has funded significant music projects. Some include the REAL New Zealand Music Tour (\$415,000), the New Zealand String Quartet (\$150,000) and New Zealand Music Commission: (\$1,378,000).³³
- The Australian Government/Council For The Arts invested \$51.2 million for the nation's orchestras; \$21.6 million for opera; \$10.8 million for other music artists and organizations; \$13.1 million for multi-platform artists and organizations; and \$4 million in miscellaneous funding, including sector building and audience development initiatives and programs.³⁴

²⁸ U.S Copyright Office, <http://www.copyright.gov/carp/m200a.html>

²⁹ 2011 Annual Report for Cyprus Ministry of Culture, Section 1.2 "Music" (http://www.moec.gov.cy/en/annual_reports/annual_report_2011_en.pdf). Activities include Music Performances in Cyprus (1.2.1) and Abroad (1.2.2), Subsidization of Paphos Aphrodite Festival (1.2.3), Music Publications (1.2.4), Subsidization and Purchases of Digital Records (1.2.5), Promotion for Cypriot musical creativity abroad (1.2.6), Cyprus Symphony Orchestra Foundation (1.2.7), Music Information Centre (1.2.8), Developing Music Education (1.2.9), Organising of the 1st Musicological Symposium (1.2.10) and Musical Festivities for the European Volunteerism Year (1.2.11)

³⁰ http://www.culturalpolicies.net/down/albania_012011.pdf

³¹ 2010-11 Annual Report from India Ministry of Culture, [http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011\(Eng\).pdf](http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011(Eng).pdf)

³² <http://my.midem.com/en/contact-us/pavilion-representatives/>

³³ 2011 Annual Report from New Zealand Ministry of Culture: [http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20\(D-0448383\).PDF](http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20(D-0448383).PDF)

³⁴ 2011 Annual Report for the Australia Council for the Arts, http://www.australiacouncil.gov.au/data/assets/pdf_file/0016/142351/Australia-Council-Annual-Report-201112.pdf, Page 28

- Canada Council for the Arts is Canada’s national, arts funding agency investing \$28 million in its Canada Council Musical Instrument Bank (Page 16) and \$28,156,000 in Music Arts Programs (Page 66).³⁵ The Government of Canada also renewed its annual investment of \$27.6 million over five years in the Canada Music Fund.³⁶
- The United Kingdom Department for Culture and Education (DfE) will fund music education at significant levels: £77 million, £65 million and £60 million will be available in the three years from April 2012.³⁷
- The United States National Endowment of the Arts has awarded more than \$4 billion to support the arts since its inception³⁸ and has a strong focus on music as outlined in its Strategic Plan³⁹ with Congress requested to provide \$154,465,000 for fiscal year 2014.⁴⁰
- The National Arts Council of South Africa invested 2,536,131R in Music and 9,995,000R in Orchestras and has focused strongly on the “Strengthening of live indigenous music and advocating the revival of the live music circuit in South Africa”⁴¹
- The Singapore Arts Council will fund \$10.2 million in the arts under its 2013 Grants Framework, including the Ding Yi Music Company and Siong Leng Musical Association.⁴²
- In 2011, the support for artistic activities by the Arts Council of Finland was €32.4 million of which €4,921,850 was awarded to music.⁴³

Each of IFACCA’s members has a clear association with, and mandate to support the music arts in their countries (in at least 165 member countries). In most countries, their ministry of culture/arts council is the largest funder and marketing supporter of the music arts.

Dedicated Community: The International Federation of Musicians (FIM):

One example is the only international federation of musicians (See support letter from the International Federation of Musicians - FIM) which has official relations with the United Nations Economic and Social Council (ECOSOC)(Ros C); the United Nations Educational, Scientific and Cultural Organization (UNESCO) (Consultative Status); the World Intellectual Property Organization (WIPO) (Permanent Observer Status); and the Organisation internationale de la Francophonie (OIF). FIM is a member of International Music Council (IMC) founded in 1949 by UNESCO, which represents over 200 million

³⁵ 2011 Annual Report for Canada Council for the Arts, http://www.canadacouncil.ca/NR/rdonlyres/6F7549BB-F4E5-4B8B-95F4-1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf

³⁶ <http://www.pch.gc.ca/eng/1294862453819/1294862453821>

³⁷ Department for Culture, The Importance of Music, A National Plan for Music Education, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/180973/DFE-00086-2011.pdf, Page 4, 2011

³⁸ 2011 Annual report for the National Endowment of the Arts, <http://www.nea.gov/about/11Annual/2011-NEA-Annual-Report.pdf>, Page 2

³⁹ NEA Strategic Plan 2012-2016, www.arts.gov/about/Budget/NEAStrategicPlan2012-2016.pdf

⁴⁰ http://www.ifacca.org/national_agency_news/2013/04/10/us-president-requests-154465000-neh-2014/

⁴¹ 2010-2011 Annual Report for the National Arts Council South Africa, National Arts Council South Africa, <http://www.nac.org.za/media/publications/AR%2010-11%20NAC.PDF/download>, Page 11. Also Mmino, the South African – Norwegian Education Music Programme, solely funds music projects funding a total of 294 projects. Thirteen projects were allocated funding for a total of R1,680,600 of which R1,381,000 went towards music educational and R299,600 to exchange projects (Page 10)

⁴² Singapore Arts Council, <http://www.nac.gov.sg/media-centre/news-releases/news-detail?id=c2db15e2-c319-40ec-939c-d58735d0a91c>

⁴³ <http://www.taiteenkeskustoimikunta.fi/documents/10162/31704/TY+tilastotiedote+1+12+.pdf>, Page 1 and Page

music constituents from over 150 countries and over 1000 organizations.⁴⁴ FIM’s aim is to “protect and elevate the economic, social and artistic status and interests of musicians, both in their role as performers and as producers of the recording of their own performances.”⁴⁵

Dedicated Community: A2IM & Global Independent Music Coalition:

A clear example of an “entity dedicated to the community” with members that cover hundreds of millions of music constituents with formal boundaries is A2IM, the American Association of Independent Music. A2IM has two types of members: U.S independent Label members and Associate members. A2IM membership for Labels and Associates is invoked formally through an application and if accepted would require annual membership dues.⁴⁶

The reach of A2IM Associate⁴⁷ membership covers hundreds of millions of entities (i.e. the reach of A2IM’s total membership “geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents – See Application Answer to Question 20a).

Organized and strictly delineated communities related to music that are members of A2IM include:

- **Apple iTunes**⁴⁸ – iTunes accounts for 63% of global digital music market⁴⁹ - a majority – with a registered community of 800 million registered members⁵⁰ available in 119 countries who abide to strict terms of service and boundaries⁵¹ and have downloaded over 25 billion songs⁵² from iTunes’ catalog of over 43 million songs⁵³ covering a global music community, regardless of genre or whether the community entities are amateur, professional, commercial or non-commercial. To add music to iTunes, all music artists must have a formal membership with iTunes via an Apple ID registration, which includes a current credit card on file.⁵⁴
- **Pandora**⁵⁵ – Pandora is the world’s largest streaming music radio with a community of over 250 million registered members.⁵⁶
- **Spotify**⁵⁷ – Spotify is the world’s largest music streaming community with over 50 million active registered members in 58 countries and over 30 million songs. The music community uploads 20,000 songs every day.⁵⁸

⁴⁴ <http://www.imc-cim.org/about-imc-separator/who-we-are.html>

⁴⁵ <http://ngo-db.unesco.org/r/or/en/1100025135>

⁴⁶ <http://a2im.org/about-joining/>

⁴⁷ <http://a2im.org/groups/tag/associate+members/>

⁴⁸ <http://a2im.org/groups/itunes>

⁴⁹ <http://appleinsider.com/articles/13/04/16/apples-itunes-rules-digital-music-market-with-63-share>

⁵⁰ <http://www.npr.org/blogs/therecord/2015/01/06/375173595/with-downloads-in-decline-can-itunes-adapt>

⁵¹ <http://www.apple.com/legal/internet-services/itunes/ww/index.html>

⁵² <http://www.apple.com/pr/library/2013/02/06iTunes-Store-Sets-New-Record-with-25-Billion-Songs-Sold.html>

⁵³ <https://www.apple.com/itunes/features/>

⁵⁴ <https://www.apple.com/itunes/working-itunes/sell-content/music-faq.html>

⁵⁵ <http://a2im.org/groups/pandora>

⁵⁶ <http://www.cnet.com/news/like-a-rolling-milestone-pandora-hits-250m-registered-users/> and <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUO9MTkxNTM1fENoaWxkSUO9LTF8VHlwZT0z&t=1>, Pg.9

- **Vevo**⁵⁹ – Vevo is the world’s leading all-premium music video community and platform with over 8 billion monthly views globally.⁶⁰
- **Youtube**⁶¹ – Youtube is the world’s largest music video streaming community with millions of music creators -- amateur, professional, commercial or non-commercial -- and over 1 billion registered members covering all regions globally. 6 billion hours of video is watched every month on Youtube,⁶² of which 38.4% is music-related.⁶³
- **Reverbnation**⁶⁴ – Reverbnation⁶⁵ is one of the world’s largest music community and a leading music distributor with over 3.87 million musicians, venues labels and industry professionals covering every country globally. The Reverbnation community grows by over 50,000 artists, bands, labels and industry professionals monthly.
- **BMG**⁶⁶ – BMG is focused on the management of music publishing and recording rights. BMG has an international presence and represents over 2.5 million music rights globally.⁶⁷

A2IM also includes members that are associated with global government agencies which exclusively represent substantial music economies and music members, such as France (BureauExport⁶⁸), China (China Audio Video Association⁶⁹) and Germany (Initiative Musik).⁷⁰

A2IM also has Affiliate⁷¹ associations within the global music community. These include Affiliates such as MusicFirst,⁷² the Copyright Alliance,⁷³ the Worldwide Independent Network (WIN)⁷⁴ and Merlin.⁷⁵ A2IM also represents a Coalition representing the interests of the Global Independent Music Community.⁷⁶ The A2IM Coalition includes Merlin, a global rights agency for the independent label sector, representing over 20,000 labels from 39 countries, Worldwide Independent Network (representing label creators in over 20 countries), Association of Independent Music (representing largest and most respected labels in the world), and IMPALA (Independent Music Companies Association on behalf of over 4,000 independent music companies and national associations across Europe, representing 99% of music actors in Europe which are micro, small and medium sized enterprises).

⁵⁷ <http://a2im.org/groups/spotify>

⁵⁸ <https://press.spotify.com/us/information/>

⁵⁹ <http://a2im.org/groups/vevo/>

⁶⁰ <http://www.vevo.com/c/EN/US/about>

⁶¹ <http://a2im.org/groups/youtube/>

⁶² <https://www.youtube.com/yt/press/statistics.html>

⁶³ http://www.researchandmarkets.com/reports/2092499/internet_video_2011_2014_view_share_site_and

⁶⁴ <http://a2im.org/groups/reverb-nation/>

⁶⁵ <http://www.reverbnation.com/about>

⁶⁶ <http://a2im.org/groups/bmg-rights/>

⁶⁷ <http://www.bmg.com/category/about-us/history/>

⁶⁸ <http://a2im.org/groups/french-music-export-office>

⁶⁹ <http://a2im.org/groups/china-audio-video-association-cava>

⁷⁰ <http://a2im.org/groups/initiative-musik-gmbh>

⁷¹ <http://a2im.org/groups/tag/associate+members/>

⁷² <http://musicfirstcoalition.org/coalition>. The **musicFIRST Coalition**, with founding members A2IM, RIAA, and Recording Academy represents musicians, recording artists, managers, music businesses, and performance right advocates. <http://musicfirstcoalition.org/coalition>

⁷³ <http://www.copyrightalliance.org/members>

⁷⁴ <http://www.winformusic.org/>

⁷⁵ <http://www.merlinnetwork.org/>

⁷⁶ <https://www.icann.org/en/system/files/correspondence/bengloff-to-chehade-et-al-20aug14-en.pdf> and

http://a2im.org/wp-content/uploads/2015/03/A2IM_Independent_Community_Letter_to_ICANN_March_7_2015.pdf

Cumulatively, A2IM's Label and Associate Membership, A2IM's Affiliates and the A2IM's Global Independent Music Community Coalition, covers a majority of the global music community. Its cumulative membership is in the hundreds of millions of entities with formal boundaries belonging to strictly organized and delineated communities related to music as per the Community Definition and Size (See Application answer to Question 20a).

A2IM is a globally-recognized institution and is an important advocate of international music trade activities.⁷⁷ A2IM has a presence of mechanisms for participation in activities, membership and leadership with a strict, clear membership and a formal Board of Directors with voting rights, an institutional purpose related to the benefit of the associated community" including a public and clear Mission Statement and Purpose, "performance of regular activities that benefit the associated community" including international activities and events benefitting members, and "level of formal boundaries around the community" including requiring members to formally apply to become members with eligibility requirements to be closely associated with the clearly delineated community invoked and pay annual membership to remain a member. For example, DotMusic Limited had to apply to become an A2IM member and also has to pay an annual membership fee to remain an A2IM member.

Formal boundaries are in place to facilitate a delineated process in which rights holders are compensated and to eliminate piracy and copyright infringement e.g. A2IM member iTunes formally requires hundreds of millions of music fans to create formal Apple accounts and abide to strict terms of service to consume music and to ensure that royalties are paid using clearly delineated, organized systems that identify rights-holders corresponding to each song sold or streamed to compensate the appropriate music rights holders.

Dedicated global music community coalition supporting the .MUSIC "community" application model, including DotMusic's measures to deter and address copyright infringement:

Another global music community coalition led by the RIAA "on behalf of over 15 national and international trade associations" also expressed its support for .MUSIC to be under a "community" application model, including encouraging statements in support of DotMusic's policies that stated that the coalition "was encouraged to see" that DotMusic "included several measures to deter and address copyright infringement within that TLD." The "coalition members represent the people that write, sing, record, manufacture, distribute and/or license over 80% of the world's music"⁷⁸ – a majority of global music.⁷⁹

Note: DotMusic expects that more MCMOs will be added to the list of .music-accredited MCMOs below, including Music Community organizations with overlapping memberships with the current MCMO list. MCMOs can apply to join by submitting a complete MCMO Application to community@music.us.⁸⁰ For latest list of MCMOs, please visit: <http://music.us>

⁷⁷ U.S Government International Trade Commission, <http://www.usitc.gov/publications/332/pub4393.pdf>, 3-9 and C-3, <http://www.usitc.gov/search-ui/search/C.view=default/results?s=&sa=0&hf=20&q=A2IM>, May 2013

⁷⁸ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf> , Pg.1

⁷⁹ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf> , Pg.3, Appendix A

⁸⁰ See http://music.us/DotMusic_Music_Community_MCMO_Application.pdf

MUSIC COMMUNITY MEMBER ORGANIZATIONS (MCMOs)

(IN ALPHABETICAL ORDER)

A & R WorldWide

A&R Worldwide is a globally renowned, independent, forward thinking, multi-faceted and all-encompassing platform, specializing in music and its implementation in the global marketplace. Its unprecedented network of international relationships and insider music industry knowledge deliver a one-stop solution for talent discovery, development, consulting and marketing services.

The company's vast subscriber reach of over 12,000 music industry professionals with a vested interest in music, worldwide influence, emerging brands, variety of promotional platforms and extensive track record serve as a central hub between the artist, entertainment industry and the consumer. Over the years A&R Worldwide and its team have assisted with brokering thousands of deals and opportunities, including signings, licensing, synch placements, publishing, booking agents, management, brand tie-ins and key media support, etc.

Some of the artists and/or their representatives that A&R Worldwide's team have supported include: Coldplay, Lady Gaga, Dido, Adele, Katy Perry, Keane, LMFAO, Robyn, Lily Allen, Jessie J, The Temper Trap, La Roux, Ting Tings, Duffy, Faithless, Sia, Muse, Missy Higgins, Bonnie McKee, Fatboy Slim, Avril Lavigne, Sugababes, Bitter:Sweet, Nova Delai, Kate Havenevik, Bloodpit, Just Jack, Ella Rouge, Disco Ensemble, Sam Sparro, Wolfmother, Vassy, Teddybears, Steriogram, Airbourne, Sixpence None The Richer, Frank Turner, Evermore, Laura Izibor, Klaxons, Frou Frou, Imogen Heap, Dead Letter Circus, SoShy, The Dares, Carolina Liar, Jem, Gary Jules, The Noisettes, Pilate Speed, McQueen, Dúné, Pint Shot Riot, Howling Bells, Capra, Skybombers, Mexicolas, Pete & The Pirates, Miss Li, The Crimea, King Blues, Headway, The Rifles, Scouting For Girls, Yoav (formerly known as Y), Swingfly, Linda Kiraly, Tina Dico, Rob Dougan, Corinne Bailey Rae, The Chevin, Makeshift Innocence, and many others.

A&R Worldwide assists artists and/or their support teams, as well as top executives and decision-makers in various arenas, not only through personal consultation, but also by offering access to our vast global Rolodex of relationships and insight with A&R executives, label heads, film/TV/gaming music supervisors, music publishers, artist managers, producers, concert bookers/promoters, broadcast media, trendsetter radio outlets, online/digital/mobile platforms, distribution networks, press/media, advertising agencies, international trade organizations, consumer brands, technology companies and trade fairs/seminars.

In fact, A&R Worldwide also produces and programs its own annual international music, media, technology and entertainment conference: the critically acclaimed MUSEXPO in Los Angeles as well as the events the Worldwide Radio Summit (with our partners AllAccess Media Group), Global Synch and Consumer Brands Summit, and the A&R Expo. In the past, A&R Worldwide has hosted MUSEXPO Europe (London), and One Movement/MUSEXPO (Perth, Australia). These events provide intimate networking opportunities and bring together some of the world's top executive minds, emerging talent, influential figures from the music, media, technology and press realms.

A&R Worldwide has decades of professional music and media industry experiences in both the US and international markets. A&R Worldwide is recognized by many of the most influential music and

entertainment industry executives from around the globe for its ability to discover and develop talent, playing a key role in assisting artists with multiple needs well before their local, regional, national and international successes.

Website: <http://www.anrworldwide.com/mission.php>

Adrev

AdRev is music multi-channel music network providing YouTube music creators the opportunity to improve monetization, discovery, programming, audience growth and production quality for their YouTube music video content. Adrev administrates and manages over 6 million music copyrights across 26.5 million music videos. The Adrev network has over 36 billion views annually.

Founded in 2011, AdRev has grown from humble beginnings as a Content ID admin and digital media licensing service to a multi-channel network generating over 3 billion monthly views. As experts in rights management Adrev understands how to handle 3rd party claims so that its partners can operate within appropriate copyright policy.

Adrev provides artists the opportunity to promote and monetize their YouTube channel and music videos. By partnering with AdRev, artists get immediate access to a suite of benefits including dedicated support with video and channel optimization, unlimited access to a music and sound effect library we've licensed for your YouTube videos, access to all of the YouTube partner features, and more.

Adrev has grown into a multifaceted business that includes a YouTube MCN but also includes Content ID services for everybody from indie artists to major publishers. Partners include the world's largest music companies, such as Universal, Sony, Warner Chappel, BMG and Imagem.

Inc. named AdRev the #2 fastest growing media company in 2014. AdRev handles a broad range of music including the production music libraries of Universal Publishing Production Music, Warner/Chappell Production Music, Extreme Music (Sony/ATV), Selectracks (BMG), 5 Alarm Music (Imagem); master recordings of Universal Pictures Film Music, including Pharrell Williams' "Happy"; songs recorded by bestselling artists Eminem, T.I., Creedence Clearwater Revival, Imagine Dragons, Bob Dylan, Robbie Robertson, The Rolling Stones, The Who, Wu Tang Clan, Two Steps from Hell, Celldweller, Dino Merlin; and YouTube stars Kurt Hugo Schneider, Mack Z and comedian Kat Williams.

Website: <http://www.adrev.net>

Music video/Youtube creator signup: <http://talent.adrev.net/connect>

Alberta Music Industry Association. Part of the Canadian Music Coalition

The Alberta Music Industry Association is a non-profit, service-based association dedicated to helping professionals in the music industry to succeed in their careers.

The Alberta Recording Arts Foundation was founded in 1980 by Bob McCord from CISN Radio in accordance to the licensing agreement that was required by the CRTC for radio broadcasting. This led to the incorporation of the Alberta Recording Industries Association (ARIA) in 1984 under the Societies Act of Alberta. Its official mandate was to “participate and assist in the overall development and improvement of the Alberta and Canadian recorded music industry, especially as it relates to Alberta.”

The criteria of who was eligible to be a full member changed at that time to consisting of incorporated business members only. Artists were no longer allowed to become members who had voting rights or could hold a position on the Board unless they owned and operated a limited company. Therefore studios, record labels, publishers and distributors made up the majority of the board with the business membership fee priced at \$250.00/yr.

From 1995 to 1999 ARIA collaborated with the music industry associations of Manitoba, Alberta and Saskatchewan and staged independent music festivals and conferences known as the All Indie Weekend. With this common project, these three industry associations worked in tandem toward the shared vision of developing the infrastructure of the independent music industry in Alberta, Saskatchewan, and Manitoba.

After four successful All Indie Weekends, these MIA’s decided to join forces and resources to create a new entity in further promoting prairie music to the world, calling it the Prairie Music Alliance Inc. (May 1999). In 2001 ARIA ratified the by-laws changing the criteria for membership. Full members with voting rights and consideration for Board positions constituted... “those companies and individuals whose principal source of income is earned from the following activities in the Alberta music industry: Artists, songwriters, publicists/promoters, producers, engineers, studios, labels, publishers, distributors, artists managers, public broadcasters.”

The Associate and Sustaining Memberships were introduced at that time as well. The Western Canadian Music Alliance Inc. (January 2003) was formed in late 2002 when the Prairie Music Alliance expanded, inviting the Music Industry Associations of BC and the Yukon to join forces in creating a new entity. The vision of developing the infrastructure of a regional music industry is intact and now shared across these five provinces.

In October of 2007 the members of the Alberta Recording Industries Association voted to change the name to the Alberta Music Industry Association. This was in line with other music industry associations in the country who were striving to be looked upon as an all-inclusive resource for the music industry.

Currently, Alberta Music has a permanent staff of five, with offices in Edmonton and Calgary (January 1). The organization frequently runs information sessions and workshops, provides financial tour support, assistance in attending festival/conferences and produces showcase opportunities for artists at events like Canadian Music Week (Toronto), The Great Escape (Brighton) and Reeperbahn (Hamburg).

The Mission Statement is “Building, connecting and inspiring a dynamic Alberta music industry.”

- The Alberta Music Industry Association is a non-profit, service-based association dedicated to helping professionals in the music industry to succeed in their careers. We are here to build, connect and inspire a dynamic Alberta music industry.

- Member Services – grants, programs, advice, workshops, etc.
- External advocacy work – work with other organizations, government, advocacy, partnerships.
- Maintain the support and growth of the Western Canadian Music Alliance.

The Alberta Music Industry Association serves:

- Bands/Artists, Managers, Publicists, Labels, Studios, Producers, Engineers...well, everyone in the Alberta music industry

Partners include:

- Government (Provincial and Municipal)
- Radio Broadcasters (through Canadian Content Development Programs)
- FACTOR (Foundation to Assist Canadians Talent On Recordings)

Establishment Date: 1980

Community Activities: <http://www.albertamusic.org/about>

Membership Information: <http://www.albertamusic.org/membership>

Altafonte Music Network

Altafonte the #1 music distributor for Spanish independent labels, covering services for all formats from streaming of singles to vinyl albums.

[PIAS] Entertainment Group and Altafonte have formed an alliance in Iberia and Latin America. As part this [PIAS] agreement we: represent [PIAS]'s labels; do physical distribution of CD's, DVD's, and vinyl; direct and carry out marketing and promotion campaigns; administer related rights; and digitally represent some of the artists from their digital catalogue. This alliance has made them the largest independent physical supplier in Spain and Portugal.

Altafonte is also the leading independent digital distribution company in Iberia and Latin America. It has agreements and alliances with leading labels, producers, distributors, management entities, communication companies, and concert/festival promoters. These alliances span countries including Spain, Portugal, Mexico, Cuba, Colombia, Chile, Uruguay and Argentina, among others. Altafonte actively operates in all of these markets while providing professional services throughout the region.

Altafonte also focuses its attention on the music industry in the United States, where the strong presence of Latin music and culture continues to grow.

Altafonte distributes digital and physical music to over 100 platforms worldwide including Apple iTunes, Spotify, Amazon, Google Play, Youtube, Vevo, 7Digital, Rdio, Vodafone, Rhapsody, Shazam, Napster, Deezer, Pandora, Slacker, Ovi, Orange and others.

Website: <http://altafonte.com/en/>

American Association of Independent Music (A2IM)

A2IM, launched in 2005, helps independent music labels improve business by promoting access and parity through advocacy, education and connection-building with one another and affiliated businesses. The Independent Music Sector has introduced, developed and supported nearly every new musical form which has impacted our society since the beginning of the recording industry. In the present day – perhaps more than ever – the independents are vital to the continued advancement of cultural diversity and innovation in music.

A2IM is a not-for-profit trade organization with over 270 independent Label Members (which include labels for globally top-selling artists such as Adele and Taylor Swift) and over 140 globally-recognized Associate members. A2IM serves the Independent music community as a unified voice representing a sector that, according to Billboard Magazine, comprises over 34.5% of the U.S music industry's market share, as much as 80% of the music industry's releases, a significant portion globally. The organization represents the Independents' interests in the marketplace, in the media, on Capitol Hill, and as part of the global music community.

A2IM also has over 140 Associate Members, such as Apple iTunes that **accounts for 63% of global digital music market** according to Apple Insider with a catalog of over 26 million songs, available in 119 countries. Other Associate A2IM members include Pandora (72.4m active users), Spotify (6m paid subscribers, 24 million active users in 35 countries) and Youtube, the largest video site in the world. Other A2IM Associate members also include entities associated with global governments, such as France (BureauExport), China (China Audio Video Association) and Germany (Initiative Musik), which represent significant economies in the music sector.

Establishment Date: 2005

Community Activities: <http://a2im.org/mission/>

Membership information: <http://a2im.org/about-joining/>

Archive of Contemporary Music (ARC)

The ARChive of Contemporary Music (ARC) is a not-for-profit archive, music library and research center located in New York City since 1985.

ARC contains more than 2.25 million sound recordings (22 + million songs). ARC preserves two copies of each recording, in all known formats, and has electronically catalogued more than 300,000 sound recordings – more than any other public, university or private library. ARC also houses more than three million pieces of attendant support material including photographs, videos, DVDs, books, magazines, press kits, sheet music, ephemera and memorabilia.

The value of ARC's collection is not only in the rareness of many of its recordings, but in the breadth, size and organization of the collection. For every signed and unique copy of an early Rolling Stones LP, there are hundreds of relevant, formative, relatively unknown recordings that contributed to its creation, and thousands that benefit from its existence.

The ARChive collects, preserves and provides information on the popular music of all cultures and races throughout the world from 1950 to the present. The ARC grows daily as hundreds of record companies, publishers, distributors, collectors, artists and music fans from around the world donate new materials to the ARC. In addition to sound recordings the ARChive actively collects all books, magazines, videos, films, photographs, press kits, newspaper clippings, memorabilia and ephemera relating to the history of popular music. ARC also maintains a variety of informational databases other than those on recordings and books, notably its Music Index of 52,000+ people working in the music industry.

The ARChive was established because for decades the recording industry had neglected the preservation of its own heritage, and over the years many irreplaceable recordings and artifacts have been misplaced or destroyed. Even as the new medium of CDs placed many out of print recordings back in circulation, many re-issues have different or truncated material, and many CDs themselves are already out of print. When we began the recording industry was doing little to preserve its own heritage, as the film industry recently did after realizing that nearly half of all films produced before 1950 have been lost. The 21st century heralds the demise of the object in any form; even more reason for the scrupulous preservation of original releases of musical works.

In general libraries and sound archives have also been slow or resistant to preserving emerging popular music. Most considered popular music “commercial” and therefore less worthy of saving—or more able to survive on its own. The ARChive is America's first non-affiliated popular music archive. We believe that all forms of popular music — jazz, be-bop, bluegrass, country, rock, rap, blues, enka, reggae, calypso, zydeco, zouk and countless others — are important culturally. Not only do they entertain, they reveal to the world a great deal about a people and their values.

The ARChive of Contemporary Music was founded by B. George, the current director, and David Wheeler (1957-1997). The collection is maintained by Senior Archivist Fred Patterson. Archivist in charge of our book scanning projects is Quinn MacRorie. Those pesky day to day things are done by volunteers from the community and interns from many different schools and universities. Bill Levay is our newest archivist and tech person.

Mission statement: To collect, preserve and provide information on the popular music of all cultures and races throughout the world, produced from 1945 to the present.

Website: <http://arcmusic.org>

Associação Brasileira da Música Independente (ABMI) – Member of the Brazilian Coalition

The Brazilian Association of Independent Music (ABMI) was founded in January 2002. ABMI operates in the Brazilian market and global to promote the production and distribution of independent Brazilian music. Currently, the association represents the majority of record labels in Brazil.

ABMI also has an international presence to promote Brazilian music globally. The ABMI is a member of the WIN - Worldwide Independent Network – the worldwide association of independent record companies and associations, with more than 800 associates worldwide. ABMI also actively participates in Merlin representing over 20,000 labels from 39 countries. Merlin focuses purely on the interests of the global independent music sector.

Establishment: 2002 http://abmi.com.br/website/abmi.asp?id_secao=3

Community Activities: http://abmi.com.br/website/abmi.asp?id_secao=3&id=9

Membership information: http://abmi.com.br/website/faq.asp?id_secao=9

Associação de Músicos Artistas e Editoras Independentes (AMAEI) / Portuguese Independent Music Association

The Portuguese Independent Music Association represents the Portuguese music sector. AMAEI members include:

- **Associated Publishers:** Independent Publishers than those of AFP or AFI. It is understood by "independent" that are not owned by a larger corporate structure, which exceeds the scope of the Association.
- **Musicians:** Independent artists without publishing contracts with major publishers, interested primarily in issues of copyright, or if edit by independent publishers, who own the rights to their own "Masters".
- **Artists:** Are artists AMAEI independent artists still unedited;
- **Associates:** Professional of the surrounding area of independent music, not necessarily linked to issues that want to join the AMAEI. Are, for example, agents or managers with or without corporate structure (SMEs) itself, which primarily work independent artists, agents, PR (PR's), shops with a focus on independent music, websites and platforms to disseminate independent music, *bloggers*, DJs , VJ's, Radios College, etc..
- **Friends of AMAEI:** Friends of St. AMAEI any commercial entities wishing to promote their services or geared to the independent music sector products preferred, directly to the Associates, through a contribution to the funding of the Association or one or more of its specific programs.

Website: <http://amaei.pt/>

Association of Independent Music (AIM)

AIM is a trade body established in 1999 to provide a collective voice for the UK's independent music industry. AIM represents over 800 member companies, from the largest and most respected labels in the World, to small start-ups and individual artists releasing their own music for the first time. AIM promotes this exciting and diverse sector globally and provides a range of services to members, enabling member companies to grow, grasp new opportunities and break into new markets.

The UK's independent music sector produces some of the most exciting and popular music in the World, and makes a huge contribution to the country's economy. AIM's 850+ members span every musical genre and every corner of the UK. They are a vibrant, entrepreneurial and diverse bunch who have one thing in common: the music comes first.

AIM oversees a sector whose artists have claimed six of the last ten Mercury Music Prizes and regularly accounts for 30% of all UK artist album awards (silver, gold, platinum). Artists signed to member labels include: Adele, Amadou and Miriam, Arctic Monkeys, Bon Iver, Bjork, Caro Emerald, Franz Ferdinand, Friendly Fires, Grimes, Netsky, Radiohead, Roots Manuva, Royksopp, The Prodigy, Queens of the Stone Age, The Strokes, The Walkmen, The White Stripes and thousands of others.

Website: www.musicindie.com

Membership Information: <http://musicindie.com/membership>

Australian Music Industry and Regional Coalition

The Australian music industry and regional coalition was created to promote music from Australian and all of its regions. The .MUSIC Initiative will work with the music coalition to ensure the protection of Australian geographic names consistent with ICANN Government Advisory Committee (GAC) advice and to advance the promotion of Australian music, culture and the arts internationally.

Coalition members include:

- Australian Independent Record Labels Association (AIR). Website: AIR.org.au
- Contemporary Music Services Tasmania. Website: music tasmania.org
- Music Australian Capital Territory
- Music New South Wales (Music NSW). Website: MusicNSW.com
- Music South Australia. MusicSA.com.au
- Music Victoria. Website: MusicVictoria.com.au
- Northern Territory Music Industry Association. Website: MusicNT.com.au
- Queensland Music Network. Website: Qmusic.com.au
- Western Australian Music Industry Association (WAM). Website: WAM.asn.au

AudioMicro

AudioMicro provides over 150,000 royalty-free stock music tracks from Grammy award-winning artists and over 310,000 sound effects from Oscar-winning sound effects artists. Clients include Microsoft, CBS, Discovery and other leading brands.

AudioMicro operates a network of digital content licensing marketplaces, each targeted at a specific vertical —royalty free stock music, sound effects, YouTube music video monetization and photos.

Website: <http://www.audiomicro.com>

Member Registration: <http://www.audiomicro.com/register>

Bandzoogle

Bandzoogle, founded in 2004, is a music-focused advanced website builder platform for tens of thousands of bands around the world. Bandzoogle provides online tools for musicians to build a professional website, promote their music, and sell directly to fans. The all-in-one platform lets an artist's website become the hub of all their online activity, with a built-in store, fan management tools, email and text message blasts, detailed reporting and integration with social networks. Thousands of bands use Bandzoogle to build their music websites and growing.

Establishment: 2004

Community Activities: <https://bandzoogle.com/about-us>

Membership information: <https://bandzoogle.com/try-it-free>

Believe Digital

Created in 2004, Believe Digital is the largest, leading digital distributor and services provider for independent artists and labels. Innovative digital distribution and promotion technology integrated with over 350 digital music stores in the world, including all major online and wireless digital music stores. Believe Digital's distribution network includes a wide range of digital music services such as iTunes, Amazon, Deezer, Google, Virgin, Rdio and Spotify, video streaming services such as YouTube and Dailymotion, and mobile services such Vodafone, H3G, Orange, Telecom Italia and many more. Believe has an extensive network of offices (UK, USA, France, Italy, Germany, Spain, Portugal) to efficiently coordinate international promotion of its music artists. Believe Digital's innovative digital distribution and promotion technology is integrated with several hundred digital music stores worldwide distributing millions of songs. Believe Digital has direct agreements with digital music services to guarantee higher revenues and quick and efficient digital distribution for labels and artists.

Believe Digital has offices in France, Italy, Germany, UK, US, Canada, Spain, Brazil, Turkey, Russia, Mexico, Singapore, Poland, Malaysia, Argentina, Chile and Indonesia with more opening worldwide.

Establishment: 2004

Community Activities: <http://www.believedigital.com/network>

BFM Digital

BFM Digital is a global digital music company committed to serving the independent music community, linking artists to the digital marketplace.

BFM Digital is a global digital music company committed to serving the global music community and delivering quality music, spoken word and video content to leading online retailers worldwide. Representing a diverse catalog of indie labels, artists and publishers, BFM distributes to all of the major music services including iTunes, Amazon, Rhapsody, eMusic, Napster, Walmart, Nokia and many more.

With an unparalleled commitment to personalized service, BFM works closely with their content providers from around the world to ensure maximum exposure of their catalog by customizing marketing efforts and building strong relationships with BFM's digital store partners.

Establishment: 2010

Website: <http://bfmdigital.com>

Distribution partners: <http://bfmdigital.com/we/bfm-distribution-partners>

BMAT

BMAT provides global music identification that monitors over 16 million songs and growing in over 3000 radios and televisions across more than 60 countries worldwide.

The BMAT Vericast solution provides real time recognition and auditable reporting based on an audio fingerprint that is resistant to signal alterations such as voice over, broadcast mastering or noisy channel degradation.

With continuous and precise tracking, Vericast guarantees accurate emission reports, making it ideal for transparent and efficient royalty distribution.

BMAT's Airplay Monitoring:

- reports title, artist, label, ISRC, ISWC, channel, duration, date and time
- recognition rate >99,9% (90% for background music)
- standard minimum time of recognition: 4 seconds
- content ingestion formats: DDEX, amazon, itunes-XML, ID3-tag, XML, XLS
- broadcast formats: DVB-S, DVB-C, DVB-T, UHF, VHF, AM, FM
- content update feeds from Universal, SONY, EMI, Warner, The Orchard, Ingrooves

BMAT also offers music curation services. BMAT's Ella service provides audio analysis, search and recommendation engine for media services to understand and personalize music.

Ella provides perceptual coherent music browse and discovery through the various fields of knowledge available: context (title, artist, labels, release date, country, language, release date, popularity...), content (mood, voice presence, pitch, key, chord progression, beats per minute...), and user data (buying history, listening behavior, playlist habits...).

BMAT's Music Curation Services include:

- REST-Based Web Service API (XML, JSON, M3U, XSPF)
- support for Debian and Redhat distros
- powered by a constantly growing song database of 16M tracks
- multi-million track capacity in 1 server
- supporting all popular media formats: MP3, OGG, MPEG, WMA, AVI...

BMAT represents clients (see <http://www.bmat.com/clients/>) that include Performing Rights Organizations and Collection Societies such as:

- AADI: a non profit-making organisation that, since 1954, has been responsible for the collection, management and distribution of the performing rights of musicians in Argentina. It is a member of the Federation of Ibero-Latin American Performers.
- ACUM: a non-profit corporation administering the rights assigned to it by its members: authors, composers, lyricists, poets, arrangers and music publishers in Israel.
- AFP: defends the rights and interests of the Phonographic Industry in Portugal. Its main activities are combating piracy of copyrighted works and monitoring the legislative process at the local and international dissemination of statistical data.

- AGADU: was established in 1929 as a non-profit copyright collecting society in Uruguay. AGADU defends the rights of national and foreign authors.
- AGATA: Lithuanian Neighbouring Rights Association, is collecting society acting on behalf of performers and phonogram producers. Since 2002 AGATA is a member of AEPO-ARTIS and SCAPR.
- AGEDI: the Spanish Performing Right Organization managing the intellectual property rights of phonographic producers.
- AIE (Artistas Intérpretes o Ejecutantes): the Spanish Collecting Society authorized by the Ministry of Culture in Spain to defend the rights of the performers.
- AKKA/LAA: the Latvian authors' society. AKKA/LAA brings together diverse authors by collectively implementing the management of their creation rights.
- APA (Associated Authors from Paraguay): a non-profit and private collecting society, which collects and distributes royalties related with authors' rights.
- APDAYC: the association of authors and composers in Peru.
- ARTISJUS: the Hungarian bureau for the protection of authors' rights.
- ASCAP: an organization owned and run by its members, is the leading U.S. Performing Rights Organization representing over 520,000 songwriters, composers and music publishers.
- AudioGest: founded in 2002 as a collection and distribution entity for the recording industry. Today, AudioGest represents all phonographic repertoire available in Portugal.
- BMI: founded in 1939 by forward-thinkers who wanted to represent songwriters in emerging genres, like jazz, blues and country, and protect the public performances of their music. *BMI* is a leader in music rights management, advocates for the value of music, representing more than 8.5 million works of more than 650,000 copyright owners.
- CAPIF: represents the music industry in Argentina. It is a non-profit organization composed of multinational and independent record companies.
- COMPASS: an organisation created to protect and promote the copyright interests of composers, authors (and their heirs) and publishers of musical works and their related lyrics.
- COSCAP: with its 322 composer, author and publisher members, as well as 298 performer and producer members – is widely recognized as the Barbados' main music industry association.
- COTT: is the premier collecting society for composers and for the protection of musical works in Trinidad and Tobago
- CUD (Cámara Uruguaya del Disco): a non-profit organization that represents phonographic producers and since 2005 is been recognized as a Collecting Society by the IFPI.
- ECCO: administers copyright and related rights on behalf of its members in the Eastern Caribbean.
- FILSCAP: the Filipino Society of Composers, Authors and Publishers, Inc. is the association of composers, lyric-writers and music publishers to administer the public performance and reproduction rights of original musical works.
- GDA: is a public, non-profit organization in Portugal that represents artists' rights when their creations are composed, commercialized or used in Portugal.
- HKRIA: was established in October 2008. It is a not-for-profit copyright management organization to handle the copyrights of members who are record companies from Hong Kong and overseas.
- JACAP: commenced operations in 1999 to take over the operations of the local Performing Right Society London (PRS) agency in the collective administration of music copyright in Jamaica.
- JAMMS: was incorporated in 2006 as a private, non-profit organization established under the Copyright Act of Jamaica, to administer the intellectual property rights granted to 'Record Producers'.

- Koda: represents approximately 40,000 Danish composers, songwriters and music publishers. Through reciprocal contracts with rights societies in more than 115 countries.
- LaIPA: represents more than 1,200 Latvian performers and more than 700,000 foreign performers in Latvia; Latvian and foreign producers; as well as, major and independent record labels.
- LATGA-A: is a collective copyright management association established by Lithuanian authors and creative unions back in 1990.
- MESAM: the Turkish society for musical performing and mechanical reproduction rights.
- MPC Music Company Limited is a music licensing company in Thailand. MPC was formed in 2003 to license and control public performance rights for MCT and Phonorights.
- MÜ-YAP: was established in 2000 to represent neighbouring rights of phonogram producers. Currently, the society has 92 members, representing nearly 80% of the music industry in Turkey.
- Muyorbir: was established in 200 by 52 founding members. Today, MUYORBIR represents 95% of the recorded production companies of Turkish music industry.
- PPL: licenses U.K./ recorded music played in public or broadcast and then distributes the licence fees to its performer and recording rightholder members.
- PRODUCE: Panamanian Society of Phonographic Producers, is a non-profit civil organization that seeks to safeguard the interests of national and international phonogram producers, whose recordings are being marketed in the Republic of Panama.
- PROFOVI: a private, non-profit organization that represents and defends the intellectual property rights of phonographic music producers of Chile.
- Promusicae (Productores de Música de España): a trade group representing the Spanish recording industry.
- Public Performance (Malaysia) or PPM: established in 1988, is a wholly owned non-profit subsidiary of the Recording Industry Association of Malaysia (RIM). PPM represents all eligible Malaysian recording companies who are members of RIM.
- Recorded Music NZ: is the industry representation, advocacy and licensing organisation for recording artists and their labels in New Zealand.
- SABAM: is the Belgian Society of Authors, Composers and Publishers. Founded in 1922, SABAM today consists of thousands of artists from every artistic discipline imaginable.
- SACEM: is the French association that collects payments of artists' rights and distributing these royalties to the original songwriters, composers and music publishers.
- SAYCE: is a non-profit collecting society from Ecuador and member of the CISAC group (The International Confederation of Authors and Composers Societies).
- SAYCO: is the collecting society for authors and composers rights in Columbia. SAYCO administers copyright and related rights on behalf of its members.
- SBACEM: is the Brazilian Society of Authors, Composers and Music Writers, based in the city of Rio de Janeiro, founded on April 9, 1946.
- SCD: is the only music rights collecting society in Chile. SCD's main objective is to manage music rights of Chilean authors and foreign musicians in Chile.
- SESAC: was founded in 1930, making it the second oldest PRO in the United States. SESEC's headquarters is in Nashville and it has offices in New York, Los Angeles and London. SESAC currently licenses the public performances of more than 400,000 songs on behalf of its 30,000 affiliated songwriters, composers and music publishers, which include such familiar names as Bob Dylan, Neil Diamond, RUSH, Charli XCX (PRS), Disclosure (PRS), Zac Brown, Mumford & Sons (PRS), Lady Antebellum, The Avett Brothers, Shirley Caesar, Paul Shaffer and Thompson Square. SESAC has long represented the music on some of TV's biggest shows including Grey's Anatomy, How I Met Your Mother, Parenthood, Dateline NBC, Dr. Phil, Seinfeld, and The Doctors among many others and is the PRO of choice among many of Hollywood's most sought-after film and television composers including Christophe Beck, Jeff

Beal, Danny Lux, Jon Ehrlich, Dennis C. Brown, Bruce Miller and Paul Shaffer among many others.

- SGACEDOM (General Society of Dominican Authors, Composers and Music Publishers): is a non-profit collecting society established in 1996.
- SGAE: is a private entity dedicated to the defence and collective management of intellectual property rights in Spain. SGAE represents more than 103,000 members.
- SGP: the collecting society of Paraguay, was established to administer and defend the rights of artistes and producers whenever their music is used in public places.
- SIAE: is the performing rights society of authors and publishers for Italy. SIAE's Headquarters and registered office is located in Rome.
- SOBODAYCOM: is the society representing authors and composers in Bolivia.
- SOMEXFON (Sociedad Mexicana de Productores de Fonogramas, Videogramas y Multimedia, Sociedad de Gestión Colectiva): is the collective management society that is responsible for the collection, at the national level, of the royalties for the public use of the recorded music catalog it represents.
- SOPROFON: is the Performing Rights Organization managing the intellectual property rights of phonographic producers in the Republic of Ecuador.
- SPA: is a limited liability cooperative, established in 1925 to manage authors' rights. It is the sole entity of its kind in Portugal, representing more than 20,000 Portuguese authors and authors from about 200 sister societies in 90 foreign countries.
- SPAC: is a non-profit Collective Management Entity nonprofit in Panama. Its mission is to preserve copyrights and efficiently manage the resulting economic use of public works of national and foreign members of the organization.
- SUDEI: founded in 1951, is the first collective rights management association for music interpreters in Uruguay.
- Teosto: is the copyright organization for composers, lyric writers, arrangers and music publishers in Finland.
- UACRR: administers public performance rights, mechanical recording and reproduction rights, and dramatic rights. UACRR is the only internationally recognized Ukrainian collecting society.
- UNIMPRO: is a collective management society representing the recording music industry of Peru.
- UPFR: is the collecting society covering copyright related rights owed to music producers in Romania.
- ZIMURA Zimbabwe Music Rights Association: is an association of composers and publishers of music established to protect the rights of Zimbabwe author members under the copyright law.
- ZPAV: is an association of producers of phonograms and videograms in Poland. Founded in 1991, ZPAV has been authorized by the Ministry of Culture to act as a collective rights management organization.

BMAT also represents clients (see <http://www.bmat.com/clients/>) that include major music labels and major music publishers such as:

- EMI Music Publishing: part of the EMI Group, also known as EMI Music, or simply EMI, is headquartered in London, United Kingdom.
- SONY/ATV Music Publishing: was established in 1995 as a joint venture between Sony Corporation and ATV Music Publishing.
- Universal Music Group: is the world largest music content company with market leading positions in recorded music, music publishing, and merchandising.

Establishment Date: 2006

Website: <http://www.bmat.com>

Distribution partners and clients represented: <http://www.bmat.com/clients>

Brasil Musica & Artes (BM&A) – Member of the Brazilian Coalition

The BM&A (Brasil Música & Artes), is a non-profit organization, set up in July 2001 with the objective of encouraging and organizing the promotion of Brazilian music abroad, working with artists, record companies, distributors, exporters, collection societies and cultural entities. It carries out activities on behalf of the whole sector, including organizing seminars, and workshops, carrying out international market studies and trade fairs, and promotion (media, promotional material, international showcases, and partnerships with foreign institutions etc).

Establishment: 2001

Community Activities: <http://bma.org.br/site/sobre.php>

Membership information: <http://bma.org.br/site/associados.php>

Brazil Music Coalition

The Brazilian music coalition was created to promote music from Brazil. The .MUSIC Initiative will work with the music coalition to ensure the protection of Brazilian geographic names consistent with ICANN Government Advisory Committee (GAC) advice and advance the promotion of music, culture and the arts internationally across all countries.

Coalition members include:

- Brazilian Association of Independent Music (ABMI). Website: ABMI.com.br
- Brazil Music Exchange (Brasil Musica & Artes). Website: BMA.org.br

BroadJam

Broadjam, founded in 1999, is an online music community of over 120,000 musicians providing web-based promotional tools and services for independent musicians, the music industry and fans around the world. Broadjams's music library has over 500,000 songs.

Broadjam provides web-based promotional tools and services for independent musicians, the music industry and fans around the world. One of the world's largest web communities focused on independent music, Broadjam.com hosts a massive online database of searchable songs by artists from all 50 U.S. states and over 150 countries worldwide. The Broadjam Pro Services group designs and builds custom technology for music industry clients such as Warner/Chappell, Academy of Country Music, Peavey, Yamaha and others.

Establishment: 1999

Community Activities: <http://www.broadjam.com/aboutus/index.php>

Membership information: <http://www.broadjam.com/signup/broadjam/index.php> (musician membership) and <http://www.broadjam.com/signup/broadjam/index.php?fm=1> (fan membership)

Canadian Independent Music Association (CIMA)

The Canadian Independent Music Association (CIMA), founded in 1975, is the not-for-profit national trade association representing the English-language, Canadian-owned sector of the music industry. CIMA's membership consists of Canadian-owned companies and representatives of Canadian-owned companies involved in every aspect of the music, sound recording and music-related industries. They are exclusively small businesses which include: record producers, record labels, recording studios, managers, agents, licensors, music video producers and directors, creative content owners, artists and others professionally involved in the sound recording and music video industries.

CIMA's mandate is to develop and advocate policies and services that serve to support a strong and economically stable Canadian independent music and sound recording industry, ensuring the long-term development of the sector and to raise the profile of Canadian independent music both in Canada and around the world.

CIMA continues to take a leadership role in improving the economic viability and well-being of the independent music and sound recording sector in important areas such as cultural industry policies and programs; intellectual property and copyright law; tax laws and tariffs; international export and trade development programs; and professional development.

Establishment: 1975

Community activities: <http://www.cimamusic.ca/about-cima/>

Membership Information: <http://www.cimamusic.ca/membership/>

Canadian Music Industry and Provincial Music Industry Associations Coalition

The Canadian music industry and provincial music industry associations coalition was created to promote music from Canada and all of its provinces. The .MUSIC Initiative will work with the music coalition to ensure the protection of Canadian geographic names consistent with ICANN Government Advisory Committee (GAC) advice and to advance the promotion of Canadian music, culture and the arts internationally.

CIMA has successfully recruited the support of Canada's Provincial Music Industry Associations as active participants in the national coalition to support your .MUSIC initiative. What this means, is through CIMA (a national music trade association) and the provincial and territorial music industry associations (MIAs), the coalition truly represents a coast-to-coast community of music interests, from British Columbia in the west to Nova Scotia in the east. In addition to BC and Nova Scotia, the coalition will also include the provincial MIAs from Saskatchewan, Alberta, Manitoba, Ontario, Newfoundland, Prince Edward Island and New Brunswick.

CIMA and its partners look forward to working with the .MUSIC Initiative and to ensure that Canada's music industry as a whole takes advantage of and benefits from a safe and trusted top-level domain, through your innovative .MUSIC initiative.

Coalition members include:

- Canadian Independent Music Association (CIMA). Website: CIMAmusic.ca
- Alberta Music Industry Association. Website: AMIA.ca
- Manitoba Music. Website: ManitobaMusic.com
- Music British Columbia Association (BC). Website: MusicBC.org
- Music New Brunswick (NB). Website: MusicNB.org
- Music Newfoundland (NL). Website: MusicNL.ca
- Music Nova Scotia. Website: MusicNovaScotia.ca
- Music Ontario
- Music Prince Edward Island (PEI). Website: MusicPEI.com
- Saskatchewan Recording Industry Association. Website: SaskMusic.org

Canadian Music Week

Canadian Music Week began in 1981, and has grown to become one of Canada's largest and most influential media and music conferences. It draws top industry professionals to participate in a four-day program of activities. Designed to stimulate the exchange of market intelligence, increase dialogue and provide networking opportunities, Canadian Music Week continues to present the ideal platform for more than 2,000 national and international delegates.

Canadian Music Week is recognized as one of the premier entertainment events in North America focusing on the business of music. We bring together Sound Recording, New Media and Broadcast for one spectacular week of events... Combining informative, intensive conferences, a cutting edge trade exhibition, award shows, film festival, comedy festival and Canada's biggest New Music Festival. The Canadian Music Week festival spans 5 nights of performances, with 1,000 showcasing bands at more than 60 live music venues in downtown Toronto.

Website: CMW.net

CD Baby

CD Baby was founded in 1998. From its humble roots as a late-90's garage startup to their current standing as the biggest online distributor of independent music in the world, CD Baby has established itself as one of the most trusted names in the music business. With a supportive, hands-on approach to artist and label-relations, and a friendly, knowledgeable customer service team (who can actually be reached by phone), CD Baby has built a loyal client base of over 300,000 artists and millions of music-fans around the globe.

CD Baby is the **world's largest online distributor of independent music, with over 400,000 albums and 4 million tracks in its catalog.** CDBaby has paid out over \$250 million to its artists.

Website: CDBaby.com

CMJ Network

CMJ. is a music events/online media company which hosts an annual festival in New York City, the CMJ Music Marathon. At CMJ.com, it publishes top 30 lists sent by stations which subscribe at a cost of a few hundred dollars a year. CMJ formerly published these lists in CMJ New Music Report, it also used to publish CMJ New Music Monthly, which was a magazine with interviews, reviews, and special features. Each monthly magazine came with a mix CD of 15–24 songs by well-established bands, unsigned bands and everything in between. The staff puts together CMJ Music Marathon, a convention and music festival, each autumn, in New York. A second festival: the CMJ Rock Hall Music Fest, took place in Cleveland in 2005 and 2006.

The company was started by Robert Haber in 1978 as the College Media Journal, a bi-weekly trade magazine aimed at college radio programmers and became CMJ New Music Report in 1982. Today, the CMJ Network connects music fans and music industry professionals with the best in new music through interactive media, live events and print. CMJ.com offers a digital music discovery service, information resources and community to new music fans, professionals and artists. CMJ Events produces the legendary CMJ Music Marathon, the largest and longest-running music industry event of its kind, in addition to live events and tours across the US. The weekly music-business trade magazine CMJ New Music Report is the primary source for exclusive charts of non-commercial and college radio. airplay. CMJ Access is an integrated marketing agency specializing in providing its clients unparalleled access to the college and young adult demographic and emerging music world.

Website: CMJ.com

Conductors Guild

Throughout its 35-year history the Conductors Guild has served as an advocate for the conducting profession throughout the world. Its membership of over 1,600 represents conductors on a global scale. The Conductors Guild was founded in 1975 at the San Diego Conference of the American Symphony Orchestra League, and it continued for a decade as a subsidiary of that organization. In 1985 the Guild became independent. Since 1985, the Guild has expanded its services and solidified its role as a collective voice for conductors' interests worldwide.

The Guild is concerned with the art and the craft of conducting, with practical problems encountered within the profession, with repertoire, and with the multiple roles that Music Directors must fulfill in orchestras, choruses, opera and ballet companies, wind ensembles, bands, musical theater, and other instrumental and vocal ensembles, whether these are professional or amateur, functioning independently or within the context of colleges, universities, and secondary or primary schools. The Guild's overall goal is to enhance the professionalism of conductors by serving as a clearing house for knowledge and information regarding the art and practice of conducting; further, to support the artistic growth of orchestras, bands, choruses and other conducted ensembles. The Guild has a broader potential role as well: to communicate to the music community the views and opinions of the conducting profession, for which the Guild can serve as a collective voice.

Website: ConductorsGuild.org

Membership Information: <http://www.conductorsguild.org/membership/>

Contemporary Music Services Tasmania (Music Tasmania) – Member of the Australian Coalition

Music Tasmania, formerly Contemporary Music Services Tasmania (CMST), is the peak body for Tasmania's contemporary music community.

Music Tasmania exists to proactively foster a network of support for Tasmanian musicians and music workers across a broad range of genres and business practices. Our objective is to engage with stakeholders to activate infrastructure, disseminate knowledge, and create developmental opportunities for original, contemporary Tasmanian music, to prosper locally, nationally, and internationally.

Music Tasmania's recent deliverables include: a rehearsal facility in Hobart, coordinating Tasmania's annual music showcase *Amplified*, providing educational resources and professional development opportunities, providing advice and referral services to its members, enhancing the profile and communication of Tasmanian music activities to local and national audiences, and advocating for Tasmanian musicians and music workers on issues of local and national significance.

Community Activities: <http://www.musictasmania.org/about-cmst>

Membership information: <http://www.musictasmania.org/membership>

Dashgo

Dashgo provides global music rights administration for 200,000 songs and digital distribution for over 10,000 artists.

Dashgo also provides monetization that is both global and hyper local. DashGo works to maximize the value of music catalogs in partnership with clients and align incentives, reaching over 30 worldwide digital platforms, such as Youtube, Spotify, iTunes, Amazon, Google Play, Beats, Shazam and others. Dashgo prides ourselves with longtime direct relationships and integration with download, streaming & radio services as well as collecting music royalties directly from SoundExchange.

Dashgo also is a YouTube MCN and is fully YouTube Certified with a strong network of creators and partners to help monetize sound recordings, compositions and music videos. The Dashgo music video network includes over 238,000 music videos, 1.2 million members with a reach of over 5.4 billion annual views.

Dashgo provides artists with full control over their music, providing management of music releases from a single platform. Dashgo also collects music royalties monthly, including providing UPCs, ISRCs, encoding and delivery to hundreds of the most popular digital music distributors. Dashgo also gives artists social analytics of their music to help track their performance across many social networks and internet radio stations.

Dashgo also provides labels with a unified, industry-leading dashboard to manage all of its artists' releases with complete encoding, metadata, and content archiving. Dashgo also gives labels comprehensive royalty reporting with complete label, artist, and publisher reporting to fit the label's needs and is Fully Harry Fox Agency reporting compliant.

Website: <http://dashgo.com/login>

DiscMakers

Founded in 1946, Disc Makers is the undisputed leader in optical disc manufacturing for independent artists, filmmakers, and businesses. Many of its 400 team members are musicians and filmmakers themselves. The company has pioneered many of the features currently taken for granted in the music and film industry: complete turnkey packages, integrated in-house manufacturing, board packages like jackets and Digipaks, promotional posters and value added promo services, quality unparalleled in the industry, the industry's only money-back guarantee, and turn times no one else can touch.

The company operates the most vertically integrated manufacturing facility in the industry out of its Pennsauken, NJ facility, and produced over 40,000 titles in 2010 and the number is still growing. Disc Makers will furnish from 1 to 1,000 discs (or tens of thousands when ordered). Disc Makers continues to be firmly focused on its mission: helping independents – whether musicians, filmmakers, or small businesses – compete head to head with companies much larger than themselves. In short, Disc Makers empowers artists to do what they love.

Website: DiscMakers.com

Echo Nest / Spotify

Founded in 2005, the Echo Nest is the industry's leading music intelligence company, providing developers with the deepest understanding of music content and music fans. Leading music services (Clear Channel's iHeartradio, MOG, Rdio, SiriusXM, Spotify, Warner Music), editorial, video and social media networks (BBC.com, Foursquare, MTV, Twitter, VEVO, Yahoo!), connected device manufacturers (doubleTwist, Nokia) and big brands (Coca Cola, Intel, Microsoft, Reebok) and a community of about 7,000 independent app developers use the Echo Nest platform and solutions to build smarter music experiences that help fans to better discover, share and interact with the music they love. The Echo Nest's customer base reaches over 100 million music fans every month through more than 400 apps and sites powered by The Echo Nest/ Powered by the world's only machine learning system that actively reads about and listens to music everywhere on the web, The Echo Nest opens up a massive repository of dynamic music data to application developers to re-shape how we all experience music.

The Echo Nest's Dynamic Music Data solution is the most comprehensive, constantly updated, socially connected feed of music information. Every day EchoNest aggregates a real-time feed of the best images, bios, blog posts, news, social conversations, and more -- **across millions of artists and 30 million+ songs**. The Echo Nest's intelligent stream of music data helps customers show their millions of fans what's actually happening in the music world, right now, while eliminating costly dependencies on stale metadata sources.

Website: Echonest.com

Flanders Music Centre

Flanders Music Centre is an organization established by the Flemish government to support the professional music sector and to promote Flemish music in Belgium and abroad.

The Flanders Music Centre promotes Flemish performers, composers and the Flemish professional music scene in general. It does this successfully by dividing its attentions between all musical genres, ranging from pop music to contemporary.

The Flanders Music Centre also provides information and advice about the business aspects of the music industry in Flanders. The Music Centre functions, above all, as the spokesperson for the music sector to the government and is continuing its efforts in the further development of the music scene in Flanders.

Website: FlandersMusic.be

France Music Coalition

The French music coalition was created to promote music from France. The .MUSIC Initiative will work with the music coalition to ensure the protection of French geographic names consistent with ICANN Government Advisory Committee (GAC) advice and advance the promotion of music, culture and the arts internationally across all countries.

Coalition members include:

- French Music Export (Bureau Export). Website: French-Music.org
- Believe Européen de Distribution et Services Numériques aux Artistes & Labels Indépendants: Website: Believe.fr
- Carnet De Route, Groupe de Créations Françaises Festives. Website: Groupe-CarnetdeRoute.fr
- Francophonie Diffusion. Website: FrancoDiff.org
- IRMA - Centre d'Information et de Ressources pour les Musiques Actuelles. Website: IRMA.asso.fr
- Music Story. Website: Music-Story.com

Francophonie Diffusion

Created in February 1993, Francophonie Diffusion promotes artists and music from the Francophone area through a worldwide network of more than 1000 medias (radio stations, online media), festivals and music supervisors worldwide located in 100 countries, provinces or territories. Francophonie Diffusion has been involved for 20 years in the promotion of artists from the Francophone area.

In addition to its role in the export of Francophone music, Francophonie Diffusion tends to initiate communication between all Francophone partners (radio broadcasters, online media, festivals, music supervisors, artists, record labels, agents, private and governmental operators) towards a common framework. Francophonie Diffusion constantly expands its international network and sets up exchanges and co-op programs between all partners providing professional tools especially designed for their needs.

Website: FrancoDiff.org

French Music Export (Bureau Export)

French Music Export Office (Bureau Export) is a French non-profit organization and network created in 1993, that helps French and international music professionals work together to develop French-produced music around the world and to promote professional exchange between France and other territories.

BureauExport members include labels, publishers, distributors, promoters, artist management offices or ensembles.

BureauExport is a global network whose mission is to help French music professionals develop their artists internationally, covering all styles of music* (electronic, jazz, pop, rock, world, urban, classical). bureauexport has offices around the world, based in Berlin (for Germany / Austria / Switzerland / Benelux / Eastern Europe), London (for United Kingdom/Ireland), New York (for United States), Tokyo (for Japan), São Paulo (for Brazil), with a central office in Paris (for other territories).

Website: French-Music.org

Global Rock Summit

The Global Rock Summit (GRS) is an international rock music conference aimed at bringing together all aspects of the multi-billion dollar global rock music industry in one annual, focused gathering with a view of helping to further stimulate a very buoyant but often much overlooked sector of the music industry.

With many global companies working in the rock sector, the Global Rock Summit encourages these companies to enhance their business and creative activities around the time of the GRS, and in doing so, help draw more business opportunities to all in attendance.

Through a number of forums featuring rock's leading visionaries as well as unparalleled networking opportunities, the GRS brings together global music colleagues vested in all things rock. The event will provide its attendees (artists, managers, labels, publishers, agents, promoters, brands, media, etc. from all of rock music's many sub-genres"), with unique perspectives from around the world as well as the opportunity to further their creative and commercial opportunities.

Website: <http://www.globalrocksummit.com>

Hacate Entertainment Group

Hacate Entertainment Group is a music publishing company based in Oslo, Norway with a sister company in New York City. Hacate represents music of all genres, of the present and the past, from all over the world, to all over the world.

The company provides traditional music publishing representation (with a strong emphasis on synchronization licensing), music business consultation services for artists and companies, rights clearance (music, film/TV clip, logo, name & likeness) and music supervision. HEG is the Norwegian representative of BMG Chrysalis and represents the synch rights in Norway of Mars Music, Misty Music, Playground Music, Scandinavian Songs and Sony Music.

Establishment Date: 1989

Website: <http://hacate.com>

Horus Music

Horus Music, founded in 2006, is an independent music distributor, music publisher and record label based in the Midlands, UK distributing to 600 music download, streaming and mobile stores (such as iTunes, Amazon, Spotify, Rdio, Youtube, GooglePlay, Deezer, Rdio, Vevo, 7Digital, Shazam and others) globally in over 120 countries.

Website: HorusMusic.co.uk

IKON Russia

IKON is one of Russia's largest music organizations focusing in management, booking, promotion, events, records and publishing. IKON was founded in 2000 by Vlad Davydov, a Russian businessman, by the time already well known in professional circles in Russia and abroad. In May 2006 IKON was rated by Forbes as Russia's leading entertainment buyer.

In its early stages the company mainly acted as a booking agency in Russia and CIS booking or organizing performances of international pop stars such as Jamiroquai, Ricky Martin, Dannii Minogue, Bond, Benny Benassi, Geri Halliwell, Craig David, Sugababes, Bomfunk MCs, Shakira, Paul Oakenfold, Junkie XL, Asian Dub Foundation, Panjabi MC, Fluke, Duran Duran, UB40, Ten Sharp, Basement Jaxx, Touch and Go and many others. The company's catalog currently works from artists such as: David Guetta (FRA), Paul Oakenfold (UK / USA), Inusa DAWUDA (GER), Vacuum (Sweden), Touch & Go (UK), Ten Sharp (HOL), Gorchitza (UA), Ivan Dorn (UA). On the territory of the Russian Federation, together with partners, IKON manages the rights to the works of a number of other well-known foreign and domestic authors and performers

IKON provides business management, booking, distribution, production and promotion services for foreign artists in Russia and CIS in cooperation with leading Russian TV channels Muz TV, MTV, STS, Channel One, NTV, TV Center, MusicBox, A-One, O2TV; radio stations Europa Plus, DFM, Megapolis FM, Radio Mayak, Love Radio, NRJ, Radio Maximum, Radio Frame, Silver Rain Radio; major international publishing houses and print magazines Axel Springer AG (OK!), Bauer Media Group (Bravo), C-Media (Billboard), Hachette Filipacchi Media (Maxim), Hubert Burda Media (Playboy), Sanoma Magazines (Men's Health), Forward Media Group (Hello!), InStyle Magazine, F5, MK, KP; and popular web portals Mail.ru, PromoDJ.ru, Newsmusic.ru., Rutube.ru, Tata.ru, Muz.ru, Zvuki.ru, Loungemusic.ru, Intremoda.ru.

The company's own communication department, a broad network of partners - venues, promoters, event agencies, entertainment brokers - in total more than 6000 contacts in Russia and the CIS, as well as direct cooperation with major channels of physical and digital distribution are key factors that allow artists signed by IKON to succeed in Russia and CIS. IKON has been working directly with major international brands such as Marlboro, L&M, West, Snickers, Burn, Adrenaline Rush, Coca-Cola, Pepsi, Parliament, Lamborghini, Jaguar, Audi, Volkswagen, Russian Standard, Bacardi, Martini, Martell, Nokia, Motorola, Sony, Samsung developing unique BTL strategies, providing consulting services and artists for communication campaigns, organizing over 1000 public concerts and corporate shows with major international stars in over 10 years.

Website: IKON.su

IMPALA (Independent Music Companies Association)

Formed in April 2000 by prominent independent labels and national trade associations, IMPALA has over 4,000 members. IMPALA is a non-profit making organisation with a scientific and artistic purpose, dedicated to cultural SMEs, the key to growth and jobs in Europe. IMPALA enables the independents to leverage collective strength to punch above their weight. IMPALA's mission is to grow the independent music sector, promote cultural diversity and cultural entrepreneurship, improve political access and modernise the perception of the music industry.

Some Label Members include:

- 8 Ball Music
- !K7 Records
- Beggars Group
- Kobalt
- CLS records
- Cobalt Music Helladisc
- Musikvertrieb
- Naïve
- Cosmos Music Group
- [PIAS] Music Group
- Edel Music AG
- Playground Music Scandinavia
- Epitaph
- Red Bullet Productions
- Everlasting Records
- [PIAS] Rough Trade Distribution
- Wagram Music

Some National Association members: include:

- AMAEI - Associação de Músicos Artistas e Editoras Independentes
- PMI - Produttori Musicali Indipendenti
- AIM - Association of Independent Music
- SOM - Swedish Association of Independents
- BIMA - Belgian Independent Music Association
- STOMP - Stichting Onafhankelijk Muziek Producenten
- DUP - Danish Association of Independents
- UFI - Union Fonografica Independiente
- FONONO - Norwegian Association of Independents
- UPFI - Union des producteurs phonographiques français indépendants
- Indieco- Finnish Association of Independents
- VUT - German Association of Independents
- PIL - Israeli Federation of Independent Record Producers

Website: <http://www.impalamusic.org>

Membership Information: <http://www.impalamusic.org/node/5>

iMusician Digital

iMusician Digital, founded in 2007, is a digital distribution for independent bands and Musicians (with or without a label), labels and managements, based in Zurich, Berlin and Melbourne. iMusician puts artists' music into nearly 200 online music stores worldwide like iTunes, Amazon, 7Digital, Napster, eMusic or Spotify; available globally from Europe to America to Japan. iMusician also officially registers artists' music to ensure copyright is protected and for the proper monetization of artists' works.

Website: iMusicianDigital.com

Independent Music New Zealand (IMNZ)

Independent Music New Zealand (IMNZ) is a non-profit trade association – the New Zealand voice for independent record labels and distributors. Our members release the bulk of New Zealand music, including commercially successful artists as well as niche music genres. IMNZ started in 2001. These labels and distributors collectively represent the majority of all musical acts in New Zealand, producing the best music on the planet – but hey we're totally biased about that!

Independent Music New Zealand monitors and advocates for our members rights, working to spread their message, and lobbies for any changes to the industry that will benefit local labels and their artists. Some of the issues where it is important to represent the interests of our members include government legislation and the copyright act, quotas, commercial and noncommercial radio, parallel importing, government funding allocation and music policy, online licensing, piracy, synchronisation licensing and many others.

IMNZ is centrally located in Auckland, which provides easy access to our members, the majority of whom are based in the North Island. The IMNZ office is maintained at 7 Great North Road, Ponsonby. IMNZ is funded by member subscriptions and contributions from NZ Music Commission and PPNZ.

IMNZ's Vision: "A thriving independent music industry and culture in New Zealand"

The three IMNZ core objectives are:

1. To advocate the values and interests of our members and the New Zealand independent sector; working with the government, other cultural agencies and music industry bodies;
2. To aid the development and knowledge of our members by providing them all the necessary tools to develop their art and grow their business; and
3. To provide collective group benefits for our members and their businesses.

IMNZ is for New Zealand owned record labels and distributors. Eligibility for IMNZ membership requires a majority of New Zealand ownership of the label/distributor (or parent company) and the majority of your releases must be by New Zealand artists.

Website: <http://www.indies.co.nz/imnz/>

Membership Information: <http://www.indies.co.nz/imnz/join-imnz/>

INDMusic Network

INDMusic is a global music rights administration network which is YouTube Certified MCN. INDMusic has proprietary digital tools and services that help increase revenue and audience development on emerging platforms including YouTube, SoundCloud and Dailymotion. INDMUSIC helps the global music community and its channel partners monetize their content on multiple platforms without sacrificing creative control or rights to their music content.

The INDMusic community is composed of over 3.9 million network members and over 1900 channel partners. INDMusic community's network reach is over 3.5 billion monthly network views.

Website: <http://www.indmusicnetwork.com>

Community Sign-up: <http://www.indmusicnetwork.com/join>

INGrooves Fontana

INGrooves Fontana combines the best-in-class digital and physical distribution to empower the independent music community. It is a leading digital media distribution and technology company that provides clients customized marketing, promotion, sync licensing and administrative support to help maximize the earnings potential of specific music and video releases or catalogues. At the heart of INgrooves Fontana is ONE Digital: a proprietary, end-to-end digital asset management platform that automates many distribution and administration functions. INgrooves Fontana's platform is a content hub that connects directly to all leading online and mobile stores worldwide and distributes more than 300,000 songs globally.

Website: INGroovesFontana.com

International Association of Music Information Centres (IAMIC)

The International Association of Music Information Centres (IAMIC) is a global network of organizations which document and promote the music from our time. IAMIC “supports the work of 40 member organizations in 37 countries.

Music Information Centers across the world bear fundamental similarities: they provide specialized music resources for music students, performers, composers and music teachers; they act as visitor centers for any member of the public with an interest in learning about national musical heritage; they develop audiences for new music through educational and promotional projects.

Some members include:

- Australia (Australian Music Centre)
- Austria (MICA - Music Information Center Austria)
- Belgium (Flanders Music Centre) Belgium (CEBEDEM - Belgian Centre for Music Documentation)
- Belgium (MATRIX)
- Brazil (CIDDIC-Brasil/UNICAMP)
- Canada (Canadian Music Centre)
- Croatia (Croatian Music Information Centre KDZ)
- Cyprus (Cyprus Music Information Center - CyMIC)
- Czech Republic (Czech Music Information Centre)
- Denmark (Danish Arts Agency - Music Centre)
- England (Sound and Music - SAM)
- Estonia (Estonian Music Information Centre)
- Finland (Finnish Music Information Centre Fimic)
- France (CDMC - Centre de documentation de la musique contemporaine)
- Georgia (Georgian Music Information Centre)
- Germany (German Music Information Centre)
- Greece (Greek Music Information Centre / Institute for Research on Music and Acoustics)
- Hungary (BMC Hungarian Music Information Center)
- Iceland (Iceland Music Information Centre)
- Ireland (Contemporary Music Centre, Ireland)
- Israel (Israel Music Information Centre / Israel Music Institute)
- Italy (CIDIM / AMIC)
- Latvia (Latvian Music Information Centre - LMIC)
- Lithuania (Lithuanian Music Information and Publishing Centre)
- Luxembourg (Luxembourg Music Information Centre)
- Netherlands (Netherlands Music Information Centre)
- New Zealand (Centre for New Zealand Music - SOUNZ)
- Norway (Music Information Centre Norway)
- Poland (Polish Music Information Centre)
- Portugal (Portuguese Music Research & Information Centre / Miso Music Portugal)
- Scotland (Scottish Music Centre)
- Slovakia (Music Centre Slovakia)
- Slovenia (Slovene Music Information Centre)
- South Africa (Music Communication Centre of Southern Africa - MCCOSA)
- Sweden (Svensk Musik)
- Switzerland (Fondation SUISA pour la musique)

- U.S.A. (American Music Center)
- Wales (Ty Cerdd - Welsh Music Information Centre)

Website: [IAMIC.net](http://www.iamic.net)

Membership Information: <http://www.iamic.net/join-iamic/>

International Federation of Arts Councils and Culture Agencies

International Federation of Arts Councils and Culture Agencies (IFACCA) is the global network of arts councils and ministries of culture. with national members from over 70 countries comprised of governments' Ministries of Culture and Arts Councils covering all continents.

IFACCA has over 70 members, across all continents. A list of IFACCA members is available here [http://www.ifacca.org/membership/current_members/]. Please note that while the dotMusic project has been given in-principle approval by the board of IFACCA, it has not been endorsed by individual member organisations.

- Albania (Ministry of Tourism, Culture, Youth & Sport)
- Armenia (Ministry of Culture)
- Australia (Australia Council for the Arts)
- Bahamas (Ministry of Youth, Sports & Culture)
- Belgium (Ministry of the Flemish Community, Arts & Heritage)
- Belize (National Institute of Culture & History)
- Botswana (Department of Arts & Culture, Ministry of Youth, Sport & Culture)
- Bulgaria (National Culture Fund)
- Cambodia (Ministry of Culture & Fine Arts)
- Canada (Canada Council for the Arts)
- Cayman Islands (Cayman National Cultural Foundation)
- Chile (Consejo Nacional de la Cultura y las Artes)
- China (CFLAC - China Federation of Literary & Art Circles)
- Cook Islands (Ministry of Cultural Development)
- Cuba (Ministerio de Cultura de la República de Cuba)
- Denmark (Kulturstyrelsen - Danish Agency for Culture)
- England (Arts Council England)
- Fiji (Fiji Arts Council)
- Finland (Arts Council of Finland)
- France (Ministère de la Culture et de la Communication de France)
- Gambia (National Council for Arts & Culture of The Gambia)
- Grenada (Grenada Arts Council)
- Guyana (National Trust of Guyana, Ministry of Culture, Youth and Sport)
- Iceland (Ministry of Education, Science & Culture)
- India (Ministry of Culture)
- Ireland (Arts Council of Ireland - An Chomhairle Ealaíon)
- Jamaica (Ministry of Youth, Sport & Culture)
- Kenya (Bomas of Kenya)
- Lithuania (Ministry of Culture)
- Luxembourg (Ministère de la Culture)
- Malawi (Ministry of Tourism, Wildlife & Culture)
- Malaysia (Ministry of Information, Communication & Culture)
- Maldives (Ministry of Tourism, Arts & Culture)
- Malta (Malta Council for Culture and the Arts)
- Mongolia (Ministry of Education, Culture & Science)
- Mozambique (Ministério da Cultura)
- Namibia (National Arts Council of Namibia)
- Netherlands (Raad voor Cultuur - Council for Culture)
- New Zealand (Creative New Zealand - Toi Aotearoa)

- Niger (Ministere de la Communication, des Nouvelles Technologies de l'Information et de la Culture)
- Northern Ireland (Arts Council of Northern Ireland)
- Norway (Norsk Kulturråd - Arts Council Norway)
- Palau (Ministry of Community & Cultural Affairs)
- Papua New Guinea (Ministry of Culture & Tourism)
- Portugal (Direcção-Geral das Artes)
- Qatar (Ministry of Culture, Arts & Heritage)
- Romania (Ministry of Culture & National Heritage)
- Saudi Arabia (Ministry of Culture & Information)
- Scotland (Creative Scotland)
- Senegal (Ministère de la Culture et du Tourisme)
- Seychelles (Ministry of Community Development, Youth, Sport & Culture)
- Singapore (National Arts Council of Singapore)
- Solomon Islands (Ministry of Culture & Tourism)
- South Africa (National Arts Council of South Africa)
- South Korea (Arts Council Korea)
- Spain (Secretaría de Estado de Cultura, España)
- Swaziland (Swaziland National Council of Arts and Culture)
- Sweden (Statens Kulturråd - Swedish Arts Council)
- Switzerland (Pro Helvetia - Swiss Arts Council)
- Tanzania (Basata: National Arts Council) Tunisia (Ministry of Culture)
- United Arab Emirates (Sharjah Museums Council)
- U.S.A. (National Endowment for the Arts)
- Vietnam (Ministry of Culture, Sports & Tourism)
- Wales (Cygnor Celfyddydau Cymru - Arts Council of Wales)
- Zambia (National Arts Council of Zambia)
- Zimbabwe (National Arts Council of Zimbabwe)

The DotMusic/DotArtist Initiative along with its .MUSIC Arts and Culture Fund is an affiliate member of IFACCA. The Initiative will work with IFACCA to ensure the protection of country geographic names consistent with ICANN Government Advisory Committee (GAC) advice and advance the promotion of music, culture and the arts internationally across all countries.

Website: [IFACCA.org](http://ifacca.org)

Membership Information: <http://ifacca.org/membership/join/>

International Music Managers Forum (IMMF)

The IMMF is the umbrella Executive Organisation utilising a collaborative network of MMF National Organisations formed in 1992 from over 22 countries comprising of over 1,000 individual entertainment manager members. The IMMF connects music managers around the world to share experiences, opportunities, information and resources.

Music conferences are a very good way keep in touch. In past years the IMMF has been involved in Conference programming, keynote events, breakout sessions specific to managers. IMMF has also 'Showcased' new artists at events at Midem (France), Popkomm (Germany), Reeperbahn Festival (Germany), c/o Pop (Germany), Musikmesse (Germany), In The City (UK), The Great Escape (UK), Go North (UK), Music and Media (Finland), Eurosonic (Netherlands), Festival In (Portugal), Monkey Week (Spain), BIME (Spain), Westway Festival (Portugal), Vienna Waves (Austria), Exit Festival (Serbia), Medimex (Italy), Tallinn Music Week (Latvia), Sonic Visions (Luxembourg), Big Sound (Australia), Musexpo (USA), SXSW (USA), Canadian Music Week (Canada), the World Creators Summit and WOMEX; many others.

The General Assembly of the IMMF is held twice a year at Midem and the Reeperbahn Festival to discuss IMMF Network's international strategies. At the last General Assembly at the Reeperbahn Festival September 2013, MMF representatives from 13 participating countries agreed on bilateral partnership programs among all members. The core aim is to improve cooperation amongst MMF members.

Only organizations which represent groups of individual or corporate entities acting as music managers may directly join as full members of the IMMF: The AAM Australia, MMF Australia, MMF Belgium, MMF Canada, MMF Denmark, MMF Estonia, MMF France, MMF Finland, IMUC Germany, MMF Ireland, MMF Italy, MMF Luxembourg, MMF New Zealand, MMF Netherlands, MMF Norway, MMF Portugal, MMF South Africa, MMF Spain, MMF Sweden, MMF UK, MMF USA and MMF West Africa. The MMF Latin America is in foundation.

Individuals or companies who are music managers outside of the areas covered by existing member organizations may join the MMF nearest them either in geographic, social, cultural, or linguistic terms as International Members. The IMMF has vital relationships with: Council of Authors and Composers of Music / Center of International Arts Management (CIAM) Featured Artists Coalition (FAC) Dachorganisation der Musikschaaffenden (DOMUS) International Federation of Musicians (FIM) Merlin Network International Confederation of Authors and Composers (CISAC).

Website: <http://immf.com/>

Membership Information: <http://immf.com/membership/>

IRMA

The Center for Information and Resources for Contemporary Music -- Le centre d'Information et de Ressources pour les Musiques Actuelles (IRMA) -- is an organization associated with the French Ministry of Culture and Communication and supported by music industry.

IRMA is an organization open to all constituents involved in contemporary music and provides information, guidance, advice and training. IRMA provides resources connecting all components of the music world, a place of exchange and tools for structuring practices and professions within music. Activities include publications:

- The Irma designs, manufactures and sells [l'Officiel de la Musique](#) as well as many directories, professional guides (collections [Métiers de la musique](#)) or thematic (collections [Musique & société](#)).
- IRMA also distributes many professional books, including those published by professional organizations of music (Adami, Prodiss, SNEP).
- Irma has a specialized library of hundreds of books related to the music sector (legislation, technical, cultural policy and management, musicology).

Building on its expertise and capabilities, IRMA also works with governments, institutions, organizations, leaders and partners in the music industry in the context of collective issues of general interest relating to music.

Establishment Date: 1986

Website: <http://www.irma.asso.fr>

Lithuanian Music Information and Publishing Centre (LMIPC)

Lithuanian Music Information and Publishing Centre (LMIPC) was established in 1995 on the initiative of the Lithuanian Composers' Union. From 2001 LMIPC works as a non-governmental public company, founded by the Lithuanian Composers' Union. From 2006 LMIPC also runs Music Export Lithuania project aiming to maintain close contacts with all relevant parties in the Lithuanian music industry and facilitate exports of the Lithuanian music production in partnership with the Agency of Lithuanian Copyright Protection Association.

The LMIPC's mission statement is to make music created by the Lithuanian artists accessible, to get it performed and heard. In carrying out its role the centre documents, provides access, and actively promotes music by the Lithuanian artists.

Its mission statement is to make music created by the Lithuanian artists accessible, to get it performed and heard. In carrying out its role the centre documents, it provides access, and actively promotes music by the Lithuanian artists. The centre serves the needs of people professionally involved with music.

The LMIPC pursues the active promotion of Lithuanian classical and contemporary music among performers, organizers of music events, broadcasters, journalists, sending and giving out the packages of CDs, scores, catalogues, brochures, and other material, as well as organizes visits to Lithuania for music journalists and other interested parties. The LMIPC also collaborates with the international recording companies, licensing the recordings for release in various markets world-wide.

Website: MIC.lt

Luxembourg Export Office

Music:LX / Luxembourg Export Office is a non-profit organization and network created in 2009 with the aim to develop Luxembourg music of all genres around the world and to promote professional exchange between Luxembourg and other territories.

Music:LX helps its artists financially with the promotion of releases outside of Luxembourg and international tours and showcases. Music:LX participates on part of the transport and accommodation costs during a tour and takes in charge the costs of a PR agent to do the promotional work for a release abroad.

music:LX helps establish and consolidate relationships between Luxembourgian artists and international music professionals. We do so through organized meetings in both international territories and Luxembourg, along with networking events at different conferences/fairs including Eurosonic, MaMA, Jazzahead, WOMEX, Printemps de Bourges, CMJ, Sonic Visions and many others.

Website: MusicLX.lu

LyricFind

LyricFind is the world's leader in legal lyric solutions. Founded in 2004, LyricFind exists to fill the void of the most popular music content on the Internet – lyrics. In order to provide a successful lyrics service, LyricFind has not only **amassed licensing from over 2,000 music publishers, including all four majors – EMI Music Publishing, Universal Music Publishing Group, Warner/Chappell Music Publishing, and Sony/ATV Music Publishing** – but has also built a quality-controlled, vetted database of those lyrics available for licensing. Additionally, LyricFind works closely with The Harry Fox Agency to aggregate licensing from publishers.

Behind the scenes, LyricFind tracks, reports, and pays royalties to those publishers on a song-by-song and territory-by-territory basis. Additionally, LyricFind has a customized search solution available to licensees to identify music based on lyrics, and answer that age-old question of “What’s that song?” LyricFind powers lyrics for many brands and over 1,000 different music sites and mobile applications such as Shazam, Bing, Lyrics.com, Cox, Slacker, Virgin, mSpot, Rhapsody and others.

Website: LyricFind.com

MMNY (Make Music New York)

MMNY is based on France's "[*Fête de la Musique*](#)," a national musical holiday inaugurated in 1982. Ever since, the music festival has become an international phenomenon, celebrated on the same day in more than 726 cities in 108 countries, including Germany, Italy, Greece, Russia, Lebanon, Ivory Coast, Australia, Peru, Colombia, Ecuador, Mexico, Canada, and Japan.

Now in its ninth year, **Make Music New York**, "the largest music event ever to grace Gotham" (*Metro New York*), is a unique festival of 1,000+ free concerts, all on June 21st, the first day of summer. MMNY takes place simultaneously with similar festivities in more than 726 cities around the world — a global celebration of music making.

From 10 in the morning to 10 at night, musicians of all ages, creeds, and musical persuasions — from hip hop to opera, Latin jazz to punk rock — perform on streets, sidewalks, stoops, plazas, cemeteries, parks and gardens. From high school bands to marquee names, MMNY is open to anyone who wants to take part, enjoyed by everyone who wants to attend.

Over 1,000 MMNY concerts have taken place in each of the last five years.

MMNY Participating Cities:

North Africa and Middle East:

Algeria: Oran **Egypt:** Cairo **Israel:** Jerusalem **Jordan:** Amman **Lebanon:** Beirut **Morocco:** Tangiers **Palestinian Territories:** Gaza, Nablus, Ramallah **Tunisia:** El Kef, Sfax, Sousse, Tunis

Sub-Saharan Africa:

Benin: Cotonou **Burkina Faso:** Ouagadougou **Burundi:** Bujumbura **Cameroon:** Douala, Garoua **Cape Verde:** Assomada **Chad:** N'Djamena **Comoros:** Fomboni, Moroni, Mutsamudu **Congo:** Brazzaville, Kinshasa, Lubumbashi, Pointe-Noire **Cote d'Ivoire:** Abidjan, Aboisso, Biankuma, Daloa, Dimbokro, Facobly, Grand-Bassam, Grand-Lahou, Korhogo, Man, Tortya, Yamoussoukro **Djibouti:** Djibouti **Equatorial Guinea:** Malabo **Gabon:** Libreville **Gambia:** Banjul **Guinea:** Conakry **Kenya:** Nairobi **Madagascar:** Ambatondrazaka, Antananarivo, Fandriana, Mjunga/Mahajanga, Moramanga, Sambava, Tamatave, Tolagnaro **Mozambique:** Maputo **Namibia:** Oshakati, Keetmanshoop, Windhoek **Niger:** Niamey, Zinder **São Tomé and Príncipe:** São Tomé **Senegal:** Dakar, Kaolack, Saint-Louis **Seychelles:** Victoria **South Sudan:** Juba **Tanzania:** Dar es Salaam **Togo:** Lomé **Uganda:** Kampala **Zambia:** Lusaka

Americas:

Argentina: Bella Vista, Buenos Aires, Cordoba **Barbados:** Bridgetown **Bolivia:** La Paz **Brazil:** Belém, Campo Grande, Curitiba, Santos **Canada:** [Notre-Dame-de-Lourdes](#), [Quebec City](#), [Sainte Agathe des Monts](#), [Toronto](#), [Vancouver](#) **Chile:** Puerto Montt **Colombia:** Barranquilla, Bogota, Cali, Cartagena, Manizales, [Medellin](#), Pereira, Valledupar **Dominican Republic:** Santo Domingo **Ecuador:** Cuenca, [Guayaquil](#), Loja, Portoviejo, [Quito](#) **Guatemala:** Guatemala City **Haiti:** Cap-Haïtien, Port-au-Prince **Honduras:** Tegucigalpa **Jamaica:** Kingston **Mexico:** Cabo San Lucas, Juarez, [Mexico](#)

[City](#), Puebla, Querétaro, [San José del Cabo](#), San Luis Potosi, Toluca, Villahermosa, Xalapa **Nicaragua**: Leon, Managua, Matagalpa **Panama**: Panama City **Paraguay**: Asunción **Peru**: Ancash, Apurímac, Arequipa, Ayacucho, Cajamarca, Callao, Cusco, Huancavelica, Ica, Iquitos, Junín, La Libertad, Lambayeque, Lima, Loreto, Moquegua, Piura, Puno, San Martín, Ucayali, Trujillo **Saint Lucia**: Castries **Salvador**: San Salvador **Suriname**: Paramaribo **Trinidad and Tobago**: Port d'Espagne **United States**: [Austin](#), [Boston](#), [Cambridge \(MA\)](#), [Chicago](#), [Denver](#), [Downey \(CA\)](#), [Issaquah \(WA\)](#), Kalamazoo (MI), [Laguna Beach \(CA\)](#), [Los Angeles](#), [Madison \(WI\)](#), [Miami](#), [Montclair \(NJ\)](#), [Nashville](#), [New York City](#), [Normal \(IL\)](#), [Oakland](#), [Palo Alto](#), [Pasadena](#), [Philadelphia](#), [Plymouth \(NH\)](#), [Portland \(ME\)](#), Portland (OR), [Riverside \(CA\)](#), [Santa Fe](#), [Syracuse \(NY\)](#) **Uruguay**: Montevideo **Venezuela**: Barinas, Barquisimeto, [Caracas](#), Maracaibo, Maracay, Mérida, Puerto La Cruz, Valencia

Asia and Pacific:

Australia: Adelaide, [Brisbane](#), Canberra, Melbourne, Perth, Sydney **Bangladesh**: Dhaka **China**: [Beijing](#), Foshan, Guangzhou, Hong Kong, Jinan, Macau, Qingdao, Shanghai, Wuhan **Fiji**: Suva **India**: Ahmedabad, Bangalore, Chennai, Hyderabad, Kolkata, Mumbai, New Delhi, Pondicherry, Pune **Indonesia**: Bandung, Jakarta, Surabaya, Yogyakarta **Japan**: Himeji, Ibaraki, Kamakura, Kobe, Kyoto, Minoo, Moriyama, Nara, Nishinomiya, Ohtsu, Osaka, Sapporo, Shima, Suita, Takatsuki, Tokyo **Malasia**: Kuala Lumpur **Nepal**: Dharan, Kathmandu, Pokhara **New Zealand**: Christchurch, Wellington **Pakistan**: Karachi, Lahore **Philippines**: Manilla **Singapore**: Singapore [South Korea](#) **Sri Lanka**: Colombo **Taiwan**: Taipei **Uzbekistan**: Tachkent **Vanatu**: Lowanatom, Luganville, Motalava, Norsup, Port-Vila **Vietnam**: Hanoi

Europe:

Albania: Tirana **Andorra**: Andorra la Vella **Armenia**: Erevan **Austria**: Innsbruck, Vienna **Belgium**: [\[Nationwide\]](#) **Bosnia-Herzegovina**: Banja Luka, Bijeljina, Doboj, Istocno Sarajevo, Prijedor, Zvornik **Bulgaria**: Varna **Croatia**: [Split](#), Zagreb **Cyprus**: [Limassol](#) **Czech Republic**: Ceske Budejovice, Plzen, Prague, [Trebic](#) **France**: [\[Nationwide\]](#) **Germany**: Annaberg-Buchholz, Aschersleben, Bamberg, [Berlin](#), Brême, Bühl, Burg, Cologne, Dessau, Dresde, Erfurt, Erlangen, Essen, Francfort-sur-le-Main, Görlitz, Greifswald, Halle, Hanovre, Hennigsdorf, Homburg, Hoyerswerda, Jena, Kamenz, Karlsruhe, Landau, Leipzig, Löbau, Magdeburg, Meiningen, Plau, Potsdam, Quedlinburg, Rathenow, Recklinghausen, Rostock, Salzwedel, Sangerhausen, Sarrebruck, Weilburg, Weimar, Weingarten, Wolfsburg **Great Britain**: Edinburgh, Glasgow, London, Manchester, Warrington **Greece**: Agios Dimitrios, Agrinio, Amaliada, Athens, Didymoteicho, Domokos, Drama, Edessa, Filippiada, Heraklion, Kallithea, Kavala, Komotini, Kos, Kythera, Larissa, Levia, Moschato-Tavros, Naxos, Paros, Preveza, Salamina, Santorini, Serres, Thessaloniki, Veria, Volos, Xanthi **Ireland**: [\[Nationwide\]](#) **Italy**: Abbiategrosso, Acquasparta, Albenga, Altamura, Arco, Ascoli Piceno, Asti, Bibbiena, Biella, Bitonto, Bologna, Brescia, Brunico, Caposele, Carapelle, Carloforte, Castellammare di Stabia, Cogne, Collesalerno, Filadelfia, Firenze, Forlì, Francavilla al Mare, Galatina, Gela, Ischia, Ispica, Lanuvio, Ledro, Lentini, Lucca, Maglie, Marino, Martina Franca, Mestre, Milano, Modena, Moncalieri, Montalcino, Moriondo Torinese, Nago Torbole, Napoli, Padova, Palermo, Pellizzano, Perugia, Pescara, Potenza, Ranco, [Rome](#), Salerno, San Mauro Pascoli, San Pellegrino Terme, San Vito dei Normanni, Sant'Agata d'Esaro, Santa Teresa Gallura, Schio, Senigallia,

Seregno, Siderno, Siena, Siracusa-Ortigia, Sona, Spello, Tortoli, Trieste, Udine **Kosovo:** Pristina **Luxembourg:** [\[Nationwide\]](#) **Macedonia:** Tetovo **Netherlands:** Amsterdam, The Hague, Roosendaal **Poland:** [Bukowiec](#), [Czestochowa](#), Olsztyn, [Toruń](#), Warsaw **Portugal:** [Lisbon](#), Santarem **Romania:** Bucharest, Cluj-Napoca, Iasi, Pitesti, Timisoara **Russia:** Yekaterinburg, Irkutsk, Moscow, Novosibirsk, Nizhny Novgorod, Perm, Rostov-on-Don, Rybinsk, Samara, Saratov, Tolyatti, Vladivostok, Voronezh **Serbia:** Belgrade **Slovakia:** Banska Bystrica **Spain:** Aguilar de Campoo, [Burjassot](#), Cartagena, [La Puebla de Alfindén](#), Logroño, Madrid, San Cristóbal de La Laguna, Tres Cantos, Valencia, [Valladolid](#), Vilagarcía de Arousa **Switzerland:** [Chaux-de-Fonds](#), [Châtel-Saint-Denis](#), [Fribourg](#), [Geneva](#), [Lausanne](#), [Monthey](#), Morges, [Neuchâtel](#), [Nyon](#), [Thun](#), [Yverdon les Bains](#) **Turkey:** Ismir **Ukraine:** [Lviv](#)

Establishment Date: 1989

Website: <http://makemusicny.org/about/around-the-world/>

Manitoba Music, Part of the Canadian Music Coalition

Manitoba Music is the hub of Manitoba's vibrant music community.

We are a member-based, not-for-profit industry association representing over 750 members in all facets of the music industry, including artists and bands, studios, agents, managers, songwriters, venues, promoters, producers, and beyond. Manitoba Music serves all genres, from rock to roots, hip-hop to hardcore, country to classical, and everything in between.

Through our programs and services, we provide information, education, communication, advocacy, industry development, and networking opportunities to nurture, develop and promote the growth and sustainability of the Manitoba music industry.

Manitoba Music has a state-of-the art resource centre, a website that overflows with mp3s and profiles, resources and news, a comprehensive series of industry-related workshops, a far-reaching market development program, and the only Aboriginal music program of its kind in the world.

Mission Statement: To develop and sustain the Manitoba music community and industry to their fullest potential.

Vision Statement: Manitoba Music is known worldwide as the hub of Manitoba's vibrant music community.

Our Values and Beliefs:

Manitoba Music believes in and will demonstrate, through its policy and actions, the values of:

- Integrity
- Transparency
- Accountability
- Inclusivity
- Foresight

Manitoba Music believes:

- Music is an integral part of Manitoba's cultural identity and should be recognized as such;
- The music and sound recording industries are significant contributors to economic development in Manitoba;
- The Manitoba music industry is increasing its artistic, creative, technological and competitive presence within the global music industry;
- Fair and equitable compensation for the use of copyrighted creations should be an inherent right of the creator;
- Partnering, community involvement, and cooperative development are essential for the continuing growth of the Manitoba music and sound recording industries;
- Manitoba Music supports, believes in, and will endeavor to reflect the diversity of our society and our industry.

SERVICES :

Members have access to a wealth of information and resources pertaining to all aspects of the music industry locally, nationally, and internationally.

Consultations

Manitoba Music staff is always available to answer questions and provide consultations on just about any topic pertaining to members' careers, including funding applications, assistance with press kit development, assistance with MROC, information on rights and royalties, and advice on career development.

Music Industry Resource Centre

Our Resource Centre houses a library of foundational material, a definitive collection of music by Manitoba artists and labels, library of industry books, contact directories, subscriptions to relevant trade publications, computers, office equipment, and a many additional resources to help our members learn about the business of music.

Professional Development

Throughout the year, Manitoba Music hosts professional development events, including workshops and panels, featuring top industry professionals and songwriters from across Canada and beyond. We also provide mentor sessions, one-on-one training with our staff, as well as informal discussions with successful local artists and industry professionals.

Information

We keep our members informed about variety of topics, including deadlines, funding information, performance opportunities, and important industry developments through our weekly e-newsletter, quarterly printed newsletter, website, social networking sites, and through direct one-on-one contact.

Represent and Promote:

manitobamusic.com

Our popular website is a tool to help promote our members and the Manitoba music scene both here at home and around the globe. Features include comprehensive concert listings, streaming radio, weekly music downloads, a searchable artist and industry directory, profiles for all our members, and a variety of useful resources for music fans, artists, and industry alike. The site routinely gets over 50,000 pageviews per month and has over 11,000 regular users who keep coming back for all the latest news and music. Manitobamusic.com is also a source for music supervisors and talent buyers searching for music for their projects.

Social Networking

Manitoba Music maintains a strong presence on social networking sites, notably Facebook and Twitter, to broadcast information and to direct the public to manitobamusic.com.

Manitoba Music Industry Directory

Manitoba Music publishes an annual Manitoba Music Industry Directory to keep our members, the public, media, and industry stakeholders informed about the Manitoba music industry. The Directory is distributed locally at music businesses and nationally at major music industry conferences including NXNE, CMW, and BreakOut West.

Partnerships

Manitoba Music places a strong focus on the development of partnerships with regional and national organizations as well as members of the local cultural communities. These partnerships allow us to access new communities while strengthening and expanding our own. The partnerships come in many forms, from co-productions of professional development events to showcases and concert presentations to joint

market development initiatives. These relationships are key to further expansion and promotion of our music industry.

Open Mics

Manitoba Music and the Winnipeg Folk Festival co-present a regular series of open mic nights at The Folk Exchange, hosted by a different Manitoba Music member on the third Friday of each month (except June, July, and August).

Live Music Events and Showcases

Manitoba Music presents and co-presents a number of live music events throughout the year. These activities are aimed at increasing the profile of Manitoba Music and local artists within the community at events such as The Ex, Festival du Voyageur, Winnipeg Folk Festival, and public concerts at The Forks. In addition, local artist showcases are produced for visiting industry personnel such as speakers in the Music Works professional development series.

Data Gathering

Manitoba Music is the voice of the Manitoba music industry in communications with government and other stakeholders. We conduct and distribute industry research and gather data on the size, makeup, and economic growth of the industry. We also gather integral information on the accomplishments of our industry, including awards and nominations, showcases, touring, new music releases, film/TV placements, and more.

Positions and Representations

Manitoba Music has representation with the following organizations:

- Foundation Assisting Canadian Talent on Recordings (FACTOR)
- Western Canadian Music Alliance (WCMA)
- Winnipeg Host Committee
- Manitoba Aboriginal Host Committee
- Canadian Council of Music Industry Associations (CCMIA)
- Canadian Academy of Recording Arts & Sciences (CARAS-Juno Awards)
- Cultural Human Resources Council (CHRC), Music Industry Training Development Initiative
- Alliance for Manitoba Sector Councils
- Canadian Folk Music Awards
- Unison Benevolent Fund

Develop Aboriginal Music

The Aboriginal Music Program (AMP) is designed to help Aboriginal people develop sustainable careers in Manitoba's music industry. The program is a first for Canada's music industry and was launched April 1, 2004. It utilizes the organization's established networks, resources and services as a foundation with which to provide additional support and profile for Aboriginal music industry workers in Manitoba.

Aboriginal Music Program Goals

- Raise the profile of Manitoba Aboriginal artists on a local, regional and national level through the creation of marketing materials and showcase opportunities;
- Empower Aboriginal artists to achieve their career objectives through greater exposure to players in the mainstream industry and the Aboriginal music sector;
- Strengthen Aboriginal artists' understanding of the industry through targeted professional development opportunities tied directly to positive experiences at real music industry events;

- Create opportunities for senior and established Aboriginal artists to mentor emerging Aboriginal artists; and,
- Assist in the development new partnerships between Aboriginal artists, industry service providers, and development organizations.

The Aboriginal Music Program also maintains a dedicated website, aboriginalmusic.ca, which hosts artist and industry profiles, concert listings, artist and industry directory, and more.

Export Marketing

Sustainable music industry careers for artists and many industry entrepreneurs are based on the ability to successfully export through touring, releasing recorded music, sub-publishing, and securing media placements in other territories. Manitoba Music works to continually understand and communicate the factors that lead to successful export marketing, tracks the export marketing activities of the local industry, and runs programs and projects to support increased levels of success in export marketing for Manitoba artists and companies.

Market Development

Manitoba Music recognizes the importance in maintaining and increasing the level of connectedness between the Manitoba music industry and the broader industry. This is accomplished by increasing awareness of both Manitoba music (the artists and companies) and Manitoba Music (the brand) locally, nationally, and internationally, and by creating opportunities for the establishment and growth of market penetration and business relationships. Through the Market Development Program, Manitoba Music engages in pan-industry promotion and targeted market development support through trade missions, industry showcases, marketing events, online marketing, and public events and activities.

Market Access

Through the Market Access Program, Manitoba Music supports the travel and marketing expenses for artists and industry personnel who travel to other markets for showcases and business meetings where the goal is to open new markets and develop new business relationships.

Showcases

Manitoba Music promotes local artists at home and at major music conferences and festivals by presenting and supporting showcase performances. Showcases are most often an opportunity for artists to perform for others within the industry including current and future potential business partners and team members, and are an essential step in becoming known within the industry and building a support team.

Establishment Date: 2000

Community Activities: <http://www.manitobamusic.com/about>

Membership information: <http://www.manitobamusic.com/become-a-member>

Website: ManitobaMusic.com

Marcato Digital

Marcato Digital is web-based artist management and festival management software for music artist communications, booking scheduling, keeping track of contacts and venues, storing files in a centralized file manager, automatically pushing upcoming gigs to social networking sites, and generating printable tour itineraries and press kits.

Website: MarcatoDigital.com

Membran Entertainment Group

The Membran Entertainment Group and in particular the music production division, is today one of the music industry's leading European independents. Membran produces, sells and distributes its comprehensive media products both independently and through its experienced partners – not only nationally but worldwide. Be it in the traditional retail outlets, the digital world or non-traditional as branded entertainment: Membran not only thinks and adapts in all the directions that the continually evolving world of entertainment demands - but it continues to exploit its potential to the maximum, using a powerful and global distribution network.

Membran's array of “in-house” labels offer productions in all styles and genres of music – ranging from jazz, classical, pop and rock, as well as a wide spectrum of genre and “theme” compilations and special limited edition exclusive boxes. Through its label-management services, Membran offers third party labels, artists or producers a complete service ranging from A to Z to enable the successful marketing, promotion and distribution of music designed for today’s digital age worldwide.

Since its foundation in 1968 the company has expanded, becoming stronger and unique due to the huge numbers of classical music productions; Membran has not only received numerous awards and Media Prizes such as from the Association of German Music Schools, the German Record Critics' Prize, various nominations for the MIDEM Classical Award and more, making Membran a world leader in the Classical world – but the company also devotes its attentions to developments in the modern world of entertainment, continually broadening its horizons in the process. Both national and international acts and signings find their way to Membran, celebrating chart entries and enjoying the attention of both media and public as a result.

Website: Membran.net

Merlin Network

Merlin is the global rights agency for the independent label sector, representing over 20,000 labels from 39 countries representing the interests of the global independent music sector.

Merlin ensures that independents have a vehicle which can protect and enhance the strength, diversity and unique interests of its members and enhance their ability to compete in the ever changing world of digital music; and ensures that digital services have the access to the widest range of independent repertoire possible.

The organisation acts to ensure its members have effective access to new and emerging revenue streams and that their rights are appropriately valued and protected in the digital realm.

Merlin represents clearly the most commercially valuable single basket of rights outside of those held by the three “major” labels.

Merlin offers Digital Services the opportunity to efficiently and globally license - via a single deal, instead of hundreds of individual local deals – the world’s most important and commercially successful music labels. Since its launch Merlin has established itself as a key partner to the world’s leading new-generation digital music services including Google Play, Spotify, Deezer, Beats Music, Sony Music Unlimited, Rdio, rara.com, YouTube and Muve Music.

The independent sector is the fastest growing sector in the music business, representing not only a huge breadth and diversity of local music on a territory-by-territory basis, but also an increasing number of hit, commercial chart acts.

Website: <http://www.merlinnetwork.org>

Membership Information: <http://www.merlinnetwork.org/merlincriteria/>

Musexpo

MUSEXPO, the "United Nations of Music and Media," brings together all sectors of the global music business. It is one of the music industry's most essential and longest-running internationally-focused conference and showcase forums.

MUSEXPO focuses on the evolving global music market and give you an overview of the opportunities shaping today and tomorrow's music business. It's a must-attend event for those who are looking to enhance their knowledge and relationships, as well as, access new creative and commercial opportunities.

MUSEXPO is open to executives, entrepreneurs, creatives (artists, songwriters, producers, etc.) from all arenas including: labels, publishers, managers, music supervisors, agents, promoters, brands, media, PR, digital, mobile, technology platforms and anyone else who has a passion or vested stake in music.

MUSEXPO is the only event of its kind that unites the global music industry as one community. In addition to its exceptional program and showcases, it's one of the best music industry networking events thanks to its focused and boutique environment.

Many talented artists have showcased at MUSEXPO since its inception back in 2005 and have gone on to secure recording, publishing, management and music placement contracts, as well as being launched on to the global stage as a result of the event.

Past MUSEXPO showcase artists have included **Katy Perry** (EMI) **LMFAO** (Cherrytree/Interscope), **Jessie J** (Lava / Universal Republic), **The Temper Trap** (Infectious Records), **Soshy** (Sony Music Int'l), **Evermore** (Sire Records/Warner Music), **A Fine Frenzy** (EMI), **Laura Izibor** (Atlantic), **Ida Maria** (Mercury/Island), **Teddybears** (Atlantic), **Missy Higgins** (Warner Bros.), **FrankMuzik** (Island), **One Night Only** (Mercury) **Erik Hassle** (Universal) and many others.

During the past decade, some of the world's most inspiring and influential music, media and technology executives who are helping shape the future of our global music business have participated at MUSEXPO, including **Larry King** (former CNN host); **Jimmy Kimmel** ("Jimmy Kimmel Live," ABC); **Lucian Grainge**, Chairman & CEO, Universal Music Group; **Harvey Goldsmith**, Founder, Harvey Goldsmith Presents; **Tim Westergren**, Founder, Pandora; **Tom Anderson**, Co-Founder, MySpace; **Daniel Glass**, Chairman & CEO, Glassnote Entertainment; **Chad Hurley**, Co-Founder, YouTube; **Will.i.am** (**The Black Eyed Peas**); **Ian Rogers**, CEO, Beats Music; **Jeff Smith**, Head of Music, BBC Radio 2 & 6 Music (UK); **George Ergatoudis**, Head of Music, BBC Radio 1 & 1Xtra (UK); **Grammy-winning songwriter Diane Warren**; **Craig Kallman**, Chairman & CEO, Atlantic Records; **Steve Schnur**, Worldwide Executive of Music & Marketing, EA Games; **Nigel Lythgoe**, Executive Producer, "American Idol" and "So You Think You Can Dance"; **Michael Rapino**, Chairman & CEO, Live Nation; **Marty Bandier**, Chairman & CEO, Sony/ATV (Worldwide), **Zane Lowe**, DJ, BBC Radio 1 (UK); **Kevin Wall**, Founder & CEO, Control Room & Live Earth; **Richard Russell**, Founder, XL Recordings (UK); **Chris Barton**, Co-Founder, Shazam; **Michael Chugg**, President & Founder, Chugg Entertainment (Australasia); **Troy Carter**, Founder, Atom Factory Inc. (Worldwide Manager, **John Legend**); **Dave Navarro** (Ex-**Red Hot Chili Peppers**, **Jane's Addiction**); **Terry McBride**, Founder & CEO, Nettwerk; **Alex Patsavas**, Founder, Chop Shop Music Supervision ("**Grey's Anatomy**", *Twilight*, *New Moon*, *Eclipse*); **Peter Edge**, Chairman & CEO, RCA Records Group; **Steve Strange**, Partner, X-ray Touring (**Eminem**, **The Ting Tings**); **Jason Carter**, Editor, BBC Radio 1 Live Music, BBC 1Xtra Live Music & BBC Introducing (UK); **Marty Diamond**, Head Talent Booker, Paradigm Agency (**Coldplay**, **Black Eyed Peas**); **Chris Scaddan**, Manager, Triple J Radio (Australia); **Joe Belliotti**, Director, Global Entertainment, Coca-Cola; **Martin Kierszenbaum**, Chairman of Cherrytree Records, President of A&R,

Pop & Rock, Interscope Records & President of International Operations for Interscope Geffen A&M; **Perez Hilton**, Founder, PerezHilton.com; **Richard Kingsmill**, Music Director, Triple J Radio (Australia); **Rob Wells**, President Digital, Universal Music Group (Worldwide); **Seymour Stein**, Chairman & CEO, Sire Records Group among hundreds of others.

Website: <http://www.museexpo.net>

Music Austria (MICA)

MICA - Music Austria is the professional partner for musicians in Austria. Music Information Centre Austria (MICA/Music Austria), funded by the Austrian Federal Ministry for Education, Arts and Culture is the professional partner for musicians in Austria, founded in 1994 as an independent, non-profit association, on the initiative of the Republic of Austria.

Objectives include the support of contemporary musicians living in Austria with advice and information and the distribution of local music through promotion in Austria and abroad. MICA has national and international networks and is a member of EMO (European Music Office), IAMIC (International Association of Music Information Centres), IAML (International Association of Music Libraries, Archives and Documentation Centres) and the IMC (International Music Council).

Website: MusicAustria.at

MusicBrainz

MusicBrainz is the largest community-maintained open source encyclopedia of music information globally. The MusicBrainz music community has nearly 1.3 million members with a database covering nearly 1 million artists and nearly 18 million songs from over 200 countries.

In 2000, Gracenote took over the free CDDB music data project and commercialized it, essentially charging users for access to the very data they had themselves contributed. In response, Robert Kaye founded MusicBrainz. The project has since grown rapidly from a one-man operation to an international music community who appreciate both music and music metadata. Along the way, the scope of the project has expanded from its origins as a mere a CDDB replacement to today, where MusicBrainz has become a true encyclopedia of music.

As an encyclopedia and as a community, MusicBrainz exists solely to collect as much information about music as we can. MusicBrainz does not discriminate or prefer one "type" of music over another though, in fact it collects information about as many different types of music as possible, whether it is published/unpublished, popular/fringe, western/non-western, or human/non-human

Website: <http://musicbrainz.org/doc/About>

Membership sign-up: <http://musicbrainz.org/register>

MusicBrainz's member and database statistics: <http://musicbrainz.org/statistics>

Music British Columbia Association (BC), Part of the Canadian Music Coalition

Representing the British Columbia music industry, Music BC is a non-profit society dedicated to providing information, education, funding, advocacy, awareness and networking opportunities to nurture, develop and promote the spirit, growth, and sustainability of the BC Music community. Music BC (formerly known as The Pacific Music Industry Association or PMIA) has been in operation for over 20 years, serving the music industry of British Columbia. Music BC is the only provincial music association that serves all genres, all territories and all participants in the industry from artists, to managers, agents, broadcasters, recording studios, producers and all other industry professionals.

Music BC serves as the regional affiliate for FACTOR, as well as MROC, and is a member of the Western Canadian Music Alliance which produces the Western Canadian Music Awards and BreakOut West Festival. Music BC is the voice of the BC Music industry provincially (lobbying for funding support, tax credits and creators rights), nationally (meeting with Minister of Heritage as part of the Council of Canadian Music Industry Associations, lobbying for sustained funding for the arts and copyright reform), internationally (representing BC artists at the world's music trade shows such as MIDEM in Cannes, France, promoting BC talent through the Canadian consulates world-wide). It has previously participated in a joint federal/Provincial study of the BC Music Industry, which became the focal point of lobbying efforts.

Music BC provides education in many areas concerning the music business: Career Development Series (which has been a cornerstone program for Music BC), an e-Newsletter (which deals with many topical issues concerning the business), a resource library full of reference books, directories and trade magazines dealing with the music industry, and much more. Music BC also provides networking opportunities for members of the music community – its “SchMusic BC” parties have become a very popular way for connecting different players in the industry. It also offers showcasing opportunities at Canadian Music Week in Toronto, with a showcase that has become one of the “must-see” events of the festival. These events are a perfect opportunity for showcasing BC artists, networking between all levels of industry professionals, to celebrate the successes of the music business and to provide education through the international conference.

Music BC helps to fund and support the development of BC artists. We also administer the MITAP Travel Assistance Program of behalf of the Province of British Columbia. Music BC also has developed its own Music Assistance Program which involves travel assistance, demonstration record recording, compilation CD promotion, licensing opportunities and other programs for our members.

Another artist development program administered by Music BC is the PEAK Performance Project, produced in concert with 102.7 The PEAK FM. The PEAK Performance Project is a seven-year, \$5.29 million contest open to all musicians over 18 in British Columbia that incorporates not only significant funding towards participants' musical careers, but an intensive educational component. Music BC also organizes and participates in trade missions for the purpose of export marketing of BC talent. We have planned trade missions to Europe, Japan, Los Angeles and more; in addition to presenting showcases of BC artists at conferences such as MIDEM, CMW, Folk Alliance, BreakOut West and more.

Establishment Date: 1994

Website: MusicBC.org Community activities: <http://www.musicbc.org/about-us/>

Membership information: <http://membership.musicbc.org/>

The Music Business Registry

The Music Business Registry is the leading company in global music business contact information providing the music industry's only real-time contact management system and most comprehensive directories focusing on music. It began in 1992 with its first title - The A&R Registry. This exclusive directory is the only international A&R Directory, which covers cities such as Los Angeles, New York, Nashville, Atlanta, Toronto, Vancouver and London. It is updated and reprinted every 8 weeks.

Over the last 18 years, the Music Business Registry has developed 3 additional music-related registries:

- The Film/Television Music Guide which is the Music & Film Industries only directory devoted to listing all of the contacts for the placement of music into Film & Television programming;
- The Music Publisher Registry: A directory of all of the creative executives at the music publishing companies; and
- The Music Attorney, Business & Legal Affairs Registry: An international directory of all of the music business attorneys working in cities that include Los Angeles, New York, Nashville, Atlanta, Toronto, Vancouver, London as well all of the business and legal affairs personnel at the record labels, music publishers and the film studio and television network music departments.

Other resources include the Indie Bible, the only resource that is totally dedicated to musicians and songwriters with access to over 4200 international music publications and 3400 international radio stations that are seeking music content.

Website: <http://www.musicregistry.com>

Music Centre Slovakia

Music Centre Slovakia is a government state-subsidized institution established by the Ministry of Culture of the Slovak Republic. Its mission is to encourage Slovak music culture by organizing concerts, bringing pieces of Slovak composers to the stages, publishing sheet music and music books, documenting the music life in Slovakia and promoting Slovak music culture abroad.

The origins of a State institution involved in organizing music life in Slovakia go back to 1969, the year when the Slovkoncert agency was founded, operating as a guarantor in the field of music festivals and concerts both of "classical" and "popular" music. In 1997, it was integrated in the National Music Centre, while in 1999 the Slovkoncert was turned into the Music Centre consisting of four departments: documentation, publishing, external relations and economy.

Website: HC.sk

Music and Entertainment Industry Educators Association (MEIEA)

The Music and Entertainment Industry Educators Association (MEIEA®) is an international organization that was formed in 1979 to bring together educators with leaders of the music and entertainment industries. The primary goal of MEIEA® is to facilitate an exchange of information between educators and practitioners in order to prepare students for careers in the music and entertainment industries.

In order to seek professional practical knowledge and functional strategies in education, MEIEA® endeavors to:

- Provide resources for the exchange of information and knowledge about all aspects of the music and entertainment industries;
- Foster scholarly research on the music and entertainment industries as well as on music and entertainment industries education;
- Assist institutions with the development of music and entertainment industries programs and curricula;
- Facilitate interaction between the music and entertainment industries and music and entertainment industries' educators and affiliated educational institutions;
- Promote student interests in the music and entertainment industries.

MEIEA is a non-profit organization dedicated to the advancement of education in the music and entertainment industries. Institutional membership is available to institutions of higher education. In order to be considered for membership, the institution must be recognized, licensed, and/or accredited as a post-secondary educational institution. Organizations and business entities interested in supporting the mission and activities of MEIEA are encouraged to become sponsors of MEIEA through charitable support. Sponsor support is greatly appreciated and tax-deductible.

Support of MEIEA activities by companies, institutions, individuals, and organizations that value music and entertainment industry education is greatly appreciated by MEIEA's members.

Website: <http://www.meiea.org/>

Membership Information: <http://www.meiea.org/schools.html>

MusicJustMusic

MusicJust Music was founded in 2004. Based on proprietary automation software and excellent global partner relations, award winning MusicJustMusic offers Worldwide Digital Distribution for music & music related content, as well as other software & services for the music business of the 21st century. Digital Distribution is provided for Artists, Record Labels & Enterprises of music rights simultaneously into over 600 online and mobile music stores in over 79 countries, reaching about 97% of the consumers buying legally music as downloads worldwide.

MusicJustMusic's state-of-the-art browser-based MJM 3.0 technology allows clients to fulfill every aspect of their distribution, from any computer & cell phone with internet connection alike. More than a webtool with instant worldwide market access, this web app becomes the music manager's Mobile Music Office™. MusicJustMusic's partners are the leaders of the digital revolution & most of the important global entertainment players, lifestyle brands, Internet providers & mobile carriers. MusicJustMusic 's goal is to unite the best in music of any genre with the best in technology.

Website: MusicJustMusic.com

Music Kickup

Music Kickup is the new way for musicians to sell music and build their careers. Music Kickup Distribution is the world's first 100% free distribution platform for all major digital services, including iTunes, Spotify, Deezer and Google Play.

Music Kickup is an artist representative and technology company focused on building tools and services to empower musicians and the music industry, and to encourage global collaboration and business. Music Kickup was founded in 2011. Backed by a strong seed round and the Finnish government we currently have operations in Helsinki, New York, Singapore, London and Shanghai.

Website: <https://www.musickickup.com/>

Music Matters

Music Matters is Asia Pacific's award-winning, pioneer music industry conference and festival and is a destination for digital and live entertainment businesses.

Pioneer music industry event in Asia Pacific and South Asia, Music Matters in Singapore and MixRadio Music Connects in Mumbai bring industry leaders and businesses together to discuss actual trends and explore new business opportunities through keynotes, panels, workshops and networking sessions. Supplemented in Singapore by a 4-night music festival and a creative Academy for artists, the conference gives a 360° vision of the music industry in Asia.

The Music Matters Academy was launched in 2011 as an initiative to give back and nurture Asia's emerging talent by mentoring them on a path to music industry success. It is produced by, with and for the Asian music community and features some of the world's most accomplished executives, artist managers, and creative minds to provide guidance and insight to aspiring professionals.

Website: <http://musicmatters.asia>

Music New Brunswick (NB). A Part of the Canadian Music Coalition

Music/Musique NB (MNB) is a provincial music industry association that provides a support network for musicians, managers, and businesses that are involved in the creation of music within the province of New Brunswick. MNB is a non-profit association with ties on regional, provincial, and national levels with government agencies and departments who enable us to lobby and promote our industry and our artists whenever possible. MNB's primary responsibility is to represent the interests of its members and foster the New Brunswick music industry.

MNB offers its members:

- Specialized workshops and seminars
- One-on-one consultations
- Business referrals
- Networking opportunities
- Showcasing opportunities

- Receiving information regarding funding programs and opportunities
- Advertising events in MNB's newsletter and social media
- Receiving the latest industry news and deadlines
- Access to resource center

Establishment date: 2006

Community activities: <http://musicnb.org/About/tabid/78/Default.aspx>

Membership information: <http://musicnb.org/Membership/tabid/84/Default.aspx>

Music New South Wales (Music NSW) – Member of Australian Coalition

MusicNSW is the Peak Body for Contemporary Music in NSW.

It is not for profit Industry Association set up to represent, promote and develop the contemporary music industry in New South Wales, Australia, in addition to managing a number of Music Development projects. MusicNSW exists to support the creative and economic expansion of the NSW contemporary Music Industry through advocacy, resource assistance, activating growth of industry infrastructure, delivery of tailored initiatives and provision of advice and referrals.

Its objectives are to:

- To ensure that the interests of the NSW contemporary music industry are adequately addressed by the media, government and cultural bodies.
- To empower communities around NSW to retain their musical identity and foster audiences for local material.
- To provide the NSW contemporary music industry with advice and resources and have available systemized information that can be updated regularly and disseminated widely.
- To increase industry professionalism and skills at all levels and sectors of the NSW contemporary music industry through education and training.
- To develop regional, national and international recording and performance opportunities for NSW musicians.
- To provide coordination services between musicians, grass roots music organisations, industry bodies and government bodies.

Advocacy and Representation

MusicNSW continues to grow and develop in its representation and advocacy role.

With increasing demands for assistance from the range of sectors that make up the industry and government at all levels, MusicNSW takes an active role in developing statewide strategies to improve services to contemporary music.

Project Development

MusicNSW continues to develop projects based on identified industry needs. Through our core projects (Indent, Whichway and Sound Summit) MusicNSW develops programs specific to increasing access and opportunities to and within the music industry.

Partners include:

- AMIN (The Australian Music Industry Network)
- Arts NSW
- APRA [Australian Performing Rights Association]
- OCYP [Office of Children and Young People]
- Arts NSW
- Australia Council for the Arts

Community Activities: <http://www.musicnsw.com/about/>

Membership information: <http://www.musicnsw.com/friends-with-benefits/>

Music Nova Scotia

Since 1989, Music Nova Scotia has been working to foster, develop and promote the full potential of the music industry in Nova Scotia. Based in Halifax, this non-profit member services association is devoted to advancing the careers of music industry professionals in songwriting, publishing, live performance, representation, production and distribution, and to help ensure that Nova Scotian musicians are heard on the world stage.

Music Nova Scotia is a non-profit organization with a mandate to encourage the creation, development, growth and promotion of Nova Scotia's music industry. Music Nova Scotia exists to grow and nurture the Nova Scotia music industry, to retain Nova Scotia own natural resource and promote investment, by:

- Providing education, information and resources to its membership
- Acting as the advocate for the industry to all levels of government and private enterprise
- Supporting membership in the promotion of the export of Nova Scotia music regionally, nationally and internationally

Membership is mainly made up of Nova Scotians but some join from other regions of the East Coast as well as across Canada. Members include songwriters, musicians, agents, managers, promoters, distributors, associations, lawyers, accountants and other industry professionals.

Website: MusicNovaScotia.ca

Music Services Asia

Music Services Asia (MSA) provides a fundamental foundation platform for development, recognition and international standard codes of practice for digital music, music charts and radio shows with a special focus on the Southeast Asian region. MSA utilises Singapore as the business hub for these services to ensure sustainable growth from a sound infrastructure that is both pro-business and pro-consumer related.

Music Services Asia provides an array of services that include:

- Asia music charts: Compiled from digital sales, radio and TV plays statistics, Music Services Asia will form the basis for the most thoroughly researched, online music charts for the Southeast Asian Region.
- Business directory (Music Matters Connects): Discover and network with over thousands of Asian music businesses in over 130 categories across more than 20 Asian countries. Search for contact details for music industry businesses operating throughout Asia.
- Music news (Music Weekly): Music Weekly digital magazine is a comprehensive source of industry information, interviews and performance announcements and opportunities happening in the Southeast Asian region and abroad.
- Digital distribution.

Establishment Date: 2011

Website: <http://www.musicservices.asia/about-msa/>

Music South Australia – Member of Australian Coalition

The South Australian Contemporary Music Company Ltd T/As Music SA (formerly AusmusicSA) was established on July 23, 1997.

Music SA is a not-for-profit organisation committed to promoting, supporting and developing contemporary music in South Australia.

MUSIC SA delivers projects for the benefit of the SA Music Industry including

- A comprehensive SA Music Industry website
- Contemporary music workshops and training programs in schools
- Professional Development, Advice and Consultancy service for SA artists and practitioners
- Music Business events and seminars
- Contemporary music showcases and live performance opportunities
- Accredited music business training program
- Secondary School Vocational Education Training (VET) programs

The MusicSA website is the only complete SA website designed for - and by - the music industry. It is dedicated to the promotion of SA music artists and to the support of industry practitioners. As a project arm of MUSIC SA, MusicSA.com.au is managed/updated on a daily basis by the Music SA Digital Marketing Manager.

MusicSA.com.au is the ultimate resource for South Australian music, and features the largest online artist directory dedicated exclusively to SA artists, as well as thousands of MP3s, industry news articles, details on gigs and events, reviews, a venue and business directory, contests and much more. As a one-stop-shop for information on the local scene, content on the website is focussed on South Australia as a means of showcasing the state's industry to website visitors from SA, across the country and around the world.

MusicSA.com.au is a major resource for music lovers of all types, and the site always encourages contributions in content, questions and suggestions.

Establishment: 1997

Community Activities: <http://www.musicsa.com.au/about/default.aspx>

Membership information: <http://www.musicsa.com.au/artists/getlisted.aspx>
<http://www.musicsa.com.au/businesses/getlisted.aspx> <http://www.musicsa.com.au/venues/getlisted.aspx>

Music Story

Music Story provides editorial content to online stores that sell music so biographies, album reviews, recommendations. Music Story is a source of information for music artists in the music world and beyond all music lovers. Maintained continuously updated by a team from the music press, the base Music Story is a documentary highlighting background digital artists and musical works of all kinds and all ages. As a genuine online music encyclopedia, Music Story deals in depth with all the popular music and informs you about recent events.

Website: Music-Story.com

Music Victoria – Member of the Australian Coalition

Music Victoria is the independent voice of the Victorian contemporary music industry.

An independent, not-for-profit, non-Government organisation, Music Victoria represents musicians, venues, music businesses and music lovers across the contemporary music community in Victoria.

Music Victoria provides advocacy on behalf of the music industry, actively supports the development of the Victorian music community, and celebrates and promotes Victorian music.

Music Victoria's mission is: *To champion Victorian music*

Music Victoria exists to support the growth, participation and development of the Victorian contemporary music industry. It aims to be broadly inclusive of the contemporary music industry across all music genres, industry sectors and professions and to be accessible for metropolitan and regional Victoria. In all its activities, it aims to add value to music makers.

Victoria attracts, supports and creates a cultural community that is recognised nationally and internationally as unique and valuable both economically and culturally. We need to protect and develop this.

The recent issues affecting Victoria's live music venues have shown just how important it is for music in this state to have an organisation representing its interests to ensure that talented individuals and businesses in our music community continue to flourish and that the voice of this community is included in the decision making processes of Government and the community at large.

Music Victoria exists to support and represent the Victorian music industry and community.

- Promotion and celebration of Victorian artists, music businesses and the industry as a whole.
- Professional development for Victorian artists and music businesses as well as the development of the industry as a whole, including implementing a program to arm artists with the requisite skills to run their music careers as successful and sustainable small businesses.
- Leading the development of a regional Victoria touring circuit to assist musicians with touring regional area and addressing barriers that regional musicians face trying to break into the capital city markets around Australia.
- Provide programs in partnership with the Sounds Australia music export initiative to develop pathways to put more Victorian musicians on the world stage.
- Advocacy on behalf of the Victorian music industry to all levels of Government and the wider community.

Music Victoria is currently meeting the following industry service needs:

- ***Representation***

Music Victoria is providing a strategic and representative voice for the Victorian music industry at the state and national level to ensure that there is a co-ordinated response to emerging issues faced by the industry as well as responding to other economic and cultural opportunities.

Music Victoria is currently advocating the interests of the industry on critical bodies such the Liquor Control Advisory Council (LCAC), the Australian Music Industry Network (AMIN) and the Arts Industry Council of Victoria. It is also strengthening its relationship with Arts Victoria and developing its relationship with Regional Arts Victoria, Tourism Victoria, the City of Melbourne, and local councils.

- ***Leadership***

The music industry in Victoria is a disparate group engaged in a wide range of activities. They have shared needs but also individual and sometimes conflicting objectives. Music Victoria is currently engaged in reconciling differences and presenting a united voice to Government to contribute to setting the policy agenda now and into the future.

- ***Providing a forum***

As part of the Victorian Music Council, Music Victoria is providing a forum for different members of the music community to discuss and mediate their differences and find consensus on solutions. Sub-committees may also be established to facilitate debate and address issues.

- ***Access to well informed specialists***

In order to ensure that the policy debate within the industry is evidence based, Music Victoria is engaging with specialists who will undertake research, provide commentary and, where appropriate, deliver written reports.

- ***Research, Information and Education***

Music Victoria will undertake its survey of industry trends and needs each year in order to track the development of the industry in Victoria and identify policy and industry development needs. Its research will be specific and issues-based and will not seek to duplicate research already undertaken elsewhere.

- ***Skills and professional development***

Music Victoria will map the industry to identify skills gaps, support industry development initiatives and advocate for programs to equip the industry with the necessary skills to expand their opportunities through professional development and coaching.

- ***Identifying role of music industry in wider social policy challenges***

Music Victoria will develop relationships across Government to identify and promote the role that music can play in addressing wider social issues. This could include, for example, the role of music in promoting mental health.

Community Activities: <http://www.musicvictoria.com.au/about>

Membership information: <http://www.musicvictoria.com.au/become-a-member-of-music-victoria>

Music Xray

Music Xray facilitates a more efficient, lower cost, and less risky A&R process. Its growing platform with a community of over 100,000 artists enables the industry to open the doors of opportunity to musicians and songwriters everywhere and to harness the most powerful tools ever built specifically for those who conduct A&R.

As long as there are commercial opportunities for music there will be industry professionals making the decisions regarding which songs and artists are chosen. Those decision makers will use the best tools available to streamline, organize, and optimize their work while reducing the risk of making choices that don't meet their business objectives. Music Xray creates those tools and makes them available online while simultaneously leveling the playing field for musicians, making it less about who you know and more about pure talent, skill, and market appeal.

Music Xray's Fan Targeting campaigns guarantee potential fans listen, which isn't always a given in today's "attention economy" If they hear compelling music they convert from potential fans to direct fans and artists learn which of their songs convert new fans quickly and cost-effectively.

Website: MusicXray.com

National Association of Recording Industry Professionals

The National Association of Recording Industry Professionals(NARIP) promotes education, career advancement and good will among record executives. Established in 1998 and based in Los Angeles, NARIP has chapters in New York, Atlanta, San Francisco, Phoenix, Houston, Las Vegas, Philadelphia and London, and reaches 100,000+ people in the music industries globally. Headquartered in Los Angeles, the entertainment capital of the world, NARIP has chapters in New York, San Francisco, Phoenix, Las Vegas, Houston, Atlanta, Philadelphia and London.

Website: NARIP.com

Membership Information: http://www.narip.com/?page_id=13923

Nimbit

Nimbit, founded in 2002, is the music industry's premier direct-to-fan platform for today's music business. Nimbit provides the easiest solution for self-managed artists, managers, and emerging labels to grow and engage their fanbase, and sell their music and merch online. Thousands of artists use Nimbit every day to get fans excited and to give them more ways to support their careers.

Nimbit has also partnered with ASCAP since 2004, to offer "ASCAP Web Tools" for ASCAP members. Other partners include Jango to offer the "Nimbit Store for Jango" which allows artists to sell music and merchandise directly to new fans who have discovered their music through airplay on Jango internet radio as well as PledgeMusic to create "PledgeStore" which was designed to give PledgeMusic artists the ability sell direct to fans and generate additional funding after their fundraising campaign has ended.

Website: Nimbit.com

Membership Information: <https://members.nimbit.com/signup>

Northern Territory Music Industry Association – Member of Australian Coalition

MusicNT exists to support the growth and development of original contemporary music in the Northern Territory. MusicNT Inc. is the non-profit member based music organisation for the Northern Territory representing, developing and servicing the Territory's original music industry.

As the lead contemporary music development body, MusicNT has a focus on developing and strengthening networks with national music industry representatives as well as strengthening links with regional centres throughout the Territory.

Community Activities: <http://www.musicnt.com.au/about/who-we-are/>

NUE Agency

NUE Agency is an international boutique talent agency which represents music talent. NUE Agency specializes in concerts, tours, endorsements, and content. The NUE Agency sits at the center of music, brands and technology, leading the way into the next chapter of the music industry.

NUE Agency is the parent company of aveNUE Music Partnerships, an operation designed to help distribute and promote artists through brand partnerships that are on the cusp of breaking through in the music industry but want to stay away from potentially restrictive major label deals. NUE Agency also operates SoundCtrl aimed at covering developments in music and technology.

In 2013, INC Magazine awarded NUE Agency the 267th position on INC Magazine's 500 list of the fastest growing privately owned companies in the United States. The NUE Agency was also recently named to INC 500's list as the 3rd fastest growing media company in the United States.

NUE brings together artists and the world's leading brands, such as Spotify, Google Play, Pandora, Myspace, Virgin, Microsoft, Samsung and others.

Establishment Date: 2006

Website: <http://www.nueagency.com>

OneRPM

ONErpm (ONE Revolution People's Music) provides digital distribution and fan engagement for the global music community. It was founded in 2010 by Emmanuel Zunz and Matthew Olim, the latter one of the co-founders of CDNow, a pioneer in digital music which was acquired by Amazon in 2000.

The company offers such services as direct-to-fan sales, distribution to multiple web outlets including iTunes, Spotify, Amazon MP3, Rdio, Google Music, Deezer, eMusic, YouTube, music sharing widgets and an app that allows artist to stream and sell music on Facebook.

With offices in New York and São Paulo, the company distributes music from artists like Metric, Tame Impala, and important Brazilian artists like Erasmo Carlos, BNegão, Chitãozinho & Xororó, Emicida, and Leoni. The OneRPM community has over 15,000 artists around the world and over 60,000 fans registered on the site.

Website: <https://www.onerpm.com>

Artist/Label/Fan signup: https://www.onerpm.com/account/form_signup

Youtube Creator signup: https://www.onerpm.com/account/form_signup?name=&acc_type=youtube

The Orchard

The Orchard was founded in 1997 to foster independence and creativity in the music industry. The Orchard is a pioneering music and video distribution company operating in more than 25 global markets, provides an innovative and comprehensive sales and marketing platform for content owners. In 2004, the Orchard became the first independent distributor to hit one million paid downloads and streams.

With industry-leading technology and operations, The Orchard's creative, tailored approach streamlines its clients' business complexity while amplifying reach and revenue across hundreds of digital and mobile outlets around the world, as well as physical retailers in North America and Europe. In 2012, both The Orchard and IODA combined their businesses under The Orchard to create a new market leader in comprehensive digital distribution services.

Website: TheOrchard.com

OurStage

Ourstage.com is web and mobile-based music community offering free music streaming, discovery, and editorial content is made up of undiscovered artists interested in exposure, music lovers and industry professionals committed to bringing talent to the masses. It is owned and operated by OurStage Inc., headquartered in Chelmsford, Massachusetts. Founded in 2007, OurStage.com holds monthly sponsored competitions for artists to compete, win prizes, and publicize themselves.

OurStage.com's proprietary judging software allows its users to listen, judge and rank music artists. The site was originally developed as a crowdsourced way to hear new music and raise it up through the charts. OurStage allows streaming music for free to users through its web site or an iPhone app, with 40 styles of music including rock, pop, urban, and country music.

Local, regional, and national competitions award cash prizes or music industry opportunities to winners chosen through fan judging or by industry experts. Competitions have included Guitar Center's Your Next Record with Keith Urban, Drake's Thank Me Later Competition, the Lilith Local Talent Search as part of Lilith Fair 2010, and John Mayer's Side Stage Warfare Competition. OurStage past and present partners and sponsors include Intel and Cakewalk, AOL, CMJ Network, MTV and Clear Channel.

OurStage is quickly becoming the world's central platform for new music discovery and promotion. On OurStage, artists, fans and industry professionals come together to discover, judge, & enjoy the best new music and the best new artists online. OurStage has grown every quarter since going live in 2007 and currently has over 200,000 artists using our platform and 4.5million registered users.

Website: OurStage.com

Patchwork Music

Founded in 2007, Patchwork Music provides touring services for bands (Tour management, production, sound engineers, backline crew, drivers), is a band management and booking agency and provides programming and production services for music festivals and events.

Patchwork Music clients past and present include:

- Glastonbury Festivals Ltd
- Cambridge City Council
- Music Beyond Mainstream
- Femi Kuti
- Brownswood Records
- Brahler ICS Ltd
- Temple Of Sound
- Creative Partnerships
- Takepart Arts
- Totally Sound Ltd
- Amp Fiddler
- Junction CDC Ltd
- The Roadmender, Northampton
- Cambridge Arts Theatre
- Da Lata
- South Hill Park Trust Ltd
- UCLES
- Cambridgeshire County Council
- The Eden Project
- ADeC
- Cambridge Folk Club
- Eagle Records
- Fenland Arts
- Imago Productions
- Cambridge Film and Television Production
- Oil Experts
- Harmony in the Community
- Liverpool Philharmonic Hall & Events Ltd
- Fun Da Mental
- Kyte
- Real World Records

Patchwork Music events past and present include:

- Glastonbury Festival
- Harwich Childrens Carnival
- Portsmouth International Festival of the Sea
- Strawberry Fair
- South Hill Park Out There Festival
- Shambala Festival
- Echo festival
- Ashton Court Festival

- Respect in the West
- Bristol Harbour Festival
- Cambridge Folk Festival
- Cambridge Fireworks display
- Trade Justice Lobby
- Make Poverty History march, Edinburgh
- Bath International and Jazz Festival
- TDK Cross Central
- Lodestar Festival
- Hope St Feast
- Liverpool Irish Festival
- Liverpool Arabic Arts Festival

Website: PatchworkMusic.co.uk

Planetary Group

Planetary Group is an artist development firm founded in 1996. Over the past 15 years Planetary has worked with a variety of musicians from all genres, signed and unsigned, self-released, indie and major labels.

Planetary helps create a solid foundation for new artists, and take all artists to new levels. The radio department structures a campaign that targets college radio, AAA, non-commercial, and commercial-specialty shows. The stations are solicited for airplay and feedback regarding the release. In addition, radio interviews and in-studio performances are coordinated in touring markets wherever possible. Planetary's radio and tour support can provide the necessary groundwork that would ensure advance exposure in music artists' pending tour markets.

In addition to airplay, increased public interest and awareness comes about through features, interviews, reviews, previews, and anything else that attracts people in the digital world. The digital marketing side of Planetary offers national campaigns for record releases, tour press to alert local media to shows, and a smaller tastemaker campaigns geared towards blogs. Planetary digital marketing focuses on online media exclusively, and at online & print with tour press. Planetary digital marketing provides a network for music to be heard via working relationships with writers, freelancers, bloggers, and site owners. Planetary strives to get music listened to, and then facilitates the writers' work by providing what they need to cover the music.

Planetary Design compliments these promotional efforts by creating everything an artist needs to build their brand. Simply put, the Planetary Group creates beautifully simple websites that embody their client's aesthetic built with a sturdy foundation of the latest web standards. With a strong focus on content distribution and social media integration, the Planetary Group implores the end user to engage in an interactive community wherein website content is shared and eventually spread to the world at large.

Website: PlanetaryOnTheWeb.com

PledgeMusic

PledgeMusic is global direct-to-fan platform that provides artists and labels with the tools needed to get fans to engage early. PledgeMusic has staff internationally in New York, Los Angeles, Boston, Nashville, London, and Germany. With an arsenal of tools including PledgeMusic's website, preordering system, iPhone app, email marketing, social media dashboard, data collection widgets, and more, artists and labels can let fans become partners in the creative process. PledgeMusic invites fans to go behind the scenes with one of a kind exclusives and bonus content.

Content creators retain 100% of all ownership rights, so PledgeMusic is able to operate as a standalone platform or work in conjunction with traditional record deals and marketing. In a nutshell, it's everything an artist or label needs to fund, pre-sell, sell, and release their music while connecting directly with fans.

Once a project is given the green-light, it can be linked to social networks (Facebook, Twitter, YouTube, etc.) and our app will track the project's progress, while fans can add badges to their own sites and pages. For direct-to-fan campaigns, PledgeMusic releases the funds in three payments (on funding, release, and fulfillment). For pre-order campaigns, we disburse money immediately when the campaign is released and fulfilled.

PledgeMusic also maintains partnerships with major players in the digital and physical music spheres, and provides numerous options to help record, produce, manufacture, market, and distribute your music, merchandise, and tickets. Finally, PledgeMusic provides artists the option to raise money for the charity of their choosing.

PledgeMusic offers two distinct options for campaigns:

1. A PledgeMusic direct-to-fan campaign offers all-or-nothing fundraising. This is our traditional campaign type, and allows fans to pledge without any transfer of money until a specific fundraising goal is met. This type of campaign is perfect for independent artists, and those wishing to raise money to record or set up an album release, tour, or video.
2. A PledgeMusic preorder campaign is similar to other e-commerce preorder campaigns, but bundles in all the communication and marketing tools that make PledgeMusic great. These tools allow artists to connect and market directly to their core fans, and spread the word beyond. For this type of campaign, fans are charged immediately upon pledging. This type of campaign is designed for labels and artists who have already completed a recording, and are looking for a strategic way to pre-sell and market it.

Membership information: https://www.pledgemusic.com/sign_up/artist (Artists) and http://www.pledgemusic.com/#session_sign_up Fan Funders)

Community activities: <http://www.pledgemusic.com/learn/artists>

Pleimo

Pleimo is an international music streaming platform which aggregates bands and music fans around the world. It offers a 360-degree platform for 250,000 artists to manage and promote their music. Music fans can also subscribe and listen to Pleimo's catalog of over 5,000,000 songs. Pleimo has offices in Brazil, United Kingdom, Philippines, Portugal and China.

Membership Information: <https://www.pleimo.com/plans/subscribe/artists> (artists) and <https://www.pleimo.com/plans> (fans)

Community activities: <https://www.pleimo.com/about>

Queensland Music Network – Member of the Australian Coalition

QMusic is Queensland's music industry development association, and is focused on promoting the artistic value, cultural worth and commercial potential of Queensland music.

In 1994, QMusic received its first round of funding, and has been running solidly since 1995.

QMusic has become first point of contact and interface for emerging artists and industry workers within the wider music industry. QMusic is an active voice for the Queensland music industry on a national and international level. QMusic is a member of AMIN (Australian Music Industry Network) which is a network of state based music organisations that provides a national voice for policy development and advocacy issues for the music industry.

Signature events such as BIGSOUND and the Queensland Music Awards promote networking and collaboration that contributes to building the profile of the Queensland music industry.

Situated in Brisbane's Fortitude Valley, Australia's only dedicated entertainment precinct, QMusic provides a physical and virtual base from which music industry professionals from all sectors and regions can establish networks, create partnerships and share the information that will drive the next generation of Australian music.

QMusic is incorporated under the Associations Incorporation Act and is governed by a management committee representing the diverse needs of the industry and the sector. The founding goals of the organisation still remain - to establish a state-wide music industry network for the sharing of knowledge and information.

QMusic acknowledges that Aboriginal and Torres Strait Islanders are the custodians of the land and recognise the disadvantage caused by colonisation and dispossession.

QMusic acknowledges the importance of music in Aboriginal and Torres Strait Islander cultures and the critical role it plays in the broader Australian music context and Australian culture overall.

QMusic is committed to building opportunities for Aboriginal and Torres Strait Islander artists and music businesses.

Vision

QMusic develops, services, and represents all sectors of Queensland music as a creative and economic powerhouse within the national and international arena.

Strategic Intent

QMusic is dedicated to building a dynamic environment that progresses a sustainable music industry and generates creative and economic returns to artists.

Values

- The cultural, economic and social importance of music
- Learning and innovation

- Partnerships
- Music and social diversity
- Knowledge and commitment of our people
- Professional practice
- Possibilities

Goals

1. Enhance industry capacity (service artists)
2. Expand Queensland music profile
3. Deliver signature events and build public participation
4. Increase internal capability

Establishment: 1994

Community Activities: <http://www.qmusic.com.au/index.cfm?contentID=625>

Membership information: <http://www.qmusic.com.au/?contentID=612>

Redeye Distribution

Redeye Distribution is an independent music distribution company founded in 1996 in Chapel Hill, North Carolina. In addition, Redeye has two in-house labels: Yep Roc Records and Eleven Thirty Records. Redeye has won the National Association of Recording Merchandisers (NARM) Distributor of the Year Award (Small Division) seven times (2000, 2002–2007) and were redesignated as a Medium Division distributor by NARM in 2008.

Based in Haw River, NC (near Raleigh/Durham/Chapel Hill), Redeye began in 1996 by focusing on the rich independent music of the southeast and providing the artists that made up the scene with a distribution option to give them access to all retail accounts located in their region. Since then, Redeye has charted a course of steady, sustainable growth by developing a strong physical and digital distribution network both nationally and internationally and providing a multitude of services to our partners.

Redeye's 5000-plus title catalog is representative of a wide range of the best independent music available. Regardless of genre, the unifying element of the catalog is an overall commitment to quality. Its network of international partners includes the finest retail partners from around the globe, touching every territory worldwide. They distribute music to chain stores such as Best Buy as well as every domestic one-stop distributor in the United States. Redeye is also a major distributor on the digital front, servicing all major DSPs such as iTunes, Spotify, YouTube and more.

Website: <http://www.redeyeusa.com/>

ReverbNation

ReverbNation, founded in 2006, is home to one of the **world's largest music communities**. ReverbNation provides over **3.66 million music industry professionals** — artists, managers, labels, venues, festivals/events — with powerful, easy-to-use technology to promote and prosper online.

ReverbNation's wide array of distribution and promotional solutions provide the hands-on tools and actionable insights that allow musicians and industry professionals to reach their goals in an increasingly complex music world. ReverbNation operates worldwide with customers on every continent. In fact, over 30 million visitors go to ReverbNation.com every month.

Website: [ReverbNation.com](http://www.reverbnation.com)

Membership Information: http://www.reverbnation.com/signup?signup_source=home

SF Music Tech

The SF MusicTech Summit brings together visionaries in the evolving music/business/technology ecosystem, along with the best and brightest developers, entrepreneurs, investors, service providers, journalists, musicians, and organizations who work with them at the convergence of culture and commerce. We meet to do business and discuss, in a proactive, conducive to dealmaking environment. The SF MusicTech Fund invests in early stage internet music and technology companies discovered at the SF MusicTech Summit.

Website: <http://sfmusictech.com>

SonicBids

Sonicbids, founded in 2001, enables artists to book gigs and market themselves online. It connects more than 400,000 artists with 30,000 promoters and brands from over 100 different countries and 100 million music fans. Additionally, the company's recently launched Social Music Marketing™ product suite enables brand marketers to reach and engage music fans and consumers using rich music-oriented content.

Sonicbids has been the launching pad for many of today's hottest artists and has many exclusive partnerships with premier events like South By Southwest (SXSW), Bonnaroo Music and Arts Festival, CMJ Music Marathon, Spain's Primavera Pro and Canada's North By Northeast (NXNE). Consumer brand customers include Renaissance Hotels, Anheuser Busch and Diesel Industry.

Website: SonicBids.com

Membership Information: <https://www.sonicbids.com/signup/>

Spoonz Music Group

Spoonz Music Group is one of the world's leading talent agency and booking, promotion and touring organizations for music. Its roster consists of the world's leading and most successful music artists. These artists include:

- 50Cent,
- Akon,
- Alicia Keys,
- Beyonce,
- Busta Rhymes,
- Chris Brown,
- Ciara,
- Drake,
- John Legend,
- Jay-Z,
- Kanye West,
- Jennifer Hudson,
- LL Cool J,
- Little Wayne,
- LMFAO,
- Ludacris,
- Method Man,
- Nas,
- Nelly,
- Ne Yo,
- Micky Minaj,
- Pitbull,
- R Kelly,
- Rihanna,
- Robin Thicke,
- Rick Ross,
- Snoop Dogg,
- T.I,
- T-Pain,
- Tyrese,
- Usher
- And many more.

Website: <http://www.spoonzmusicgroupinc.com/>

StoryAmp

Story Amp is the world's leading music community for music artists, music publicists and music journalists. It provides artists and publicists the opportunity to connect and network with over 7000 music journalists globally.

Website: <https://www.storyamp.com>

Artist Sign-up: <https://www.storyamp.com/artists#signup>

Music Journalist Sign-up: <https://www.storyamp.com/journalists#signup>

Sync Exchange

Sync Exchange is a global music licensing marketplace. Its company's core mission is to help musicians, rights holders, composers and music supervisors better connect.

Website: <http://syncexchange.com/>

Syndicate

The Syndicate is a 16-year-old, award-winning music marketing agency. The Syndicate is a 16-year-old, award-winning music and comedy marketing agency. Clients include Taco Bell, multiple Grammy award-winning artists and record labels. We've helped sell hundreds of millions of albums for acts such as Maroon 5, Daft Punk, The Killers, Kings of Leon and Pearl Jam. The Syndicate has strong relationships with over 6,500 media outlets including 500 college and commercial radio stations, 400 field marketing reps and hundreds of executives within every field of the entertainment business.

Website: <http://www.thesyn.com/>

Tommy Boy / New Music Seminar

Tommy Boy is an independent record label started in 1981 by Tom Silverman. The label is widely recognized for significant contribution to the development of hip hop music, dance music, and electronica.

Website: TommyBoy.com

The New Music Seminar (NMS) is the ultimate destination founded by Tom Silverman where artists, industry players, and companies are provided the knowledge, tools, and connections they need to succeed and build the New Music Business. The mission of the New Music Seminar is to grow a sustainable and better music business to allow creators the best opportunity to succeed. The NMS strives to enable more artists to achieve success and encourages new levels of investment in music and artists. In its 15-year run, the first series of seminars annually attracted more than 8,000 participants from 35 countries, and was considered one of the most influential Music Business Conferences in the World.

Website: <http://newmusicseminar.com>

Trigger Creative Conference

Trigger Creative Conference is a music industry event which takes place simultaneously with the Peace & Love-festival: a meeting place for Swedish and the world's biggest artist, branche elite and more than 40.000 happy festival visitors. Trigger works together with Swedish largest music festival – and takes place in the heart of the festival area. Trigger Creative Conference is Sweden's leading innovative conference for the music industry. Participants from all branches of the popular music community gather to share fresh and constructive thinking through discussions, debates and new working methods on how to help the future of the industry.

Website: Triggercc.com

TuneCore

TuneCore is the **world's leading digital distributor for online music and video**. Founded in 2005, TuneCore offers musicians and other rights-holders the opportunity to place their music into online retailers such as iTunes, GooglePlay, AmazonMP3, Zune Marketplace, Rhapsody, eMusic, Spotify, and others for sale. TuneCore distributes between 15,000 - 20,000 newly recorded releases a month, this is more music being distributed monthly than all the major labels combined in 100 years. Tunecore registers musicians' songs worldwide in over 60 countries and is affiliated with ASCAP, BMI and SESAC. Tunecore partnered with INDMUSIC, YouTube's largest independent music network, to monetize both music compositions and sound recordings for maximum YouTube earnings potential.

The TuneCore artist community has made over \$405.6 million in revenue and sold over 6.1 billion total downloads and streams, since TuneCore launched in 2006, **representing over 60% of all new music sales**. TuneCore is a partner with hundreds of thousands of artists and labels, ranging from indie artists to high profile performers, including: Drake, The Civil Wars, Sonic Youth, Beck, Jay-Z, Aretha Franklin, Keith Richards, Blood On The Dance Floor, Public Enemy, Willie Nelson, They Might Be Giants, Donna Summer, MGM Studios, Moby, Girl Talk & Brian Eno. This market share continues to grow significantly quarterly. In addition, many of TuneCore's artist customers dominate the iTunes, Amazon and other music retail charts outselling and out earning well over 98% of major label releases.

Website: TuneCore.com

Virtual Label

Virtual Label provides direct access to all the major and secondary worldwide digital service providers. It provides significant value for its artists and labels by not only identifying new services but by actively marketing to existing services and being at the forefront of all emerging services worldwide.

Virtual Label is successful in securing significant visibility for new releases and catalog on iTunes, Amazon MP3, eMusic, Spotify, Rdio, Google Play and more. Virtual Label utilizes a proprietary content management system to quickly and easily deliver over 30,000 songs from its catalog worldwide to new and existing services.

Virtual Label has digital partnerships with

- 24-7
- 7digital
- 88tc88 (China)
- Amazon MP3 (NA, EU and Japan)
- Amoeba Music
- Archambault/Zik (Canada)
- AT&T
- Beatport
- Bleep
- Boomkat
- Createspace (Amazon's Disc On Demand)
- Deezer
- Dub Store Inc. (Japan)
- elWatusi
- eMusic (North America and Europe)
- Google Play
- Gracenote
- HMV (Canada)
- iMesh
- iMusica (Brazil)
- iTunes (Worldwide)
- JB Hi-Fi (Australia)
- Juno
- MOG
- Music Unlimited
- Muve Music
- ONErpm
- Pandora
- Psonar
- Pulselocker
- Pure Tracks (Canada)
- Qobuz (France)

- Rara
- Rdio
- Rhapsody
- Satellite
- Shazam
- Slacker
- Songza
- Spotify
- Vevo
- Virgin Mega (France)
- Wasabeat (Japan)
- WiMP
- WDA (ringtones and mobile)
- Xbox
- YouTube
- Zik
- Zvooq (Russia)

Establishment Date: 2000

Website: <http://virtuallabel.biz/sections/services>

Western Australian Music Industry Association (WAM) – Member of the Australian Coalition

Committed to championing Western Australia's music industry since 1987, WAM (West Australian Music) is the peak music body responsible for supporting, nurturing and growing all forms of contemporary music in WA. WAM champions all forms and levels of WA music, locally, nationally and internationally.

Establishment: 1997

Community Activities: <http://wam.org.au/what-we-do/>

Membership information: <http://wam.org.au/membership/>

William Morris Endeavor (WME)

William Morris Endeavor (also known as WME) is one of the world's largest music talent agencies with offices in Beverly Hills, New York City, London, Miami, Nashville, and Dallas. The company was founded in April 2009, after the merger of the William Morris Agency and the Endeavor Agency.

The WME talent agency represents leading music artists including:

1-800-Dinosaur
2 Chainz
2ManyDJs
A\$AP Rocky
A Perfect Circle
Adele
Adventure Club
AFI
Afrojack
The Airborne Toxic Event
Al Green
Alanis Morissette
Alberta Cross
Alesso
Alex Clare
Alexa Goddard
Alicia Keys
All Time Low
Allie X
Aloe Blacc
Amos Lee
Andrew Combs
Angel
Angus & Julia Stone
Angus Stone
Annie
Annie Eve
Antemasque
Antony & the Johnsons
Aretha Franklin
Ásgeir
Astro
Atmosphere
Autre Ne Veut
Axwell
The B-52s
BabyMetal
Backstreet Boys
Bag Raiders
Banks
Barry Manilow
Basement Jaxx

Beady Eye
Beastie Boys
Bebe Rexha
Ben Lee
Benjamin Booker
Beth Hart
Beth Orton
Better Than Ezra
Biffy Clyro
Big Business
Big Talk
Billy Idol
The Birds of Satan
Birdy
Biting Elbows
Bjork
Black Pistol Fire
Blaq Audio
Blue October
Bo Ningen
Boa
Booka Shade
Boots
Borgore
Bosnian Rainbows
Brad Caleb Kane
Brandon Flowers
The Bravery
Bret Michaels
Brian Littrell
Brian Setzer
Bridget Everett
Brody Dalle
Broken Bells
Bruno Mars
Bryan Ferry
The Bryan Ferry Orchestra
The Bunny Gang
Burns
Buzzcocks
Caifanes
Calvin Harris
Carly Rae Jepsen
Cat Power
CeeLo
The Chemical Brothers
Cher Lloyd
Chevy Metal
Children's Hospital
Chris Botti
Chris Cornell

Chris Isaak
Chris Lake
Chris Malinchak
Christina Perri
Chuckie
Ciara
Clare Maguire
Coasts
Coheed and Cambria
Colbie Caillat
Collective Soul
Colony House
Conway
The Courteeners
Crash
Crass Mammoth
Crowded House
The Crystal Method
Curtis Harding
Damian Jr. Gong Marley
Danger Mouse
Daniel Rossen
Dappy
Dark Rooms
Dead Can Dance
Deadmau5
The Dead Weather
Death Grips
Department of Eagles
Depeche Mode
Devotchka
Die Antwoord
Dinosaur Jr.
Divine Fits
DJ Shadow
DJ Snoopadelic
Dot Hacker
Down
Drake
Duffy
Duran Duran
Eagles of Death Metal
EarlWolf
Echo & the Bunnymen
Ed Kowalczyk
Ed Roland
Eddie Vedder
Eden XO
Editors
Edward Sharpe & The Magnetic Zeros
Elbow

Elijah Blake
Ellie Goulding
Emilia Mitiku
Empire of the Sun
Eric Prydz
Erik Hassle
Erol Alkan
Esperanza Spalding
Eva Shaw
Eva Simons
The Expendables
FKA Twigs
The Faint
Faith No More
Family Reunion
Fantomas
Fatboy Slim
Feed Me
Feeder
The Fire Theft
Firekid
Fistful of Mercy
Fitz And The Tantrums
Five Finger Death Punch
The Flaming Lips
Flogging Molly
Fly Golden Eagle
Foo Fighters
Foster the People
Frank Ocean
The Fratellis
Frontier Ruckus
Fuck Buttons
Galantis
Gareth Emery
Gary Barlow
Gary Clark Jr.
George Ezra
The Ghost of a Saber Tooth Tiger
Gin Blossoms
Glasser
Glasvegas
Gnarls Barkley
Godsmack
Gogol Bordello
Goldfrapp
Goo Goo Dolls
Grace Mitchell
Greyson Chance
Grimes
Grizzly Bear

Groove Armada
Hard-Fi
Heitor Pereira
hitRECORD
The Hives
HOLYCHILD
Holy Ghost!
How To Destroy Angels
Hozier
Hugh Jackman
Hugh Laurie
Hurts
Ice Cube
Idris Elba Presents 7 Wallace
Iration
J. Roddy Walston & The Business
Jack White
Jacques Lu Cont
Jake Bugg
James
James Bay
James Blake
James Lavelle
James Murphy
Jane's Addiction
Janet Jackson
Jazmine Sullivan
Jeff The Brotherhood
Jeremy Enigk
Jesse Kinch
Jimmy Cliff
Joe Banfi
John C. Reilly
John Grant
John Legend
John Rzeznik
Johnny Marr
Jojo
Jon Batiste And Stay Human
Joseph Gordon-Levitt
Josh Groban
Juanes
Judith Hill
Julia Stone
Julian Marley & The Uprising
Just A Gent
Justin Timberlake
Katharine McPhee
KC & The Sunshine Band
K'Naan
Karmin

Kasabian
Kaskade
Kat Edmonson
Kat Graham
Katey Sagal & The Forest Rangers
Katy Tiz
Kenny Wayne Shepherd Band
Keziah Jones
Kid Cudi
Kiesza
The Killers
Kimbra
Kina Grannis
The Knocks
Kopecky
Kyp Malone
Lady Gaga
Lapsley
Laura Marling
Le Butcherettes
Leftfield
Leighton Meester
Les Rythmes Digitales
Lewis Watson
Lil Dicky
Lindsey Stirling
The Little Willies feat. Norah Jones
LL Cool J
LMFAO
The Lonely Biscuits
Logic
Louis XIV
LP
Luis Miguel
Lynyrd Skynyrd
M.I.A.
Madcon
Madisen Ward and The Mama Bear
Madness
Mandy Moore
Mansionair
Mark Knopfler
Mark Lanegan
The Mars Volta
Massive Attack
Matt Morris
Matthew Koma
Max Schneider
Maximo Park
Maximum Balloon
Maxwell

MckNasty
Meg Myers
Megan Nicole
Melody Gardot
Melvins
Mercury Rev
The Mercy Beat
Mew
Michael Kiwanuka
Michael Smith
Michael Woods
Michelle Branch
Miguel
Miike Snow
Mike Scott
Mike Tompkins
Milow
Mini Mansions
Minus The Bear
Miranda Cosgrove
Moderat
Modestep
Mogwai
Mondo Cane
Moon Taxi
Morcheeba
Mord Fustang
Morrissey
Motion City Soundtrack
MOVEMENT
Mr. Bungle
Murder City Devils
Museum of Love
My Crazy Girlfriend
Mystery Skulls
N.E.R.D.
Nas
Neil Diamond
Nero
Nervo
Night Ranger
Nico & Vinz
Nine Inch Nails
NONONO
Norah Jones
Nostalgia
Odd Future
The Olms
One Day As A Lion
Orbital
The Orwells

Outkast
P.O.D.
Palms
Paolo Nutini
Parachute
Paris Hilton
Passion Pit
Pat Benatar and Neil Giraldo
Patrick Wolf
Patti LaBelle
Paul Kalkbrenner
Paul Reubens
Pauly D
Pearl Jam
Peeping Tom
Pepper
Pet Shop Boys
Pete Tong
Pete Yorn
Peter Frampton
Peter Gabriel
Pharrell Williams
Philip H. Anselmo & The Illegals
Pixies
Polarsets
Porcelain Black
Preservation Hall Jazz Band
Primus
Princess
Priscilla Ahn
The Prodigy
Psy
Public Access T.V.
Pujol
Puscifer
Puss N Boots
Queens of the Stone Age
Quicksand
R3hab
The Raconteurs
Rage Against The Machine
Rain Machine
Ratking
Red Hot Chili Peppers
Redfoo
Refused
Rihanna
Rival Schools
The Robert Cray Band
Robert DeLong
Robert Rodriguez's Chingon Band

Robin Guthrie
Roger Hodgson: The Voice of Supertramp
Roger Sanchez
Roger Waters
Room 94
Roxy Music
Royal Blood
Rozzi Crane
Ruen Brothers
Russell Crowe and the Ordinary Fear of God
Ryuichi Sakamoto
Sam Romans
Sam Smith
Saul Hernandez
Savoy
Scars On Broadway
Scuba
Sean Lennon
Sean Paul
Sebastian Ingrosso
Selena Gomez
Serj Tankian
Seth McFarlane
Seth Troxler
Sex Pistols
Shamir
Shane Harper
Shermanology
Sheryl Crow
Shinedown
The Shins
Shpongle
Sick Puppies
Sidney Samson
Sister Hazel
Skye
Slash
Sleepwave
Sleigh Bells
Slint
SM Town Live
Snoop Dogg
Snoop Lion
Sol Cat
Sons of Fathers
Soulsavers
Soulwax
Sound City Players
Soundgarden
Spookyland
Spoon

St. Lucia
Star Wars: In Concert
Stars in Stereo
Steel Pulse
Stephen "Ragga" Marley
Steve Aoki
Steve Earle
Steve Martin
Stray Cats
Sugar Ray
Sully Erna
Sunny Day Real Estate
Sunset Sons
Swedish House Mafia
Switchfoot
Syd Arthur
System of a Down
Takaya
Tamar Braxton
Taylor Hawkins and the- Coattail Riders
Teachers
The Temper Trap (South America)
Tenacious D
Tenterhook
The Rides
Them Crooked Vultures
Thenewno2
Thievery Corporation
Timo Maas
Tokio Hotel
Tom Waits
Tom Petty & The Heartbreakers
Tom Staar
Tomahawk
Tool
Toots & The Maytals
Trans-Siberian Orchestra
Trentemoller
Trent Reznor
Tres MTs
Trombone Shorty & Orleans Avenue
TV on the Radio
TVXQ!
Tyler The Creator
Tyler Ward
Underworld
Usher
Vicky Cryer
The Vines
Wale
Watch the Duck

The Waterboys
The Weeknd
Weezer
Weird Al Yankovic
Whinnie Williams
The Whip
The White Buffalo
The Whitest Boy Alive
Wolfmother
X Japan
XTRMST
Yanni
Yoshiki
The Young Evils
Yusuf/Cat Stevens
Zane Lamprey
Zane Lowe
Zara Larsson
Zebra Katz
Zella Day
Zero 7
Zhu
Ziggy Marley
And others.

Establishment: 2009

Website: <http://www.wmeentertainment.com>

Music artist roster: <http://www.wmeentertainment.com/0/cta/music/>

World Independent Network (WIN)

The Worldwide Independent Music Industry Network (WIN) supports independent music trade associations globally. WIN is a global forum that represents the independent music industry globally. It was launched in 2006 in response to business, creative and market access issues faced by the independent sector everywhere. For independent music companies and their national trade associations worldwide, WIN is a collective voice. It also acts as an advocate, instigator and facilitator for its membership.

WIN exists to support the independent music community through interaction with representative trade organisations and groups, and working directly with international music industry bodies on issues of global significance.

For independent music companies and their national trade associations worldwide, WIN is a collective voice and platform. When appropriate it also acts as an advocate, instigator and facilitator for its continually growing membership. WIN is also a focal point for collecting and sharing knowledge about the indie sector at national and international levels. WIN takes its direction from the WIN Council of leading independent music company heads from all the key markets around the world.

WIN's membership stretches across every continent, with trade associations in all the well-developed legitimate music markets taking a particularly active role – including AIM (UK), A2IM (USA), AIR (Australia), CIMA (Canada), VUT (Germany), IMNZ (New Zealand), AIRCO (South Africa), UFI (Spain); APROFIP (Peru); ABMI (Brazil) – and Impala representing the whole of Europe.

WIN's priorities are set by the global membership, and included the creation of Merlin, the world's first independent global new media rights licensing agency.

Some key issues on WIN's agenda include:

- Monitoring the policies and effectiveness of collective rights management and licensing organisations for independent rights holders
- Working directly with collecting societies to ensure independent rights holders' interests are properly represented internationally
- Providing legal and commercial support to independent trade associations
- Development of independent trade associations and representative groups in countries where they do not yet exist
- Supporting member trade associations in national copyright, legislative and related issues
- Future protection and development of independent music companies in a rapidly changing market.

WIN members include:

- American Association of Independent Music (USA)
- Associacao Brasileira da Musica Independente (Brazil)
- Association Quebecoise de l'industrie du disque, du spectacle et de la video (Quebec)
- Peruvian Association of Independent Phonographic Producers (Peru)
- Association of Independent Music (UK)

- Australian Independent Record Labels Association (Australia)
- South African Association of Independent Record Companies (South Africa) -
- Associao de Musicos Artistas e Editoras Independentes (Portugal)
- Belgian Independent Music Association (Belgium)
- Association for French Record Companies (France)
- Canadian Independent Music Association (Canada)
- Danish Independent Record Association (Denmark)
- Federation of Music Producers Japan (Japan)
- Association for Norwegian Record Companies (Norway)
- Independent Music Coppanies Association (Europe)
- Independent Music New Zealand (New Zealand)
- Finnish indie labels and producers association (Finland)
- Independent Label Council of Japan (Japan)
- Record Labels Industry Association of Korea (South Korea)
- Svenska Oberoende Musikproducenter (Sweden)
- Stichting onafhankelijke muziek producenten (Netherlands)
- Union Fonografica Independiente (Spain)
- Union des Producteurs Phonographiques Francais Independants (France)
- Austrian Association of Independent Music (Austria)
- German Association of Independent Music Companies (Germany)

Website: <http://winformusic.org>

Membership Information: <http://winformusic.org/win-members/>

YouLicense

YouLicense is an online music licensing marketplace. YouLicense's platform enables artists and those seeking musical content to conduct business directly with one another in a safe and secure environment. Its unique search engine and standardized contracts allow for a quick and easy process.

YouLicense provides licensing for independent artists, labels, publishers and other content owners for music, film, television, advertising, and video games. Additionally, YouLicense aims to lead the global music industry in developing and monetizing the emerging field of long-tail music licensing, consisting of "media pro-sumers" (producer consumers) seeking music licenses for a range of digital and non-commercial usages such as wedding DVDs, live events, in-store music, photo slideshows, videos, presentations and many other uses.

YouLicense provides an open online licensing marketplace for independent artists and companies, including record labels and publishers. YouLicense currently hosts over 20,000 music licensing stores, and 350,000 music recordings.

YouLicense provides a marketplace to license music for Film & Television, Advertising Campaigns, Music on Hold, Mobile Phone Content, Web Content and Audio Projects.

The world of music licensing is known to be complex, exclusive and expensive. It is often the case that those seeking to license music have great difficulty obtaining what they need and that only a small percentage of artists and composers have the means to offer their music for licensing.

The aim of YouLicense is to break down these limitations and simplify the process.

YouLicense is non-exclusive and welcomes anyone with musical content to upload music and offer licenses for sale. This allows for a large range of musical content; from ringtones to sheet music to songs and beats; and is combined with a unique search engine to increase the chances of finding the much needed musical content.

YouLicense makes music license and copyright trade a simpler and more direct process, offering a service which is inexpensive and secure.

Establishment Date: 2007

Website: <http://www.youlicense.com/About.aspx>

Appendix C

MCMO Application &
Eligibility Requirements



COMMUNITY APPLICATION: .MUSIC ACCREDITATION FOR MUSIC COMMUNITY MEMBER ORGANIZATIONS (MCMOs)

<p>.music MCMO Application Information</p> <p>The global music Community is defined as a “strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music.” Priority MCMO Launch Phase .music registrations are only restricted to members of .music-accredited MCMOs.</p>	<p>Questions: community@music.us</p> <p>For DotMusic Use Only: <input type="checkbox"/> Accepted <input type="checkbox"/> Rejected</p>
<p>NOTE: This Application Form is developed in A4 size and available in both PDF and fillable DOC formats. Please scale to print on Letter size paper if necessary.</p>	
<p>Hard Copy Submission: .MUSIC™ (DotMusic™) 950 S. Flower St #1404 Los Angeles, CA 90015 United States</p>	<p>Email Submission: community@music.us</p> <p>Applicant MUST include the words: “.music Community MCMO” in the Subject of the Email.</p>
<p>Applicants are reminded that you MUST accept and agree to be bound by the Terms and Conditions upon the submission of your Application to DotMusic. Applications that do not comply with the requirements to become an MCMO and be part of the .MUSIC Community will be disqualified at the sole discretion of DotMusic per its .MUSIC Application’s policies.</p>	

1.0	MusicCommunityMemberOrganization (MCMO) Application Form for .music Community
1.1	<p>Please indicate your organization's name</p> <div style="border: 1px solid black; height: 40px; width: 100%;"></div>
1.2	<p>Please provide details about your organizations's music community-related activities</p> <div style="border: 1px solid black; height: 100px; width: 100%; padding: 5px;"> <p>Website:</p> <p>Establishment Date:</p> <p>Activities:</p> </div>
1.3	<p>Please provide details why and how you qualify as a .MUSIC-Accredited Music Community Member Organization</p> <div style="border: 1px solid black; height: 150px; width: 100%;"></div>

2.0 .MUSIC-Accreditation Requirements for a Music Community Member Organization (MCMO)

2.1 Does your music organization fulfill the following .MUSIC Accreditation Requirements for MCMOs?

1. Clear delineation: The Community organization must have clear and straightforward membership and the requisite awareness and recognition from those members. The following non-exhaustive list denotes elements of straightforward membership definitions: fees, skill and/or accreditation-requirements, privileges or benefits entitled to members, certifications aligned with community goals etc
2. Organized: The Community organization must administer its members with documented evidence of community activities
3. Community organization must relate to music in a non-tangential or non-peripheral manner.
4. Membership aligns with the Nexus of the Community and the String, which is explicitly relevant to music. Any tangential or implicit associations with the Nexus of the Community and the String will not be regarded as a delineated membership since it would be considered unclear, dispersed or unbound. Such an unclear, dispersed or unbound tangential relationship would not constitute a qualifying membership of an accredited MCMO and would be ineligible for registration.
5. Community organization activities are aligned with the .MUSIC Mission and Purpose.
6. Membership is of non-negligible size.
7. Membership geographic dispersion is either international or national (i.e. organizations with merely local memberships do not qualify).
8. Forward-looking longevity: Membership pursuits are of a lasting, non-transient nature (i.e. will continue to exist in the future).
9. Membership activities must be involved in the legal production and/or the distribution and/or the promotion of music (i.e. related to music).
10. The Community organization's functions must legally comply with the string's regulated sector in relation to copyright and clearly abide to the sector's clearly, delineated systems to ensure fair compensation and proper allocation of royalties to Community rights holders.

YES:

2.2 What is your organization's Mission Statement?

3.0 Applicant Information

3.1 Primary Contact

Position:		Title: <input type="checkbox"/> Mr. <input type="checkbox"/> Ms. <input type="checkbox"/> Other:	
First Name:		Middle Name / Initial:	
Last Name:			
Principal Address:			
Email:		Mobile:	
Telephone:		Facsimile:	

3.2 Secondary Contact (OPTIONAL)

Position:		Title: <input type="checkbox"/> Mr. <input type="checkbox"/> Ms. <input type="checkbox"/> Other:	
First Name:		Middle Name / Initial:	
Last Name:			
Principal Address:			
Email:		Mobile:	
Telephone:		Facsimile:	

3.3 .music Reseller Interest

Check box below if you are interested in becoming a .music reseller under an ICANN-Accredited Registrar

Reseller:	
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Please provide other relevant references to support your qualifications:

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4.0 Terms and Conditions

Acknowledgement and Acceptance of Terms and Conditions

The terms ".MUSIC" and "DotMusic herein refer to DotMusic Limited, the community applicant for the .MUSIC gTLD.

DotMusic is the global registry community applicant for the .MUSIC top level domain. Upon successful delegation of .MUSIC after contention resolution, DotMusic will enter into an agreement with the Internet Corporation for Assigned Names and Numbers ("ICANN") as the Registry Operator for the .MUSIC" community-based top-level domain. DotMusic Limited is incorporated in Cyprus.

Under DotMusic's agreement with ICANN, DotMusic's delegated authority includes creating policies and procedures to ensure Eligibility criteria are met by registrants. The MCMO domain allocation method is designed to allocate domain names based on Eligibility criteria which mandate that registrations during the MCMO Launch Phase are restricted to only Community members of MCMOs.

The terms "Applicant" or "MCMO Applicant" as used herein refer to all music entities who have submitted an Application to us for consideration to become a .MUSIC-accredited Music Community Member Organization (MCMO).

DotMusic's MCMO Eligibility criteria, subject to the following Terms and Conditions, may be updated and revised by us from time to time by posting the revised version at the DotMusic's Websites if required to meet our Application's requirements.

You accept and agree to be bound by the Terms and Conditions upon your submission of your Application to us. If you have any questions about the Terms and Conditions, or about the MCMO Application, please contact us at community@music.us

I hereby accept and agree to be bound by the Terms and Conditions upon the submission of this MCMO Application to DotMusic.

You must check the above box to acknowledge and accept these Terms and Conditions to complete this Application Form.

5.0 Disclaimer of Liability

Disclaimer of Liability and Indemnity

In no event shall DotMusic be liable for any direct, indirect, incidental, special, consequential, or exemplary damages resulting from or relating to the Community MCMO Application nor shall DotMusic be liable for the cost of procurement of substitute services.

Without limiting the foregoing, DotMusic expressly disclaims any liability resulting from: the conduct of or Applicant's participation in the Application process; data non-delivery between the Applicant and DotMusic; processing and/or consideration of Applicant's Proposal; ruling of a court or tribunal from competent jurisdictions; errors, omissions or misstatements; and/or natural or unnatural events beyond DotMusic's control.

Indemnity

The Applicant agrees to indemnify, to the maximum extent permitted by law, defend and hold harmless DotMusic and its directors, officers, employees and agents from and against any and all claims, damages, liabilities, costs and expenses, including reasonable legal fees and expenses, arising out of or relating to the Applicant's Community MCMO Application.

Arbitration

Any claim arising out of or relating to the Community MCMO process shall be resolved through Arbitration with the National Arbitration Forum (NAF).

6.0 Applicant's Certification

By signing below, the Applicant's .MUSIC-Accreditation Application Form shall be deemed an express representation and certification by the Applicant that:

- The Applicant has read and understands the Terms and Conditions of MCMO Eligibility, investigated all aspects of the Terms and Conditions, and is aware of the applicable facts pertaining to the MCMO Application, its procedures, and its requirements;
- The Applicant has read and understands the Application and the Application Form and investigated all aspects of the Application, and is aware of the applicable facts pertaining to the Application, its representations, procedures, and its requirements;
- All information and representations provided by the Applicant to DotMusic, including all information and representations set forth in the Application, are current, complete, reliable, and accurate;
- The Applicant will update its Application in the event that it discovers any errors or that material changes

6.0 Applicant's Certification

occur affecting the completeness, reliability or accuracy of information contained within;

- The Applicant acknowledges and agrees to all terms, conditions, and requirements contained in these Terms and Conditions and the Application Form;
- The Applicant is able to deliver the services and products as specified in the Application; and,
- The Applicant understands and acknowledges that, if its Application is approved and opts to become a reseller, it must agree to and sign an approved ICANN-accredited Reseller Contract before DotMusic will advance the Applicant to be an authorized reseller
- The Applicant understands and acknowledges that it will not be able to transfer the MCMO qualification to a third-party without the expressed written consent of DotMusic.

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Authorized By (Name):		Position:	
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Organization's Name:	
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Signature:	Date:
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<p>X</p>	<p>(DD/MM/YYYY)</p>
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Appendix D

.music Globally Protected Marks List ("GPML")*

*The .music GPML is current as of 2012 and subject to change as more eligible famous artists and music brands qualify for GPML inclusion.



Music Globally Protected Marks List (GPML)

Music Brands

&

Music Artists

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GLOBALLY PROTECTED MARKS LIST (GPML) - MUSIC ARTISTS

DOTMUSIC (.MUSIC)

? and the Mysterians
10 Years
10,000 Maniacs
10cc
12 Stones
13th Floor Elevators
1910 Fruitgum Co.
2 Unlimited
3 Doors Down
30 Seconds to Mars
311
38 Special
4 Non Blondes
5 Royales, The
50 Cent
54-40
5ive
5th Dimension, The
69 Eyes, The
77's, The
90 Day Men, The
98 Degrees
999
A House
Aaliyah
Abair, Mindi
ABBA
Abbott, Gregory
ABC
Abdul, Paula
Abigail's Ghost
Abraham
AC/DC
Accept
Ace
Ace of Base
Ace, Johnny
Acetone
Acoustic Alchemy
Acuff, Roy
Ad Infinitum
Ad Libs, The
Adams, Bryan
Adams, Ryan

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criteria is met at community@music.us if you would like your artist name of brand
name to be included in the DotMusic GPML

Adderly, Cannonball
Addrisi Brothers, The
Adele
Adkins, Trace
Aeolia
Aerosmith
Afghan Whigs
AFI
Afrika Bambaataa
After 7
After Midnight Project
After the Fire
Against Me
Agalloch
Agents of Good Roots
Aguilera, Christina
a-ha
Aiken, Clay
Air
Air Supply
Airborne Toxic Event, The
Airplay
Akens, Jewel
Akon
Al B. Sure
Alabama
Alaimo, Steve
Alarm, The
Albert, Morris
Albright, Gerald
Alexander, Arthur
Alias
Alice in Chains
Alien Ant Farm
Aliens, The
Alkaline Trio
All About Eve
All Saints
All Time Low
All-4-One
All-American Rejects
Allan, Gary
Allen, Kris
Allen, Lily
Allman Brothers Band, The
Almond, Marc
Almost Famous

Almost, The
Alpert, Herb & the Tijuana Brass
Alphaville
Alter Bridge
Aluminum Group
Aly & AJ
Amazing Rhythm Aces
Amber
Amboy Dukes
Ambrosia
America
American Breed, The
American Hi-Fi
American Music Club
Ames Brothers, The
Ames, Ed
Amethystium
Amorphis
Amos, Tori
Amulet
Anabret
Anastacia
Anastasio, Trey
Anathema
Anberlin
Anderson, Bill
Anderson, Carl
Anderson, Laurie
Anderson, Leroy
Anderson, Lynn
Andrews Sisters, The
Andrews, Julie
Andy, Horace
Anekdoten
Angel
Angels & Airwaves
Angels, The
Angels, The (II)
Anlagard
Animal Collective
Animal Liberation Orchestra
Animal Logic
Animal Nightlife
Animals, The
Animotion
Anka, Paul
Annette

Annuals
Ansell, Martin
Answer, The
Ant, Adam
Anthony, Marc
Anthrax
Anti-Nowhere League
Antony and the Johnsons
Aparo, Angie
Aphex Twin
Aphrodite's Child
Apocalyptica
Apple, Fiona
April Wine
Aqualung
Arc Angels, The
Arcade Fire
Arcadia
Archer, Tasmin
Archies, The
Archuleta, David
Arctic Monkeys
Arena
Argent
Aries9
Ark
Arkenstone, David
Armatrading, Joan
Armored Saint
Armstrong, Louis
Army of Anyone
Army of Me
Arnold, Eddy
Arrested Development
Art of Noise, The
Arthur, Joseph
As Tall as Lions
Ash
Ashanti
Ashcroft, Richard
Ashes Divide
Ashford & Simpson
Asia
Asleep at the Wheel
Associates
Association, The
Astley, Jon

Astley, Rick
At the Drive-In
ATC
Athenaeum
Atkins, Chet
Atlanta Rhythm Section
Atlantic Starr
Atlas Sound
Atomic Rooster
Atreyu
Attaway, Murray
Audience
Audioslave
Auerbach, Dan
Augie March
Aunt Betty's
Austin, Patti
Australian Crawl
Auteurs, The
Autograph
AutoVaughn
Autry, Gene
Autumn Shade
Autumns, The
Avalanches, The
Avalon, Frankie
Avenged Sevenfold
Avengers, The
Average White Band, The
Avett Brothers, The
Avi Buffalo
Axiom
Ayler, Albert
Ayreon
Aztec Camera
Aztec Two-Step
B.T. Express
B-52s, The
Babyface
Babys, The
Bachelors, The
Bachman, Randy
Bachman, Tal
Bachman-Turner Overdrive
Backstreet Boys
Bad Brains
Bad City

Bad Company
Bad English
Bad Religion
Badalamenti, Angelo
Badfinger
Badlands
Badloves
Badly Drawn Boy
Baerwald, David
Baez, Joan
Baha Men
Bailey, Philip
Bainbridge, Merrill
Baker, Anita
Baker, Chet
Baker, George Selection
Baker, LaVern
Balancing Act, The
Baldry, Long John
Balin, Marty
Ball, Kenny & His Jazzmen
Ballard, Hank & the Midnighters
Balloon Farm
Baltimora
Banana Splits, The
Bananarama
Band of Horses
Band of Skulls
Band Perry, The
Band, The
Bangles
Barcelona
Barclay James Harvest
Bare Wires
Bare, Bobby
Bareilles, Sara
Barenaked Ladies
Bar-Kays, The
Barlow, Gary
Barnes, Jimmy
Barrett, Syd
Barry, John Orchestra
Barry, Len
Barton, Eileen
Basement Jaxx
Basia
Basie, Count

Basil, Toni
Bass, Fontella
Basse, Shirley
Bat For Lashes
Battles
Bauhaus
Baxter, Les & His Orchestra
Bay City Rollers
Be Bop Deluxe
Beach Boys, The
Beach House
Beasley, Walter
Beastie Boys
Beat Farmers, The
Beat, The
Beatles, The
Beau Brummels, The
Beau, Toby
Beautiful South, The
Beauty Room, The
Beaver
Beck
Beck, Jeff
Beckley, Gerry
Bedingfield, Daniel
Bedingfield, Natasha
Bee Gees
Been, Michael
Bega, Lou
Beginning of the End
Belafonte, Harry
Belew, Adrian
Bell & James
Bell Biv DeVoe
Bell X1
Bell, Archie & the Drells
Bell, Chris
Bell, William
Bella
Bellamy Brothers
Belle and Sebastian
Belle, Regina
Bells, The
Belly
Beltram, Joey
Belvin, Jesse
Benatar, Pat

Benedictine Monks of Santo Domingo De Silos
Bennett, Tony
Benoit, David
Benson, Brendan
Benson, George
Bentall, Barney
Bentley, Dierks
Benton, Brook
Berigan, Bunny
Berlin
Bernard, Seth and Daisy May
Berry, Chuck
Berry, Dave
Besnard Lakes, The
Beta Band, The
Better Than Ezra
Beyonce
BH Surfers
Bice, Bo
Bieber, Justin
Big & Rich
Big Audio Dynamite
Big Bad Voodoo Daddy
Big Blue Ball
Big Bopper
Big Country
Big Head Todd & the Monsters
Big Pink, The
Big Star
Bilk, Mr. Acker
Biohazard
Birch, Diane
Bird, Andrew
Birds of Avalon
Bishop, Elvin
Bishop, Stephen
Bjork
Black Angels, The
Black Box
Black Country Communion
Black Crowes, The
Black Dub
Black Flag
Black Keys, The
Black Lab
Black Label Society
Black Light Burns

Black Mountain
Black Oak Arkansas
Black Rebel Motorcycle Club
Black Sabbath
Black Stone Cherry
Black, Clint
Black, Frank
Blackbyrds
Blackfield
Blackfoot
Blackmore's Night
Black's, Bill Combo
Blades, The
Blaine, Marcie
Blakey, Art
Bland, Billy
Bland, Bobby Blue
Blank Theory, The
Blasters, The
Blessid Union of Souls
Blige, Mary J.
Blind Faith
Blind Melon
Blind Pilot
Blink 182
Blitzen Trapper
Bloc Party
Block, Rory
Blondie
Blood, Sweat & Tears
Bloodrock
Bloodstone
Bloom, Bobby
Bloomfield, Michael
Blow Monkeys, The
Blow, Kurtis
Blue Cheer
Blue Mink
Blue Nile, The
Blue October
Blue Oyster Cult
Blue Rodeo
Blue Swede
Blues Image
Blues Magoos
Blues Project, The
Blues Traveler

Bluetones, The
Blunstone, Colin
Blunt, James
Blur
Boa, Phillip & the Voodoo Club
Boards of Canada
Bob & Earl
Bobaflex
Bobbettes, The
BoDeans, The
Bofill, Angela
Bogguss, Suzy
Bolshoi, The
Bolton, Michael
Bon Iver
Bon Jovi
Bon Jovi, Jon
Bonamassa, Joe
Bonds, Gary U.S.
Bonham, Tracy
Bonnie Prince Billy
Bonoff, Karla
Boo Radleys, The
Boo, Betty
Book of Love
Booker T. & the MG's
Boomtown Rats, The
Boone, Daniel
Boone, Debby
Boone, Pat
Boss Hog
Bostic, Earl
Boston
Botti, Chris
Bottle Rockets
Bourgeois Tagg
Bow Wow Wow
Bowersox, Crystal
Bowie, David
Bowling For Soup
Box of Frogs
Box Tops, The
Boy George
Boy Meets Girl
Boyce, Tommy
Boys Don't Cry
Boys Like Girls

Boyz II Men
Bozzio Levin Stevens
Brad
Brady, Paul
Bragg, Billy
Branch, Michelle
Brand New
Brand New Heavies
Brand X
Brandy
Branigan, Laura
Bratz
Brave Belt
Bravery, The
Braxton, Toni
Bread
Breakfast Club
Breaking Benjamin
Breathe
Brecker Brothers
Breeders, The
Bremers, Beverly
Brenda & the Tabulations
Brennan, Maire
Brenston, Jackie
Brewer & Shipley
Brewer, Teresa
Brick
Brickell, Edie & New Bohemians
Brickman, Jim
Bricolage
Bridges, Alicia
Bright Eyes
Brightman, Sarah
Briley, Martin
Brinsley Schwarz
Bristol, Johnny
British Sea Power
Britny Fox
Broken Bells
Broken Halo
Broken Social Scene
Broken West, The
Bromberg, David
Bronski Beat
Brooke, Jonatha
Brooklyn Bridge

Brooks & Dunn
Brooks, Garth
Brooks, Meredith
Brother Bones & His Shadows
Brother Cane
Brotherhood of Man, The
Brothers Four, The
Brothers Johnson, The
Broussard, Marc
Brown, Arthur
Brown, Bobby
Brown, Chris
Brown, James
Brown, Julie
Brown, Maxine
Brown, Peter
Brown, Ruth
Brown, Zac Band
Browne, Duncan
Browne, Jackson
Browns, The
Brownsville Station
Brubeck, Dave
Bruce, Jack
Bryant, Anita
Bryson, Peabo
BT
Buble, Michael
Buchanan, Roy
Buckcherry
Buckethead
Buckingham, Lindsey
Buckingham, The
Buckley, Jeff
Buckley, Tim
Bucks Fizz
Buckshot Lefonque
Buckwheat Zydeco
Budgie
Buffalo
Buffalo Springfield
Buffett, Jimmy
Buggles, The
Built to Spill
Bunton, Emma
Buoys
Burden Brothers

Burdon, Eric
Burke, Solomon
Burnett, T-Bone
Burnette, Johnny
Burnette, Rocky
Burning Hearts
Burning Spear
Burtnik, Glen
Bush
Bush, Kate
Bushwhack
Butcher, Jon
Butler, Jerry
Butler, John Trio
Butler, Jonathan
Butterfield, Paul Blues Band
Buzzcocks, The
Byrd, Tracy
Byrds, The
Byrne, David
C & C Music Factory
C.J. & Co.
Cabaret Voltaire
Cabrera, Ryan
Cactus
Cadillacs, The
Caedmon's Call
Cafferty, John & the Beaver Brown Band
Caillat, Colby
Cain, Tane
Cairo
Cake
Caldwell, Bobby
Cale, J.J.
Cale, John
Calexico
Call, The
Callier, Terry
Calling, The
Calloway
Calloway, Cab
Camel
Cameo
Camera Obscura
Camouflage
Campbell, Glen
Campbell, Tevin

Camper van Beethoven
Can
Candlebox
Canned Heat
Cannon, Ace
Cannon, Freddy
Canvas
Canyon
Capaldi, Jim
Capps, Grayson
Capris, The
Captain & Tennille
Captain Beefheart
Captain Beyond
Cara, Irene
Caravan
Carbon Leaf
Cardigans, The
Carey, Mariah
Carey, Tony
Caribou
Carlile, Brandi
Carlisle, Belinda
Carlton, Carl
Carlton, Larry
Carlton, Vanessa
Carmen, Eric
Carmichael, Hoagy
Carnes, Kim
Carolina Liar
Carpenter, Mary Chapin
Carpenters
Carptree
Carr, James
Carr, Vikki
Carrack, Paul
Carradine, Keith
Carroll, Jason Michael
Cars, The
Carson, Jeff
Cartel
Carter, Clarence
Carter, Mel
Casablanacas, Julian
Cascades, The
Case, Neko
Cash, Alvin

Cash, Johnny
Cash, Rosanne
Casinos, The
Cassettes Won't Listen
Cassidy, David
Cassidy, Shaun
Cast
Casting Crowns
Castor, Jimmy Bunch, The
Cat Power
Catatonia
Catherine Wheel
Cave, Nick & the Bad Seeds
Cavo
Cazals
Celtic Thunder
Cetera, Peter
Chad & Jeremy
Chairmen of the Board
Chamberlain, Richard
Chambers Brothers
Chameleons
Champaign
Champs, The
Chandler, Gene
Chandler, Crystal
Channel, Bruce
Chantays
Chantels, The
Chapin, Harry
Chapman, Michael
Chapman, Tracy
Charlatans, The
Charles, Ray
Charlie
Chase
Cheap Trick
Checker, Chubby
Chemical Brothers, The
Cher
Cherry, Eagle-Eye
Cherry, Neneh
Chesney, Kenny
Chesnutt, Mark
Chesterfield Kings
Chevelle
Chic

Chicago
Chicken Shack
Chickenfoot
Chicory Tip
Chieftains, The
Chiffons, The
Child, Jane
Childs, Toni
Chi-Lites, The
Chilliwack
Chilton, Alex
China Crisis
Chk Chk Chk
Chocolate Watchband
Chordettes, The
Christie, Lou
Chroma Key
Chronic Future
Chumbawamba
Church, Charlotte
Church, The
Ciani, Suzanne
Cinderella
Circus Maximus
City and Colour
City Boy
City Drive, The
Clannad
Clanton, Jimmy
Clap Your Hands Say Yeah
Clapton, Eric
Clark, Dave Five
Clark, Dee
Clark, Guy
Clark, Louis
Clark, Petula
Clark, Roy
Clark, Sanford
Clark, Terri
Clarke, Stanley
Clarkson, Kelly
Clash, The
Classics IV
Clay, Otis
Clearlake
Cleftones, The
Clegg, Johnny

Clemons, Clarence
Click Five, The
Clientele, The
Cliff, Jimmy
Climax
Climax Blues Band
Cline, Patsy
Clinic
Clooney, Rosemary
Clovers, The
Club Nouveau
Clutch
Clyne, Roger & the Peacemakers
Coasters, The
Cochran, Eddie
Cochrane, Tom
Cock Robin
Cockburn, Bruce
Cocker, Jarvis
Cocker, Joe
Cocktail Slippers
CocoRosie
Cocteau Twins
Coe, David Allan
Coheed & Cambria
Cohen, Leonard
Cohn, Marc
Cold
Cold Blood
Cold Chisel
Coldplay
Cole, Cheryl
Cole, Cozy
Cole, Holly
Cole, Jude
Cole, Lloyd and the Commotions
Cole, Nat King
Cole, Natalie
Cole, Paula
Coleman, Ornette
Collective Soul
Collins, Albert
Collins, Edwyn
Collins, Judy
Collins', Paul Beat, The
Collins, Phil
Collins, Tyler

Coloma
Color Me Badd
Colosseum
Colter, Jessi
Coltrane, Chi
Coltrane, John
Colvin, Shawn
Commagere, Juliette
Commander Cody
Commodores
Communards
Como, Perry
Comsat Angels
Con Funk Shun
Concrete Blonde
Conley, Arthur
Conley, Earl Thomas
Connells, The
Connick, Harry Jr.
Conniff, Ray
Conti, Bill
Contours, The
Converge
Cooder, Ry
Cook, David
Cooke, Sam
Cookies, The
Coolidge, Rita
Cooper, Alice
Cope, Julian
Coral, The
Corea, Chick
Cornelius Brothers & Sister Rose
Cornell, Chris
Cornershop
Corrosion of Conformity
Corrs, The
Cortez, Dave Baby
Costa, Nikka
Costello, Elvis & the Attractions
Coster, Tom
Cotton, Danielia
Cotton, Gene
Count Five
Counting Crows
Country Joe & the Fish
Covay, Don

Coven
Covenant
Cover Girls, The
Coverdale, David
Coverdale/Page
Cowboy Junkies
Cowsills, The
Cox, Deborah
Crack the Sky
Cracker
Craddock, Billy "Crash"
Cramer, Floyd
Cranberries, The
Cranes, The
Crash Kings
Crash Test Dummies
Crawford, Johnny
Crawford, Michael
Cray, Robert Band
Crazy 8s
Crazy House
Cream
Creation, The
Creed
Creedence Clearwater Revival
Crenshaw, Marshall
Cressida
Cressida (II)
Crests, The
Crew-Cuts, The
Crewe, Bob Generation
Croce, Jim
Cropper, Steve
Crosby, Bing
Crosby, David
Crosby, Stills & Nash
Cross, Christopher
Crossfade
Crow, Sheryl
Crowded House
Crowell, Rodney
Crows, The
Crusaders, The
Cruz, Taio
Cruzados
Cry of Love
Crystal Castles

Crystal Method, The
Crystal Stilts
Crystals, The
Cuby & the Blizzards
Cuff Links, The
Cullum, Jamie
Cult, The
Culture
Culture Club
Cummings, Burton
Cure, The
Currie, Justin
Currington, Billy
Curry, Tim
Curve
Curved Air
CUSCO
Cush
Cut Copy
Cutting Crew
Cymarron
Cyrkle, The
Cyrus, Billy Ray
Cyrus, Miley
Czar
Dada
Dala
Dale, Dick & His Del-Tones
Dali's Dilemma
Dalloways, The
Daltrey, Roger
Damian, Michael
Damita Jo
Damn Yankees
Damned, The
Damone, Vic
Dana, Vic
Dancing Fantasy
Dando, Evan
Dandy Warhols, The
D'Angelo
Daniels, Charlie Band
Danleers, The
Danny & the Juniors
Danzig
D'Arby, Terence Trent
Darin, Bobby

Darkness, The
Darren, James
Dashboard Confessional
Daughtry
David & David
David, Craig
Davies, Ray
Davis, Governor Jimmie
Davis, Mac
Davis, Miles
Davis, Paul
Davis, Sammy Jr.
Davis, Skeeter
Davis, Spencer Group
Davis, Tyrone
Day to Remember, A
Day, Bobby
Day, Doris
Day, Howie
Dayne, Taylor
Days of the New
Daysleepers, The
Dazz Band
dB's, The
De la Soul
Deacon Blue
Dead Can Dance
Dead Kennedys
Dead Milkmen, The
Dead Or Alive
Dead Soul Tribe
Dead Weather, The
Deadstring Brothers
Dean, Jimmy
Dear Hunter, The
Death Cab For Cutie
Death in Vegas
DeBarge
Deburgh, Chris
Decemberists, The
Dee, Joey & the Starlites
Dee, Kiki
Deee-Lite
Deep Blue Something
Deep Purple
Deerhunter
Dees, Rick and His Cast of Idiots

Def Leppard
Default
DeFranco Family
Deftones
Dekker, Desmond
Del Amitri
Del Fuegos, The
Delaney & Bonnie
Delerium
Delerue, Georges
Delfonics, The
Delgado Brothers, The
Delgados, The
Delirious
Del-Lords, The
Dells, The
Dell-Vikings, The
DeLuca, Rocco and the Burden
Del-Vetts, The
Dennis, Cathy
Denny, Sandy
Denver, John
Deodato
Depeche Mode
Derek
Derek & the Dominos
Derringer, Rick
DeSario, Teri
Descendents
Desert Rose Band
DeShannon, Jackie
Des'ree
Destiny's Child
Destroyer
Detroit Cobras
Detroit Emeralds
DeVaughn, William
Devo
Devonsquare
DeVorzon, Barry and Perry Botkin Jr.
Dexy's Midnight Runners
DeYoung, Dennis
Diablos, The
Diamond Rio
Diamond, Neil
Diamonds, The
Dick & Deedee

Dickies, The
Diddley, Bo
Dido
Diesel
Diffie, Joe
DiFranco, Ani
Digby, Marie
Digital Underground
DiMeola, Al
Dimmu Borgir
Dinning, Mark
Dino
Dino, Desi and Billy
Dinosaur Jr.
Dio
Dion
Dion, Celine
Dire Straits
Dirty Projectors, The
Dirty Vegas
Disco Tex & the Sex-o-lettes
Dishwalla
Dismemberment Plan, The
Dispatch
Dissociatives, The
Disturbed
Divine
Divine Comedy, The
Divinyls, The
Dixie Chicks
Dixie Cups, The
Dixie Dregs
Dixon, Gabe Band, The
Doc Holliday
Dodos, The
Doggett, Bill
Dokken
Dolby, Thomas
Domino, Fats
Dominoes, The
Don & Juan
Donaldson, Bo and the Heywoods
Donaldson, Lou
Donegan, Lonnie and His Skiffle Group
Donnas, The
Donner, Ral
Donovan

Doobie Brothers, The
Doors, The
Dore, Charlie
Dorham, Kenny
Dorsey, Jimmy
Dorsey, Lee
Dorsey, Tommy
Double
Douglas Spotted Eagle
Douglas, Carl
Dove, Ronnie
Dovells, The
Doveman
Doves
Dozier, Lamont
Dr. Feelgood
Dr. Hook
Dr. John
Drake, Nick
Dramarama
Dramatics, The
Draper, Rusty
Dream Academy, The
Dream Syndicate, The
Dream Theater
Dresden Dolls, The
Drifters, The
Driveblind
Drive-By Truckers
Drivin' N' Cryin'
Droge, Pete
Dropkick Murphys
Drowning Pool
Dru Hill
Dudley, Dave
Duff, Hilary
Duffy
Duhks, The
Duke Spirit, The
Duke, George
Dukes of Stratosphear, The
Dulfer, Candy
Dumptruck
Dundas, David
DuPree, Robbie
Duprees, The
Duran Duran

Dury, Ian
Dylan, Bob
Dylan, Jakob
Dyser, Joey
Dyson, Ronnie
Eagles
Eaglesmith, Fred
Earl Greyhound
Earle, Justin Townes
Earle, Steve
Earlies, The
Early November, The
Earshot
Earth
Earth & Fire
Earth, Wind & Fire
East River Pipe
Easton, Sheena
Easybeats, The
Echo and the Bunnymen
Echobelly
Echoes
Echoes (II)
Echoes (III)
Echolyn
Eddie & the Hot Rods
Eddy, Duane
Edison Lighthouse
Editors
Edmunds, Dave
Edsels, The
Edward Bear
Edwards, Cliff
Edwards, Jonathan
Edwards, Kathleen
Edwards, Tommy
Eels
Egan, Joe
Egan, Walter
Eiffel 65
Eight Seconds
Eighteen Visions
Eisley
El Chicano
Elastica
Elbow
Electric Flag

Electric Light Orchestra
Electric Prunes, The
Electric Six
Elegants
Eleventh Dream Day
Elfman, Danny
Elliman, Yvonne
Ellington, Duke
Elliott, Mama Cass
Ellis, Shirley
Eloy
Ely, Joe
Embrace
Emerson, Lake & Palmer
Emerson, Lake & Powell
EMF
Emotions, The
Empire of the Sun
En Vogue
Enchant
End, The
England Dan & John Ford Coley
English Beat, The
Enigma
Eno, Brian
Enuff Z'nuff
Enya
Erasure
Erickson, Roky
Escape Club, The
Escovedo, Alejandro
Espers
Essex, David
Essex, The
Estefan, Gloria
Estelle
Eternal
Etheridge, Melissa
Eubanks, Kevin
Euphoria
Eurogliders
Europe
Eurythmics
Evan & Jaron
Evanescence
Evans, Faith
Evans, Paul

Evans, Sara
Eve 6
Everclear
Everett, Betty
Evergrey
Everly Brothers, The
Evermore
Every Mother's Son
Everything But the Girl
Exciters, The
Exile
Exploding Hearts, The
Explorers Club
Expose'
Extreme
Eyes, The
Fabares, Shelley
Fabian
Fabulous Thunderbirds, The
Face To Face
Face to Face (II)
Faces
Fagen, Donald
Fahey, John
Fair to Midland
Fairground Attraction
Fairport Convention
Faith No More
Faith, Percy
Faithfull, Marianne
Falco
Falcons, The
Fall Out Boy
Fall, The
Falling Up
Faltermeyer, Harold
Fanfarlo
Fantastic Johnny C, The
Fargo, Donna
Farlowe, Chris
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Velvet Revolver
Velvet Underground, The
Ventures, The

Vera, Billy & the Beaters
Verlaine, Tom
Verne, Larry
Verona
Vertical Horizon
Veruca Salt
Verve Pipe, The
Verve, The
Vestals, The
Vibrators, The
Vida Blue
Videos
Village People
Village Stompers, The
Vincent, Gene
Vines, The
Vinton, Bobby
Violent Femmes
Visage
Visible Wind
Vitamin C
Vivian Girls
Vixen
Vogues, The
Vollenweider, Andreas
Von Bondies, The
Vonray
W.A.S.P.
Wade, Adam
Wagner, Jack
Wagoner, Porter
Wainwright, Loudon III
Wainwright, Rufus
Waite, John
Waits, Tom
Wakelin, Johnny & the Kinshasa Band
Wakeman, Rick
Walkabouts, The
Walker Brothers
Walker, Butch
Walker, Clay
Walker, Jr. & the All Stars
Walker, T-Bone
Walkmen, The
Wall of Voodoo
Wallace, Jerry
Waller, Fats

Wallflowers, The
Walsh, Joe
Wang Chung
War
Ward, Anita
Ward, Billy & His Dominoes
Ward, M.
Wariner, Steve
Warlord
Warnes, Jennifer
Warpaint
Warrant
Warwick, Dee Dee
Warwick, Dionne
Was (Not Was)
Washed Out
Washington, Baby
Washington, Dinah
Washington, Grover Jr.
Watanabe, Sadao
Watchtower
Waterboys, The
Waters, Crystal
Waters, Kim
Waters, Muddy
Waters, Roger
Watershed
Watkins, Sean
Watley, Jody
Watson, Doc
Watson, Johnny Guitar
We All Together
We Five
Weather Report
Weavers, The
Ween
Weezer
Weiland, Scott
Weissberg, Eric
Welch, Bob
Welch, Gillian
Welch, Lenny
Welk, Lawrence
Weller, Paul
Wells, Junior
Wells, Kitty
Wells, Mary

Wendy and Lisa
Wesley, Fred & the JB's
West Coast Pop Art Experimental Band
West Indian Girl
West, Dottie
West, Matthew
Westerberg, Paul
Westlife
Wet Wet Wet
Wet Willie
Wham
Wheat
When In Rome
Whiskeytown
Whispers, The
White Denim
White Lies
White Lion
White Rabbits
White Stripes, The
White Willow
White Zombie
White, Barry
White, Brooke
White, Karyn
White, Matt
White, Snowy
White, Tony Joe
WhiteHeart
Whitesnake
Whitley, Chris
Whitley, Keith
Whitman, Slim
Whittaker, Roger
Who, The
Whodini
Widespread Panic
Wiedlin, Jane
Wilco
Wild Cherry
Wilde, Kim
Wilder, Matthew
Wildhearts, The
Will To Power
Williams, Andy
Williams, Dar
Williams, Deniece

Williams, Don
Williams, Hank
Williams, Hank Jr.
Williams, John
Williams, Keller
Williams, Larry
Williams, Lucinda
Williams, Mason
Williams, Maurice and the Zodiacs
Williams, Otis
Williams, Robbie
Williams, Roger
Williams, Vanessa
Willis, Chuck
Wills, Mark
Wilson Phillips
Wilson, Al
Wilson, Ann
Wilson, Brian
Wilson, Dennis
Wilson, Gretchen
Wilson, J. Frank and the Cavaliers
Wilson, Jackie
Wilson, Meri
Wilson, Nancy
Wilson, Steven
Winans, Bebe & Cece
Winchester, Jesse
Winehouse, Amy
Wing and a Prayer Fife and Drum Corps, The
Winger
Wingfield, Pete
Wink
Winston, George
Winter, Edgar Group
Winter, Johnny
Winwood, Steve
Wire
Wire Train
Wishbone Ash
Withers, Bill
Within Temptation
Wizzard
Wolf Parade
Wolf, Kate
Wolf, Patrick
Wolf, Peter

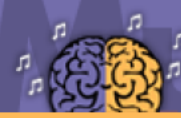
Wolfgang Press
Wolfmother
Womack, Bobby
Womack, Lee Ann
Wonder, Stevie
Wonders, The
Wonderwall
Wood, Brenton
Woodentops, The
Wooley, Sheb
World Leader Pretend
World Party
Worley, Darryl
Wray, Link
Wreckage
Wreckers, The
Wright, Betty
Wright, Charles and the Watts 103rd Street Rhythm Band
Wright, Gary
Wright, Lizz
Wyatt, Robert
Wynette, Tammy
Wynn, Steve
Wynonna
X
Xscape
XTC
XX, The
Y&T
Yankee Grey
Yankovic, Frankie
Yankovic, Weird Al
Yanni
Yarbrough & Peoples
Yarbrough, Glenn
Yardbirds, The
Yaz
Yeah Yeah Yeahs
Year Zero, The
Yearwood, Trisha
Yello
Yellow Magic Orchestra
Yellowcard
Yellowjackets
Yes
Yo La Tengo
Yoakam, Dwight

Yorn, Pete
You Am I
Young Fresh Fellows
Young Rascals, The
Young, Eli Band
Young, Faron
Young, John Paul
Young, Kathy with the Innocents
Young, Neil
Young, Paul
Young, Will
Youngbloods, The
Yuro, Timi
Zager & Evans
Zapp & Roger
Zappa, Dweezil
Zappa, Frank
Zebra
Zero 7
Zero One
Zeus
Zevon, Warren
Zhane
Zombie, Rob
Zombies, The
Zumpano
ZZ Top

Appendix E

Artist Naming Conflicts

Artist Name Example: Bliss



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Search Results

Last updated: 2014-06-29 15:10 UTC

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Found 1,488 results for "bliss"

Score	Name	Sort Name	Type	Gender	Area	Begin	Begin Area	End	End Area
100	Bliss (Yonatan Marcow, psychedelic, trance, Israel)	Bliss	Person	Male	Israel				
100	Bliss (Trance artist, released Bliss)	Bliss	Person	Male	United States				
100	Bliss (Hong Kong canto-pop duo)	Bliss	Group		Hong Kong				
100	Bliss (UK yoga/meditation, Lucinda Drayton & Andrew Blissett)	Bliss	Group		United Kingdom				
100	Bliss (UK Goth Metal act, key track "You Spin Me Round" cover)	Bliss	Group		United Kingdom	1996		1999	
100	Bliss (US, Georgia alternative band, xmas rock track "Santa vs Magneto")	Bliss	Group		United States				
100	Bliss (Australian rock band from the late nineties)	Bliss	Group		Australia				
100	Bliss (downtempo/ambient act from Denmark)	Bliss	Group		Denmark				
100	Bliss (Rock group founded in Coventry, UK)	Bliss	Group		United Kingdom				
100	Bliss (60s group, single "Lifetime")	Bliss							
100	Bliss (Greek grunge band)	Bliss	Group		Greece	2000			
100	Bliss (Australian rapper)	Bliss	Person	Male	Australia				
100	Bliss (Belgian trance duo)	Bliss	Group		Belgium				
100	Bliss (unknown trance artist, track "Wind")	Bliss							
100	Bliss (Danish electronic quartet)	Bliss	Group		Denmark				
100	Bliss (Harikesa Swami)	Bliss							
100	Bliss ((Floyd Fisher, Krisco, Maria Nocera))	Bliss							
100	Bliss (Downtempo/world music act from Denmark)	Bliss							
100	Bliss (US rapper aka J Lighten)	Bliss	Person	Male	United States				
100	Bliss	Bliss							
100	Bliss (Desiree, Ascended Masters)	Bliss	Person	Female					
100	Bliss (Canadian pop girl group)	Bliss	Group		Canada				
100	Bliss (Electronic hardcore artist working with Central Rock Records and Bit Music)	Bliss							
99	Bliss (Three-boy band from Manchester, UK)	Bliss	Group		United Kingdom				
97	Bliss (Demoscene composer)	Bliss, Henrik José	Person	Male	Sweden				

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Appendix F

**.MUSIC Policy & Copyright Infringement
Dispute Resolution Process
("MPCIDRP")**

Appeals & Dispute Resolution Process

By DRP National Arbitration Forum (NAF)



.MUSIC Policy & Copyright Infringement Dispute Resolution Process ("MPCIDRP")

Background

This .MUSIC Policy & Copyright Infringement Dispute Resolution Process (the "MPCIDRP") is incorporated by reference into the Registration Agreement for each domain name registered in the .MUSIC top-level domain ("TLD"). This MPCIDRP shall become effective as of April 1st, 2014 and remain in effect as long as the Registry Operator maintains the eligibility criteria or restrictions. This MPCIDRP may be invoked by filing an appeal or a formal complaint with the National Arbitration Forum. The Rules governing the MPCIDRP process may be found at: <http://domains.adrforum.com>.

Registration policies are bound by the .MUSIC Policy and Copyright Infringement Dispute Resolution Process ("MPCIDRP"). The .MUSIC Registry's MPCIDRP measures outline the conditions that need to be met when registering a .MUSIC domain name. These conditions include registrant compliance with:

Eligibility Criteria;

Validation or Verification;

Name Selection Rules;

Content and Use Restrictions; and

Enforcement Measures.

By way of example, Registrants must belong to a strictly delineated and organized music organization with clear and straightforward membership (defined as a Music Community Member Organization (MCMO)). The "Music Community" is further recognized as the "*strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities (MCMOs) of similar nature that relate to music.*" Entities will be denied registration if they only have a tangential relationship with the Music Community as it is defined, because such entity would not have the requisite awareness and recognition of the Community and would not invoke any formal membership with the Music Community. Likewise, .MUSIC Eligibility Requirements and Policies, provide that such an entity does not qualify as a Music Community Member because there would be a misalignment between the Music Community definition and the .MUSIC string. All of the following requirements and qualifications must be met by a MCMO:

- i. Clear delineation: The Community organization must have clear and straightforward membership and the requisite awareness and recognition from those members.
- ii. Organized: The Community organization must administer the community members and have membership rules (e.g. Terms of Service or Membership Code of Conduct).
- iii. Community organization must relate to music in a non-tangential or non-peripheral manner.
- iv. Membership aligns with the Nexus of the Community and the String, which is explicitly relevant to music. Any tangential or implicit associations with the Nexus of the Community and the String will not be regarded as delineated memberships since they would be considered unclear, dispersed or unbound. Such unclear, dispersed or unbound tangential relationships would not constitute a qualifying membership of an accredited MCMO and would be ineligible for registration.
- v. Community organization activities are aligned with the .MUSIC Mission and Purpose.
- vi. Membership is of non-negligible size.
- vii. Membership geographic dispersion is either international or national (i.e. organizations with merely local memberships do not qualify).
- viii. Forward-looking longevity: Membership pursuits are of a lasting, non-transient nature (i.e. will continue to exist in the future).
- ix. Membership activities must be involved in the legal production and/or the distribution and/or the promotion of music (i.e. of the same nature).
- x. The Community organization's functions must legally comply with the string's regulated sector in relation to copyright and clearly abide to the sector's clearly, delineated systems to ensure fair compensation and proper allocation of royalties to Community rights holders.

The Community as defined is comprised of clearly delineated and organized MCMOs which were identified by the Registry to meet the Community-defined qualifications. A music organization can also apply to become a .MUSIC-accredited MCMO and must prove it fulfills MCMO qualification requirements. The .MUSIC MCMO Accreditation Application and Eligibility Requirements can be found at <http://music.us/DotMusic Music Community MCMO Application.pdf>.

The MPCIDRP includes mitigation measures, such as investigation of non-compliance with the .MUSIC policies, including rules pertaining to domain name registrations (eligibility and name selection restrictions), rules on content and use (such as abuse and copyright infringement rules) and appropriate dispute resolution appeals mechanisms.

Registrants who do not prevail in a MPCIDRP Dispute Resolution will have a one-time opportunity to file a Re-consideration Request Appeal around the Policy decision. The Re-consideration appeal will be conducted by the Dispute Resolution Provider (DRP) and the Registry and must include a stated reason for request of re-consideration.

Any Registrant taken down or suspended for a Registry-related violation will also have the option to submit an Appeal for Re-Instatement if they remedy the non-compliance issue to comply with the .MUSIC policies.

DotMusic reserves the right to terminate a domain for failure by the registrant to demonstrate it meets established rules and requirements under .MUSIC Policies through this Appeals process.

When a domain name is terminated it is placed on hold under the Redemption Grace Period. During this period, a domain name is placed in the Pending Delete Restorable status. The domain name can remain in this state for up to 30 days and will not be included in the zone file.

The Appeal Process is a method that the original registrant can use at this stage to re-activate the domain name before it is released into the pool of available domains. During this period any requests to modify or otherwise update the domain will be rejected. If the registrant is successful in their Appeal the domain will be restored and it is moved into Pending Restore status and then OK status. If after 30 days there is no Appeal filed by the registrant then the domain is moved into Pending Delete Scheduled For Release status before the domain is released back into the pool of available domains. During the Pending Delete stage, a domain name is placed in Pending Delete Scheduled For Release status for 5 days, and all Internet services associated with the domain will remain disabled without any possibility of the domain to be restored. After 5 days the domain is released back into the pool of available domains.

1. Purpose

Domain names in the TLD can be registered or reserved subject to eligibility or restriction requirements. This MPCIDRP describes standards that will be applied to resolve challenges to names registered in the TLD on the basis of failure to meet or maintain the eligibility or restriction criteria required by the Registry. This MPCIDRP will not be applied to Registry-reserved names in the TLD.

2. Applicable Disputes

A registered domain name in the TLD will be subject to an administrative proceeding upon submission of a complaint showing by a preponderance of the evidence that the registration was improper under one or more of the circumstances in this section.

The Registry may, through an Annex to this Policy, denote what evidence must be submitted to the Panel and/or a limiting date by which claims may be submitted pursuant to this MPCIDRP, for a specified TLD.

a. Community “Eligibility” Restrictions for Registrants and MCMOs

A complaint under this section shall be required to show that a registered domain name in the TLD does not comply with the provisions of the Registry’s Registration Eligibility criteria. The complaint must show:

- (i) At the time the challenged domain name was registered, the Registry’s registration “Eligibility” criteria were not met, including requirements for

maintaining the registration, naming conditions and restrictions on domain transfers to third parties that otherwise fail to meet the Registration Policy requirements. The complainant must show that the Registrant is not a bona-fide member of the Music Community and does not have a formally, invoked membership with a .MUSIC-accredited Music Community Member Organization (referred to as “MCMOs”) as per the Registry’s definition of Community. The definition of the Community is a “clearly delineated and organized logical alliance of communities (referred to as “MCMOs”) of the same nature related to music.”

The Complainant shall submit a copy of the Registry’s Eligibility criteria and show the absence of a clear and straightforward membership with the Registry’s defined Community with a Complaint based on MPCIDRP para. 2(a).

b. “Name Selection” and “Globally Protected Marks List” (“GPML”) Restrictions

A complaint under this section shall be required to show that a registered domain name in the TLD does not comply with the provisions of the Registry’s Name Selection Restrictions, including restrictions pertaining to famous music names under the music Globally Protected Marks List (GPML). The complaint may show:

After the challenged domain name was registered, the registrant failed to comply with the Registry’s Name Selection requirements and naming conditions for registration consistent with the Registry’s articulated community-based mission pertaining to increase trust, protect intellectual property, prevent user-confusion and eliminate malicious abuse. The Complainant shall submit a copy of the Registry’s Name Selection criteria with a Complaint based on MPCIDRP para. 2(b).

c. Community “Content and Use” restrictions

A complaint under this section shall be required to show that a registered domain name in the TLD does not comply with the provisions of the Registry’s “Content and Use” criteria. The complaint must show either:

- i. At the time the challenged domain name was registered, the Registry’s “Content and Use” criteria were not met; or
- ii. After the challenged domain name was registered, the registrant failed to continue to comply with the Registry’s ongoing “Content and Use” restrictions or requirements for maintaining the registration.

The Complainant shall submit a copy of the Registry’s “Content and Use” criteria, including evidence regarding any requirement for the registrant to maintain the “Content and Use” restrictions, with a Complaint based on MPCIDRP para. 2(c).

Registrants may not license, sub-delegate or otherwise transfer .music domain names to third parties that otherwise fail to meet the Registration Policy requirements.

3. Appeal Processes

Applicants and others may appeal (or request reconsiderations of) various decisions made by the Registry under the .music Registration Policies. Appeals and requests for reconsideration must be made following the relevant provider Rules and must be made within the time period specified. Requests for appeal or reconsideration must specify the error made by the Registry. The decisions available for appeal to the Provider are:

The Appeals available under this MPCIDRP include:

i. **Reinstatement Reconsideration**

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

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

ii. **Copyright Infringement Appeal**

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

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

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

iv. **Geographic Public Interest Appeal**

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

v. **Policy Advisory Board (PAB) Decision Appeal**

A majority of the PAB may direct the Registry to take action against a Registrant for registrations that substantially and negatively affect the objectives of the .MUSIC Registry. This PAB determination and Registry implementation can be appealed by a

Registrant with the National Arbitration Forum. A PAB Decision Appeal must be brought within 30 days of the Registry's final determination.

- vi. A **Civil Court Action** filed in civil court. Any legal decision by such a court supersedes any MPCIDRP Appeal or UDRP or URS decision. No further action will be taken until the Registry receives (1) satisfactory evidence of a resolution or settlement between the parties; (2) satisfactory evidence that the lawsuit has been dismissed or withdrawn; or (3) a copy of an order from such court dismissing the lawsuit or stating that the domain name holder does not have the right to continue to use the domain name. ICANN-accredited domain name registrars, which have agreed to abide by UDRP and MPCIDRP decisions, must implement a decision after a period of ten days, unless the decision is appealed in court in that time. The panel decisions are mandatory in the sense that accredited registrars are bound to take the necessary steps to enforce a decision, such as transferring the name concerned. However, under the UDRP and MPCIDRP, either party retains the option to take the dispute to a court of competent jurisdiction for independent resolution.

4. Remedies

The remedies available to a complainant for a proceeding under this MPCIDRP shall be:

a. Ineligible at Registration

If the Panel finds that the domain name was ineligible for registration under MPCIDRP 2(a) and MPCIDRP 2(c)(i), the sole remedy shall be cancellation of the registration and return of the cancelled domain name to the pool of available names available for registration in the TLD. If the Complainant independently qualifies to register the domain name, such application may be made via the standard registration process.

b. Improper Maintenance of Eligibility

The remedies for a Complaint filed under MPCIDRP 2(b) and MPCIDRP 2(c) (ii) are either:

- i. The Panel may allow the Respondent up to 14 days to bring the registration into compliance and submit proof of compliance and ongoing eligibility; and/or
- ii. The Panel may order cancellation of the registration and return of the cancelled domain name to the pool of available names available for registration in the TLD. If the Complainant independently qualifies to register the domain name, such application may be made via the standard Registration process.

c. Appeals and Requests for Reconsideration

For appeals and reconsideration requests brought under Section 3(i, iii ,iv, and v), the sole remedy available shall be a decision directing the Registry to perform the requested reinstatement, membership acceptance, or geographic name termination.

5. Procedure

a. Dispute Resolution Provider / Selection of Procedure

A Complaint under this MPCIDRP shall be submitted to the National Arbitration Forum (“Provider”) by submitting the complaint directly to that Provider. The Provider will administer the proceeding and select a qualified and eligible Panel (“Panel”). The Provider shall establish Rules, setting forth a fee schedule and other technical and process requirements for a dispute under this MPCIDRP (“Rules”). The proceedings under this MPCIDRP will be conducted according to this MPCIDRP and the applicable Rules of the Provider.

b. Registry’s or Registrar’s Involvement

(1) Neither the Registry nor registrar will participate in the administration or conduct of any proceeding before a Panel, except to the extent that Registry decisions may be reconsidered by the Provider in certain cases (see section 3) and the Registry may provide to the Panel reasons for its decision. In any event, neither the Registry nor the registrar is or will be liable as a result of any decisions rendered by the Panel. Any domain names in the TLD involved in a MPCIDRP proceeding will be locked against transfer to another domain name holder or another registrar during the course of a proceeding. The contact details of the holder of a registered domain name in the TLD will be provided to the Provider by the registrar’s publicly available Whois database record for the relevant registrant. The Registry and the applicable registrar will comply with any Panel decision and make all appropriate changes to the status of the domain name registration(s) in their Whois databases.

(2) Decisions made by the Provider under this Policy may be reviewed by the .MUSIC Registry upon request, on the grounds that the Provider failed to follow the Policy or Rules. In no event is the substantive decision by the Panel subject to review by the Registry. If the Provider is found by the Registry to have deviated from the Policy or Rules, the Provider shall rehear the case in accordance with the Policy and Rules before a new Panelist; the rehearing shall be done without additional charges to the Parties.

c. Parties

The registrant of a registered domain name in the TLD or the Registry, in case of a Reconsideration or Appeal, shall be promptly notified by the Provider of the commencement of a dispute under this MPCIDRP, and shall have thirty (30) days in which it may contest the allegations of the complaint or show other cause why the complaint should not be granted in accordance with this MPCIDRP or the conditions under which the domain name in the TLD has been registered or used. In all cases, the burden of proof shall be on the complainant, and default or other failure of the holder of the registered name shall not constitute an admission to any allegation of the complaint. The Provider shall promptly notify all named parties in the dispute, as well as the registrar and the Registry of any decision made by a Panel.

d. Decisions

- (i) The Panel may state the basis on which the decision is issued in summary format and may include such commentary or guidance as the Panel deems appropriate;
- (ii) the decision shall state whether a registered name in the TLD is to be cancelled or the status quo maintained; and
- (iii) decisions made under this MPCIDRP will be publicly published by the Provider on its website.

e. Implementation

If a Panel's decision requires a change to the status of a registered name, the registrar and/or Registry will wait ten (10) business days after communication of the decision before implementing that decision, unless the registrant submits to the Registry (with a copy to the Provider) during that ten (10) day period official documentation (such as a copy of a complaint, file-stamped by the clerk of the court) that the registrant has commenced a lawsuit to preserve its claimed rights in a court of competent jurisdiction over the parties and the domain name. If such documentation is received no further action shall be taken until the Registry receives (i) evidence satisfactory to the Registry of an agreed resolution between the parties; (ii) evidence satisfactory to Registry that registrant's lawsuit has been dismissed or withdrawn; or (iii) a copy of an order from such court dismissing such lawsuit or otherwise directing disposition of the domain name.

f. Representations and Warranties Parties to a dispute under this MPCIDRP shall warrant that all factual allegations made in the course thereof are true and correct to the best of their knowledge, shall remain subject to all representations and warranties made in the course of registration of a disputed domain name.

6. Maintaining the Status Quo

During a proceeding under the MPCIDRP, the domain name shall be locked against transfers between registrants and/or registrars. In the event the domain name(s) is due to expire during a proceeding, the name shall proceed to a temporarily reserved status if it is not renewed by the registrant; the MPCIDRP proceeding, in that case, shall be terminated.

7. Indemnification / Hold Harmless The parties shall hold the registrar, the Registry, the Provider, and the Panel harmless from any claim arising from operation of the MPCIDRP. Neither party may name the registrar, the Registry, the Provider, or the Panel as a party or otherwise include the registrar, the Registry, the Provider, or the Panel in any judicial proceeding relating to the dispute or the administration of the MPCIDRP policy. The parties shall indemnify, defend and hold harmless the registrar, the Registry, the Provider, the Panel and their respective employees, contractors, agents and service providers from any claim arising from the conduct or result of a proceeding under this MPCIDRP. Neither the registrar, the Registry, Provider, the Panel and their respective employees, contractors, agents and service providers shall be liable to a party for any act or omission in connection with any administrative

proceeding under this MPCIDRP or the corresponding Rules. The complainant shall be directly and solely liable to the registrant in the event the complaint is granted in circumstances where the registrant is lawfully entitled to registration and use of the domain name(s) in the TLD.

8. Relation To Other Dispute Resolution Policies This MPCIDRP is in addition to and complementary with the Uniform Domain Name Dispute Resolution Policy (“UDRP”), the Uniform Rapid Suspension System (“URS”) and any Charter, Nexus, or Eligibility Dispute Policies adopted by ICANN or the Registry. The conditions herein may constitute lack of legitimate interests and/or bad faith as appropriate under the UDRP or URS in relation to domain names in the TLD.

9. Effect of Other Proceedings The administrative proceeding under the MPCIDRP shall not prevent either party from submitting a dispute concerning the domain name in the TLD to concurrent administrative proceedings or to a court of competent jurisdiction for independent resolution during a pending MPCIDRP administrative proceeding or after such proceeding is concluded. Upon notice of such other proceeding, the MPCIDRP proceeding will be suspended or terminated (in the sole discretion of the Panel) in deference to the outcome of such other proceeding. If a domain name in the TLD is subject to a UDRP proceeding, the factors set forth in the MPCIDRP may be alleged in such proceeding as applicable terms of legitimate rights or registration and use under the UDRP in addition to any allegations or defenses available.

10. MPCIDRP Modifications The Registry reserves the right to modify this MPCIDRP at any time subject to the terms of its Memorandum of Understanding with the Forum or if it is deemed that any Rules could likely compromise the Registry's operations, security and technical stability. Such revised MPCIDRP shall be posted on the Registry website at least ten (10) calendar days before it becomes effective; unless this MPCIDRP has already been invoked by the submission of a complaint, in which event the version of the MPCIDRP in effect at the time it was invoked will apply until the dispute is concluded, all such changes will be binding with respect to any dispute, whether the dispute arose before, on or after the effective date of the change. In the event that registrant objects to a change in this MPCIDRP, the sole remedy is to cancel the registration, provided that registrant will not be entitled to a refund of any fees paid in connection with such registration.

Appendix G

.MUSIC Premium Channels

Examples:

www.French.music

www.Jazz.music

www.Metal.music

www.Rock.music

Mots clés de recherche

dans France

Recherche



Première Vidéo
Lorem ipsum dolor sit amet, consectetur donec adipiscing elit. In fermentum arcu non volupta. Lorem ipsum dolor sit amet, consectetur.



Interview Exclusive
Thomas Dutronc
Donec in felis et urna imperdiet scelerisque et quis nisi. Praesent in nisi ac risus laoreet iaculis eget id quam.



Musique Recommandés
Oui Mais... Non
Nam at dignissim elit. Cras et tortor odio, at faucibus ligula. Ut tristique mattis fermentum. Nulla posuere iaculis.



Performance en Direct
Philippe Katerine
Donec tempor pulvinar turpis nec imperdiet. Lorem ipsum dolor sit amet, consectetur adipiscing elit.



Nouvel Album
Christophe Maé
Praesent pretium dui vel velit malesuada id tempus leo dapibus. Vestibulum a magna non dui ornare lacinia ut ut libero.

Nouvelles brèves et événements

Pellentesque pellentesque nisi id libero rhoncus a interdum odio vestibulum.

— 10 Janvier 2010

Cras bibendum, lectus id bibendum mattis, est tellus faucibus neque, semper adipiscing dolor dui eget mi. Donec tempus cursus vehicula. Fusce mauris neque, consequat vitae mattis non, placerat eu libero. Phasellus dignissim dictum lacinia.

Praesent hendrerit felis nec urna vehicula

— 12 Janvier 2010

Sed et elementum lectus. Etiam elementum, quam sodales gravida fringilla, sapien velit tristique ligula, ac feugiat nulla purus mattis quam. Nulla sed risus in magna mollis consequat in et tortor. Nam varius sollicitudin velit at posuere.



- Listen to music
- Play videos
- Attend events
- Social network
- Shop merchandise

- About us
- About the domains
- Contact information
- Legal terms
- Privacy policy

- For artists
- For professionals
- For fans & audience
- Concerts & events
- Special features

- Register & Sign-up
- My account
- Browse profiles
- Manage options

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in Jazz ▾

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Preservation Hall
Exclusive Live Concert

Pavlov Concert

Exclusive Live Concert
Lorem ipsum dolor sit amet, consectetur donec adipiscing elit. In fermentum arcu non volupta. Lorem ipsum dolor sit amet, consectetur.

Improvisation

Featured Event

Jazz tour
On The Road

Donec in felis et urna imperdiet scelerisque et quis nisi. Praesent in nisi ac risus laoreet iaculis eget id quam.

Featured artist
Ron Carter

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Featured event
Jazz Night

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Interview
Jazz Room

Praesent pretium dui vel velit malesuada id tempus leo dapibus. Vestibulum a magna non dui ornare lacinia ut ut libero.

Latest news & events

Pellentesque pellentesque nisi id libero rhoncus a interdum odio vestibulum.

— 10 January 2010

Cras bibendum, lectus id bibendum mattis, est tellus faucibus neque, semper adipiscing dolor dui eget mi. Donec tempus cursus vehicula. Fusce mauris neque, consequat vitae mattis non, placerat eu libero. Phasellus dignissim dictum lacinia.

Praesent hendrerit felis nec urna vehicula

— 12 January 2010

Sed et elementum lectus. Etiam elementum, quam sodales gravida fringilla, sapien velit tristique ligula, ac feugiat nulla purus mattis quam. Nulla sed risus in magna mollis consequat in et tortor. Nam varius sollicitudin velit at posuere.

Musician of the day
Charlie Parker

Spring festival
Jazz & Art

Auckland
Jazzfest 2010

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Metallica



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Tabs

Merchandise

News

Discussions



It's the sort of story that scriptwriters would get laughed out of conference rooms for entering. The sort of story that illustrates perfect synchronicity between hunger, passion and time. The sort of story that only happens every 30-odd years. And the sort of story that would approximately 500 pages to do it true justice. Metallica. A household name. The 7th biggest selling act in American history. Who'd have thought it when, on October 28th, 1981, drummer Lars Ulrich made guitar player/singer James Hetfield an offer he couldn't refuse. 'I've got a track, saved for my band on Brian Slagel's new Metal Blade label.'

The truth is, Lars didn't have a band at that time, but he did that day when James joined him. The two recorded their first track on a cheap recorder with James performing singing duties, rhythm guitar duties and bass guitar duties. Lars dutifully pounded the drums, helped with musical arrangements and acted as manager. Hetfield's friend and housemate Ron McGovney was eventually talked into taking up bass and Dave Mustaine took lead guitar duties.

The band adopted the moniker Metallica after a suggestion from Bay Area friend Ron Quintana, and they quickly began gigging in the Los Angeles area opening for bands like Saxon. Eventually recording a fully-fledged demo called No Life Till Leather, Metallica quickly saw the tape whistle around the metal tape-trading underground and become a hot commodity, with San Francisco and New York particularly receptive.

Origin: Los Angeles, California, United States

Genre: Heavy metal, thrash metal, hard rock, speed metal

Active: 1981-present

Labels: Elektra, Vertigo, Megaforce

Associated: Megadeth, Slayer, Anthrax

www.metallica.com
www.metallica.music

Discography

Albums

EP

Live

Hits

Remix

Compilation

Special



Death Magnetic (2004)

Released: 22 Nov 2004
Recorded: Nov 2003 - Aug 2004
Genre: Rock, Metal
Length: 48 minutes and 46 seconds

[View album](#)



St. Anger (2002)

Released: 22 Nov 2004
Recorded: Nov 2003 - Aug 2004
Genre: Rock, Metal
Length: 48 minutes and 46 seconds

[View album](#)



Ride the Lightning (1999)

Released: 22 Nov 2004
Recorded: Nov 2003 - Aug 2004
Genre: Rock, Metal
Length: 48 minutes and 46 seconds

[View album](#)



Six Feet Under (2001)

Released: 22 Nov 2004
Recorded: Nov 2003 - Aug 2004
Genre: Rock, Metal
Length: 48 minutes and 46 seconds

[View album](#)

[View the complete discography](#)

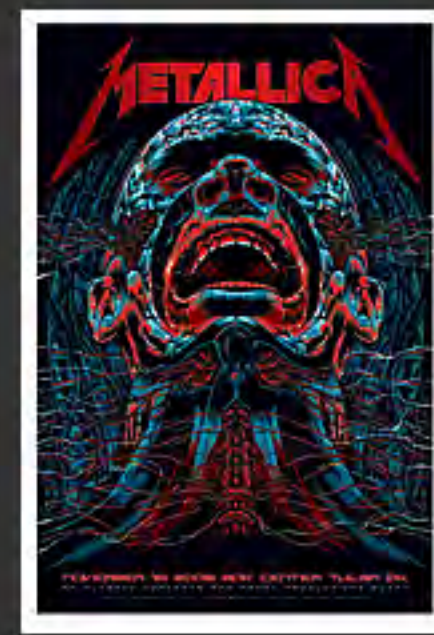
News & Events



Metallica World Magnetic Tour 2010

It's the sort of story that scriptwriters would get laughed out of conference rooms for entering. The sort of story that illustrates perfect synchronicity between hunger, passion and time. The sort of story that only happens every 30-odd years. And the sort of story that would approximately 500 pages to do it true justice. Metallica. A household name.

- [Buy tickets](#) 19 January 2010 - Estadio San Marcos, Lima, Peru
- [Buy tickets](#) 22 January 2010 - Stadium, Buenos Aires, Argentina
- [Buy tickets](#) 24 January 2010 - Perito Moreno, Lima, Peru



Metallica Special Concert

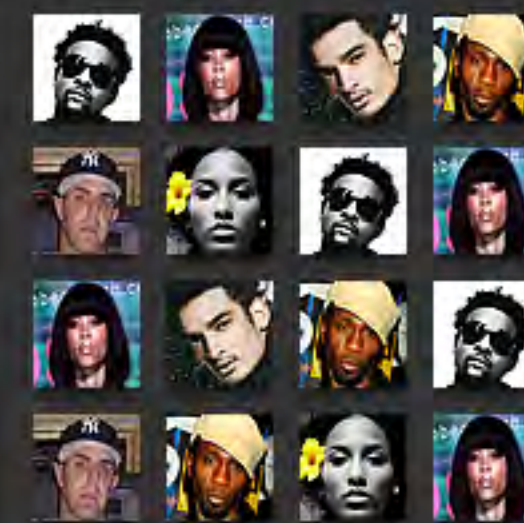
Praesent sapien purus, condimentum vitae venenatis eget, interdum in leo. Aliquam ullamcorper lacus quis orci hendrerit pharetra. Mauris sed sapien justo. Maecenas in velit id lorem bibendum lobortis ac quis leo.

Mauris gravida magna eu nisi semper eget luctus metus sodales. Etiam pellentesque justo eget euismod lacrima, nisi turpis vulpate dui, in elementum leo odio ac odio. In volutpat ante sit amet enim euismod malesuada. [Read more](#)

[Buy tickets](#)

[View more news & events](#)

Fans



Etiam 2,798,359 pellentesque, justo eget euismod lacrima, nisi turpis dui.

[View more fans](#)

Photo gallery



[Visit the gallery](#)

Merchandise



Mauris sed sapien justo. Maecenas in velit id lorem bibendum lobortis ac quis leo. Etiam pellentesque.

\$24.99

[Buy item](#)



Mauris sed sapien justo. Maecenas in velit id lorem bibendum lobortis ac quis leo. Etiam pellentesque.

\$6.99

[Buy item](#)



Mauris sed sapien justo. Maecenas in velit id lorem bibendum lobortis ac quis leo. Etiam pellentesque.

\$88.99

[Buy item](#)



Mauris sed sapien justo. Maecenas in velit id lorem bibendum lobortis ac quis leo. Etiam pellentesque.

\$126.99

[Buy item](#)

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Viva la Vida or Death and all His Friends

The Exclusive Version of the fourth studio album by alternative rock band Coldplay, released in 2008

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Coldplay



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Discussions

Coldplay are an English alternative rock band formed in 1996 by lead vocalist Chris Martin and lead guitarist Jonny Buckland at University College London. After forming Pectoralz, Guy Berryman joined the group as a bassist and they changed their name to Starfish. Will Champion joined as a drummer, backing vocalist, and multi-instrumentalist, completing the lineup. Manager Phil Harvey is often considered an unofficial fifth member. The band renamed themselves "Coldplay" in 1998, before recording and releasing three EPs: Safety in 1998, Brothers & Sisters as a single in 1999 and The Blue Room in the same year. The latter was their first release on a major label, after signing to Parlophone.

Coldplay's early material was compared to acts such as Radiohead, Jeff Buckley, U2, and Travis. They achieved worldwide fame with the release of the single "Yellow" in 2000, followed by their debut album released in the same year, Parachutes, which was nominated for the Mercury Prize. The band's second album, A Rush of Blood to the Head (2002), won multiple awards, including NME's Album of the Year. Their next release, X&Y, received a slightly less enthusiastic yet still generally positive reception upon its release in 2005. The band's fourth studio album, Viva la Vida or Death and All His Friends (2008), was produced by Brian Eno and released again to largely favourable reviews, earning several Grammy nominations and wins.

Origin: London, England

Genre: Alternative rock

Activity: 1996–present

Labels: EMI, Parlophone, Capitol, Fierce Panda

Associated: Apparatjik

www.coldplay.com
www.coldplay.music

Discography

Albums

EP

Live

Hits

Remix

Compilation

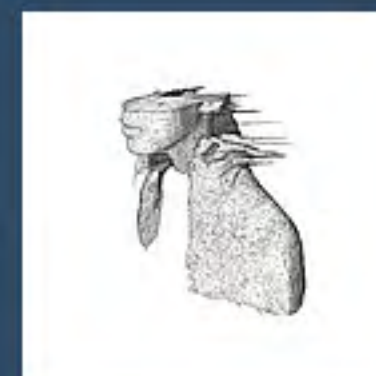
Special



Parachutes (2000)

Released: 22 Nov 2004
Recorded: Nov 2003 - Aug 2004
Genre: Rock, Metal
Length: 48 minutes and 46 seconds

[View album](#)



A Rush of Blood to the Head (2002)

Released: 22 Nov 2004
Recorded: Nov 2003 - Aug 2004
Genre: Rock, Metal
Length: 48 minutes and 46 seconds

[View album](#)



X&Y (2005)

Released: 22 Nov 2004
Recorded: Nov 2003 - Aug 2004
Genre: Rock, Metal
Length: 48 minutes and 46 seconds

[View album](#)



Viva la Vida or Death and All His Friends (2008)

Released: 22 Nov 2004
Recorded: Nov 2003 - Aug 2004
Genre: Rock, Metal
Length: 48 minutes and 46 seconds

[View album](#)

[View the complete discography](#)

News & Events



Viva la Vida or Death and all His Friends

Praesent sapien purus, condimentum vitae venenatis eget, interdum in leo. Aliquam ullamcorper lacus quis orci hendrerit pharetra. Mauris sed sapien justo. Maecenas in velit id lorem bibendum lobortis ac quis leo.

Mauris gravida magna eu nisi semper eget luctus metus sodales. Etiam pellentesque, justo eget euismod lacinia, nisi turpis vulputate dui, in elementum leo odio ac odio. In volutpat ante sit amet enim euismod malesuada. [Read more](#)

[Buy tickets](#)



Powderfinger, The Fillmore

Praesent sapien purus, condimentum vitae venenatis eget, interdum in leo. Aliquam ullamcorper lacus quis orci hendrerit pharetra. Mauris sed sapien justo. Maecenas in velit id lorem bibendum lobortis ac quis leo.

Mauris gravida magna eu nisi semper eget luctus metus sodales. Etiam pellentesque, justo eget euismod lacinia, nisi turpis vulputate dui, in elementum leo odio ac odio. In volutpat ante sit amet enim euismod malesuada. [Read more](#)

[Buy tickets](#)

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Fans



Etiam 2.798.359 pellentesque, justo eget euismod lacinia, nisi turpis dui.

[View more fans](#)

Photo gallery



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Merchandise



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\$24.99

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\$6.99

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Mauris sed sapien justo. Maecenas in velit id lorem bibendum lobortis ac quis leo. Etiam pellentesque.

\$88.99

[Buy item](#)



Mauris sed sapien justo. Maecenas in velit id lorem bibendum lobortis ac quis leo. Etiam pellentesque.

\$126.99

[Buy item](#)

Appendix H

Global Music Community Communication
Outreach Campaign (2008-2014)
Events & Other Engagements

ICANN (Cairo, Egypt): 2-7 November, 2008

Midem (Cannes, France): 18-21 January, 2009

ICANN (Mexico City, Mexico): 1-6 March, 2009

SXSW (Austin, USA): 18-22 March, 2009

Leadership Music Digital Summit (Nashville, USA): 23-25 March, 2009

Musexpo (Hollywood/Los Angeles, USA): 26-29 April, 2009

Harvard Business School (Cambridge/Boston, USA): May 2009

ICANN (Sydney, Australia): 21-26 June, 2009

Digital Music Forum West (Hollywood/Los Angeles, USA): 7-8 October, 2009

Digital Hollywood (Santa Monica, USA): 19-22 October, 2009

ICANN (Seoul, South Korea): 25-30 October, 2009 [SPONSOR]

San Francisco Music Tech (San Francisco, USA): 7 December, 2009 [SPONSOR]

Mashable (New York, USA): 17 December, 2009

CES (Las Vegas, USA): 7-10 January, 2010

ICANN Studienkreis (Barcelona, Spain): 21-22 January, 2010

Midem (Cannes, France), 23-27 January, 2010

Social Media Week (New York, USA), 1-5 February, 2010 [SPONSOR]

Harvard Business School (Cambridge/Boston, USA), February, 2010

ICANN (Nairobi, Kenya), 7-12 March, 2010

SXSW (Austin, USA): 17-21 March, 2010

ASCAP "I Create Music" Expo (Los Angeles, USA): 22-24 April, 2010

Musexpo (Hollywood/Los Angeles, USA): 25-28 April, 2010

Digital Hollywood (Los Angeles, USA): 3-6 May, 2010

San Francisco Music Tech (San Francisco, USA): 17 May, 2010 [SPONSOR]

Soundctrl Internet Week (New York, USA): 10 June, 2010 [SPONSOR]

ICANN (Brussels, Belgium): 20-25, June, 2010 [SPONSOR]

New Music Seminar (New York, USA): 19-21, July, 2010

North Music Park Thing (San Diego, USA): 13-14, August, 2010 [SPONSOR]

Bandwidth Conference (San Francisco, USA): 19-20, August, 2010 [SPONSOR]

Berlin Music Week (Berlin, Germany): 6-12, September, 2010

All2getherNow Music & Culture (Berlin, Germany): 6-10, Sept, 2010 [SPONSOR]

Popkomm (Berlin, Germany): 8-10, September, 2010 [SPONSOR]

Tag Strategic & Midem Event (West Hollywood, USA): 22, September, 2010

Social Media Week (Los Angeles, USA): Sep 23, 2010

Future of Music Policy Summit (Washington DC, USA): 3-5, Oct, 2010 [SPONSOR]

Digital Music Forum West (Los Angeles, USA): 6-7, October, 2010

CMJ Music Marathon (New York, USA): 19-23, October, 2010 [SPONSOR]

Billboard (Los Angeles, USA): 27-28, October, 2010 [SPONSOR]

New Noise Music Conference & Festival (Santa Barbara, USA): 4-6 November, 2010

The Underground, Presented By Microsoft (Los Angeles, USA): 9 November, 2010

Entertainment & Sports Law Symposium (Minneapolis, USA): 12, November, 2010

Miami Music Festival (Miami, USA): 12-14, November, 2010 [SPONSOR]

San Francisco Music Tech (San Francisco, USA): 6, December, 2010

ICANN Meeting (Cartagena, Colombia): 5-10, December, 2010 [SPONSOR]

CES (Las Vegas, USA): 6-9, January, 2011

Midem (Cannes, France): 22-26, January, 2011

.nxt Conference (San Francisco, USA): 9-10, February, 2011

New Music Seminar (Los Angeles, USA): 14-16, February, 2011 [SPONSOR]

Digital Music Forum East (New York, USA): 24, February, 2011

Experience Music Project, UCLA (Los Angeles, USA): 25-27, February, 2011

USC Lloyd Greif Entrepreneur Day (Los Angeles, USA): 5, March, 2011

Canadian Music Week (Toronto, Canada): 9-13, March, 2011

ICANN Meeting 40 (San Francisco, USA): 13-18, March, 2011

SXSW (Austin, USA): 11-20, March, 2011 [SPONSOR]

Music & Entertainment Industry Educators Assoc (L.A, USA): 1-2, April 2011

Summit Series: Summit at Sea (Miami, USA): 8-11, April, 2011

Rethink Music (Boston, USA): 25-27, April, 2011

ASCAP Expo (Los Angeles, USA): 28-30, April, 2011

Musexpo (Los Angeles, USA): 1-4, May, 2011

Digital Hollywood (Santa Monica, USA): 2-5, May, 2011

NARM (Los Angeles, USA): 9-12, May, 2011

SoundCtrl FlashFWD / Internet Week (NYC, USA): 8, June, 2011 [SPONSOR]

ICANN Meeting 41 (Singapore): 19-24, June, 2011

Dot Nxt (San Francisco, USA): 24-26, August, 2011

Popkomm (Berlin, Germany): 7-9, September, 2011

New Domains Conference on new TLDs (Munich, Germany): 26-7, September, 2011

T.R.A.F.F.I.C (Fort Lauderdale, USA): 14-19 October, 2011

CMJ Music Marathon (New York, USA): 18-22, October, 2011

ICANN Meeting 42 (Dakar, Senegal/Africa): 23-28, October, 2011

WOMEX (Copenhagen, Denmark) October 26-30, 2011

Finnish-America Chamber of Commerce Music Panel (New York, NY) November 1, 2011

Association of Performing Arts Presenters and Jazz Connects (New York, NY) January 5-10, 2012

Midem (Cannes, France): 28-31, January, 2012

SF Music Tech (San Francisco, USA): 13, February, 2012

A2IM Licensing Day (New York, USA): 15, February, 2012

SoundCtrl Music Hub, Social Media Week (New York, USA): 16, February, 2012

SXSW (Austin, TX, USA): 9-18, March, 2012

ICANN Meeting 43 (San Jose, Costa Rica): 11-16, March, 2012

Canadian Music Week (Toronto, CA), March 21-25, 2012

Sync Up (New Orleans, Louisiana) May 4-5, 2012

NARM (Los Angeles, USA): May 7-10, 2012

Music Matters (Singapore): May 22-26, 2012

Song Summit (Sydney, Australia): May 26-28, 2012

New Music Seminar (New York, USA): June 17-19, 2012

A2IM Indie Week (New York, NY) June 19-21, 2012

ICANN Meeting 44 (Prague, Czech Republic): 24-29, June, 2012

Trigger Creative Conference (Borlange, Sweden): June 27-29, 2012

Brasil Music Exchange (Rio de Janeiro, Brazil) July 16-18, 2012

U.S A2IM Trade Mission (Seoul, Korea, China and Hong Kong): September 6-13, 2012

Cutting Edge (New Orleans, Louisiana): September 26-30th, 2012

T.R.A.F.F.I.C (Fort Lauderdale, USA): 7-10 October, 2012

SF Music Tech (San Francisco, USA): October 9, 2012

ICANN Meeting 45 (Toronto, Canada): 14-19 October, 2012

CMJ (New York, USA): 15-19 October, 2012

MU:CON (Seoul, Korea): November 2-3, 2012

Soft Launch Paishouba (Beijing, China): November 4,5, 2012

Nokia Music Connects (Mumbai, India): November 6-7, 2012

Billboard Futuresound (San Francisco, USA): November 15-16, 2012

Association of Performing Arts Presenters and Jazz Connects (New York, NY): January 10-15, 2013

Midem (Cannes, France): 26-28 January, 2013

Folk Alliance (Toronto, Canada): Feb 19-23, 2013

SF Music Tech (San Francisco, USA): February 28, 2013

IM4U (Kuala Lumpur, Malaysia): March 2-3, 2013

SXSW (Austin, USA): March 12-17, 2013

Canadian Music Week (Toronto, Canada): 19-24 March, 2013

ICANN Meeting (Beijing, China): April 7-11, 2013)

ABMI Conference and U.S A2IM Trade Mission (Rio de Janeiro, Brazil), April 17-20, 2012

NARM (Los Angeles, USA): May 6-9, 2013

Music Matters Asia (Singapore): May 21-25, 2013

SF Music Tech (San Francisco), May 28, 2013

World Creators Summit (Washington DC, USA), June 4-5, 2013

New Music Seminar (New York, USA): June 9-11, 2013

SF Music Tech (San Francisco): May 28, 2013

World Creators Summit (Washington DC, USA): June 4-5, 2013

A2IM Indie Week (New York, NY): June 18-20, 2013

Sync Summit (New York, NY): June 19-20, 2013

Trigger Creative Conference (Borlange, Sweden): June 26-29, 2013

YouBloom (Dublin, Ireland): June 29-30, 2013

ICANN Meeting (Durban, South Africa): 14-18 July, 2013

Chicago Music Summit (Chicago, Illinois): September 19-20, 2013

SF Music Tech (San Francisco), October 1, 2013

MU:CON (Seoul, Korea): October 10-12, 2013

CMJ (New York, NY): October 15-17), 2013

MaMA (Paris, France): October 17-18, 2013

T.R.A.F.F.I.C (Fort Lauderdale, USA): 20-23 October, 2013

Festival Innovation and Creativity (Lisbon, Portugal): November 14-17, 2013

ICANN Meeting (Buenos Aires, Argentina): 17-21 November, 2013

Sync Summit (Los Angeles, CA): December 4-5, 2013

NamesCon, (Las Vegas, USA): January 13-15, 2014

Midem (Cannes, France): Jan 25-28, 2014

SXSW (Austin, USA): March 7-16, 2014

ICANN Meeting (Singapore): 23-27 March, 2014

DomainFest (Los Angeles, USA): March 31 – April 2, 2014

A2IM LA Chapter Event & Music Biz/NARM Reception (Los Angeles, U.S.A): May 6th, 2014

Canadian Music Week (Toronto, Canada): 6-10 May, 2014

SF Music Tech (San Francisco, USA): May 20, 2014

T.R.A.F.F.I.C (Las Vegas, USA): May 28-31, 2014

ICANN Meeting (London, UK): 22-26 June, 2014

The communication outreach campaign is ongoing. For the most recent outreach campaign information and upcoming events visit <http://music.us/events.htm>

Appendix I

Wikipedia "Music Community"

Music Community. In Wikipedia. Retrieved
November 26, 2014, from
https://en.wikipedia.org/wiki/Music_community

Music community

Music community is defined as a logical alliance of interdependent communities that are related to music, which include commercial participants, such as record labels, operating within what is commonly-known as the music industry, and non-commercial participants, such as amateur musicians. It comprises of “networks of musicians, promoters, and interested people”,^{[1][2]} and consists of an “ensemble of practices and institutions that make possible and regulate the production, distribution and consumption of music.”^[3]

UNESCO identifies the music community as a “community of identity”, implying common identifiable characteristics and cohesive attributes such as sharing a music culture, norms and subscribing to common ideals related to music.^[4] The music community is not defined as much by demographic indicators such as race, gender, and income level, as it is by common values, cohesive norms and interconnected structures to build a community identity.^[5] It refers to music-related individuals and organizations in a shared environment with shared understandings and practices, modes of production and distribution.^[6] The shared organisation of collective musical activities, identity and community value is created as result of infrastructure and a shared set of common values.^[7]

Many studies outline the historical, cultural, and spatial significance of the music community, including how its identity is formed through musical practices.^{[8][9]} The music community shares a cohesive and interconnected structure of artistic expression, with diverse subcultures and socio-economic interactions between music creators, their value chain, distribution channel and fans subscribing to common ideals. Under such structured context music consumption becomes possible regardless whether the transaction is commercial and non-commercial. Music performances give people in the music community an opportunity to voice their emotions, values, lifestyle, and economic and social conditions through sound, rhythm, and community.^[10]

In the place of the continued commercialism of music, the quest for identity and meaning has been rekindled with music both musicians and audiences.^[11] How music is consumed in a space can affect the cultural meaning of places and people’s interactions in places.^[12] With new frameworks for music consumption, communication, distribution and reception being adopted, many elements have been re-negotiated and re-modified, often altering our traditional understandings of music audiences and their role in these practices. The popularity of social me-

dia and online communities in particular brought forth a number of online explorations of music audience and fan behavior.^[13]

1 References

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- [2] Rebecca Elizabeth Ball, *Portland’s Independent Music Scene: Formation of Community Identities and Alternative Urban Cultural Landscapes*, 2010, Page 50
- [3] Michael Talbot, *Business of Music*, Liverpool University Press, 2002, Page 171
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- [8] Grazian, David. “The Symbolic Economy of Authenticity in the Chicago Blues Scene.” in *Music Scenes: Local, Translocal, and Virtual*. ed. Bennett, Andy and Richard A. Peterson. Nashville: Vanderbilt University Press, 2004. Pages 31-47
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- [12] Connell, John, and Chris Gibson. "World Music: Deterritorializing Place and Identity." *Progress and Human Geography*. 28.3 (2004): 342-361. Sage Journals Online. Web. 19 March 2009
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2.1 Text

- **Music community** *Source:* <http://en.wikipedia.org/wiki/Music%20community?oldid=632403850> *Contributors:* Dr. Blofeld

2.2 Images

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yourname.music



www.music.us

For more information on DotMusic:

<http://www.music.us>

Exhibit DIDP A17

.MUSIC Applicant Comparison Chart: DotMusic Limited vs. Other .MUSIC Applicants

	DotMusic Limited	.music LLC	Amazon S.a.r.l	Charleston Road	dot Music Limited	Victor Cross	Entertainment Names	Dotmusic Inc
"Also Known As"	.MUSIC™	Far Further	Amazon	Google	Famous Four Media	Donuts/Rightside	Minds and Machines	Radix
Application ID	1-1115-14110	1-959-51046	1-1316-18029	1-1680-18593	1-1175-68062	1-1571-12951	1-994-99764	1-1058-25065
Total Top-Level Domain Applications Filed	1	1	76 (Portfolio)	101 (Portfolio)	60 (Portfolio)	307 (Portfolio)	71 (Portfolio)	31 (Portfolio)
Type of Application	Community (Restricted)	Community (Restricted)	Standard (Closed)	Standard (Open)	Standard (Open)	Standard (Open)	Standard (Open)	Standard (Open)
Policy Advisory Board & Multi-Stakeholder Governance	Yes.	Yes. Board still pending.	No	No	Limited Board	No	No	No
Community Member Organization Resellers/Partners	Yes	Yes	No	No	No	No	No	No
Music Organization Accreditation Requirements	Yes. Eligible organizations get priority in MCMO Phase(1)	No. Invite-only.	No	No	No	No	No	No
Who Can Register (Eligibility)	Entire global Music Community	Only those belonging to 42 organizations	No	No	No	No	No	No
Phone & Email Two-Step Authentication	Yes	No	No	No	No	No	No	No
Protect Famous Music Artist/Brand Names	Music Globally Protected Marks List (GPML)	No	No	No	No	No	No	No
Domain Naming Conditions	Yes. 1. Entity name (or portion of); or	No. Open	No. Open	No. Open	No. Open	No. Open	No. Open	No. Open
	2. Doing Business As; or	No. Open	No. Open	No. Open	No. Open	No. Open	No. Open	No. Open
	3. Acronym (AKA); or	No. Open	No. Open	No. Open	No. Open	No. Open	No. Open	No. Open
	4. Name recognizing entity; or	No. Open	No. Open	No. Open	No. Open	No. Open	No. Open	No. Open

	5. Name describing entity	No. Open	No. Open	No. Open	No. Open	No. Open	No. Open	No. Open
Use:								
Only Legal Music Activities	Yes. Only legal music activities allowed	No. Open	No. Open	No. Open	No. Open	No. Open	No. Open	No. Open
Only Music-Related Activity Usage	Yes. Only music usage allowed	No. Open	No. Open	No. Open	No. Open	No. Open	No. Open	No. Open
Prohibits registering of domain with established artist's/brand's name	Yes	No. Open	No. Open	No. Open	No. Open	No. Open	No. Open	No. Open
Content:								
Only Music-Related Content	Yes. Only music content allowed	No. Open	No. Open	No. Open	No. Open	No. Open	No. Open	No. Open
Quality Content Control (Parking Pages)	Yes. Parking pages are not allowed	No. Open	No. Open	No. Open	No. Open	No. Open	No. Open	No. Open
Policy, IP & Copyright Infringement Enforcement	Extensive enforcement measures constituting a coherent set	No. General	No. General	No. General	No. General	No. General	No. General	No. General
Enforcement & Appeals Mechanisms	Appropriate appeals mechanisms	No. General	No. General	No. General	No. General	No. General	No. General	No. General
Independent Dispute Resolution Provider	Yes. National Arbitration Forum (NAF)	None specified	None	None	None	None	None	None
Music-Focused Registration Policy Dispute Resolution	MPCIDRP	Partial. Only for Eligibility (MEDRP)	No	No	No	No	No	No
Music-tailored Copyright Protection Provisions	Extensive enhanced safeguards and copyright provisions (2)	No. General.	No. General.	No. General.	No. General.	No. General.	No. General.	No. General.
Community Definition	Organized & delineated logical alliance of music communities	Segments from 42 organizations	Open	Open	Open	Open	Open	Open
Community Support	Majority. Coalition represents over 95% of global music consumed	Minority. Only 4 million members.	Open	Open	Open	Open	Open	Open
Community Objection	There has been no Community Objection or relevant opposition (3)	Objection.	Objection.	Objection.	Objection.	Objection.	Objection.	Objection.

Music-Tailored Public Interest Commitments (PIC)	Public Interest Commitments with Clarifications (4)	No	No	No	No	No	No	No
.music Community TLD Support Petition	1.5+ million signed petition	No	No	No	No	No	No	No
Public Community Outreach Campaign	200+ public events (2008-Present)	Negligible	No	No	No	No	No	No
.music-focused Social Media Engagement	Extensive. 5+ million across all media	Negligible	No	No	No	No	No	No
Trademark for .MUSIC™	Yes. Over 40 countries/regions	No	No	No	No	No	1 country	No
Community Premium Channels	Yes. Sorted by Type, Genre, Language, Geography, Keyword (5)	No	No	No	No	No	No	No
Global Legal Song Licensing Registry based on DNS	Yes	No	No	No	No	No	No	No

(1) DotMusic gives priority to members of Music Organizations during MCMO Phase. During General Availability all Community members (including non-MCMO members) can register a .MUSIC domain.

(2) DotMusic has more enhanced safeguards than all .MUSIC applicants combined. DotMusic has incorporated all IFPI/RIAA IP protection provisions that include stopping domain hopping, takedown policies, authorizations, permanent blocks, privacy/proxy, true name/address and trusted sender complaint policies.

(3) DotMusic addressed all concerns/comments raised by the Music Community and filed the PIC which clarifies how the Application serves the Community and the public interest. According to the ICANN New gTLD Program Applicant Guidebook: "To be taken into account as relevant opposition, such objections or comments must be of a reasoned nature. Sources of opposition that are clearly spurious, unsubstantiated, made for a purpose incompatible with competition objectives, or filed for the purpose of obstruction will not be considered relevant." (Community Priority Evaluation Guidelines, P.20)

(4) By filing these Public Interest Commitments with ICANN, DotMusic commits to serve the Music Community and Public Interest as clarified and may be held accountable via the PICDRP.

(5) The Premium Channels available to all validated community members are sorted/delineated according to NAICS community type (Musician/Band/Professional/Company), Genre (e.g. www.Rock.music), Language (e.g. French.music), Geography (e.g London.music / France.music) and Keywords (e.g Lyrics.music).

Exhibit DIDP A18



Transparency Report

Reporting Organization: BPI (British Recorded Music Industry) Ltd

Total Requests:	329,193
Median Requests per Week:	754
URLs Requested to be Removed:	200,416,831
% Indexed URLs ⓘ	–
Median URLs per Week:	831,137
Most Recent Request:	Mar 30, 2016
First Available Request:	Jun 6, 2011

URLs Requested to be Removed Per Week

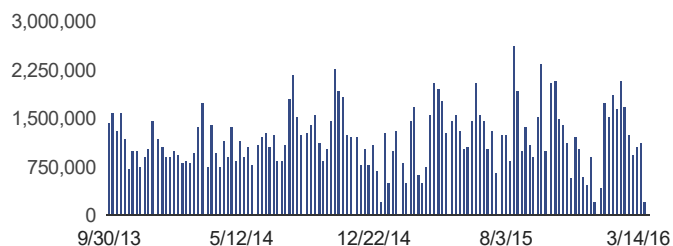


Exhibit DIDP A19



MEDIA CENTRE

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“URGENT REFORM” NEEDED TO NOTICE AND TAKEDOWN AS REMOVAL OF 200 MILLIONTH ILLEGAL SEARCH RESULT FROM GOOGLE APPROACHES

London, 24th March 2016 – for immediate release: The BPI, the record labels' organisation which promotes British music, has spearheaded a major drive in recent years to support the growth of the legal music market by disrupting the activities of illegal music sites.

Concerted efforts by the wider music community to build a healthy digital market have been held back by search engines and other intermediaries continuing to direct users and revenues towards sites that defraud artists and labels. The BPI has repeatedly called on Google and others to do more to ensure that consumers searching for recorded music are referred to legal services in preference to illegal sites, many of which pose risks from viruses, trojans or other harmful or inappropriate content.

As part of a range of measures to protect its members' content¹, the BPI notifies Google and others whenever its automated content protection system identifies links in search results that point to illegal copies of music, and requests these are taken down. This weekend will see the BPI pass the milestone of 200 million infringing URLs sent to Google for removal from search results since its first notice in July 2011.

This high-volume take-down helps to limit the amount of illegal content being promoted, giving legal music services such as Amazon, Apple, Spotify and Deezer a better chance of appearing at the top of search results when fans are looking for music online². While this approach has contributed to some improved visibility of legal services, illegal results that are taken down by Google are frequently replaced by other illegal links, which means that legal services continue to be overshadowed by infringing sites in the very top search results. This damaging situation can only be remedied by Google themselves changing strategy and pro-actively pursuing a “notice and stay down” approach, so that once a piece of content has been notified for removal by the BPI, it isn't indexed again for the same site and stays removed.

The Government has set up a round table to try to reach voluntary agreement to fulfil its manifesto commitment to “work to ensure that search engines do not link to the worst offending sites”. The BPI has called for a series of measures as part of that process: *A lower threshold* for the number of notices required to de-rank an illegal site and *transparency* over that threshold; *improved discoverability* of genuine sites to help consumers towards legal content; *automatic de-listing* of sites that have been ruled illegal by the High Court; action to *prevent illegal sites avoiding demotion* by swapping domain; and “*notice and stay down*” – once a piece of content has been notified for removal, it should not be indexed again for the same site.

Geoff Taylor, Chief Executive BPI & BRIT Awards, comments: “*The BPI believes that people who make music or other entertainment deserve to be rewarded for their work and creativity. Only when*

consumers support legitimate sites can labels, studios and broadcasters consistently invest in the best talent to make high quality entertainment we can all enjoy.

"The notice and take-down system, as currently structured, cannot represent an effective response to piracy and requires urgent reform. Internet intermediaries like search engines clearly need to take more active responsibility to stop directing business to the black market.

"We are calling on Google and Bing to show their undiluted commitment to artists and the creative process by implementing a more pro-active solution to illegal sites appearing in search results. This will avoid the cost for both of us in dealing with hundreds of repeated notices for the same content on the same illegal sites".

ENDS –

-

Enquiries

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139

Notes to Editors

The BPI's content protection work

¹Alongside its programme of take-down notices to Google and other search engines, the BPI has obtained court orders requiring Internet Service Providers (ISPs) to block UK access to 63 websites offering infringing content as well as hundreds of proxy sites. The BPI also works with The City of London Police's PIPCU operation (Police Intellectual Property Crime Unit) and with advertisers and financial services to choke off the revenues on which illegal sites feed, and is a partner in the Creative Content UK *Get It Right From A Genuine Site* awareness campaign, which aims to encourage consumers to value content and to source it from legal sites.

The importance of Search - research

²Research data consistently shows that search placement plays an important role in determining where consumers go to acquire music and other entertainment. A 2014 study by the Technology Policy Institute highlighted that "changing the prominence of pirate and legal links has a strong impact on user choices: users are more likely to consume legally (and less likely to infringe copyright) when legal content is more prominent in search results". The study also found that users whose initial search terms indicate an intention to consume pirated content are more likely to use legal channels when pirated content is harder to find in search results. <https://techpolicyinstitute.org/2014/09/15/search-impact-on-piracy/>

About The BPI

The BPI was formed in 1973 and is a representative voice of the UK recorded music business. It promotes recorded music in the UK and worldwide and champions the rights of the music community. Its membership is made up of hundreds of independent music labels and the UK's three major record companies, which collectively account for around 85 per cent of the recorded music consumed in the UK – the world's fourth largest music market.

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Exhibit DIDP A20

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POSTS

Using Search Results to Fight Piracy (<https://techpolicyinstitute.org/2014/09/15/search-impact-on-piracy/>)

by [Michael D. Smith \(https://techpolicyinstitute.org/author/michael-d-smith/\)](https://techpolicyinstitute.org/author/michael-d-smith/) | Tags:
| Comments: 0 (<https://techpolicyinstitute.org/2014/09/15/search-impact-on-piracy/#respond>)
September 15, 2014

With the growing consensus in the empirical literature that piracy harms sales (<http://www.digitopoly.org/2012/09/13/piracy-harm/>), and emerging evidence that increased piracy can affect both the quantity and quality of content produced (here (<https://www.techpolicyinstitute.org/blog/2014/09/does-piracy-undermine-product-creation/>) and here (<http://www.digitopoly.org/2014/08/22/piracy-undermining-content-creation-loch-ness-monster-or-black-swan/>) for example), governments and industry partners are exploring a variety of ways to reduce the harm caused by intellectual property theft. In addition to graduated response efforts and site shutdowns, Internet intermediaries such as Internet Service Providers, hosting companies, and web search engines are increasingly being asked play a role in limiting the availability of pirated content to consumers.

However, for this to be a viable strategy, it must first be the case that these sorts of efforts influence consumers' decisions to consume legally. Surprisingly, there is very little empirical evidence one way or the other on this question.

In a recent paper (<http://ssrn.com/abstract=2495591>), my colleagues Liron Sivan, Rahul Telang and I used a field experiment to address one aspect of this question: Does the prominence of pirate and legal sites in search results impact consumers' choices for infringing versus legal content? Our results

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suggest that reducing the prominence of pirate links in search results can reduce copyright infringement.

To conduct our study, we first developed a custom search engine that allows us to experimentally manipulate what results are shown in response to user search queries. We then studied how changing what sites are listed in search results impacted the consumption behavior of a panel of users drawn from a general population, and a separate panel of only college aged participants.

In our experiments, we first randomly assigned users to one of three groups: a control group of users who are shown the same search results they would receive from a major search engine, and two treatment groups where pirate sites are artificially promoted and artificially demoted in the displayed search results. We then asked users to obtain a movie they are interested in watching, and to use our search engine instead of the search engine they would normally use. We observe what queries each set of users issued to search for their chosen movie, and surveyed them regarding what site they used to obtain the movie.

Our results suggest that changing the prominence of pirate and legal links has a strong impact on user choices: Relative to the control condition, users are more likely to consume legally (and less likely to infringe copyright) when legal content is more prominent in search results, and user are more likely to consume pirate content when pirate content is more prominent in search results.

By analyzing users' initial search terms we find that these results hold even among users with an apparent predisposition to pirate: users whose initial search terms indicate an intention to consume pirated content are more likely to use legal channels when pirated content is harder to find in search results.

Our results suggest that reducing the prominence of pirate links in search results can reduce copyright infringement. We also note that there is both precedent and available data for this sort of response. In terms of precedent, search engines are already required to block a variety of information, including content from non-FDA approved pharmacies in the U.S. and content that violates an individual's "right to be forgotten" in a variety of EU countries. Likewise, the websites listed in DMCA notices give search engines some of the raw data necessary to determine which sites are most likely to host infringing content.

Thus, while more research and analysis is needed to craft effective policy, we believe that our experimental results provide important initial evidence that users' choices for legal versus infringing content can be influenced by what information they are shown, and thus that search engines can play a role in the ongoing fight against intellectual property theft.

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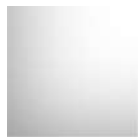
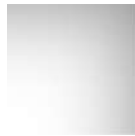
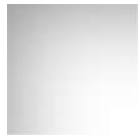
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Exhibit DIDP A21

Google now receives more than 2 million piracy takedown requests a day

That's 1,500 takedown requests a minute

By [James Vincent](#) on November 23, 2015 09:32 am [@jjvincent](#)



It's been a while since we checked in with Google's Transparency Report, the company's blog that keeps tabs on search result takedowns and related issues, but it seems the war on piracy has only been **getting more frantic**. As *TorrentFreak* pointed out in a **recent post**, Google now receives just over 1,500 requests every minute to remove URLs from its search results. That's 25 requests a second or around 2,160,000 a day — double the amount of requests the

company was receiving over the same time period last year.

Last month's takedown requests came from 5,492 copyright owners and pertained to 72,207 specific domains, meaning that each domain, on average, was the subject of around 900 takedown requests. However, this stat doesn't paint a totally accurate picture, as the top five domains (including Spanish-language MP3 download site flowxd.me and Polish file locker chomikuj.pl) were the target of more than half a million reports each.

*LAST
MONTH'S
MOST
PROLIFIC
DOMAINS
WERE THE
TARGET OF
HALF A
MILLION
REQUESTS*

It's also worth remembering that these statistics include multiple takedown requests for the same URLs (which Google says it includes as doing so "paints a more complete picture of the removals activity"). Still, though, these are staggering numbers and show that despite Google's attempts to limit access to pirating sites (as of 2012 it's been **feeding this data** into its search algorithms to make frequently-infringing domains less visible), the takedown request is still one of the main weapons used by copyright holders against pirates.

looks like



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How changing technologies will affect your business

Exhibit DIDP A22

Business Matters: Legal MP3 Sites Are Still Buried by Google Search Results

By Glenn Peoples | November 05, 2012 7:07 PM EST



If most people simply want to do the right thing when it comes to downloading, the upcoming Copyright Alert System could help more than searching at Google. Over three months after Google implemented a system to lower the search ranking of domains based on the number of DMCA takedown requests received, Billboard.biz finds legal options are still buried in the search results for many popular artists.

Billboard.biz took a sample of 30 popular artists and used a standard query of the artist name plus the term "MP3" in Google's search engine to gauge where legal and illegal sites ranked in the search results. For two artists, Ke\$ha and P!nk, alternative spellings were also used. In all, 32 searches were conducted.

The average rank of the first legal result of any kind was 7.9 - which would place the average item near the bottom of the first page. The first legal result was almost always a YouTube video. Occasionally it was an embedded stream, such as a SoundCloud widget in a music blog.

The average rank of the first legal MP3 store listed was 11.75. That would place the first MP3 store returned in the average search result near the top of the second page. (There were almost always 10 search results per page. Occasionally there were fewer than 10 because links had been removed due to content owners' takedown requests.) Amazon was the first legal MP3 site in the search results in 31 out of 32 instances. 7digital was the top legal MP3 site once.

One illegal download site, MP3skull, was the top search result 31 out of 32 times; MP3skull was also the top illegal search result 28 out of 32 times. The domain has received the 23rd-most removal requests from content owners over the last 12 months, according to the Google Transparency Report. Billboard.biz calculates MP3skull has accounted for 3.6% of the 14.07 million URLs removed from Google's search listings over the last 12 months.

Some domains that were frequently seen in search results are near the top of the list of

targeted offenders. One was beemp3.com. It has accounted for 5.1% of all URLs removed over the last 12 months, making it the 11th most targeted domain over that time span. Another was MP3bear.com. Content owners have requested that 106,050 URLs -- 0.7% of the total -- be removed from MP3bear.com domains. Nevertheless, the site is the fourth result returned for a search for Kanye West MP3s. The first three are MP3skull URLs.

Country and rock artists had a better tendency to have a legal MP3 site on the first page of search results (although one should note this is a small sample). Amazon MP3 was the first result for the Lumineers and Little Big Town, the second for Adele and Taylor Swift, the third for Carrie Underwood and Mumford and Sons and the fourth for Neon Trees and Jason Aldean. For artists other than the Lumineers and Little Big Town, the Amazon MP3 link was the first legal link returned in the search result.

Results varied by genre, however. Pop, R&B and hip-hop artists were more likely to have legal sites buried further in the search results. Justin Bieber's first legal result, a YouTube video, was #13 and his first legal MP3 site was #17. Kanye West's first legal result and first legal MP3 site was #16. Big Sean's first legal result was #14 and first legal MP3 site was an astounding #93.

Some domains commonly seen in the search results have accounted for a good portion of takedown requests. Beemp3.com, for example, has accounted for 5.1% of all URLs removed over the last 12 months. Although seen less frequently, 4shared.com has accounted for 6.2% of removed URLs over the last 12 months. The domain targeted most often by rights holders, filestube.com, was rarely spotted.

Five major US broadband companies will soon begin receiving infringement notices from copyright holders under the Copyright Alert System they negotiated with the RIAA and MPAA. Infringers will be pointed to a list of legal options at the website of the Center for Copyright Information. The combination of increased awareness and better education could have a positive impact. If the average person wants to do the right thing but doesn't know what legal options are available, Google search is not always a good avenue to find out.

Exhibit DIDP A23

Amazon Registry Services is excited to present .SONG — a new TLD

Information on the .SONG space, registration policies, and launch dates
will be forthcoming.

**To receive updates on the .SONG TLD,
email: contactsong@amazon.com**

Exhibit DIDP A24

Amazon Registry Services is excited to present .TUNES — a new TLD

Information on the .TUNES space, registration policies, and launch dates
will be forthcoming.

**To receive updates on the .TUNES TLD,
email: contacttunes@amazon.com**

Exhibit DIDP A25

Business ▶ Government

French scream *sacré bleu!* as US govt gives up the internet to ICANN

Oh non - ceci donnera Amazon et Google trop de pouvoir

24 Mar 2016 at 21:25, [Kieren McCarthy](#)



30

24

The French government has slammed the agreement to move the domain name system out from under US control and hand it to Californian non-profit [ICANN](#).

The French believe the move hands too much control to internet giants like Google and Amazon.

Speaking to leading French newspaper *Le Monde*, French government officials **said** that the [transition plan](#) will lead to the "privatization of ICANN, not its internationalization."

Axelle Lemaire, minister for the digital economy, put out a statement on Thursday which complained: "Despite the continued efforts of civil society and many governments to reach a balanced compromise, elements of this reform project will marginalize States in the decision-making processes of ICANN, especially compared to the role of the private sector."

Unnamed foreign ministry officials also told *Le Monde* they were unhappy with the end result, saying: "This is an unsatisfactory condition. The consensus requirement only produces warm water. And that does not put the GAC [ICANN's Governmental Advisory Committee] on the same footing as the other committees of ICANN."

At the heart of the concerns are [last-minute compromises](#) reached at ICANN's meeting in Marrakesh earlier this month regarding how much influence governments should collectively have over ICANN's decision-making process.

One of the main conditions that the US government put on the transition of the critical contract to run [IANA](#) was that its role would not be replaced with "a government-led or intergovernmental organization."

Some governments feel that pre-condition led to the internet community unduly restricting the role of governments as a group and, by extension, giving too much power to "GAFA" – Google, Apple, Facebook and Amazon.

Unusual role of GAC

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Governments, through the **Governmental Advisory Committee** (GAC), have always had an unusual role within ICANN. They remain an advisory body only and do not have a vote. They are also not on the committee which elects a significant number of the board members. As such, governments' influence on the body that makes the final judgments is strictly limited.

That said, following a decade of international conferences where the world's governments have discussed taking more control of the internet's naming and addressing systems, ICANN has agreed that GAC "advice" comes with the expectation that it will be followed unless the board holds a specific vote otherwise.

The board is also obligated to explain its reasoning if it does reject that advice, and to embark on a mediation process with the GAC in an effort to resolve the issue.

During the IANA transition process, however, the internet community played around with both what constituted "advice" from the GAC (it decided: an agreement with no objections), and the size of the vote required at the ICANN board level to reject it.

What the internet community feels was a fair balance, however, the French government (and a number of others including Brazil, Argentina and some African countries) felt was a dangerous watering-down of their influence.

Ultimately, with a deadline hard on their heels, the GAC as a whole agreed not to block the plan, while noting that a number of members were not able to approve it.

Scaremongering

The French government is unhappy with how that process played out, claiming in the article that the US government wrongly pressured other governments into agreeing to the plan by over-emphasizing the risk that authoritarian governments like China and Russia would pose if the GAC did not agree to a reduced role.

It also noted that the US government still retains significant control over ICANN, since it remains a non-profit organization based in California under US law, as opposed to an international organization like the United Nations or Red Cross, which operate under international law.

As to the plan itself, the US government has selected Harvard University's Berkman Center for Internet & Society to carry out an assessment of it and report back. A [contract](#) shows the Center being engaged for five months to do the job.

The Berkman Center has a good working knowledge of ICANN, having been one of the original groups that helped set it up back in 1999 and having been selected to carry out an accountability [review](#) into ICANN in 2010.

It is worth noting that the main ICANN staff member in charge of that review was caught trying to block the selection of the Berkman Center. Its [final report](#) [PDF] highlighted and reflected many of the long-standing problems with ICANN as an organization, but recommendations that built on its observations have still yet to be fully implemented six years later. ®

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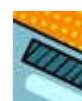
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Paris dénonce une « privatisation » de la gouvernance d'Internet

LE MONDE ECONOMIE | 24.03.2016 à 15h25 • Mis à jour le 25.03.2016 à 10h15 | Par Zeliha Chaffin



Lors d'une réunion de l'Icann à Londres en 2012. ANDREW COWIE / AFP

La réforme se voulait historique. Deux semaines après la validation, lors de la réunion de Marrakech, du plan de transition de l'Internet Corporation for Assigned Names and Numbers (Icann – la société pour l'attribution des noms de domaine et des numéros sur Internet) censé mettre fin à la tutelle des Etats-Unis sur ses activités, les premières fissures apparaissent. Le Quai d'Orsay se dit aujourd'hui déçu par les modalités de la future organisation et dénonce notamment la mainmise des géants américains du Net, Google et Amazon en tête, sur la gouvernance d'Internet.

En cause, le poids des lobbys des « GAFA » (Google, Apple, Facebook, Amazon) lors des discussions sur la réforme. Ces derniers sont ainsi parvenus à réduire l'influence des Etats au sein de l'organisation. « Les intérêts privés vont maintenant écraser les intérêts représentés par les gouvernements », commentait-on mercredi 23 mars au ministère des affaires étrangères.

Depuis 1998, date de sa création, l'Icann administre le réseau Internet, gérant notamment l'attribution des noms de domaine à travers le monde. C'est grâce à lui que les internautes accèdent à une adresse Internet en tapant des noms de domaines plutôt qu'une longue série de chiffres (adresse IP).

« Les Etats-Unis reprennent d'une main ce qu'ils donnent de l'autre »

Peu connue du grand public, cette organisation a fait parler d'elle en 2014 lorsque la secrétaire d'Etat française chargée du numérique, Axelle Lemaire, avait menacé à grands cris de la quitter après que celle-ci avait mis en vente les extensions «.vin » et «.wine ». A l'époque, déjà, la question de l'indépendance de l'Icann agitaient les gouvernements. Car l'organisation, implantée à Los Angeles et qui relève du droit californien, est sous la supervision du département du commerce américain. « Cela signifie concrètement que pour les paramètres du “.fr”, il faut l'accord du gouvernement américain », souligne-t-on au Quai d'Orsay.

La réforme a mis du temps à [voir](#) le jour. C'est le scandale des écoutes de la NSA, révélé par Edouard Snowden en juin 2013, qui a déclenché le processus. Face à la perte de confiance des utilisateurs dans le réseau des réseaux, et sous la pression du président de l'Icann de l'époque, Fadi Chehadé, les Etats-Unis se sont finalement déclarés prêts, en mars 2014, à [abandonner](#) leur rôle central dans l'organisation au profit d'une gouvernance mondiale. Une décision saluée en son temps par la [France](#) .

Lire aussi : [Vers la fin de la tutelle américaine sur l'Icann, le gestionnaire des adresses Internet ?](#) ([\(pixels/article/2015/04/16/vers-la-fin-de-la-tutelle-americaine-sur-l-icann-le-gestionnaire-des-adresses-internet-4617487-4408996.html\)](#))

Deux ans plus tard, la transition entamée pour se [défaire](#) de la tutelle américaine est sur le point de se [conclure](#) , mais Paris se sent floué. « *On est dans la privatisation de l'Icann, pas dans son internationalisation. Les Etats-Unis reprennent d'une main ce qu'ils donnent de l'autre* », selon l'analyse du Quai d'Orsay. Pour la France, l'un des problèmes majeurs de la future organisation tient aux modalités relatives au GAC (pour Governmental Advisory Committee), le comité consultatif des gouvernements, un organe de l'Icann qui réunit les représentants des Etats du [monde](#) entier. Désormais, ce dernier devra se [prononcer](#) à l'unanimité. « *C'est une condition insatisfaisante. L'obligation de consensus ne produit que de l'eau tiède.* »

Spectre d'une prise de contrôle d'Etats non-démocratiques

Une position partagée par la secrétaire d'Etat au numérique. « *Certains éléments de ce [projet](#) de réforme auront pour conséquence de [marginaliser](#) les Etats dans les processus de décision de l'Icann, notamment en comparaison du rôle accordé au secteur privé* », a-t-elle précisé dans un communiqué jeudi 24 mars.

Pour [justifier](#) cette décision, les Etats-Unis invoquent le spectre d'une prise de contrôle d'Etats non démocratiques sur l'Internet. Dans sa ligne de mire : la [Russie](#) et la [Chine](#) . Le candidat républicain à la présidentielle américaine, [Ted Cruz](#) , soutient notamment cette thèse. Un non-sens d'après le Quai d'Orsay : « *Ces pays ont joué le rôle d'épouvantail. D'autant que le GAC [dont font partie la Russie et la Chine] n'a pas de voix délibérative. Il ne fait que [produire](#) un avis.* »

Si la France a pu [bénéficier](#) du soutien d'une majorité des pays d'Amérique latine, comme le [Brésil](#) ou l'[Argentine](#) , et des pays africains, les opinions étaient cependant plus tranchées en [Europe](#) . Le [Royaume-Uni](#) et les pays nordiques, comme la [Suède](#) et le [Danemark](#) , ont ainsi préféré se [rallier](#) à la position américaine, illustrant le manque d'unité européenne sur la question. Avant d'être effective, cette réforme de la gouvernance d'Internet devra d'abord [être](#) adoptée par le Congrès américain, une probable formalité. L'Icann devrait ainsi officiellement quitter le giron américain à la fin septembre pour [devenir](#) un bien commun mondial.



AXELLE LEMAIRE
SECRETARE D'ETAT AU NUMERIQUE,
AUPRES DU MINISTRE DE L'ECONOMIE, DE L'INDUSTRIE ET DU NUMERIQUE

Communiqué de presse

Communiqué de presse

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Paris, le 24 mars 2016
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Réaction d'Axelle LEMAIRE à la conclusion de la 55^{ème} réunion de l'ICANN

La 55^e réunion de l'ICANN*, qui s'est achevée à Marrakech, a examiné un projet de réforme de la gouvernance de cette organisation en charge de la gestion du système des noms de domaine au niveau mondial.

La France plaide depuis de nombreuses années pour l'internationalisation de l'ICANN et pour son émancipation de la tutelle américaine. Elle a donc naturellement salué la démarche engagée par le Département du Commerce américain en mars 2014, visant à transférer à la communauté internet la tutelle qu'il a jusqu'à présent exercé sur cette société de droit californien.

Soutien de longue date de l'approche multi-acteurs, la France s'est pleinement investie dans les groupes de travail multipartites qui ont travaillé pendant un an et demi à l'élaboration de ce projet de réforme. Elle est particulièrement satisfaite des propositions consistant à renforcer les mécanismes d'appel face aux décisions du conseil d'administration de l'ICANN (IRP, *Independent Review Process*).

Cependant, malgré les efforts continus de la société civile et de nombreux gouvernements pour arriver à un compromis équilibré, certains éléments de ce projet de réforme auront pour conséquence de marginaliser les Etats dans les processus de décision de l'ICANN, notamment en comparaison du rôle accordé au secteur privé.

En effet, la mise en œuvre de ce projet de réforme limitera la capacité du Comité Consultatif des Gouvernements (GAC, *Governmental Advisory Committee*) à faire valoir ses positions en imposant des conditions particulières à la prise en compte de ses avis par le conseil d'administration de l'ICANN – c'est l'objet de la 11^{ème} recommandation. Par ailleurs, les Etats ne se voient pas reconnaître les mêmes droits que les autres parties prenantes dans l'exercice des nouveaux mécanismes de recours contre les décisions du conseil d'administration de l'ICANN – c'est l'objet des limites imposées dans les deux premières recommandations.

C'est pourquoi le GAC, sans pour autant objecter à la poursuite de l'émancipation de la tutelle américaine, n'a pas été en mesure d'approuver dans son intégralité le projet de réforme examiné lors de la réunion de Marrakech. La France salue cette décision, qui s'inscrit dans la continuité des positions exprimées par la France depuis plusieurs mois. Il s'agit d'un signal fort adressé à l'ICANN et à son conseil d'administration, dont la légitimité dépendra désormais largement de la relation de confiance qu'il devra établir avec les parties prenantes du monde entier, et en particulier les Etats.

La France appelle l'administration américaine, qui doit désormais examiner ce projet de réforme, à accorder la plus grande attention aux préoccupations exprimées par de nombreux Etats. Elle sera par ailleurs particulièrement attentive à la poursuite des travaux visant à améliorer la redevabilité de l'ICANN dans le cadre du « *Work Stream 2* », notamment concernant le renforcement de la diversité géographique et la lutte contre les conflits d'intérêts.

Internet étant désormais un bien commun mondial, il est essentiel que ses instances de gouvernance deviennent réellement internationales, transparentes et démocratiques, comme l'a rappelé l'Assemblée générale des nations unies lors de la réunion de haut niveau pour la revue après 10 ans du Sommet mondial pour la société de l'information le 16 décembre 2015.

* (*Internet Corporation for Assigned Names and Numbers*)

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Exhibit DIDP A26



New Generic Top-Level Domains

— About the Program

The New generic Top-Level Domain Program was developed to increase competition and choice in the domain name space.

A gTLD is a domain name extension such as the familiar .com, .net, or .org. There are roughly two dozen now, but soon, there could be hundreds.

ABOUT THE PROGRAM

The Internet Corporation for Assigned Names and Numbers, founded in 1998, has as its mission to ensure a stable and unified global Internet. One of its key responsibilities is introducing and promoting competition in the registration of domain names, while ensuring the security and stability of the domain name system (DNS).

In 2005, ICANN's Generic Names Supporting Organization (GNSO) began a policy development process to consider the introduction of new gTLDs, based on the results of trial rounds conducted in 2000 and 2003. The GNSO is the main policy-making body for generic top-level domains, and encourages global participation in the technical management of the Internet.

The two-year policy development process included detailed and lengthy consultations with the many constituencies of ICANN's global Internet community, including governments, civil society, business and intellectual property stakeholders, and technologists.

In 2008, the ICANN Board adopted 19 specific GNSO policy recommendations for implementing new gTLDs, with certain allocation criteria and contractual conditions.

After approval of the policy, ICANN undertook an open, inclusive, and transparent implementation process to address stakeholder concerns, such as the protection of intellectual property and community interests, consumer protection, and DNS stability. This work included public consultations, review, and input on multiple draft versions of the Applicant Guidebook.

In June 2011, ICANN's Board of Directors approved the Guidebook and authorized the launch of the New gTLD Program. The program's goals include enhancing competition and consumer choice, and enabling the benefits of innovation via the introduction of new gTLDs, including both new ASCII and internationalized domain name (IDN) top-level domains.

The application window opened on 12 January 2012, and ICANN received 1,930 applications for new gTLDs. On 17 December 2012, ICANN held a prioritization draw to determine the order in which applications would be processed during Initial Evaluation and subsequent phases of the program. These applications were processed by ICANN staff and evaluated by expert, independent third-party evaluators according to priority numbers.

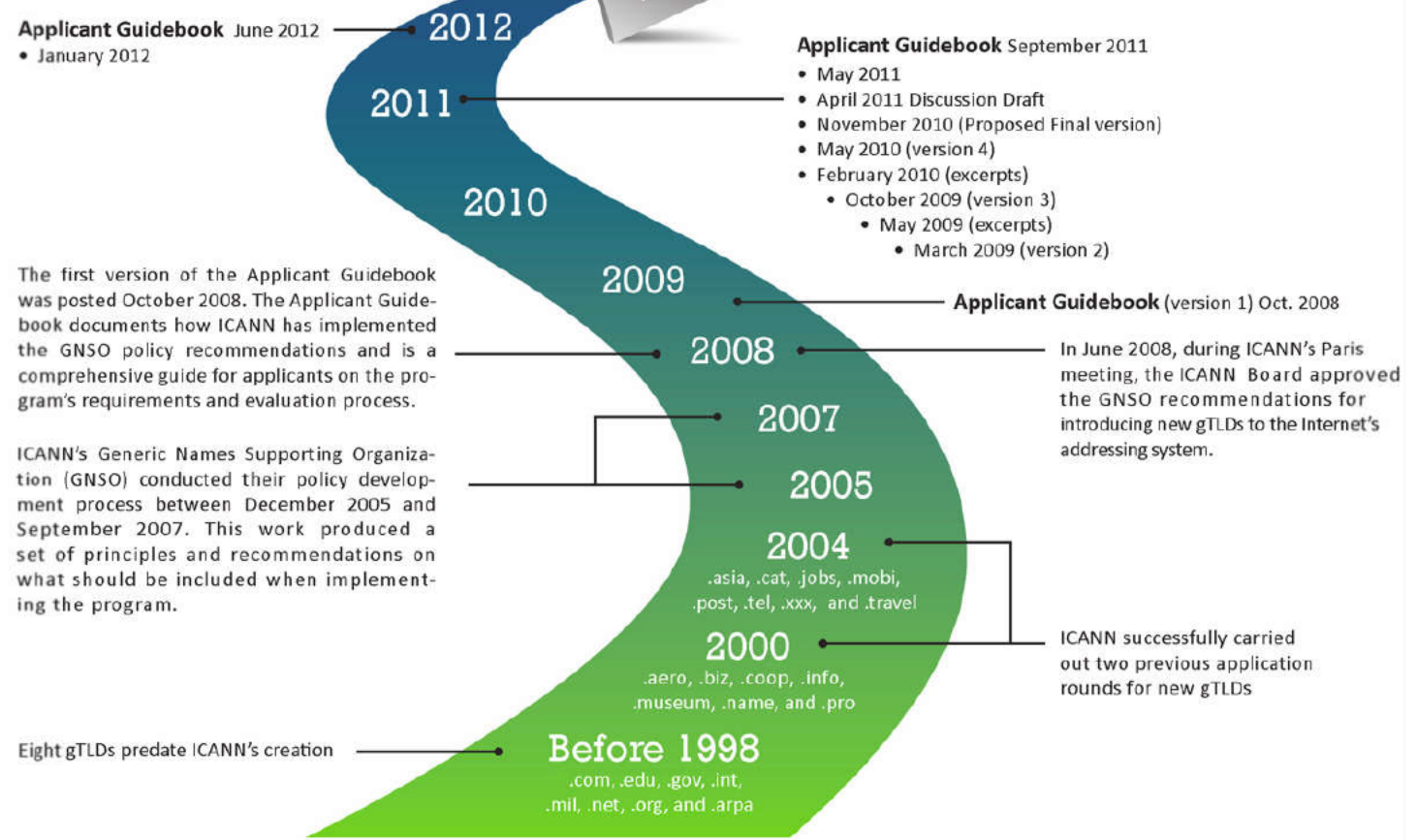
On 22 March 2013, ICANN released the first set of Initial Evaluation results to applicants and the public. ICANN anticipates that Initial Evaluation results for all applications will be published by the end of August 2013.

Applications that pass Initial Evaluation (and that do not face any objections or string contention) will be eligible to proceed to contracting. It is anticipated that contracting will begin in mid 2013, and the first new gTLDs will be delegated soon afterwards.

[New gTLD Fast Facts \(/en/announcements-and-media/infographics\)](/en/announcements-and-media/infographics)

History

The Applicant Guidebook has gone through several iterations in draft form and is the result of years of careful implementation of GNSO policy recommendations and thoughtful review and feedback from the ICANN stakeholder community. Each version of the Applicant Guidebook was posted for public comment. More than one thousand public comments have been reviewed and considered, making the program what it is today.



[\(/sites/default/files/main-images/gtld-history-1200x975-08oct13-en.png\)](/sites/default/files/main-images/gtld-history-1200x975-08oct13-en.png)

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[Site Map](#)

Exhibit DIDP *A27*

SUMMARY -- PRINCIPLES, RECOMMENDATIONS & IMPLEMENTATION GUIDELINES

1. This section sets out, in table form, the set of Principles, proposed Policy Recommendations and Guidelines that the Committee has derived through its work. The addition of new gTLDs will be done in accordance with ICANN's primary mission which is to ensure the security and stability of the DNS and, in particular, the Internet's root server system[\[24\]](#).
2. The Principles are a combination of GNSO Committee priorities, ICANN staff implementation principles developed in tandem with the Committee and the March 2007 GAC Public Policy Principles on New Top-Level Domains. The Principles are supported by all GNSO Constituencies.[\[25\]](#)
3. ICANN's Mission and Core Values were key reference points for the development of the Committee's Principles, Recommendations and Implementation Guidelines. These are referenced in the right-hand column of the tables below.
4. The Principles have support from all GNSO Constituencies.

	PRINCIPLES	MISSION & CORE VALUES
A	New generic top-level domains (gTLDs) must be introduced in an orderly, timely and predictable way.	M1 & CV1 & 2, 4-10
B	Some new generic top-level domains should be internationalised domain names (IDNs) subject to the approval of IDNs being available in the root.	M1-3 & CV 1, 4 & 6
C	The reasons for introducing new top-level domains include that there is demand from potential applicants for new top-level domains in both ASCII and IDN formats. In addition the introduction of new top-level domain application process has the potential to promote competition in the provision of registry services, to add to consumer choice, market differentiation and geographical and service-provider diversity.	M3 & CV 4-10
D	A set of technical criteria must be used for assessing a new gTLD registry applicant to minimise the risk of harming the operational stability, security and global interoperability of the Internet.	M1-3 & CV 1
E	A set of capability criteria for a new gTLD registry applicant must be used to provide an assurance that an applicant has the capability to meets its obligations under the terms of ICANN's registry agreement.	M1-3 & CV 1
F	A set of operational criteria must be set out in contractual conditions in the registry agreement to ensure compliance with ICANN policies.	M1-3 & CV 1
G	The string evaluation process must not infringe the applicant's freedom of expression rights that are protected under internationally recognized principles of law.	

	RECOMMENDATIONS [26]	MISSION & CORE VALUES
1	<p>ICANN must implement a process that allows the introduction of new top-level domains.</p> <p>The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination.</p> <p>All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process.</p>	M1-3 & CV1-11
2	Strings must not be confusingly similar to an existing top-level domain or a Reserved Name.	M1-3 & C1-6-11
3	<p>Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law.</p> <p>Examples of these legal rights that are internationally recognized include, but are not limited to, rights defined in the Paris Convention for the Protection of Industry Property (in particular trademark rights), the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) (in particular freedom of expression rights).</p>	CV3
4	Strings must not cause any technical instability.	M1-3 & CV 1
5	Strings must not be a Reserved Word [27] .	M1-3 & CV 1 & 3

6*	<p>Strings must not be contrary to generally accepted legal norms relating to morality and public order that are recognized under international principles of law.</p> <p>Examples of such principles of law include, but are not limited to, the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the International Convention on the Elimination of All Forms of Racial Discrimination, intellectual property treaties administered by the World Intellectual Property Organisation (WIPO) and the WTO Agreement on Trade-Related Aspects of Intellectual Property (TRIPS).</p>	M3 & CV 4
7	Applicants must be able to demonstrate their technical capability to run a registry operation for the purpose that the applicant sets out.	M1-3 & CV1
8	Applicants must be able to demonstrate their financial and organisational operational capability.	M1-3 & CV1
9	There must be a clear and pre-published application process using objective and measurable criteria.	M3 & CV6-9
10	There must be a base contract provided to applicants at the beginning of the application process.	CV7-9
11	[Replaced with Recommendation 20 and Implementation Guideline P and inserted into Term of Reference 3 Allocation Methods section]	
12	Dispute resolution and challenge processes must be established prior to the start of the process.	CV7-9
13	Applications must initially be assessed in rounds until the scale of demand is clear.	CV7-9

14	The initial registry agreement term must be of a commercially reasonable length.	CV5-9
15	There must be renewal expectancy.	CV5-9
16	Registries must apply existing Consensus Policies and adopt new Consensus Policies as they are approved.	CV5-9
17	A clear compliance and sanctions process must be set out in the base contract which could lead to contract termination.	M1 & CV1
18	If an applicant offers an IDN service, then ICANN's IDN guidelines[28] must be followed.	M1 & CV1
19	Registries must use only ICANN accredited registrars in registering domain names and may not discriminate among such accredited registrars.	M1 & CV1
20*	An application will be rejected if an expert panel determines that there is substantial opposition to it from a significant portion of the community to which the string may be explicitly or implicitly targeted.	

* The NCUC submitted Minority Statements on Recommendations 6 and 20. The remainder of the Recommendations have support from all GNSO Constituencies.

	IMPLEMENTATION GUIDELINES	MISSION & CORE VALUES
IG A	The application process will provide a pre-defined roadmap for applicants that encourages the submission of applications for new top-level domains.	CV 2, 5, 6, 8 & 9
IG B	Application fees will be designed to ensure that adequate resources exist to cover the total cost to administer the new gTLD process.	CV 5, 6, 8 & 9

	Application fees may differ for applicants.	
IG C	ICANN will provide frequent communications with applicants and the public including comment forums.	CV 9 & 10
IG D	A first come first served processing schedule within the application round will be implemented and will continue for an ongoing process, if necessary. Applications will be time and date stamped on receipt.	CV 8-10
IG E	The application submission date will be at least four months after the issue of the Request for Proposal and ICANN will promote the opening of the application round.	CV 9 & 10
IG F*	If there is contention for strings, applicants may ^[29] : i) resolve contention between them within a pre-established timeframe ii) if there is no mutual agreement, a claim to support a community by one party will be a reason to award priority to that application. If there is no such claim, and no mutual agreement a process will be put in place to enable efficient resolution of contention and; iii) the ICANN Board may be used to make a final decision, using advice from staff and expert panels.	CV 7-10
IG H*	Where an applicant lays any claim that the TLD is intended to support a particular community such as a sponsored TLD, or any other TLD intended for a specified community, that claim will be taken on trust with the following exceptions: (i) the claim relates to a string that is also subject to another application and the claim to support a community is being used to gain priority for the application; and (ii) a formal objection process is initiated. Under these exceptions, Staff Evaluators will devise criteria and	CV 7 - 10

	<p>procedures to investigate the claim.</p> <p>Under exception (ii), an expert panel will apply the process, guidelines, and definitions set forth in IG P.</p>	
IG H	External dispute providers will give decisions on objections.	CV 10
IG I	An applicant granted a TLD string must use it within a fixed timeframe which will be specified in the application process.	CV 10
IG J	The base contract should balance market certainty and flexibility for ICANN to accommodate a rapidly changing market place.	CV 4-10
IG K	ICANN should take a consistent approach to the establishment of registry fees.	CV 5
IG L	The use of personal data must be limited to the purpose for which it is collected.	CV 8
IG M	ICANN may establish a capacity building and support mechanism aiming at facilitating effective communication on important and technical Internet governance functions in a way that no longer requires all participants in the conversation to be able to read and write English ^[30] .	CV 3 - 7
IG N	ICANN may put in place a fee reduction scheme for gTLD applicants from economies classified by the UN as least developed.	CV 3 - 7
IG O	ICANN may put in place systems that could provide information about the gTLD process in major languages other than English, for example, in the six working languages of the United Nations.	CV 8 -10
IG P*	<p>The following process, definitions and guidelines refer to Recommendation 20.</p> <p>Process</p> <p>Opposition must be objection based.</p> <p>Determination will be made by a dispute resolution panel constituted for the purpose.</p> <p>The objector must provide verifiable evidence that it is an established institution of the community (perhaps like the RSTEP pool of panelists</p>	

from which a small panel would be constituted for each objection).

Guidelines

The task of the panel is the determination of substantial opposition.

- a) **substantial** – in determining substantial the panel will assess the following: signification portion, community, explicitly targeting, implicitly targeting, established institution, formal existence, detriment
- b) **significant portion** – in determining significant portion the panel will assess the balance between the level of objection submitted by one or more established institutions and the level of support provided in the application from one or more established institutions. The panel will assess significance proportionate to the explicit or implicit targeting.
- c) **community** – community should be interpreted broadly and will include, for example, an economic sector, a cultural community, or a linguistic community. It may be a closely related community which believes it is impacted.
- d) **explicitly targeting** – explicitly targeting means there is a description of the intended use of the TLD in the application.
- e) **implicitly targeting** – implicitly targeting means that the objector makes an assumption of targeting or that the objector believes there may be confusion by users over its intended use.
- f) **established institution** – an institution that has been in formal existence for at least 5 years. In exceptional cases, standing may be granted to an institution that has been in existence for

	<p>fewer than 5 years.</p> <p>Exceptional circumstances include but are not limited to a re-organization, merger or an inherently younger community.</p> <p>The following ICANN organizations are defined as established institutions: GAC, ALAC, GNSO, ccNSO, ASO.</p> <p>g) formal existence – formal existence may be demonstrated by appropriate public registration, public historical evidence, validation by a government, intergovernmental organization, international treaty organization or similar.</p> <p>h) detriment – the objector must provide sufficient evidence to allow the panel to determine that there would be a likelihood of detriment to the rights or legitimate interests of the community or to users more widely.</p>	
IG Q	ICANN staff will provide an automatic reply to all those who submit public comments that will explain the objection procedure.	
IG R	Once formal objections or disputes are accepted for review there will be a cooling off period to allow parties to resolve the dispute or objection before review by the panel is initiated.	

* The NCUC submitted Minority Statements on Implementation Guidelines F, H & P. The remainder of the Implementation Guidelines have support from all GNSO Constituencies.

1. This set of implementation guidelines is the result of detailed discussion, particularly with respect to the two *ICANN Staff Discussion Points*[\[31\]](#) documents that were prepared to facilitate consultation with the GNSO Committee about the implementation impacts of the proposed policy Recommendations. The Implementation Guidelines will be used to inform the final Implementation Plan which is approved by the ICANN Board

2. The *Discussion Points* documents contain draft flowcharts which have been developed by the Implementation Team and which will be updated, based on the final vote of the GNSO Council and the direction of the ICANN Board. The *Discussion Points* documents have been used in the ongoing internal implementation discussions that have focused on ensuring that draft recommendations proposed by the Committee are implementable in an efficient and transparent manner^[32]. The flowchart setting out the proposed Contention Evaluation Process is a more detailed component within the Application Evaluation Process and will be amended to take into account the inputs from Recommendation 20 and its related Implementation Guidelines.

3. This policy development process has been designed to produce a systemised and ongoing mechanism for applicants to propose new top-level domains. The Request for Proposals (RFP) for the first round will include scheduling information for the subsequent rounds to occur within one year. After the first round of new applications, the application system will be evaluated by ICANN's TLDs Project Office to assess the effectiveness of the application system. Success metrics will be developed and any necessary adjustments made to the process for subsequent rounds.

4. The following sections set out in detail the explanation for the Committee's recommendations for each Term of Reference.

Exhibit DIDP A28

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Last Updated: 4 September 2009

Final Report - Introduction of New Generic Top-Level Domains

Date: 8 August 2007

ICANN Generic Names Supporting Organisation**Final Report****Introduction of New Generic Top-Level Domains****8 August 2007****Part A: Final Report****Introduction of New Generic Top-Level Domains**[ABSTRACT](#)[BACKGROUND](#)[SUMMARY -- PRINCIPLES, RECOMMENDATIONS & IMPLEMENTATION GUIDELINES](#)[TERM OF REFERENCE ONE -- WHETHER TO INTRODUCE NEW TOP-LEVEL DOMAINS](#)[TERM OF REFERENCE -- SELECTION CRITERIA](#)[TERM OF REFERENCE THREE -- ALLOCATION METHODS](#)[TERM OF REFERENCE FOUR -- CONTRACTUAL CONDITIONS](#)[NEXT STEPS](#)[Annex A – NCUC Minority Statement: Recommendation 6](#)[Annex B – Nominating Committee Appointee Avri Doria: Individual Comments](#)[Annex C – NCUC Minority Statement: Recommendation 20 and Implementation Guidelines F, H & P](#)[REFERENCE MATERIAL -- GLOSSARY](#)**FINAL REPORT: PART B****ABSTRACT**

This is the Generic Names Supporting Organization's Final Report on the Introduction of New Top-Level Domains. The Report is in two parts. Part A contains the substantive discussion of the Principles, Policy Recommendations and Implementation Guidelines and Part B contains a range of supplementary materials that have been used by the Committee during the course of the Policy Development Process.

The GNSO Committee on New Top-Level Domains consisted of all GNSO Council members. All meetings were open to a wide range of interested stakeholders and observers. A set of participation data is found in Part B.

Many of the terms found here have specific meaning within the context of ICANN and new top-level domains discussion. A full glossary of terms is available in the Reference Material section at the end of Part A.

BACKGROUND

1. The Internet Corporation for Assigned Names and Numbers (ICANN) is responsible for the overall coordination of "the global Internet's system of unique identifiers" and ensuring the "stable and secure operation of the Internet's unique identifier systems. In particular, ICANN coordinates the "allocation and assignment of the three sets of unique identifiers for the Internet". These are "domain names"(forming a system called the DNS); Internet protocol (IP) addresses and autonomous system (AS) numbers and Protocol port and parameter numbers". ICANN is also responsible for the "operation and evolution of the DNS root name server system and policy development reasonably and appropriately related to these technical functions". These elements are all contained in ICANN's Mission and Core Values[1] in addition to provisions which enable policy development work that, once approved by the ICANN Board, become binding on the organization. The results of the policy development process found here relate to the introduction of new generic top-level domains.

2. This document is the *Final Report* of the Generic Names Supporting Organisation's (GNSO) Policy Development Process (PDP) that has been conducted using ICANN's Bylaws and policy development guidelines that relate to the work of the GNSO. This *Report* reflects a comprehensive examination of four Terms of Reference designed to establish a stable and ongoing process that facilitates the introduction of new top-level domains. The policy development process (PDP) is part of the Generic Names Supporting Organisation's (GNSO) mandate within the ICANN structure. However, close consultation with other ICANN Supporting Organisations and Advisory Committees has been an integral part of the process. The consultations and negotiations have also included a wide range of interested stakeholders from within and outside the ICANN community[2].

Tweets by [@ICANN_GNSO](#)**GNSO**[@ICANN_GNSO](#)

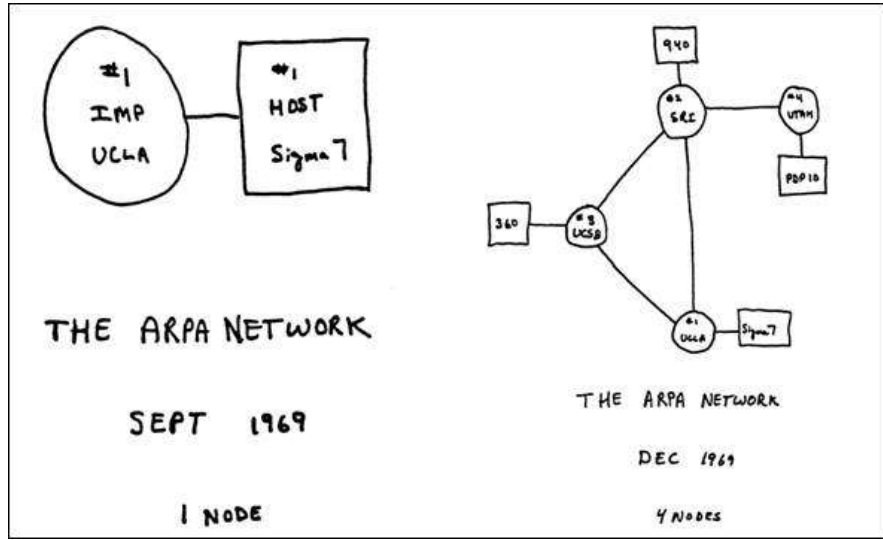
GNSO briefing on the status of protections for red cross identifiers [bit.ly/21ULPcO](#) #ICANN

1h

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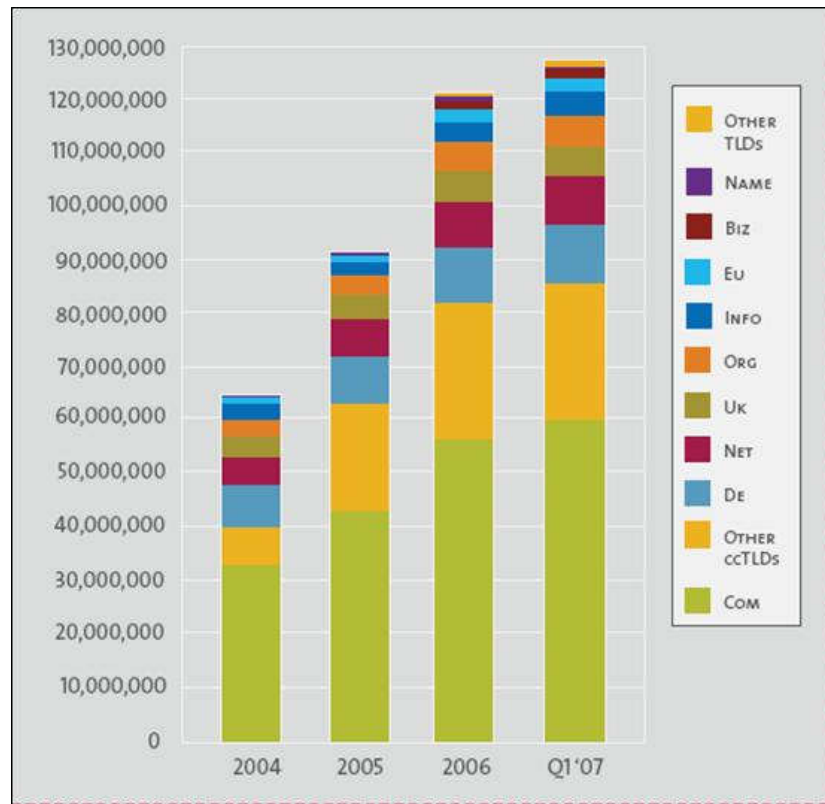
3. The *Final Report* is in two parts. This document is Part A and contains the full explanation of each of the Principles, Recommendations and Implementation Guidelines that the Committee has developed since December 2005[3]. Part B of the *Report* contains a wide range of supplementary materials which have been used in the policy development process including Constituency Impact Statements (CIS), a series of Working Group Reports on important sub-elements of the Committee's deliberations, a collection of external reference materials, and the procedural documentation of the policy development process[4].

4. The finalisation of the policy for the introduction of new top-level domains is part of a long series of events that have dramatically changed the nature of the Internet. The 1969 ARPANET diagram shows the initial design of a network that is now global in its reach and an integral part of many lives and businesses. The policy recommendations found here illustrate the complexity of the Internet of 2007 and, as a package, propose a system to add new top-level domains in an orderly and transparent way. The ICANN Staff Implementation Team, consisting of policy, operational and legal staff members, has worked closely with the Committee on all aspects of the policy development process[5]. The ICANN Board has received regular information and updates about the process and the substantive results of the Committee's work.



5. The majority of the early work on the introduction of new top-level domains is found in the IETF's Request for Comment series. RFC 1034[6] is a fundamental resource that explains key concepts of the naming system. Read in conjunction with RFC920[7], an historical picture emerges of how and why the domain name system hierarchy has been organised. Postel & Reynolds set out in their RFC920 introduction about the "General Purpose Domains" that "...While the initial domain name "ARPA" arises from the history of the development of this system and environment, in the future most of the top level names will be very general categories like "government", "education", or "commercial". The motivation is to provide an organization name that is free of undesirable semantics."

6. In 2007, the Internet is multi-dimensional and its development is driven by widespread access to inexpensive communications technologies in many parts of the world. In addition, global travel is now relatively inexpensive, efficient and readily available to a diverse range of travellers. As a consequence, citizens no longer automatically associate themselves with countries but with international communities of linguistic, cultural or professional interests independent of physical location. Many people now exercise multiple citizenship rights, speak many different languages and quite often live far from where they were born or educated. The 2007 OECD *Factbook*[8] provides comprehensive statistics about the impact of migration on OECD member countries. In essence, many populations are fluid and changing due in part to easing labour movement restrictions but also because technology enables workers to live in one place and work in another relatively easily. As a result, companies and organizations are now global and operate across many geographic borders and jurisdictions. The following illustration[9] shows how rapidly the number of domain names under registration has increased and one could expect that trend to continue with the introduction of new top-level domains.



7. A key driver of change has been the introduction of competition in the registration of domain names through ICANN Accredited Registrars[10]. In June 2007, there were more than 800 accredited registrars who register names for end users with ongoing downward pressure on the prices end-users pay for domain name registration.

8. ICANN's work on the introduction of new top-level domains has been underway since 1999. By mid-1999, Working Group C[11] had quickly reached consensus on two issues, namely that "...ICANN should add new gTLDs to the root. The second is that ICANN should begin the deployment of new gTLDs with an initial rollout of six to ten new gTLDs, followed by an evaluation period". This work was undertaken throughout 2000 and saw the introduction of, for example, .coop, .aero and .biz.

9. After an evaluation period, a further round of sponsored TLDs was introduced during 2003 and 2004 which included, amongst others, .mobi and .travel[12].

10. The July 2007 zone file survey statistics from www.registrarstats.com[13] shows that there are slightly more than 96,000,000 top level domains registered across a selection of seven top-level domains including .com, .net and .info. Evidence from potential new applicants provides more impetus to implement a system that enables the ongoing introduction of new top level domains[14]. In addition, interest from Internet users who could use Internationalised Domain Names (IDNs) in a wide variety of scripts beyond ASCII is growing rapidly.

11. To arrive at the full set of policy recommendations which are found here, the Committee considered the responses to a Call for Expert Papers issued at the beginning of the policy development process[15], and which was augmented by a full set of GNSO Constituency Statements[16]. These are all found in Part B of the *Final Report* and should be read in conjunction with this document. In addition, the Committee received detailed responses from the Implementation Team about proposed policy recommendations and the implementation of the recommendations package as an on-line application process that could be used by a wide array of potential applicants.

12. The Committee reviewed and analysed a wide variety of materials including Working Group C's findings, the evaluation reports from the 2003 & 2004 round of sponsored top-level domains and a full range of other historic materials[17].

13. In the past, a number of different approaches to new top level domains have been considered including the formulation of a structured taxonomy[18] of names, for example, .auto, .books, .travel and .music. The Committee has opted to enable potential applicants to self-select strings that are either the most appropriate for their customers or potentially the most marketable. It is expected that applicants will apply for targeted community strings such as .travel for the travel industry and .cat for the Catalan community as well as some generic strings. The Committee identified five key drivers for the introduction of new top-level domains.

- (i) It is consistent with the reasons articulated in 1999 when the first proof-of-concept round was initiated
- (ii) There are no technical impediments to the introduction of new top-level domains as evidenced by the two previous rounds
- (iii) Expanding the domain name space to accommodate the introduction of both new ASCII and internationalised domain name (IDN) top-level domains will give end users more choice about the nature of their presence on the Internet. In addition, users will be able to use domain names in their language of choice.
- (iv) There is demand for additional top-level domains as a business opportunity. The GNSO Committee expects that this business opportunity will stimulate competition at the registry service level which is consistent with ICANN's Core Value 6.

(v) No compelling reason has been articulated to not proceed with accepting applications for new top-level domains.

14. The remainder of his Report is structured around the four *Terms of Reference*. This includes an explanation of the Principles that have guided the work taking into account the Governmental Advisory Committee's March 2007 *Public Policy Principles for New gTLDs*[19]; a comprehensive set of Recommendations which has majority Committee support and a set of Implementation Guidelines which has been discussed in great detail with the ICANN Staff Implementation Team. The Implementation Team has released two *ICANN Staff Discussion Points* documents (in November 2006 and June 2007). Version 2 provides detailed analysis of the proposed recommendations from an implementation standpoint and provides suggestions about the way in which the implementation plan may come together. The ICANN Board will make the final decision about the actual structure of the application and evaluation process.

15. In each of the sections below the Committee's recommendations are discussed in more detail with an explanation of the rationale for the decisions. The recommendations have been the subject of numerous public comment periods and intensive discussion across a range of stakeholders including ICANN's GNSO Constituencies, ICANN Supporting Organisations and Advisory Committees and members of the broader Internet-using public that is interested in ICANN's work[20]. In particular, detailed work has been conducted through the Internationalised Domain Names Working Group (IDN-WG)[21], the Reserved Names Working Group (RN-WG)[22] and the Protecting the Rights of Others Working Group (PRO-WG) [23]. The Working Group Reports are found in full in Part B of the *Final Report* along with the March 2007 GAC Public Policy Principles for New Top-Level Domains, Constituency Impact Statements. A minority statement from the NCUC about Recommendations 6 & 20 are found Annexes for this document along with individual comments from Nominating Committee appointee Ms Avri Doria.

SUMMARY -- PRINCIPLES, RECOMMENDATIONS & IMPLEMENTATION GUIDELINES

1. This section sets out, in table form, the set of Principles, proposed Policy Recommendations and Guidelines that the Committee has derived through its work. The addition of new gTLDs will be done in accordance with ICANN's primary mission which is to ensure the security and stability of the DNS and, in particular, the Internet's root server system[24].
2. The Principles are a combination of GNSO Committee priorities, ICANN staff implementation principles developed in tandem with the Committee and the March 2007 GAC Public Policy Principles on New Top-Level Domains. The Principles are supported by all GNSO Constituencies.[25]
3. ICANN's Mission and Core Values were key reference points for the development of the Committee's Principles, Recommendations and Implementation Guidelines. These are referenced in the right-hand column of the tables below.
4. The Principles have support from all GNSO Constituencies.

	PRINCIPLES	MISSION & CORE VALUES
A	New generic top-level domains (gTLDs) must be introduced in an orderly, timely and predictable way.	M1 & CV1 & 2, 4-10
B	Some new generic top-level domains should be internationalised domain names (IDNs) subject to the approval of IDNs being available in the root.	M1-3 & CV 1, 4 & 6
C	The reasons for introducing new top-level domains include that there is demand from potential applicants for new top-level domains in both ASCII and IDN formats. In addition the introduction of new top-level domain application process has the potential to promote competition in the provision of registry services, to add to consumer choice, market differentiation and geographical and service-provider diversity.	M3 & CV 4-10
D	A set of technical criteria must be used for assessing a new gTLD registry applicant to minimise the risk of harming the operational stability, security and global interoperability of the Internet.	M1-3 & CV 1
E	A set of capability criteria for a new gTLD registry applicant must be used to provide an assurance that an applicant has the capability to meet its obligations under the terms of ICANN's registry agreement.	M1-3 & CV 1
F	A set of operational criteria must be set out in contractual conditions in the registry agreement to ensure compliance with ICANN policies.	M1-3 & CV 1
G	The string evaluation process must not infringe the applicant's freedom of expression rights that are protected under internationally recognized principles of law.	

	RECOMMENDATIONS[26]	MISSION & CORE VALUES
1	<p>ICANN must implement a process that allows the introduction of new top-level domains.</p> <p>The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination.</p> <p>All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process.</p>	M1-3 & CV1-11

2	Strings must not be confusingly similar to an existing top-level domain or a Reserved Name.	M1-3 & C1-6-11
3	Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law. Examples of these legal rights that are internationally recognized include, but are not limited to, rights defined in the Paris Convention for the Protection of Industry Property (in particular trademark rights), the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) (in particular freedom of expression rights).	CV3
4	Strings must not cause any technical instability.	M1-3 & CV 1
5	Strings must not be a Reserved Word[27].	M1-3 & CV 1 & 3
6*	Strings must not be contrary to generally accepted legal norms relating to morality and public order that are recognized under international principles of law. Examples of such principles of law include, but are not limited to, the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the International Convention on the Elimination of All Forms of Racial Discrimination, intellectual property treaties administered by the World Intellectual Property Organisation (WIPO) and the WTO Agreement on Trade-Related Aspects of Intellectual Property (TRIPS).	M3 & CV 4
7	Applicants must be able to demonstrate their technical capability to run a registry operation for the purpose that the applicant sets out.	M1-3 & CV1
8	Applicants must be able to demonstrate their financial and organisational operational capability.	M1-3 & CV1
9	There must be a clear and pre-published application process using objective and measurable criteria.	M3 & CV6-9
10	There must be a base contract provided to applicants at the beginning of the application process.	CV7-9
11	[Replaced with Recommendation 20 and Implementation Guideline P and inserted into Term of Reference 3 Allocation Methods section]	
12	Dispute resolution and challenge processes must be established prior to the start of the process.	CV7-9
13	Applications must initially be assessed in rounds until the scale of demand is clear.	CV7-9
14	The initial registry agreement term must be of a commercially reasonable length.	CV5-9
15	There must be renewal expectancy.	CV5-9
16	Registries must apply existing Consensus Policies and adopt new Consensus Policies as they are approved.	CV5-9
17	A clear compliance and sanctions process must be set out in the base contract which could lead to contract termination.	M1 & CV1
18	If an applicant offers an IDN service, then ICANN's IDN guidelines[28] must be followed.	M1 & CV1
19	Registries must use only ICANN accredited registrars in registering domain names and may not discriminate among such accredited registrars.	M1 & CV1
20*	An application will be rejected if an expert panel determines that there is substantial opposition to it from a significant portion of the community to which the string may be explicitly or implicitly targeted.	

* The NCUC submitted Minority Statements on Recommendations 6 and 20. The remainder of the Recommendations have support from all GNSO Constituencies.

	IMPLEMENTATION GUIDELINES	MISSION & CORE VALUES
IG A	The application process will provide a pre-defined roadmap for applicants that encourages the submission of applications for new top-level domains.	CV 2, 5, 6, 8 & 9
IG B	Application fees will be designed to ensure that adequate resources exist to cover the total cost to administer the new gTLD process. Application fees may differ for applicants.	CV 5, 6, 8 & 9

IG C	ICANN will provide frequent communications with applicants and the public including comment forums.	CV 9 & 10
IG D	A first come first served processing schedule within the application round will be implemented and will continue for an ongoing process, if necessary. Applications will be time and date stamped on receipt.	CV 8-10
IG E	The application submission date will be at least four months after the issue of the Request for Proposal and ICANN will promote the opening of the application round.	CV 9 & 10
IG F*	If there is contention for strings, applicants may[29]: i) resolve contention between them within a pre-established timeframe ii) if there is no mutual agreement, a claim to support a community by one party will be a reason to award priority to that application. If there is no such claim, and no mutual agreement a process will be put in place to enable efficient resolution of contention and; iii) the ICANN Board may be used to make a final decision, using advice from staff and expert panels.	CV 7-10
IG H*	Where an applicant lays any claim that the TLD is intended to support a particular community such as a sponsored TLD, or any other TLD intended for a specified community, that claim will be taken on trust with the following exceptions: (i) the claim relates to a string that is also subject to another application and the claim to support a community is being used to gain priority for the application; and (ii) a formal objection process is initiated. Under these exceptions, Staff Evaluators will devise criteria and procedures to investigate the claim. Under exception (ii), an expert panel will apply the process, guidelines, and definitions set forth in IG P.	CV 7 - 10
IG H	External dispute providers will give decisions on objections.	CV 10
IG I	An applicant granted a TLD string must use it within a fixed timeframe which will be specified in the application process.	CV 10
IG J	The base contract should balance market certainty and flexibility for ICANN to accommodate a rapidly changing market place.	CV 4-10
IG K	ICANN should take a consistent approach to the establishment of registry fees.	CV 5
IG L	The use of personal data must be limited to the purpose for which it is collected.	CV 8
IG M	ICANN may establish a capacity building and support mechanism aiming at facilitating effective communication on important and technical Internet governance functions in a way that no longer requires all participants in the conversation to be able to read and write English[30].	CV 3 - 7
IG N	ICANN may put in place a fee reduction scheme for gTLD applicants from economies classified by the UN as least developed.	CV 3 - 7
IG O	ICANN may put in place systems that could provide information about the gTLD process in major languages other than English, for example, in the six working languages of the United Nations.	CV 8 -10
IG P*	The following process, definitions and guidelines refer to Recommendation 20. Process Opposition must be objection based. Determination will be made by a dispute resolution panel constituted for the purpose. The objector must provide verifiable evidence that it is an established institution of the community (perhaps like the RSTEP pool of panelists from which a small panel would be constituted for each objection). Guidelines The task of the panel is the determination of substantial opposition. a) substantial – in determining substantial the panel will assess the following: significant portion, community, explicitly targeting, implicitly targeting, established institution, formal existence, detriment b) significant portion – in determining significant portion the panel will assess the balance between the level of objection submitted by one or more established institutions and the level of support provided in the application from one or more established institutions. The panel will assess significance proportionate to the explicit	

	<p>or implicit targeting.</p> <p>c) community – community should be interpreted broadly and will include, for example, an economic sector, a cultural community, or a linguistic community. It may be a closely related community which believes it is impacted.</p> <p>d) explicitly targeting – explicitly targeting means there is a description of the intended use of the TLD in the application.</p> <p>e) implicitly targeting – implicitly targeting means that the objector makes an assumption of targeting or that the objector believes there may be confusion by users over its intended use.</p> <p>f) established institution – an institution that has been in formal existence for at least 5 years. In exceptional cases, standing may be granted to an institution that has been in existence for fewer than 5 years.</p> <p>Exceptional circumstances include but are not limited to a re-organization, merger or an inherently younger community.</p> <p>The following ICANN organizations are defined as established institutions: GAC, ALAC, GNSO, ccNSO, ASO.</p> <p>g) formal existence – formal existence may be demonstrated by appropriate public registration, public historical evidence, validation by a government, intergovernmental organization, international treaty organization or similar.</p> <p>h) detriment – the objector must provide sufficient evidence to allow the panel to determine that there would be a likelihood of detriment to the rights or legitimate interests of the community or to users more widely.</p>	
IG Q	ICANN staff will provide an automatic reply to all those who submit public comments that will explain the objection procedure.	
IG R	Once formal objections or disputes are accepted for review there will be a cooling off period to allow parties to resolve the dispute or objection before review by the panel is initiated.	

* The NCUC submitted Minority Statements on Implementation Guidelines F, H & P. The remainder of the Implementation Guidelines have support from all GNSO Constituencies.

1. This set of implementation guidelines is the result of detailed discussion, particularly with respect to the two *ICANN Staff Discussion Points*[31] documents that were prepared to facilitate consultation with the GNSO Committee about the implementation impacts of the proposed policy Recommendations. The Implementation Guidelines will be used to inform the final Implementation Plan which is approved by the ICANN Board.
2. The *Discussion Points* documents contain draft flowcharts which have been developed by the Implementation Team and which will be updated, based on the final vote of the GNSO Council and the direction of the ICANN Board. The *Discussion Points* documents have been used in the ongoing internal implementation discussions that have focused on ensuring that draft recommendations proposed by the Committee are implementable in an efficient and transparent manner[32]. The flowchart setting out the proposed Contention Evaluation Process is a more detailed component within the Application Evaluation Process and will be amended to take into account the inputs from Recommendation 20 and its related Implementation Guidelines.
3. This policy development process has been designed to produce a systemised and ongoing mechanism for applicants to propose new top-level domains. The Request for Proposals (RFP) for the first round will include scheduling information for the subsequent rounds to occur within one year. After the first round of new applications, the application system will be evaluated by ICANN's TLDs Project Office to assess the effectiveness of the application system. Success metrics will be developed and any necessary adjustments made to the process for subsequent rounds.
4. The following sections set out in detail the explanation for the Committee's recommendations for each Term of Reference.

TERM OF REFERENCE ONE -- WHETHER TO INTRODUCE NEW TOP-LEVEL DOMAINS

1. **Recommendation 1 Discussion – All GNSO Constituencies supported the introduction of new top-level domains.**
2. The GNSO Committee was asked to address the question of whether to introduce new top-level domains. The Committee recommends that ICANN should implement a process that allows the introduction of new top level domains and that work should proceed to develop policies that will enable the introduction of new generic top-level domains, taking into account the recommendations found in the latter sections of the *Report* concerning Selection Criteria (Term of Reference 2), Allocation Methods (Term of Reference 3) and Policies for Contractual Conditions (Term of Reference 4).
3. ICANN's work on the introduction of new top-level domains has been ongoing since 1999. The early work included the 2000 Working Group C Report[33] that also asked the question of "whether there should be new TLDs". By mid-1999, the Working Group had quickly reached consensus on two issues, namely that "...ICANN should add new gTLDs to the root. The second is that ICANN should begin the deployment of new gTLDs with an initial rollout of six to ten new gTLDs,

followed by an evaluation period". This work was undertaken throughout 2000 and saw the introduction of, for example, .coop, .aero and .biz.

4. After an evaluation period, a further round of sponsored TLDs was introduced during 2003 and 2004 which included, amongst others, .mobi and .travel.
5. In addressing Term of Reference One, the Committee arrived at its recommendation by reviewing and analysing a wide variety of materials including Working Group C's findings; the evaluation reports from the 2003-2004 round of sponsored top-level domains and full range of other historic materials which are posted at <http://gns0.icann.org/issues/new-gtlds/>
6. In addition, the Committee considered the responses to a Call for Expert Papers issued at the beginning of the policy development process[34]. These papers augmented a full set of GNSO Constituency Statements[35] and a set of Constituency Impact Statements[36] that addressed specific elements of the Principles, Recommendations and Implementation Guidelines.
7. The Committee was asked, at its February 2007 Los Angeles meeting, to confirm its rationale for recommending that ICANN introduce new top-level domains. In summary, there are five threads which have emerged:
 - (i) It is consistent with the reasons articulated in 1999 when the first proof-of-concept round was initiated
 - (ii) There are no technical impediments to the introduction of new top-level domains as evidenced by the two previous rounds
 - (iii) It is hoped that expanding the domain name space to accommodate the introduction of both new ASCII and internationalised domain name (IDN) top-level domains will give end users more choice about the nature of their presence on the Internet. In addition, users will be able to use domain names in their language of choice.
 - (iv) In addition, the introduction of a new top-level domain application process has the potential to promote competition in the provision of registry services, and to add to consumer choice, market differentiation and geographic and service-provider diversity which is consistent with ICANN's Core Value 6.
 - (v) No compelling reason has been articulated to not proceed with accepting applications for new top-level domains.
8. Article X, Part 7, Section E of the GNSO's Policy Development Process requires the submission of "constituency impact statements" which reflect the potential implementation impact of policy recommendations. By 4 July 2007 all GNSO Constituencies had submitted Constituency Impact Statements (CIS) to the gTLD-council mailing list[37]. Each of those statements is referred to throughout the next sections[38] and are found in full in Part B of the Report. The NCUIC submitted Minority Statements on Recommendations 6 & 20 and on Implementation Guidelines F, H & P. These statements are found in full here in Annex A & C, respectively, as they relate specifically to the finalised text of those two recommendations. GNSO Committee Chair and Nominating Committee appointee Ms Avri Doria also submitted individual comments on the recommendation package. Her comments are found in Annex B here.
9. All Constituencies support the introduction of new TLDs particularly if the application process is transparent and objective. For example, the ISPCP said that, "...the ISPCP is highly supportive of the principles defined in this section, especially with regards to the statement in [principle A] (A): New generic top-level domains must be introduced in an orderly, timely and predictable way. Network operators and ISPs must ensure their customers do not encounter problems in addressing their emails, and in their web searching and access activities, since this can cause customer dissatisfaction and overload help-desk complaints. Hence this principle is a vital component of any addition sequence to the gTLD namespace. The various criteria as defined in D, E and F, are also of great importance in contributing to minimise the risk of moving forward with any new gTLDs, and our constituency urges ICANN to ensure they are scrupulously observed during the applications evaluation process". The Business Constituency's (BC) CIS said that "...If the outcome is the best possible there will be a beneficial impact on business users from: a reduction in the competitive concentration in the Registry sector; increased choice of domain names; lower fees for registration and ownership; increased opportunities for innovative on-line business models." The Registrar Constituency (RC) agreed with this view stating that "...new gTLDs present an opportunity to Registrars in the form of additional products and associated services to offer to its customers. However, that opportunity comes with the costs of implementing the new gTLDs as well as the efforts required to do the appropriate business analysis to determine which of the new gTLDs are appropriate for its particular business model."
10. The Registry Constituency (RyC) said that "...Regarding increased competition, the RyC has consistently supported the introduction of new gTLDs because we believe that: there is a clear demand for new TLDs; competition creates more choices for potential registrants; introducing new TLDs with different purposes increases the public benefit; new gTLDs will result in creativity and differentiation in the domain name industry; the total market for all TLDs, new and old, will be expanded." In summary, the Committee recommended, "ICANN must implement a process that allows the introduction of new top-level domains. The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination. All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process". Given that this recommendation has support from all Constituencies, the following sections set out the other Terms of Reference recommendations.

TERM OF REFERENCE -- SELECTION CRITERIA

1. Recommendation 2 Discussion -- Strings must not be confusingly similar to an existing top-level domain.

- i) This recommendation has support from all the GNSO Constituencies. Ms Doria accepted the recommendation with the concern expressed below[39].
- ii) The list of existing top-level domains is maintained by IANA and is listed in full on ICANN's website[40]. Naturally,

as the application process enables the operation of new top-level domains this list will get much longer and the test more complex. The RyC, in its Impact Statement, said that "...This recommendation is especially important to the RyC. ... It is of prime concern for the RyC that the introduction of new gTLDs results in a ubiquitous experience for Internet users that minimizes user confusion. gTLD registries will be impacted operationally and financially if new gTLDs are introduced that create confusion with currently existing gTLD strings or with strings that are introduced in the future. There is a strong possibility of significant impact on gTLD registries if IDN versions of existing ASCII gTLDs are introduced by registries different than the ASCII gTLD registries. Not only could there be user confusion in both email and web applications, but dispute resolution processes could be greatly complicated." The ISPCP also stated that this recommendation was "especially important in the avoidance of any negative impact on network activities." The RC stated that "...Registrars would likely be hesitant to offer confusingly similar gTLDs due to customer demand and support concerns. On the other hand, applying the concept too broadly would inhibit gTLD applicants and ultimately limit choice to Registrars and their customers".

- iii) There are two other key concepts within this recommendation. The first is the issue of "confusingly similar" [41] and the second "likelihood of confusion". There is extensive experience within the Committee with respect to trademark law and the issues found below have been discussed at length, both within the Committee and amongst the Implementation Team.
- iv) The Committee used a wide variety of existing law[42], international treaty agreements and covenants to arrive at a common understanding that strings should not be confusingly similar either to existing top-level domains like .com and .net or to existing trademarks[43]. For example, the Committee considered the World Trade Organisation's TRIPS agreement, in particular Article 16 which discusses the rights which are conferred to a trademark owner [44] In particular, the Committee agreed upon an expectation that strings must avoid increasing opportunities for entities or individuals, who operate in bad faith and who wish to defraud consumers. The Committee also considered the Universal Declaration of Human Rights[45] and the International Covenant on Civil and Political Rights which address the "freedom of expression" element of the Committee's deliberations.
- v) The Committee also benefited from the work of the Protecting the Rights of Others Working Group (PRO-WG). The PRO-WG presented its *Final Report*[46] to the Committee at the June 2007 San Juan meeting. The Committee agreed that the Working Group could develop some reference implementation guidelines on rights protection mechanisms that may inform potential new TLD applicants during the application process. A small ad-hoc group of interested volunteers are preparing those materials for consideration by the Council by mid-October 2007.
- vi) The Committee had access to a wide range of differing approaches to rights holder protection mechanisms including the United Kingdom, the USA, Jordan, Egypt and Australia[47].
- vii) In addition, the Committee referred to the 1883 *Paris Convention on the Protection of Industrial Property*[48]. It describes the notion of confusion and describes creating confusion as "to create confusion by any means whatever" {Article 10bis (3) (1)} and, further, being "liable to mislead the public" {Article 10bis (3) (3)}. The treatment of confusingly similar is also contained in European Union law (currently covering twenty-seven countries) and is structured as follows. "...because of its identity with or similarity to... there exists a likelihood of confusion on the part of the public...; the likelihood of confusion includes the likelihood of association..." {Article 4 (1) (b) of the 1988 EU Trade Mark directive 89/104/EEC}. Article 8 (1) (b) of the 1993 European Union Trade Mark regulation 40/94 is also relevant.
- viii) In the United States, existing trade mark law requires applicants for trademark registration to state under penalty of perjury that "...to the best of the verifier's knowledge and belief, no other person has the right to use such mark in commerce either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods of such other person, to cause confusion, or to cause mistake, or to deceive..." which is contained in Section 1051 (3) (d) of the US Trademark Act 2005 (found at <http://www.billlaw.com/source/15usc/1051.html>.)[49]
- ix) In Australia, the Australian Trade Marks Act 1995 Section 10 says that "...For the purposes of this Act, a trade mark is taken to be deceptively similar to another trade mark if it so nearly resembles that other trade mark that it is likely to deceive or cause confusion" (found at http://www.ipaustralia.gov.au/resources/legislation_index.shtml)
- x) A number of different trademark offices provide guidance on how to interpret confusion. For example, the European Union Trade Mark Office provides guidance on how to interpret confusion. "...confusion may be visual, phonetic or conceptual. A mere aural similarity may create a likelihood of confusion. A mere visual similarity may create a likelihood of confusion. Confusion is based on the fact that the relevant public does not tend to analyse a word in detail but pays more attention to the distinctive and dominant components. Similarities are more significant than dissimilarities. The visual comparison is based on an analysis of the number and sequence of the letters, the number of words and the structure of the signs. Further particularities may be of relevance, such as the existence of special letters or accents that may be perceived as an indication of a specific language. For words, the visual comparison coincides with the phonetic comparison unless in the relevant language the word is not pronounced as it is written. It should be assumed that the relevant public is either unfamiliar with that foreign language, or even if it understands the meaning in that foreign language, will still tend to pronounce it in accordance with the phonetic rules of their native language. The length of a name may influence the effect of differences. The shorter a name, the more easily the public is able to perceive all its single elements. Thus, small differences may frequently lead in short words to a different overall impression. In contrast, the public is less aware of differences between long names. The overall phonetic impression is particularly influenced by the number and sequence of syllables." (found at <http://oami.europa.eu/en/mark/marque/direct.htm>).
- xi) An extract from the United Kingdom's Trade Mark Office's Examiner's Guidance Manual is useful in explaining further the Committee's approach to developing its Recommendation. "For likelihood of confusion to exist, it must be probable, not merely possible that confusion will arise in the mind of the average consumer. Likelihood of association is not an alternative to likelihood of confusion, "but serves to define its scope". Mere association, in the sense that the later mark brings the earlier mark to mind is insufficient to find a likelihood of confusion, unless the average consumer, in bringing the earlier mark to mind, is led to expect the goods or services of both marks to be under the control of one single trade source. "The risk that the public might believe that the

goods/services in question come from the same undertaking or, as the case may be, from economically-linked undertakings, constitutes a likelihood of confusion..." (found at <http://www.patent.gov.uk/tm/t-decisionmaking/t-law/t-law-manual.htm>)

- xii) The Committee also looked in detail at the existing provisions of ICANN's Registrar Accreditation Agreement, particularly Section 3.7.7.9[50] which says that "...The Registered Name Holder shall represent that, to the best of the Registered Name Holder's knowledge and belief, neither the registration of the Registered Name nor the manner in which it is directly or indirectly used infringes the legal rights of any third party."
- xiii) The implications of the introduction of Internationalised Domain Names (IDNs) are, in the main, the same as for ASCII top-level domains. On 22 March 2007 the IDN-WG released its *Outcomes Report*[51] that the Working Group presented to the GNSO Committee. The Working Group's exploration of IDN-specific issues confirmed that the new TLD recommendations are valid for IDN TLDs. The full IDN WG Report is found in Part B of the *Report*.
- xiv) The technical testing for IDNs at the top-level is not yet completed although strong progress is being made. Given this and the other work that is taking place around the introduction of IDNs at the top-level, there are some critical factors that may impede the immediate acceptance of new IDN TLD applications. The conditions under which those applications would be assessed would remain the same as for ASCII TLDs.
- xv) Detailed work continues on the preparation of an Implementation Plan that reflects both the Principles and the Recommendations. The proposed Implementation Plan deals with a comprehensive range of potentially controversial (for whatever reason) string applications which balances the need for reasonable protection of existing legal rights and the capacity to innovate with new uses for top level domains that may be attractive to a wide range of users[52].
- xvi) The draft Implementation Plan (included in the *Discussion Points* document), illustrates the flow of the application and evaluation process and includes a detailed dispute resolution and extended evaluation tracks designed to resolve objections to applicants or applications.
- xvii) There is tension between those on the Committee who are concerned about the protection of existing TLD strings and those concerned with the protection of trademark and other rights as compared to those who wish, as far as possible, to preserve freedom of expression and creativity. The *Implementation Plan* sets out a series of tests to apply the recommendation during the application evaluation process.

2. Recommendation 3 Discussion -- Strings must not infringe the existing legal rights of others that are recognized or enforceable under generally accepted and internationally recognized principles of law. Examples of these legal rights that are internationally recognized include, but are not limited to, rights defined in the Paris Convention for the Protection of Industry Property (in particular trademark rights), the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) (in particular freedom of expression rights).

- i. This recommendation has support from all GNSO Constituencies. Ms Doria supported the recommendation with concern expressed below[53].
- ii. This recommendation was discussed in detail in the lead up to the Committee's 7 June 2007 conference call and it was agreed that further work would be beneficial. That work was conducted through a series of teleconferences and email exchanges. The Committee decided to leave the recommendation text as it had been drafted and insert a new Principle G that reads "...The string evaluation process must not infringe the applicant's freedom of expression rights that are protected under internationally recognized principles of law."
- iii. Prior to this, the Committee engaged in comprehensive discussion about this recommendation and took advice from a number of experts within the group[54]. The original text of the recommendation has been modified to recognise that an applicant would be bound by the laws of the country where they are located and an applicant may be bound by another country that has jurisdiction over them. In addition, the original formulation that included "freedom of speech" was modified to read the more generally applicable "freedom of expression".
- iv. Before reaching agreement on the final text, the IPC and the NCUC, in their respective Constituency Impact Statements (CIS), had differing views. The NCUC argued that "... here is no recognition that trade marks (and other legal rights have legal limits and *defenses*." The IPC says "agreed [to the recommendation], and, as stated before, appropriate mechanisms must be in place to address conflicts that may arise between any proposed new string and the IP rights of others."

3. Recommendation 4 Discussion -- Strings must not cause any technical instability.

- i. This recommendation is supported by all GNSO Constituencies and Ms Doria.
- ii. It was agreed by the Committee that the string should not cause any technical issues that threatened the stability and security of the Internet.
- iii. In its CIS, the ISPCP stated that "...this is especially important in the avoidance of any negative impact on network activities...The ISPCP considers recommendations 7 and 8 to be fundamental. The technical, financial, organizational and operational capability of the applicant are the evaluators' instruments for preventing potential negative impact on a new string on the activities of our sector (and indeed of many other sectors)." The IPC also agreed that "technical and operational stability are imperative to any new gTLD introduction." The RC said "...This is important to Registrars in that unstable registry and/or zone operations would have a serious and costly impact on its operations and customer service and support."
- iv. The Security and Stability Advisory Committee (SSAC) has been involved in general discussions about new top level domains and will be consulted formally to confirm that the implementation of the recommendations will not cause

any technical instability.

v. A reserved word list, which includes strings which are reserved for technical reasons, has been recommended by the RN-WG. This table is found in the section below.

4. Recommendation 5 Discussion -- Strings must not be a Reserved Word.[55]

- i. This recommendation is supported by all GNSO Constituencies. Ms Doria supported the recommendation but expressed some concerns outlined in the footnote below.[56]
- ii. The RN WG developed a definition of "reserved word" in the context of new TLDs which said "... depending on the specific reserved name category as well as the type (ASCII or IDN), the reserved name requirements recommended may apply in any one or more of the following levels as indicated:
 1. At the top level regarding gTLD string restrictions
 2. At the second-level as contractual conditions
 3. At the third-level as contractual conditions for any new gTLDs that offer domain name registrations at the third-level.
- iii. The notion of "reserved words" has a specific meaning within the ICANN context. Each of the existing ICANN registry contracts has provisions within it that govern the use of reserved words. Some of these recommendations will become part of the contractual conditions for new registry operators.
- iv. The Reserved Names Working Group (RN-WG) developed a series of recommendations across a broad spectrum of reserved words. The Working Group's *Final Report*[57] was reviewed and the recommendations updated by the Committee at ICANN's Puerto Rico meeting and, with respect to the recommendations relating to IDNs, with IDN experts. The final recommendations are included in the following table.

	Reserved Name Category	Domain Name Level(s)	Recommendation
1	ICANN & IANA	All ASCII	The names listed as ICANN and IANA names will be reserved at all levels.
2	ICANN & IANA	Top level, IDN	Any names that appear in the IDN evaluation facility[58] which consist exclusively of translations of 'example' or 'test' that appear in the document at http://www.icann.org/topics/idn/idn-evaluation-plan-v2%209.pdf shall be reserved.
3	ICANN & IANA	2 nd & 3 rd levels, IDN	Any names that appear in the IDN evaluation facility which consist exclusively of translations of 'example' or 'test' that appear in the document at http://www.icann.org/topics/idn/idn-evaluation-plan-v2%209.pdf shall be reserved.
4	Symbols	All	We recommend that the current practice be maintained, so that no symbols other than the '-' [hyphen] be considered for use, with further allowance for any equivalent marks that may explicitly be made available in future revisions of the IDNA protocol.
5	Single and Two Character IDNs	IDNA-valid strings at all levels	Single and two-character U-labels on the top level and second level of a domain name should not be restricted in general. At the top level, requested strings should be analyzed on a case-by-case basis in the new gTLD process depending on the script and language used in order to determine whether the string should be granted for allocation in the DNS with particular caution applied to U-labels in Latin script (see Recommendation 10 below). Single and two character labels at the second level and the third level if applicable should be available for registration, provided they are consistent with the IDN Guidelines.
6	Single Letters	Top Level	We recommend reservation of single letters at the top level based on technical questions raised. If sufficient research at a later date demonstrates that the technical issues and concerns are addressed, the topic of releasing reservation status can be reconsidered.
7	Single Letters and Digits	2 nd Level	In future gTLDs we recommend that single letters and single digits be available at the second (and third level if applicable).
8	Single and Two Digits	Top Level	A top-level label must not be a plausible component of an IPv4 or IPv6 address. (e.g., .3, .99, .123, .1035, .0xAF, .1578234)
9	Single Letter, Single Digit Combinations	Top Level	Applications may be considered for single letter, single digit combinations at the top level in accordance with the terms set forth in the new gTLD process. Examples include .3F, .A1, .u7.
10	Two Letters	Top Level	We recommend that the current practice of allowing two letter names at the top level, only for ccTLDs, remains at this time.[59] Examples include .AU, .DE, .UK.
11	Any combination of Two Letters, Digits	2 nd Level	Registries may propose release provided that measures to avoid confusion with any corresponding country codes are implemented.[60] Examples include ba.aero, ub.cat, 53.com, 3M.com, e8.org.
12	Tagged Names	Top Level ASCII	In the absence of standardization activity and appropriate IANA registration, all labels with hyphens in both the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n") must be reserved at the top-level [61]
13	N/A	Top Level IDN	For each IDN gTLD proposed, applicant must provide both the "ASCII compatible encoding" ("A-label") and the "Unicode display form" ("U-label")[62] For example: <ul style="list-style-type: none"> • If the Chinese word for 'Beijing' is proposed as a new gTLD, the applicant would be required to provide the A-label (xn--1q90i) and the U-label (北京). • If the Japanese word for 'Tokyo' is proposed as a new gTLD, the applicant would be required to provide the A-label (xn--1qs71d) and the U-label (東京).

	Reserved Name Category	Domain Name Level(s)	Recommendation
14	Tagged Names	2 nd Level ASCII	The current reservation requirement be reworded to say, " <i>In the absence of standardization activity and appropriate IANA registration</i> , all labels with hyphens in both the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n") must be reserved in ASCII at the second (2 nd) level.[63] – added words in <i>italics</i> . (Note that names starting with "xn--" may only be used if the current ICANN IDN Guidelines are followed by a gTLD registry.)
15	Tagged Names	3 rd Level ASCII	All labels with hyphens in both the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n") must be reserved in ASCII at the third (3 rd) level) for gTLD registries that register names at the third level."[64] – added words in <i>italics</i> . (Note that names starting with "xn--" may only be used if the current ICANN IDN Guidelines are followed by a gTLD registry)
16	NIC, WHOIS, WWW	Top ASCII	The following names must be reserved: nic, whois, www.
17	NIC, WHOIS, WWW	Top IDN	Do not try to translate nic, whois and www into Unicode versions for various scripts or to reserve any ACE versions of such translations or transliterations if they exist.
18	NIC, WHOIS, WWW	Second and Third* ASCII	The following names must be reserved for use in connection with the operation of the registry for the Registry TLD: nic, whois, www Registry Operator may use them, but upon conclusion of Registry Operator's designation as operator of the registry for the Registry TLD, they shall be transferred as specified by ICANN. (*Third level only applies in cases where a registry offers registrations at the third level)
19	NIC, WHOIS, WWW	Second and Third* IDN	Do not try to translate nic, whois and www into Unicode versions for various scripts or to reserve any ACE versions of such translations or transliterations if they exist, except on a case by case basis as proposed by given registries. (*Third level only applies in cases where a registry offers registrations at the third level)
20	Geographic and geopolitical	Top Level ASCII and IDN	<p>There should be no geographical reserved names (i.e., no exclusionary list, no presumptive right of registration, no separate administrative procedure, etc.). The proposed challenge mechanisms currently being proposed in the draft new gTLD process would allow national or local governments to initiate a challenge, therefore no additional protection mechanisms are needed. Potential applicants for a new TLD need to represent that the use of the proposed string is not in violation of the national laws in which the applicant is incorporated.</p> <p>However, new TLD applicants interested in applying for a TLD that incorporates a country, territory, or place name should be advised of the GAC Principles, and the advisory role vested to it under the ICANN Bylaws. Additionally, a summary overview of the obstacles encountered by previous applicants involving similar TLDs should be provided to allow an applicant to make an informed decision. Potential applicants should also be advised that the failure of the GAC, or an individual GAC member, to file a challenge during the TLD application process, does not constitute a waiver of the authority vested to the GAC under the ICANN Bylaws.</p> <p><i>Note New gTLD Recommendation 20</i></p>
21	Geographic and geopolitical	All Levels ASCII and IDN	<p>The term 'geopolitical names' should be avoided until such time that a useful definition can be adopted. The basis for this recommendation is founded on the potential ambiguity regarding the definition of the term, and the lack of any specific definition of it in the WIPO Second Report on Domain Names or GAC recommendations.</p> <p><i>Note New gTLD Recommendation 20</i></p>
22	Geographic and geopolitical	Second Level & Third Level if applicable, ASCII & IDN	The consensus view of the working group is given the lack of any established international law on the subject, conflicting legal opinions, and conflicting recommendations emerging from various governmental fora, the current geographical reservation provision contained in the sTLD contracts during the 2004 Round should be removed, and harmonized with the more recently executed .COM, .NET, .ORG, .BIZ and .INFO registry contracts. The only exception to this consensus recommendation is those registries incorporated/organized under countries that require additional protection for geographical identifiers. In this instance, the registry would have to incorporate appropriate mechanisms to comply with their national/local laws.

	Reserved Name Category	Domain Name Level(s)	Recommendation
			<p>For those registries incorporated/organized under the laws of those countries that have expressly supported the guidelines of the WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications as adopted by the WIPO General Assembly, it is strongly recommended (but not mandated) that these registries take appropriate action to promptly implement protections that are in line with these WIPO guidelines and are in accordance with the relevant national laws of the applicable Member State.</p> <p><i>Note New gTLD Recommendation 20</i></p>
23	gTLD Reserved Names	Second & Third Level ASCII and IDN (when applicable)	<p>Absent justification for user confusion[65], the recommendation is that gTLD strings should no longer be reserved from registration for new gTLDs at the second or when applicable at the third level. Applicants for new gTLDs should take into consideration possible abusive or confusing uses of existing gTLD strings at the second level of their corresponding gTLD, based on the nature of their gTLD, when developing the startup process for their gTLD.</p>
24	Controversial Names	All Levels, ASCII & IDN	<p>There should not be a new reserved names category for Controversial Names.</p>
25	Controversial Names	Top Level, ASCII & IDN	<p>There should be a list of disputed names created as a result of the dispute process to be created by the new gTLD process.</p> <p><i>Note New gTLD Recommendation 6</i></p>
26	Controversial Names	Top Level, ASCII & IDN	<p>In the event of the initiation of a CN-DRP process, applications for that label will be placed in a HOLD status that would allow for the dispute to be further examined. If the dispute is dismissed or otherwise resolved favorably, the applications will reenter the processing queue. The period of time allowed for dispute should be finite and should be relegated to the CN-DRP process. The external dispute process should be defined to be objective, neutral, and transparent. The outcome of any dispute shall not result in the development of new categories of Reserved Names.[66]</p> <p><i>Note New gTLD Recommendation 6</i></p>
27	Controversial Names	Top Level, ASCII & IDN	<p>The new gTLD Controversial Names Dispute Resolution Panel should be established as a standing mechanism that is convened at the time a dispute is initiated. Preliminary elements of that process are provided in this report but further work is needed in this area.</p> <p><i>Note New gTLD Recommendation 6</i></p>
28	Controversial Names	Top Level, ASCII & IDN	<p>Within the dispute process, disputes would be initiated by the ICANN Advisory Committees (e.g. ALAC or GAC) or supporting organizations (e.g. GNSO or ccNSO). As these organizations do not currently have formal processes for receiving, and deciding on such activities, these processes would need to be defined:</p> <ul style="list-style-type: none"> o The Advisory Groups and the Supporting Organizations, using their own processes and consistent with their organizational structure, will need to define procedures for deciding on any requests for dispute initiation. o Any consensus or other formally supported position from an ICANN Advisory Committee or ICANN Supporting Organization must document the position of each member within that committee or organization (i.e., support, opposition, abstention) in compliance with both the spirit and letter of the ICANN bylaws regarding openness and transparency. <p><i>Note New gTLD Recommendation 6</i></p>
29	Controversial Names	Top Level, ASCII & IDN	<p>Further work is needed to develop predictable and transparent criteria that can be used by the Controversial Resolution Panel. These criteria must take into account the need to:</p> <ul style="list-style-type: none"> § Protect freedom of expression § Affirm the fundamental human rights, in the dignity and worth of the human person and the equal rights of men and women § Take into account sensitivities regarding terms with cultural and religious significance <p><i>Note New gTLD Recommendation 6</i></p>
30	Controversial Names	Top Level, ASCII & IDN	<p>In any dispute resolution process, or sequence of issue resolution processes, the Controversial name category should be the last category considered.</p>

	Reserved Name Category	Domain Name Level(s)	Recommendation
			Note New gTLD Recommendation 6

- v. With respect to geographic terms, the NCUC's CIS stated that "...We oppose any attempts to create lists of reserved names. Even examples are to be avoided as they can only become prescriptive. We are concerned that geographic names should not be fenced off from the commons of language and rather should be free for the use of all.. Moreover, the proposed recommendation does not make allowance for the duplication of geographic names outside the ccTLDs – where the real issues arise and the means of resolving competing use and fair and nominative use."
- vi. The GAC's Public Policy Principle 2.2 states that "ICANN should avoid country, territory or place names, and country, territory or regional language or people descriptions, unless in agreement with the relevant government or public authorities."
- vii. The Implementation Team has developed some suggestions about how this recommendation may be implemented. Those suggestions and the process flow were incorporated into the Version 2 of the ICANN Staff Discussion Points document for consideration by the Committee.

5. Recommendation 6 Discussion -- Strings must not be contrary to generally accepted legal norms relating to morality and public order that are recognized under international principles of law.
Examples of such principles of law include, but are not limited to, the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the International Convention of the Elimination of All Forms of Racial Discrimination, intellectual property treaties administered by the World Intellectual Property Organisation (WIPO) and the WTO Agreement on Trade-Related Aspects of Intellectual Property (TRIPS).

- i. This Recommendation is supported by all GNSO Constituencies except the NCUC. The NCUC has submitted a Minority Statement which is found in full in Annex A. The NCUC's earlier Constituency Impact Statement is found, along with all the GNSO Constituency Impact Statements, in Part B of this report. Ms Doria has submitted individual comments[67]. The Committee has discussed this recommendation in great detail and has attempted to address the experiences of the 2003-2004 sTLD round and the complex issues surrounding the xxx application. The Committee has also recognised the GAC's Public Policy Principles, most notably Principle 2.1 a) and b) which refer to both freedom of expression and terms with significance in a variety of contexts. In addition, the Committee recognises the tension respecting freedom of expression and being sensitive to the legitimate concerns others have about offensive terms. The NCUC's earlier CIS says "...we oppose any string criteria based on morality and public order".
- ii. Other Constituencies did not address this recommendation in their CISs. The Implementation Team has tried to balance these views by establishing an Implementation Plan that recognises the practical effect of opening a new top-level domain application system that will attract applications that some members of the community do not agree with. Whilst ICANN does have a technical co-ordination remit, it must also put in place a system of handling objections to strings or to applicants, using pre-published criteria, that is fair and predictable for applicants. It is also necessary to develop guidance for independent evaluators tasked with making decisions about objections.
- iii. In its consideration of public policy aspects of new top-level domains the Committee examined the approach taken in a wide variety of jurisdictions to issues of morality and public order. This was done not to make decisions about acceptable strings but to provide a series of potential tests for independent evaluators to use should an objection be raised to an application. The use of the phrase "morality and public order" within the recommendation was done to set some guidelines for potential applicants about areas that may raise objections. The phrasing was also intended to set parameters for potential objectors so that any objection to an application could be analysed within the framework of broadly accepted legal norms that independent evaluators could use across a broad spectrum of possible objections. The Committee also sought to ensure that the objections process would have parameters set for who could object. Those suggested parameters are found within the Implementation Guidelines.
- iv. In reaching its decision about the recommendation, the Committee sought to be consistent with, for example, Article 3 (1) (f) of the 1988 European Union Trade Mark Directive 89/104/EEC and within Article 7 (1) (f) of the 1993 European Union Trade Mark Regulation 40/94. In addition, the phrasing "contrary to morality or public order and in particular of such a nature as to deceive the public" comes from Article 6quinques (B)(3) of the 1883 Paris Convention. The reference to the Paris Convention remains relevant to domain names even though, when it was drafted, domain names were completely unheard of.
- v. The concept of "morality" is captured in Article 19 United Nations Convention on Human Rights (<http://www.unhcr.ch/udhr/lang/eng.htm>) says "...Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." Article 29 continues by saying that "...In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society".
- vi. The EU Trade Mark Office's Examiner's guidelines provides assistance on how to interpret morality and deceit. "...Contrary to morality or public order. Words or images which are offensive, such as swear words or racially derogatory images, or which are blasphemous are not acceptable. There is a dividing line between this and words which might be considered in poor taste. The latter do not offend against this provision." The further element is deception of the public which is treated in the following way. "...Deceive the public. To deceive the public, is for

instance as to the nature, quality or geographical origin. For example, a word may give rise to a real expectation of a particular locality which is untrue." For more information, see Sections 8.7 and 8.8 at <http://oami.europa.eu/en/mark/marque/direc.htm>

- vii. The UK Trade Mark office provides similar guidance in its Examiner's Guidance Manual. "Marks which offend fall broadly into three types: those with criminal connotations, those with religious connotations and explicit/taboo signs. Marks offending public policy are likely to offend accepted principles of morality, e.g. illegal drug terminology, although the question of public policy may not arise against marks offending accepted principles of morality, for example, taboo swear words. If a mark is merely distasteful, an objection is unlikely to be justified, whereas if it would cause outrage or would be likely significantly to undermine religious, family or social values, then an objection will be appropriate. Offence may be caused on matters of race, sex, religious belief or general matters of taste and decency. Care should be taken when words have a religious significance and which may provoke greater offence than mere distaste, or even outrage, if used to parody a religion or its values. Where a sign has a very sacred status to members of a religion, mere use may be enough to cause outrage." For more information, see <http://www.patent.gov.uk/tm/t-decisionmaking/t-law/t-law-manual.htm>
- viii. This recommendation has been the subject of detailed Committee and small group work in an attempt to reach consensus about both the text of the recommendation and the examples included as guidance about generally accepted legal norms. The work has been informed by detailed discussion within the GAC and through interactions between the GNSO Committee and the GAC.

6. Recommendation 7 Discussion -- Applicants must be able to demonstrate their technical capability to run a registry operation for the purpose that the applicant sets out.

- i. This recommendation is supported by all GNSO Constituencies and Ms Doria.
- ii. The Committee agreed that the technical requirements for applicants would include compliance with a minimum set of technical standards and that this requirement would be part of the new registry operator's contractual conditions included in the proposed base contract. The more detailed discussion about technical requirements has been moved to the contractual conditions section.
- iii. Reference was made to numerous Requests for Comment (RFCs) and other technical standards which apply to existing registry operators. For example, Appendix 7 of the June 2005 .net agreement^[68] provides a comprehensive listing of technical requirements in addition to other technical specifications in other parts of the agreement. These requirements are consistent with that which is expected of all current registry operators. These standards would form the basis of any new top-level domain operator requirements.
- iv. This recommendation is referred to in two CISs. "The ISPCP considers recommendations 7 and 8 to be fundamental. The technical, financial, organisational and operational capabilities of the applicant are the evaluators' instruments for preventing potential negative impact on a new string on the activities of our sector (and indeed of many other sectors)." The NCUC submitted "...we record that this must be limited to transparent, predictable and minimum technical requirements only. These must be published. They must then be adhered to neutrally, fairly and without discrimination."
- v. The GAC supported this direction in its Public Policy Principles 2.6, 2.10 and 2.11.

7. Recommendation 8 Discussion -- Applicants must be able to demonstrate their financial and organisational operational capability.

- i. This recommendation is supported by all GNSO Constituencies and accepted with concern by Ms Doria^[69].
- ii. The Committee discussed this requirement in detail and determined that it was reasonable to request this information from potential applicants. It was also consistent with past practices including the prior new TLD rounds in 2000 and 2003-2004; the .net and .org rebids and the conditions associated with ICANN registrar accreditation.
- iii. This is also consistent with best practice procurement guidelines recommended by the World Bank (www.worldbank.org), the OECD (www.oecd.org) and the Asian Development Bank (www.adb.org) as well as a range of federal procurement agencies such as the UK telecommunications regulator, Ofcom; the US Federal Communications Commission and major public companies.
- iv. The challenging aspect of this recommendation is to develop robust and objective criteria against which applicants can be measured, recognising a vast array of business conditions and models. This will be an important element of the ongoing development of the Implementation Plan.
- v. The ISPCP discussed the importance of this recommendation in its CIS, as found in Recommendation 7 above.
- vi. The NCUC's CIS addressed this recommendation by saying "...we support this recommendation to the extent that the criteria is truly limited to minimum financial and organizational operational capability...All criteria must be transparent, predictable and minimum. They must be published. They must then be adhered to neutrally, fairly and without discrimination."
- vii. The GAC echoed these views in its Public Policy Principle 2.5 that said "...the evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination. All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process. Normally, therefore, no subsequent additional selection criteria should be used in the selection process."

8. Recommendation 9 Discussion -- There must be a clear and pre-published process using objective and measurable criteria.

- i. This recommendation is supported by all GNSO Constituencies and by Ms Doria. It is consistent with ICANN's previous TLD rounds in 2000 and 2003-2004 and with its re-bid of both the .net and .org registry contracts.
- ii. It is also consistent with ICANN's Mission and Core Values especially 7, 8 and 9 which address openness in decision-making processes and the timeliness of those processes.

- iii. The Committee decided that the "process" criteria for introducing new top-level domains would follow a pre-published application system including the levying of an application fee to recover the costs of the application process. This is consistent with ICANN's approach to the introduction of new TLDs in the previous 2000 and 2004 round for new top-level domains.
- iv. The RyC reiterated its support for this recommendation in its CIS. It said that "...this Recommendation is of major importance to the RyC because the majority of constituency members incurred unnecessarily high costs in previous rounds of new gTLD introductions as a result of excessively long time periods from application submittal until they were able to start their business. We believe that a significant part of the delays were related to selection criteria and processes that were too subjective and not very measurable. It is critical in our opinion that the process for the introduction of new gTLDs be predictable in terms of evaluation requirements and timeframes so that new applicants can properly scope their costs and develop reliable implementation plans." The NCUC said that "...we strongly support this recommendation and again stress the need for all criteria to be limited to minimum operational, financial, and technical considerations. We all stress the need that all evaluation criteria be objective and measurable."

9. Recommendation 10 Discussion -- There must be a base contract provided to applicants at the beginning of the process.

- i. This recommendation is supported by all GNSO Constituencies and by Ms Doria.
- ii. The General Counsel's office has been involved in discussions about the provision of a base contract which would assist applicants both during the application process and in any subsequent contract negotiations.
- iii. A framework for the base contract was developed for discussion at the June 2007 ICANN meeting in Puerto Rico. The base contract will not be completed until the policy recommendations are in place. Completion of the policy recommendations will enable the completion of a draft base contract that would be available to applicants prior to the start of the new gTLD process, that is, prior to the beginning of the four-month window preceding the application submittal period.
- iv. The RyC, in its CIS, said, "...like the comments for Recommendation 9, we believe that this recommendation will facilitate a more cost-effective and timely application process and thereby minimize the negative impacts of a process that is less well-defined and objective. Having a clear understanding of base contractual requirements is essential for a new gTLD applicant in developing a complete business plan."

10. Recommendation 11 Discussion -- (This recommendation has been removed and is left intentionally blank. Note Recommendation 20 and its Implementation Guidelines).

11. Recommendation 12 Discussion -- Dispute resolution and challenge processes must be established prior to the start of the process.

- i. This recommendation is supported by all GNSO Constituencies and Ms Doria.
- ii. The Committee has provided clear direction on its expectations that all the dispute resolution and challenge processes would be established prior to the opening of the application round. The full system will be published prior to an application round starting. However, the finalisation of this process is contingent upon a completed set of recommendations being agreed; a public comment period and the final agreement of the ICANN Board.
- iii. The draft Implementation Plan in the Implementation Team *Discussion Points* document sets out the way in which the ICANN Staff proposes that disputes between applicants and challenge processes may be handled. Expert legal and other professional advice from, for example, auctions experts is being sought to augment the Implementation Plan.

TERM OF REFERENCE THREE -- ALLOCATION METHODS

12. Recommendation 13 Discussion -- Applications must initially be assessed in rounds until the scale of demand is clear.

- i. This recommendation is supported by all GNSO Constituencies and Ms Doria.
- ii. This recommendation sets out the principal allocation methods for TLD applications. The narrative here should be read in conjunction with the draft flowcharts and the draft Request for Proposals.
- iii. An application round would be opened on Day 1 and closed on an agreed date in the future with an unspecified number of applications to be processed within that round.
- iv. This recommendation may be amended, after an evaluation period and report that may suggest modifications to the system. The development of objective "success metrics" is a necessary part of the evaluation process that could take place within the new TLDs Project Office.
- v. The ISPCP expressed its support for this recommendation. Its CIS said that "...this is an essential element in the deployment of new gTLDs, as it enables any technical difficulties to be quickly identified and sorted out, working with reduced numbers of new strings at a time, rather than many all at once. Recommendation 18 on the use of IDNs is also important in preventing any negative impact on network operators and ISPs."

13. Recommendation 20 Discussion -- An application will be rejected if an expert panel determines that there is substantial opposition to it from a significant portion of the community to which the string may be explicitly or implicitly targeted.

- i. This recommendation is supported by the majority of GNSO Constituencies. Ms Doria supports the recommendation but has concerns about its implementation^[70]. The NCUC has submitted a Minority Statement which is found in full in Annex C about the recommendation and its associated Implementation Guidelines F, H and P.
- ii. This recommendation was developed during the preparations for the Committee's 7 June 2007 conference call and during subsequent Committee deliberations. The intention was to factor into the process the very likely possibility of objections to applications from a wide variety of stakeholders.
- iii. The language used here is relatively broad and the implementation impact of the proposed recommendation is discussed in

detail in the Implementation Team's *Discussion Points* document.

- iv. The NCUC's response to this recommendation in its earlier CIS says, in part, "...recommendation 20 swallows up any attempt to narrow the string criteria to technical, operational and financial evaluations. It asks for objections based on entirely subjective and unknowable criteria and for unlimited reasons and by unlimited parties." This view has, in part, been addressed in the Implementation Team's proposed plan but this requires further discussion and agreement by the Committee.

TERM OF REFERENCE FOUR -- CONTRACTUAL CONDITIONS**14. Recommendation 14 Discussion -- The initial registry agreement term must be of a commercially reasonable length.**

- i. The remainder of the recommendations address Term of Reference Four on policies for contractual conditions and should be read in conjunction with Recommendation 10 on the provision of a base contract prior to the opening of an application round. The recommendation is supported by all GNSO Constituencies and Ms Doria.
- ii. This recommendation is consistent with the existing registry contract provisions found in, for example, the .com and .biz agreements.
- iii. These conditions would form the baseline conditions of term length for new TLD operators. It was determined that a term of ten years would reasonably balance the start up costs of registry operations with reasonable commercial terms.
- iv. The RyC commented on this recommendation in its CIS saying that "...the members of the RyC have learned first hand that operating a registry in a secure and stable manner is a capital intensive venture. Extensive infrastructure is needed both for redundant registration systems and global domain name constellations. Even the most successful registries have taken many years to recoup their initial investment costs. The RyC is convinced that these two recommendations [14 & 15] will make it easier for new applicants to raise the initial capital necessary and to continue to make investments needed to ensure the level of service expected by registrants and users of their TLDs. These two recommendations will have a very positive impact on new gTLD registries and in turn on the quality of the service they will be able to provide to the Internet community."

15. Recommendation 15 -- There must be renewal expectancy.

- i. This recommendation is consistent with the existing registry contract provisions found in, for example, the .com and .biz agreements and is supported by all Constituencies. Ms Doria supported the recommendation and provided the comments found in the footnote below [71]
- ii. These conditions would form the baseline conditions of term length for new TLD operators. It was determined that a term of ten years would reasonably balance the start up costs of registry operations with reasonable commercial terms.
- iii. See the CIS comments from the RyC in the previous section.

16. Recommendation 16 -- Registries must apply existing Consensus Policies[72] and adopt new Consensus Policies as they are approved.

- i. This recommendation is supported by all GNSO Constituencies and Ms Doria.
- ii. The full set of existing ICANN registry contracts can be found here <http://www.icann.org/registries/agreements.htm> and ICANN's seven current Consensus Policies are found at <http://www.icann.org/general/consensus-policies.htm>.
- iii. ICANN develops binding Consensus Policies through its policy development processes, in this case, through the GNSO[73].

17. Recommendation 17 -- A clear compliance and sanctions process must be set out in the base contract which could lead to contract termination.

- i. This recommendation is supported by all GNSO Constituencies and Ms Doria.
- ii. Referring to the recommendations on contractual conditions above, this section sets out the discussion of the policies for contractual conditions for new top-level domain registry operators. The recommendations are consistent with the existing provisions for registry operators which were the subject of detailed community input throughout 2006[74].
- iii. The Committee developed its recommendations during the Brussels and Amsterdam face-to-face consultations, with assistance from the ICANN General Counsel's office. The General Counsel's office has also provided a draft base contract which will be completed once the policy recommendations are agreed. Reference should also be made to Recommendation 5 on reserved words as some of the findings could be part of the base contract.
- iv. The Committee has focused on the key principles of consistency, openness and transparency. It was also determined that a scalable and predictable process is consistent with industry best practice standards for services procurement. The Committee referred in particular to standards within the broadcasting, telecommunications and Internet services industries to examine how regulatory agencies in those environments conducted, for example, spectrum auctions, broadcasting licence distribution and media ownership frameworks.
- v. Since then ICANN has developed and published a new approach to its compliance activities. These are found on ICANN's website at <http://www.icann.org/compliance/> and will be part of the development of base contract materials.
- vi. The Committee found a number of expert reports[75] beneficial. In particular, the World Bank report on mobile licensing conditions provides some guidance on best practice principles for considering broader market investment conditions. "...A major challenge facing regulators in developed and developing countries alike is the need to strike the right balance between ensuring certainty for market players and preserving flexibility of the regulatory process to accommodate the rapidly changing market, technological and policy conditions. As much as possible, policy makers and regulators should strive to promote investors' confidence and give incentives for long-term investment. They can do this by favouring the principle of 'renewal expectancy', but also by promoting regulatory certainty and predictability through a fair, transparent and participatory renewal process. For example, by providing details for license renewal or reissue, clearly establishing what is the discretion offered to the licensing body, or ensuring sufficient lead-times and transitional arrangements in the event of non-renewal or changes in licensing conditions. Public consultation procedures and guaranteeing the right to appeal regulatory decisions maximizes the prospects for a successful renewal process. As technological changes and convergence and technologically neutral approaches gain importance, regulators and policy makers need to be ready to adapt and evolve licensing procedures and practices to the new environment."
- vii. The Recommendations which the Committee has developed with respect to the introduction of new TLDs are consistent

with the World Bank principles.

18. Recommendation 18 Discussion -- If an applicant offers an IDN service, then ICANN's IDN guidelines must be followed.

- i. This recommendation is supported by all GNSO Constituencies and Ms Doria. The introduction of internationalised domain names at the root presents ICANN with a series of implementation challenges. This recommendation would apply to any new gTLD (IDN or ASCII TLD) offering IDN services. The initial technical testing^[76] has been completed and a series of live root tests will take place during the remainder of 2007.
- ii. The Committee recognises that there is ongoing work in other parts of the ICANN organisation that needs to be factored into the application process that will apply to IDN applications. The work includes the President's Committee on IDNs and the GAC and ccNSO joint working group on IDNs.

19. Recommendation 19 Discussion -- Registries must use only ICANN accredited registrars in registering domain names and may not discriminate among such accredited registrars.

- i. This recommendation is supported by all GNSO Constituencies and Ms Doria.
- ii. There is a long history associated with the separation of registry and registrar operations for top-level domains. The structural separation of VeriSign's registry operations from Network Solutions registrar operations explains much of the ongoing policy to require the use of ICANN accredited registrars.
- iii. In order to facilitate the stable and secure operation of the DNS, the Committee agreed that it was prudent to continue the current requirement that registry operators be obliged to use ICANN accredited registrars.
- iv. ICANN's Registrar Accreditation Agreement has been in place since 2001^[77]. Detailed information about the accreditation of registrars can be found on the ICANN website^[78]. The accreditation process is under active discussion but the critical element of requiring the use of ICANN accredited registrars remains constant.
- v. In its CIS, the RyC noted that "...the RyC has no problem with his recommendation for larger gTLDs; the requirement to use accredited registrars has worked well for them. But it has not always worked as well for very small, specialized gTLDs. The possible impact on the latter is that they can be at the mercy of registrars for whom there is no good business reason to devote resources. In the New gTLD PDP, it was noted that this requirement would be less of a problem if the impacted registry would become a registrar for its own TLD, with appropriate controls in place. The RyC agrees with this line of reasoning but current registry agreements forbid registries from doing this. Dialog with the Registrars Constituency on this topic was initiated and is ongoing, the goal being to mutually agree on terms that could be presented for consideration and might provide a workable solution."

NEXT STEPS

1. Under the GNSO's Policy Development Process, the production of this *Final Report* completes Stage 9. The next steps are to conduct a twenty-day public comment period running from 10 August to 30 August 2007. The GNSO Council is due to meet on 6 September 2007 to vote on the package of principles, policy recommendations and implementation guidelines.
2. After the GNSO Council have voted the Council Report to the Board is prepared. The GNSO's PDP guidelines stipulate that "the Staff Manager will be present at the final meeting of the Council, and will have five (5) calendar days after the meeting to incorporate the views of the Council into a report to be submitted to the Board (the "Board Report"). The Board Report must contain at least the following:
 - a. A clear statement of any Supermajority Vote recommendation of the Council;
 - b. If a Supermajority Vote was not reached, a clear statement of all positions held by Council members. Each statement should clearly indicate (i) the reasons underlying each position and (ii) the constituency(ies) that held the position;
 - c. An analysis of how the issue would affect each constituency, including any financial impact on the constituency;
 - d. An analysis of the period of time that would likely be necessary to implement the policy;
 - e. The advice of any outside advisors relied upon, which should be accompanied by a detailed statement of the advisor's (i) qualifications and relevant experience; and (ii) potential conflicts of interest;
 - f. The Final Report submitted to the Council; and
 - g. A copy of the minutes of the Council deliberation on the policy issue, including the all opinions expressed during such deliberation, accompanied by a description of who expressed such opinions.
3. It is expected that, according to the Bylaws, "...The Board will meet to discuss the GNSO Council recommendation as soon as feasible after receipt of the Board Report from the Staff Manager. In the event that the Council reached a Supermajority Vote, the Board shall adopt the policy according to the Council Supermajority Vote recommendation unless by a vote of more than sixty-six (66%) percent of the Board determines that such policy is not in the best interests of the ICANN community or ICANN. In the event that the Board determines not to act in accordance with the Council Supermajority Vote recommendation, the Board shall (i) articulate the reasons for its determination in a report to the Council (the "Board Statement"); and (ii) submit the Board Statement to the Council. The Council shall review the Board Statement for discussion with the Board within twenty (20) calendar days after the Council's receipt of the Board Statement. The Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and Board will discuss the Board Statement. At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its recommendation, and communicate that conclusion (the "Supplemental Recommendation") to the Board, including an explanation for its current recommendation. In the event that the Council is able to reach a Supermajority Vote on the Supplemental Recommendation, the Board shall adopt the recommendation unless more than sixty-six (66%) percent of the Board determines that such policy is not in the interests of the ICANN community or ICANN. In any case in which the Council is not able to reach Supermajority, a majority vote of the Board will be sufficient to act. When a final decision on a GNSO Council Recommendation or Supplemental Recommendation is timely, the Board shall take a preliminary vote and, where practicable, will publish a tentative decision that allows for a ten (10) day period of public comment prior to a final decision by the Board."
4. The final stage in the PDP is the implementation of the policy which is also governed by the Bylaws as follows, "...Upon a final decision of the Board, the Board shall, as appropriate, give authorization or direction to the ICANN staff to take all necessary steps to implement the policy."

Annex A – NCUC Minority Statement: Recommendation 6

STATEMENT OF DISSENT ON RECOMMENDATION #6 OF

GNSO's NEW GTLD REPORT FROM

the Non-Commercial Users Constituency (NCUC)

20 July 2007

NCUC supports most of the recommendations in the GNSO's Final Report, but Recommendation #6 is one we cannot support.[79]

We oppose Recommendation #6 for the following reasons:

- 1) It will completely undermine ICANN's efforts to make the gTLD application process predictable, and instead make the evaluation process arbitrary, subjective and political;
- 2) It will have the effect of suppressing free and diverse expression;
- 3) It exposes ICANN to litigation risks;
- 4) It takes ICANN too far away from its technical coordination mission and into areas of legislating morality and public order.

We also believe that the objective of Recommendation #6 is unclear, in that much of its desirable substance is already covered by Recommendation #3. At a minimum, we believe that the words "relating to morality and public order" must be struck from the recommendation.

1) Predictability, Transparency and Objectivity

Recommendation #6 poses severe implementation problems. It makes it impossible to achieve the GNSO's goals of predictable and transparent evaluation criteria for new gTLDs.

Principle 1 of the New gTLD Report states that the evaluation process must be "predictable," and Recommendation #1 states that the evaluation criteria must be transparent, predictable, and fully available to applicants prior to their application.

NCUC strongly supports these guidelines. But no gTLD applicant can possibly know in advance what people or governments in a far away land will object to as "immoral" or contrary to "public order." When applications are challenged on these grounds, applicants cannot possibly know what decision an expert panel – which will be assembled on an ad hoc basis with no precedent to draw on – will make about it.

Decisions by expert panels on "morality and public order" must be subjective and arbitrary, because there is no settled and well-established international law regarding the relationship between TLD strings and morality and public order. There is no single "community standard" of morality that ICANN can apply to all applicants in every corner of the globe. What is considered "immoral" in Teheran may be easily accepted in Los Angeles or Stockholm; what is considered a threat to "public order" in China and Russia may not be in Brazil and Qatar.

2) Suppression of expression of controversial views

gTLD applicants will respond to the uncertainty inherent in a vague "morality and public order" standard and lack of clear standards by suppressing and avoiding any ideas that might generate controversy. Applicants will have to invest sizable sums of money to develop a gTLD application and see it through the ICANN process. Most of them will avoid risking a challenge under Recommendation #6. In other words, the presence of Recommendation #6 will result in self-censorship by most applicants.

That policy would strip citizens everywhere of their rights to express controversial ideas because someone else finds them offensive. This policy recommendation ignores international and national laws, in particular freedom of expression guarantees that permit the expression of "immoral" or otherwise controversial speech on the Internet.

3) Risk of litigation

Some people in the ICANN community are under the mistaken impression that suppressing controversial gTLDs will protect it from litigation. Nothing could be further from the truth. By introducing subjective and culturally divisive standards into the evaluation process Recommendation #6 will increase the likelihood of litigation.

ICANN operates under authority from the US Commerce Department. It is undisputed that the US Commerce Department is prohibited from censoring the expression of US citizens in the manner proposed by Recommendation #6. The US Government cannot "contract away" the constitutional protections of its citizens to ICANN any more than it can engage in the censorship itself.

Adoption of Recommendation #6 invites litigation against ICANN to determine whether its censorship policy is compatible with the US First Amendment. An ICANN decision to suppress a gTLD string that would be permitted under US law could and probably would lead to legal challenges to the decision as a form of US Government action.

If ICANN left the adjudication of legal rights up to courts, it could avoid the legal risk and legal liability that this policy of censorship brings upon it.

4) ICANN's mission and core values

Recommendation #6 exceeds the scope of ICANN's technical mission. It asks ICANN to create rules and adjudicate disputes about what is permissible expression. It enables it to censor expression in domain names that would be lawful in some countries. It would require ICANN and "expert panels" to make decisions about permitting top-level domain names based on arbitrary "morality" judgments and other subjective criteria. Under Recommendation #6, ICANN will evaluate domain names based on ideas about "morality and public order" -- concepts for which there are varying interpretations, in both law and culture, in various parts of the world. Recommendation #6 risks turning ICANN into the arbiter of "morality" and "appropriate" public policy through global rules.

This new role for ICANN conflicts with its intended narrow technical mission, as embodied in its mission and core values.

ICANN holds no legitimate authority to regulate in this entirely non-technical area and adjudicate the legal rights of others. This recommendation takes the adjudication of people's rights to use domain names out of the hands of democratically elected representatives and into the hands of "expert panels" or ICANN staff and board with no public accountability.

Besides exceeding the scope of ICANN's authority, Recommendation #6 seems unsure of its objective. It mandates "morality and public order" in domain names, but then lists, as examples of the type of rights to protect, the WTO TRIPS Agreement and all 24 World Intellectual Property (WIPO) Treaties, which deal with economic and trade rights, and have little to do with "morality and public order". Protection for intellectual property rights was fully covered in Recommendation #3, and no explanation has been provided as to why intellectual property rights would be listed again in a recommendation on "morality and public order", an entirely separate concept.

In conclusion Recommendation #6 exceeds ICANN's authority, ignores Internet users' free expression rights, and its adoption would impose an enormous burden on and liability for ICANN. It should not be adopted by the Board of Directors in the final policy decision for new gtlds.

Annex B – Nominating Committee Appointee Avri Doria[80]: Individual Comments

Comments from Avri Doria

The "Personal level of support" indications fall into 3 categories:

I Support: these are principles, recommendations or guidelines that are compatible with my personal opinions

I Support with concerns: While these principles, recommendations and guidelines are not incompatible with my personal opinions, I have some concerns about them.

I Accept with concern: these recommendations and guidelines do not necessarily correspond to my personal opinions, but I am able to accept them in that they have the broad support of the committee. I do, however, have concerns with these recommendations and guideline.

I believe these comments are consistent with comments I have made throughout the process and do not constitute new input.

Principles

#	Personal level of support	Explanation
A	Support	
B	Support with concerns	While I strongly support the introduction of IDN TLDs, I am concerned that the unresolved issues with IDN ccTLD equivalents may interfere with the introduction of IDN TLDs. I am also concerned that some of these issues could impede the introduction of some new ASCII TLDs dealing with geographically related identifiers.
C	Support	
D	Support with concerns	While I favor the establishment of a minimum set of necessary technical criteria, I am concerned that this set actually be the basic minimum set necessary to protect the stability, security and global interoperability.
E-G	Support	

Recommendations

#	Level of support	Explanation
1	Support	
2	Accept with concern	<p>My concern involves using definitions that rely on legal terminology established for trademarks for what I believe should be a policy based on technical criteria.</p> <p>I In the first instance I believe that this is essentially a technical issue that should have been resolved with reference to typography, homologues, or hographic neighbourhood, transliteration and other technically defined attributes of a name that would make it unacceptable. There is a large body of scientific and technical knowledge and description in this field that we could have drawn on.</p> <p>I By using terms that rely on the legal language of trademark law, I believe we have created an implicit redundancy between recommendations 2 and 3. I.e., I believe both 2 and 3 can be used to protect trademarks and other intellectual property rights, and while 3 has specific limitations, 2 remains open to full and varied interpretation.</p> <p>I As we begin to consider IDNs, I am concerned that the interpretations of confusingly similar may be used to eliminate many potential TLDs based on translation. That is, when a translation may have the same or similar meaning to an existing TLD, that the new name may be eliminated because it is considered confusing to users who know both languages.</p>
3	Support with concerns	<p>My first concern relates to the protection of what can be called the linguistic commons. While it is true that much of trademark law and practice does protect general vocabulary and common usage from trademark protection, I am not sure that this is always the case in practice.</p> <p>I am also not convinced that trademark law and policy that applies to specific product type within a specific locale is entirely compatible with a general and global naming system.</p>
4	Support	
5	Support with concerns	<p>Until such time as the technical work on IDNabis is completed, I am concerned about establishing reserved name rules connected to IDNs. My primary concern involves policy decisions made in ICANN for reserved names becoming hard coded in the IDNabis technical solution and thus becoming technical constraints that are no longer open to future policy reconsideration.</p>

#	Level of support	Explanation
6	Accept with concern	<p>My primary concern focuses on the term 'morality'. While public order is frequently codified in national laws and occasionally in international law and conventions, the definition of what constitutes morality is not generally codified, and when it is, I believe it could be referenced as public order.</p> <p>This concern is related to the broad set of definitions used in the world to define morality. By including morality in the list of allowable exclusions we have made the possible exclusion list indefinitely large and have subjected the process to the consideration of all possible religious and ethical systems. ICANN or the panel of reviewers will also have to decide between different sets of moral principles, e.g., a morality that holds that people should be free to express themselves in all forms of media and those who believe that people should be free from exposure to any expression that is prohibited by their faith or moral principles. This recommendation will also subject the process to the fashion and occasional demagoguery of political correctness. I do not understand how ICANN or any expert panel will be able to judge that something should be excluded based on reasons of morality without defining, at least de-facto, an ICANN definition of morality? And while I am not a strict constructionist and sometimes allow for the broader interpretation of ICANN's mission, I do not believe it includes the definition of a system of morality.</p>
7	Support	
8	Accept with concern	<p>While I accept that a prospective registry must show adequate operational capability, creating a financial criteria is of concern. There may be many different ways of satisfying the requirement for operational capability and stability that may not be demonstrable in a financial statement or traditional business plan. E.g., in the case of a less developed community, the registry may rely on volunteer effort from knowledgeable technical experts.</p> <p>Another concern I have with financial requirements and high application fees is that they may act to discourage applications from developing nations or indigenous and minority peoples that have a different set of financial opportunities or capabilities than those recognized as acceptable within an expensive and highly developed region such as Los Angeles or Brussels.</p>
9,10, 12-14	Support	
15	Support with concerns	<p>In general I support the idea that a registry that is doing a good job should have the expectancy of renewal. I do, however, believe that a registry, especially a registry with general market dominance, or specific or local market dominance, should be subject to comment from the relevant user public and to evaluation of that public comment before renewal. When performance is satisfactory, there should be an expectation of renewal. When performance is not satisfactory, there should be some procedure for correcting the situation before renewal.</p>
16-19	Support	
20	Support with concerns	<p>In general I support the policy though I do have concerns about the implementation which I discuss below in relation to IG (P)</p>

Implementation Guidelines

#	Level of support	Explanation
A-E	Support	
F	Accept with concern	<p>In designing a New gTLD process, one of the original design goals had been to design a predictable and timely process that did not include the involvement of the Board of Directors except for very rare and exceptional cases and perhaps in the due diligence check of a final approval. My concern is that the use of Board in step (iii) may make them a regular part of many of the application procedure and may overload both the Board and the process. If every dispute can fall through to Board consideration in the process sieve, then the incentive to resolve the dispute earlier will be lessened.</p>
G-M	Support	
N	Support with concerns	<p>I strongly support the idea of financial assistance programs and fee reduction for less developed communities. I am concerned that not providing pricing that enables applications from less developed countries and communities may serve to increase the divide between the haves and the have-nots in the Internet and may lead to a foreign 'land grab' of choice TLD names, especially IDN TLD names in a new form of resource colonialism because only those with well developed funding capability will be able to participate in the process as currently planned.</p>
O	Support	

#	Level of support	Explanation
P	Support with concerns	<p>While I essentially agree with the policy recommendation and its implementation guideline, its social justice and fairness depends heavily on the implementation issues. While the implementation details are not yet settled, I have serious concerns about the published draft plans of the ICANN staff in this regard. The current proposal involves using fees to prevent vexatious or unreasonable objections. In my personal opinion this would be a cause of social injustice in the application of the policy as it would prejudice the objection policy in favor of the rich. I also believe that an objection policy based on financial means would allow for well endowed entities to object to any term they found objectionable, hence enabling them to be as vexatious as they wish to be.</p> <p>In order for an objection system to work properly, it must be fair and it must allow for any applicant to understand the basis on which they might have to answer an objection. If the policy and implementation are clear about objections only being considered when they can be shown to cause irreparable harm to a community then it may be possible to build a just process. In addition to the necessity for there to be strict filters on which potential objections are actually processed for further review by an objections review process, it is essential that an external and impartial professional review panel have a clear basis for judging any objections.</p> <p>I do not believe that the ability to pay for a review will provide a reasonable criteria, nor do I believe that financial barriers are an adequate filter for stopping vexatious or unreasonable objections though they are a sufficient barrier for the poor.</p> <p>I believe that ICANN should investigate other methods for balancing the need to allow even the poorest to raise an issue of irreparable harm while filtering out unreasonable disputes. I believe, as recommend in the Reserved Names Working group report, that the ALAC and GAC may be an important part of the solution. IG (P) currently includes support for treating ALAC and GAC as established institutions in regard to raising objections to TLD concerns. I believe this is an important part of the policy recommendation and should be retained in the implementation. I believe that it should be possible for the ALAC or GAC, through some internal procedure that they define, to take up the cause of the individual complainant and to request a review by the external expert review panel. Some have argued that this is unacceptable because it operationalizes these Advisory Committees. I believe we do have precedence for such an operational role for volunteers within ICANN and that it is in keeping with their respective roles and responsibilities as representatives of the user community and of the international community of nations. I strongly recommend that such a solution be included in the Implementation of the New gTLD process.</p>
Q	Support	

Annex C – NCUC Minority Statement: Recommendation 20 and Implementation Guidelines F, H & P

STATEMENT OF DISSENT ON RECOMMENDATION #20 &
IMPLEMENTATION GUIDELINES F, H, & P IN THE
GNSO NEW GTLD COMMITTEE'S FINAL REPORT
FROM THE
NON-COMMERCIAL USERS CONSTITUENCY (NCUC)

RE: DOMAIN NAME OBJECTION AND REJECTION PROCESS
25 July 2007

Text of Recommendation #20:

"An application will be rejected if an expert panel determines that there is substantial opposition to it from a significant portion of the community to which the string may be explicitly or implicitly targeted."

Text of Implementation Guideline F:

If there is contention for strings, applicants may:

- i) resolve contention between them within a pre-established timeframe
- ii) if there is no mutual agreement, a claim to support a community by one party will be a reason to award priority to that application. If there is no such claim, and no mutual agreement a process will be put in place to enable efficient resolution of contention and;
- iii) the ICANN Board may be used to make a final decision, using advice from staff and expert panels.

Text of Implementation Guideline H:

External dispute providers will give decisions on complaints.

Text of Implementation Guideline P:

The following process, definitions, and guidelines refer to Recommendation 20.

Process

Opposition must be objection based.

Determination will be made by a dispute resolution panel constituted for the purpose.

The objector must provide verifiable evidence that it is an established institution of the community (perhaps like the RSTEP pool of panelists from which a small panel would be constituted for each objection).

Guidelines

The task of the panel is the determination of substantial opposition.

a) substantial

In determining substantial the panel will assess the following: significant portion, community, explicitly targeting, implicitly targeting, established institution, formal existence, detriment.

b) significant portion:

In determining significant portion the panel will assess the balance between the level of objection submitted by one or more established institutions and the level of support provided in the application from one or more established institutions. The panel will assess significance proportionate to the explicit or implicit targeting.

c) community

Community should be interpreted broadly and will include for example an economic sector, a cultural community, or a linguistic community. It may also be a closely related community which believes it is impacted.

d) explicitly targeting

Explicitly targeting means there is a description of the intended use of the TLD in the application.

e) implicitly targeting

Implicitly targeting means that the objector makes an assumption of targeting or that the objector believes there may be confusion by users over its intended use.

f) established institution

An institution that has been in formal existence for at least 5 years. In exceptional cases, standing may be granted to an

institution that has been in existence for fewer than 5 years. Exceptional circumstances include but are not limited to reorganization, merger, or an inherently younger community. The following ICANN organizations are defined as established institutions: GAC, ALAC, GNSO, ccNSO, ASO.

g) formal existence

Formal existence may be demonstrated by: appropriate public registration, public historical evidence, validation by a government, intergovernmental organization, international treaty organization or similar.

h) detriment

<< A >> Evidence of detriment to the community or to users more widely must be provided.

<< B >> [A likelihood of detriment to the community or to users more widely must be provided.]

Recommendation #20

The Non-Commercial Users Constituency (NCUC) Dissenting Statement on Recommendation #20 of the New GTLD Committee's Final Report[81] should be read in combination with Implementation Guidelines F, H & P, which detail the implementation of Recommendation #20. This statement should also be read in conjunction with its statement[82] of 13 June 2007 on the committee's draft report.

NCUC cannot support the committee's proposal for ICANN to establish a broad objection and rejection process for domain names that empowers ICANN and its "experts" to adjudicate the legal rights of domain name applicants (and objectors). The proposal would also empower ICANN and its "experts" to invent entirely new rights to domain names that do not exist in law and that will compete with existing legal rights to domains.

However "good-intentioned", the proposal would inevitably set up a system that decides legal rights based on subjective beliefs of "expert panels" and the amount of insider lobbying. The proposal would give "established institutions" veto power over applications for domain names to the detriment of innovators and start-ups. The proposal is further flawed because it makes no allowances for generic words to which no community claims exclusive "ownership" of. Instead, it wants to assign rights to use language based on subjective standards and will over-regulate to the detriment of competition, innovation, and free expression.

There is no limitation on the type of objections that can be raised to kill a domain name, no requirement that actual harm be shown to deny an application, and no recourse for the wrongful denial of legal rights by ICANN and its experts under this proposal. An applicant must be able to appeal decisions of ICANN and its experts to courts, who have more competence and authority to decide the applicant's legal rights. Legal due process requires maintaining a right to appeal these decisions to real courts.

The proposal is hopelessly flawed and will result in the improper rejection of many legitimate domain names. The reasons permitted to object to a domain are infinite in number. Anyone may make an objection; and an application will automatically be rejected upon a very low threshold of "detriment" or an even lower standard of "a likelihood of detriment" to anyone. Not a difficult bar to meet.

If ICANN attempted to put this policy proposal into practice it would intertwine itself in general policy debates, cultural clashes, business feuds, religious wars, and national politics, among a few of the disputes ICANN would have to rule on through this domain name policy.

The proposal operates under false assumptions of "communities" that can be defined, and that parties can be rightfully appointed representatives of "the community" by ICANN. The proposal gives preference to "established institutions" for domain names, and leaves applicants' without the backing of "established institutions" with little right to a top-level domain. The proposal operates to the detriment of small-scale start-ups and innovators who are clever enough to come up with an idea for a domain first, but lack the insider-connections and financial resources necessary to convince an ICANN panel of their worthiness.

It will be excessively expensive to apply for either a controversial or a popular domain name, so only well-financed "established institutions" will have both the standing and financial wherewithal to be awarded a top-level domain. The proposal privileges who is awarded a top-level domain, and thus discourages diversity of thought and the free flow of information by making it more difficult to obtain information on controversial ideas or from innovative new-comers.

Implementation Guideline F

NCUC does not agree with the part of Implementation Guideline F that empowers ICANN identified "communities" to support or oppose applications. Why should all "communities" agree before a domain name can be issued? How to decide who speaks for a "community"?

NCUC also notes that ICANN's Board of Directors would make the final decisions on applications and thus the legal rights of applicants under proposed IG-F. ICANN Board Members are not democratically elected, accountable to the public in any meaningful way, or trained in the adjudication of legal rights. Final decisions regarding legal rights should come from legitimate law-making processes, such as courts.

"Expert panels" or corporate officers are not obligated to respect an applicant's free expression rights and there is no recourse for a decision by the panel or ICANN for rights wrongfully denied. None of the "expert" panelists are democratically elected, nor accountable to the public for their decisions. Yet they will take decisions on the boundaries between free expression and trademark rights in domain names; and "experts" will decide what ideas are too controversial to be permitted in a domain name under this process.

Implementation Guideline H

Implementation Guideline H recommends a system to adjudicate legal rights that exists entirely outside of legitimate democratic law-making processes. The process sets up a system of unaccountable "private law" where "experts" are free to pick and choose favored laws, such as trademark rights, and ignore disfavored laws, such as free expression guarantees.

IG-H operates under the false premise that external dispute providers are authorized to adjudicate the legal rights of domain name applicants and objectors. It further presumes that such expert panels will be qualified to adjudicate the legal rights of

applicants and others. But undertaking the creation of an entirely new international dispute resolution process for the adjudication of legal rights and the creation of new rights is not something that can be delegated to a team of experts. Existing international law that takes into account conflict of laws, choice of laws, jurisdiction, standing, and due process must be part of any legitimate process; and the applicant's legal rights including freedom of expression rights must be respected in the process.

Implementation Guideline P

"The devil is in the details" of Implementation Guideline P as it describes in greater detail the proposed adversarial dispute process to adjudicate legal rights to top-level domain names in Recommendation #20. IG-P mandates the rejection of an application if there is "substantial opposition" to it according to ICANN's expert panel. But "substantial" is defined in such a way so as to actually mean "insubstantial" and as a result many legitimate domain names would be rejected by such an extremely low standard for killing an application.

Under IG-P, opposition against and support for an application must be made by an "established institution" for it to count as "significant", again favoring major industry players and mainstream cultural institutions over cultural diversity, innovative individuals, small niche, and medium-sized Internet businesses.

IG-P states that "community" should be interpreted broadly, which will allow for the maximum number of objections to a domain name to count against an application. It includes examples of "the economic sector, cultural community or linguistic community" as those who have a right to complain about an application. It also includes any "related community which believes it is impacted." So anyone who claims to represent a community and believes to be impacted by a domain name can file a complaint and have standing to object to another's application.

There is no requirement that the objection be based on legal rights or the operational capacity of the applicant. There is no requirement that the objection be reasonable or the belief about impact to be reasonable. There is no requirement that the harm be actual or verifiable. The standard for "community" is entirely subjective and based on the personal beliefs of the objector.

The definition of "implicitly targeting" further confirms this subjective standard by inviting objections where "the objector makes the assumption of targeting" and also where "the objector believes there may be confusion by users". Such a subjective process will inevitably result in the rejection of many legitimate domain names.

Picking such a subjective standard conflicts with Principle A in the Final Report that states domain names must be introduced in a "predictable way", and also with Recommendation 1 that states "All applicants for a new gTLD registry should be evaluated against transparent and predictable criteria, fully available to the applicants prior to the initiation of the process." The subjectivity and unpredictability invited into the process by Recommendation #20 turn Principle A and Recommendation 1 from the same report upside down.

Besides the inherent subjectivity, the standard for killing applications is remarkably low. An application need not be intended to serve a particular community for "community-based" objections to kill the application under the proposal. Anyone who believed that he or she was part of the targeted community or who believes others face "detriment" have standing to object to a domain name, and the objection weighs in favor of "significant opposition". This standard is even lower than the "reasonable person" standard, which would at least require that the belief be "reasonable" for it to count against an applicant. The proposed standard for rejecting domains is so low it even permits unreasonable beliefs about a domain name to weigh against an applicant.

If a domain name does cause confusion, existing trademark law and unfair competition law have dealt with it for years and already balanced intellectual property rights against free expression rights in domain names. There is neither reason nor authority for ICANN processes to overtake the adjudication of legal rights and invite unreasonable and illegitimate objections to domain names.

IG-P falsely assumes that the number of years in operation is indicative of one's right to use language. It privileges entities over 5 years old with objection rights that will effectively veto innovative start-ups who cannot afford the dispute resolution process and will be forced to abandon their application to the incumbents.

IG-P sets the threshold for harm that must be shown to kill an application for a domain name remarkably low. Indeed harm need not be actual or verified for an application to be killed based on "substantial opposition" from a single objector.

Whether the committee selects the unbounded definition for "detriment" that includes a "likelihood of detriment" or the narrower definition of "evidence of detriment" as the standard for killing an application for a domain name is largely irrelevant. The difference is akin to re-arranging the deck chairs on the Titanic. ICANN will become bogged down with the approval of domain names either way, although it is worth noting that "likelihood of detriment" is a very long way from "substantial harm" and an easy standard to meet, so will result in many more domain names being rejected.

The definitions and guidelines detailed in IG-P invite a lobby-fest between competing businesses, instill the "heckler's veto" into domain name policy, privilege incumbents, price out of the market non-commercial applicants, and give third-parties who have no legal rights to domain names the power to block applications for those domains. A better standard for killing an application for non-technical reasons would be for a domain name to be shown to be illegal in the applicant's jurisdiction before it can be rejected.

In conclusion, the committee's recommendation for domain name objection and rejection processes are far too broad and unwieldy to be put into practice. They would stifle freedom of expression, innovation, cultural diversity, and market competition. Rather than follow existing law, the proposal would set up an illegitimate process that usurps jurisdiction to adjudicate peoples' legal rights (and create new rights) in a process designed to favor incumbents. The adoption of this "free-for-all" objection and rejection process will further call into question ICANN's legitimacy to govern and its ability to serve the global public interest that respects the rights of all citizens.

NCUC respectfully submits that ICANN will best serve the global public interest by resisting the temptation to stray from its technical mandate and meddle in international lawmaking as proposed by Rec. #20 and IG-F, IG-H, and IG-P of the New GTLD Committee Final Report.

REFERENCE MATERIAL -- GLOSSARY[83]

TERM	ACRONYM & EXPLANATION
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A-label	The A-label is what is transmitted in the DNS protocol and this is the ASCII-compatible (ACE) form of an IDNA string; for example "xn--11b5bs1di".
ASCII Compatible Encoding	ACE ACE is a system for encoding Unicode so each character can be transmitted using only the letters a-z, 0-9 and hyphens. Refer also to http://www.ietf.org/rfc/rfc3467.txt?number=3467
American Standard Code for Information Exchange	ASCII ASCII is a common numerical code for computers and other devices that work with text. Computers can only understand numbers, so an ASCII code is the numerical representation of a character such as 'a' or '@'. See above referenced RFC for more information.
Advanced Research Projects Agency	ARPA http://www.darpa.mil/body/arpa_darpa.html
Commercial & Business Users Constituency	CBUC http://www.bizconst.org/
Consensus Policy	A defined term in all ICANN registry contracts usually found in Article 3 (Covenants). See, for example, http://www.icann.org/tlds/agreements/biz/registry-agmt-08dec06.htm
Country Code Names Supporting Organization	ccNSO http://ccnso.icann.org/
Country Code Top Level Domain	ccTLD Two letter domains, such as .uk (United Kingdom), .de (Germany) and .jp (Japan) (for example), are called country code top level domains (ccTLDs) and correspond to a country, territory, or other geographic location. The rules and policies for registering domain names in the ccTLDs vary significantly and ccTLD registries limit use of the ccTLD to citizens of the corresponding country. Some ICANN-accredited registrars provide registration services in the ccTLDs in addition to registering names in .biz, .com, .info, .name, net and .org, however, ICANN does not specifically accredit registrars to provide ccTLD registration services. For more information regarding registering names in ccTLDs, including a complete database of designated ccTLDs and managers, please refer to http://www.iana.org/cctld/ccld.htm .
Domain Names	The term domain name has multiple related meanings: A name that identifies a computer or computers on the internet. These names appear as a component of a Web site's URL , e.g. www.wikipedia.org . This type of domain name is also called a hostname . The product that Domain name registrars provide to their customers. These names are often called registered domain names . Names used for other purposes in the Domain Name System (DNS) , for example the special name which follows the @ sign in an email address, or the Top-level domains like .com, or the names used by the Session Initiation Protocol (VoIP) , or DomainKeys . http://en.wikipedia.org/wiki/Domain_names
Domain Name System	The Domain Name System (DNS) helps users to find their way around the Internet. Every computer on the Internet has a unique address - just like a telephone number - which is a rather complicated string of numbers. It is called its "IP address" (IP stands for "Internet Protocol"). IP Addresses are hard to remember. The DNS makes using the Internet easier by allowing a familiar string of letters (the "domain name") to be used instead of the arcane IP address. So instead of typing 207.151.159.3, you can type www.internic.net . It is a "mnemonic" device that makes addresses easier to remember.
Generic Top Level Domain	gTLD Most TLDs with three or more characters are referred to as "generic" TLDs, or "gTLDs". They can be subdivided into two types, "sponsored" TLDs (sTLDs) and "unsponsored TLDs (uTLDs), as described in more detail below. In the 1980s, seven gTLDs (.com, .edu, gov, .int, .mil, .net, and .org) were created. Domain names may be registered in three of these (.com, .net, and .org) without restriction; the other four have limited purposes. In 2001 & 2002 four new unsponsored TLDs (.biz, .info, .name, and .pro) were introduced. The other three new TLDs (.aero, .coop, and .museum) were

	<p>sponsored.</p> <p>Generally speaking, an unsponsored TLD operates under policies established by the global Internet community directly through the ICANN process, while a sponsored TLD is a specialized TLD that has a sponsor representing the narrower community that is most affected by the TLD. The sponsor thus carries out delegated policy-formulation responsibilities over many matters concerning the TLD.</p>
Governmental Advisory Committee	<p>GAC</p> <p>http://gac.icann.org/web/index.shtml</p>
Intellectual Property Constituency	<p>IPC</p> <p>http://www.ipconstituency.org/</p>
Internet Service & Connection Providers Constituency	ISPCP
Internationalized Domain Names	<p>IDNs</p> <p>IDNs are domain names represented by local language characters. These domain names may contain characters with diacritical marks (required by many European languages) or characters from non-Latin scripts like Arabic or Chinese.</p>
Internationalized Domain Names in Application	<p>IDNA</p> <p>IDNA is a protocol that makes it possible for applications to handle domain names with non-ASCII characters. IDNA converts domain names with non-ASCII characters to ASCII labels that the DNS can accurately understand. These standards are developed within the IETF (http://www.ietf.org)</p>
Internationalized Domain Names – Labels	<p>IDN A Label</p> <p>The A-label is what is transmitted in the DNS protocol and this is the ASCII-compatible ACE form of an IDN A string. For example "xn-11q90l".</p> <p>IDN U Label</p> <p>The U-label is what should be displayed to the user and is the representation of the IDN in Unicode. For example "北京" ("Beijing" in Chinese).</p> <p>LDH Label</p> <p>The LDH-label strictly refers to an all-ASCII label that obeys the "hostname" (LDH) conventions and that is not an IDN; for example "icann" in the domain name "icann.org"</p>
Internationalized Domain Names Working Group	<p>IDN-WG</p> <p>http://forum.icann.org/lists/gnso-idn-wg/</p>
Letter Digit Hyphen	<p>LDH</p> <p>The hostname convention used by domain names before internationalization. This meant that domain names could only practically contain the letters a-z, digits 0-9 and the hyphen "-". The term "LDH code points" refers to this subset. With the introduction of IDNs this rule is no longer relevant for all domain names.</p> <p>The LDH-label strictly refers to an all-ASCII label that obeys the "hostname" (LDH) conventions and that is not an IDN; for example "icann" in the domain name "icann.org".</p>
Nominating Committee	<p>NomCom</p> <p>http://nomcom.icann.org/</p>
Non-Commercial Users Constituency	<p>NCUC</p> <p>http://www.ncdnhc.org/</p>
Policy Development Process	<p>PDP</p> <p>See http://www.icann.org/general/archive-bylaws/bylaws-28feb06.htm#AnnexA</p>
Protecting the Rights of Others Working Group	<p>PRO-WG</p> <p>See the mailing list archive at http://forum.icann.org/lists/gnso-pro-wg/</p>
Punycode	<p>Punycode is the ASCII-compatible encoding algorithm described in Internet standard [RFC3492]. This is the method that will encode IDNs into sequences of ASCII characters in order for the Domain Name System (DNS) to understand and manage the names. The intention is that domain name registrants and users will never see this encoded form of a domain name. The sole purpose is for the DNS to be able to resolve for example a web-address containing local characters.</p>

Registrar	<p>Domain names ending with .aero, .biz, .com, .coop, info, .museum, .name, net, .org, and .pro can be registered through many different companies (known as "registrars") that compete with one another. A listing of these companies appears in the Accredited Registrar Directory.</p> <p>The registrar asks registrants to provide various contact and technical information that makes up the domain name registration. The registrar keeps records of the contact information and submits the technical information to a central directory known as the "registry."</p>
Registrar Constituency	<p>RC</p> <p>http://www.icann-registrars.org/</p>
Registry	<p>A registry is the authoritative, master database of all domain names registered in each Top Level Domain. The registry operator keeps the master database and also generates the "zone file" which allows computers to route Internet traffic to and from top-level domains anywhere in the world. Internet users don't interact directly with the registry operator. Users can register names in TLDs including .biz, .com, .info, .net, .name, .org by using an ICANN-Accredited Registrar.</p>
Registry Constituency	<p>RyC</p> <p>http://www.gtldregistries.org/</p>
Request for Comment	<p>RFC</p> <p>A full list of all Requests for Comment http://www.rfc-editor.org/rfcxx00.html</p> <p>Specific references used in this report are shown in the next column.</p> <p>This document uses language, for example, "should", "must" and "may", consistent with RFC2119.</p> <p>ftp://ftp.rfc-editor.org/in-notes/rfc1591.txt</p> <p>ftp://ftp.rfc-editor.org/in-notes/rfc2119.txt</p> <p>ftp://ftp.rfc-editor.org/in-notes/rfc2606.txt</p>
Reserved Names Working Group	<p>RN-WG</p> <p>See the mailing list archive at http://forum.icann.org/lists/gnso-rn-wg/</p>
Root server	<p>A root nameserver is a DNS server that answers requests for the root namespace domain, and redirects requests for a particular top-level domain to that TLD's nameservers. Although any local implementation of DNS can implement its own private root nameservers, the term "root nameserver" is generally used to describe the thirteen well-known root nameservers that implement the root namespace domain for the Internet's official global implementation of the Domain Name System.</p> <p>All domain names on the Internet can be regarded as ending in a full stop character e.g. "en.wikipedia.org.". This final dot is generally implied rather than explicit, as modern DNS software does not actually require that the final dot be included when attempting to translate a domain name to an IP address. The empty string after the final dot is called the root domain, and all other domains (i.e. .com, .org, .net, etc.) are contained within the root domain.</p> <p>http://en.wikipedia.org/wiki/Root_server</p>
Sponsored Top Level Domain	<p>sTLD</p> <p>A Sponsor is an organization to which some policy making is delegated from ICANN. The sponsored TLD has a Charter, which defines the purpose for which the sponsored TLD has been created and will be operated. The Sponsor is responsible for developing policies on the delegated topics so that the TLD is operated for the benefit of a defined group of stakeholders, known as the Sponsored TLD Community, that are most directly interested in the operation of the TLD. The Sponsor also is responsible for selecting the registry operator and to varying degrees for establishing the roles played by registrars and their relationship with the registry operator. The Sponsor must exercise its delegated authority according to fairness standards and in a manner that is representative of the Sponsored TLD Community.</p>
U-label	<p>The U-label is what should be displayed to the user and is the representation of the Internationalized Domain Name (IDN) in Unicode.</p>
Unicode Consortium	<p>A not-for-profit organization found to develop, extend and promote use of the Unicode standard. See http://www.unicode.org</p>
Unicode	<p>Unicode is a commonly used single encoding scheme that provides a unique number for each character across a wide variety of languages and scripts. The Unicode standard contains tables that list the code points for each local character identified. These tables continue to expand as more characters are digitalized.</p>

[Continue to Final Report: Part B](#)

- [1] <http://www.icann.org/general/archive-bylaws/bylaws-28feb06.htm#>
- [2] The ICANN "community" is a complex matrix of intersecting organizations and which are represented graphically here. <http://www.icann.org/structure/>
- [3] The *Final Report* is Step 9 in the GNSO's policy development process which is set out in full at <http://www.icann.org/general/archive-bylaws/bylaws-28feb06.htm#AnnexA>.
- [4] Found here <http://gns0.icann.org/issues/new-gtlds/>.
- [5] The ICANN Staff *Discussion Points* documents can be found at <http://gns0.icann.org/drafts/GNSO-PDP-Dec05-StaffMemo-14Nov06.pdf> and <http://gns0.icann.org/drafts/PDP-Dec05-StaffMemo-19-jun-07.pdf>
- [6] Authored in 1987 by Paul Mockapetris and found at <http://www.ietf.org/rfc/rfc1034>
- [7] Authored in October 1984 by Jon Postel and J Reynolds and found at <http://www.ietf.org/rfc/rfc920>
- [8] Found at <http://www.oecd.org/dataoecd/15/37/38336539.pdf>
- [9] From Verisign's June 2007 *Domain Name Industry Brief*.
- [10] The full list is available here <http://www.icann.org/registrar/accredited-list.html>
- [11] Report found at <http://www.icann.org/dns0/wgc-report-21mar00.htm>
- [12] Found at <http://www.icann.org/announcements/announcement-31aug04.htm>
- [13] <http://www.registrarstats.com/Public/ZoneFileSurvey.aspx>
- [14] Verisign produce a regular report on the domain name industry. http://www.verisign.com/Resources/Naming_Services_Resources/Domain_Name_Industry_Brief/index.html
- [15] The announcement is here <http://icann.org/announcements/announcement-03jan06.htm> and the results are here <http://gns0.icann.org/issues/new-gtlds/new-gtld-pdp-input.htm>
- [16] Found here <http://gns0.icann.org/issues/new-gtlds/new-gtld-pdp-input.htm>
- [17] <http://gns0.icann.org/issues/new-gtlds/>
- [18] For example, see the GA List discussion thread found at <http://gns0.icann.org/mailling-lists/archives/ga/msg03337.html> & earlier discussion on IANA lists <http://www.iana.org/comments/26sep1998-02oct1998/msg00016.html>. The 13 June 2002 paper regarding a taxonomy for non-ASCII TLDs is also illuminating <http://www.icann.org/committees/idn/registry-selection-paper-13jun02.htm>
- [19] Found here http://gac.icann.org/web/home/gTLD_principles.pdf
- [20] A list of the working materials of the new TLDs Committee can be found at <http://gns0.icann.org/issues/new-gtlds/>.
- [21] The Outcomes Report for the IDN-WG is found <http://gns0.icann.org/drafts/idn-wg-fr-22mar07.htm>. A full set of resources which the WG is using is found at <http://gns0.icann.org/issues/idn-tlds/>.
- [22] The Final Report of the RN-WG is found at <http://gns0.icann.org/drafts/rn-wg-fr19mar07.pdf>
- [23] The Final Report of the PRO-WG is found at <http://gns0.icann.org/drafts/GNSO-PRO-WG-final-01Jun07.pdf>
- [24] The root server system is explained here <http://en.wikipedia.org/wiki/Rootserver>
- [25] Ms Doria supports all of the Principles but expressed concern about Principle B by saying "...While I strongly support the introduction of IDN TLDs, I am concerned that the unresolved issues with IDN ccTLD equivalents may interfere with the introduction of IDN TLDs. I am also concerned that some of these issues could impede the introduction of some new ASCII TLDs dealing with geographically related identifiers" and Principle D "...While I favor the establishment of a minimum set of necessary technical criteria, I am concerned that this set actually be the basic minimum set necessary to protect the stability, security and global interoperability."
- [26] Note the updated recommendation text sent to the gTLD-council list after the 7 June meeting. <http://forum.icann.org/lists/gtld-council/msg00520.html>
- [27] Reserved word limitations will be included in the base contract that will be available to applicants prior to the start of the application round.
- [28] <http://www.icann.org/general/idn-guidelines-22feb06.htm>
- [29] The Implementation Team sought advice from a number of auction specialists and examined other industries in which auctions were used to make clear and binding decisions. Further expert advice will be used in developing the implementation of the application process to ensure the fairest and most appropriate method of resolving contention for strings.
- [30] Detailed work is being undertaken, lead by the Corporate Affairs Department, on establishing a translation framework for ICANN documentation. This element of the Implementation Guidelines may be addressed separately.
- [31] <http://gns0.icann.org/drafts/GNSO-PDP-Dec05-StaffMemo-14Nov06.pdf>
- [32] Consistent with ICANN's commitments to accountability and transparency found at <http://www.icann.org/announcements/announcement-26jan07b.htm>
- [33] Found at <http://www.icann.org/dns0/wgc-report-21mar00.htm>
- [34] The announcement is here <http://icann.org/announcements/announcement-03jan06.htm> and the results are here <http://gns0.icann.org/issues/new-gtlds/new-gtld-pdp-input.htm>
- [35] Found here <http://gns0.icann.org/issues/new-gtlds/new-gtld-pdp-input.htm>
- [36] Found here <http://forum.icann.org/lists/gtld-council/>

[37] Archived at <http://forum.icann.org/lists/gtld-council/>

[38] Business Constituency <http://forum.icann.org/lists/gtld-council/msg00501.html>, Intellectual Property Constituency <http://forum.icann.org/lists/gtld-council/msg00514.html>, Internet Service Providers <http://forum.icann.org/lists/gtld-council/msg00500.html>, NCUC <http://forum.icann.org/lists/gtld-council/msg00530.html>, Registry Constituency <http://forum.icann.org/lists/gtld-council/msg00494.html>

[39] "My concern involves using definitions that rely on legal terminology established for trademarks for what I believe should be a policy based on technical criteria.

In the first instance I believe that this is essentially a technical issue that should have been resolved with reference to typography, homologues, orthographic neighbourhood, transliteration and other technically defined attributes of a name that would make it unacceptable. There is a large body of scientific and technical knowledge and description in this field that we could have drawn on.

By using terms that rely on the legal language of trademark law, I believe we have created an implicit redundancy between recommendations 2 and 3. I.e., I believe both 2 and 3 can be used to protect trademarks and other intellectual property rights, and while 3 has specific limitations, 2 remains open to full and varied interpretation.

As we begin to consider IDNs, I am concerned that the interpretations of confusingly similar may be used to eliminate many potential TLDs based on translation. That is, when a translation may have the same or similar meaning to an existing TLD, that the new name may be eliminated because it is considered confusing to users who know both languages."

[40] <http://data.iana.org/TLD/tlds-alpha-by-domain.txt>

[41] See section 4A -- <http://www.icann.org/udrp/udrp-policy-24oct99.htm>.

[42] In addition to the expertise within the Committee, the NCUC provided, as part of its Constituency Impact Statement expert outside advice from Professor Christine Haight Farley which said, in part, "...A determination about whether use of a mark by another is "confusingly similar" is simply a first step in the analysis of infringement. As the committee correctly notes, account will be taken of visual, phonetic and conceptual similarity. But this determination does not end the analysis. Delta Dental and Delta Airlines are confusingly similar, but are not like to cause confusion, and therefore do not infringe. ... In trademark law, where there is confusing similarity and the mark is used on similar goods or services, a likelihood of confusion will usually be found. European trademark law recognizes this point perhaps more readily than U.S. trademark law. As a result, sometimes "confusingly similar" is used as shorthand for "likelihood of confusion". However, these concepts must remain distinct in domain name policy where there is no opportunity to consider how the mark is being used."

[43] In addition, advice was sought from experts within WIPO who continue to provide guidance on this and other elements of dispute resolution procedures.

[44] Kristina Rosette provided the reference to the *Agreement on Trade-Related Aspects of Intellectual Property Rights* which is found online at http://www.wto.org/english/tratop_e/trips_e/t_agm1_e.htm

".. *Article 16 Rights Conferred* 1. The owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed. The rights described above shall not prejudice any existing prior rights, nor shall they affect the possibility of Members making rights available on the basis of use...."

[45] <http://www.ohchr.org/english/bodies/hrc/comments.htm>

[46] <http://gns0.icann.org/drafts/GNSO-PRO-WG-final-01Jun07.pdf>

[47] Charles Sha'ban provided a range of examples from Arabic speaking countries. For example, in Jordan, Article 7 Trademarks eligible for registration are 1- A trademark shall be registered if it is distinctive, as to words, letters, numbers, figures, colors, or other signs or any combination thereof and visually perceptible. 2- For the purposes of this Article, "distinctive" shall mean applied in a manner which secures distinguishing the goods of the proprietor of the trademark from those of other persons. Article 8 Marks which may not be registered as trademarks. The following may not be registered as trademarks: 10- A mark identical with one belonging to a different proprietor which is already entered in the register in respect of the same goods or class of goods for which the mark is intended to be registered, or so closely resembling such trademark to the extent that it may lead to deceiving third parties.

12- The trademark which is identical or similar to, or constitutes a translation of, a well-known trademark for use on similar or identical goods to those for which that one is well-known for and whose use would cause confusion with the well-known mark, or for use of different goods in such a way as to prejudice the interests of the owner of the well-known mark and leads to believing that there is a connection between its owner and those goods as well as the marks which are similar or identical to the honorary badges, flags, and other insignia as well as the names and abbreviations relating to international or regional organizations or those that offend our Arab and Islamic age-old values.

In Oman for example, Article 2 of the Sultan Decree No. 38/2000 states:

"The following shall not be considered as trademarks and shall not be registered as such: If the mark is identical, similar to a degree which causes confusion, or a translation of a trademark or a commercial name known in the Sultanate of Oman with respect to identical or similar goods or services belonging to another business, or if it is known and registered in the Sultanate of Oman on goods and service which are neither identical nor similar to those for which the mark is sought to be registered provided that the usage of the mark on those goods or services in this last case will suggest a connection between those goods or services and the owner of the known trademark and such use will cause damage to the interests of the owner of the known trademark."

Although the laws in Egypt do not have specific provisions regarding confusion they stress in great detail the importance of distinctiveness of a trade mark.

Article 63 in the IP Law of Egypt No.82 for the year 2002 states:

"A trademark is any sign distinguishing goods, whether products or services, and include is particular names represented in a distinctive manner, signatures, words, letters, numerals, design, symbols, signposts, stamps, seal, drawings, engravings, a

combination of distinctly formed colors and any other combination of these elements if used, or meant to be used, to distinguish the precedents of a particular industry, agriculture, forest or mining venture or any goods, or to indicate the origin of products or goods or their quality, category, guarantee, preparation process, or to indicate the provision of any service. In all cases, a trademark shall be a sign that is recognizable by sight."

[48] Found at http://www.wipo.int/treaties/en/ip/paris/trtdocs_wo020.htm with 171 contracting parties.

[49] Further information can be found at the US Patent and Trademark Office's website <http://www.uspto.gov/>

[50] Found at <http://www.icann.org/registrars/ra-agreement-17may01.htm#3>

[51] Found at <http://gnso.icann.org/drafts/idn-wg-fr-22mar07.htm>.

[52] The 2003 correspondence between ICANN's then General Counsel and the then GAC Chairman is also useful <http://www.icann.org/correspondence/touton-letter-to-tarmizi-10feb03.htm>.

[53] "My first concern relates to the protection of what can be called the linguistic commons. While it is true that much of trademark law and practice does protect general vocabulary and common usage from trademark protection, I am not sure that this is always the case in practice. I am also not convinced that trademark law and policy that applies to specific product type within a specific locale is entirely compatible with a general and global naming system."

[54] For example, David Maher, Jon Bing, Steve Metalitz, Philip Sheppard and Michael Palage.

[55] Reserved Word has a specific meaning in the ICANN context and includes, for example, the reserved word provisions in ICANN's existing registry contracts. See <http://www.icann.org/registries/agreements.htm>.

[56] "Until such time as the technical work on IDNAbis is completed, I am concerned about establishing reserved name rules connected to IDNs. My primary concern involves policy decisions made in ICANN for reserved names becoming hard coded in the IDNAbis technical solution and thus becoming technical constraints that are no longer open to future policy reconsideration."

[57] Found online at <http://gnso.icann.org/issues/new-gtlds/final-report-rn-wg-23may07.htm> and in full in Part B of the *Report*.

[58] The Committee are aware that the terminology used here for the purposes of policy recommendations requires further refinement and may be at odds with similar terminology developed in other context. The terminology may be imprecise in other contexts than the general discussion about reserved words found here.

[59] The subgroup was encouraged by the ccNSO not to consider removing the restriction on two-letter names at the top level. IANA has based its allocation of two-letter names at the top level on the ISO 3166 list. There is a risk of collisions between any interim allocations, and ISO 3166 assignments which may be desired in the future.

[60] The existing gTLD registry agreements provide for a method of potential release of two-character LDH names at the second level. In addition, two character LDH strings at the second level may be released through the process for new registry services, which process involves analysis of any technical or security concerns and provides opportunity for public input. Technical issues related to the release of two-letter and/or number strings have been addressed by the RSTEP Report on GNR's proposed registry service. The GAC has previously noted the WIPO II Report statement that "If ISO 3166 alpha-2 country code elements are to be registered as domain names in the gTLDs, it is recommended that this be done in a manner that minimises the potential for confusion with the ccTLDs."

[61] Considering that the current requirement in all 16 registry agreement reserves "All labels with hyphens in the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n")", this requirement reserves any names having any of a combination of 1296 different prefixes (36x36).

[62] Internet Draft IDNAbis Issues: <http://www.ietf.org/internet-drafts/draft-klensin-idnabis-issues-01.txt> (J. Klensin), Section 3.1.1.1

[63] Considering that the current requirement in all 16 registry agreement reserves "All labels with hyphens in the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n")", this requirement reserves any names having any of a combination of 1296 different prefixes (36x36).

[64] Considering that the current requirement in all 16 registry agreement reserves "All labels with hyphens in the third and fourth character positions (e.g., "bq--1k2n4h4b" or "xn--ndk061n")", this requirement reserves any names having any of a combination of 1296 different prefixes (36x36).

[65] With its recommendation, the sub-group takes into consideration that justification for potential user confusion (i.e., the minority view) as a result of removing the contractual condition to reserve gTLD strings for new TLDs may surface during one or more public comment periods.

[66] Note that his recommendation is a continuation of the recommendation in the original RN-WG report, modified to synchronize with the additional work done in the 30-day extension period.

[67] Ms Doria said "...My primary concern focuses on the term 'morality'. While public order is frequently codified in national laws and occasionally in international law and conventions, the definition of what constitutes morality is not generally codified, and when it is, I believe it could be referenced as public order. This concern is related to the broad set of definitions used in the world to define morality. By including morality in the list of allowable exclusions we have made the possible exclusion list indefinitely large and have subjected the process to the consideration of all possible religious and ethical systems. ICANN or the panel of reviewers will also have to decide between different sets of moral principles, e.g., a morality that holds that people should be free to express themselves in all forms of media and those who believe that people should be free from exposure to any expression that is prohibited by their faith or moral principles. This recommendation will also subject the process to the fashion and occasional demagoguery of political correctness. I do not understand how ICANN or any expert panel will be able to judge that something should be excluded based on reasons of morality without defining, at least de-facto, an ICANN definition of morality? And while I am not a strict constructionist and sometimes allow for the broader interpretation of ICANN's definition, I do not believe it includes the definition of a system of morality."

[68] <http://www.icann.org/tlds/agreements/net/appendix7.html>

[69] While I accept that a prospective registry must show adequate operational capability, creating a financial criteria is of concern. There may be many different ways of satisfying the requirement for operational capability and stability that may not

be demonstrable in a financial statement or traditional business plan. E.g., in the case of an less developed community, the registry may rely on volunteer effort from knowledgeable technical experts.

Another concern I have with financial requirements and high application fees is that they may act to discourage applications from developing nations or indigenous and minority peoples that have a different set of financial opportunities or capabilities than those recognized as acceptable within an expensive and highly developed region such as Los Angeles or Brussels."

[70] "In general I support the policy though I do have concerns about the implementation which I discuss below in relation to IG (P)".

[71] "In general I support the idea that a registry that is doing a good job should have the expectancy of renewal. I do, however, believe that a registry, especially a registry with general market dominance, or specific or local market dominance, should be subject to comment from the relevant user public and to evaluation of that public comment before renewal. When performance is satisfactory, there should be an expectation of renewal. When performance is not satisfactory, there should be some procedure for correcting the situation before renewal."

[72] Consensus Policies has a particular meaning within the ICANN environment. Refer to <http://www.icann.org/general/consensus-policies.htm> for the full list of ICANN's Consensus Policies.

[73] <http://www.icann.org/general/bylaws.htm#AnnexA>

[74] <http://www.icann.org/registries/agreements.htm>

[75] The full list of reports is found in the Reference section at the end of the document.

[76] <http://www.icann.org/announcements/announcement-4-07mar07.htm>

[77] Found at <http://www.icann.org/registrars/ra-agreement-17may01.htm>

[78] Found at <http://www.icann.org/registrars/accreditation.htm>.

[79] Text of Recommendation #6: "Strings must not be contrary to generally accepted legal norms relating to morality and public order that are enforceable under generally accepted and internationally recognized principles of law. Examples of such principles of law include, but are not limited to, the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) and the International Convention on the Elimination of All Forms of Racial Discrimination, intellectual property treaties administered by the World Intellectual Property Organisation (WIPO) and the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)."

[80] Ms Doria took over from former GNSO Council Chairman (and GNSO new TLDs Committee Chairman) Dr Bruce Tonkin on 7 June 2007. Ms Doria's term runs until 31 January 2008.

[81] Available at: <http://forum.icann.org/lists/gtld-council/pdf0QqgaRNrXf.pdf>

[82] Available at: <http://ipjustice.org/wp/2007/06/13/ncuc-newgtld-stmt-june2007/>

[83] This glossary has been developed over the course of the policy development process. Refer here to ICANN's glossary of terms <http://www.icann.org/general/glossary.htm> for further information.

Comments concerning the layout, construction and functionality of this site should be sent to [webmaster \[at\] gns0.icann.org](mailto:webmaster@icann.org)

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Exhibit DIDP A29

Cybersquatting Cases Up in 2015, Driven by New gTLDs

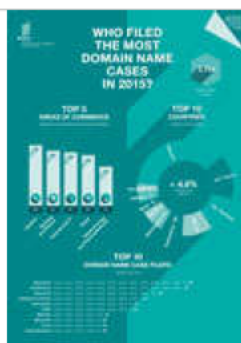
Geneva, March 18, 2016

PR/2016/789

Amid the roll-out of hundreds of new generic Top-Level Domains (gTLDs) such as .GURU, .NINJA and .NYC, trademark owners filed 2,754 cases under the Uniform Domain Name Dispute Resolution Policy (UDRP) with WIPO in 2015, an increase of 4.6 % over the previous year.

Videos: Highlights [■/YouTube](#) | Press Conference [■/YouTube](#)

Cybersquatting disputes relating to new gTLDs accounted for 10.5% of WIPO's UDRP caseload in 2015, which covered a total of 4,364 domain names. Among these names, .XYZ, .CLUB and .EMAIL were the most common new gTLDs (Annex 1 [PDF](#)).



Infographic: Who filed the most domain name cases in 2015? [PDF](#)

WIPO Director General Francis Gurry said: “As brand owners face the possibility of further abuse of their trademarks in domains - both old and new - they continue to rely on WIPO's cybersquatting dispute resolution procedures. By combating opportunistic domain name registration practices, WIPO's services help consumers to find authentic web content and enhance the reliability of the Domain Name System.”

Country code Top-Level Domains (ccTLDs) accounted for 13.7% of all filings with WIPO in 2015, with 71 national domain registries designating this WIPO dispute resolution service.

WIPO UDRP cases in 2015 involved parties from 113 countries. The U.S., with 847 cases filed, was the first-ranked WIPO filing country, followed by France (337), Germany (272), the U.K. (229) and Switzerland (169). (Annex 2 [PDF](#)) Among the top five users, Germany (+48.6%) saw the highest growth in cases filed.

The top three sectors of complainant activity were fashion (10% of all cases), banking and finance (9%), and Internet and IT (9%). (Annex 3 [PDF](#)) Hugo Boss leads the list of filers – 62 cases – followed by Philip Morris (60) and AB Electrolux (48). (Annex 4 [PDF](#)) 313 WIPO panelists from 45 countries were appointed in 2015, and proceedings were administered in 15 different languages.



WIPO Director General Francis Gurry and Director of WIPO Arbitration and Mediation Center Erik Wilbers present the Organization's 2015 arbitration and mediation activities at a press conference at the United Nations Office in Geneva (photo: WIPO).

The increase in new gTLD registrations in WIPO's caseload is anticipated to continue, in particular as new gTLDs contested at Internet Corporation for Assigned Names and Numbers (ICANN) auction, such as ".SHOP", are yet to launch. Meanwhile, calls are being made for a next round of new gTLDs, particularly by brand owners, such as Twitter. At the same time, ICANN has commenced a process to review Rights Protection Mechanisms such as the URS (Uniform Rapid Suspension system) and the UDRP. As the UDRP initiator and leading administrator, WIPO takes a strong interest in these ICANN processes.

Since the WIPO Arbitration and Mediation Center administered the first UDRP case in 1999, total WIPO case filings passed the 33,000 mark in 2015, encompassing over 61,000 domain names (Annex 5 [PDF](#)).

Intellectual Property Disputes

For intellectual property disputes more broadly, the WIPO Center has updated the [WIPO Mediation Rules](#) to facilitate submission of a dispute to mediation in cases where there is no prior mediation agreement between the parties. Effective as of January 1, 2016, these provisions may be particularly suitable for cases in which a court encourages mediation.

Also in 2015, the WIPO Center published the WIPO Guide on Alternative Dispute Resolution Options for Intellectual Property Offices and Courts [PDF](#). Informed by WIPO Center experience in this area, this Guide provides a broad overview of ADR for intellectual property disputes and presents options for interested Intellectual Property Offices (IPOs), courts and other bodies (before which intellectual property disputes are adjudicated) to integrate ADR processes into their existing services.

In 2015, the United States Patent and Trademark Office (USPTO) included the WIPO Center among listed ADR providers available at the option of parties to administer disputes before the Trademark Trial and Appeal Board (TTAB) and the Patent Trial and Appeal Board (PTAB).

Background

WIPO Arbitration and Mediation Center

Based in Geneva, Switzerland, with an office in Singapore, the [WIPO Arbitration and Mediation Center](#) offers Alternative Dispute Resolution options for the resolution of international commercial disputes between private parties. The arbitration, mediation and expert determination procedures provided by the

WIPO Center are recognized as particularly appropriate for technology, entertainment and other disputes involving IP. The WIPO Center is also the global leader in the provision of domain name dispute resolution services under the WIPO-designed UDRP, receiving cases from trademark owners from around the world.

About WIPO

The World Intellectual Property Organization (WIPO) is the global forum for intellectual property policy, services, information and cooperation. A specialized agency of the United Nations, WIPO assists its 188 member states in developing a balanced international IP legal framework to meet society's evolving needs. It provides business services for obtaining IP rights in multiple countries and resolving disputes. It delivers capacity-building programs to help developing countries benefit from using IP. And it provides free access to unique knowledge banks of IP information.

For further information, please contact the Media Relations Section at WIPO:

- Tel: (+41 22) - 338 81 61 / 338 72 24
- Fax: (+41 22) - 338 81 40
- E-mail

Exhibit DIDP A30

Spamhaus Presents: The World's Worst Top Level Domains

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2016-02-25 03:56:29 GMT, by Quentin Jenkins

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The Spamhaus Project has added a new list to its Top-10 Worst pages, this time for [Top Level Domains \(TLDs\)](#). This domain data is designed to complement the recent additions to our IP address data announced in a [previous news blog](#).

One must note that this list does not provide the worst TLDs in absolute quantity, other TLDs may have far more abusive domains, but they also have vastly more non-abusive domains. Instead, the list shows the ratio of all domains seen by the systems at Spamhaus versus the domains our systems profile as spamming or being used for botnet or malware abuse. In the last 18-years, Spamhaus has built its data gathering systems to have a view of most of the world's domain traffic. We feel the numbers shown on this list are representative of the actual full totals.

Spam and other types of abuse continue to plague the internet because bad actors find it very cheap and very easy to obtain thousands of domain names from the Top Level Domain registries and their resellers, the registrars. A few registrars knowingly sell high volumes of domains to professional spammers for profit, or do not do enough to stop or limit spammers' access to this endless supply of domains. These registrars end up basing their entire business model on network abuse.

Unsurprisingly, most of the TLDs listed on this page are the "new gTLDs" recently introduced by ICANN; this is largely the result of a combination of factors:

- no body of legacy good reputation from old customers with legitimate domains long since registered
- anti-abuse mechanisms freshly deployed and still not up to the task
- promotional sales offering domains for very cheap prices, or even free, attracting bulk registrations of throw-away resources

In fact, we have observed it is usually quite easy to see which registrar/TLD combination is being promoted and sold cheapest that day by just looking at the bulk registrations created by known bad actors. Abuse of this type also ends up damaging the reputation of any legitimate users who have purchased domains on some of the affected TLDs, as the trust in resources hosted on these new TLDs ends up decreasing over time.

Nearly all TLD registries (including the Country-Code TLDs - "ccTLDs") claim to be against abuse of the resources they provide. However, some seem to only consider the revenue made by selling as many domains as possible as factors in their corporate policy decisions. The abuse of these domains matters not to their calculations. Some TLD registries also claim it is not up to them, but to their resellers (the registrars) to deal with any misuse, but if these registrars also do nothing nor are forced to do anything, the problems remain.

A good number of the TLDs succeed in keeping spammers off their domains and work to maintain a positive reputation; this shows that, if they wished to, any TLD registry can 'keep clean'.

For the purpose of seeing "who is doing well" in this regard, we plan to provide a view of the abuse trends we observe over time, integrating the snapshot provided by the statistics currently published with an historical view that should be able to show which TLDs are getting better at managing their resource space. We will also soon be publishing a Top-10 Worst registrar list, so keep an eye out for those.

Our hope is that this data can help the "Good" Powers That Be (starting with ICANN and its stakeholders) to better focus their attention on network abuse issues, aiming for a better tomorrow for our Internet.

« « » »

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The Top 10 Worst

Countries	Spam ISPs	Spammers	Bot Countries	Bot ISPs	Bot ASNs	TLDs
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The World's Worst TLDs

TLD Check

TLD Result

This is not a list of the worst TLDs in quantity, several other TLDs have far more spam domains, but they also have vastly more non-spam domains. This list shows the ratio of domains seen by the systems at Spamhaus versus the domains our systems profile as spamming or being used for botnet or malware abuse. This is also not a list that retains a long history, it is a one-month "snapshot" of our current view.

Spam continues to plague the internet because spammers find it easy to obtain thousands of domain names from the Top Level Domain (TLD) registries and their resellers. Many knowingly sell masses of domains to professional spammers for profit, or do not do enough to stop or limit spammers' access to this endless supply of domains.

The TLDs listed on this page provide a needed service to spam gangs and in doing so are actually damaging the reputations of their domains and damaging the reputation of any legitimate non-spammers who have purchased a domain from them.

Although nearly all TLD registries (including the Country-Code TLDs, ccTLDs) claim to be anti-spam, some seem to only factor the revenue made by selling as many domains as possible into corporate policy decisions. The use of these domains (in this case abuse) matters not to their calculations. Some TLD registries will claim it is not up to them, but to their sales-agents (registrars) to deal with any misuse, but if these registrars also do nothing, the problems remain.

A good number of the TLDs succeed in keeping spammers off their domains and work to maintain a positive anti-spam reputation. This shows that if they wish, TLD registries can "keep clean" by keeping the spammers and other abusers away.

Source: Spamhaus ([DBL](#)) database. Data is compiled automatically from the DBL database using the percentage of DBL listed domains for each TLD.

The 10 Worst Top Level Domains

As of 31 March 2016 the TLDs with the worst reputations for spam operations are:

1	.work	67.1% bad domains
2	.review	58.8% bad domains
3	.date	57.0% bad domains
4	.click	55.2% bad domains
5	.tokyo	53.1% bad domains
6	.download	51.9% bad domains
7	.party	42.2% bad domains
8	.science	42.0% bad domains
9	.poker	38.0% bad domains
10	.racing	36.1% bad domains

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NEWS

Abuse runs rampant on new generic top level domains

For some new gTLDs the ratio of malicious domains is almost 80 percent, Spamhaus says



By **Lucian Constantin** | [Follow](#)

IDG News Service | Mar 7, 2016 10:04 AM PT

Generic top-level domains (gTLDs) that have sprung up in recent years have become a magnet for cybercriminals, to the point where some of them host more malicious domains than legitimate ones.

Spamhaus, an organization that monitors spam, botnet and malware activity on the Internet, has [published a list](#) of the world's top 10 "worst TLDs" on Saturday. What's interesting is that the list is not based on the overall number of abusive domains hosted under a TLD, but on the TLD's ratio of abusive domains compared to legitimate ones.

[ALSO ON CSO: [The Web's 10 most shady neighborhoods](#)]

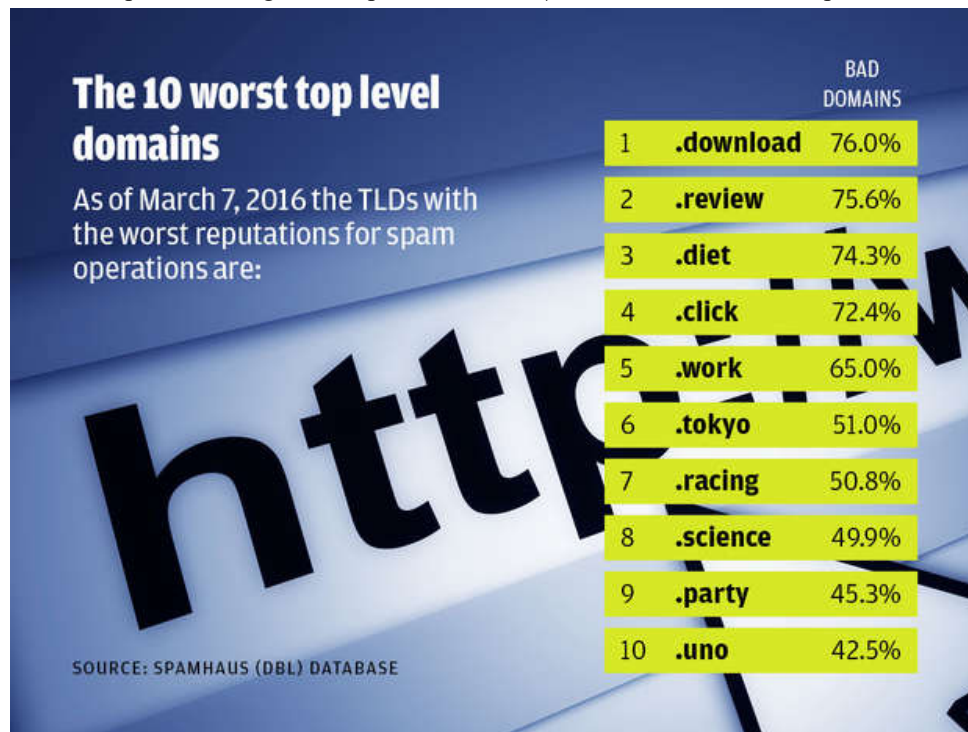
Compare: HP ArcSight vs Splunk

Over the years, lists of spam-friendly top level domains have typically had .com, .net and .org at the top. However, a TLD's trustworthiness ultimately relies on the ability of the organization that manages it -- known as the registry -- to police its name space and to enforce rules for its resellers, the registrars.

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If, for example, 1 percent of all .com domains were used for malicious activity, one could say that the .com registry, Verisign, is doing a relatively good job at keeping the abuse rate down. The problem is that because the .com TLD is so large, its 1 percent might represent more malicious domains than in a much smaller TLD where the rate of abusive domains is actually 50 percent.

Therefore, comparing good-vs-bad ratios is a better way to determine which registries care more about their TLDs' reputation, something that ultimately affects their legitimate customers.

"Spam and other types of abuse continue to plague the Internet because bad actors find it very cheap and very easy to obtain thousands of domain names from the Top Level Domain registries and their resellers, the registrars," Spamhaus said in a [blog post](#). "A few registrars knowingly sell high volumes of domains to professional spammers for profit, or do not do enough to stop or limit spammers' access to this endless supply of domains. These registrars end up basing their entire business model on network abuse."

Based on Spamhaus' data, some of the generic TLDs that have been created in recent years thanks to ICANN's relaxed policies are not doing enough to stop abuse. This could be either because they're inexperienced at tackling such issues or because they care more about revenue than a clean Internet.



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At this time, Spamhaus' 10 Worst Top Level Domains list looks like this: .download with 76 percent bad domains; .review with 75.6 percent bad domains; .diet with 74.3 percent bad domains; .click with 72.4 percent; .work with 65 percent; .tokyo with 51 percent; .racing with 50.8 percent; .science with 49.9 percent; .party with 45.3 percent and .uno with 42.5 percent.

Some TLD owners claim that it's up to resellers to deal with cases of domain misuse and policy violations, but if they don't force those resellers to take action, nothing will change, Spamhaus said. "A good number of the TLDs succeed in keeping spammers off their domains and work to maintain a positive reputation; this shows that, if they wished to, any TLD registry can 'keep clean'."



Lucian Constantin — *Romania Correspondent*



Exhibit DIDP A31

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Positive findings around consumer awareness and trust in domains and the industry overall

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English



The Internet Corporation for Assigned Names and Numbers ([ICANN \(Internet Corporation for Assigned Names and Numbers\)](#)) today published the findings from its [ICANN \(Internet Corporation for Assigned Names and Numbers\) Global Consumer Research Study, Phase One](#), conducted on its behalf by Nielsen, to measure aspects of consumer awareness, perceived consumer choice, experience and trust related to the current generic top-level domain ([gTLD \(generic Top Level Domain\)](#)) landscape and the domain name system ([DNS \(Domain Name System\)](#)). The global study surveyed 6,144 consumers aged 18+ representing Asia, Europe, Africa, North America and South America, and was administered in 18 languages and drawn from 24 countries. The research, conducted between February 2-19, 2015, was designed to create a meaningful baseline of data on consumer attitudes and will be followed by a second survey approximately one year later. This will also be a key input to a team set to be reviewing competition, consumer trust and consumer choice in the domain name system later this year.

To prepare for this review, [ICANN \(Internet Corporation for Assigned Names and Numbers\)](#)'s stakeholder community recommended a list of metrics and definitions to help inform consideration of these areas. [ICANN \(Internet Corporation for Assigned Names and Numbers\)](#) commissioned this survey in response to recommendations from the Implementation Advisory Group on Competition, Consumer Choice and Consumer Trust ([IAG-CCT \(Competition, Consumer Choice & Consumer Trust\)](#)). Among the 66 metrics recommended, a subset of 11 were identified as best being measured using a global survey of Internet users. [ICANN \(Internet Corporation for Assigned Names and Numbers\)](#) conducted [an open RFP \(/news/announcement-2-2014-07-16-en\)](#) and signed a contract with Nielsen to conduct the study in November 2014.

"This is the first time we've surveyed consumers directly about domain names and Internet use, and it provides an important benchmark as the new domains roll out," Akram Atallah, president of [ICANN \(Internet Corporation for Assigned Names and Numbers\)](#)'s Global Domains Division. "As the community looks toward future rounds, the survey findings will help inform the best approach."

Growing awareness for new gTLDs

Since the first new [gTLD \(generic Top Level Domain\)](#) was delegated in

October 2013, more than 630 new gTLDs have been delegated. To gauge perceptions of the new gTLDs, the survey focused on the new gTLDs with the greatest number of registrations at the time the questions were developed in January 2015 – .EMAIL, .PHOTOGRAPHY, .LINK, .GURU, .REALTOR, .CLUB, .XYZ and a regionally relevant TLD (Top Level Domain), including internationalized domain names (IDNs (Internationalized Domain Names)).

Across all survey respondents, 46 percent reported awareness of at least one new gTLD (generic Top Level Domain), with 65 percent of those who are aware reporting they have also visited a new gTLD (generic Top Level Domain). Notably, .EMAIL and .LINK led in awareness and visitation of new gTLDs.

"The survey found that domains with an implied purpose and functional associations, such as .EMAIL, were most often recalled by Internet users," said Atallah. "While some of the drivers may be linked to familiarity and general association versus awareness of the extension, we believe it's a signal that people are receptive to the names."

Awareness continues to be high for well-known legacy TLDs

The survey also examined consumer attitudes toward a subset of legacy TLDs introduced before 2012 – .COM, .NET, .ORG, .INFO, .BIZ, .MOBI, .PRO, .TEL, .ASIA and .COOP. Among these legacy gTLDs, three extensions (.COM, .NET and .ORG) lead awareness, with nearly 8 in 10 (79 percent) respondents reporting knowledge of these domains, on average. These TLDs also had relatively high visitation, with an average of 71 percent of respondents reporting they have visited one of those domains.

Consumer trust in the Domain Name (Domain Name) Industry is high

Notably, Nielsen found that 72 percent of respondents reported high levels of trust with entities that offer domain names. These high trust levels were linked to a perception that the industry will take precautions, give consumers what they think they're getting, and screen companies or individuals who register for certain domain names.

Of those surveyed, an average of 90 percent claimed to trust the top three legacy TLDs (.COM, .NET, and .ORG), with the highest numbers found in North America, South America and Africa. Consistent with other study findings, the results show trust among new gTLDs is lower than legacy TLDs, but growing: nearly one person in two (49 percent) on average reports that they trusted the sample of new gTLDs provided in the survey.

Users aware and fearful of abusive Internet behavior, but taking precautions

Abusive Internet behavior, including spam, malware, phishing, and cybersquatting remain an issue for Internet users. At least three quarters of the respondents (74 percent) are familiar with malware, phishing or stolen credentials. Cybersquatting is the only bad behavior that the majority are unfamiliar with — just over 1 in 3 (37 percent) report awareness.

Regardless of their experience, most Internet users take some personal actions to improve their online security — most commonly installing anti-virus software and modifying their online behavior. There is a continuing need for education as consumers seek out resources to increase their sense of safety and to help resolve issues encountered online.

Additional Study highlights include:

- When asked to describe new gTLDs, the most common words included: useful, informative, helpful, practical, interesting and innovative.
- While people are increasingly using different devices to surf the web, 64 percent of respondents report using a search engine as their preferred way to find a website. This is only slightly lower than Internet users report they did two to three years ago.
- Registering a domain is not hard, but could be easier – fifty-three percent report that registering a domain is either "very easy" or "somewhat easy" and roughly half want the process of registering a website to be less complicated (50 percent), cheaper (55 percent) and quicker (49 percent).

ICANN (Internet Corporation for Assigned Names and Numbers) is also working with Nielsen to conduct a global survey of domain name registrants and their perceived sense of trust and choice in the domain name space. Results from that study will be available later in 2015.

About the Global Consumer Survey and Supporting Materials

The Global Consumer Survey was conducted by Nielsen on behalf of ICANN (Internet Corporation for Assigned Names and Numbers). The data collection and analysis phase of the survey took place in February 2-19, 2015, and the final report was delivered in April 2015. A total of 6,144 consumers aged 18+ representing Asia, Europe, Africa, North America and South America were selected based on the number of hours per week spent on the Internet. The survey was administered in 18 languages and drawn from 24 countries. In addition, significance testing was performed at a 95 percent confidence level throughout the survey. For a complete methodological summary, including weighting variables, please contact karen.lentz@icann.org (<mailto:karen.lentz@icann.org>).

Supporting Materials

- [Global Consumer Survey Full Report \(http://newgtlds.icann.org/en/reviews/cct/global-consumer-survey-29may15-en.pdf\)](http://newgtlds.icann.org/en/reviews/cct/global-consumer-survey-29may15-en.pdf) [PDF, 2.48 MB]
- [Guide to Data Tables \(http://newgtlds.icann.org/en/reviews/cct/data-tables-guide-29may15-en.pdf\)](http://newgtlds.icann.org/en/reviews/cct/data-tables-guide-29may15-en.pdf) [PDF, 572 KB]
- [Data Tables by Region \(http://newgtlds.icann.org/en/reviews/cct/data-tables-region-29may15-en.pdf\)](http://newgtlds.icann.org/en/reviews/cct/data-tables-region-29may15-en.pdf) [PDF, 5.03 MB]
- [Data Tables by Country \(http://newgtlds.icann.org/en/reviews/cct/data-tables-country-29may15-en.pdf\)](http://newgtlds.icann.org/en/reviews/cct/data-tables-country-29may15-en.pdf) [PDF, 4.78 MB]
- [Frequently Asked Questions \(http://newgtlds.icann.org/en/reviews/cct/consumer-survey-faqs-29may15-en\)](http://newgtlds.icann.org/en/reviews/cct/consumer-survey-faqs-29may15-en)

More Announcements

[The Internet Academy Lecture Project in Poland Kicks Off \(/news/announcement-2016-03-30-en\)](/news/announcement-2016-03-30-en)

[Data Retention Waiver - ONE.COM A/S, Denmark \(/news/announcement-2-2016-03-28-en\)](/news/announcement-2-2016-03-28-en)

[Release of Country and Territory Names within the .TORAY and .PICTET TLDs \(/news/announcement-2016-03-28-en\)](/news/announcement-2016-03-28-en)

[Call for Volunteers: Cross Community Working Group on Enhancing ICANN \(Internet Corporation for Assigned Names and Numbers\) Accountability \(CCWG-Accountability\) Implementation and Work Stream 2 \(/news/announcement-2016-03-25-en\)](/news/announcement-2016-03-25-en)



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Exhibit DIDP A32

From .academy to .zone: An Analysis of the New TLD Land Rush

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ABSTRACT

The `com`, `net`, and `org` TLDs contain roughly 150 million registered domains, and domain registrants often have a difficult time finding a desirable and available name. In 2013, ICANN began delegation of a new wave of TLDs into the Domain Name System with the goal of improving meaningful name choice for registrants. The new rollout resulted in over 500 new TLDs in the first 18 months, nearly tripling the number of TLDs. Previous rollouts of small numbers of new TLDs have resulted in a burst of defensive registrations as companies aggressively defend their trademarks to avoid consumer confusion. This paper analyzes the types of domain registrations in the new TLDs to determine registrant behavior in the brave new world of naming abundance. We also examine the cost structures and monetization models for the new TLDs to identify which registries are profitable. We gather DNS, Web, and WHOIS data for each new domain, and combine this with cost structure data from ICANN, the registries, and domain registrars to estimate the total cost of the new TLD program. We find that only 15% of domains in the new TLDs show characteristics consistent with primary registrations, while the rest are promotional, speculative, or defensive in nature; indeed, 16% of domains with NS records do not even resolve yet, and 32% are parked. Our financial analysis suggests only half of the registries have earned enough to cover their application fees, and 10% of current registries likely never will solely from registration revenue.

Categories and Subject Descriptors

C.2.m [Computer Communication Networks]: Miscellaneous;
K.4.1 [Computers and Society]: Public Policy Issues

Keywords

Domain Name System; Top-Level Domains; Registration Intent; Internet Economics

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<http://dx.doi.org/10.1145/2815675.2815696>.

1. INTRODUCTION

Nearly any successful company today needs a good Internet presence, and most see a memorable domain name as a key part of that presence. Though a nearly infinite set of possible domain names exist, any given name is unique, and memorable names often change hands for thousands or even millions of dollars. The Domain Name System (DNS) originally included only a small handful of top-level domains (TLDs), and ICANN has kept that number low until recent times. The benefits of a new TLD seem obvious at first glance: simple and memorable strings, long since taken in the older TLDs, become available again under a new namespace. However, many registrations in new TLDs go towards defensive registrations, brand or trademark owners trying to protect their names.

Starting in 2013, delegation began of a whole new wave of TLDs. Whereas ICANN debated the inclusion of previous TLDs independently and over the course of multiple ICANN board meetings, TLDs in the new program go through a standard application process which does not include ICANN-wide attention. The new expansion has resulted in a swift expansion of the TLD namespace: on October 1, 2013, shortly before the beginning of the program, the root zone contained 318 TLDs, mostly country code TLDs (ccTLDs). As of April 15, 2015, the root zone contained 897 TLDs, an expansion of 579 TLDs in less than two years.

This paper identifies the impact of the New gTLD Program on the domain name ecosystem. Previous TLD additions, such as `biz` [12] and `xxx` [11], caused widespread speculation and defensive registrations, but this larger expansion could discourage both. With hundreds of new TLDs, we expect many smaller companies to find it infeasible to defend their name in each. Additionally, such a sharp increase in simple-word second-level domains could make it difficult for speculators to resell even desirable names. The program's success also depends on how Internet users view the new domains. Do consumers see TLDs as interchangeable, or will new TLDs discourage users from visiting the associated domain? To answer these questions, we make the following contributions:

- We **classify registration intent** with a methodology derived from our work on `xxx` [11]. The application of the methodology to the New gTLD Program presented additional scaling difficulties, most notably requiring further automation of domain analysis. Our main contribution is the timely result of this methodology applied to the TLD landscape during its current period of swift expansion.

- We determine the program’s **impact on the old TLDs**, both on registration rates and on the types of registrations.
- We examine **registry profitability** to learn where the registration money goes and what kinds of TLDs get the most registrations.

Taken together, our findings suggest that the new gTLDs have yet to provide value to the Internet community in the same way as legacy TLDs. Although the new TLDs greatly expand the domain name space, overall we find that speculative and defensive registrations dominate the growth of registrations in new TLDs. For domains that resolve with some kind of content, over 45% are speculative in nature, nearly 40% are defensive, and less than 15% host primary Web content. Users also visit new domains in the new TLDs less frequently than in the old, and new TLD domains are more than twice as likely to appear on a blacklist within the first month of registration. Finally, we also find that the new TLDs have yet to have significant impact on the old TLDs. Registrations in the new TLDs generally increase the number of total registrations, and com continues to dominate Internet domain name registration activity overall.

2. BACKGROUND

The Domain Name System (DNS) is the Internet service that maps human-readable names to machine addresses. In the Internet today, the DNS is overseen by the Internet Corporation for Assigned Names and Numbers (ICANN), which holds the authority for establishing new top-level domains (TLDs). After a number of minor TLD additions in the decade previous (e.g., *biz*, *info*, *mobi*, *xxx*), ICANN initiated a new process in 2008 to normalize the policies for creating new gTLDs. In late 2013, the first new gTLD was delegated. The length of this process reflects the significant complexity involved, the range of stakeholders and the significant potential for conflict. In this section, we provide background on how the domain name ecosystem works, how companies apply for a TLD in the new program, and who the significant players are.

There are three key actors in the DNS ecosystem:

- Registries** operate TLDs and have a contract with ICANN for each one.
- Registrars** sell domain names, typically in many different TLDs, and also have an ICANN accreditation.
- Registrants** are entities that buy domain names.

and our goal in this paper is to explore how these actors have reacted to the rapid expansion of the DNS name space.

2.1 The Delegation Process

In preparation for the expansion, ICANN formalized a detailed application process for those seeking to sponsor new TLDs (well over 300 pages in English) [19]. Each applicant prepared an extensive submission covering business, technical and operational issues and paid a USD 185,000 evaluation fee for the initial evaluation. These applications in turn were open to public comment and for review by government interests and interested stakeholders. In such cases, the TLD might undergo extended evaluation, dispute resolution, or a contention period when multiple applications pursue the same TLD (and in such cases the fees could increase considerably). With the addition of legal fees, drafting fees, data escrow fees, auctions for contested names and operational costs, applications for a new gTLD require significant capital and thus favor those large organizations (e.g., Google, Amazon, Donuts) who would amortize these expenses across many such applications.

Those applicants whose submission survived evaluation transitioned to a phase called “delegation” (when the TLD is entered into the zones of the root DNS servers) subject to a series of contractual obligations (e.g., a registry agreement with ICANN covering dispute resolution, fees, technical standards, etc.) and technical tests. Delegation marks the time when end users can first resolve domains under the new TLD and is thus a major milestone for any registry. Due to capacity constraints inside ICANN and changes in applicant business goals, there can be considerable delay between evaluation and delegation.

2.2 TLD Rollout

After delegation, the TLD life cycle depends on the registry. TLDs intended for public use have a sunrise phase, a period of time during which only trademark holders may register. This phase gives brand holders a first chance to defend their names. Most TLDs follow with a “land rush” phase where registrants can get an earlier chance at any domain name for a price premium, usually on the order of a few hundred dollars. Finally, public TLDs will have a general availability phase, where registrations become first-come first-served, and registrants just pay the standard yearly registration rate for most names. Though ICANN has some minimum length standards for the sunrise phase, the registry chooses the exact length of sunrise, domain pricing and promotions, and all of the details about the other introductory phases.

A subset of TLDs are never made available for public registration. For these private TLDs, the only intended registrant is the registry itself, frequently to protect a brand mark. For example, the TLD *aramco* is closed to the public and only Saudi Aramco and its affiliates can operate domains under this TLD.

2.3 Examples

The data for this paper comes from hundreds of new TLDs, many of them managed by unique registries. We cannot describe all actors due to space limitations, but this section describes some of the larger registries and their TLDs.

2.3.1 Donuts

Though most registries run one or a small handful of new TLDs, Donuts Inc. is the largest and manages hundreds. Their TLDs largely consist of topical English words, such as “singles”, “digital”, and “coffee”. The company’s founders each have years of experience in the domain name industry, and the company secured over USD 100 million in venture capital [9]. Another large registry, Rightside, runs the technical infrastructure for Donuts TLDs. In return, Donuts gives some of its TLDs to Rightside after they reach delegation.

2.3.2 The xyz TLD

The xyz TLD is a generic alternative to com and is the largest in the new program. In the middle of 2014, Network Solutions, a large registrar, began offering xyz domains for free to some of their customers on an opt-out basis (e.g., the owner of *example.com* would find the domain *example.xyz* had appeared in their account). While registrants received these domains for free, Network Solutions still paid the registry full price for each domain [16, 26], although documents released as part of a lawsuit by Verisign suggest Network Solutions may have paid for these domains with advertising credit [8].

Due to this promotion, the number of registered domains in xyz rose by thousands per day in its earliest days until early August, when the number of registrations slowed to around 428,806 domains. Since then, xyz registrations appear at a much lower rate:

the number of domains finally doubled on April 13, 2015, taking over eight months to register a number of domains that originally took only two.

Registrants, however, appear to have only limited interest in these free domains. In our data set, 351,457 `xyz` domains (46% of `xyz`) remain unused and display a standard Network Solutions registration page when visited in a Web browser. Upon further analysis, we find that 351,440 of these domains appeared in the zone file in its first two months and still showed the unused Network Solutions template six months later. In fact, 82% of the 428,806 `xyz` domains in the August 2, 2014 zone file originated from this promotion and remained unclaimed as of early February 3, 2015. According to the monthly reports, Network Solutions had acted as registrar for only 360,683 `xyz` domains at the end of July, 2015, so registrants from this promotion claimed fewer than 10,000 free domains in the first six months.

2.3.3 *The science TLD*

The `science` TLD allows generic registrations, but targets the scientific community. Starting with general availability on February 24, 2015, the `AlpNames` registrar offered `science` TLDs for free. Similar to `xyz`, this promotion appears to have significantly impacted the number of `science` registrations: within only a few days, the TLD boasted 36,952 unique domains. The promotion has since ended, but the `AlpNames` registrar still sells `science` domains for \$0.50, making it one of the cheapest TLDs. Two months after the start of general availability it had 174,403 registrations. Even though general availability started after our cutoff date, `science` is already the third largest TLD.

2.3.4 *The realtor TLD*

The National Association of Realtors owns the `realtor` TLD and targets accredited realtors, but also requires all registrants to prove that they are members of their association [22]. The registry provides the first year of registration for free to anyone that provides their NAR membership information. The promotion only applies to a single domain per NAR membership number. 46,920 `realtor` domains (51%) still show the default Web template provided by the registrar.

3. DATA AND INFRASTRUCTURE

We use data from many sources in our analysis, including zone files and several reports from ICANN. We actively crawl Web and DNS for each domain, and compare our findings with Alexa rankings and various blacklists. In this section we describe our data sources and data collection infrastructure.

3.1 Zone Files

When a registrant purchases a new domain from a registrar, the registrar sends a request to the registry with the domain and name server information. Once the domain goes live, it will appear in that TLD's *zone file*. At a high level, a zone file reflects a snapshot of a DNS server's anticipated answers to DNS queries. For a domain to resolve, it must have name server information in the zone file.

ICANN requires most registries to provide zone file access for a variety of purposes, including research. Some registries, such as most ccTLDs, do not need to provide access. For zones delegated prior to 2013, we gained access to their zone files by signing and faxing a paper contract to the TLD's registry, each of which gave us FTP credentials. We originally used this method to gain access to `aero`, `biz`, `com`, `info`, `name`, `net`, `org`, `us`, and `xxx`.

In anticipation for the rapid TLD expansion, ICANN developed a more scalable solution to zone file access requests, known as the

Centralized Zone Data Service (CZDS). Registries and interested third parties can all apply for accounts on the service. After filling out their online profile with contact information and project details, requesting access to multiple zone files becomes straightforward. Registries still see multiple requests and can approve or deny them individually, but the process is much simpler. Once the registry provides access, the user can download the zone file through a simple API call up to once per day. Older TLDs can migrate to the new system for zone access, but progress has been slow; so far, only `museum`, `coop`, and `xxx` have migrated.

We have an account on CZDS, and manually refresh all new or expired approval requests almost once per day.¹ We have access to the zone files for hundreds of domains, most using the new CZDS system. We download a new snapshot of each daily, totaling 3.8 GB of gzipped text, more than half from `com`. For the analysis in this paper we simplify the zones and store all NS, A, and AAAA records on our HDFS cluster, and then store the raw zones on our archive server for future use.

3.2 ICANN Public Data

ICANN also requires each registry to provide a handful of summary reports. We have used most of them at some point in our methodology. The monthly transaction reports are particularly useful for our study. ICANN requires each registry to publish monthly summary statistics about the number of domains registered, transferred, expired, and renewed for each accredited registrar. We use the monthly summary reports to identify the number of registered domains that do not have any name server information and therefore do not appear in the zone file. We also use their breakdown of domains per registrar when estimating registration costs.

We also relied upon ICANN's New gTLD Current Application Status listing [20]. We used the data provided to determine TLD status and registry information as the new TLDs worked through the application system.

3.3 Our TLD Set

We include results for new TLDs that started general availability by the date of publication of ICANN's latest monthly registry reports on January 31, 2015, which altogether totals 502 new TLDs. Table 1 breaks down these new TLDs into various high-level categories, together with the total number of new domains registered in them at the time we crawled them.

We have focused our analysis on why registrants spend money on domains in the new TLD program. Some companies defensively register private TLDs, while others simply want a shorter domain name for their services. However, some companies in the latter category have not established their presence in their new TLDs yet, so we do not have a methodology to differentiate between these cases. Thus, we are more interested in public TLDs, where we can establish the registrant intent of individual domain names.

We differentiate public and private TLDs by checking public information about the start of general availability, as provided by several large domain registrars and `nTLDStats` [21], a Web site that tracks information on the new TLD program and is well-regarded in the domain community. Registries include their TLDs in these listings when they want public registrations, since the registrar collects this list in anticipation of selling domains in the TLD. This classification technique held up to the 15 randomly sampled private domains we verified manually. With this classification, 128 of the 502 new TLDs are private.

¹We considered scripting our requests, but CZDS blocked obvious scripting attempts, so we did not pursue this further.

	<i>TLDs</i>	<i>Registered Domains</i>
Private	128	—
IDN	44	533,249
Public, Pre-GA	40	—
Public, Post-GA	290	3,657,848
Generic	259	3,061,416
Geographic	27	494,824
Community	4	101,608
Total	502	4,191,097

Table 1: The number of new TLDs in each category on February 3, 2015, and their sizes. For the three TLDs for which we had pending access requests, we used the size of the closest zone file.

In addition to the above, we found it difficult to learn substantial information about the new internationalized TLDs. In many cases, registrants can only purchase domains for them from international registrars. They tend to have rules for sunrise and general availability that we found unclear even with the help of a native speaker. As a result, we also do not include these 44 new TLDs in our analysis. Additionally, we focus on domains that reached general availability (GA) before our February 3, 2015 Web crawl so the set of registrants can include all prospective domain owners.

After removing private and internationalized TLDs from those that had already began general availability, we end with a set of 290 new public TLDs. The total set of TLDs includes generic words like `bike` and `academy` and geographical regions like `berlin` and `london`, both represented in Table 1. Additionally, four TLDs gate registrations to members of a particular community, such as the `realtor` TLD for accredited realtors. To give a sense of how many common word TLDs exist, our data set contains four synonyms for “picture”: `photo` (12,933 domains), `photos` (17,500 domains), `pics` (6,506 domains), and `pictures` (4,633 domains). Table 2 gives an overview of the largest TLDs in our set, with some of the geographic TLDs featuring prominently. In the rest of this paper, we restrict our analyses to these 290 TLDs.

3.4 Active Web

For each domain in the zone file of a new gTLD, we visit the Web page hosted on port 80 of the domain with a crawler based on Firefox, an improved version of the crawler used in our previous study of xxx [11]. Our browser-based Web crawler executes JavaScript, loads Flash, and in general renders the page as close as possible to what an actual user would see. We also follow redirects of all kinds. After the browser loads all resources sent by the remote server, we capture the DOM and any JavaScript transformations it has made. We also fetch page headers, the response code, and the redirect chain.

Our primary data set for this paper is our Web crawl of all domains in the new TLDs on February 3, 2015. We chose this date due to its proximity to the timing of the latest ICANN reports, which reflect the number of registered domains in each TLD as of the end of January 2015.

3.5 Active DNS

Every time we Web crawl a domain, we also perform a DNS query using a DNS crawler developed for [15]. We follow CNAME and NS records and continue to query until we find an A or AAAA record, or determine that no such record exists. We save every record we find along the chain. We use DNS data to detect invalid NS records and to annotate each Web crawl with its CNAME chain.

<i>gTLD</i>	<i>Domains</i>	<i>Availability</i>
xyz	768,911	2014-06-02
club	166,072	2014-05-07
berlin	154,988	2014-03-18
wang	119,193	2014-06-29
realtor	91,372	2014-10-23
guru	79,892	2014-02-05
nyc	68,840	2014-10-08
ovh	57,349	2014-10-02
link	57,090	2014-04-15
london	54,144	2014-09-09

Table 2: The ten largest TLDs in our public set with their general availability dates.

3.6 Active WHOIS

Registry operators for most TLDs must publicly provide accurate domain ownership data using the WHOIS protocol. ICANN intends the use of WHOIS for “any lawful purpose except to enable marketing or spam, or to enable high volume, automated processes to query a registrar or registry’s systems” [14]. In particular, ICANN encourages its use by consumers, registrars, and law enforcement, and discourages its use by spammers [29].

WHOIS server operators have leeway in how they achieve these goals. They typically rate limit requests, and responses do not need to conform to any standard format, which causes parsing difficulty even once records are properly fetched. We only query WHOIS for a small percentage of domains in the new gTLD program as an investigative step towards understanding ownership and intent.

3.7 Pricing Data

One dimension of our analysis focuses on the economic impact of the new TLD program, a task that requires domain pricing information. Unfortunately for our data collection purposes, registries do not sell domain names directly, but instead sell them through ICANN-accredited registrars. A registry can sell their domain names through any registrars they choose, but each must get similar wholesale prices and promotions [5].

We gathered pricing data for domains in the new gTLDs from a wide range of registrars. First, we collected data from the most common registrars for as many TLDs as possible. In some cases the registrar included a pricing table with information for many TLDs and we were able to automate the data collection process. Other registrars only showed pricing information after querying a domain name’s availability, which required many separate queries. We made these queries manually. Some registrars made us solve a single captcha after five to ten requests.

Obtaining pricing information for the most common registrars simplifies the process and allows us to obtain a large number of (registrar, TLD) pairs in a short amount of time. However, we ultimately want to estimate pricing per TLD, so we would like to have registrar pricing data for many domain registrations in each TLD. Some TLDs do not sell well or are not available at the most common registrars (e.g., geographical TLDs for non-Western regions). We use the monthly registry reports to learn how many domains each registrar manages in each TLD, and we collect pricing information for the top five in each. Where possible, we also removed registry-owned domains from our analysis, since they did not cost anything. When registrars reported prices for non-standard time intervals or in foreign currencies, we used the current exchange rate to convert all prices to US dollars per year.

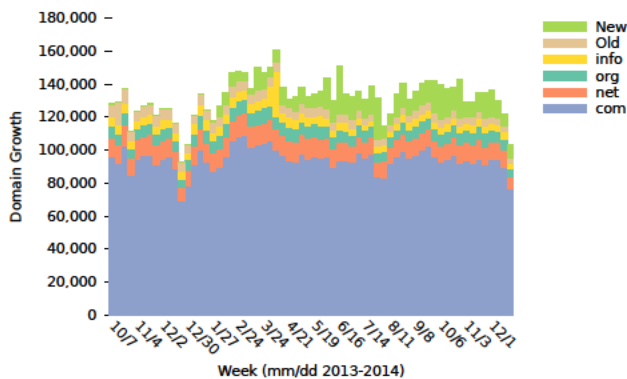


Figure 1: Number of new domains per day. Bars indicate the average rate for each week.

Registries reserve a set of strings which they sell for increased prices, known as *premium domain names*. For instance, GoDaddy sells normal `club` domains for \$10 USD, but `universities.club` costs \$5,000 USD, and this increase in price represents revenue to both the registry and registrar. These domains number in the thousands for any given TLD, and prices can vary per string. Our methodology treats premium domains as normal domains, thus underestimating registry and registrar revenue. Premium domain sales do not always correlate with wholesale revenue, and we do not see a scalable method to address this problem.

3.8 Alexa

We use the Alexa top million domains list to make an estimate of how often users visit domains in the new TLDs [1]. Alexa collects their data by allowing browser extensions to include their measurement code in exchange for providing domain analytics, and by allowing Web page operators to do the same. We use a domain’s presence in the list as an indication that users visit it, but do not place any emphasis on domain rankings.

3.9 Blacklists

We also compare new domain registrations with URIBL, a publicly available domain blacklist, to see how the blacklist rate compares between old and new TLDs [27]. We use their high-volume `rsync` instance to download a new copy of the blacklist every hour. Though they provide many types of blacklists, we only use the standard and highest-volume blacklist, labeled “black”, as the rest tend to be lower volume. This list represents the domains most likely to be malicious, while the other lists include domains detected through more experimental methodologies.

4. REGISTRATION VOLUME

We first look at the impact of the new TLDs on overall registration volume. The new TLDs represent new opportunities for registering domains. As registrants create new domains, one possibility is that they decide to create them in the new TLDs rather than the old, thereby displacing registration activity in the old TLDs (e.g., because names taken in `com` are available in the new TLDs). Another possibility is that the new opportunities motivate even more registrations, thereby growing total registration activity overall.

Figure 1 shows the number of new domain registrations per week broken down into various categories. Days for which we did not have access to the zone files resulted in slight drops in the graph.

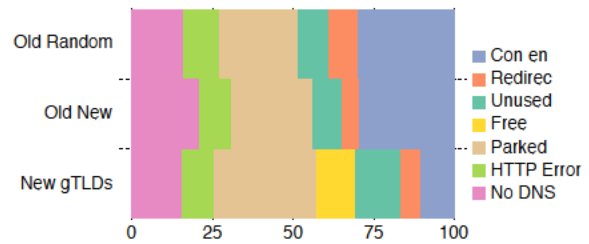


Figure 2: Classifications for all domains in the new TLDs, a random sample of the old TLDs, and a month of new domain registrations in the old TLDs.

We show the most active old TLDs individually, the remaining old TLDs grouped into “Old”, and the new TLDs in “New”.

Overall, the introduction of the new TLDs had only minimal impact in the rate of registration of the old TLDs. The new TLDs generally increase the total number of registrations rather than shift focus from old to new TLDs. However, the new TLDs see far fewer registrations than the old TLDs, largely because `com` continues to dominate.

5. CONTENT CATEGORIES

As a first step towards learning the intent of each domain’s registrant, we classify the technical data each domain returns when queried by our DNS or HTTP infrastructure. We perform this classification with features of both crawls, including DNS CNAME records, Web headers, Web contents, and the NS records in the zone files.

Domains with invalid DNS or HTTP errors are straightforward to identify, but in many instances, we need to classify the domains based on the textual content they return to HTTP queries. We use a combination of automated machine learning techniques and manual inspection of Web pages hosted at these domains.

We assign each domain to one of the following seven categories:

No DNS domains do not successfully resolve DNS queries.

HTTP Error domains have valid DNS, but do not return an HTTP 200 when queried.

Parked domains are owned by an ad network or are for sale by their owners and typically return Web pages dominated by ads.

Unused domains return HTTP content that is not consumer-ready, including empty pages, default Web server templates, or PHP errors.

Free domains include domains given out as part of a promotion that still have the original template, as well as domains with registry-owned Web templates.

Defensive Redirect domains redirect through one of several technical mechanisms to a different domain name.

Content domains host valid Web content for users to visit.

We start by presenting high-level content categorizations, including domains in the older TLDs as a reference point. Then Section 5.2 provides more detail about our clustering methodology, and Section 5.3 describes the seven categories in more detail.

5.1 Content Summary

To place the new TLD results in context, we present domain classifications for three data sets. The first includes all domains in the new TLDs as of February 3, 2015. The second includes 3 mil-

Content Category	Results	
No DNS	567,390	15.6%
HTTP Error	362,727	10.0%
Parked	1,161,892	31.9%
Unused	504,928	13.9%
Free	432,323	11.9%
Defensive Redirect	236,380	6.5%
Content	372,569	10.2%
Total	3,638,209	100.0%

Table 3: Overall content classifications for all domains in the zone file for the new public TLDs.

lion domains from the old TLDs defined in Section 3.1 chosen uniformly at random. The third includes all domains in the same set of old TLDs that were newly registered during December 2014. (Delays in our com processing pipeline prevented us from using a more recent data set.) Figure 2 summarizes all three data sets. This paper focuses on the new TLDs, so we focus on those domains. Table 3 shows exact values for the 290 public English TLDs described in Section 3.3, minus `quebec`, `scot`, and `gal`, the TLDs for which we did not have zone file access at the time.

For most categories the classification breakdown is comparable among the three data sets: erroneous domains (No DNS and HTTP Error) account for about a quarter of all domains, another quarter utilizes domain parking, and roughly 20% of domains are either unused or redirect elsewhere. The old and new TLDs differ greatly in content and promotional domains: the new TLDs show a dearth of content, but make up for it with a high volume of free domains, which domain owners do not actively use yet.

Figure 3 shows our content classification for the 20 largest TLDs that allow public registrations. Most TLDs show a typical split between the major content categories, but other TLDs show very different registration types, especially those with free domains.

5.2 Content Clustering

Our goal is to cluster Web pages hosted at domains into one of the content categories. Two key challenges to classifying content are the sheer size of the data (millions of domains), and the lack of labeled data for training a classifier. With so many unlabeled Web pages, we must learn from scratch to classify the domains.

Our first step is to cluster Web pages with highly similar content. This procedure groups together duplicate and near-duplicate Web pages, which commonly arise when HTML is automatically generated using a fixed template. Prevalent examples include parked pages, and default placeholder pages served by a registrar before the registrant publishes any content.

To map Web pages to inputs for a clustering algorithm, we follow a conventional “bag-of-words” approach which extracts HTML features from the Web pages. In particular, we compose a dictionary of all terms that appear in the HTML source code, and for each Web page, we count the number of times that each term appears. In this way, each Web page is represented as a sparse, high-dimensional vector of feature counts. We implemented a custom bag-of-words feature extractor which forms tag-attribute-value triplets from HTML tags, as described in [7].

For reasons of computability and conciseness of results, we begin by clustering roughly one tenth of the crawled Web pages. We used the k -means clustering algorithm with $k = 400$ to organize these Web pages into groups of high similarity (based on the Euclidean distance between their feature vectors). We set k to be in-

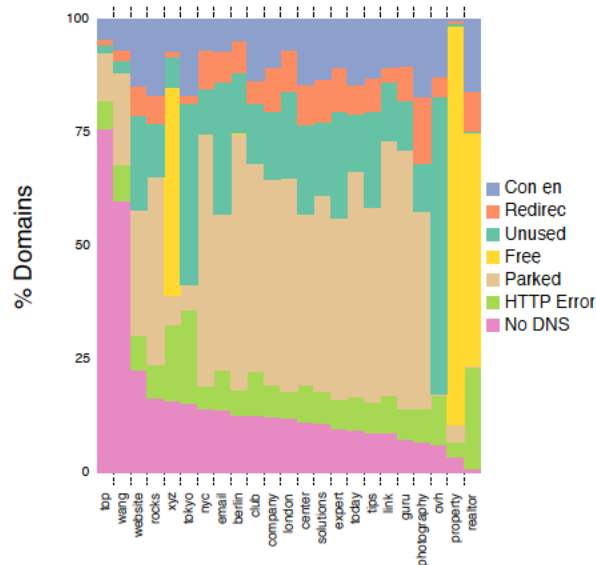


Figure 3: Domain classifications in individual TLDs for the 20 most common. We have sorted TLDs by fraction of “No DNS” to better highlight the category breakdowns of successful content.

tionally large because we wished to discover especially cohesive clusters of replicated Web pages.

Next we manually inspected the resulting clusters using a custom visualization tool. The tool displays screenshots of how the Web pages rendered in our crawler and provides a link to the HTML source next to each screenshot. To facilitate efficient manual review, the tool presents a condensed view of the clusters by showing only a sample of Web pages in each one. Specifically, it sorts the Web pages in each cluster by their distance to the cluster centroid, then displays the top and bottom-ranked pages as well as a random sample of pages in between. If all Web pages in this sample are visually nearly identical, we can conclude with confidence that the entirety of Web pages in the cluster have been appropriately grouped. Furthermore, we can classify Web pages in these perfectly homogenous clusters all together.

By examining the clusters, we placed domains into three broad categories according to their content: parked, content-free, and meaningful content. Our clustering approach was particularly effective at identifying large numbers of parked domains and content-free (or unused) domains that host a default registration page. The class of Web pages with meaningful content exhibits the most variety: Web content is highly diverse and unlikely to have the same degree of replication as the other two classes. Thus at this stage, we focused only on bulk labeling of clusters that clearly contained parked or content-free Web pages. If it was not visually obvious how to label a cluster in bulk, then its pages remained unclassified at this point. (In practice, though, we found that Web pages with content often were grouped together in clusters with wide diameters.)

After this phase of clustering, manual inspection, and labeling, we then aimed to classify domains that were not included in the initial subset. Now equipped with a large number of labeled examples, we used nearest neighbor classification to discover many more candidate Web pages which are likely parked or content-free. First, we extracted HTML features from the remaining Web pages, then mapped the pages into the same feature space as the original subset.

Then for each unlabeled Web page, we found its nearest neighbor by Euclidean distance in the labeled set and, if the distance was less than a strict threshold, we marked the page as a candidate for its neighbor’s class. This thresholding minimizes false positives. This step continues to focus only on parked and content-free pages; no content pages were classified in this way. We modified our visualization tool to display candidates next to their nearest neighbor; if the Web pages were visually nearly the same, then we were confident in assigning the appropriate label to the candidates.

In one round of this nearest neighbor method, we were able to label many of the remaining (non-content) Web pages in our data set with high confidence. However, since we only clustered about one tenth of the Web pages at the outset, we likely missed different templates that did not appear in the initial subset. Thus, we iterated this approach to achieve greater coverage. That is, we clustered the remaining unlabeled Web pages, manually inspected and labeled homogenous clusters, and performed thresholded nearest neighbor classification—now with a larger set of labeled examples. We iterated this process until there were no more obviously cohesive clusters. Finally, after identifying all parked and content-free domains, we manually inspected a random sample of the remaining unlabeled Web pages. The results gave us confidence to conclude that the remaining Web pages contain legitimate content.

5.3 Content Categories

We use this content clustering methodology to create a cluster label for each domain. Then, we took any page metadata (e.g., DNS errors, HTTP status code, the redirect chain, etc.) and combined these features together to make a final classification.

The rest of this subsection describes how we combined those features to determine a final content category. For domains that might fall into multiple categories, we prioritize categories in the order listed in Table 3. For example, for parked domains that redirect to a different domain, usually as part of the parking program, we only classify as “Parked” and not “Defensive Redirect”.

5.3.1 No DNS

Registrants purchase domain names from a registrar and pay a yearly fee to keep them, yet a large fraction of domains in the new gTLDs do not even resolve. Some of these registrants associate name server information with their domains, but these servers do not respond to DNS queries, or only respond with the DNS REFUSED error code. For instance, `adsense.xyz` has an NS record for `ns1.google.com`, but its name server returns REFUSED for all queries (which recursive resolvers usually report as SERVFAIL to the end user). Out of 3,638,209 domains in the new TLDs, we had 567,390 DNS failures with an associated NS record, or 15.6%.

Other registrants buy domains and then do not associate name server information with them. Since the zone files only contain associations between domain names and name servers, they contain no entries for this set of domains. We do not have a list of these domain names and do not have a clear mechanism to find them.

While we cannot enumerate these domains, we can infer their presence through the ICANN monthly reports. The monthly reports provide a summary of domain activity and transactions for all registered domains (i.e., domains with a yearly fee). We can use the difference between the number of domains in the ICANN reports and the number of domains in the zone file as an estimate for the number of domains with no name server information.

Our analysis shows that out of 3,754,141 total domains in the reports, 207,184 domains (5.5%) do not appear in their respective zone files. Registrants pay for these domains like any other, but they do not resolve.

<i>Error Type</i>	<i>Result</i>	
Connection Error	110,144	30.4%
HTTP 4xx	82,298	22.7%
HTTP 5xx	138,471	38.2%
Other	31,814	8.8%
Total	362,727	100.0%

Table 4: Breakdown of HTTP errors encountered when visiting Web pages.

5.3.2 HTTP Error

We next classify domains that resolve to an IP address, but return no result or an HTTP error code when queried on port 80. We suspect some of these error conditions are temporary. Others are likely longer-term misconfigurations by owners who do not care about the content hosted on the domains, making them likely brand defenders. Alternatively, these domains might serve a legitimate purpose that is motivated by content other than Web. Because we use the status code from the final landing page, even HTTP 3xx status codes indicate errors, typically a redirect loop.

We received 362,727 responses to that we classified as HTTP errors. Table 4 provides a breakdown. Notably, most domains in this category exhibit connection issues such as timeouts or return HTTP 5xx return codes, meant for internal server issues. The variety of errors is multifarious: overall we received responses with 43 unique HTTP status codes.²

5.3.3 Parked

Many domain registrants do not have a plan to monetize the content of their domain names. Most of them are speculating on the name itself, intending to sell it later for a profit. Some may have a plan to develop the site later in its lifetime, but have not put up any content yet. Still other owners initially created Web properties that turned out to be unsuccessful, and later parked them while waiting for expiration. Whatever the reason, domain parking is common in all TLDs. We discovered 1,161,892 parked domains in our data set, or 31.9% of all domains in the zone files.

Potential domain speculators have the choice of a large number of parking services. Some parking services also act as domain registrars (e.g., GoDaddy and Sedo), while others focus solely on parking. Registrants use their services by setting their name server (NS) record to the parking service’s DNS servers, redirecting their Web traffic to the parking service, or setting a CNAME. Parking services that also act as registrars may or may not use different name servers for parked domains compared to normal registrations.

Parked domains come in two main varieties [3]. Most domain parking monetization is through pay per click (PPC) advertising. These parked pages look much like search result pages with links pertaining to words in the domain name. Each link on this page is an advertisement. Other parked domains use pay per redirect (PPR). When the target domain’s owner purchases “direct navigation traffic” from an ad network used by the parking program, the parking service will redirect the user to a page run by an ad purchaser. Decisions to serve PPC or PPR to any particular visitor happen in real time based on characteristics provided by the traffic purchaser, including domain keywords or traffic from limited geographic regions.

²Six domains responded with the HTTP response code 418, an error code added as part of the Hyper Text Coffee Pot Control Protocol in a satirical RFC [13]. The return code means “I’m a teapot”.

<i>Feature</i>	<i>Domains</i>	<i>Coverage</i>	<i>Unique</i>
Content Cluster	1,080,283	92.3%	277,754
Parking Redirect	638,757	55.0%	81,468
Parking NS	279,903	24.1%	124
Total	1,161,892	—	

Table 5: Our capture methods for parking and how many domains each catches. We identify most parking domains with more than one classifier; column 2 shows how many domains each classifier identifies, while the last column shows how many are unique to that classifier.

As a starting point, two previous studies also needed to classify parked domains as part of their work. Alrwais et al. focus on how parking programs operate, and use domains from known parking name servers as their source [3]. Vissers et al. focus on classifying parked domains, but use parking pages from known parking name servers as their inputs [28]. However, our problem is slightly different since we want to identify random pages from the Internet as parked or not. Some parking programs host both legitimate and parked pages using the same name servers, including one of the largest parking services, GoDaddy. We need a different approach to identifying parking than either of these papers suggest.

We identify parked domains with three mechanisms. First, we use our k -means content classifier to identify PPC parking services. Often there are many of these pages for each parking service, with variations only in the displayed links; all layout and remote resources remain constant for any given parking service. As such, they tend to cluster well and are easy to identify with this method.

Second, we use the visit’s full redirect chain, acquired with the methodology described in Section 5.3.6, to identify PPR parking. These domains usually redirect through an ad network before landing at their final destination for accounting purposes. We manually inspected redirect chains for visits to known parking name servers to compile a set of URL features that indicate parking. For instance, if any URL contains “zeroredirect1.com” or both “domain” and “sale”, we classify the domain as parked.

Finally, we use known parking name servers, such as those for `sedoparking.com`. We use this method only for servers we are confident host solely parked domains. We start by taking the intersection of the different sets used by Alrwais et al. [3] and Vissers et al. [28]; the intersection includes all but one of the name servers from the latter set. For each name server in the set intersection, we use our k -means classifier to determine if domains using that name server are parked or not. For those we did not identify as parking (a very small set), we manually inspect a random selection of screenshots and their redirect chains. If we believe them all to be parking traffic missed by our classifier, then we assume all domains using the name server are parked. With this additional verification step, we concluded with high confidence that all 14 name servers in our set are used strictly for domain parking. Finally, we added one additional name server (`parklogic.com`) to our set, which we found to be dedicated to parking services through our classification experiments.

Table 5 shows how many parked domains we identify with each method. We identify most parking domains with more than one of our three methods. In particular, we identify all but 124 of nearly 280,000 domains on our set of parking name servers with another approach. This high detection accuracy provides validation of our other parking classifiers, and further increases our confidence that we have identified the prevalent parking behaviors.

<i>Mechanism</i>	<i>Domains</i>	<i>Coverage</i>	<i>Unique</i>
CNAME	2,020	0.9%	729
Browser	211,065	89.3%	203,941
Frame	30,437	12.9%	24,571
Total	236,380	—	

Table 6: The mechanisms domain owners use to redirect to a different domain. Most domain owners use only browser-level redirects, but frames are still very common. Very few content domains use multiple redirect methods.

5.3.4 Unused

In our analysis, we find many Web pages that fit in none of the above categories, but also do not provide meaningful content. Most of these are placeholder pages served by a large registry with instructions for the owner on how to develop their domain. Others are empty Web pages, or the default template provided by a software package. Whatever the reason, these pages do not provide meaningful content to end users and we refer to them as “Unused”.

Unused pages often appear in bulk, so we identify them using our k -means classifier. With this technique, we find 504,928 content-free domains in our data set, or 13.9% of domains in the new TLDs.

5.3.5 Free

Domains we identify as part of a promotion, such as those described in Section 2.3, get their own content classification. Most of these domains fall into the “Unused” category through a strict categorization, but the registrant plays a different role for these (which will be relevant when determining intent in Section 6).

Though not part of a promotion, the `property` TLD largely contains domains owned by Uniregistry, its registry. The TLD showed slow growth in all other time periods, but on February 1, 2015 it grew from 2,472 to 38,464 domains in a single day. Uniregistry owns all of these domains and hosts a standard sale page with the text “Make this name yours.” We place these registry-owned content placeholders into the “Free” category as well.³ In total, we find 432,323 free domains in the new TLD program (11.9%).

5.3.6 Defensive Redirects

Many domains in the new gTLDs have at least one redirect, and most of these point to a different domain. The role of the redirect depends on the type of content. Some parking programs redirect from the initial domain to a standard parking page, using the URL parameters to pass a domain identifier for revenue sharing purposes. Defensive registrations often redirect to the owner’s other domain names, typically in an older TLD. We check for three kinds of redirects: CNAMEs, browser-level redirects, and single large frames. Table 6 shows how many domains redirect with each mechanism.

A CNAME is a DNS record type that acts like a symbolic link between two domains. Any DNS query that results in a CNAME causes the resolver to perform the same query on the target. Sometimes the result is another CNAME, which our DNS crawler must follow before finally resulting in an answer to the original query. Most domains with a CNAME only have a single CNAME, but chains of up to four are not uncommon in CDNs. For example, in our February 3 data set, the domain `tangyao.xyz` has a CNAME to `scwcty.gotoip2.com`. This domain has its own CNAME to `hkvhost660.800cdn.com`.

³We do not classify them as “Parking” because they do not show ads and they are owned by the registry.

<i>Redirect To</i>	<i>Number</i>
Defensive	236,380
Same TLD	7,135
Different New TLD	5,843
Different Old TLD	98,923
com	124,479
Structural	75,073
Same Domain	74,379
To IP	694
Total	311,453

Table 7: Which locations our visits were ultimately redirected towards.

Browser-level redirects happen when DNS resolves to a host running an HTTP server, but a query to that server returns a redirect which our browser will follow automatically. For example, an HTTP request to `tucsonphotobooth.com` returns an HTTP 302 redirect to `bumblebeephotoobooth.com`, which modern browsers obey without user interaction. A domain owner can do this in a very large number of ways, such as with a 300–399 status code, an HTTP header, an HTML meta tag, or using JavaScript to set `window.location`. We find and store these redirects at crawl time, so we are robust to these and less common methods.

In practice, we find many pages that return valid HTML, do not redirect, and present only a single large frame to the end user, such that all visual content comes through the frame. Although it does not use an explicit redirection mechanism, this technique provides the same effect: a user visits one domain on their browser, and sees content from another. Since these frames serve the same purpose as a CNAME or an HTTP redirect, we consider these to be redirects as well.

To determine if a page contains only a single large frame, we first check how many frames the page contains. We do this in JavaScript in the browser, so we do not need to use textual analysis to find them. The remaining challenge is to differentiate between pages with a single large frame, and pages with real content that have a smaller frame, such as for page navigation or tracking purposes.

We differentiate between these classes using the DOM. First, we remove non-visible components from the page, as well as anything having to do with the frame itself: the `head` tag, `frameset` and `iframe` tags, and long URLs. These modifications are safe because we operate on the DOM, not the original HTML, so non-visible components that transform visual components (such as JavaScript) have already run. By examining the string length of the resulting DOM, the pages we crawl fall cleanly into two classes. Altogether, 49% of the filtered DOMs have a string length of less than 55 characters, but show variable behavior based on the few remaining tags. The remaining pages distribute mostly evenly with a few spikes corresponding to common page templates. A visual examination of the pages in these clusters shows that the short pages do show only a single large frame, while most of the large pages have other visual content.

The most important two pieces of the overall redirect chain are the starting domain and the final page that serves content. To determine the last, we check for a single large frame first, then a browser-level redirect, and finally a CNAME. A domain with all three behaviors serves its real content through the frame; the CNAME and browser-level redirects only point to the next resource. We classify redirects by the domain they point to: same-domain, same-TLD, “com”, new-TLD, old-TLD, or IP.

Table 7 shows which of these six location types domains in the new TLDs tend to point towards. Though each of these domains has some form of redirect when fetching Web content, redirects to a page under the same domain name are less interesting because they reflect aspects of the structure of the Web page itself. Similarly, we cannot make any strong claims about redirects to a hard-coded IP address.

Instead, we only consider redirects to a different domain to fall into our redirect category. We do include redirects to other domains within the same TLD because in this case, the registrant is only using the destination domain for primary purposes. We find 236,380 off-domain redirects in our data set, or 6.5% of all domains in the new TLD zone files. 94.5% of defensive redirects point to domains in the old TLDs, with over half of those to `com`. In short, defensive redirects are only a small fraction of the overall registration behavior in the new TLDs.

5.3.7 Content

We classify domains under “Content” when they do not fit into another of our content classifications. The other aspects of our categorization pull out common errors, interesting features like redirects, and Web responses that appear frequently. Domains that do not fit into any of those categories resolve in the DNS, return HTTP 200 status codes, and provide vaguely unique responses to Web queries. Only 372,569 domains (10.2%) fall into this category. By comparing this category with the previous, we find that 38.8% of the 608,949 domains with real content redirect to a different domain to serve it.

6. REGISTRATION INTENT

In the previous section, we focused on understanding the types of content that domains in the new gTLDs host. In this section we explore the high-level intent of the domain’s registrant. For each domain, we infer what motivated its registrant to spend money on the name. We classify registration intent into one of three broad categories:

- Defensive** registrants purchased a new domain to defend an existing Web presence.
- Primary** registrants own domains with the intent to establish a Web presence.
- Speculative** registrants intend to profit off of the name itself and never plan to develop a meaningful Web presence.

Before classifying domains by registration intent into one of the above categories, we must remove some types of domains. We ignore domains in the “Unused” and “HTTP Error” categories. We could guess that these domains tend to include more defensive than primary motivations since they are not user-ready and therefore the use of the name is the only relevant effect on the Internet. However, registrants likely buy domains they intend to develop all the time, and these domain names may transition to other categorizations given time or result in expirations.

We also ignore domains in the “Free” content category before deciding registration intent. In a typical domain registration scenario, we know registrants have expressed genuine interest in the domains they own because they paid money for them. Without ignoring the “Free” content category, we could not use the results of our registrant intent classifications to make any claims about why registrants purchase domain names.

Table 8 summarizes our results. In the following sections, we describe each registration intent category in more detail. We discuss what types of registrants we expect each category to cover and how we map content categories to registration intents for each domain.

<i>Intent</i>	<i>Results</i>	
Primary	372,569	14.6%
Defensive	1,010,954	39.7%
Speculative	1,161,892	45.6%
Total	2,545,415	100.0%

Table 8: Registration intent categorizations for the new public TLDs.

6.1 Defensive

Our defensive registration intent set begins with domains that redirect to a different domain name. Some off-domain redirects could reflect primary registrations: registrants could use their old name for technical or historical reasons but primarily use and market the new domain name. However, we find in practice that most are defensive, and many lead to sites whose branding and headers clearly advertise the landing domain.⁴

Additionally, we include domains that return invalid DNS results in this set. Owners of non-resolving domains could only use their names for private purposes, since traffic routed through the public Internet cannot correctly address a remote server. A more likely explanation is that the registrant only cares about the name. We include domains with invalid NS records as well as those that do not appear in the zone file (both described in Section 5.3.1), for a total of 774,574 non-resolving domains. Combined with the 236,380 defensive redirects, we find defensive registrations of 1,010,954 domains in the new TLDs.

6.2 Primary

Primary domains include all those purchased by a registrant with the intent to use that specific domain. Most primary registrants purchased their domain to establish a Web presence, but there are other kinds of primary registrants as well. We only classify domains in our “Content” category as primary registrations. Each of these domains resolves and could conceivably host content intended for end users. Our clustering technique did not find similar Web content for these domains, so registrants of those domains at a minimum host sufficiently unique content.

6.3 Speculative

Many registrants purchase domains to speculate on the domain itself with no intent to develop content. Most make use of the first-come first-served nature of domain registrations to grab domains they believe others will find desirable in the hope of selling them later for a profit. Others host parking-based advertising and pay-per-redirect services with the goal of monetizing through ad revenue, but still with no intent to develop unique content. In practice, most speculators in the first case also host parked content because it is essentially free (and often bundled with domain registration fees), and also serves as a signal to prospective buyers that the name is available.

From a content standpoint, the difference between a defensive and speculative registration is relatively narrow. Defensive registrants purchase domains to defend the string but with no intent to develop content, while speculative registrants purchase domains to resell later with no intent to develop content. However, speculative registrants are monetarily motivated on a per-domain margin, while defensive registrants have revenues outside the domain business. A

⁴Trademark holders make defensive registrations on their own brands. The same registration made by a different actor with malicious intent would instead qualify as cybersquatting.

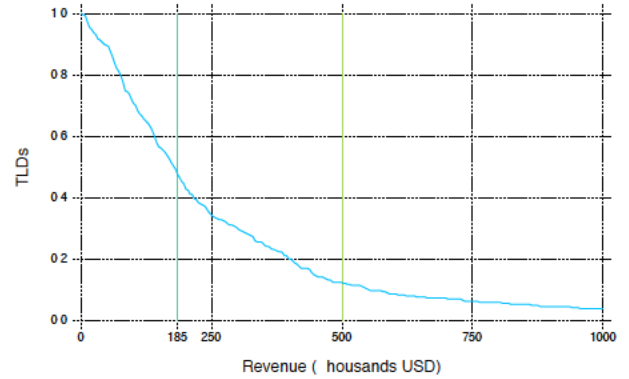


Figure 4: New gTLD program revenue as a CCDF across all TLDs. The vertical line at \$185,000 USD corresponds to the minimum ICANN application fee, and the line at \$500,000 USD corresponds to a more realistic estimate of the cost of establishing a new TLD.

speculator must monetize the name, but a defender does not. Therefore, we classify parked domains as speculative and non-resolving domains as defensive based on this distinction.

7. REGISTRATION COSTS

Previously, we focused on the new TLD system from a registrant-centric perspective. In this section we look at the new TLD rollout from the point of view of the registries. We examine how registries make money and how they interact with registrars in practice.

7.1 Registry Financials

Using the methodology described in Section 3.7, we obtained pricing information for 2,006 (TLD, registrar) pairs, which account for 73.8% of all domain registrations. In only four TLDs do we record prices from fewer than three registrars; in each case, however, the one or two registrars we do record account for at least 97.5% of all domains. In the remaining 26.2% of domain registrations for which we do not have matching data, we use the median price for the TLD.

Figure 4 shows a complementary cumulative distribution function of the cost to registrants per TLD. A point on the line shows the ratio of new TLDs that have made at least the corresponding amount in registration costs. We included a vertical line at \$185,000 USD, the standard application fee for a new TLD [19]. At this cost, roughly half of all TLDs made this money back. We estimate the total cost to registrants for domains in the new TLDs at \$89 million USD through March 2015.

The application fee, however, only represents a lower bound on the amount each registry spent on their TLD. Additional costs to ICANN include a quarterly \$6,250 fee [5], a per-domain transaction fee for registries with more than 50,000 transactions per year (a threshold only 18 TLDs have met), and additional application fees for TLDs that must enter the contention process. While registries do not have many other explicit costs, the TLD application process ran for years before the first delegation; presumably registries built up legal or personnel costs in the meantime. Registries also need to connect with registrars, market and brand their TLDs, build a Web presence, and run or outsource technical operations.

As a result, we also include 500,000 USD as a more realistic estimate for the cost of establishing a new TLD. While it is conjecture, some TLDs have already gone up for auction, like `reise` [23] and

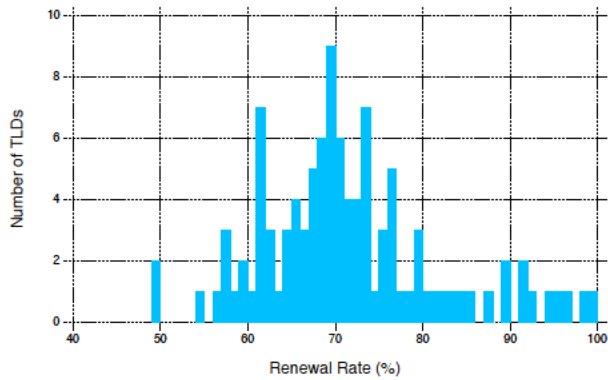


Figure 5: A histogram of renewal rates per TLD.

versicherung [4], which set reserve prices of 400,000 USD and 750,000 USD, respectively. Given the small number of registrations each had at the time, these TLDs were valuable because they had completed the delegation process, suggesting the sale price roughly reflects the cost of delegation. With these reserve prices, we chose 500,000 USD as a rounded estimate in this range. At this estimate, only about 10% of TLDs are profitable.

Revenue from domain registrations does not all go to the registry. Instead, registries and registrars split revenue based on a previously agreed upon model. For instance, Verisign makes \$7.85 USD per com registration [6] and \$6.79 per net registration [18]. During our pricing data collection, we found registration prices for both com and net names ranging from \$8 to \$13 USD, or markups ranging from \$0.15 to \$6.⁵

Unfortunately, the new registry agreements do not specify maximum wholesale prices, only fees the registry must pay to ICANN. For calibration, we can get a handful of prices through registry-reported earning data. Rightside, one of the largest back-end registry providers, is funded through private investors and has released some revenue statistics online in a presentation meant for investors and analysts [25]. They provide end-of-November wholesale and total revenue numbers for five TLDs, two of them aggregated. Our estimate is too low for reviews,⁶ but our other estimates overestimate the wholesale price by close to a factor of 1.4. Our model does not factor in premium domain name sales, a non-trivial revenue source that does not correlate well with wholesale price. As a result, Figure 4 represents a low estimate of domain name costs, and we discuss the limitations of our model further in Section 7.4.

7.2 Renewal Rates

All registries in the new gTLD program anticipated the one year and 45 day mark since the introduction of the earliest TLDs [2].⁷ This milestone provides the first chance for registrants in the new TLDs to renew their domain names, and hence reflects ongoing de-

⁵Registries can offer “bulk discounts and marketing support and incentive programs” but must offer similar terms to all registrars [6].

⁶The price we found for reviews domains through two registrars owned by the same company as Rightside is less than its wholesale price. We found pricing for November through archive.org [17] and found that the price to registrants of a review domain has halved. We do not know if this reflects a reduction in its wholesale price or a promotion.

⁷The extra 45 days is for the Auto-Renew Grace Period, which allows registrars to keep the registrations for free. Usually the registrar uses this time to offer the registrant one last chance for renewal, in case they let it expire accidentally.

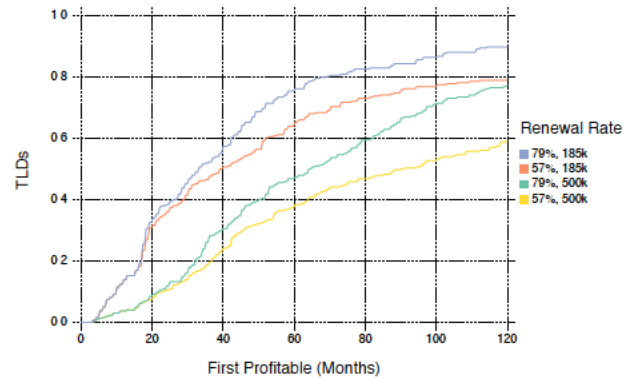


Figure 6: Registry profitability over time under different revenue models. A point on a line indicates the fraction of TLDs that were profitable within the given time since general availability.

mand for domains in the new TLDs after one year’s actual, rather than anticipated, experience with the domains. Donuts, the largest registry with over a hundred new TLDs, published statistics on renewal rates for their earliest TLDs [10, 24], likely in an attempt to attract registrars and investors [30]. However, Donuts limited their analysis to their own TLDs, and also did not provide numbers past 26 days.

Figure 5 shows a histogram of renewal rates by TLD. We only performed our analysis on TLDs where at least a hundred domains completed a full year of registrations plus the 45-day Auto-Renew Grace Period. The Donuts TLDs in our data set show renewal rates within a few percentage points of the numbers Donuts reported in April. We calculate an overall renewal rate of 71%.

7.3 Future Profit Modeling

In this section, we take a look at registry profitability using a variety of parameters. In face of the limitations of our profit modeling discussed in Section 7.4, we acknowledge that drawing higher-order conclusions from such limited data could lead to models that are incorrect in unpredictable ways. However, we would still like to attempt to classify “successful” TLDs, and profitability is a strong indicator of the success of any company.

We start by graphing TLD profitability over time under four different models in Figure 6. A point on a line indicates the fraction of TLDs that were profitable within the given time since general availability. We show four curves that reflect different values for two parameters. Two of the models assume an initial cost to the registry of only 185,000 USD, or the amount of the ICANN application fee. This is the minimum amount we know all registries must pay. The other models assume an initial cost of 500,000 USD, which better reflects our understanding of the cost of creating a registry. The second parameter is renewal rates. We show models with renewal rates of 57% and 79%, which reflect lower and higher than average rates and show the sensitivity of the model to renewals.

For each TLD, we collect registration volume data from the reports provided via ICANN. We consider TLDs for which we have three monthly reports after general availability. The first month typically contains a burst of registrations, and then the second and third provide two data points at a more typical registration rate. We model future months based on new registrations at this rate, and renewals of domains registered or renewed 12 months prior at the indicated renewal rate. We estimate the wholesale price as 70% of the total price at the cheapest registrar.

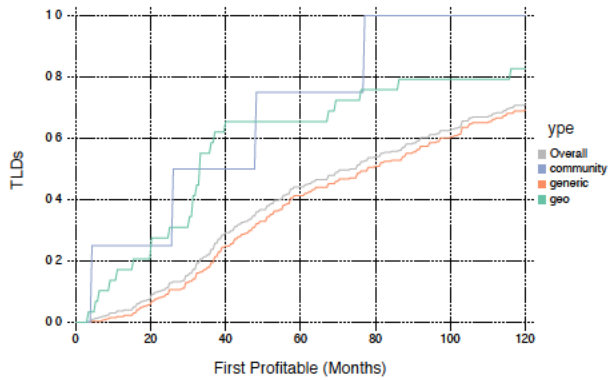


Figure 7: Modeling profitability by type of TLD. The gray line represents the aggregate, and the colored lines represent the set of TLDs of the indicated type.

Figure 6 shows that the initial cost plays a much larger role than the renewal rate in the short term, but that both parameters are important in the long term. We find that even under the most permissive model, with high renewal rates and no fees beyond those imposed by ICANN, 10% of TLDs still do not become profitable within the first 10 years.

Since there are a wide variety of registries operating new TLDs, and there is a wide variety of domain registration activity across the TLDs, we were interested to see if there were features that might separate profitable and unprofitable TLDs. To that end, we compared profitability based on four metrics:

- ◆ lexical string length;
- ◆ the registry for TLDs belonging to the top four registries, otherwise “Other”;
- ◆ the type of registry (“generic”, “community”, or “geographic”); and
- ◆ whether or not the most common registrars all sell domains in the TLD.

In practice, we only found minor variations in profitability based on these metrics. We present results for the most significant differentiators, type and registry, below.

Figure 7 shows variations in profitability by type of TLD. The gray line represents the overall profitability CDF. It is equivalent to the profitability CDFs in Figure 6 with an initial cost of 500,000 USD and an overall renewal rate of 71%. The remaining lines represent non-overlapping TLD subsets which combine to the same overall set. Though community and geographical TLDs become profitable much sooner than generic TLDs, there are so few of them in comparison that the profitability of generic TLDs still closely tracks the overall rate.

Similarly, Figure 8 shows variations in profitability by registry. Of the large registries, only Uniregistry TLDs become profitable sooner than the average. Instead, our data suggests owners of multiple TLDs mainly benefit by spreading the risk. Many registries only manage between one and three TLDs, and those strings tend to become profitable sooner than most of the large registries.

7.4 Limitations

We see profitability as an important metric with which to compare registries, but our methodology has some limitations. In this section, we describe the known limitations and their expected impact on the results.

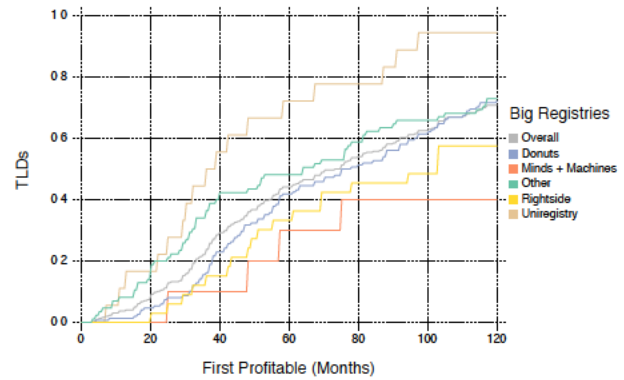


Figure 8: Modeling profitability by registry for the registries with the most TLDs. The gray line represents the aggregate, with colored lines representing individual registries.

First, our pricing model does not include premium domain name sales, as described in Section 3.7. For the few TLDs for which we have seen premium domain revenue reports, these sales vary considerably. For different TLDs, we have seen the total revenue from premium domain sales range from \$0 to the same amount as the total revenue of wholesale domains. It is also plausible that some TLDs could get more total revenue from premium domain names than from standard registrations. As a result, this category represents the largest unknown in our model. Premium domain names renew for the normal registration cost, so this unknown only affects the initial upfront purchase of the name and not ongoing renewal revenue.

Second, for any given TLD/registrar pair, we only record a single price, when domain name prices could change over time. To date we find that, after the beginning of general availability, domain prices do not change very frequently. Future studies could address this assumption by periodically regathering pricing data. For practical reasons, doing so would require deploying a more automated method of gathering prices than we used in this paper.

Finally, we estimate wholesale prices as 70% of the lowest price for domains in the TLD. We leave a better estimation of this price to future work.

8. VISITS

As an alternative to our registrant-focused analysis, we also analyze the new TLD program from an end user perspective. In particular, we want to know whether actual users visit domains in the new TLDs, and how that compares to similar domains in the old TLDs. We use a domain’s presence or absence in the Alexa top million domains as a metric for whether or not users visit it. We do not consider the ranking order as we only care whether or not the domain gets traffic at all.

We begin by splitting new domain registrations from December 2014 into two sets, one for domains in the new TLDs and one for domains in the old TLDs. We find 326,974 registrations in December 2014 in the new TLDs, and 3,461,322 in the old TLDs. We compare these sets with the Alexa top million from April 13, 2014. We use a newer Alexa list to allow the new domain registrations time to develop their Web presence. Due to the order of magnitude size difference between our new registration sets, we report results per hundred thousand new registrations.

	<i>New</i> Per 100,000	<i>Old</i> Per 100,000
Alexa 1M	88.1	243
Alexa 10K	0.3	1.1
URIBL	703	331

Table 9: The rate at which new domains in the old and new TLDs appear in blacklists and Alexa. This table only includes domains registered within the same one-month time window to compare old and young TLDs on equal terms.

Table 9 summarizes our results. New domain registrations in the old TLDs are nearly three times more likely to appear in the Alexa top million when compared to registrations in the new TLDs. This ratio is also consistent with appearances on the Alexa top ten thousand. While this is a notable difference, it is also consistent with the proportion of primary registrations described in Section 5.1.

We use a similar method with the URIBL blacklist as an indicator of abusive behavior. We use the same sets of newly registered domains. We use a blacklist contemporaneous with our registration data because blacklist operators add abusive domains as soon as possible. Table 9 summarizes our results.

We find that domains in new TLDs are twice as likely to appear on the URIBL blacklist within the first month. Our data does not reveal why spammers find the new TLDs attractive. However, we can guess based on the registrar pricing data we collected as described in Section 3.7. Domains in new TLDs tended to cost more on average, but individual registrars sometimes sold them for significantly reduced prices. In the extreme we found xyz domains for less than \$1 USD per year at some registrars.

Table 10 shows the ten TLDs for which a new registration is most likely to appear on a blacklist. Domains registered in December 2014 in most TLDs had less than a 1% chance of appearing on a blacklist in the same month, but the link, red, and rocks TLDs showed significantly higher rates of blacklisting. We found link domains for as cheap as \$1.50 USD, but rocks domains cost at least \$7.99 USD. The characteristics of these domains that consistently contribute towards higher rates of abusive behavior remains an open question.

9. CONCLUSION

ICANN greatly expanded the TLD name space to increase consumer choice and to allow more domain registrants to get short and memorable domain names. As we have found in previous TLD expansions [11, 12], new TLDs can increase primary domain registrations but can also lead to speculation and defensive registrations. ICANN’s new rapid expansion of the available TLDs gives primary registrants a lot more choice, but also increases the demands on defensive registrants seeking to protect their marks.

We take a comprehensive approach to understanding how registrants use domain names in ICANN’s new TLD program. We used data from many sources, including zone file data available to researchers, extensive crawls of Web and DNS information, and public data from ICANN, registries and registrars. We determined that only 15% of domains purchased by a registrant show behavior consistent with primary registrations and that domain parking drives over 30% of registrations in the new gTLD zone files. We use domain pricing information to estimate that only half of all registries have recouped their application fee in wholesale revenue. Similarly, we conservatively estimate that registrants have spent roughly \$89 million USD on domain registrations in the new TLDs. Finally,

TLD	New Domains	Blacklisted	Percent
link	4,087	917	22.4%
red	7,599	614	8.1%
rocks	7,191	360	5.0%
tokyo	3,252	40	1.2%
black	919	10	1.1%
club	16,490	173	1.0%
blue	4,971	41	0.8%
support	435	3	0.7%
website	7,876	49	0.6%
country	1,154	7	0.6%

Table 10: The ten most commonly blacklisted TLDs.

we validate the expectation that users visit fewer new domains in new gTLDs than those in old, and that new domains are more than twice as likely to appear on a commonly available blacklist within the first month of registration. Taken together, our findings suggest that new gTLDs, while accruing significant revenue for registrars, have yet to provide value to the Internet community in the same way as legacy TLDs.

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Exhibit DIDP A33



New gTLD Program Safeguards Against DNS Abuse

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Introduction

In accordance with section 9.3 of ICANN's [Affirmation of Commitments](#) (AoC) to promote competition, consumer choice, and consumer trust in the Domain Name System (DNS), this report is intended to aid the work of the review team on Competition, Consumer Choice, and Consumer Trust (CCT-RT). It will do so by:

- Providing an overview of the state of DNS abuse following the roll-out of the New Generic Top-Level Domain (gTLD) Program in January 2012
- Discussing options for measuring the effectiveness of the nine safeguards put in place to mitigate DNS abuse in new gTLDs
- Proposing a research model to help assess the effectiveness of the nine safeguards in mitigating DNS abuse in new gTLDs

The [AoC](#) states:

ICANN will organize a review that will examine the extent to which the... expansion of gTLDs has promoted competition, consumer trust and consumer choice, as well as effectiveness of...**safeguards put in place to mitigate issues involved in the...expansion...**[emphasis added]. The reviews will be performed by volunteer community members and the review team will be constituted and published for public comment...Resulting recommendations of the reviews will be provided to the Board and posted for public comment. The Board will take action within six months of receipt of the recommendations

In preparation for the potential expansion of the DNS, ICANN solicited advice from its expert constituencies to examine the potential for increases in abusive, malicious, and criminal activity in an expanded DNS and to make recommendations to **pre-emptively mitigate** those activities through a number of **safeguards**.¹ The effort to identify steps for mitigating potential abuse began with posing four questions to experts in a diverse array of groups including the Anti-Phishing Working Group (APWG), the Registry Internet Safety Group (RISG), the Security and Stability Advisory Committee (SSAC), Computer Emergency Response Teams (CERTs) and members from the banking, financial, and Internet security communities. Those questions were:

- 1) How do we ensure that bad actors do not run registries?
- 2) How do we ensure integrity and utility of registry information?
- 3) How do we ensure more focused efforts on combating identified abuse?

¹ "Mitigating Malicious Conduct," ICANN, New gTLD Program Explanatory Memorandum, 3 October 2009, <https://archive.icann.org/en/topics/new-gtlds/mitigating-malicious-conduct-04oct09-en.pdf>

- 4) How do we provide an enhanced control framework for TLDs with intrinsic potential for malicious conduct?

After extensive consultations, the expert groups arrived at the following **recommendations** to address each issue area:

Question	Recommendation(s)
1) How do we ensure that bad actors do not run registries?	1) Vet registry operators through background checks to reduce the risk that a potential registry operator has been party to criminal, malicious, and/or bad faith behavior.
2) How do we ensure integrity and utility of registry information?	2) Require Domain Name System Security Extension (DNSSEC) deployment on the part of all new registries to minimize the potential for spoofed DNS records. 3) Prohibit “wildcarding” to prevent DNS redirection and synthesized DNS responses that may result in arrival at malicious sites. 4) Encourage removal of “orphan glue” records to minimize use of these remnants of domains previously removed from registry records as “safe haven” name server entries in the TLD’s zone file that malicious actors can exploit.
3) How do we ensure more focused efforts on combating identified abuse?	5) Require “Thick” WHOIS records to encourage availability and completeness of WHOIS data. 6) Centralize Zone File access to create a more efficient means of obtaining updates on new domains as they are created within each TLD zone. 7) Document registry- and registrar-level abuse contacts and policies to provide a single point of contact to address abuse complaints. 8) Provide an expedited registry security request process to address security threats that require immediate action by the registry and an expedited response from ICANN.

4) How do we provide an enhanced control framework for TLDs with intrinsic potential for malicious conduct?

9) **Create a draft framework for a high security zone verification program** to establish a set of criteria to assure trust in TLDs with higher risk of targeting by malicious actors—e.g. banking and pharmaceutical TLDs—through enhanced operational and security controls.

Measuring the effectiveness of these safeguards is a central aim of the work of the CCT-RT. To aid that work, this report will present an in-depth examination of each of these safeguards, propose potential means to measure their effectiveness where possible, and put forward a research model to analyze their effectiveness in a rigorous and comprehensive manner. Note that this report is meant as an *aid* to the CCT-RT. It is meant to offer *possible* methods and to provoke discussion within the team about how best to approach their study of DNS abuse and the safeguards put in place to mitigate it in the context of the New gTLD Program.

DNS Abuse: Key Terminology

“DNS abuse” covers a wide range of activities. While no globally accepted definition exists, definitional variants can include “cyber-crime,” “hacking,” and, as ICANN has used in the past, “malicious conduct”. Researchers from the University of Rome and the Global Cyber Security Center classify such threats to the DNS as falling under three categories: data corruption, denial of service, and privacy.²

“DNS abuse” is the term used in this report, and refers to intentionally deceptive, conniving, or unsolicited activities that actively make use of the the DNS and/or the procedures used to register domain names. This is a working definition based on review of which activities are generally explored in the literature as malicious or abusive, and is intended to provide a point of departure for the CCT-RT to refine their own definition of DNS abuse in their work. As explored below, some activities tend to fall under “bad faith”—but not necessarily illegal—commercial practices while others are outright scams that are likely to be illegal in most jurisdictions around the world. The extent to which each abusive activity (described below) falls under this definition and can be analyzed from the standpoint of the nine safeguards to mitigate DNS abuse in the New gTLD Program will remain open for consideration by the CCT-RT. The goal is to provide a working definitional structure to frame additional discussion around which activities should be included in their work.

² Casalicchio, Caselli, and Coletta, “Measuring the Global Domain Name System,” IEEE Network 27, no. 1, (2013) 25-31. doi: 10.1109/MNET.2013.6423188

DNS Abuse: Tactics and Instruments

Malicious actors typically carry out their schemes via the following avenues:³

- **Compromised domains:** domains in which a malicious actor has broken in to the web hosting of a registrant.
- **Malicious registrations:** domains registered by malicious actors for the express purpose of engaging in DNS abuse.
- **Subdomain resellers:** services—many of which are free and offer anonymous registration outside of a WHOIS service—that allow people to create registrations at the third level beneath a second-level domain that the service provider owns. These resellers often do not maintain any registration or point of contact data beyond user account names.⁴
- **IP addresses:** phishing attacks sometimes use IP addresses in their URLs rather than domain names.
- **Shortened URLs:** a technique to compact lengthy domain addresses that can be used by malicious actors to obfuscate a domain name and thus redirect unsuspecting users to malicious sites⁵

While DNS abuse can take a number of forms, its typical aim is to distribute **malware**—short for “malicious software”—which is used to disrupt computer operations, gather sensitive information, or gain access to private computer systems.⁶ Malware itself can carry out a number of harmful activities and take a number of forms. The most commonly distributed programs include:

- **Viruses:** Malicious programs that carry out a number of unwanted activities and cause computers not to function properly, including creating, moving,

³ Note the first two listed tend to be the primary avenues used by malicious actors. See Illumintel, “Potential for Phishing in Sensitive-String Top-Level Domains,” study for the ICANN Board of Directors New gTLD Program Committee, 21 May 2015, <https://www.icann.org/resources/pages/new-gtld-program-committee-2014-03-21-en>

⁴ Anti-Phishing Working Group, “Making Waves in the Phisher’s Safest Harbor: Exposing the Dark Side of Subdomain Registries,” November 2008, http://docs.apwg.org/reports/APWG_Advisory_on_Subdomain_Registries.pdf

⁵ See StopTheHacker.com, “The Curse of the URL Shorteners: How Safe Are They?” accessed 26 February 2016, <https://www.stopthehacker.com/2010/02/19/analyzing-url-shorteners/>

⁶ “Implementation Advisory Group for Competition, Consumer Choice, and Consumer Trust (IAG-CCT): Final Recommendations on Metrics for CCT Review,” 26 September 2014, <https://newgtlds.icann.org/en/reviews/cct/iag-metrics-final-recs-26sep14-en.pdf>

and/or erasing files, and/or consuming computer memory. Often they duplicate themselves and travel across networks via infected emails. Examples include “worms” and “trojan horses”.⁷

- **Spyware:** Malware that can capture information such as usernames, passwords, credit card info, web browsing habits, and e-mails.⁸

Malware is often distributed through the use of **bots**, which are automated programs that are coded to operate continuously to perform malicious or abusive functions.⁹ **Botnets** are networks of these bots that utilize infected computers to distribute malware.¹⁰ Those who are infected do not know their devices are being used for such purposes.

The Registration Abuse Policies Working Group

In 2010, the GNSO’s Registration Abuse Policies Working Group (RAPWG) produced a report that explored abuse provisions in registry-registrar agreements. In it, the group developed a consensus definition of abuse, which reads:

Abuse is an action that: a) causes actual and substantial harm, or is a material predicate of harm, and b) Is illegal or illegitimate, or is otherwise contrary to the intention and design of a stated legitimate purpose, if such purpose is disclosed.¹¹

They went further to distinguish between “**registration**” and “**use**” abuse, with the former referring to issues that arise during the registration of domains, while the latter refers to how the domains are used post-registration. Their definitional framework is as follows:

Registration issues are related to the core domain name-related activities performed by registrars and registries. These generally include (but are not limited to) the allocation of registered names; the maintenance of and access

⁷ Kaspersky Lab, “What is a Computer Virus or a Computer Worm?” accessed 26 February 2016, <http://www.kaspersky.com/internet-security-center/threats/viruses-worms>

⁸ Kaspersky Lab, “What is Spyware?” accessed 26 February 2016, <http://usa.kaspersky.com/internet-security-center/threats/spyware#.VtCsAJMrJTY>

⁹ Bots are often not malicious and carry out any number of legitimate functions. However, this report refers only to their malicious form. See Gabada, Usman, and Sharma, “Techniques to Break the Botnet Attack,” International Journal for Research in Emerging Science and Technology 2, no. 1 (March 2015), <http://ijrest.net/downloads/volume-2/special-issue-1/pid-m15ug638.pdf>

¹⁰ Ibid.

¹¹ “Registration Abuse Policies Working Group Final Report,” May 2010, <http://gns0.icann.org/en/issues/rap/rap-wg-final-report-29may10-en.pdf>

to registration (WHOIS) information; the transfer, deletion, and reallocation of domain names; and similar areas discussed in more detail below. These are generally within the scope of GNSO policy-making. Many of these are specifically listed in registration agreements as being subject to Consensus Policies, and the extant Consensus Policies have to do with these kinds of topics.

The group discussed the following activities as potential forms of registration abuse:

- **Cybersquatting** - the deliberate and bad-faith registration and use of a name that is a registered brand or mark of an unrelated entity, often for the purpose of profiting (typically, though not exclusively, through pay-per-click advertisements).
- **Front-running** – when a party obtains some form of insider information regarding an Internet user’s preference for registering a domain name and uses this opportunity to pre-emptively register that domain name.
- **Gripe sites** – websites that complain about a company’s or entity’s products or services and uses a company’s trademark in the domain name (e.g. companysucks.example). The concern expressed within the group was that these types of sites have the potential to infringe on trademark owners’ rights. But the group also noted that in many cases such sites are avenues for legitimate complaints and are protected under free speech laws in many jurisdictions.
- **Deceptive and/or offensive domain names** – registration of domain names that direct unsuspecting consumers to obscenity or direct minors to harmful content—sometimes referred to as a form of “mousetrapping.”
- **Fake renewal notices** – misleading correspondence sent to registrants from an individual or organization claiming to be or to represent the current registrar. These are sent for a variety of deceptive purposes.
- **Name spinning** – using automated tools used to create permutations of a given domain name string. While registrars regularly use such tools legitimately to suggest alternate strings to potential registrants when the string that registrant queries is not available, the group’s concern here was that such tools could produce results that infringed upon trademarked strings.
- **Pay-per-click** – an Internet advertising model used on websites, in which the advertiser pays the host only when their ad is clicked. The concern raised was use of a trademark in a domain name to draw traffic to a site containing paid placement advertising.
- **Traffic diversion** – use of brand names in HTML visible text, hidden text, meta tags, or web page title to manipulate search engine rankings and divert traffic.
- **False affiliation** – falsely purporting to be an affiliate of a brand owner.
- **Cross-TLD registration scam** – a deceptive sales practice where an existing

registrant is sent a notice that another party is interested in or is attempting to register the registrant's domain string in another TLD. The registrant is therefore pushed to make additional registrations via the party who sent the notice – often a reseller who would profit from the additional registrations, and is offering the new domain creates at a higher-than-average market price.

- **Domain kiting/tasting** – when registrants abuse the “Add Grace Period” through continual registration, deletion, and re- registration of the same names in order to avoid paying registration fees.

In contrast, the RAPWG defined “use” issues as follows:

Domain name use issues concern what a registrant does with his or her domain name after the domain is created—the purpose the registrant puts the domain to, and/or the services that the registrant operates on it. These use issues are often independent of or do not involve any registration issues...[D]omain name use is an area in which ICANN's and the GNSO's policy-making authority is more limited.

The group discussed the following activities as potential forms of use abuse:

- **Phishing** – a website fraudulently presenting itself as a trusted site (often a bank) in order to deceive Internet users into divulging sensitive information (e.g. online banking credentials, email passwords). The goal of phishing is usually the theft of funds or other valuable assets.
- **Spam** – bulk unsolicited e-mail sent from domains, and used to advertise websites.
- **Malware/Botnet Command-and-Control** –using domain names as a way to control and update botnets, which are networks of thousands to millions of infected computers under the common control of a criminal. Botnets can be used to perpetrate many kinds of malicious activity, including **distributed denial-of-service attacks (DDoS)**, **spam**, and **fast-flux** hosting of phishing and spam sites [see below for further explanation of the practices and terminology used in this definition].
- **Use of stolen credentials** – e.g. identity, access, and financial credentials to register domain names for malicious purposes, steal from, and/or otherwise disrupt and individual's or organization's operations.

In the report, the RAPWG reiterates that ICANN and its various supporting organizations have some purview over *registration* issues through the policy-making and enforcement processes, while *use* issues are more difficult to confront given ICANN's limited authority over how registrants use their domain names. Note that the definitions and activities provided in this section were solely those discussed by members of the RAPWG for the purposes of their report, and do not constitute an endorsement by ICANN as to which activities are in fact DNS abuse. The definitions

and activities noted here are provided to serve the work of the CCT-RT, and are for informational and discussion purposes only.

Specification 11 of the New gTLD Registry Agreement

Specification 11 of the New gTLD Registry Agreement mandates that registry operators commit to certain public interest commitments (PICs) as part of their contractual obligations with ICANN. Sub-sections 3a and 3b focus on registry operators' PICs as an aspect of DNS abuse, and describe activities that should be included in their efforts to mitigate and track abusive behavior in their TLDs. Specification 11 states:¹²

3a. Registry Operator will include a provision in its Registry-Registrar Agreement that requires Registrars to include in their Registration Agreements a provision prohibiting Registered Name Holders from distributing malware, abusively operating botnets, phishing, piracy, trademark or copyright infringement, fraudulent or deceptive practices, counterfeiting or otherwise engaging in activity contrary to applicable law, and providing (consistent with applicable law and any related procedures) consequences for such activities including suspension of the domain name.

3b. Registry Operator will periodically conduct a technical analysis to assess whether domains in the TLD are being used to perpetrate security threats, such as pharming, phishing, malware, and botnets. Registry Operator will maintain statistical reports on the number of security threats identified and the actions taken as a result of the periodic security checks. Registry Operator will maintain these reports for the term of the Agreement unless a shorter period is required by law or approved by ICANN, and will provide them to ICANN upon request.

The activities described within Specification 11 may provide an additional definitional framework for the CCT-RT as they refine the scope of their review.

DNS Abuse: Additional Terminology and Considerations

A number of other terms and considerations are worth noting in regard to the activities that constitute DNS abuse:

- **Phishing** uses both **social engineering** and technical subterfuge to steal consumers' personal identity data and financial account credentials. Social engineering schemes use spoofed emails to lead consumers to counterfeit websites designed to trick recipients into divulging financial data such as credit card numbers, account usernames, passwords and social security numbers.

¹² "Registry Agreements," accessed 4 February 2016, <https://www.icann.org/resources/pages/registries/registries-agreements-en>

- Spear-phishing** is a specific form of phishing email scam that targets specific individuals with high-value credentials within an organization to trick them into providing sensitive information.¹³
- **Fast-flux** is a technique carried out by botnets in phishing, spam, and other malware delivery activities in which attacks are sent from a constantly shifting set of IP addresses, rendering detection very difficult.¹⁴
 - **Typo-squatting**—aka “URL hijacking”—is a form of **cyber-squatting** that relies on users making a typographical error when entering a website address into a web browser, and often directs users to malicious sites.¹⁵
 - **Malvertising** is advertising on a website or ad network that is set up to infect viewers with malware either every time it is seen or at various intervals based on time or number of hits.¹⁶
 - **Search engine poisoning** is an activity that manipulates search engines to display search results that link to malicious websites.¹⁷
 - **Spoofing attacks** are when a malicious actor impersonates another device or user in order to launch attacks against network hosts, steal data, spread malware, or bypass access controls.¹⁸
 - **(Distributed) Denial of Service (DDoS) attacks** are cyber-attacks that work to make one or more computer systems unavailable. A *distributed* attack—carried out through a botnet—is when multiple systems are coordinated to overwhelm victims’ servers with requests. A new form of “**amplified**” **DDoS attack** has emerged that use DNS reflection and amplification to achieve extremely high attack data bit rates (reportedly exceeding 300 gigabits per second), which

¹³ “SSAC Advisory on Registrant Protection: Best Practices for Preserving Security and Stability in the Credential Management Lifecycle,” ICANN Security and Stability Advisory Committee, November 2015,

<https://www.icann.org/en/system/files/files/sac-074-en.pdf>,

¹⁴ “SSAC Advisory on Fast Flux Hosting and DNS,” ICANN Security and Stability Advisory Committee, March 2008, <https://www.icann.org/en/system/files/files/sac-025-en.pdf>

¹⁵ Moore and Edelman, “Measuring the Perpetrators and Funders of Typosquatting,” paper presented at the 14th Intl. Conference on Financial Cryptography and Data Security, Tenerife, January 2010,

<http://www.benedelman.org/typosquatting/typosquatting.pdf>,

¹⁶ Fourth Global DNS Stability, Security, and Resiliency Symposium, Meeting Report, October 2012, <https://www.icann.org/en/system/files/files/dns-symposium-25oct12-en.pdf>,

¹⁷ “Search Engine Poisoning,” Imperva, accessed 1 February 2016,

https://www.imperva.com/resources/glossary?term=search_engine_poisoning_sep,

¹⁸ Veracode, “Spoofing Attack: IP, DNS & ARP,” accessed 4 February 2016,

<http://www.veracode.com/security/spoofing-attack>

overwhelm a victim's network capacity and result in significant or complete service outages.¹⁹

- **Domain shadowing** is another emerging form of DNS abuse in which criminals, using stolen or phished credentials, create numerous subdomains associated with existing legitimate domains in a registrant's portfolio. The legitimate domains continue to function normally from the view of the registrant while these subdomains direct visitors to malicious sites.²⁰
- **DNS cache poisoning** is an attack in which a malicious actor tricks a name server into adding or modifying cached DNS data with malicious data. **Pharming** is one form of this activity in which a malicious actor coaxes a victim into clicking on a link—usually sent via spam email—which in turn infects the victim's personal computer or server and redirects users to fraudulent websites where confidential personal information can be gathered.²¹

A key factor to remember when it comes to nearly all of these tactics is that they exploit **human weaknesses** in the forms of greed, carelessness, and/or naiveté. Thus, **end-users tend to be the weakest links in the cyber-security chain.**²²

DNS Abuse: Key Stats and Trends

A recent ICANN-sponsored global survey of 6,144 consumers reported the following:

- 74% were aware of phishing
- 79% were aware of spamming
- 40% were aware of cybersquatting
- 67% were aware of stolen credentials

¹⁹ "SSAC Advisory on DDoS Attacks Leveraging DNS Infrastructure," ICANN Security and Stability Advisory Committee, February 2014, <https://www.icann.org/en/system/files/files/sac-065-en.pdf>. See also Alvarez, Carlos, "Amplified DDoS Attacks: The Current Biggest Threat Against the Internet," ICANN Blog, 11 April 2014, <https://www.icann.org/news/blog/amplified-ddos-attacks-the-current-biggest-threat-against-the-internet>

²⁰ "SSAC Advisory on Registrant Protection: Best Practices for Preserving Security and Stability in the Credential Management Lifecycle," ICANN Security and Stability Advisory Committee, November 2015, <https://www.icann.org/en/system/files/files/sac-074-en.pdf>






²¹ See Piscitello, Dave, "DNS Pharming: Someone's poisoned the water hole!," WatchGuard Technologies Expert Editorial, 2005, <http://www.corecom.com/external/livesecurity/dnsphishing.htm>

²² Khonji, Mahmoud and Youssef Iraqi, "Phishing Detection: A Literature Survey," IEEE Communications Surveys & Tutorials 15, no. 4 (Q4 2013), doi: 10.1109/SURV.2013.032213.00009.

- 76% were aware of malware

Along with high awareness of malicious behavior in the DNS, consumer end-users also reported high levels of being “very/somewhat scared” of each abusive behavior, and indicated a belief that they were also “very/somewhat” common.²³

Symantec, one of the world’s largest cyber-security firms, produces a yearly report on the state of global Internet security.²⁴ Its latest provides a number of indicators to illustrate general trends in key DNS abuse-related activities. As such it can serve as one point of departure for more segmented analysis of DNS abuse in new and legacy gTLDs as the work of the CCT-RT progresses:

Indicator	Descriptive Stats	Trend
Websites found with malware	<ul style="list-style-type: none"> • 2014: 1 in 1126 • 2013: 1 in 566 	
Overall Spam Rate (percentage of all emails classified as spam)	<ul style="list-style-type: none"> • 2015: 54%²⁵ • 2014: 60% • 2013: 66% 	
Global Spam Volume per Day (estimated)	<ul style="list-style-type: none"> • 2014: 28 billion • 2013: 29 billion 	
Email Phishing Rate (proportion of emails that are phishing attempts)	<ul style="list-style-type: none"> • 2014: 1 in 965 • 2013: 1 in 392 	
New Malware Variants Added Each Year	<ul style="list-style-type: none"> • 2014: 317 million • 2013: 252 million 	



²³ ICANN Global Consumer Research, conducted by Nielsen, April 2015,

<https://www.icann.org/news/announcement-2015-05-29-en>

²⁴ Symantec, “Internet Security Threat Report 20,” April 2015,

https://www4.symantec.com/mktginfo/whitepaper/ISTR/21347932_GA-internet-security-threat-report-volume-20-2015-social_v2.pdf

²⁵ Note this 2015 number taken from Symantec’s November 2015 Intelligence Report at www.symantec.com/content/en/us/enterprise/other_resources/intelligence-report-11-2015-en-us.pdf. The figure listed is an annual figure minus reporting for December 2015. Symantec did not report annualized 2015 figures for the other metrics listed in this table.

Email Malware Rate (proportion of emails containing malware)	<ul style="list-style-type: none"> • 2014: 1 in 244 • 2013: 1 in 196 • 2012: 1 in 291 	
Number of Bots	<ul style="list-style-type: none"> • 2014: 1.9 million • 2013: 2.3 million • 2012: 3.4 million 	

While these data generally indicate downward trends in the specific forms of DNS abuse analyzed, it is important to note that they present a snapshot of those trends. For example, while phishing attacks appear to be going down according to the table, **since 2008 the number of phishing attacks has nearly doubled**, indicating the downward trend shown may be nothing more than a slight downtick in the overall trend line.²⁶ Furthermore, the data presented cover the *entire* DNS; they do not specifically describe DNS abuse in *new* gTLDs

DNS Abuse in New gTLDs

Few systematic studies on DNS abuse in new gTLDs have been conducted, which is likely a function of their newness. The ICANN-sponsored survey referenced above reported that **consumer trust in new gTLDs is much lower than in legacy TLDs**, with approximately 50% of consumers reporting trust in new versus approximately 90% reporting trust in legacy TLDs.²⁷ Researchers from the University of California, San Diego found that **new TLD domains are more than twice as likely as legacy TLDs to appear on a domain blacklist**—a list of domains of known spammers— within their first month of registration.²⁸

According to members of the APWG, it appears that **malicious actors are testing the new gTLD space** as a potential base for their activities.²⁹ They suggest this may be a result of increased competition in the new gTLD market, which drives down prices and in turn attracts malicious actors looking to capitalize on lower costs. However, they

²⁶ Illumintel, “Potential for Phishing in Sensitive-String Top-Level Domains,” study for the ICANN Board of Directors New gTLD Program Committee, 21 May 2015, <https://www.icann.org/resources/pages/new-gtld-program-committee-2014-03-21-en>

²⁷ ICANN Global Consumer Research, conducted by Nielsen, April 2015, <https://www.icann.org/news/announcement-2015-05-29-en>

²⁸ Note this was a “snapshot” measure taken at the time of their study and did not reflect any longer term analysis. See Der et al., “From .academy to .zone: An Analysis of the New TLD Land Rush,” University of California, San Diego, Department of Computer Science and Engineering, October 2015, doi: 10.1145/2815675.2815696.

²⁹ Anti-Phishing Working Group, “Global Phishing Survey: Trends and Domain Name use in 1H2014,” 25 September 2014, <https://apwg.org/apwg-news-center/>

note the difficulty in drawing conclusions based on limited comparative evidence given that new gTLDs are in the early phases of their introduction. They suggest that future studies compare DNS abuse in new and legacy TLDs when enough data is available.³⁰

Architelos, a TLD consulting and management firm, offers more segmented analysis of DNS abuse in new, legacy, and country-code TLDs (ccTLDs). Their latest report, released in June 2015, utilizes their Namespace Quality Index (NQI) measure, which is the **amount of abuse domains listed on their blacklist portfolio per million domains** under management in each registry, to analyze the state of abusive behavior in legacy and new gTLDs. The report offers a number of important findings:³¹

- According to the NQI from January 2014 to June 2015, the rate of **abusive activities** (phishing, malware, botnet command and control, and spam) in new gTLDs **has spiked dramatically** since the first abuse in new gTLDs was detected in February 2014, and is approaching the levels of legacy gTLDs.
- **Spam accounts for 99% of reported abuses in new gTLDs** during the timeframe of their analysis (spam comprised 90% in legacy gTLDs and in ccTLDs).
- In May 2015, **the NQI score for new gTLDs was 11,654 per million domains** under management compared to approximately **16,500 per million in legacy gTLDs**
- **Phishing, malware, and botnet command-and-control rates in new gTLDs are still very low** compared to legacy gTLDs, although this is likely to increase as awareness and adoption of new gTLDs increases. From May 2014 to May 2015, **the amount of phishing domains spiked** from seven blocklisted domains detected to 143, a 20-fold increase (compared to a rise from approximately 7,300 to 14,000 in legacy gTLDs for the same period). However, **77% of those 143 new phishing reports were concentrated in just ten new gTLDs.**

A Case Study in DNS Abuse: Phishing in New gTLDs

The prevalence of phishing can serve as one indicator of the extent to which malicious actors are abusing new gTLDs. In a study co-authored by members of the APWG, the authors noted that **the expansion of the DNS through the New gTLD Program is unlikely to increase the total amount of phishing in the world**, but will create **new, different locations from which phishing attacks can occur**, as cyber-criminals tend

³⁰ Ibid.

³¹ Architelos, “The NameSentrySM Abuse Report,” June 2015, <http://architelos.com/wp-content/uploads/2015/06/Architelos-StateOfAbuseReport2015-webc-FIN.pdf>

to favor “hopping” from TLD to TLD over time.³² Phishers will not usually register domains that have brand names, instead preferring nonsense strings or placing a brand name somewhere in a subdomain or subdirectory, as brand owners routinely scan for their names being used inappropriately. In the second half of 2014, only 1.9% of all domains used for phishing contained a brand name or variation (often they were misspellings).

In another analysis paper written by members of the APWG, the authors reached a similar conclusion, noting that new gTLDs have not caused a “bonanza” of new phishing. The authors of both papers utilize a measure, “phishing domains per 10,000”, which is the ratio of the number of domain names used for phishing in a TLD to the number of registered domain names in that TLD, as a gauge for the health of new TLDs as it pertains to phishing.³³ In their analysis, they conclude that a score **between 3.4 and 4.7 phishing domains per 10,000 represents a “middle ground” phishing prevalence score.**³⁴ Any score above 4.7 would indicate a TLD with above average levels of phishing. The median phishing domains per 10,000 score for all TLDs in the second half of 2014 was 3.4. **Only nine of the 295 new gTLDs (in 2014) had scores above 3.4.**³⁵ In addition, **the average “uptimes” of phishing attacks**—or how long those attacks are active and a key measure of the strength of phishers’ efforts—**are at historic lows**, indicating some **success of anti-phishing efforts.**³⁶

According to the authors of both papers, **domain price appears to be a significant driver of phishing** in TLDs, and domains tend to be cheaper in legacy TLDs.³⁷ This sentiment was echoed by a number of representatives from registries and registrars at an ICANN-sponsored teleconference on measuring DNS abuse, who indicated that **higher prices for domains was a key factor in reducing abusive activities in**

³² Illumintel, “Potential for Phishing in Sensitive-String Top-Level Domains,” study for the ICANN Board of Directors New gTLD Program Committee, 21 May 2015, <https://www.icann.org/resources/pages/new-gtld-program-committee-2014-03-21-en>

³³ Anti-Phishing Working Group, “Global Phishing Survey: Trends and Domain Name use in 2H2014,” 27 May 2015, <https://apwg.org/apwg-news-center/>

³⁴ Note the APWG’s report from the first half of 2014 suggested a measure between 4.1 and 4.7. These measures change according to the “curve” of overall phishing activity.

³⁵ Anti-Phishing Working Group, “Global Phishing Survey: Trends and Domain Name use in 2H2014,” 27 May 2015, <https://apwg.org/apwg-news-center/>

³⁶ The second half of 2014 did see a slight uptick in *median* uptimes, from 8 hours and 42 minutes to 10 hours and 6 minutes. See Anti-Phishing Working Group, “Global Phishing Survey: Trends and Domain Name use in 2H2014,” 27 May 2015, <https://apwg.org/apwg-news-center/>

³⁷ Anti-Phishing Working Group, “Global Phishing Survey: Trends and Domain Name use in 2H2014,” 27 May 2015, <https://apwg.org/apwg-news-center/>

general.³⁸ The authors from the APWG predict that as new gTLDs become more prevalent and prices drop due to increased supply and competition, we will see more phishing in them compared to legacy and country-code TLDs (ccTLDs). A key piece of evidence for this trend is demonstrated by the case of the .xyz gTLD, which offered free domains for a period of time. In the second half of 2014, nearly 2/3 of phishing in new gTLDs was concentrated in the .xyz registry.³⁹ Keeping costs down appears to be a significant concern for phishers, as studies have shown it to be an increasingly “low-skill low-reward business.”⁴⁰ While some stories show spectacular profits as a result of phishing, it appears as though the average phisher can net something on the order of a few hundred US dollars per week.⁴¹

The Nine Safeguards

In the lead-up to the New gTLD Program, ICANN solicited advice from subject matter experts in DNS abuse and cyber-security to suggest what pre-emptive measures could be taken to mitigate the kinds of activities explored above. The expert community arrived at the following nine safeguards presented below. It now remains with the CCT-RT to determine the extent to which these safeguards were effective in achieving their intended aims.

In order to understand the “effectiveness” of the nine safeguards to mitigate DNS abuse, **“effectiveness” must first be defined as a measureable concept.** The following pages will discuss such definitions in the context of each question posed as part of initial efforts to establish what kinds of safeguards would be necessary for the New gTLD Program. Available data on proposed “effectiveness” measures will be presented. If data is unavailable, then a discussion of the reasons behind the lack of data and other potential means to assess a given safeguard’s effectiveness will follow.

³⁸ One participant anecdotally posited a threshold of greater than US\$15 for a domain was generally when abuse rates began to decline. ICANN Operations and Policy Research, “Reviewing New gTLD Program Safeguards Against DNS Abuse,” 28 January 2016, teleconference proceedings, recordings available at <https://newgtlds.icann.org/en/reviews/dns-abuse>

³⁹ The authors note that most of the .xyz phishing registrations were made through Chinese registrars and used to attack Chinese targets. See Anti-Phishing Working Group, “Global Phishing Survey: Trends and Domain Name use in 2H2014,” 27 May 2015, <https://apwg.org/apwg-news-center/>

⁴⁰ Herley and Florencio, “A Profitless Endeavor: Phishing as Tragedy of the Commons,” Microsoft Research, September 2008, <http://research.microsoft.com/en-us/um/people/cormac/Papers/PhishingAsTragedy.pdf>

⁴¹ Ibid. Given its “underground” nature, data is difficult to obtain. Thus, there is still significant debate on the actual costs and benefits of phishing in general.

Question: How do we ensure that bad actors do not run Registries?

“Effectiveness” in the context of this question can be understood as preventing “bad actors,” such as those who have been convicted of a felony or misdemeanor related to financial activities, from running registries. As early as 2001, the .COM Registry Agreement mandated that termination of the Registry Agreement would be possible if a registry operator was:

“(a) convicted by a court of competent jurisdiction of a felony or other serious offense related to financial activities, or is the subject of a determination by a court of competent jurisdiction that ICANN reasonably deems as the substantive equivalent of those offenses; or (b) is disciplined by the government of its domicile for conduct involving dishonesty or misuse of funds of others.”⁴²

This clause also exists in the New gTLD Registry Agreement, along with additional provisions:

(f) ICANN may, upon notice to Registry Operator, terminate this Agreement if (i) Registry Operator knowingly employs any officer who is convicted of a misdemeanor related to financial activities or of any felony, or is judged by a court of competent jurisdiction to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN reasonably deems as the substantive equivalent of any of the foregoing and such officer is not terminated within thirty (30) calendar days of Registry Operator’s knowledge of the foregoing, or (ii) any member of Registry Operator’s board of directors or similar governing body is convicted of a misdemeanor related to financial activities or of any felony, or is judged by a court of competent jurisdiction to have committed fraud or breach of fiduciary duty, or is the subject of a judicial determination that ICANN reasonably deems as the substantive equivalent of any of the foregoing and such member is not removed from Registry Operator’s board of directors or similar governing body within thirty (30) calendar days of Registry Operator’s knowledge of the foregoing.⁴³

⁴² “.com Registry Agreement,” 25 May 2001, <https://www.icann.org/resources/unthemed-pages/registry-agmt-com-2001-05-25-en#II-16C>.

⁴³ “Registry Agreements,” 9 January 2014, <https://www.icann.org/resources/pages/registries/registries-agreements-en>

Safeguard: Vet Registry Operators

Background

Vetting registry operators prior to execution of a Registry Agreement and delegation of a TLD into the root zone was added as a safeguard to the gTLD Applicant Guidebook for the New gTLD Program in order to prevent applicants with a history of criminal or malicious behavior from running TLDs. The measure was developed as a means to create a defined process to screen registry operators prior to signing the Registry Agreement during the initial evaluation of applications.

ICANN engaged PricewaterhouseCoopers (PwC) to perform background screenings focused on two areas: 1) general business diligence and criminal history, and 2) history of cybersquatting behavior. The eligibility of a given application to proceed in the New gTLD Program was reported in Initial Evaluation and, sometimes, Extended Evaluation reports.

The background screening used in the New gTLD Program is conducted at a point in time during the Initial Evaluation process. In cases where an applicant reported changes to its application information in the course of the evaluation, an additional background screening occurred prior to signing the Registry Agreement. And in every case, ICANN reserved the right to conduct additional due diligence as necessary before signing an agreement.

Defining “Effectiveness”

For this safeguard, “effectiveness” can be conceived as preventing registry operators with a malicious or criminal history from signing a Registry Agreement with ICANN. However, as noted above, a vetting process occurs at a point in time, and changes can occur in the entity responsible for management of a TLD (e.g., a company may be sold, or an officer may be replaced). In the context of DNS abuse, it may also be important to consider whether there is evidence of bad actors running registries, or a risk of such, on an ongoing basis.

Current Context

According to the Program Implementation Review published in January 2016, the background screening process was “a review performed on all applying entities, and all individuals and organizations disclosed in questions 9-11 of the application, which included officers and directors of the applying entities, in addition to shareholders owning a significant stake in the entity.”⁴⁴ According to the Review, ICANN conducted 1,150 background screenings on 1,930 applications (a number of entities submitted multiple applications). The background screening results for each application were

⁴⁴ “Program Implementation Review,” 29 January 2016, <https://www.icann.org/en/system/files/files/program-review-29jan16-en.pdf>

reported following the completion of its Initial Evaluation procedures. In some cases clarifying questions were posed to the applicant by the background screening panel. Overall, the Program Implementation Review called the background screening a successful process as all applicants were able to be screened, but noted that the time between the application submission deadline and the signing of the Registry Agreements was longer than anticipated. This meant that many applicants had to be re-screened. The Review suggests that background screenings could be conducted at the contracting stage rather than during Initial Evaluation to minimize the need for re-screening.

Possible Methods of Data Collection and Measurement

It may be too soon to determine if *both* aspects of the safeguard have been effective as preventative measures. Any measure of “effectiveness” would have to take into account data on rejections based on the initial background screening as well as from terminations of Registry Agreements due to a registry’s failure to eliminate bad actors from its officer staff or board of directors. And due to the personal information involved and sensitivity around the background screening process, reports indicating whether applications were eligible to proceed to the next step in the process are limited. However, overall numbers are available. Formal compliance complaints and/or terminations of Registry Agreements could provide a gauge of whether this safeguard continues to be effective.

Additionally, the safeguard may have had a deterrent effect on prospective applicants with questionable staff backgrounds. However, measuring a deterrent effect—i.e. how many applicants *did not* apply—is near impossible given that such an effect does not generate measurable data.

Question: How do we ensure integrity and utility of registry information?

Defining “effectiveness” in terms of this question can be understood as the successful use of safeguards to aid in validating and securing registry information. The following three preventative safeguards were designed to accomplish this.

Safeguard: Require Demonstrated Plan for DNSSEC Deployment

Background

The Domain Name System Security Extension (DNSSEC) was developed to curtail attempts by malicious actors to hijack the DNS lookup process. Such actors can hack into a web user’s lookups and, for example, direct them to their malicious websites to steal confidential information. DNSSEC protects against such attacks by digitally signing data so users can be assured the source is valid. It employs cryptographic signatures to existing DNS records to verify that a DNS record comes from its official

name server and was not altered at any point.⁴⁵ Registries' deployment of DNSSEC allows registrants to assign specific domain name keys to their domains if they choose. Mandating DNSSEC via the Registry Agreement was aimed at ensuring its more widespread and rapid deployment.

The safeguard requires all new gTLD applicants to have a specific plan for DNSSEC deployment. This is evaluated during the Initial Evaluation process, with the primary aim to reduce the risk of spoofed DNS records. Under the Registry Agreement, new gTLD registry operators are required to sign TLD zone files with DNSSEC, follow best practices as described in the Internet Engineering Task Force's (IETF) RFC 4641 and its successors, accept public-key material from child domain names in a secure manner, and publish the DNSSEC Practice Statements (DPS) according to the format in RFC 6841.^{46 47}

Defining "Effectiveness"

"Effectiveness" of this safeguard can be defined in a number of ways. It could be defined simply as a registry operator having a specific plan for DNSSEC deployment, and passing the evaluation at the application stage. It could also be defined according to the number of issues reported on registry compliance with DNSSEC requirements. Finally, it could be defined according to more broad dissemination of DNSSEC, such as the rate of signing done by registrants or the development of DNSSEC-validating DNS resolvers within networks run by Internet Service Providers (ISPs).⁴⁸

Current Context

As of 23 February 2016, 1,073 of the 1,236 TLDs (including ccTLDs) in the root zone had signed DNSSEC keys.⁴⁹

⁴⁵ "DNSSEC – What Is It and Why Is It Important?" accessed 1 February 2016, <https://www.icann.org/resources/pages/dnssec-qa-2014-01-29-en>; "How DNSSEC Works," accessed 1 February 2016, <https://www.cloudflare.com/dnssec/how-dnssec-works/>

⁴⁶ ICANN Registry Agreement, Specification 6: 1.2 DNSSEC, accessed 1 February 2016, <https://newgtlds.icann.org/sites/default/files/agreements/agreement-approved-09jan14-en.htm>

⁴⁷ "RFC" is a "Request for Comments" series of documents produced by the IETF that contain technical and organizational briefs on computer networking, protocols, procedures, and concepts. See www.ietf.org/rfc.

⁴⁸ "Deployment Guide: DNSSEC for Internet Service Providers (ISPs)," accessed 1 February 2016, <http://www.internetsociety.org/deploy360/resources/deployment-guide-dnssec-for-isps/>

⁴⁹ "TLD DNSSEC Report," accessed 23 February 2016, http://stats.research.icann.org/dns/tld_report/

Possible Methods of Data Collection and Measurement

Two measurements available now are the number of TLDs in the root zone and number of second-level domains in each that have signed keys.⁵⁰ More in-depth measures could focus on measuring DNSSEC issues that were discovered during pre-delegation testing, how many service-level agreement (SLA) monitoring issues have been reported, and the number of complaints have been received regarding DNSSEC compliance.

A comprehensive measure of “effectiveness” in this area would need to take into account the fact that registrars, registrants, DNS hosting providers, and ISPs all play a key role in full DNSSEC deployment and functionality. For example, while registry operators are required to demonstrate a plan for DNSSEC deployment, this does not mean that registrants will necessarily sign on. Preliminary data collected by ICANN Technical Services indicate that often only a small percentage of second-level domains have signed DNSSEC keys (although this varies significantly by TLD).⁵¹ A potential case study to consider could be that of CloudFlare—a domain name server services and DNS content delivery company—who decided to let anyone on their network secure their traffic with DNSSEC in a single step. A case study approach that provides a cross-industry look at support for DNSSEC by registries, registrars, DNS hosting providers, and ISPs could allow for the identification of areas of weakness in the deployment of DNSSEC across gTLDs. A group already collecting this information is the DNSSEC Deployment Working Group, which provides reports at dnssec-deployment.org.

Safeguard: Prohibition of Wildcarding

Background

This recommendation requires appropriate controls to prevent DNS “wildcarding.” This is when, rather than providing a “name error” response for non-existent DNS queries, registry operators instead use DNS redirection, wildcards, or synthesized responses.⁵² ICANN has prohibited these actions due to findings that suggest they pose a danger to the security and stability of the DNS by creating new opportunities for malicious attacks.⁵³

⁵⁰ See “DNSSEC Deployment Report,” accessed 23 February 2016, <http://rick.eng.br/dnssecstat/>

⁵¹ Data collected by ICANN Technical Services from publicly available zone files for the purposes of this report.

⁵² “About Wildcard Prohibition (Domain Redirect),” accessed February 1, 2016, <https://www.icann.org/resources/pages/wildcard-prohibition-2014-01-29-en>

⁵³ ICANN Security and Stability Advisory Committee, “SAC041: Recommendation to prohibit use of redirection and synthesized responses by new TLDs,” 10 June 2009, <https://www.icann.org/en/system/files/files/sac-041-en.pdf>

This safeguard is defined in section 2.2 of Specification 6 to the Registry Agreement:

2.2. Wildcard Prohibition. For domain names which are either not registered, or the registrant has not supplied valid records such as NS records for listing in the DNS zone file, or their status does not allow them to be published in the DNS, the use of DNS wildcard Resource Records as described in RFCs 1034 and 4592 or any other method or technology for synthesizing DNS Resources Records or using redirection within the DNS by the Registry is prohibited. When queried for such domain names the authoritative name servers must return a “Name Error” response (also known as NXDOMAIN), RCODE 3 as described in RFC 1035 and related RFCs. This provision applies for all DNS zone files at all levels in the DNS tree for which the Registry Operator (or an affiliate engaged in providing Registration Services) maintains data, arranges for such maintenance, or derives revenue from such maintenance.

However, in 2014, as part of the Name Collision Occurrence Management Framework, wildcarding was deployed in some TLDs for a limited period immediately after the delegation of the TLD (the controlled interruption period) as a means to identify any namespace collisions.⁵⁴ As stated in the JAS Phase 1 Report *Mitigating the Risk of DNS Namespace Collisions*:

We recommend that the registry implement the controlled interruption period immediately upon delegation in the root zone and the prohibition on wildcard records be temporarily suspended during this period. Given the objective of controlled interruption and the reality that no registrant data will be in the zone at this point, we believe that temporarily permitting wildcard records for this purpose is not counter to established ICANN prohibitions on wildcard

⁵⁴ See “Frequently Asked Questions: Name Collision Occurrence Management Framework for Registries,” accessed 11 February 2016, www.icann.org/resources/pages/name-collision-ro-faqs-2014-08-01-en, which states: “The prohibition against wildcards is waived for the controlled interruption period for applicable TLDs (i.e., where there are no active names under the TLD other than ‘nic’). This waiver only applies while there are no names delegated (hence, operational) within that TLD, removing the risks that are traditionally associated with wildcard implementations. The reason for lifting the prohibition and specifying the use of the wildcard is to catch all evident name collision situations. The wildcard at the ‘top’ of the zone will match all of the queries that will ever be seen once the zone runs in full production. This approach maximizes the steps taken to protect Internet users that are currently leaking queries that are meant to be local.”

records and does not raise the concerns that lead ICANN to establish these prohibitions.⁵⁵

Defining “Effectiveness”

For this measure, “effectiveness” could theoretically be defined in terms of the degree of compliance with the prohibition on wildcarding in new gTLDs. The assessment of this behavior as a means of ensuring the integrity and utility of registry information can also be considered. Input regarding the impact on the behaviors this safeguard sought to prevent could also be assessed.

Current Context

ICANN makes available a “Wildcard Prohibition (Domain Redirect) Complaint Form” to allow reports of noncompliance with contractual provisions.⁵⁶ To date, ICANN has not received any complaints on wildcard prohibition through this tool.⁵⁷

Possible Methods of Data Collection and Measurement

As noted above, no complaints have been received concerning wildcarding by new gTLD registries. Qualitative inquiry with subject matter experts on the effectiveness of this safeguard may be a means of circumventing this lack of quantitative data.

Another approach could include looking not only at complaints to ICANN about failures to prohibit wildcarding in specific TLDs, but also the current prevalence of the use of DNS redirection for “error traffic monetization,” which is the practice of redirecting DNS users to advertisement-oriented web servers when their DNS lookups fail. The University of California, Berkeley’s ICSI Netalyzr is a network diagnosis tool as well as part of a measurement study that is working to measure the health of the Internet. It has been used in previous studies examining issues of DNS redirection and may be a useful tool for understanding the implications of wildcarding in the DNS.⁵⁸

⁵⁵ JAS Global Advisors, “Mitigating the Risk of DNS Namespace Collisions,” 4 June 2014, <https://www.icann.org/en/system/files/files/name-collision-mitigation-study-06jun14-en.pdf>

⁵⁶ See “Wildcard Prohibition (Domain Redirect) Complaint Form,” accessed 11 February 2016, <https://forms.icann.org/en/resources/compliance/registries/wildcard-prohibition/form>

⁵⁷ However, Compliance has received some complaints on “Reserved Names/Controlled Interruption.” See “ICANN Contractual Compliance Dashboard for 2016,” accessed 12 February 2016, <https://features.icann.org/compliance/dashboard/0116/report>

⁵⁸ Weaver, Kreibich, and Paxson, “Redirecting DNS for Ads and Profit,” USENIX Workshop on Free and Open Communications on the Internet (FOCI), 2011, <http://www.icir.org/christian/publications/2011-foci-dns.pdf>

Safeguard: Removal of Orphan Glue Records

Background

This safeguard was developed to reduce the risk of malicious actors sneaking links to malicious domains into the root zone via “orphan glue” records, which are name server records that can remain once a “parent” record is removed from the zone. Orphan glue records can allow malicious actors to gain control of name servers, which then gives them the ability to carry out malicious activities from seemingly “legitimate” domains. For example, “fast-flux” attacks are known to make use of orphan glue records to host malicious domains for short amounts of time.⁵⁹

The safeguard requires registry operators to provide a plan in their application to remove orphan glue records once the parent record is removed. Once bound by the terms of the Registry Agreement, registry operators are required to take action to remove orphan glue records per specification 6, section 4.2 of the Agreement, which states: “Registry Operator shall take action to remove orphan glue records... when provided with evidence in written form that such records are present in connection with malicious conduct.”⁶⁰

Defining “Effectiveness”

For this measure, “effectiveness” can be understood as regularized practices on the part of registries to provide points of contact for end-users to report abuse and confirm the automatic removal of orphan glue records when a parent record is removed from the zone.

Current Context

Initial community feedback on this issue suggests that orphan glue records as a source of abuse has been largely neutralized through regular practice of removing them from zone files, although they remain a “low-level” issue in some cases.⁶¹

Possible Methods of Data Collection and Measurement

ICANN has received some initial feedback suggesting that this safeguard be measured by using zone files to track orphan glue record removal over time.

⁵⁹ See ICANN Security and Stability Advisory Committee, “SSAC Advisory on Fast Flux Hosting and DNS,” March 2008, <https://www.icann.org/en/system/files/files/sac-025-en.pdf>

⁶⁰ See ICANN Security and Stability Advisory Committee, “SSAC Comment on Orphan Glue Records in the Draft Applicant Guidebook,” May 2011, <https://www.icann.org/en/system/files/files/sac-048-en.pdf>.

⁶¹ ICANN Operations and Policy Research, “Reviewing New gTLD Program Safeguards Against DNS Abuse,” 28 January 2016, teleconference proceedings, recordings available at <https://newgtlds.icann.org/en/reviews/dns-abuse>

Discussing the prevalence and use of orphan glue records for malicious purposes with registry operators could provide a qualitative measure of whether registries, registrars, and registrants are effectively utilizing the required mechanisms for removal of orphan glue records. The “evidence in written form” required for a registry operator to remove orphan glue records as mandated by Specification 6 may also provide a useful source of data. It may also be useful to locate instances of recommendations for the removal of orphan glue records in registry anti-abuse policies. For example, the “.rich” TLD includes a section focusing on the removal of orphan glue records in its anti-abuse policy,⁶² while Afilias focuses on the issue as an element of fast flux hosting.⁶³

Question: How do we ensure more focused efforts on combating identified abuse?

This question focuses on the availability of information to curtail the activities of and aid in locating identified abusers in the DNS.

Safeguard: Requirement for Thick WHOIS records

Background

This safeguard requires that new gTLDs maintain and provide access to “thick WHOIS” records to help improve the availability and completeness of WHOIS data. Thick WHOIS records are records held by registries that “contain the registrant’s contact information and designated administrative and technical contact information, in addition to the sponsoring registrar and registration status.”⁶⁴ This is in contrast to “thin WHOIS” records, which only store information sufficient to identify the sponsoring registrar and status of the registration, and provide no information on the registrant. The use of thick WHOIS records may allow for more complete and rapid data search during efforts to identify malicious actors operating in the DNS.

Defining “Effectiveness”

For this measure, “effectiveness” can be defined by the development of a set of thick WHOIS records that are regularly used by authorities to track, identify, and curtail the activities of malicious actors in the DNS.

⁶² “.RICH Anti-Abuse Policy,” accessed 11 February 2016, <http://nic.rich/files/policies/rich-anti-abuse-policy.pdf>,

⁶³ “Afilias Anti-Abuse Policy,” accessed 11 February 2016, <http://dotblue.blue/about/afilias-anti-abuse-policy>

⁶⁴ ICANN WHOIS, “WHOIS Primer,” accessed 11 February 2016, <https://whois.icann.org/en/primer>

Current Context

Every new gTLD registry operator who has had their TLD(s) delegated into the root zone is required to create and maintain thick WHOIS records as part of their contractual obligations.

Possible Methods of Data Collection and Measurement

The intention behind mandating that new gTLD registries maintain thick WHOIS records was to create a more comprehensive set of contact records to enable authorities to track down and stop malicious activity. Obtaining feedback from DNS abuse responders regarding the utility of thick versus thin WHOIS records in curtailing DNS abuse could be one means of assessing this safeguard's effectiveness.

Other potential measures could stem from data generated by the WHOIS Accuracy Reporting System (ARS), which is a project currently in development whose goal is to “identify and report on accuracy in a systematic way to improve quality of contact data in the WHOIS”.⁶⁵ The following charts from the Phase 2 Report published December 2015 summarize overall gTLD accuracy to 2009 Registrar Accreditation Agreement (RAA) Syntax Requirements by mode and overall gTLD accuracy to 2009 RAA operability requirements by mode:⁶⁶

Overall gTLD Accuracy to 2009 RAA Syntax Requirements by Contact Mode

	Email	Telephone	Postal Address	ALL 3 Accurate
All 3 Contacts Accurate	99.1% ± 0.2%	83.3% ± 0.7%	79.4% ± 0.8%	67.2% ± 0.9%

Overall gTLD Accuracy to 2009 RAA Operability Requirements by Contact Mode

	Email	Telephone	Postal Address	ALL 3 Accurate
All 3 Contacts Accurate	87.1% ± 0.7%	74.0% ± 0.9%	98.0% ± 0.3%	64.7% ± 0.9%

⁶⁵ Note that Phase 3 of the study has yet to be carried out, but intends to focus on “Identity Requirements,” which test whether the contact provided is actually the individual or entity responsible for the domain. “Syntax Requirements” are defined as the format of the WHOIS entry. “Operability Requirements” are defined as the ability for contacts to resolve and connect to a user. Note that while contacts may be operable and connect to a user, the ARS does not test whether that user is the one indicated in the WHOIS record. See “WHOIS ARS Phase 2 Cycle 1 Report: Syntax and Operability Accuracy,” accessed February 1, 2016, <https://whois.icann.org/en/file/whois-ars-phase-2-cycle-1-report-syntax-and-operability-accuracy> and “WHOIS Accuracy Reporting System (ARS),” accessed 11 February 2016, <https://whois.icann.org/en/whoisars>

⁶⁶ Ibid.

The three phases of the WHOIS ARS study—which focus on syntax, accuracy, and validity, respectively—may provide a set of proxy measures for this safeguard’s effectiveness. In theory, more accurate WHOIS records would provide the anti-abuse community with a useful tool to combat DNS abuse. However, it is unlikely that malicious actors would proactively give out “accurate” contact details. It remains with the CCT-RT to decide whether “syntax, accuracy, and validity” are adequate proxies for effectiveness in this area.

Safeguard: Centralization of Zone-File Access

Background

This safeguard requires that access credentials to obtain registry zone file data be made available through a centralized source, which allows the anti-abuse community to more efficiently obtain updates on new domains as they are created within each TLD zone. This was intended to reduce the time necessary to take corrective action within TLDs experiencing malicious activity.

Defining “Effectiveness”

For this safeguard, “effectiveness” could be defined by the capacity of the Centralized Zone Data Service (CZDS) to handle requests for registry zone file data in a timely and efficient manner in order to minimize response times in countering malicious activity.

Current Context

New gTLD registries are required under Specification 4, Section 2 of the Registry Agreement to provide zone data to end users who request it. ICANN’s publicly available reports show more than 3 million zone file access (ZFA) passwords approved for 2015 alone.⁶⁷ Conversations with security researchers for the purposes of this report indicate that the CZDS provides a valuable service to DNS abuse responders and to those seeking to protect their intellectual property. However, while the CZDS was developed with the intention to make the process for providing access to zone files more efficient, registries themselves have reported widespread frustration with the service.⁶⁸ Registry operators still have to verify an end-user, and the Registry Agreement does not delimit the time in which registry operators must respond to access requests. This results in an often unmanageable amount of requests “piling up” for registry operators and a lack of capacity on their part to respond to requests in a timely manner. One registry representative reported receiving 7,000-10,000 requests

⁶⁷ CZDS ZFA- Password Monthly Reports, accessed 1 February 2016, <https://czds.icann.org/en/reports>

⁶⁸ ICANN Operations and Policy Research, “Reviewing New gTLD Program Safeguards Against DNS Abuse,” 28 January 2016, teleconference proceedings, recordings available at <https://newgtlds.icann.org/en/reviews/dns-abuse>

for zone file access *per day*.⁶⁹ This can result in less than full enforcement of the terms of use and cursory verification of the requestor’s credentials.⁷⁰ ICANN Compliance identified requests for zone file access by third parties via the CZDS as one of the top issues in registry compliance for 2015, with most complaints pertaining to registry operators not responding to requests for zone file access and registry operators being denied access for reasons not permitted in the Registry Agreement.⁷¹

Possible Methods of Data Collection and Measurement

A potential proxy for “effectiveness” could be gauged through CZDS password reports, which show the number of ZFA-passwords (given to users who have requested access to zone files in bulk) within the CZDS and the number of passwords approved each month within specific TLDs and as a whole.⁷² User feedback on the service may provide additional depth to such a measure as many users report problems with handling CZDS requests, at least anecdotally.

Safeguard: Documented Registry Level Abuse Contacts and Procedures

Background

This safeguard requires that registry operators establish a single point of contact responsible for handling abuse complaints. The Applicant Guidebook directs applicants to develop an “implementation plan to establish and publish on its website a single abuse point of contact responsible for addressing matters requiring expedited attention and providing a timely response to abuse complaints...”⁷³ Specification 6, section 4.1 of the Registry Agreement states: “Registry Operator shall provide to ICANN and publish on its website its accurate contact details including a valid email and mailing address as well as a primary contact for handling inquiries related to malicious conduct in the TLD, and will provide ICANN with prompt notice of any changes to such contact details.”⁷⁴

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ “ICANN Contractual Compliance 2015 Annual Report,” January 2016, <https://www.icann.org/en/system/files/files/annual-2015-27jan16-en.pdf>

⁷² CZDS ZFA- Password Monthly Reports, accessed 1 February 2016, <https://czds.icann.org/en/reports>

⁷³ “gTLD Applicant Guidebook,” 4 June 2012, <https://newgtlds.icann.org/en/applicants/agb>

⁷⁴ “Registry Agreements,” 9 January 2014, <https://www.icann.org/resources/pages/registries/registries-agreements-en>

Defining “Effectiveness”

For this measure, “effectiveness” could be measured by the availability of this information to front-end users, and finding a way to measure the relative ease with which users can report DNS abuse. A complementary approach could be to interview law enforcement and registry operators themselves for their feedback on the effectiveness of this measure.

Current Context

ICANN Compliance has monitored abuse contact information that registries are required to post on their websites, and stated the following in the last Contractual Compliance Update to review the issue:

ICANN continued its proactive monitoring of the abuse contact information that registries under the New Registry Agreement must publish on their websites. By doing so, ICANN ensures that end-users, including but not limited to law enforcement agencies, find a point of contact to report malicious activities in the TLDs...ICANN reviewed the websites of 64 top-level domains that started the Claims Period between 1 January 2015 and 31 March 2015. The number of non-compliance inquiries or notices to registries was lower than in the previous round of monitoring. Some of the deficiencies noted were the following: not displaying the required information at all, missing primary contact, or missing mailing address for abuse reports. ICANN is collaborating with the registries to remediate the non-compliance found.⁷⁵

Some initial community feedback on this safeguard indicates that the points of contact for abuse were used mostly by spammers.⁷⁶

Possible Methods of Data Collection and Measurement

Analyzing ICANN Compliance reports and testimonials from those who use these contacts could be an approach to measuring the effectiveness of this safeguard. Another method could entail collecting registry abuse contact information and testing its functionality.

⁷⁵ See “ICANN Contractual Compliance Update January – March 2015,” <https://www.icann.org/en/system/files/files/compliance-update-mar15-en.pdf>.

⁷⁶ ICANN Operations and Policy Research, “Reviewing New gTLD Program Safeguards Against DNS Abuse,” 28 January 2016, teleconference proceedings, recordings available at <https://newgtlds.icann.org/en/reviews/dns-abuse>

Safeguard: Participation in an Expedited Registry Security Request Process (ERSR)

Background

This safeguard provides a mechanism for registry operators to take quick and decisive action in light of systemic threats to the DNS by establishing a dedicated process to review and approve expedited security requests. In practice, registries are allowed to request a contractual waiver that exempts them from a specific provision in the Registry Agreement for the time period required to respond to a security threat. It was designed to provide for operational security around a threat while keeping relevant parties informed of the threat's status. Note that this process was established in response to the Conficker virus and thus before the work to define safeguards for the New gTLD Program. It is not included in the latest Registry Agreement, but as a process is available to registries with a clear and present need for it.⁷⁷

Defining “Effectiveness”

“Effectiveness” could be conceptualized as the rapidity with which a security threat was identified and neutralized as a result of the ERSR.

Current Context

Given the sensitive nature of the data involved, ICANN does not report publicly on the details of this process. However, initial input from security researchers for the purposes of this report indicate that the safeguard has been used effectively since the emergence of the Conficker virus to dismantle subsequent botnets.

Possible Methods of Data Collection and Measurement

To understand the effectiveness of this measure, feedback from those who have requested the ERSR process could be collected to understand its capacity to handle security threats. Given the limited quantity of requests for the ERSR and the sensitivity of the security-oriented data inherent to the process, analytical focus could be placed on *how* the process was carried out—such as the speed and relative ease of addressing the threat as a result of the ERSR—rather than the number of instances the ERSR has been requested or the specifics of how the security threat was confronted.

⁷⁷ “Registration Abuse Policies Working Group Final Report,” May 2010, <http://gns0.icann.org/en/issues/rap/rap-wg-final-report-29may10-en.pdf>

Question: How do we provide an enhanced control framework for TLDs with intrinsic potential for malicious conduct?

Safeguard: Create a Draft Framework for a High Security Zone Verification Program

Background

This *recommendation*—it was never formally established in the Registry Agreement as a required safeguard nor instituted as an official, ICANN-backed initiative—suggested the creation of a voluntary program for registry operators who wanted to establish and prove an enhanced level of security and trust in their TLDs. The overall goal of the program was to provide a standardized set of practices for registries seeking to distinguish themselves along these lines.⁷⁸

Defining “Effectiveness”

For this measure, “effectiveness” could be seen as the successful adoption, implementation, and verification of a high security zone (HSZ) in a TLD with a high potential for malicious activity (e.g. those representing the banking/financial and pharmaceutical sectors).

Current Context

While no comprehensive draft framework for such a program has been formalized through ICANN’s various policy development and implementation mechanisms, a number of efforts have been aimed at addressing the increased security needs of certain strings.

During the application process for a new gTLD, applicants’ security policies as they relate to sensitive strings were assessed under the guidelines of question 30 of the Applicant Guidebook, which requires applicants to

...provide a summary of the security policy for the proposed registry, including but not limited to...[a] description of any augmented security levels or capabilities commensurate with the nature of the applied for TLD string, including the identification of any existing international or industry relevant security standards the applicant commits to following...⁷⁹

Additionally, ICANN’s Governmental Advisory Committee has recommended a model be created for the verification and validation of registry operator credentials as public

⁷⁸ icann.org, “Public Comment: High Security Zone TLD Final Report,” 11 March 2011, <https://www.icann.org/news/announcement-2011-03-11-en>

⁷⁹ “gTLD Applicant Guidebook,” 4 June 2012, <https://newgtlds.icann.org/en/applicants/agb>

interest commitments (PICs) in highly regulated sectors in order to establish and maintain the trustworthiness of those domains.⁸⁰

A number of independent efforts to increase security and trust in new gTLDs on the part of industry associations and registries have also emerged. For example, the fTLD Service, LLC registry is independently working to establish a high security zone for their “.bank” and “.insurance” TLDs.⁸¹ The “DNS Seal Project” is working to build trust in the domain name industry through self-regulation and identification of best practices to help internet users identify trustworthy websites.⁸²

Possible Methods of Data Collection and Measurement

Collecting feedback from registry operators on why they chose not to pursue HSZ verification could provide insight into this recommended safeguard’s lack of adoption. Also, speaking with the fTLD Service, LLC registry on why they chose to pursue their own HSZ could provide an additional source of data.

Research Proposal and Models

Significant **empirical puzzles** present themselves with regard to the relationship between the expansion of the DNS through the New gTLD Program and the prevalence of abusive, criminal behavior in the DNS. Important questions remain as to whether the New gTLD Program has contributed to an increase in DNS abuse *that is proportional to the increase in the size of the DNS as a result of the Program*, and—crucially—**whether the safeguards put in place to mitigate it have been effective in achieving their intended objectives**. However, the current body of literature focused on DNS abuse is populated almost exclusively by studies reliant on descriptive statistics and focused probes of specific DNS abuse activities, and suffers from a distinct lack of broadly-focused longitudinal studies employing multivariate, inferential statistical analyses.

In order to arrive at a comprehensive picture of the state of DNS abuse in New gTLDs and to assess the effectiveness of safeguards to mitigate it, this report proposes a **hypothesis-driven** causal analysis utilizing safeguards as intervening variables in a set of hypothetical models built on reasoned assumptions regarding the relationship

⁸⁰ See “GAC Communiqué – Buenos Aires, Argentina,” 24 June 2015, <https://www.icann.org/news/announcement-2-2015-06-24-en> and “GAC Communiqué - Dublin, Ireland,” 21 October 2015, <https://www.icann.org/news/announcement-2015-10-22-en>

⁸¹ See fTLD Registry Services, “Enhanced Security,” accessed 11 February 2016, www.ftld.com/enhanced-security/

⁸² “About the DNS Seal Project,” accessed 12 February 2016, http://dnsseal.wiki/About_the_DNS_Seal_Project

between the New gTLD Program safeguards and the prevalence of abusive behavior in the DNS. The model focuses on answering a central research question:

To what extent can the safeguards put in place to mitigate DNS abuse in new gTLDs account for the rate of abusive behavior in the DNS?

Answering this question in a comprehensive, scientifically sound manner necessitates building a testable hypothetical model and segmenting inquiry to focus on legacy and/or new TLDs, and/or the entire DNS space as appropriate. It requires establishing a **baseline measure** as a point of departure in answering the foundational question of whether there has been an increase in DNS abuse as a result of the New gTLD Program that is *proportional to the expansion of the DNS* itself. Once this measure has been established, we can begin to ask **questions focused on rates of abuse in the “pre-safeguard” era compared to the “safeguarded” era of DNS expansion**. This enables researchers to contextualize the potential relationship between the nine safeguards and the current rate of DNS abuse.⁸³

The models below lend themselves to both qualitative and quantitative testing methods. However, as alluded to above, many of the safeguard measures do not generate quantitative data in the quantities needed to conduct a robust statistical analysis. Two approaches can address this: exploring potential proxy measures for safeguard effectiveness, and employing qualitative methods—e.g. user feedback interviews, focus groups, review of relevant publications—in order to add empirical depth to the wider scope of what quantitative methods are possible in the context of the safeguards.

A Possible Qualitative Framework for Testing the Effectiveness of Safeguards

This proposal and models below represent first steps to inform discussion on the most effective means to test the effectiveness of safeguards to mitigate DNS abuse. It remains to the CCT-RT to decide the scope and method of their inquiry into DNS abuse mitigation efforts.

⁸³ Note that this approach to compare the rate of abuse in legacy TLDs both currently and during the “pre-New gTLD era” with abuse in new gTLDs was one independently brought up and favored by a number of participants at the teleconference session on measuring DNS abuse and the effectiveness of the nine safeguards. See ICANN Operations and Policy Research, “Reviewing New gTLD Program Safeguards Against DNS Abuse,” 28 January 2016, teleconference proceedings, recordings available at <https://newgtlds.icann.org/en/reviews/dns-abuse>

Research Design: Key Questions and Considerations

An abundance of potential data exists—be they in qualitative and quantitative form—that could potentially be applied to investigate the effectiveness of the nine safeguards to mitigate DNS abuse. However, before deciding on which data to use, a research design to structure the data and achieve the review’s objectives must be determined. Any research design must answer the following:⁸⁴

1. Identify the research problem clearly. What is the empirical puzzle we’re trying to solve?
2. Review and synthesize previously published literature associated with the problem.
3. Clearly and explicitly specify research questions and/or hypotheses central to the research problem.
4. Effectively describe the data necessary to adequately answer the research questions and/or test the hypotheses, and explain how such data will be obtained.
5. Describe the methods of analysis to be applied to the data in determining whether or not the hypotheses are true or false.

The Q&A below contextualizes these research tasks in terms of the DNS Abuse Review:

1. Identify the research problem clearly. What is the empirical puzzle we’re trying to solve?

Research problem: It is unclear how effective the safeguards to mitigate DNS abuse in new gTLDs have been.

Empirical puzzle: Some indicators point to reduced amounts of DNS abuse in TLDs in general (legacy and new), while others point to increasing rates in particular TLDs. The extent to which the safeguards to mitigate DNS abuse have played a role in this variation remains unclear.

2. Review and synthesize previously published literature associated with the problem.

This report is geared toward providing such a review and synthesis.

3. Clearly and explicitly specify research questions and/or hypotheses central to the research problem.

⁸⁴ This has been taken from the University of Southern California’s succinct list of research questions at <http://libguides.usc.edu/writingguide/researchdesigns> (accessed 26 February 2016).

Research question(s): What explains the variation in the rates of abuse in different TLDs? To what extent have the safeguards put in place to mitigate them been effective?

Hypothesis examples (see models below for in-depth exploration of defining hypothetical relationships):

- High-level (to guide overall or significant portion of review):
 - The expansion of the DNS has caused an *increase* in the amount of DNS Abuse that is not proportional to the expansion itself.
- Low-level (to guide specific portions of inquiry within the review):
 - X safeguard intended to prevent Y form of DNS abuse has been ineffective in its intended aims

Research questions and hypotheses should also indicate how each term is defined and/or measured. For example, as explored above, how do we measure “effectiveness” of a safeguard?

4. Effectively describe the data necessary to adequately answer the research questions and/or test the hypotheses, and explain how such data will be obtained.

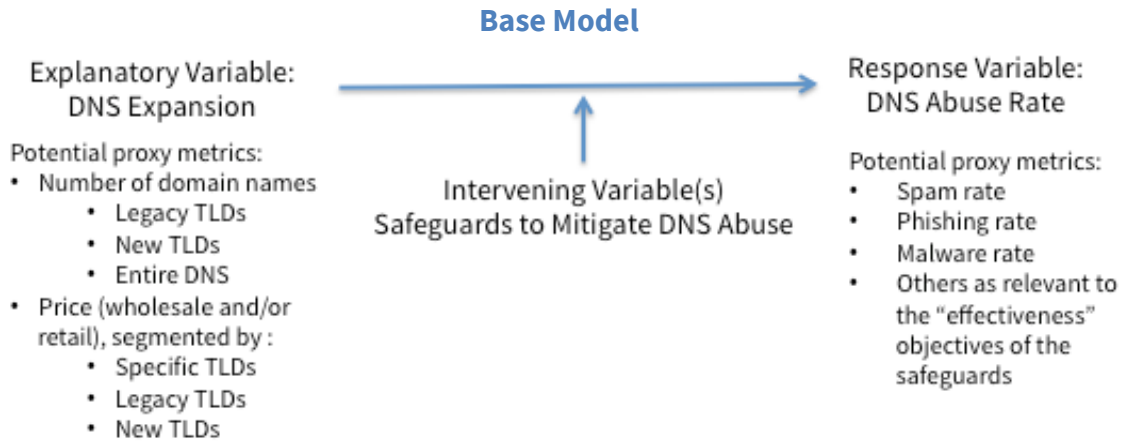
For example, “effectiveness” of safeguards may be measured qualitatively via interviews with experts and users of the safeguards. The extent to which the New gTLD Program has contributed to DNS Abuse may possibly be measured quantitatively by examining statistical correlations between the number of new domains and a DNS abuse proxy, such as phishing rate.

5. Describe the methods of analysis to be applied to the data in determining whether or not the hypotheses are true or false.

To be determined by the work of the CCT-RT, in addition to defining the research questions and hypotheses as explored above.

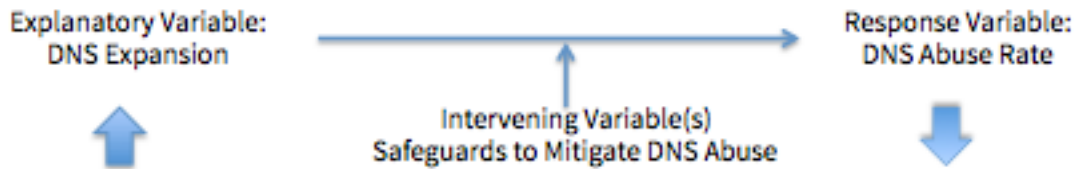
Causal Models and Hypotheses

The models below derive from a simple central hypothesis that—theoretically at least—the introduction of safeguards to prevent DNS abuse in new gTLDs should result in a “cleaner” (i.e. fewer malicious activities) DNS space compared to the “legacy” TLD era when such safeguards did not exist.



Three testable hypothetical scenarios derive from this base model:

Model 1: The expansion of the DNS has resulted in a proportional *decrease* in DNS abuse
(Effective Safeguard Hypothesis)

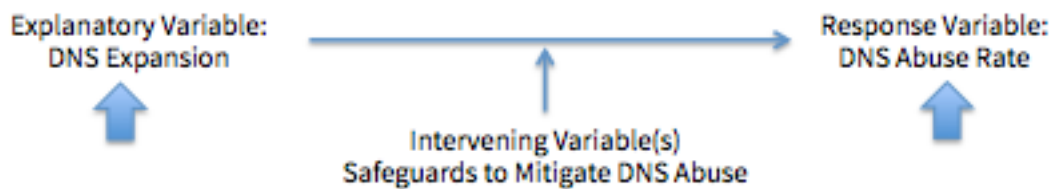


Research Question: To what extent are effective safeguards causal factors explaining the proportional *decrease* in DNS abuse?

Hypothesis 1: The “safeguarded” expansion of the DNS is a causal factor explaining the proportional **decrease** in DNS abuse in new and/or legacy TLDs, and/or the entire DNS (segment analysis by new and/or legacy, and/or entire DNS as appropriate).

Hypothesis 1.1: The safeguards put in place to mitigate DNS abuse have been **effective** in achieving their intended objectives, and are causal factors explaining the proportional decrease in DNS abuse (target individual safeguards for analysis as appropriate).

Model 2: The expansion of the DNS via the New gTLD Program has resulted in a proportional *increase* in DNS abuse (Ineffective Safeguard Hypothesis)

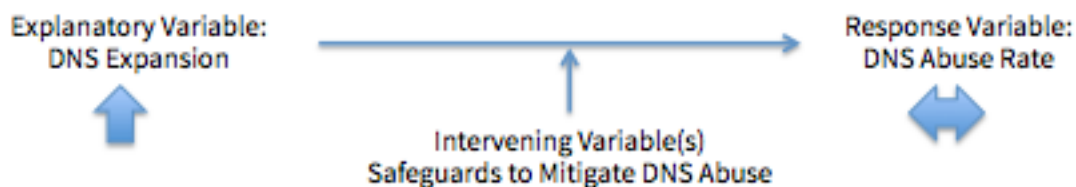


Research Question: To what extent are ineffective safeguards causal factors explaining the proportional *increase* in DNS abuse?

Hypothesis 2: The “safeguarded” expansion of the DNS is a causal factor explaining the proportional **increase** in DNS abuse in new and/or legacy TLDs, and/or the entire DNS (segment analysis by new and/or legacy, and/or entire DNS as appropriate).

Hypothesis 2.1: The safeguards put in place to mitigate DNS abuse have been **ineffective** in achieving their intended objectives (target individual safeguards for analysis as appropriate).

Model 3: The expansion of the DNS has had a *null effect* on DNS abuse (Ineffective Safeguard Hypothesis)



Research Question: To what extent are ineffective safeguards causal factors explaining the *lack of change* in DNS abuse?

Hypothesis 3: The “safeguarded” expansion of the DNS has had no effect on the proportion of abusive behavior occurring within new and/or legacy TLDs, and/or the entire DNS (segment analysis by new and/or legacy, and/or entire DNS as appropriate).

Hypothesis 3.1: The safeguards put in place to mitigate DNS abuse have been **ineffective** in achieving their intended objectives of providing a new gTLD space that is “safer” compared to the legacy space (target individual safeguards for analysis as appropriate).

Insofar as the work of the CCT-RT is concerned, this research proposal represents a possible approach to structuring their inquiry into the effectiveness of the nine safeguards to mitigate DNS abuse. Such an approach will likely necessitate hiring outside vendors with statistical and qualitative data collection and analysis expertise to build and conduct the actual study. It remains with the CCT-RT to decide the scope and method of any analysis. If nothing else, this research proposal can serve as a point of departure for discussing other possible approaches.

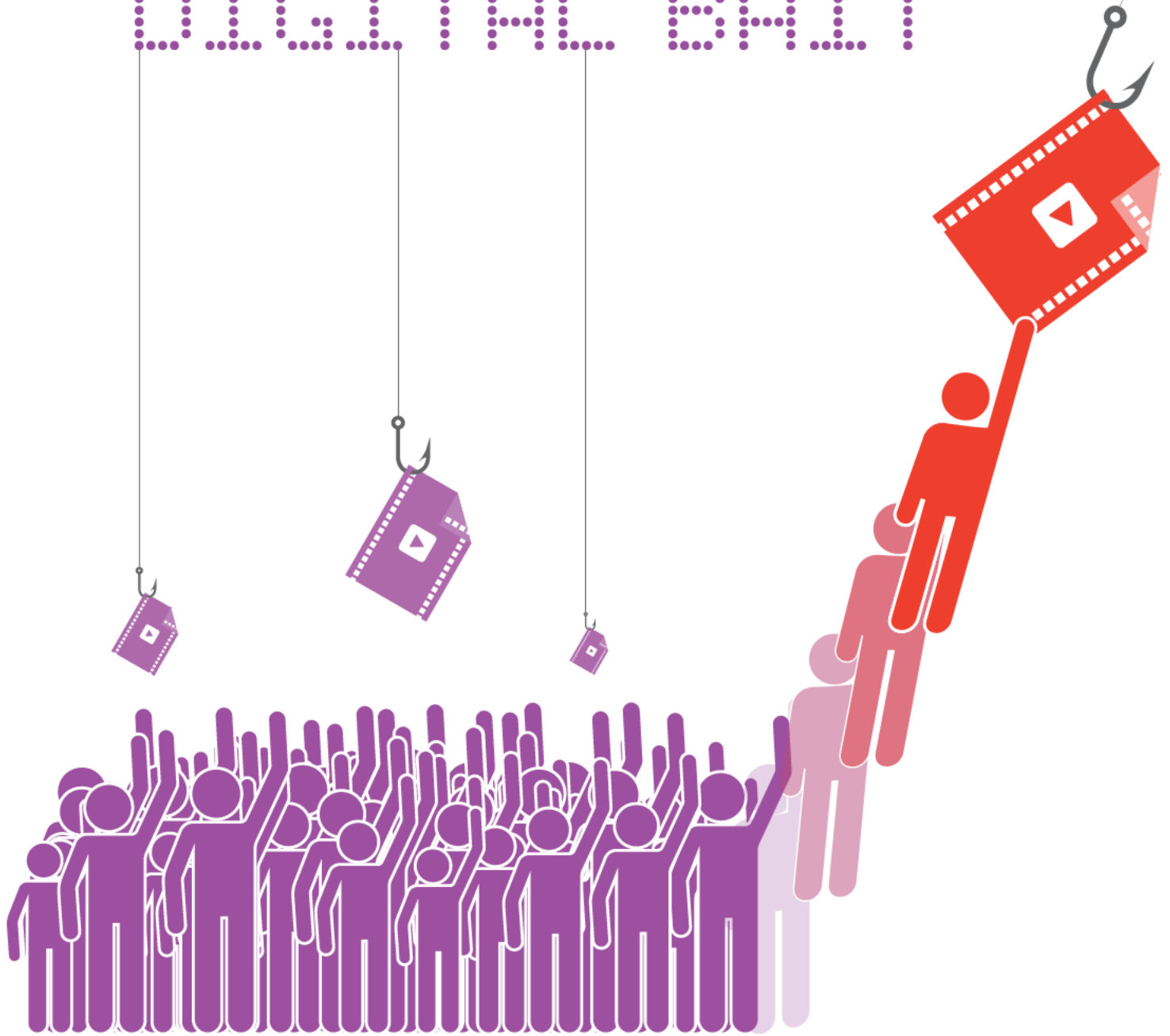
Appendix: Survey of Abuse-Related Activities at ICANN

Project	Scope	Source and Links
Registry Agreement Specification 11	<p><u>Section 3a</u>: “Registry Operator will include a provision in its Registry-Registrar Agreement that requires Registrars to include in their Registration Agreements a provision prohibiting Registered Name Holders from distributing malware, abusively operating botnets, phishing, piracy, trademark or copyright infringement, fraudulent or deceptive practices, counterfeiting or otherwise engaging in activity contrary to applicable law, and providing (consistent with applicable law and any related procedures) consequences for such activities including suspension of the domain name.”</p> <p><u>Section 3b</u>: “Registry Operator will periodically conduct a technical analysis to assess whether domains in the TLD are being used to perpetrate security threats, such as pharming, phishing, malware, and botnets. Registry Operator will maintain statistical reports on the number of security threats identified and the actions taken as a result of the periodic security checks. Registry Operator will maintain these reports for the term of the Agreement unless a shorter period is required by law or approved by ICANN, and will provide them to ICANN upon request.”</p>	<p>Source: Registry Agreement</p> <p>Link: Registry Agreements</p> <p>Link: FAQs: Specification 11 of the Revised New gTLD Registry Agreement</p>
SSR Review Team Recommendation 11	<p><u>Recommendation 11</u>: “ICANN should finalize and implement measures of success for new gTLDs and IDN fast track that expressly relate to its SSR-related program objectives, including measurements for the effectiveness of mechanisms to mitigate domain name abuse.”</p>	<p>Source: Security, Stability and Resiliency of the DNS Review Team</p> <p>Link: Final Report of the Security, Stability and Resiliency of the DNS Review Team</p>
GAC Advice: ICANN53 and ICANN54	<p><u>ICANN53 Buenos Aires Communiqué</u>: “The GAC...recommends...that the ICANN community creates a harmonised methodology to assess the number of abusive domain names within the current exercise of assessment of the new gTLD program.”</p>	<p>Source: ICANN Governmental Advisory Committee</p> <p>Link: ICANN53 GAC</p>

	<p>ICANN54 Dublin Communiqué: “The GAC advises and urges the Board to...develop and adopt a harmonized methodology for reporting to the ICANN community the levels and persistence of abusive conduct (e.g., malware, botnets, phishing, pharming, piracy, trademark and/or copyright infringement, counterfeiting, fraudulent or deceptive practices and other illegal conduct) that have occurred in the rollout of the new gTLD program.”</p>	<p>Communiqué, Buenos Aires</p> <p>Link: ICANN54 GAC Communiqué, Dublin</p>
<p>SSAC Advisory on Registrant Protection: Best Practices for Preserving Security and Stability in the Credential Management Lifecycle</p>	<p><u>Recommendation 1</u>: “As part of regular reports, the ICANN Compliance Department should publish data about the security breaches that registrars have reported in accordance with the 2013 Registrar Accreditation Agreement (RAA) paragraph 3.20.”</p> <p><u>Recommendation 2</u>: “A provision similar to 2013 RAA paragraph 3.20 should be incorporated into all future registry contracts, with similar statistics published as per Recommendation 1 above.”</p>	<p>Source: Security and Stability Advisory Committee</p> <p>Link: SAC074 Advisory</p>
<p>gTLD Marketplace Health Index</p>	<p>ICANN has developed a set of candidate concepts for community discussion to inform its creation of the gTLD Marketplace Health Index, which focus on (i) robust competition, (ii) consumer trust, and (iii) non-technical stability.</p> <p>These proposed concepts are intended to facilitate community discussion about what it means for the global gTLD marketplace to be "healthy." This community discussion is expected to produce measurable factors to serve as key performance indicators for the gTLD marketplace.</p> <p>A number of the concepts focus on DNS abuse as described herein.</p>	<p>Source: ICANN Staff</p> <p>Link: gTLD Marketplace Health Index Proposal: Call for Comments and Volunteers</p>

Exhibit DIDP A34

DIGITAL BAIT



HOW CONTENT THEFT SITES AND MALWARE ARE EXPLOITED
BY CYBERCRIMINALS TO HACK INTO INTERNET USERS'
COMPUTERS AND PERSONAL DATA

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Content theft, or piracy as it's commonly known, poses a serious and underappreciated threat to Internet users by exposing them to harmful malware that can lead to identity theft, financial loss, and computers being taken over by hackers, according to a new report commissioned by the Digital Citizens Alliance.

Probing a sample of 800 sites dedicated to distributing stolen movies and television shows, the cyber security firm RiskIQ found that *one out of every three* content theft sites contained malware.

The study found that consumers are 28 times more likely to get malware from a content theft site than on similarly visited mainstream websites or licensed content providers.

And just as worrisome, merely visiting a content theft site can place a users' computer at risk: 45 percent of the malware was delivered through so-called "drive-by downloads" that invisibly download to the user's computer—without requiring them to click on a link.

While content theft has long been wounding creators large and small, the RiskIQ report shows that the base of victims includes the unwitting Internet users who go to content theft sites for "free" content.

By exploiting stolen content to bait mainstream consumers, bad actors have uncovered an effective means to hack into millions of computers.

Baiting Internet users, stealing their personal information, and taking control of their computers is becoming big business—an estimated \$70 million per year just from peddling malware.

Digital Citizens found a significant change in the content thieves' business model. Historically, they have profited by taking money out of the pockets of content creators. Now, content thieves have created another stream of revenue that comes from

the spread of malicious materials to the computers of unsuspecting consumers. Content thieves are no longer satisfied with targeting creators, not when there is big money to be made from preying on consumers as well.

After its two "[Good Money Going Bad](#)" reports explored the business models behind ad-supported content theft sites, DCA commissioned RiskIQ, a leading provider of online security and ad monitoring services, to estimate the amount and type of malware that content theft sites carry and to explore the connection between content theft and malware ecosystems in the dark corners of the Internet.

What RiskIQ found should be troubling to anyone concerned about keeping Internet users safe online. The research found that once hackers get into a computer, they can use it for a wide range of criminal schemes where the user of the computer is the victim.

These include:

→ *Stealing bank and credit card information* that is then sold on underground Internet exchanges. After the hack, consumers find their bank accounts depleted or suspicious charges on their credit cards. There is an underground market for credit card information that ranges from \$2 to \$135 per credit card credential.

→ *Finding personal information* that makes it easier to sell a person's identity to the highest bidder online. In July, the FBI added five online criminals to its "Most Wanted" list for creating computer programs that stole identities and financial information.

→ *Locking a user's computer* and demanding a ransom fee before returning access to their files.

Hackers don't just steal personal information and financial records—they gain access to an Internet user's computer, enabling them to control it for nefarious purposes, including ad fraud, spamming,

denial of service attacks, or extortion by threatening to cripple businesses through attacks on their computer systems.

The majority of malware installed through content theft sites was either Trojans, to spy on the consumer's computer, or adware, designed to co-opt the consumer's computer into advertising fraud schemes.

This is disturbing news for the advertising industry and consumers. The Interactive Advertising Bureau (IAB), the trade association for online advertisers and sellers, reports that revenue for online advertising totaled \$49.5 billion in 2014. This is largely due to innovations in advertising that open up the ecosystem to a mass market for any advertiser or publisher with a bank account. However, malware threatens to undermine the trust in the new market these innovations have opened.

The U.S. Department of Justice reports that 16.2 million U.S. consumers have been victimized by identity theft, with financial losses totaling over \$24.7 billion.

What is perhaps most troubling about these findings is how easy it is for hackers. Bad actors dangle free content, consumers take the bait, and the end result is millions of identities at risk and billions of

dollars stolen. Then these computers are taken over to wreak more havoc, causing a nightmare for everyone from Internet users, to advertisers who get defrauded, to corporations blackmailed into paying off hackers who threaten to use those rogue computers to launch attacks.

And it can all start with a casual visit by an Internet user to a content theft site.

These revelations should be a wake-up call. *To consumers:* be wary of content theft sites that offer something valuable for "free," for there is a good chance the price you actually pay is an infected computer. *To Internet safety groups:* create awareness and education campaigns, especially aimed towards younger Internet users who often don't consider the impact of their browsing choices. *To government:* step up enforcement of laws on the books to identify and deter those who bait and defraud consumers. *And to advertisers and ad networks:* continue to build safeguards against hackers who are creating elaborate fraud schemes and ultimately undermining trust in online advertising.

If the public better understands the intersection of content theft and malware, we can reduce the number of victims. Until we do so, there will be bait . . . and prey.

OBJECTIVES

DCA commissioned RiskIQ to assess and analyze any links between content theft sites distributing unlicensed copies of movies and television shows and malware.

RiskIQ performed this study in two parts. The first is a quantitative study that analyzed the rate of malware exposures across a sample of content theft sites against a control group representing the general web site population. The second is a research study into the malware distribution ecosystem and the role content theft sites play. Taken together, the two pieces present a clear picture of the mechanics of what, why, and how frequently content theft site operators place malware on their sites, and the economics of the partnership between content thieves with the pushers and designers of malware.

RiskIQ's focus is to detect malware incidents for web sites and advertisers trying to protect themselves from malware exploits that would affect their end consumers and partners. As such, RiskIQ detects anything ranging from suspicious incidents to outright, confirmed cases of malware. RiskIQ's system classifies cases as "exact" matches, which are confirmed and active cases, and "reputational" cases, which are incidents that are suspect because they use infrastructure that was previously used for a malware attack. In the interest of precision, for the purposes of this study, RiskIQ used only "exact" matches. This conservative approach suggests that the actual level of malware is larger—and perhaps much larger—than the estimates found here.

QUANTITATIVE STUDY METHODOLOGY OVERVIEW

The quantitative study was designed to provide an objective comparison of the amount and type of malware found on content theft sites with a control group of sites, which comprise a sam-

pling of legitimate viewing sites and random sites that are representative of the general Internet. In both groups, a broad sample of sites was analyzed, including sites that are highly popular and those less frequently visited.

RiskIQ defined malware as software designed with malicious intent to gain unauthorized access, collect private data, or inflict intentional damage.

The sites were probed for malware by simulating the behavior of users from the U.S. with a variety of browser profiles to approximate typical U.S. targets for malware distributors.

SAMPLE DESIGN

The sample group was comprised of "*content theft sites*" which consist of:

- 25 Sites from the March 2015 Notorious Markets Report published by the U.S. Trade Representative
- The top 25 sites from the Google Transparency Report (GTR) for the month before the scan. (Note this list overlaps with the Notorious Markets Report.)
- 750 sites selected at random from the top (250), middle (250) and bottom third (250) of the GTR with at least 20,000 copyright infringement removal requests since the inception of the GTR

The following were excluded from the sample group of content theft sites:

- Sites primarily dedicated to video game content theft were excluded from the study because most gaming files are executable files, which carry more apparent inherent risks of malware infection.
- Sites with primarily adult content were also excluded. This was done by filtering out adult related domains and by running a keyword classifier for page content.

CONTROL GROUP DESIGN

Control group sites were intended to represent legal online media sites and the general Internet and were drawn from the following sources:

- 100 sites were selected from the list of legal online media sites on Where to Watch, a site that promotes legal alternatives in the U.S. to content theft sites.
- 150 sites were selected, like the sample group, at random from among top third, middle third and bottom third of global Alexa-ranked sites ranging from the top ranked site to the 999,999 ranked site, and filtered so as to not overlap the sample group.

DATA COLLECTION

All sites in both the sample and control groups were scanned for malware for a period of four weeks from June to August 2015. RiskIQ's proprietary malware detection solution scans sites with a global proxy network of virtual users that simulate the behavior of real consumers with a variety of operating systems and browsers. For the purposes of this study, scans were limited to users across 20+ cities in the U.S. only. Malware analysis was run through a series of market standard malware detection tools, including VirusTotal and RiskIQ's own proprietary detection system.

Each simulated user was configured to navigate up to three levels deep for a maximum of 25 pages daily per site. Data collection sampled an average of just over 50 pages daily per site during the four-week period. Scans were designed to check for the presence of malware in either "drive-by downloads" (where no user initiated action is required) or user-initiated downloads, typically delivered through pop-ups or fake software update requests. Click throughs were performed based on a link scorer that preferred links containing downloads over

navigation links while clicking through 5 links per page to a depth of 3 pages within a site. Additionally, click throughs were limited to the domain of the first page in a site crawl.

The amount of malware discovered is a conservative measure because:

- No ads were clicked on for the study. Most malicious ads deliver malware upon loading. Even though RiskIQ's system is capable of clicking through on ads, previous experience had shown that the rate of malware exposure from actually clicking on ads was extremely low, indicating that clicking on ads would not have materially changed the results of this study; and
- No files were downloaded from the sites for the study, even though malware can be delivered through the file download, which means that the study does not include the malware risks from sites, such as torrent sites, that offer downloading of content.

These limitations of the methodology suggest that the malware uncovered by this report is a conservative measure of the total amount of malware delivered by content theft sites.

DATA AVAILABILITY

RiskIQ designed a study that could be easily repeated by any researcher with the capability to adequately analyze and detect malware on web sites.

The data and malware analysis from this report is available online at:

- <http://www.digitalcitizensalliance.org>

Researchers who wish to repeat the study or have questions about the results may contact the DCA through their online contact form.

PROFILE OF A CRIMEWARE DISTRIBUTION NETWORK

After calculating the amount of malware found on content theft sites, RiskIQ went on to probe the ecosystem connecting malware to content theft sites. Specifically, they looked at who deployed the malware, what kind of malware was prevalent, and how much money could be made from using content theft sites to distribute it. For the qualitative component of the study, RiskIQ sent researchers

with undercover online personas into DarkNet exchanges and marketplaces to collect information about popular malware distribution programs with ties to content theft sites. Multiple programs were found. A typical program is profiled in this report with some details removed to protect the sources that provided the information. This profile provides valuable insight into the typical revenue for sites involved with malware campaigns and sheds light on how the business relationships work.

SITES WITH MALWARE INCIDENTS

RiskIQ found that 33 percent of sites in the Content Theft Sample group had at least one malware incident over the month in which it collected data compared with 2 percent for the Control Group.

MALWARE INCIDENT RATES FOR USERS VISITING THESE SITES

RiskIQ found that users are 28 times more likely to be infected with malware when visiting sites in the Content Theft Sample group as compared with the Control Group. Of the Content Theft Sample group, 8 percent (1 in 12) of user visits resulted in exposure to malware, compared with 0.3 percent (1 in 333) user visits for the Control Group.

Many of the sites in the Content Theft Sample Group sustained very high exposure rates, suggesting that malware distribution was part of their ongoing modus operandi. For example, 20 of the content theft sites exposed more than three out of every four users (75 percent) that visited them to malware.

HOW MALWARE IS DELIVERED

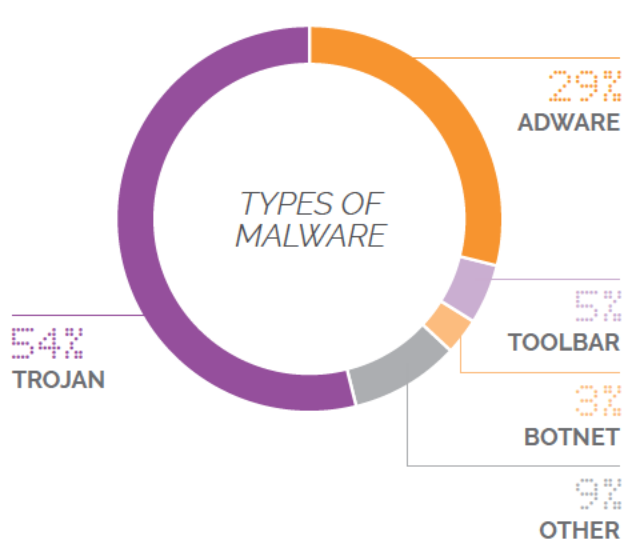
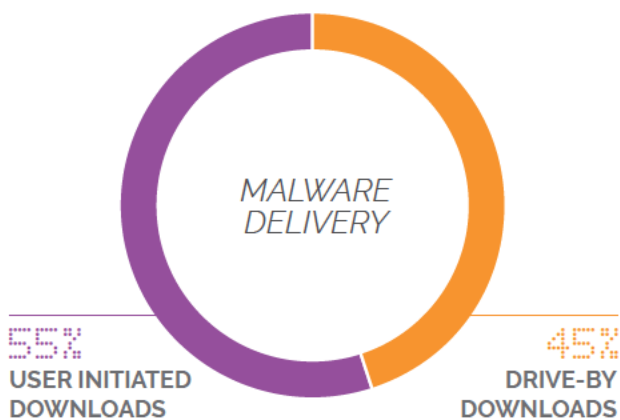
"Drive-by downloads" allows malware to be delivered without the victims even having to click on anything after arriving on the page. Drive-by downloads infect users silently and can go completely

undetected. Forty-five percent of malware payloads found on the sample sites downloaded invisibly in the background and did not require the user to do anything to confirm the download. Users did not need to download media or click on any pop-up advertisements to be infected by these attacks.

The remaining 55 percent of the malware lured users with fake prompts for requests such as Flash downloads and anti-virus updates -- many of these prompts look virtually identical to prompts from the actual legitimate providers of such services. While some users may know enough to avoid fake prompts, attackers are often able to trick users into accepting a payload just to get rid of a pop-up. The malware payloads for these user initiated downloads are typically larger, containing more than one type of malware because they do not have to be installed surreptitiously in the background like drive-by downloads.

TYPES OF MALWARE

Over half of all malware detected was classified as Trojans by RiskIQ's malware analysis tools. "Trojan" is the general term for any malware that secretly installs itself to open unauthorized access to a computer.



Malicious adware and toolbar software were the next most prevalent types. The definition of Adware can range from benign to annoying to malicious. Adware detected by the anti-virus tools in this study was weighted toward the malicious end of the spectrum.

Lastly, "Other" was used to signify minor categories and instances where an exploit kit was detected but the malware type was not determined.

A subset of Trojans, Remote Access Trojans ("RATs"), were also quite prevalent. RATs can be used to steal logins and financial data, or take over a user's web cam and use it to spy on them. Below is a list of the top 10 RATs found in our scans.

TOP 10 REMOTE ACCESS TROJANS (RATS) IDENTIFIED IN RISKIQ SCANS

- 1. XTREME RAT*
- 2. BIFROST*
- 3. BACK ORIFICE*
- 4. NJRAT*
- 5. ADWIND*
- 6. DARKCOMET*
- 7. BLACKSHADES*
- 8. SBU7*
- 9. POISON IVY*
- 10. CERBERUS*

ESTIMATED NUMBER OF CONSUMERS AFFECTED

RiskIQ estimated that each month 12 million U.S. users were being exposed to malware attacks from the specific sites they visited in the Sample Content Theft Group, based on Alexa traffic data and RiskIQ's measure of malware incident rates.

RiskIQ applied the average malware exposure rate for each site with Alexa average monthly traffic of unique visitors. Note that Alexa data does not permit de-duplication of visitors; however, the 12 million user figure may still be a conservative estimate among the Sample Group for two reasons:

First, Alexa measures audiences by allowing Internet users to opt into a tracking panel. Many users who engage in illegal activities do not choose to opt in to the Alexa panel because they do not wish to have their online behavior tracked. For this reason, traffic to Content Theft sites, and DarkNet sites in general, is likely underreported. Second, Alexa tracks traffic data for only 21 percent of the sites in the Sample Content Theft Group. According to Alexa, the sites that were tracked average more than 88 million unique users from the U.S. each month.

Given that the remaining 79 percent of sites do not have traffic figures, and further that the non-Sample sites are not covered by this estimate; this number is a floor, not a ceiling, for the potential users affected.

THE INTERNET'S MOST DANGEROUS INTERSECTION: CONFEET THEFT & MALWARE

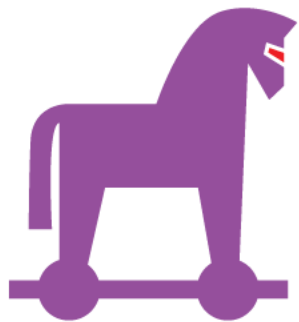
Malware inflicts significant harm on consumers, on advertisers, and on society in general. This section explains in words and in illustrations how the major types of malware work, and the serious problems they can inflict.

MALWARE AND ITS MANY TYPES



MALWARE

Software designed with malicious intent to gain unauthorized access, collect private data, or inflict intentional damage.



TROJANS

Software that installs itself without the user's knowledge either secretly or hidden inside a seemingly benign user action such as opening an email or web page. Most Trojans open up unauthorized access to the victim's computer.



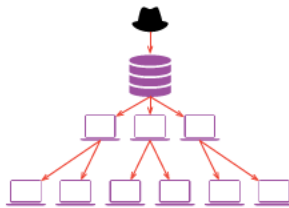
REMOTE ACCESS TROJANS (RATs)

A particularly powerful form of Trojan that gives the attacker administrative access to the user's computer. Hackers use RATs to steal data and control webcams, even making videos of unsuspecting victims. For more information on RATs, see the DCA's report [Selling Slaving](#).



ADWARE

Software designed to make money through ads targeted at the computer's users. Adware is often installed without the user's consent as part of another program. Adware programs can be highly invasive, running in the background and serving pop-ups to the user even when they are not browsing, and collecting their personal data in order to target them with more profitable ads. They are also frequently used for the purposes of traffic fraud. Adware can range from the benign to the annoying to the malicious. Adware detected by the anti-virus tools in this study was weighted toward the malicious end of the spectrum.



BOTNET

A distributed system of Internet connected computers acting as a group at the command of a Bot controller, who directs them to accomplish certain tasks. Botnets are used to fake advertising traffic, attack web sites in Distributed Denial of Service attacks (DDOS), and carry out spam and phishing campaigns.



EXPLOIT

Software or a script that takes advantage of a computer's security vulnerability—often with Flash or Java—to install unwanted code such as malware. Where malware is the payload, the exploit is the tool that opens the computer's back door to install the program.

THREATS TO CONSUMERS

Few consumers who use content theft sites, or whose family members use such sites, realize they have become targets for malware. And malware means more than just a slow computer. An infected computer exposes everyone who uses it—children, spouses, or roommates—to the risks of being victimized by any of a variety of criminal schemes.

This study found a range of malware exploits on content theft sites targeting both computers and tablets. Typically, the risks to consumers fell into three categories.

Identity Theft is the most prevalent problem. As noted in our findings, Trojans were by far the most prevalent type of malware RiskIQ found in its scans. Popular Trojans such as Dyre, Zeus, Shyloc, and Ramnit are designed to steal consumer credentials on a massive scale. Once a consumer has inadvertently downloaded the software, the criminal behind the exploit, known as a harvester, batches together credentials from the same financial institution, and sells them online in underground exchanges for anywhere from \$2 to more than \$135 per credential,¹ depending on the quality. Trojan kits were once available only to highly skilled or connected cyber criminals. Today, anyone with basic web skills can find and deploy them.

Ransomware is malware that installs itself on the consumer's PC, encrypts their files, and posts a message demanding they make a payment in order to regain access to their files. Typically, criminal operators demand \$100-\$500 in ransom,⁴ the same price as a data recovery service would charge in most U.S. cities. In June 2015, the FBI reported receiving complaints amounting to \$18 million in losses due to ransomware for the past year alone.⁵

THE DEPARTMENT OF JUSTICE REPORTS THAT U.S. CONSUMERS LOSE \$24.7 BILLION TO IDENTITY THEFT IN A SINGLE YEAR.² CONSUMER REPORTS FOUND THAT MALWARE ALONE COSTS CONSUMERS \$2.3 BILLION.³

UP TO \$135
THE GOING RATE PER CONSUMER CREDIT CARD CREDENTIAL ON UNDERGROUND INTERNET EXCHANGES

\$100-\$500
TYPICAL AMOUNT CHARGED BY RANSOMWARE OPERATORS FOR CONSUMERS TO REGAIN ACCESS TO THEIR PC

Remote Access Trojans, or RATs, are a particularly potent form of Trojans that grant the controller full access to the victim's device. Not only can they log keystrokes and collect data or files, they can also access the camera. As the DCA reported in its study, [Selling Slaving](#), hackers who run networks of slaved devices sell video streams of men, women, boys, and girls as reality porn online to communities of voyeurs. Also concerning is the rise of one-to-one attacks by hackers who select a victim, "own" their computer, and proceed to blackmail and manipulate them. The most common scenario is to take compromising pictures or capture compromising secrets from the user's PC. Then, the attacker threatens to publish the pictures or information on social media if the victim does not meet their demands. As noted in the findings, RiskIQ found several popular RATs, which have large distribution and are very easy to use.

CONTENT THEFT SITES OFFER THE PERFECT VEHICLE TO DELIVER MALWARE TO MAINSTREAM CONSUMER HOUSEHOLDS. OFTEN KIDS DO THE DAMAGE BY VISITING SITE OFFERING FREE DOWNLOADS, LEAVING INFECTED THE HOUSEHOLD COMPUTER WHERE PARENTS PAY THE BILLS AND MANAGE BANK ACCOUNTS.

MALWARE FRAUD SCHEMES AGAINST CONSUMERS



"THE ID SNAG" → CREDENTIAL THEFT CYCLE

1. Household members visit content theft site
2. Site downloads Trojan or "spyware" to victim's computer
3. Spyware activates when adult members of household log in to banking site or credit card site
4. Malicious advertiser or "Harvester" grabs the consumer's logins and sells them into underground exchanges
5. "Cashiers" buy thousands of credentials and systematically exploit them
6. Victims often find later that their bank account has been drained or systematically raided with random charges that often go unnoticed for many months



"THE RANSOM" → RANSOMWARE SCHEME

1. Household member visits content theft site
2. Site installs malware that fully encrypts the user's files or merely posts a scare-tactic message. Some ransomware even posts fake messages about the user's "Illegal activity," demanding they pay a fine for downloading copyrighted media or illegal pornography.
3. Consumer must then negotiate with the attacker to pay a ransom fee to regain access to their computer and files



"THE SLAVER" → REMOTE ACCESS TROJANS

1. Household member visits content theft site
2. Site downloads Remote Access Trojan to victim's computer
3. Attacker then takes control of the computer in order to spy on the user's activity:
 - » Web cam can be turned on for a live web stream into the consumer's private life. Access to these web streams are commonly sold in forums to voyeurs.
 - » Personal data can then be used to blackmail the user with threats of posting information about their private life on their own social media accounts.
 - » Just as with any Trojan, identity theft is always an ultimate endgame when other options are not as fruitful for the attacker

THREATS TO ADVERTISERS

Malware distribution through content theft sites also defrauds advertisers. Double Verify, a leader in the ad verification business, observed in 2014 that content theft sites have unique characteristics that make them ideal for traffic laundering. They have high volume traffic from a valuable audience, but their objectionable (pirated) content drives away premium advertisers. Advertising fraud schemes offer content theft sites a way to earn money from premium advertisers without those advertisers knowing their ads appeared on such sites. For the criminals behind advertising fraud, a content theft site offers a vehicle to capture real, valuable users clicking on ads.

From the criminal's perspective, installing malware from content theft sites is an attractive line of business. Alternative money-making scams, such as phishing emails, have always been a blunt tool for targeting, and enforcement efforts have made them increasingly less effective. "Malvertising" campaigns, by contrast, are highly targeted and very efficient. The proliferation of malware via content theft sites contributes to three trends that should be of concern to anyone in advertising.

More malware means more bots, and more bots could mean more traffic fraud. Content theft sites use media content to draw quality audiences to their web sites. When these same consumers get

\$50-\$200

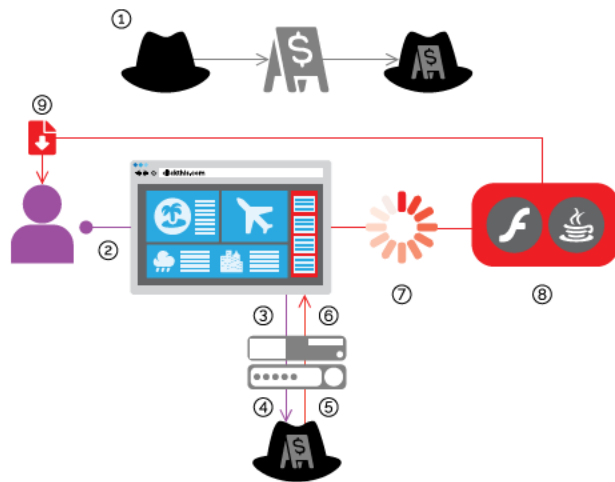
*PAY RATE PER 1,000 INSTALLS FOR A
TYPICAL MALVERTISING CAMPAIGN⁶*

malware on their PC, they may become a part of the massive infrastructure that perpetrates traffic fraud on the advertising industry.

In the November 2015 report from IAB and EY, "What is an untrustworthy supply chain costing the US digital advertising industry?", researchers estimated that advertisers would lose \$4.4 billion annually to fraudulent, non-human traffic.⁷

More malware means more ad blocking. Ad blocking has been on the rise since 2012, creating more obstacles for advertisers to reach their audience, and reducing the revenue necessary to drive the creation of more sites and services. Adobe reports that over 144 million Internet users globally use Ad Blocking software.⁸ Users who do use ad-blocking software cite privacy as their major concern. Publishers are now reporting ad-blocking rates from 10-50 percent depending on their demographic.⁹ Continued headlines over identity theft and malware infections delivered via ads will drive this advertiser-unfriendly trend.

HOW MALVERTISING WORKS



1. Attacker registers as an Advertiser with Self-Service Ad Platform
2. User visits website
3. User Targeting Data sent to Ad Platform
4. Impression sold to Attacker
5. Malvertisement served to Ad Platform
6. Malvertisement served to Website
7. Exploit kit loads
8. Vulnerable browser plugins discovered
9. Malware installed on User's device

MALWARE FRAUD SCHEMES AGAINST ADVERTISERS



"THE ROBOT ARMY" → HOW BOTS GENERATE FAKE IMPRESSIONS

1. Content theft sites attract mainstream population from valuable households
2. Household member's device infected by malware that converts PC into a "bot" that browses sites in the background, loading and clicking on ads
3. Bot owner rents out household PC for fraud schemes
4. The family is left to wonder why their home PC is running so slow, while it surfs the web and clicks on ads to make money for the bot owner and criminal ad fraud schemes



"THE WASH" → MONEY LAUNDERING SCHEME

1. A criminal organization sets up web sites as a "front." Often these are sketchy sites with cheap content—even stolen content, or sites run by "mules" who are recruited by the criminals to run ads to launder money
2. The web site operators or mules register with a sketchy ad network or advertising exchange without sufficient controls to detect traffic fraud
3. The same criminal organization that set up the web sites then runs click fraud bots to view and click on the ads
4. Web sites like content theft sites attract just enough natural traffic to avoid being detected for fraud
5. Money makes full cycle from advertiser to web sites that are usually controlled by the same organization. The typical revenue share to ad network or exchange and money mules is a reasonable fee for laundering the money

THREATS TO SOCIETY

Malware not only affects individuals and advertisers. Infected computers can also be enlisted into criminal activities that affect society at large.

Botnets play an essential role in the crimeware economy. Malware can convert the consumer's PC into a "bot" or "zombie" that performs the operator's bidding. Botnets essentially act as underground distributed computing systems for criminal operators.

Distributed Denial-of-Service Attacks (DDoS) disrupt consumer services by flooding a target web site or Internet service with so many requests that it simply shuts down. With rental rates from nefarious web site operators starting as low as \$150, botnets are relatively cheap to use for DDoS attacks and can exact an expensive toll on their targets.

DDoS attacks are sometimes used by hacktivists to attack or censure governments, organizations, and publications with which they disagree. They are also used by criminals to extort money from the organizations that they target. Last but not least, DDoS attacks can be used to distract security teams and keep them busy while hackers try to penetrate their defenses. Security firm Incapsula surveyed over 270 firms in North America between 250 and 10,000 employees on the impact of DDoS attacks. The average cost of an attack across all survey respondents was estimated to be about \$500,000. For a sense of how individual firms can be affected, technology firm Neustar offers this [DDoS cost calculator](#). DDoS attacks continue to be a tremendous cost to the private sector in terms of money, jobs, and productivity.

\$1,000

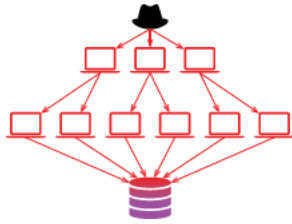
THE HOURLY RATE FOR RENTING
10,000 U.S. COMPUTERS ON
RECENTLY DISCOVERED BOTNET¹⁰

Spamming and Phishing clog the mail servers of the Internet and provide a major vector for malware distribution and credential theft. "Botted" computers acting as mail servers send out emails that would otherwise be blocked by most commercial senders. Some even host phishing sites themselves to avoid the obvious challenges of hosting them with a reputable commercial ISP. The largest documented botnets in history have been found to infect millions of computers and send out billions of emails per day.¹¹

Distributed Financial Fraud is another common use for infected computers. Some bots are capable of capturing a victim's account login and then using that same computer to log in and conduct transactions on the account to avoid detection. Because the transaction comes from the victim's own computer, it is much harder for financial institutions to detect the fraud.

In summary, botnets provide criminals with the infrastructure to wreak havoc and mischief on the Internet community at large. For the consumer, the most obvious effect of botnet software is a slow computer, but participating in a botnet unwittingly assists criminals to defraud other consumers. Consumers who host bots unwittingly become a part of a global network of computers that are the underpinning of many cybercrime schemes.

MALWARE FRAUD SCHEMES AGAINST SOCIETY



"THE SHAKEDOWN" → DISTRIBUTED DENIAL OF SERVICE EXTORTION AND CENSORSHIP

1. A criminal organization contacts the target organization and warns them of impending Denial of Service (DDoS) attacks if they do not cooperate. For online publishers and public-facing organizations, the demand may be political in nature. For corporations, the demand may be for money.
2. If the organization refuses to cooperate, the extortionists stage a DDoS attack by renting a botnet service to provide the computing power
3. Depending on their security posture and resources, the target will experience down time on their public site in the worst case, or a financial loss of computing and human resources

At the heart of content thieves' efforts is criminal exploitation of both the creator and consumer of pirated content.

“Crimeware” refers to software written for the purpose of these criminal enterprises. To understand how it works and how such an operation can achieve scale, it is important first to understand the basic infrastructure of the economy underpinning the Internet criminal underground that has developed over the past fifteen years—which Digital Citizens calls the crimeware economy.

THE DARKNET

The DarkNet is the term commonly used to describe the criminal underground that operates online outside the public eye. It is made up of private forums, “friend-to-friend” private networks, and anonymous networks such as Tor that enable criminal activity without fear of being identified. In that underground, criminals buy and sell illegal wares including stolen credit cards, personal information, drugs, and human trafficking. Payments are made using anonymous payment methods such as Bitcoin, Litecoin, and Ripple¹² that cannot be traced by law enforcement. In this environment, criminals have operated with impunity since the early 2000s. In the DarkNet, there is a thriving market for crimeware.

INSIDE THE DARKNET

The DarkNet costs economies around the globe more than \$300 billion per year.¹³ At the heart of the

underground economy are the online chat forums, where criminals buy and sell their wares. These forums can range from specialized “carding forums”—where criminals purchase or sell stolen credit cards—to full-fledged e-commerce sites. Before it was taken down, Silk Road made millions connecting sellers of illegal drugs to interested buyers. In the post-Silk Road era, sites have emerged that sell illegal and dangerous items all on one site—including illicit drugs, personal financial information, weapons, and malware.

As of August 2015, there were about 47 such online markets.¹⁴ The majority of these sites are in the English language. There are also markets in French, Finnish, Italian, Polish, and Russian.¹⁵ A single carding forum can have as many as 13,000 members with 4,000 daily visits and 20 sub-forums covering a range of topics such as online security, tutorials, carding, botnets, web design, and money laundering.¹⁶ It is in these underground markets that hackers peddle malware, exploits, botnets, etc.

THE PROFESSIONAL HACKER

Modern hackers are professional, organized, and monetarily motivated. According to Marc Goodman, author of *Future Crime*, 80 percent of hackers are affiliated with organized crime.¹⁷ As Goodman points out, this radical shift has led to the creation of increasingly sophisticated criminal organizations that operate with the professionalism, discipline, and structure of legitimate enterprises.

CRIMEWARE SPECIALIZATION

Like any market, the crimeware market has evolved to reflect a division of labor. Within the DarkNet are dozens of unique product and services categories. Anyone from professional criminals to nation states can purchase Trojan malware, Exploit kits/packs, or services such as dedicated hosting or Distributed Denial-of-Service attack services.¹⁸ Many of these products and services come complete with service agreements and money-back guarantees.

The DarkNet allows individual hacking groups to specialize in specific categories and to earn money for delivery of goods and services to other criminals. For example, one organization may special-

ize in developing the malware that is installed on consumer devices and sell it on the web. Another organization will be responsible for distributing and installing the malware on consumer PCs or mobile devices. A third group that runs a forum might also purchase stolen consumer credentials and resell them in the DarkNet. The ultimate buyer of the credentials plays the role of *cashier* to collect cash from the credentials by actually exploiting the bank or credit card accounts. Because of the role the DarkNet plays in facilitating anonymous communication, none of these specialized groups ever has to meet one another. This enables a very efficient market for crimeware developers and distributors.

To better understand the economics and working relationships behind a typical crimeware distribution network, RiskIQ sent covert agents into the DarkNet to research organized malware programs that exploited the content theft sites in the sample sites scanned in the earlier part of the study.

CRIMEWARE AND AFFILIATE PROGRAMS

Affiliate programs are the primary vehicle for spreading programs like malware and adware via content theft sites. These programs are a common model in the advertising world. Typically, a malware publisher or *affiliate* joins an ad network that rewards them on some type of "pay for performance" model. The two most common models are "Pay-Per-Click," where the advertiser pays an affiliate publisher for each user click on an ad, and "Pay-Per-Action," where the advertiser pays for a specific action such as filling out a form or making a purchase. In the world of advertising, there is a range of affiliate networks, some with high business standards, and some that operate in gray areas. It is typical for less reputable affiliate networks to offer same-day payouts, which enable participants to join, engage in a questionable advertising campaign, and leave with their money in the same day. In the criminal underground, crimeware distribution campaigns are commonly referred to as "Pay-Per-Install" (PPI) campaigns because they pay out for every malware installation that the publisher delivers.

Affiliate programs offering a PPI model can pay as little as five cents per install to as much as \$2. For malware that involves secondary conversions, there is an additional source of revenue after the user installs the malware. These include such schemes as Fake Anti-virus or Ransomware, where

the payout per user for the affiliate can be as high as \$25 for each victim that ends up paying the ransom, which (as noted above) is typically \$100-\$500.

The PPI affiliate programs work in two ways: hosting models and traffic models.

In a hosting model, the program provides the malicious download to the affiliate and relies on the affiliate to generate installs. This means the affiliate is responsible for (1) hosting the install, (2) creating a lure to trick people into downloading it (such as codecs), and (3) generating traffic to the download location.

Generally speaking, these types of programs are sophisticated and tightly guarded. For instance, a program run by one of the world's top spammers will re-package their malware every few hours in order to avoid detection by anti-virus software. The affiliate is then responsible for constantly refreshing the install if they want to avoid having it flagged by anti-virus software. In fact, this malware affiliate program is so strict that affiliates hosting old executable files that were flagged by anti-virus software are expelled from the program. This particular program is advertised only in Russian-language underground forums open only to vetted individuals; even then, the potential affiliates must also prove they have the ability to deliver traffic.

The traffic model, by contrast, relies on the affiliate to drive traffic to the page hosting the install that was created by the program. Most of the affiliate programs RiskIQ observed fell into this category. Media-related traffic is delivered via redirect links, popups and popunders. Most offer a movie download as the lure to get consumers to unwittingly in-

stall an executable malware file. Each affiliate web site is compensated for every malware install completed.

The malware RiskIQ observed from these sources tend to be adware or bloatware, which monitors traffic and slows down machines. And since many of these programs are for actual user-prompted downloads, the operators also have the ability to control what people download, which can lead to more severe infections.

HOW ONE AFFILIATE PROGRAM WORKS

RiskIQ identified one program in particular that was very popular within the content theft community. To protect sources, it is referred to it as *Advertising Underground* (not its real name).

Advertising Underground was found in RiskIQ's scans of content theft sites. It has been around since 2009, a very long time for such a program, which is a testament to its durability and quality, and has been drawing a lot of attention lately in the Russian underground. As is the case with other affiliate programs, *Advertising Underground* has used different names and guises since 2009, which helps it fly under the radar of law enforcement.

Advertising Underground, which appears to be based in Russia, has a strong reputation and is recommended in the Russian underground community, because it pays out its affiliates in a timely manner and converts traffic to installations at a high rate. *Advertising Underground* mainly installs toolbars, torrent download clients, and games, which are generally associated with adware, though more trusted affiliates of *Advertising Underground* could be given sites with more malicious and lucrative installs like ransomware.

Advertising Underground's program managers have acknowledged that it is involved in the spread of adware and other malicious programs. When asked if VirusTotal—a leading malware and anti-virus platform—will detect their malware, they respond that they frequently "clean" or repackage the installs to evade antivirus detection, just as the affiliate program discussed above did.

Advertising Underground operates both in the English and Russian languages and offers support and a personal manager. Potential affiliates are required to contact them with their web sites and eventually prove that they can deliver traffic. Following a chat over ICQ or Skype to vet potential affiliates, the affiliate must then prove their ability to deliver traffic to *Advertising Underground*.

Contact US e-mail password Sign in
forgot password?

is a Pay-Per-Install (PPI) affiliate program. We are distributing a lot of downloadable exclusive offers with different schemes:

Download Product Install Product Get Profit

up to \$1 per ESC install by default
\$0.10 per worldwide install
10% referral program

SIGN UP HERE

13 march stats will be updated by 15 march
Dear publishers, Stats in your panel for 2015.03.13 is not fully updated by now. Statistics will be updated by 15 march. Have a nice day!

New promo giving up to x2 revenue now available
Hello dear webmasters. We have finished new promo. It gives more installs from same traffic amounts, so you can easily get up to 2x more daily revenue. It is put to links with real file and gives user both files ours and real. Please contact support for details.

Download us to 15 January date

Home Download Help Contacts

As Simple as That

Downloading has never been so simple. You can easily find and download any file you want.

Get SimpleFile See our Tutorial

Free, 3.17 MB, Windows

Why SimpleFiles?

It's absolutely free. Yes, we are completely working on making your experience using our app even better. Ask about it's why simple - see website.

It's totally unique. Very simple interface is specially designed for search and every area. SimpleFiles does not require any specific knowledge to

It's an in-one app. Easy-to-use robust search engine for both your needs according to relevance, size, format that you like. And you control it.

More than 20 million files available for free download and all you need is to click a "Download" button to start search to your local drive. Don't

» Advertising Under-ground registration page

Home Download F.A.Q. Support

Just download and smile!

Downloading has never been so much fun. Download any file you want fast and easily.

Get Free, 3.1 MB, Windows

Search files

All Downloading Completed

file

- Captain America The First Avenger
Modified: 11/26/11 10:08:03 PM; Total left: 0%; 6.2 MB/s
- Captain America The First Avenger
Modified: 11/26/11 10:08:03 PM; Total left: 0%; 6.2 MB/s
- Captain America The First Avenger
Modified: 11/26/11 10:08:03 PM; Total left: 0%; 6.2 MB/s
- Captain America The First Avenger
Modified: 11/26/11 10:08:03 PM; Total left: 0%; 6.2 MB/s
- Captain America The First Avenger
Modified: 11/26/11 10:08:03 PM; Total left: 0%; 6.2 MB/s
- Captain America The First Avenger
Modified: 11/26/11 10:08:03 PM; Total left: 0%; 6.2 MB/s

» Torrent downloader from Advertising Underground using Captain America (in download box on the far right) as an enticement to install the program.

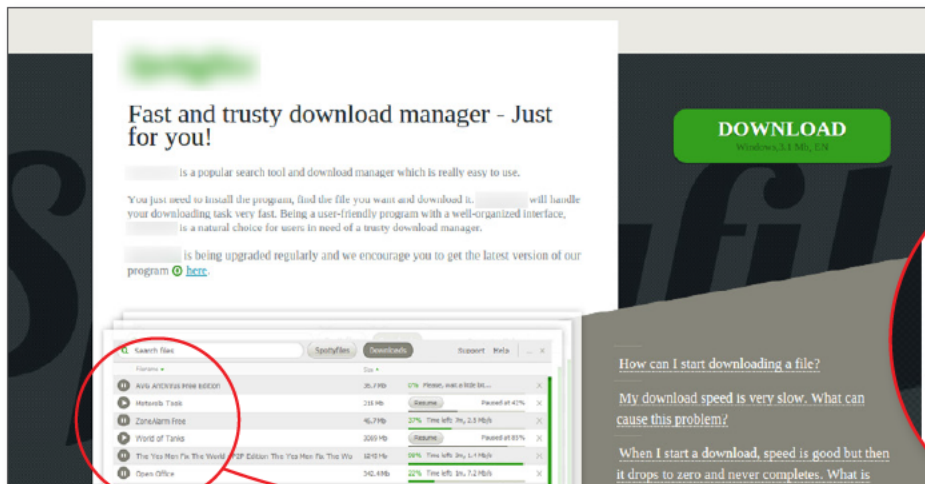
PAYOUTS

Advertising Underground pays for each application installed and appears to operate a traffic model. So it will provide the page with the install to which the affiliate drives traffic. They are not concerned with how the traffic is delivered to the page, except they explicitly prohibit spam traffic.

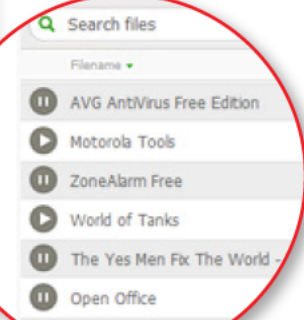
Advertising Underground claims a conversion rate of 1 download for every 7 visits, and will pay 10 cents U.S. per install in countries within the Commonwealth of Independent States and up to 20 cents U.S. for installs in Western countries.

However, some installs, such as the torrent downloader client described below, will earn an affiliate up to \$2 per download. RiskIQ observed this download in the crawls as spottyfls.com, and it was tied to the general-catalog.com home page.

The spottyfls.com torrent downloader is classified as adware by VirusTotal, and, since it controls the users' results, could be used to download more malicious programs in the form of torrents.



» Screenshot of Spottyfls.com



Antivirus	Result	Update
AVG	Generic_r_AID	20151130
AVware	Trojan.Win32.Generic!BT	20151130
Agnitum	PUA.Downloader!	20151130
AhnLab-V3	PUP/Win32.YourFileDownloader	20151130
Avast	Win32.Malware-gen	20151130
Avira	PUA/EDownloader.Gen4	20151130
DrWeb	Adware.Downware.13091	20151130
ESET-NOD32	a variant of Win32/ExpressDownloader.K potentially unwanted	20151130
K7AntiVirus	Adware (004b90661)	20151130
K7GW	Adware (004b90661)	20151130
Malwarebytes	PUP.Optional.SpottyFiles	20151130
NANO-Antivirus	Trojan.Win32.Agent.dxestg	20151130
Panda	Trj/Genetic.gen	20151130
Qihoo-360	HEUR/QVM10.1.Malware.Gen	20151130
Rising	PE:Trojan.ExpressDownloader1.A207 [F]	20151129
VIPRE	Trojan.Win32.Generic!BT	20151130
Zillya	Downloader.Agent.Win32.281189	20151130

» VirusTotal Results for Spottyfls.com

AFFILIATE EARNINGS

According to *Advertising Underground*'s claims, one arm of *Advertising Underground* supposedly has generated more than 150 million worldwide installs since 2012 and is said to have paid out \$12 million to affiliates.

Advertising Underground has been observed reaching out to other pirated media sites that were in the list of Sample Content Theft Sites to direct traffic to the *Advertising Underground*'s sites.

In one of the underground forum threads, one of the affiliates claimed that *Advertising Underground* generated 30,000 installs a day for him. Below are statistics from several users, whose earnings are \$200-600 a day from the affiliate program.

Advertising Underground's payout vehicles are a further testament to their criminal purpose. Payments to affiliate are only available via (1) WebMoney, which is one of the *de facto* means of payment in the criminal underground, (2) Epese, a Russian anonymous payment program, or (3) Western Union/MoneyGram.

Statistics table

Date	Hits	Unique	Installs	Money	CPM
2014-06-16	9272	6813	950	67.04	9.84
2014-06-15	24660	18773	2568	184.92	9.85
2014-06-14	22257	16897	2258	166.07	9.83
2014-06-13	22483	15976	2228	155.81	9.75
2014-06-12	21467	15834	2133	155	9.79
2014-06-11	22961	16352	2224	159.27	9.74
2014-06-10	22049	16718	2337	162.96	9.75
2014-06-09	22524	16477	2228	161.48	9.8

» Sample Advertising Underground chart showing payments to affiliates

Payment list

Date	Amount	Status
07.03.2014	\$295.49	in progress
16.01.2014	\$304.71	in progress
23.11.2013	\$244.00	Paid
19.09.2013	\$54.35	Paid

» Advertising Underground statistics 2

To better understand the incentives for distributing malware on content theft sites, RiskIQ calculated an estimate of the potential revenues these sites earn from malware.

PAY-PER-INSTALL RATES

Estimates of Pay-Per-Install rates range widely in crimeware research. Trend Micro found that the Russian Underground paid a range of 5-20 cents U.S. per install, depending on the target country.¹⁹ In RiskIQ's research into Pay-Per-Install Programs, it found an active affiliate campaign with typical mid-tier content theft sites offering 10-20 cents per install. The program profiled was well reviewed by third party users, not just its own web site, and had been in existence for some years. So, for the purposes of this model, RiskIQ used 15 cents as a conservative average Pay-Per-Install rate to estimate revenue.

ESTIMATED MALWARE EXPOSURES

The subset of the 800 content theft sample group sites for which visitor statistics are available on Alexa (n=229) average over 88 million U.S. users per month. Taking into account the sites' average malware exposure rates indicates that an estimated 12 million U.S. users were being exposed to malware each month from these sites. There is likely some

level of carryover in users across sites; however, Alexa does not measure de-duplicated visitors.

ESTIMATED INSTALL RATE

It is difficult to estimate the actual install rate for these malware exposures, as not every user's system is vulnerable in the same ways, and not every user clicks on the lure for user-initiated installs. In RiskIQ's underground research, it found that the program profiled claimed a 1 in 7 conversion rate for traffic (15 percent). Therefore, RiskIQ used this number for the purposes of estimating revenue.

REVENUE FROM MALWARE

Once malware is installed, there are ongoing services that add to the total lifetime value of the malware installation. Consumer credentials harvested by Trojans can be sold for \$20-45 per user (although less than \$10 if the market is flooded or the credentials are stale).²⁰ Botnets can be rented for up to \$1,000 per hour for 10,000 U.S. computers.²¹ Lastly, as mentioned earlier, Symantec found that the typical charge for a Ransomware clean up is \$100-\$500.²² For the purposes of this study, RiskIQ focused exclusively on the money earned from malware installations through content theft sites, not on the add-ons.

ESTIMATING POTENTIAL MALWARE-RELATED REVENUE

Combining these estimates leads us to calculate that the operators of the sample of content theft sites studied with Alexa visitor data (n=229) are generating roughly \$3.3 million in revenue per year:

12.2 MILLION Monthly U.S. Users Exposed to Malware (for Sample Group Sites with Alexa User Data)
X **15 PERCENT** Estimated Install Rate
X **15 CENTS** Pay-Per-Install Rate

= **\$274,500** Monthly Revenue
= **\$3.3 MILLION** Estimated Annual Revenue

This estimate has some limitations as previously described, but is within range of similar research studies on the economics of malware. For example, in 2012, Symantec found a group of sites running Pay-Per-Install malware campaigns where the top site was earning more than \$200,000 per year. This figure is in line with the data from our study, where only three exceptional sites are estimated to earn more than this figure.

Again, our estimate above is only for a small sample of sites. There are 4,865 sites in the Google Transparency Report that received 1,000 or more copyright infringing URL removal requests in the year preceding this analysis. Projecting the earnings from the 229 sites in the sample group to this broader universe suggests that these content theft sites may be generating roughly \$70 million in revenue per year:

(\$3.3 MILLION Estimated Annual Revenue for 229 Sample Group Sites
÷ **229** Sample Group Sites)
X **4,865** Sites w. 1,000 or more copyright infringing URL removal requests in the past year

= **\$70 MILLION** Estimated Annual Revenue

These assumptions are conservative in two respects. First, they do not take into consideration malware income from any of the many thousands of content theft sites that receive less than 1,000 notices per year. Because the malware rates across content theft sites are relatively constant regardless of size (7-9%), this may be a considerable sum. Second, they do not take into consideration the "add-ons" that content sites can earn from peddling malware.

While this is a rough estimate limited by the lack of comprehensive visitation data, it is easy to see that malware and content theft work together as a big business for the organizations behind them. Add to this estimate the obvious potential for additional revenue once the malware is installed, and it is easy to see that this is an industry that can generate hundreds of millions of dollars for the criminals behind it, at the expense of consumers, advertisers, and society.

For the last two decades, content theft has largely been an issue for creators who were denied compensation and credit for their work. But RiskIQ's research has revealed that cybercriminals have expanded the group of victims to include the hundreds of millions of Internet users who go online each day looking for high-quality content free or cheap.

By dangling such content as bait, criminals lure in unsuspecting users and infect their computers. In doing so, these criminals are exploiting a lack of understanding and awareness among users about the risks that visiting shady websites can pose.

There is an adage from the Watergate era: "Follow the money." It is clear why cybercriminals have targeted consumers. They present an enormous potential windfall to scam and cheat. And it can be done relatively inexpensively through malware and other viruses.

Over the last few years, significant breaches in the customer databases of high-profile companies have created greater awareness about the need for cyber security. The threat of content theft and malware must be part of that conversation.

For consumers, it comes down to another adage: "If it seems too good to be true, it is." The delivery of content—whether radio programs long ago or movies and TV series and sports now—has always been based on some transaction that provides a reward for the content provider—that is the creative incentive, and was most frequently funded by ad revenues or a monthly subscription payment.

But the consumer who goes to a content theft site is paying someone—not the creator of the content, and not just money—they may also be giving up their user identity, access to their financial information or control of their computer. It's a great deal for the cybercriminal, and it leaves millions of Internet users victimized and wondering "what happened?"

It is not fair or reasonable to expect Internet users to understand all these risks because the Internet is an impossibly complex ecosystem. But it does underscore the importance of education campaigns to raise awareness about the threats and how to avoid them.

This report should compel law enforcement authorities to devote more attention and resources to tracking and apprehending global cybercriminals who operate in the shadows and put so many Internet users in harm's way.

And it is incumbent upon our leading digital platforms and financial facilitators to ensure that they are not aiding cybercriminals. That means choking cybercriminals at their key points: how they are found (search engines) and how they bank their ill-gotten gains.

With this report, Digital Citizens hopes to help Internet users—even those who have no care or respect for creators who are victimized by content theft—understand that there are more victims than they may think . . . and some of them are right there in the mirror.

The Digital Citizens Alliance is a nonprofit, 501(c)(6) organization that is a consumer-oriented coalition focused on educating the public and policymakers on the threats that consumers face on the Internet. Digital Citizens wants to create a dialogue on the importance for Internet stakeholders— individuals, government, and industry—to make the Web a safer place.

This is the fourth report in which Digital Citizens has studied content theft sites. In 2014 and 2015, Digital Citizens released its ["Good Money Gone Bad"](#) reports looking at the revenues of ad-supported content theft websites. Also in 2014, Digital Citizens published ["Behind the Cyberlocker Door: A Report on How Shadowy Cyberlocker Businesses Use Credit Card Companies to Make Millions"](#) which broke down the profits and operating costs of the largest cyberlockers.

Based in Washington, DC, the Digital Citizens Alliance counts among its supporters: private citizens, the health, pharmaceutical and creative industries as well as online safety experts and other communities focused on Internet safety. Visit us at digitalcitizensalliance.org.

OUR MISSION

RiskIQ solves the problem of collecting and analyzing Internet-scale data. It enables security teams to expand their security program outside the firewall. Our technology addresses the growing challenge of external threats targeting the enterprise, its customers and employees.

RiskIQ is designed to detect threats that corrupt the core tenets of the Internet—the principles of open standards and information sharing—to extort, scam, invade systems and infect its users. Our mission is to provide web-scale detection to the people responsible for protecting their business against the threats that exist outside of the firewall.

OUR STORY

From the beginning, RiskIQ sought to solve the complex issues security professionals face. RiskIQ saw firsthand how the emergence of the Internet as the primary place for companies to do business also made it the ideal launching pad for malicious attacks. As security professionals build up their firewall technology in an effort to shield their companies, their greatest vulnerability continues to be outside the firewall, on the Internet, where their web sites and apps live.

At RiskIQ, we've taken a unique approach to security by creating a user-emulating security management technology that monitors the entire web and mobile attack surface from the outside in. We're the only company that sees the Internet from the perspective of the browsing public. Our intelligent software outwits the smartest adversaries by seeing what traditional malware scanners can't—even the assets our customers did not even know existed.

By empowering security teams with the ability to see what their web and mobile assets are currently serving to the public from the perspective of their users, organizations can take control of their security program outside their firewall.

At RiskIQ, we believe that knowing is the best defense.

RiskIQ was founded in 2008 and is based in San Francisco.

APPENDIX ITEMS

List of Sites in Study

CONTROL

Alexa Sites

akita-pu.ac.jp
al-7up.com
altaif.org
anvelope-autobon.ro
artinsight.co.kr
atastylovestory.com
avforums.com
betpasnews.com
bilgievi.gen.tr
bmwe34club.com
bogds.in
bosmp3.mywapblog.com
bursarestaurant.com
buygoldandsilversafely.com
cesegypt.com
cheki.com.ng
chinacmb.com.cn
comfibags.com
comtalks.com
coolmath.com
cortad-piura.com
corobori.com
cyprustimes.com
dahlias.com
daily-news.it
digimantra.com
diskonaja.com
dls.ua
domainsa.com
ecosupp.co.il
eropartner.com
essence-beautyfriends.eu
etradebill.co.kr
extremetube.com
eyecancer.com
fbf.org.br
febalcasa.com

fin-5.ru
flydata.com
forever21.co.kr
francecars.fr
freeseach.co.uk
garden-garden.biz
ggsupplies.com
giethoorn.com
gongye360.com
healingxchange.com
hepsitarada.com
herbalife.com.tw
homespakistan.com
hotelhotel.com
intermonitor.ru
irananimations.ir
iranmilre.com
kiabi.nl
kinkireins.or.jp
kinoboh.ru
lorraine.eu
mailtester.com
manastir-lepavina.org
michoacainformativo.com
miragro.com
moneysoldiers.com
murahstore.com
muskiportal.com
netflixroulette.net
optionpipsincome.com
paavai.edu.in
parkson.com.my
pharmaceutical-equipment.com
phpstate.com
poimap.com
popmech.ru
portaldefacturas.com
postroiv.ru

pray-as-you-go.org
premiers ae
presentation7.com
pro-touring.com
progressplay.net
pronostici-oggi.it
purewatercare.com
radiusbank.com
real-sex-partners.com
redwoodhill.com
reinsightdata.com
resepmasakanpedia.com
rheinbahn.de
rsipa.net
rv-max.com
sacem.fr
saji.my
samotur.ru
scarcitybuilder.com
selcukecza.com.tr
selector-wixoss.com
sengokuixa.jp
shairy.com
shivkhera.com
shopazamerica.com.br
shopsomething.com
shopxml.com/user/or-
der_stat
showyu.net.cn
skidkimira.ru
sluhealth.org
smaatware.com
smartben.com
sneak-a-venue.de
snu.ru
softicons.com
solar-eyes.net
sosyalreklamci.com
spring.me

starwoodhotels.com
storefeeder.com
studential.com
submitrelevantsites.com
surveyexpression.com
syx.com
tabiulala.com
teamlbi.net
telepacific.com
thebittersideofsweet.com
thecloudoffers.co.uk
tintint.com
torturegalaxy.com
tritmonk.com
tuljo.com
tungstencopper.net
twistyscash.com
uchealth.org
uninsubria.it
unioneprofessionisti.com
universalsewing.com
urbanwearables.technology
urlaubmachtspass.com
urpitrek.com
uzeyirdogan.com
viel-unterwegs.de
vlogitfi
vodovoz.ru
weac.org
wenxuecity.com
wetshop.com.br
wholesaletrade.co.in
wikipower.ru
worldlink.com.np
wpteq.org
yquem.fr
zdravnsk.ru

Where to Watch Sites

acorn.tv
adultswim.com
aetv.com
amazon.com
animalplanet.com
apple.com
bet.com
blockbusternow.com
bravotv.com
cartoonnetwork.com

cbs.com
cc.com
cmt.com
crackle.com
cwtv.com
daystar.com
directv.com
dishanywhere.com
disney.com
dramafever.com
epixhd.com

fan.tv
fandor.com
filmfresh.com
flixhouse.com
flixster.com
fox.com
fxnetworks.com
gowatchit.com
guidebox.com
hallmarkspiritclips.com
hbogo.com

hgtv.com
history.com
hitbliss.com
hulu.com
imdb.com
indieflix.com
indiepixonlimited.com
instant.warnerarchive.com
jaman.com
jinni.com
kidoodle.tv

livewellnetwork.com
locatetv.com
maxgo.com
mediatogo.thewb.com
mgo.com
movies.com
movievisor.com
mtv.com
mubi.com
mylifetime.com
nationalgeographic.com
nbc.com
netflix.com
nextguide.tv
nick.com

paramountmovies.com
pbskids.org
play.google.com
playstation.com
popcornflix.com
qello.com
reelhouse.org
shoutfactorytv.com
showtimeanytime.com
smartreplay.com
snagfilms.com
sonyentertainmentnet-
work.com
spike.com
starzplay.com

syfy.com
targetticket.com
tbs.com
televisor.com
tntdrama.com
toysrus.com
trutv.com
tubitv.com
tv.com
tv.esquire.com
tvguide.com
tvland.com
us.cinemanow.com
usanetwork.com
uverse.com

verizon.com
vh1.com
video.pbs.org
videostore.bhn.rr.com
viewster.com
vudu.com
watchi.ly
watchitstream.com
wolfeondemand.movies.
com
yaahtv.com
vidio.com
youtube.com
zap2it.com

SAMPLE CONTENT THEFT GROUP

- Notorious Markets -

4shared.com
baixeturbo.org
bajui.com
beemp3.com
bitsnoop.com
catshare.net
chomikuj.pl
cuevana.tv
darkwarez.pl
downloads.nl
e-nuc.com
elitetorrent.com

ex.ua
extratorrent.cc
filestube.com
free-tv-video-online.me
free-tv-video.me
gigabytesistemas.com
gosong.net
hardstore.com
kickass.to
molten-wow.com
mp3juices.com
mrtzcmp3.net
muzofon.com

myfreemp3.cc
myfreemp3.eu
nakido.com
novamov.com
nowvideo.sx
putlocker.is
rapidgator.net
rapidlibrary.com
rutracker.org
seedpeer.me
thepiratebay.se
torrentz.ch
torrentz.eu

torrentz.in
torrentz.me
tucows.com
uploaded.net
vk.com
vkontakte.com
vmsuice.net
weblagu.com
yts.re
zimuzu.tv
zing.vn
zippyshare.com

1) Top 3rd GTR

2download.org
2shared.com
3ko.me
4fun.cc
4shared-musica.com
4shared.net
5gg.biz
5mp3.org
88torrent.com
adobetorrentz.berlin
alexandrebonhomme.fr
all-torrents.eu
allmyvideos.net
animea.net
arnaudcornu.com
baseofmp3.com
battleit.ee
baymirror.com
bayproxy.com
bayproxy.me
bayproxy.nl

bayproxy.org
baytorrent.eu
bittorrent.pm
blupaw.net
brmlab.cz
bthunter.org
cloud-vibe.com
come.in
condorr.at
datafile.com
deliciousmanga.com
demonoid.ph
demonoid.pw
dizzcloud.com
dl4all.com
dotpirate.me
download-music.lt
downloadnow.net
downloadonlinemp3.com
downloadunit.com
drumscum.be
emp3world.so

extabit.com
extendify.com
extratorrent.com
extratorrent.ee
fattyLewis.com
fenopy.eu
file7file.com
filecatch.com
filehound.co.uk
fileom.com
filepost.com
filesborn.com
fileshark.pl
fileshut.com
filesonic.com
filesonicsearch.com
filesoup.com
firedrive.com
forumophilia.com
forumwizard.net
free-albums.net
freemp3in.com

freemp3like.com
freemp3x.com
fullsongs.net
general-files.com
genteflow.com
getpirate.com
gooddrama.net
grooveshark.com
h33tmirror.co
h33tunblocked.co
hdspot.net
hellshare.com
hotfilesearch.com
houndmirror.com
hugefiles.net
hulkshare.com
ilikerainbows.co
index-of-mp3.com
irfree.net
itemvn.com
kat.gs
kat.works

kat.yt
katmirror.com
ketomob.com
kickass.pw
kickass.so
kickasstor.net
kickasstorrent.rocks
kickasstorrents.com
kickasstorrents.in
kickasstorrents.link
kickasstorrents.rocks
kickassunblock.com
kickassunblock.info
kickassunblock.net
kset.kz
kuiken.co
labaia.in
lanunbay.org
limetor.com
livepirate.com
lumfile.com
majaa.net
mangabase.co
mangable.com
mangabro.com
mangaeden.com
mangago.com
mangahit.com
mangajoy.com
mangapark.com
mangapark.me
mangasee.co
mangasee.com
mangasky.co
mangatank.com
mangawindow.com
mediafiredownloads.net
mnova.eu
monova.org
movie2k.to
movie4k.to

mp3-vip.org
mp3c.cc
mp3facebook.com
mp3forte.com
mp3joy.net
mp3juices.to
mp3sale.ru
mp3searchy.com
mp3sfinder.com
mp3skull.fm
mp3stahuj.cz
mp3truck.com
mp3tx.com
mp3vip.org
mp3wm.com
mp3ye.eu
mp3yeah.com
mp3ylp.com
musicaddict.com
musicatono.com
mybay.pw
myfree.cc
myfreemp3.biz
myfreemp3.co
myfreemp3x.com
myfreesongs.cc
mymp3site.cf
mypiratebay.cl
no-ip.biz
noflag.org.uk
nowvideo.eu
oostingwebdesign.nl
org-proxy.com
piratebay.me.uk
piratebay1.com
piratebayalternate.in
piratebaybyproxy.com
piratebaymirror.me
piratebaysafe.me
piratebayunion.com
pirateflix.info

piratenpartij.nl
piratepc.org
pirateproxy.net
pirateproxybay.org
pirati.cz
planetsuzy.org
poisk-mp3.com
proxicity.info
proxy-bay.com
proxybay.ca
proxybay.de
proxybay.in
proxybay.link
proxytank.com
quluxingba.info
rapid4me.com
readmanga.eu
readpanda.net
mb4u.in
rootmob.org
sciagara.pl
searchdepositfiles.com
sharedir.com
skit.org.ua
sockshare.com
songs.to
su7.info
sumotorrent.sx
teluga.com
thedutchbay.nl
thegorillanetwork.com
thehotfilesearch.com
thepiratebay.hk
thepiratebay.org.es
thepiratebay.uno
thepromobay.co.uk
tinydl.com
tnttorrent.info
topboard.org
torrent.pm
torrentbar.com

torrentbit.net
torrenticity.com
torrentkitty.com
torrentportal.com
torrentproject.org
torrentproject.se
torrentz.ms
torrentz.to
tosarang.net
tpb.gr
tpb.lt
tpb.me
tpbpirate.tk
tpbproxy.eu
tpbunblocked.me
tv-shuffle.ch
uhd-downloads.eu
ulub.pl
unblocked-piratebay.com
unblocked2.bz
unlocktorrent.com
uploadable.ch
uploading.com
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THE
IP COMMISSION
REPORT

THE REPORT OF
THE COMMISSION ON THE THEFT OF
AMERICAN INTELLECTUAL PROPERTY



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THE IP COMMISSION REPORT

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— ACKNOWLEDGMENTS —

We present this report to the American people for their consideration. The Commission on the Theft of American Intellectual Property reached consensus on its insights and recommendations after a thorough and independent investigation of one of the most pressing issues of economic and national security facing our country. We investigated the scale and complexities of international intellectual property (IP) theft, the driving forces behind it, and its consequences for Americans. We collected the evidence, formed assessments, and developed a set of policy recommendations for Congress and the Administration.

This Commission is composed of extraordinary members. We are indebted to our fellow Commissioners for their contributions. They have brought to the Commission diligence, selfless bipartisanship, and tremendous expertise and wisdom. Coming from industry, defense, advanced education, and politics, and with senior-level diplomatic, national security, legal, and other public policy experience, they span the spectrum of American professional life that has huge stakes in IP rights. They have our deepest appreciation.

The Commission reached out to many remarkable specialists and leaders who shared their experiences and perspectives as we developed an understanding of the problem and a very rich set of policy recommendations. Business leaders with whom we spoke provided inputs anonymously; they represent a cross-section of companies that deal with the problem of IP theft, as well as trade associations with major interests in the problem and its solutions. Other interlocutors were officials from Republican and Democratic administrations, policy analysts, lawyers, economists, international trade experts, and international relations and area specialists. We benefited from the efforts of those in the U.S. government who have been working hard on these issues for years. We thank them for their work and hope that our shining the spotlight on the facts and recommending strong policy make their goals more achievable.

The Commission's staff was exemplary. It includes Director Richard Ellings, Deputy Director Roy Kamphausen, Casey Bruner, John Graham, Creigh Agnew, Meredith Miller, Clara Gillispie, Sonia Luthra, Amanda Keverkamp, Deborah Cooper, Karolos Karnikis, Joshua Ziemkowski, and Jonathan Walton. The Commission is grateful to The National Bureau of Asian Research (NBR) and its Slade Gorton International Policy Center, which provided the unrestricted support that underwrote the Commission's work and complete independence.

Leading an effort that attempts to define and prescribe a focus as complex as IP protection is truly daunting. Given the subject of this report, it comes as no surprise that the People's Republic of China figures prominently throughout. It should be noted that we co-chairs have spent a considerable part of our professional lives building and managing important aspects of the U.S.-China relationship. We have participated in and observed the development—whether diplomatic, military, economic, or cultural—of the most critical bilateral relationship of the 21st century, one that will have a significant impact on the security and prosperity of the entire world. Ensuring its viability and success in part gave rise to this Commission and our participation in it. We recognize as well the historic reform efforts that continue to be undertaken in China and offer this report as a step toward solutions and pragmatic problem solving that have characterized the interaction of both countries for over four decades.

Dennis C. Blair
Co-chair

Jon M. Huntsman, Jr.
Co-chair



The Commission on the Theft of American Intellectual Property is an independent and bipartisan initiative of leading Americans from the private sector, public service in national security and foreign affairs, academe, and politics. The members are:

- **Dennis C. Blair** (co-chair), former Director of National Intelligence and Commander in Chief of the U.S. Pacific Command
- **Jon M. Huntsman, Jr.** (co-chair), former Ambassador to China, Governor of the state of Utah, and Deputy U.S. Trade Representative
- **Craig R. Barrett**, former Chairman and CEO of Intel Corporation
- **Slade Gorton**, former U.S. Senator from the state of Washington, Washington Attorney General, and member of the 9-11 Commission
- **William J. Lynn III**, CEO of DRS Technologies and former Deputy Secretary of Defense
- **Deborah Wince-Smith**, President and CEO of the Council on Competitiveness
- **Michael K. Young**, President of the University of Washington and former Deputy Under Secretary of State

The three purposes of the Commission are to:

1. Document and assess the causes, scale, and other major dimensions of international intellectual property theft as they affect the United States
2. Document and assess the role of China in international intellectual property theft
3. Propose appropriate U.S. policy responses that would mitigate ongoing and future damage and obtain greater enforcement of intellectual property rights by China and other infringers

Introduction

The scale of international theft of American intellectual property (IP) is unprecedented—hundreds of billions of dollars per year, on the order of the size of U.S. exports to Asia. The effects of this theft are twofold. The first is the tremendous loss of revenue and reward for those who made the inventions or who have purchased licenses to provide goods and services based on them, as well as of the jobs associated with those losses. American companies of all sizes are victimized. The second and even more pernicious effect is that illegal theft of intellectual property is undermining both the means and the incentive for entrepreneurs to innovate, which will slow the development of new inventions and industries that can further expand the world economy and continue to raise the prosperity and quality of life for everyone. Unless current trends are reversed, there is a risk of stifling innovation, with adverse consequences for both developed and still developing countries. The American response to date of hectoring governments and prosecuting individuals has been utterly inadequate to deal with the problem.

China has been the principal focus of U.S. intellectual property rights (IPR) policy for many years. As its economy developed, China built a sophisticated body of law that includes IPR protection. It has a vibrant, although flawed, patent system. For a variety of historical reasons, however, as well as because of economic and commercial practices and official policies aimed to favor Chinese entities

and spur economic growth and technological advancement, China is the world's largest source of IP theft. The evidence presented here is a compilation of the best governmental and private studies undertaken to date, interviews, individual cases, assessments of the impact of IP theft on the American economy, and examinations of PRC policies. There is now enough information, in our view, to warrant urgent consideration of the findings and recommendations that follow.

The IP Commission has met numerous times over the course of an eleven-month period; heard from experts and specialists on international law, the American legal system, cybersecurity, and the economy, as well as from industry representatives and many others; and conducted research on a range of topics. The Commission has also reviewed the current actions being taken by the U.S. government and international organizations like the World Trade Organization (WTO) and the recommendations of official and private studies of the problem. Both current and proposed actions generally emphasize more intensive government-to-government communication requesting foreign governments to rein in their companies and other actors. The Commission judges that the scope of the problem requires stronger action, involving swifter and more stringent penalties for IP theft. The Commission believes that over the long term, as their companies mature and have trade secrets to protect, China and other leading infringers will develop adequate legal regimes to protect the intellectual property of international companies as well as domestic companies. The United States cannot afford to wait for that process, however, and needs to take action in the near term to protect its own economic interests.

The Commissioners unanimously advocate the recommendations contained within this report.

Key Findings

The Impact of International IP Theft on the American Economy

Hundreds of billions of dollars per year. The annual losses are likely to be comparable to the current annual level of U.S. exports to Asia—over \$300 billion. The exact figure is unknowable, but private and governmental studies tend to understate the impacts due to inadequacies in data or scope. The members of the Commission agree with the assessment by the Commander of the United States Cyber Command and Director of the National Security Agency, General Keith Alexander, that the ongoing theft of IP is “the greatest transfer of wealth in history.”

Millions of jobs. If IP were to receive the same protection overseas that it does here, the American economy would add millions of jobs.

A drag on U.S. GDP growth. Better protection of IP would encourage significantly more R&D investment and economic growth.

Innovation. The incentive to innovate drives productivity growth and the advancements that improve the quality of life. The threat of IP theft diminishes that incentive.

Long Supply Chains Pose a Major Challenge

Stolen IP represents a subsidy to foreign suppliers that do not have to bear the costs of developing or licensing it. In China, where many overseas supply chains extend, even ethical multinational companies frequently procure counterfeit items or items whose manufacture benefits from stolen IP, including proprietary business processes, counterfeited machine tools, pirated software, etc.

International IP Theft Is Not Just a Problem in China

Russia, India, and other countries constitute important actors in a worldwide challenge. Many issues are the same: poor legal environments for IPR, protectionist industrial policies, and a sense that IP theft is justified by a playing field that benefits developed countries.

The Role of China

Between 50% and 80% of the problem. The major studies range in their estimates of China's share of international IP theft; many are roughly 70%, but in specific industries we see a broader range.

The evidence. Evidence comes from disparate sources: the portion of court cases in which China is the destination for stolen IP, reports by the U.S. Trade Representative, studies from specialized firms and industry groups, and studies sponsored by the U.S. government.

Why does China stand out? A core component of China's successful growth strategy is acquiring science and technology. It does this in part by legal means—imports, foreign domestic investment, licensing, and joint ventures—but also by means that are illegal. National industrial policy goals in China encourage IP theft, and an extraordinary number of Chinese in business and government entities are engaged in this practice. There are also weaknesses and biases in the legal and patent systems that lessen the protection of foreign IP. In addition, other policies weaken IPR, from mandating technology standards that favor domestic suppliers to leveraging access to the Chinese market for foreign companies' technologies.

Existing Remedies Are Not Keeping Up

Short product life cycles. Even in the best judicial systems, the slow pace of legal remedies for IP infringement does not meet the needs of companies whose products have rapid product life and profit cycles.

Inadequate institutional capacity. Particularly in developing countries there is inadequate institutional capacity to handle IP-infringement cases—for example, a shortage of trained judges.

China's approach to IPR is evolving too slowly. The improvements over the years have not produced meaningful protection for American IP, nor is there evidence that substantial improvement is imminent. Indeed, cyberattacks are increasing.

Limitations in trade agreements. Although there appears to be a great deal of activity on the part of the United States through the WTO, there are also significant problems in the process that have made it impossible to obtain effective resolutions. Bilateral and regional free trade agreements are not a panacea either.

Steps undertaken by Congress and the administration are inadequate. Actions have been taken recently both to elevate the problem as a policy priority and to tighten U.S. economic espionage law. These are positive steps. A bill in Congress that would allow greater information-sharing between government and private business needs to be enacted and amended if needed. All of these efforts, however, will not change the underlying incentive structure for IP thieves and will therefore have limited effect.

The Commission's Strategy

With U.S. companies suffering losses and American workers losing jobs, and our innovative economy and security thus at stake, more effective measures are required. The problem is compounded

by newer methods of stealing IP, including cyber methods. Of the cyber threat, President Obama has said that it is “one of the most serious economic and national security challenges we face.” Network attacks, together with other forms of IP attacks, are doing great damage to the United States, and constitute an issue of the first order in U.S.-China relations.

The Commission regards changing the incentive structure for IP thieves to be a paramount goal in reducing the scale and scope of IP theft. Simply put, the conditions that encourage foreign companies to steal American intellectual property must be changed in large part by making theft unprofitable. The starting point is the recognition that access to the American market is the single most important goal of foreign firms seeking to be international corporate leaders. Companies that seek access by using stolen intellectual property have an unearned competitive advantage, and because the costs of stealing are negligible or nonexistent, they continue to operate with impunity. Cheating has become commonplace.

The Commission regards changing the cost-benefit calculus for foreign entities that steal American intellectual property to be its principal policy focus. IP theft needs to have consequences, with costs sufficiently high that state and corporate behavior and attitudes that support such theft are fundamentally changed.

Beyond changing behavior in the short term, the Commission regards strengthening the legal frameworks that govern the protection of IP to be a set of important medium-term recommendations. From that point, and over the longer term, the Commission judges that capacity-building in countries, especially China, that have poor IP-protection standards is of critical importance.

Recommendations

The Commission recommends short-term, medium-term, and long-term remedies.

Short-term measures incorporate the immediate steps that policymakers should take to stem the tide of IP theft and include the following:

- *Designate the national security advisor as the principal policy coordinator for all actions on the protection of American IP.* The theft of American IP poses enormous challenges to national security and the welfare of the nation. These challenges require the direct involvement of the president’s principal advisor on national security issues to ensure that they receive the proper priority and the full engagement of the U.S. government.
- *Provide statutory responsibility and authority to the secretary of commerce to serve as the principal official to manage all aspects of IP protection.* The secretary of commerce has sufficient human, budgetary, and investigative resources to address the full range of IP-protection issues. If given the statutory authority to protect American IP, we anticipate a robust set of responses.
- *Strengthen the International Trade Commission’s 337 process to sequester goods containing stolen IP.* The current 337 process is not fast enough to prevent goods containing or benefitting from stolen IP from entering the United States. A speedier process, managed by a strong interagency group led by the secretary of commerce, can both prevent counterfeit goods from entering the United States and serve as a deterrent to future offenders. The speedier process would impound imports suspected of containing or benefitting from IP theft based

on probable cause. A subsequent investigation would allow the importing company to prove that the goods did not contain or benefit from stolen IP.

- *Empower the secretary of the treasury, on the recommendation of the secretary of commerce, to deny the use of the American banking system to foreign companies that repeatedly use or benefit from the theft of American IP.* Access to the American market is a principal interest of firms desiring to become global industrial leaders. Protecting American IP should be a precondition for operating in the American market. Failure to do so ought to result in sanctions on bank activities, essentially curtailing U.S. operations.
- *Increase Department of Justice and Federal Bureau of Investigation resources to investigate and prosecute cases of trade-secret theft, especially those enabled by cyber means.* The increase in trade-secret theft, in many ways enabled by emerging cyber capabilities, requires a significant increase in investigative and prosecutorial resources.
- *Consider the degree of protection afforded to American companies' IP a criterion for approving major foreign investments in the United States under the Committee on Foreign Investment in the U.S. (CFIUS) process.* CFIUS assesses national security risk and national security implications of proposed transactions involving U.S. companies. Adding an additional evaluative criterion to the review process that assesses the manner in which a foreign company obtains IP would help improve IP-protection environments.
- *Enforce strict supply-chain accountability for the U.S. government.* Establishing control and auditing measures that enable suppliers to the U.S. government to guarantee the strongest IP-protection standards should be the “new normal” that the U.S. government demands.
- *Require the Securities and Exchange Commission to judge whether companies' use of stolen IP is a material condition that ought to be publicly reported.* Corporate leaders will take seriously the protection of IP, including in their supply chains, if reporting IP theft in disclosure statements and reports to boards of directors and shareholders is mandatory.
- *Greatly expand the number of green cards available to foreign students who earn science, technology, engineering, and mathematics degrees in American universities and who have a job offer in their field upon graduation.* In too many cases, American universities train the best minds of foreign countries, who then return home with a great deal of IP knowledge and use it to compete with American companies. Many of these graduates have job offers and would gladly stay in the United States if afforded the opportunity.

Legislative and legal reforms represent actions that aim to have positive effects over the medium-term. To build a more sustainable legal framework to protect American IP, Congress and the administration should take the following actions:

- *Amend the Economic Espionage Act (EEA) to provide a federal private right of action for trade-secret theft.* If companies or individuals can sue for damages due to the theft of IP, especially trade secrets, this will both punish bad behavior and deter future theft.
- *Make the Court of Appeals for the Federal Circuit (CAFC) the appellate court for all actions under the EEA.* The CAFC is the appellate court for all International Trade Commission cases and has accumulated the most expertise of any appellate court on IP issues. It is thus in the best position to serve as the appellate court for all matters under the EEA.

- *Instruct the Federal Trade Commission (FTC) to obtain meaningful sanctions against foreign companies using stolen IP.* Having demonstrated that foreign companies have stolen IP, the FTC can take sanctions against those companies.
- *Strengthen American diplomatic priorities in the protection of American IP.* American ambassadors ought to be assessed on protecting intellectual property, as they are now assessed on promoting trade and exports. Raising the rank of IP attachés in countries in which theft is the most serious enhances their ability to protect American IP.

Over the longer term, the Commission recommends the following capacity-building measures:

- *Build institutions in priority countries that contribute toward a “rule of law” environment in ways that protect IP.* Legal and judicial exchanges, as well as training programs sponsored by elements of the U.S. government—including the U.S. Patent and Trademark Office—will pay long-term dividends in the protection of IP.
- *Develop a program that encourages technological innovation to improve the ability to detect counterfeit goods.* Prize competitions have proved to be both meaningful and cost-effective ways to rapidly develop and assess new technologies. New technologies, either to validate the integrity of goods or to detect fraud, would both deter bad behavior and serve as models for the creation of new IP.
- *Ensure that top U.S. officials from all agencies push to move China, in particular, beyond a policy of indigenous innovation toward becoming a self-innovating economy.* China’s various industrial policies, including indigenous innovation, serve to dampen the country’s own technological advancements. Utility, or “petty,” patents are a particularly pernicious form of Chinese IP behavior and need to cease being abused.
- *Develop IP “centers of excellence” on a regional basis within China and other priority countries.* This policy aims to show local and provincial leaders that protecting IP can enhance inward foreign investment; this policy both strengthens the protection of IP and benefits the promotion possibilities of officials whose economic goals are achieved by producing foreign investment.
- *Establish in the private, nonprofit sector an assessment or rating system of levels of IP legal protection, beginning in China but extending to other countries as well.* One of the tools necessary to develop “centers of excellence” is a rating system that shows the best—and worst—geographical areas for the protection of IP.

The Commission recommends the following measures to address cybersecurity:

- *Implement prudent vulnerability-mitigation measures.* This recommendation provides a summary of the security activities that ought to be undertaken by companies. Activities such as network surveillance, sequestering of critical information, and the use of redundant firewalls are proven and effective vulnerability-mitigation measures.
- *Support American companies and technology that can both identify and recover IP stolen through cyber means.* Without damaging the intruder’s own network, companies that experience cyber theft ought to be able to retrieve their electronic files or prevent the exploitation of their stolen information.

- *Reconcile necessary changes in the law with a changing technical environment.* Both technology and law must be developed to implement a range of more aggressive measures that identify and penalize illegal intruders into proprietary networks, but do not cause damage to third parties. Only when the danger of hacking into a company's network and exfiltrating trade secrets exceeds the rewards will such theft be reduced from a threat to a nuisance.

The Nature of the Problem

Economic Development in the Postwar Period

The unprecedented economic growth in country after country since the Second World War followed a familiar pattern. Taking advantage of reduced barriers to international trade and their lower costs for labor and other expenses, less developed countries manufactured lower-technology products and provided lower-technology services for sale to the more developed countries. The developed countries, meanwhile, closed entire industries and converted their labor forces to work on more advanced products and services based on newly invented products and processes. Prosperity increased as new technologies drove productivity gains and wages rose. Countries moved up the technology ladder.

This system produced phenomenal benefits for both the developed and developing worlds, and generations had the chance to live better lives than their parents and grandparents. In the period since the Second World War, humanity experienced more economic growth, which was led by more scientific progress, than at any prior time in history. From 1950 to 2012, world output expanded more than sixteen-fold, while population grew 2.7 times.¹ Driven by scientific breakthroughs, new technologies, and open trade, standards of living and life expectancy skyrocketed for enormous populations worldwide.²

This virtuous cycle of innovation, with benefits for both developed and developing countries, depended on innovators receiving adequate compensation for the risks they took. The developing world acquired and adapted foreign technology, but the driving discoveries in the areas of information technology, materials science, and biochemistry came from a combination of entrepreneurship and private and government research in the developed world—primarily the United States, Western Europe, and Japan. These discoveries gave birth to entire new manufacturing and service industries and transformed traditional sectors like transportation and health care.

The Underpinnings of an Economic System at Risk

On an unprecedented level, a critical driver of this worldwide economic growth is in trouble. Trade secrets, patents, copyrights, and trademarks are being stolen, especially from American but also from European, Japanese, and other nations' companies and organizations. The effects are twofold. The first is the loss of revenue and reward for those who made the inventions or who have purchased licenses to provide goods and services based on them. In addition, there is the loss of jobs, which is in the millions. Companies injured by the theft of intellectual property (IP) cut back

¹ See Angus Maddison, *The World Economy: A Millennial Perspective/Historical Statistics* (Paris: OECD, 2007); and International Monetary Fund (IMF) and World Bank statistics. From the year 1000 to 1820 the advance in per capita income was “a slow crawl”—the world per capita income rose only about 50% in 820 years. Most of the growth went to accommodate a fourfold increase in population. From about 1820, world development began accelerating far faster than population growth. Between 1820 and 1950 the world economy grew nearly eightfold. In less than half that time, between 1950 and 2012, the world economy grew more than sixteen-fold. Figures are measured in constant dollars.

² See, for example, the Human Development Index, published annually by the United Nations Development Programme. Drawing on data that goes back to 1975, the index shows gains in human development in all regions of the world. Even the industrialized world shows marked improvements. In the United States, average life expectancy at birth has grown for all groups by 10%–15% since 1949.

on payrolls. Payrolls are also hit by lost export and licensing markets and unfair competition both in the American market and in markets around the world. The losses are more acute for companies whose innovation cycles are ever shorter. IP theft prior to or soon after a product's release can eliminate all or vast portions of what a company could earn.

The second, and more fundamental, effect is that IP theft is undermining both the means and the incentive for entrepreneurs to innovate, which will slow the development of new inventions and new industries that can further expand the world economy and continue to raise the prosperity of all. This effect has received some attention in the cases of a few industries, but it affects others as well. Unless current trends are reversed, there is a risk of the relative stagnation of innovation, with adverse consequences for both developed and developing countries.

Because IP theft is not a new phenomenon, it is important to understand why it is an urgent issue now. Compared with prior eras, today's economic world is far more interconnected and operates at a far higher speed, with product cycles measured in months rather than years. Companies in the developing world that steal intellectual property from those in the developed world become instant international competitors without becoming innovators themselves. Bypassing the difficult work of developing over decades the human talent, the business processes, and the incentive systems to become innovators, these companies simply drive more inventive companies in the developed world out of markets or out of business entirely. If more and more companies compete for the same amount of business using the same technology and processes, growth stagnates. It is only through innovation that world economic growth can be sustained. In addition, in this new era of globalization, national industrial policies unforeseen in times past have become possible. Many countries have taken advantage of the opportunities provided by international businesses eager for entry into their markets and by generous national and international development programs. Some have gone beyond this by leveraging access to their markets for IP and by sponsoring IP theft.

Finally, the enormous scale of IP theft is a relatively recent phenomenon, and the United States and the rest of the developed world have been slow to respond. American policy in this area has been limited mostly to attempts to talk foreign leaders into building more effective intellectual property rights (IPR) regimes. In addition, the U.S. Department of Justice has prosecuted individual employees of American companies who have been caught attempting to carry trade secrets with

them to foreign companies and entities. This policy of jawboning and jailing a few individuals has produced no measurable effect on the problem. The only encouraging sign on the horizon is a nascent and small group of entrepreneurs who may be working within their developing countries for more robust systems of protection of their own inventions against competitors.

If the United States continues on its current path, with the incentives eroding, innovation will decline and our economy will stagnate. In this fundamental sense, IP theft is now a national security issue.

The theft of American IP is about much more than the aggregation of big numbers. It is also the collection of individual, sometimes devastating, stories of loss. For instance, when the American Superconductor Corporation had its wind-energy software code stolen by a major customer in China, it lost not only that customer, but also 90% of its stock value.

SOURCE: Michael A. Riley and Ashlee Vance, "China Corporate Espionage Boom Knocks Wind Out of U.S. Companies," *Bloomberg Businessweek*, March 19–25, 2012.

The Toll of IP Theft and Vulnerable Supply Chains

It is difficult to overstate the importance of intellectual property to U.S. economic prosperity and difficult to gauge the full extent of the damage done by IP theft. According to a figure cited in the president's 2006 Economic Report to Congress, 70% of the value of publicly traded corporations is estimated to be in "intangible assets," that is, IP. A 2012 study by the Department of Commerce found that protection and enforcement of IPR around the globe directly affects an estimated 27 million American jobs in IP-intensive industries, which is roughly 19% of the U.S. workforce, producing over one-third of America's GDP.³

Overseas, products are counterfeited on a mammoth scale or re-engineered with small changes and then patented as if they were new inventions. Because much of the theft is not counted, estimates of the total vary. In 2010, the commander of the U.S. Cyber Command and director of the National Security Agency, General Keith Alexander, stated that "our intellectual property here is about \$5 trillion. Of that, approximately \$300 billion [6%] is stolen over the networks per year."⁴ He later called the theft "the greatest transfer of wealth in history."⁵

Intellectual property that is stolen over the Internet constitutes only a portion of total IP theft. Much of it occurs the old-fashioned way. Hard drives are either duplicated on site or physically stolen by bribed employees; employees are planted temporarily in companies or permanent employees leave and illegally share proprietary information; products are dissected, re-engineered, and sold without permission or payment of royalties; digitized products are pirated and sold illegally; phones are tapped for the purpose of obtaining trade secrets; and email accounts are compromised. The list goes on. The stories that appear in court records and occasionally appear in the media demonstrate that while there are new tools being utilized in IP theft, traditional tools continue to cause enormous damage. *Totaled, it is safe to say that dollar losses from IP theft are hundreds of billions per year, which is at least in the range of total exports to Asia in 2012 (valued at \$320 billion).*

Indeed, IP is hugely important to the U.S. economy. Loss of revenues to the victimized inventor or owner of a trade secret is the first and most obvious cost of IP theft, but an asset is lost too. Both losses mean fewer jobs and less money to reinvest in the next generation of products. Stolen IP represents a subsidy to the party that did not have to bear the costs of developing it, and the effects can ripple across industries and companies. A prime example is the pirated software utilized in manufacturing systems and management of companies. Stolen corporate software—from basic computer and network operating systems and office technology to sophisticated design algorithms—allows companies to cut costs unfairly. The problem is rampant in many countries around the world, but in the People's Republic of China (PRC), a country to which so many overseas supply chains extend, even ethical multinational companies find themselves complicit.

The member companies of the American Chamber of Commerce in the People's Republic of China (AmCham China) express their concerns in annual surveys. In the most recent, conducted in late 2012, over 40% of respondents reported that the risk of data breach to their operations in China

³ U.S. Department of Commerce, "Intellectual Property and the U.S. Economy: Industries in Focus," March 2012.

⁴ Jim Garamone, "Cybercom Chief Details Cyberspace Defense," American Forces Press Service, September 23, 2010. A decade ago the U.S. government reported that "private estimates put the combined costs of foreign and domestic economic espionage [by all methods], including the theft of intellectual property, as high as \$300 billion per year and rising." See "Annual Report to Congress on Foreign Economic Collection and Industrial Espionage—2002," Office of the National Counterintelligence Executive, NCIX 2003-10006, 2003.

⁵ Keith B. Alexander, "Cybersecurity and American Power" (conference presentation hosted by the American Enterprise Institute, Washington, D.C., July 9, 2012).

is increasing, and those who indicated that IP infringement has resulted in “material damage” to China operations or global operations increased from 18% in 2010 to 48% in 2012.⁶

The longer the supply line, the more vulnerable it is to IP theft. In an extensive study of the Department of Defense’s supply chain, the U.S. Senate Armed Services Committee reported a “flood” of counterfeit parts. The investigation

uncovered 1,800 cases of suspect electronic parts. The total number of individual suspect parts involved in those cases exceeded one million.

China is the dominant source country for counterfeit electronic parts that are infiltrating the defense supply chain..... The Committee tracked well over 100 cases of suspect counterfeit parts back through the supply chain. China was found to be the source country for suspect counterfeit parts in an overwhelming majority of those cases, with more than 70 percent of the suspect parts traced to that country.⁷

One of the witnesses in the investigation testified that he observed “factories in China of 10,000 to 15,000 people set up for the purpose of counterfeiting.” Electronic components can be compromised both unintentionally and intentionally and could be subject to embargoes in times of crisis. Fierce competition gives the cheating overseas supplier a cost advantage, but at the expense of American firms, American employees, American security, and future American innovation.

A 2011 study by the U.S. International Trade Commission estimated that if IP protection in just China were improved to a level comparable to that in the United States, the U.S. economy would obtain an estimated \$107 billion in additional annual sales and net U.S. employment could increase by 2.1-million jobs.⁸ Yet as useful as it is, this study underestimated employment impacts because it did not consider “less-IP intensive industries,” likely underestimated the effects of trade-secret theft (much of which is never revealed or even known by the victims), and did not have the participation of many vulnerable U.S. companies.⁹

Despite the understandable reluctance of companies to publicize successful or even attempted breeches, there are many documented examples of IP theft. An American company, for example, developed at great cost a critical component in current smartphones and computers, only to have that technology illegally replicated by a Chinese company. The latter subsequently undersold the inventor and took much of the world market for the technology. In another case, one copy of an American company’s software was purchased in China and illegally copied onto 30 million Chinese

⁶ “American Chamber’s Business Climate Survey 2013,” China IPR web log, April 22, 2013, <http://chinaipr.com/2013/04/22/american-chambers-business-climate-survey-2013/>; American Chamber of Commerce, “China Business Climate Survey Report,” 2011, <http://www.amchamchina.org/upload/cmsfile/2011/03/22/efb2ab9d3806269fc343f640cb33baf9.pdf>; and American Chamber of Commerce, “China Business Climate Survey Report,” 2013, <http://web.resource.amchamchina.org/cmsfile/2013/03/29/0640e5a7e0c8f86ff4a380150357bbef.pdf>.

⁷ U.S. Senate Committee on Armed Services, *Inquiry into Counterfeit Electronic Parts in the Department of Defense Supply Chain*, 112th Cong., 2nd sess., Report 112-167, May 21, 2012.

⁸ U.S. International Trade Commission (USITC), *China: Effects of Intellectual Property Infringement and Indigenous Innovation Policies on the U.S. Economy*, no. 332-519, USITC Publication 4226, May 2011, xviii–xx, <http://www.usitc.gov/publications/332/pub4226.pdf>. In addition, an estimate of the international value during 2009–15 of just pirated and counterfeited goods, such as software and clothing, is \$1.12 trillion. See Pamela Passman, “How to Protect Intellectual Property: From Fair Trade to Legal Trade,” *Foreign Affairs*, February 27, 2013.

⁹ Nor do these findings take into account that IP theft also increases cybercrime and other security threats, particularly with regard to counterfeit software use. According to a recent report by the International Data Corporation (IDC), counterfeit software is a major vehicle for carrying dangerous malware that imposes costs on the economy and exposes IT systems and data. The IDC study states that “the direct costs to enterprises from dealing with malware from counterfeit software will hit \$114 billion” in 2013 and “potential losses from data breaches could reach nearly \$350 billion.” See John F. Gantz et al., “The Dangerous World of Counterfeit and Pirated Software: How Pirated Software Can Compromise the Cybersecurity of Consumers, Enterprises, and Nations ... and the Resultant Costs in Time and Money,” IDC, White Paper, no. 239751, March 2013, 3–4, <http://www.computerworld.com.pt/media/2013/03/IDC030513.pdf>.

computers, an act of piracy with a multibillion dollar commercial value.¹⁰ While most cases of IP theft do not end up in courts, twenty trade-secret cases involving China revealed the wide range of industries hit: automobiles, automobile tires, aviation, chemicals, consumer electronics, defense systems, electronic trading, industrial software, and pharmaceuticals.¹¹

American scientific innovations and new technologies are tracked and stolen from American universities, national laboratories, private think tanks, and start-up companies, as well as from the major R&D centers of multinational companies. Virtually every sector and technology is attacked—from low-tech to high-tech; from agricultural machinery and biotechnology to wind-power generation; from mobile phones, computers, and televisions to chemical compounds and aeronautics.

Start-up companies are at the heart of the American innovative society. In his 2012 State of the Union address, President Obama noted the important place of start-ups when he observed that “innovation is what America has always been about. Most new jobs are created in start-ups and small businesses.”¹²

Start-ups rely heavily on IP protection just to get their inventions to market. As the Biotechnology Industry Organization (BIO) points out, “the vast majority of BIO’s members are small and medium sized enterprises that currently do not have products on the market. As such BIO’s members rely heavily on the strength and scope of their patents to generate investment to take their technologies to commercialization.”¹³ Start-ups, such as those in the biotech field, are extremely vulnerable to IP theft. Typically located in “incubator” areas near major research universities, these small operations have limited legal and technological resources to deal with the nearly relentless efforts targeting their IP. Moreover, they are often staffed by graduate students or post-degree fellows, who sometimes turn into “walking IP” and take trade secrets with them when they leave. As BIO observes, once the IP is lost, the company may simply fold because it is unable to attract any investment.

In addition to the illegal forms of IP theft, the United States may be losing a significant portion of its IP through completely legal and even institutionalized means. For example, each year hundreds thousands of students from all over the world come to the United States to pursue science, technology, engineering, and mathematics graduate degrees. Upon graduation, many return to their country of origin, not because they choose to but because current U.S. immigration law limits the number of visas granted to these graduates. This cap on visas forces thousands of highly skilled workers, a core input for economic growth and production, to leave the country, taking their knowledge, skills, and innovative spirit with them.

¹⁰ Leo Hindery Jr., “China’s Latest Target in Its Trade War Against American Manufacturing: The U.S. Solar Industry,” Huffington Post, March 6, 2012, http://www.huffingtonpost.com/leo-hindery-jr/china-solar-panels-_b_1323568.html.

¹¹ Michael A. Riley and Ashlee Vance, “China Corporate Espionage Boom Knocks Wind Out of U.S. Companies,” *Businessweek*, March 15, 2012; and Ann Woolner et al., “The Great Brain Robbery,” *Businessweek*, March 15, 2012.

¹² “Remarks by the President in State of the Union Address,” White House, Office of the Press Secretary, January 24, 2012, <http://www.whitehouse.gov/the-press-office/2012/01/24/remarks-president-state-union-address>.

¹³ Stanford McCoy, “Biotechnology Industry Organization: 2013 Special 301 Submission,” Biotechnology Industry Organization, 2013, <http://www.bio.org/sites/default/files/2013%20BIO%20Submission.pdf>.

Weak Rule of Law and the Absence of a Culture of Compliance

Contributing to the problem of IP theft globally is a lack of institutional capacity and a general unwillingness to confront the issue at a national level. Often, judicial resources are either not utilized or lack the capacity or experience to hear cases. Likewise, there is a lack of criminal sanctions for end-users in some countries where IPR violations are rife. The two most populous nations in the world, India and China, suffer from inefficient judicial institutions, have weak criminal enforcement of IPR violations, and seldom impose sentences that would rise to the level of deterrence for IP crimes. In China, for example, the courts are overwhelmed with cases, and judges in the IP courts are spread thinly.¹⁴ Barriers to discovery in China also remain a vexing problem for U.S. parties seeking redress both there and in U.S. courts.¹⁵ Despite improvements in some sectors following China's 2010 Special IPR Enforcement Campaign, the country remained on the "priority watch list" published by the United States Trade Representative (USTR) in 2012 and 2013. The USTR notes that IP protection and enforcement remain a significant challenge.¹⁶

Even where there are established administrative mechanisms to deal with IPR protection, such mechanisms often suffer from understaffing, underfunding, bureaucratic paralysis, or a combination of hindrances. As an example, a confluence of factors limits the effectiveness of China's copyright bureaucracy. Devolution of state power to the local level, local protectionism, lack of sufficient resources, and low bureaucratic rank have all been cited as reasons for the inefficacy of the National Copyright Administration and its local counterparts.¹⁷

Further, China has just redrafted its Guidelines on Anti-Monopoly Enforcement for Intellectual Property, and certain provisions could possibly be used to penalize IP producers rather than spur innovative activity. For instance, the guidelines require compulsory licensing of IP when a company is deemed to be in a dominant market position. In a disconcerting trend that has emerged in recent court cases, patent holders have been forced into compulsory licenses for their patents at rates that are far below market value (e.g., in *Interdigital v. Huawei*), and the definition of what constitutes a "dominant market position" remains unclear.¹⁸ While establishing guidelines for anti-monopoly enforcement of IP and opening these rules up for public comment are positive steps, more must be done to ensure that these guidelines are not used to suppress innovative activity rather than encourage it.

What Countries?

The USTR's 2013 Special 301 Report reviews the state of IPR protection and enforcement across the globe. In its most recent report on U.S. trading partners, the USTR identifies 1 priority country (Ukraine), while including 10 countries on its "priority watch list" and 30 on its "watch list." Most of these 41 countries are the subject of a sternly worded paragraph on problems in their IPR protection

¹⁴ Interview with a senior judge in the No. 2 Intermediate People's Court, IP Division, 2010.

¹⁵ See Allison Walton and Dean Gonsowski, "Like the Great Wall: E-discovery Barriers Still Exist between the U.S. and China," *Inside Counsel*, December 3, 2012, <http://www.insidecounsel.com/2012/12/03/like-the-great-wall-e-discovery-barriers-still-exi>.

¹⁶ Office of the U.S. Trade Representative (USTR), "2012 Special 301 Report," April 2012, http://www.ustr.gov/sites/default/files/2012%20Special%20301%20Report_0.pdf; and Office of the USTR, "2013 Special 301 Report," May 2013, <http://www.ustr.gov/sites/default/files/05012013%202013%20Special%20301%20Report.pdf>.

¹⁷ As Andrew Mertha notes, the state is not necessarily complicit in the devolution of power; rather, it may actually objectively recognize the limitations of its own abilities to control certain activities at the local level. See Andrew C. Mertha, *China's Water Warriors: Citizen Action and Policy Change* (Ithaca: Cornell University Press, 2008), 159.

¹⁸ See Frank Schoneveld, "Abuse of IP Rights under China's Antitrust Rules: Recent Cases Have a Potentially Serious Impact," *Lexology*, March 22, 2013, <http://www.lexology.com/library/detail.aspx?g=9f45d667-7444-4a74-ae61-bf4b5d04e0fe>.

and enforcement. Beyond the special focus on Ukraine, however, 3 countries on the priority watch list warrant more extensive comments: India, Russia, and China.

According to the USTR, the outlook for Indian protection of IP is discouraging, so much so that “there are serious questions about the future condition of the innovation climate across multiple sectors and disciplines.” Companies, for example, are challenged to patent and defend already patented pharmaceuticals. If a recent case serves as a precedent, companies from many sectors may be forced into compulsory licensing if they wish to sell in the country but do not manufacture the product there.

Russia frequently ranks among the worst-offending countries in the USTR’s Special 301 reports, and this year’s assessment finds an overall decline in IPR enforcement. However, with Russia’s accession to the WTO, some improvement in the piracy rate of software, and the introduction of a new special court, the report is hopeful about the future.

China receives the lion’s share of attention in the 2013 report, which notes that according to the U.S. National Counterintelligence Executive, “Chinese actors are the world’s most active and persistent perpetrators of economic espionage.” The USTR also cites evidence from privately sponsored studies suggesting that entities “affiliated with the Chinese military and Chinese Government” have obtained “all forms of trade secrets.” Overall, the report describes Chinese companies and entities as “escalating” infringement of trade secrets and continuing infringement of trademarks, copyrights, and patents. In addition, it notes that “central, provincial, and local level Chinese agencies inappropriately require or pressure rights holders to transfer IPR from foreign to domestic entities.”¹⁹

The indicators of China’s complex role in IPR infringement come from a host of other studies over the years. Of the counterfeit or pirated goods seized by U.S. Customs and Border Protection in 2012, 72% were Chinese in origin.²⁰ Seven of the eleven cases brought under the Economic Espionage Act since 2010 concern stolen IP destined for Chinese entities. For almost all categories of IP theft, currently available evidence and studies suggest that between 50% and 80% of the problem, both globally and in the United States, can be traced back to China.

By legal as well as illegal means, China has done a Herculean job of absorbing American and other countries’ technology. China now manufactures more cars than any other country, in 2012 producing almost as many as the United States and Japan combined;²¹ launches astronauts into orbit; assembles and makes many components for sophisticated consumer products like the iPad; leads the world in many green industries; builds most of the world’s new nuclear power plants; is rapidly advancing its military technology, often at a quicker pace than most experts predict; and makes some of the world’s fastest supercomputers. China is projected to pass the United States in total economic output between 2016 and 2030, depending on the source and methodology used.²² At the point of GDP parity, each of the two economies will account for an estimated 18% of world product.

Beyond these accomplishments, which suggest extraordinary inputs, are factors that make China the biggest IP offender in the world. In the first major study on China and IPR, Michel Oksenberg

¹⁹ See USTR, “2013 Special 301 Report,” especially 13, 31–38.

²⁰ U.S. Customs and Border Protection, “Intellectual Property Rights: Fiscal Year 2012 Seizure Statistics,” Office of International Trade, 0172-0113, January 17, 2013.

²¹ Patrick Blain (presentation at the 2013 Geneva Motor Show OICA Press Conference, Geneva, March 6, 2013), 10, <http://oica.net/wp-content/uploads/pc-oica-geneve-2013-v3b.pdf>.

²² These projections from the IMF’s 2011 “World Economic Outlook” are based on PPP measurements; see also the 2030 projection from the World Bank.

and colleagues noted in 1996 that the problem in China begins with historical and cultural factors, which are then exacerbated by leadership priorities, bureaucracies competing for authority, an immature legal system, and local-level leaders motivated first and foremost by short-term economic and political interests. “This widespread disregard for intellectual property rights,” they wrote, “is an area of great concern for all high-technology firms operating in the Chinese market.... and won’t be easily solved.”²³

Nearly two decades later, IPR still suffers from lax enforcement by a judicial system that, despite extraordinary reforms, does not deter IP theft. In fact, the most recent member surveys by AmCham China suggest that the situation is deteriorating. In 2012 the percentage of responding companies that classified IPR enforcement as “ineffective” and “totally ineffective” rose to 72%.²⁴ Doing business in China entails navigating a system that defies the outsider’s full apprehension, and IP theft represents a special risk.²⁵

PRC Policy

The legacy of the “four modernizations” policy, launched by Deng Xiaoping in 1978, is crucial to understanding IPR in China. The targets of Deng’s remarkably successful development policy were the core economic sectors of society, and foreign IP was seen as crucial for each. The Chinese government elicited the support of the UN Development Programme in fall 1978 for technical assistance and financial resources. China soon became the World Bank’s major recipient of support. To accelerate the modernization process, foreign trade was encouraged, with machinery and know-how from the West and Japan purchased or obtained through aid or other means. Eventually millions of Chinese studied abroad, many of them in the sciences. Having adopted fundamental reforms that included an export-led growth strategy similar to those that were pioneered by Japan and the “four tigers,” China was able to speed up its economic development with foreign investment and access to technologies and management expertise.²⁶

Over the years, the policy to acquire and develop technology has existed under different names and been given subtly different emphases. U.S. firms and national labs were targeted from the beginning. A congressional report documented successful efforts between the late 1970s and mid-1990s by a range of Chinese actors to obtain very advanced technologies.²⁷ By the late 1980s, American companies and trade negotiators were complaining, as reflected in the USTR Special 301 reports. These reports serve as an instructive historical record from 1989 to the present. The very first report listed China as one of the top three IPR offenders, and by 1996 China stood alone as the country of greatest concern.

At the core of the “indigenous innovation” policy launched in 2006 and incorporated into the National Medium- and Long-Term Plan for the Development of Science and Technology (2006–2020) were procurement rules that further favored Chinese companies, advantages for Chinese companies

²³ Michel Oksenberg, Pitman B. Potter, and William B. Abnett, “Advancing Intellectual Property Rights: Information Technologies and the Course of Economic Development in China,” *NBR Analysis* 7, no. 4 (1996): 1–35.

²⁴ American Chamber of Commerce, “China Business Climate Survey Report,” 2013.

²⁵ For a practical view by an American business lawyer and China hand, see Dan Harris, “How to Protect Your IP from China,” China Law Blog, parts 1–5, October 4–11, 2012, <http://www.chinalawblog.com/2012/10/how-to-protect-your-ip-from-china-part-5.html>.

²⁶ The four tigers of Asia are Hong Kong, the Republic of Korea, Singapore, and Taiwan.

²⁷ Christopher Cox, “Report of the Select Committee on U.S. National Security and Military/Commercial Concerns with the People’s Republic of China,” Select Committee, United States House of Representatives, May 1999, <http://www.gpo.gov/fdsys/pkg/GPO-CRPT-105hrpt851/pdf/GPO-CRPT-105hrpt851.pdf>; and Justin Schenk and Evan Perez, “FBI Traces Trail of Spy Ring to China,” *Wall Street Journal*, March 10, 2012, <http://online.wsj.com/article/SB10001424052970203961204577266892884130620.html>.

in the protection of IP and in the patent system,²⁸ efforts to set Chinese technology standards to favor Chinese entities, requirements for foreign companies to share or expose their technologies for access to the Chinese market, and subsidies for key industries to enable them to beat foreign competitors. Many foreign businesses came to see the heightened mandate to import technologies and assimilate them as justification for greater theft of foreign-generated IP, as well as for stronger pressure on foreign companies to share technology. An increase in theft and compulsory technology transfer in fact seems to have been the outcome.²⁹ China's indigenous innovation policy also included a mandate to consolidate industry so that one or a few Chinese companies would dominate key sectors. After decades of reforms, state-owned enterprises today produce an estimated half of China's total manufacturing and services output, and they dominate such sectors as energy, telecommunications, and transportation.³⁰

In China's 12th five-year plan (2011–15), developing technological capabilities across a broad swath of industries remains a top priority. Added to the plan in July 2012 were seven “national strategic emerging industries” of special interest, on top of the traditional focuses. These seven industries are (1) *new energy auto industry*, (2) *energy-saving and environmental-protection industry* (energy-efficient industry, advanced environmental-protection industry, resource-recycling industry), (3) *new-generation information-technology industry* (next-generation information-network industry, fundamental industry of core electronics, high-end software, and new information-service industry), (4) *biotechnology industry* (bio-pharmaceutical industry, bio-medical engineering industry, bio-breeding industry, bio-manufacturing industry), (5) *high-end equipment manufacturing industry* (aviation equipment industry, satellite and satellite application industry, rail transportation equipment industry, marine engineering equipment industry, intelligent equipment-manufacturing industry), (6) *new energy industry* (nuclear energy technology industry, wind energy industry, solar energy industry, biomass industry), and (7) *new material industry* (new functional-material industry, advanced structural-material industry, high-performance composite-material industry).

As the new Chinese leadership settles in, IPR issues loom. The fundamental question is whether the new leaders will confront the major societal and policy forces that continue to work against IPR. The patent and trade-secret legal environments, for example, require reform. The patent system encourages Chinese entities to copy and file foreign patents as if these patents were their own, and seems to establish the right of Chinese entities to sue the foreign, original inventor that seeks to sell the technology in China. A deluge of such suits could occur in the next few years. Separately, proposed legal amendments are now circulating that would force foreign companies into licensing agreements in exchange for those companies' access to the Chinese market. The amendments would produce a situation similar to the one developing in India, where foreign manufacturers may be prevented from importing their products and left with the choice of either licensing their technology to an Indian firm or manufacturing products in the country if they wish access to the Indian market.

²⁸ For example, the PRC pays entities to file for patents, and most patents are granted based on small or no design changes from the foreign originals.

²⁹ James McGregor, “China's Drive for ‘Indigenous Innovation’—A Web of Industrial Policies,” U.S. Chamber of Commerce, July 28, 2010, http://www.uschamber.com/sites/default/files/reports/100728chinareport_0.pdf.

³⁰ Andrew Szamosszegi and Cole Kyle, “An Analysis of State-owned Enterprise and State Capitalism in China,” prepared for the U.S.-China Economic and Security Review Commission, October 26, 2011, 1, http://origin.www.uscc.gov/sites/default/files/Research/10_26_11_CapitalTradeSOEStudy.pdf.

Cyber Methods for Stealing IP

Russia and other states are known to use espionage and cyberattacks on networks to steal defense and other secrets. Hackers stealing trade secrets, money, and personal information are also a worldwide problem. Quantitatively, however, China stands out in regard to attacks for IP. A confluence of factors, from government priorities to an underdeveloped legal system, causes China to be a massive source of cyber-enabled IP theft. Much of this theft stems from the undirected, uncoordinated actions of Chinese citizens and entities who see within a permissive domestic legal environment an opportunity to advance their own commercial interests. With rare penalties for offenders and large profits to be gained, Chinese businesses thrive on stolen technology.

While traditional industrial espionage techniques have been used extensively, cyber methods for stealing IP have become especially pernicious. In a March 2012 report to Congress, the People's Liberation Army (PLA) was identified as a key player, and was noted as often acting in concert with commercial entities. The report suggests that "rather than isolate certain state owned IT firms as exclusively 'defense' in orientation, the PLA...alternately collaborates with China's civilian IT companies and universities." The report concludes that "computer network operations have assumed a strategic significance for the Chinese leadership that moves beyond solely military applications and is being broadly applied to assist with long term strategies for China's national development."³¹

In its study of successful attacks conducted in 2012, Verizon, in cooperation with eighteen private organizations and government agencies, found that "state-affiliated actors" accounted for 19% of the 621 successful "breaches" in the 47,000 attacks reported.³² Of cases that were deemed motivated by "espionage," the PRC was determined to be responsible for 96%. In spite of the sophistication and reputation of the series of Verizon studies, this figure may exaggerate China's dominance in this arena. Nonetheless, the study adds weight to the findings of the other principal studies in the field, all of which point to China as the major source of state-sponsored attacks on IP.

Similarly, Mandiant Corporation's February 2013 study, entitled "Exposing One of China's Cyber Espionage Units," traces Chinese government sponsorship for cyberattacks on IP. All the industries targeted by the PLA unit studied by Mandiant fall into those considered strategic by the PRC, "including four of the seven strategic emerging industries that China identified in its 12th Five-Year Plan." The PLA unit began operations in 2006, the year that the indigenous innovation policy was approved. The purposes of the cyberattacks were found to be straightforward: to commit espionage and steal data. The unit was judged to access networks over months or even years to "steal broad categories of intellectual property, including technology blueprints, proprietary manufacturing processes, test results, business plans, pricing documents, partnership agreements, and emails and contact lists from victim organization's leadership." In the words of the report, "the cyber command is fully institutionalized within the CPC [Communist Party of China] and able to draw upon the resources of China's state-owned enterprises to support its operations."³³

In addition, on May 6 the U.S. Department of Defense issued its 2013 report to Congress on Chinese military developments. Reinforcing the findings from the Mandiant Corporation, the

³¹ Brian Krekel, Patton Adams, and George Bakos, "Occupying the Information High Ground: Chinese Capabilities for Computer Network Operations and Cyber Espionage," prepared for the U.S.-China Economic and Security Review Commission, March 7, 2012, http://origin.www.uscc.gov/sites/default/files/Research/USCC_Report_Chinese_Capabilities_for_Computer_Network_Operations_and_Cyber_%20Espionage.pdf.

³² Verizon RISK Team, "2013 Data Breach Investigations Report," 2013.

³³ Mandiant Corporation, "APT1: Exposing One of China's Cyber Espionage Units," February 2013, http://intelreport.mandiant.com/Mandiant_APT1_Report.pdf.

report notes that the PRC “is using its computer network exploitation (CNE) capability to support intelligence collection against the U.S. diplomatic, economic, and defense industrial base sectors that support U.S. national defense programs.” It asserts that “the information targeted could potentially be used to benefit China’s defense industry, high technology industries, [and] policymaker interest in U.S. leadership thinking on key China issues,” among other things.³⁴

In a sense, China’s current policy toward IP protection is similar to its policy toward environmental protection several years ago. Both IP and environmental protection impose costs and competitive disadvantages on China’s highest priority—comprehensive development—and have therefore been widely disregarded. Now, however, Chinese policy is better reflecting the understanding that environmental protection is essential for its citizens to lead healthy lives. Similarly, a solid IPR regime is essential to China obtaining the benefits from innovation necessary to sustain economic progress. Such a regime would encourage Chinese innovation as well as sustain Western innovation, from which China could continue to receive enormous benefits. Although degradation of the atmosphere for innovation is not as obvious as degradation of the air in Chinese cities, the long-term impact is equally devastating.

Problems with Available Trade Mechanisms

Traditionally, in order to solve trade disputes, most developed countries have relied on tools such as unilateral trade sanctions, trade remedies such as countervailing duties, and “voluntary” export restraints.³⁵ Due to obligations assumed as a result of the World Trade Organization’s Uruguay Round negotiations, the United States and other major countries agreed to use WTO mechanisms to settle disputes. The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), negotiated in 1994 and administered by the WTO, establishes minimum standards for many forms of IP regulation. A qualified success, WTO dispute mechanisms have seen more than 339 settlement reports and arbitration awards issued by the organization’s dispute body from 1995 (its year of inception) through 2011. Of these, the United States participated in 140.³⁶

Participation rates notwithstanding, WTO dispute mechanisms have several problems. Chief among these is the time required to reach a resolution. The process can be so time-consuming that recapturing any damages through this process is often illusory. As noted above, many products today, especially in the software and other high-tech industries, generate the bulk of profits for their companies in the first weeks or months of release.

Dispute mechanisms for trade in goods have worked reasonably well. However, resolutions to disputes involving IP are often reached behind closed doors, by lawyers lacking a sufficient background to make decisions on important issues of IP protection.³⁷ This stands in contrast to most modern procedural codes, which generally adhere to common transparent guidelines, including

³⁴ Office of the Secretary of Defense, Department of Defense, “Annual Report to Congress: Military and Security Developments Involving the People’s Republic of China 2013,” prepared for Congress, Washington, D.C., 2013, 36, http://www.defense.gov/pubs/2013_China_Report_FINAL.pdf.

³⁵ Council on Foreign Relations (CFR), “U.S. Trade and Investment Policy,” Independent Task Force Report, no. 67, September 19, 2011, http://i.cfr.org/content/publications/attachments/Trade_TFR67.pdf.

³⁶ World Trade Organization, “Annual Report 2012,” 2012, 84–107, http://www.wto.org/english/res_e/booksp_e/anrep_e/anrep12_chap5_e.pdf.

³⁷ Anne Hiaring, “Fish or Fowl? The Nature of WTO Dispute Resolution under TRIPS,” *Annual Survey of International & Comparative Law* 12, no. 1 (2006): 269–288, <http://digitalcommons.law.ggu.edu/annlsurvey/vol12/iss1/11>.

that “judicial proceedings must be public and that, in principle, the control of the allegations and proof belongs to the parties.”³⁸

The paucity of legal interpretations of the TRIPS agreement and a general sense of ambiguity inherent in many of the TRIPS obligations have also made it difficult to establish noncompliance and enforce the agreement.³⁹ For instance, the need for a plaintiff to show clear evidence of systemic failure, as opposed to anecdotal weaknesses in a country’s IP enforcement regime, leads to great difficulty in proving a culture of noncompliance under TRIPS for cases in which access to such clear evidence is restricted or otherwise unavailable.⁴⁰

Bilateral and multilateral trade agreements have also often been used to address global IP issues. Such discussions have allowed for more detailed treatment of trade-related issues between the United States and its trading partners that could not be easily dealt with through other avenues, such as the WTO. The Korea-U.S. Free Trade Agreement contains provisions specifically designed to address IP protections. For example, it includes specific provisions for improving enforcement and strengthening the overall legal environment for patents, trademarks, and copyright.⁴¹ The ongoing negotiations of the Trans-Pacific Partnership and U.S.-EU agreements are expected to have similarly high standards for protecting IP. As important as agreements are, however, progress in IP protection often occurs only when U.S. pressure reinforces some preexisting domestic impetus for change.⁴²

Recent U.S. Policy Responses Are Inadequate

In addition to participating in WTO dispute mechanisms such as TRIPS, the United States has relied on a series of other measures to deal with IP theft, none of which has solved the problem.

First, the United States has attempted to hector China and other foreign countries into doing a better job of protecting IP. The mechanism utilized annually is the USTR Special 301 Report. As discussed earlier, the report assesses foreign countries on their ability to protect intellectual property and identifies actions taken or anticipated by the U.S. government. In the recently released 2013 report, the USTR notes a grave concern with cyber-enabled trade-secret theft from China. Top administration officials have more frequently decried foreign theft of American IP amid promises to get tough. In March 2013, Thomas Donilon, President Obama’s national security advisor, specifically called attention to the problem of Chinese cyber-enabled theft of confidential American proprietary information.⁴³

A second U.S. government approach has been to increase enforcement and prosecution initiatives. The Office of the Intellectual Property Enforcement Coordinator was established in 2008 in the Office

³⁸ See the discussion in Norbert Horn, Hein Kötz, and Hans G. Leser, *German Private and Commercial Law: An Introduction* (Oxford: Clarendon Press, 1982), 45–50, cited in Hiaring, “Fish or Fowl?”

³⁹ Fanshu Yang, Ping Wang, and Kristie Thomas, “Recent WTO Disputes Involving the Protection and Enforcement of Intellectual Property Rights in China: Legal and Political Analysis,” China Policy Institute Briefing Series, no. 24, August 2007, available at <http://ssrn.com/abstract=1437642>.

⁴⁰ *Ibid.*

⁴¹ American Chamber of Commerce in Korea, “The KORUS Advantage: A Basic Guide for US Companies to the Contents of the KORUS FTA,” November 2012, <http://www.uschamber.com/sites/default/files/international/files/KORUS%20Advantage%20Final.pdf>.

⁴² Examples of such agreements have included the U.S.-Japan Structural Impediments Initiative, the U.S.-EU Summit process, and the Security and Prosperity Partnership with Canada and Mexico. See CFR, “U.S. Trade and Investment Policy.”

⁴³ See Thomas Donilon, “The United States and the Asia-Pacific in 2013” (remarks presented at the Asia Society, New York, March 11, 2013). Donilon stated: “Increasingly, U.S. businesses are speaking out about their serious concerns about sophisticated, targeted theft of confidential business information and proprietary technologies through cyber intrusions emanating from China on an unprecedented scale.... [S]pecifically with respect to the issue of cyber-enabled theft, we seek three things from the Chinese side. First, we need a recognition of the urgency and scope of this problem and the risk it poses—to international trade, to the reputation of Chinese industry and to our overall relations. Second, Beijing should take serious steps to investigate and put a stop to these activities. Finally, we need China to engage with us in a constructive direct dialogue to establish acceptable norms of behavior in cyberspace.”

of Management and Budget. Improved legislation and increased enforcement of foreign theft have resulted in the arrest and prosecution of Chinese and other foreign nationals at rates greater than in the past.⁴⁴ Seizures by U.S. Customs and Border Protection are also on the rise in many categories.⁴⁵

As important as these efforts are, they just do not have sufficient “teeth” and do not catch perpetrators often enough to make a difference. Theft is increasing, and cyber-enabled forms, in particular, are proving ever more deleterious.

Despite the inadequacy of U.S. government policy and action, many U.S. and other international companies large and small have made the calculation that they can mitigate the risk or absorb the lost revenues and profits. Some U.S. corporate actors are also pursuing their own solutions. Companies such as IBM are supporting the proposed Cyber Intelligence Sharing and Protection Act to allow for greater information sharing between the government and the private sector. Many companies support programs that encourage the rule of law abroad. Others, such as the Center for Responsible Enterprise and Trade (CREATE), seek to standardize best practices for corporate IP policy by enhancing supply-chain accountability on behalf of multinational companies. A final set of actors is increasingly looking to “take matters into its own hands” and pursue unilateral actions, particularly in the cyber domain, against foreign entities that steal their IP.

These conditions cannot be allowed to fester. China has taken aggressive private and public actions that are inflicting major damage to the American economy and national security. Robust and swift action must be taken by the U.S. government. IP thieves must rapidly discover that the costs of stealing American IP greatly exceed the benefits, and several changes are needed to make that happen. This report contains a series of recommendations that will reverse the negative trends of the past and make immediate improvements in the protection of American IP.

Conclusion

While IP theft is not new to the planet, today’s scale of economic impacts—with national security ramifications, international dimensions, significant foreign-state involvement, and inadequacy of legal and policy remedies and deterrents—makes for an unprecedented set of circumstances.

China poses an especially difficult problem, given the size and importance of its economy and the interdependence of the Chinese economy with those of the United States, Europe, and Japan. In 1996, Professor Oksenberg and colleagues argued that “Gradually, policy communities supportive and understanding of IPR are arising on the Chinese landscape. In effect, constituencies who stand to gain from IPR are beginning to appear and influence policy. But their strength is relatively weak...”⁴⁶ Three and half decades of Chinese economic development and progress in legal reform, together with well-intentioned and improved U.S. policy, have not proved effective. Almost the same things that were said twenty years ago can be restated today, except that now China is the world’s second-largest economy and the losses from IP theft have increased greatly. With American companies and workers hurting, millions of jobs, the vibrancy of our innovative economy, and our security are at stake. Meanwhile, the risks for stealing are low and cheating is commonplace.

The starting point for redressing the problem is an understanding of the tools available to fix it. The IP Commission regards access to the American market as the single most important lever

⁴⁴ See chapter 9 of this report for a thorough description and analysis of recent U.S. government actions to improve the protection of American intellectual property.

⁴⁵ See chapter 2 of this report for a discussion of recent seizure rates.

⁴⁶ Oksenberg et al., “Advancing Intellectual Property Rights,” 29.

in dealing with foreign companies with international ambitions. Thus, the Commission views changing the cost-benefit calculus for foreign entities that steal intellectual property to be its principal policy focus. Stealing American IP needs to have serious consequences, with costs sufficiently high that state and corporate behavior and policies that support IP theft are fundamentally changed. Companies that seek competitive advantages within the American market by using stolen intellectual property must find their access to that market made more difficult or thwarted altogether until they stop stealing.

The forces within China promoting greater IP protection need to be applauded and supported. At the same time, the incentive structure that currently rewards IP theft must be changed. The new Chinese leadership has a great opportunity in this regard. What the Commission can do is recommend specific steps that the United States can take to change the environment of IP theft, while offering to work with all groups in China who see that it is in their interest, as much as ours, to build an effective business environment that protects every country's innovators.

Beyond contributing toward a better functioning Chinese system, the Commission makes a series of recommendations that seek to protect American companies against all sources and forms of IP theft.

Measuring the Scale and Scope of the Loss of Intellectual Property

After reviewing the extant literature and hearing testimony from a wide range of experts, the IP Commission assesses that when the estimated value of lost sales, stock assets, investments, and other dimensions are added in, the total annual losses due to stolen IP are in the hundreds of billions of dollars.

Technet, a national coalition of CEOs in the high-tech field, estimates that more than six million jobs and more than a third of the United States' \$15-trillion economy rely on innovation.¹ A U.S. Patent and Trademark Office study estimates that IP-intensive industries directly accounted for 27.1 million American jobs in 2010, or 18.8% of all employment in the economy. An annual loss of hundreds of billions of dollars of stolen IP—the very lifeblood of America's innovation economy—is indeed extraordinary, especially to a still-recovering U.S. economy.

If the cost is so high and the implications for the U.S. economy so great, why is the IP Commission not able to more precisely measure the loss? The reasons are many.² First, loss is necessarily measured in different ways across different sectors and different types of IP theft. For instance, the value of unauthorized software is somewhat easier to measure, in part by counting the number of computers seeking to update software. Similarly, good statistics are kept on the value of seized counterfeit goods entering the United States. On the other hand, some losses are not ever aggregated. Trade-secret losses, for instance, by definition are not included in a total, in part because the value of the loss of an individual company's IP may only become known well after the fact, such as during the trial of a suspected thief or if the company ultimately goes out of business.

A second factor is that companies are highly disincentivized to report their losses for two reasons. First, when a company divulges that it has been a victim of IP theft, there can be certain reputational effects that may affect market confidence in corporate leadership and the value of a company's stock. Second, identifying IP theft almost necessarily requires identifying the source of the theft. If the origin of the theft is in a strategically important market for a company, then a certain level of theft may be written off as merely a “cost of doing business” in an otherwise profitable market.

A third factor centers on the surveys that are often used to measure loss, either by counting the losses reported by survey respondents or by estimating loss from reported statistics. Both approaches are problematic for essentially the same reason. Because IP theft varies widely across sectors and between companies—even within the same sector, companies have widely varying success in protecting their IP—unless every single company is polled and accurately reports its losses, neither aggregating nor estimating has much of a chance of being useful.³

What is indisputable is that the scale and scope of the loss is enormous. In a year of research, testimony, and interviews, the IP Commission has not heard one expert suggest the problem is not

¹ See Technet, “America's Innovation Economy,” website, <http://www.technet.org>.

² See the Appendix to this chapter for an in-depth report on the challenges of measuring the value of IP theft.

³ That said, we cite some of these surveys later in the report. Flawed as they might be, they are all that was available. We recognize that we are in some cases drawing conclusions from data that is incomplete.

breathhtaking in scale. Even more important than the scale and scope of the loss is an overwhelming assessment by experts that current legal and regulatory approaches to mitigating the loss are staggeringly ineffective.

Below are summaries of a range of highly knowledgeable efforts, which help bound the scale and scope of the problem.

The Details

International Data Corporation (IDC): "The Dangerous World of Counterfeit and Pirated Software" (2013). Counterfeit software is a major vector for the distribution of dangerous malware that imposes substantial costs on the economy and decreases the security of IT systems and data. IDC estimated that globally "the direct costs to enterprises from dealing with malware from counterfeit software will hit \$114 billion" in 2013 and "[t]he potential losses from data breaches could reach nearly \$350 billion."⁴ High rates of IP theft also increase the risks of cybercrime and other security threats, particularly with regard to counterfeit software use.

Bureau of Economic Affairs/U.S. Patent and Trademark Office: "Intellectual Property and the U.S. Economy: Industries in Focus" (2012). The entire U.S. economy relies on some form of IP because virtually every industry either produces or uses it. The report identified 75 industries (from among 313 total) as IP-intensive. These IP-intensive industries directly accounted for 27.1-million American jobs in 2010, or 18.8% of all employment in the economy. The vast majority were in the 60 trademark-intensive industries (which included 22.6 million jobs in 2010).

IP-intensive industries accounted for about \$5.06 trillion in value added in 2010, or 34.8% of U.S. GDP. While IP-intensive industries directly supported 27.1-million jobs, either on their payrolls or under employment contracts, these sectors also indirectly supported 12.9 million more supply-chain jobs throughout the economy. In total, 40.0-million jobs, or 27.7% of all jobs, were directly or indirectly attributable to the most IP-intensive industries. Merchandise exports of IP-intensive industries totaled \$775 billion in 2010, accounting for 60.7% of total U.S. merchandise exports.⁵

Business Software Alliance: "Shadow Market: 2011 BSA Global Software Piracy Study" (2012). The commercial value of the "shadow market" of globally pirated software climbed from \$58.8 billion in 2010 to \$63.4 billion in 2011. The study by the Business Software Alliance estimates that the global piracy rate is 42%. The EU rate was judged to be 33%, Japan's is 21%, and the U.S. rate is 19%. However, the piracy rate for emerging economies is over 68%. India's piracy rate is 63% (a 9% decline over the last decade), Russia's rate is 63% (a 24% decline), and Indonesia's rate is 85%.

Meanwhile, China's illegal software market was \$9 billion in 2011 out of a total market of nearly \$12 billion, for an astonishing piracy rate of 77%. Chinese PC owners spend less than a quarter of the amount of other BRIC countries on software and a mere 7% of U.S. software spending. The BSA study suggests that the problem is only expected to get worse. Emerging markets—the key origins of pirated software—took in 56% of new PC deliveries in 2011.⁶

⁴ IDC, "The Dangerous World of Counterfeit and Pirated Software," 3–4.

⁵ U.S. Department of Commerce, "Intellectual Property and the U.S. Economy: Industries in Focus," prepared by the Economics and Statistics Administration and U.S. Patent and Trademark Office, March 2012, <http://www.esa.doc.gov/sites/default/files/reports/documents/ipandtheuseconomyindustriesinfocus.pdf>.

⁶ Business Software Alliance (BSA), "Shadow Market: 2011 BSA Global Software Piracy Study," May 2012, http://portal.bsa.org/globalpiracy2011/downloads/study_pdf/2011_BSA_Piracy_Study-Standard.pdf.

U.S. Customs and Border Patrol: Intellectual Property Rights Fiscal Year (FY) 2012 Seizure Statistics. The number of IPR seizures decreased to 22,848 shipments in FY 2012 from 24,792 in FY 2011 (largely due to certain high-volume counterfeited patents leaving service). The estimated manufacturer's suggested retail price for all FY 2012 IPR seizures is \$1.26 billion, up from \$1.1 billion in FY 2011. China was the source for 72% of seized goods.⁷

International Chamber of Commerce: "Estimating the Global Economic and Social Impacts of Counterfeiting and Piracy" (2011). A report commissioned by the International Chamber of Commerce estimates that, based on 2008 data compiled by the Organisation for Economic Co-operation and Development (OECD), the total global economic value of counterfeit and pirated products is as much as \$650 billion every year. Moreover, the extent of the problem is expected to grow, in large part as a result of the growth of the Internet. Based on existing estimates, the report also projects that the *global value of counterfeit and pirated products could amount to \$1.7 trillion by 2015*. Previous studies have indicated that if counterfeiting and piracy could be eradicated or seriously reduced, up to 2.5-million jobs could be created in the legitimate economies of the G20.⁸

U.S. International Trade Commission (USITC): China: Effects of Intellectual Property Infringement and Indigenous Innovation Policies on the U.S. Economy (2011). In 2009, the theft of U.S. IP from China alone was equivalent in value to \$48.2 billion in lost sales, royalties, and license fees. This estimate falls within a broad \$14.2-billion to \$90.5-billion range; the breadth of this range is explained by the fact that many firms were unable to calculate such losses. Of the \$48.2 billion in total reported losses, approximately \$36.6 billion (75.9%) was attributable to lost sales, while the remaining \$11.6 billion was attributable to a combination of lost royalty and license payments as well as other unspecified losses.

The USITC report estimated that an improvement in IPR protection in China to levels comparable to those in the United States could lead to an estimated \$107.0-billion gain in U.S. exports and sales to majority-owned affiliates in China (after adjusting for the double-counting of U.S. exports to affiliate firms in China). U.S. exports of goods and services to China—including the receipt of royalties and license fees—could increase by an estimated \$21.4 billion, and sales to U.S. majority-owned affiliates in China could increase by an estimated \$87.8 billion.⁹

Organisation for Economic Co-operation and Development: The Economic Impact of Counterfeiting and Piracy (2008). Quantitative analysis carried out by the OECD indicates that the volume of tangible counterfeit and pirated products in international trade could have been up to \$200 billion in 2005.¹⁰ This figure does not, however, include counterfeit and pirated products that are produced and consumed domestically, nor does it include the significant volume of pirated digital products that are being distributed via the Internet. If these items were added, the total magnitude of counterfeiting and piracy worldwide could well be several hundred billion dollars more. The OECD report also finds that 70% of the source economies of IP theft are in the Asia-Pacific region.

⁷ Office of the Intellectual Property Enforcement Coordinator, "Intellectual Property Spotlight," January/February 2013.

⁸ International Chamber of Commerce, "Estimating the Global Economic and Social Impacts of Counterfeiting and Piracy," February 2011, <http://www.iccwbo.org/Advocacy-Codes-and-Rules/BASCAP/BASCAP-Research/Economic-impact/Global-Impacts-Study>.

⁹ USITC, *China: Effects of Intellectual Property Infringement and Indigenous Innovation Policies on the U.S. Economy*, no. 332-519, USITC Publication 4226, May 2011, 3-37, <http://www.usitc.gov/publications/332/pub4226.pdf>.

¹⁰ *The Economic Impact of Counterfeiting and Piracy* (Paris: OECD, 2008).

Effects on R&D and Innovation

Regardless of how overall monetary value of IP loss is quantified, the true losses extend far beyond decreased revenues and lost market share. There are also secondary effects that directly influence companies to significantly reduce their R&D investments, thus slowing long-term economic progress. Reduced incentive to innovate, diversion of revenues to IP-infringing firms and away from IP-creating firms, and diversion of revenues to IP-protection measures and away from R&D investment are just a few of the reasons that companies may struggle to maintain investment in innovative activity.

Reduced Incentive to Innovate

IP protections in the United States are based on the fundamental belief that providing limited monopolies to inventors and creators incentivizes further innovation, driving forward human and economic development.¹¹ A 2011 study conducted for the U.S. Chamber of Commerce's Global Intellectual Property Center examined the contributions of IP-intensive industries in the U.S. economy and concluded that they were responsible for up to a third of U.S. economic output.¹² This economic growth, however, is not limited to specific industries or classes; the benefits of IP are felt across all sectors and, to some extent, affect every job in the economy. As explained in a recent report by the U.S. Patent and Trademark Office, "every job in some way produces, supplies, consumes, or relies on innovation, creativity, and commercial distinctiveness. Protecting our ideas and IP promotes innovative, open, and competitive markets."¹³

While the argument that strong IP protections are an overall benefit to the economy has historically been a theoretical and anecdotal one, it has garnered an increasing body of empirical support.¹⁴ Recent studies have shown that the level of a country's IP protections is a key determinant of its overall economic development.¹⁵ In an OECD study of WTO TRIPS (trade-related aspects of intellectual property rights) signatories, researchers found that patent rights in developing countries tended to be positively associated with increased levels of FDI as the strength of those rights increased.¹⁶ It is important to note, however, that IP protections are only beneficial to an economy when they are adequately enforced.¹⁷ The lack of enforcement is the key issue in many countries. As one expert noted when discussing Chinese IP rights, "the problem is not the lack of laws.... The problem is implementation."¹⁸

¹¹ U.S. Const. art. I, § 8; and Andréanne Léger "Intellectual Property Rights and Innovation in Developing Countries: Evidence from Panel Data" (paper prepared for presentation at the International Association of Agricultural Economists Conference, Gold Coast, Australia, August 12–18, 2006), 2, available at <http://bit.ly/15oAEA9>.

¹² Nan D. Pham, "Employment and Gross Output of Intellectual Property Companies in the United States," NDP Consulting, January 2011, 4, available at <http://bit.ly/JvExFv>.

¹³ "Intellectual Property and the U.S. Economy: Industries in Focus," Economics and Statistics Administration, U.S. Patent and Trademark Office, March 2012.

¹⁴ "Measuring Momentum: GIPC International IP Index," Global Intellectual Property Center Index, U.S. Chamber of Commerce, December 2012, 9, available at <http://bit.ly/ZCLQlz>.

¹⁵ Theo S. Eicher and Monique Newiak, "Intellectual Property Rights as Development Determinants," *Canadian Journal of Economics* 46, no. 1 (2013).

¹⁶ TRIPS refers to "trade-related aspects of intellectual property rights." See W.G. Park and D. Lippoldt, "The Impact of Trade-Related Intellectual Property Rights on Trade and Foreign Direct Investment in Developing Countries," Organisation for Economic Co-operation and Development (OECD), May 21, 2003, 4, available at <http://bit.ly/11p7cF0>.

¹⁷ Park and Lippoldt, "The Impact of Trade-Related Intellectual Property Rights," 4.

¹⁸ Adam Segal, *Advantage: How American Innovation Can Overcome the Asian Challenge* (New York: W.W. Norton, 2012).

When IP protections are strong and effective, they can provide tremendous incentive for innovators, create jobs, and drive broad economic development, especially in sectors where returns on investment are long term.¹⁹ Conversely, when IP is not protected, the incentive structure for individuals and firms changes, with start-up companies being the clear losers.

Revenues Diverted to IP Infringers

When a country fails to provide adequate protection for intellectual property, the result is not only a lost incentive to innovate but also a positive incentive to infringe. In all the IP-intensive industries there exist both IP creators and IP infringers. The former use their time, money, and human resources in the pursuit of new and better inventions and vary in size from large multinational corporations to small start-ups operating out of a garage. What they all have in common is a drive to create, with the expectation that the market will reward them for their ingenuity. IP infringers do not create. They instead use the creative powers of other firms or individuals to generate revenue for themselves. Examples include industrial spies stealing proprietary chemical formulas, patrons of cybercriminals who break into corporate networks in order to steal trade secrets for use in their own products, DVD and software pirates across Asia, and manufacturers of counterfeit luxury goods. When these infringers are allowed to succeed in their endeavors, we allow the marketplace to reward and incentivize IP theft. This state of affairs creates a vicious cycle, whereby ill-gotten revenues are utilized to continue to fund the firm's standing business model of IP theft.

Clearly, while both IP infringers and creators can generate revenue from an economy, only one of these business models creates lasting, long-term economic growth.

Revenues Diverted to IP Protections

Most firms see R&D expenditures as investments in their long-term growth. As outside firms and individuals steal IP, firms increasingly spend revenue trying to protect their previous R&D investments from being stolen rather than on new R&D investments.²⁰ Rampant infringement of IP in China has been directly cited by U.S. firms as a reason for reduced expenditures on R&D, and even reduced employment in the U.S.²¹ Why would these companies continue to spend from a continually shrinking pot on new R&D investments when they cannot protect the return on their previous investments?

According to the previously cited USITC report, "firms in the U.S. IP-intensive economy...spent approximately \$4.8 billion in 2009 to address possible Chinese IPR infringement."²² Again, the hardest-hit sector was information services. Furthermore, a company's costs for protecting its IP on the Internet are increasing rapidly. A recent study estimated that the median annualized cost to organizations of cybercrime for 50 benchmarked companies was \$5.9 million per year and ranged

¹⁹ "The Impact of Intellectual Property Protection on Innovation and Technology Development," Business and Industry Advisory Committee to the OECD, January 2003, available at: <http://bit.ly/XVDH0m>.

²⁰ U.S. Government Accountability Office (USGAO), "Intellectual Property: Observations on Efforts to Quantify the Economic Effects of Counterfeit or Pirated Goods," Report to Congressional Committees, GAO-10-423, April 2010, 12.

²¹ USITC, *China: Effects of Intellectual Property Infringement*, 2-7, 2-21.

²² *Ibid.*

from \$1.5 million to \$36.5 million per company.²³ Smaller companies have suffered the most and incur almost four times the per capita cost of large companies.²⁴

Beyond lost incentives and fewer resources, a lack of IP protection also incentivizes unfair competition. Not all stolen IP comes in the form of a final product. In many cases, stolen IP is used as an input to make what would otherwise be classified as legitimate goods. For instance, a fishing company in Thailand was recently fined for using pirated software to manage its business infrastructure.²⁵ By using illegal software, this company was able to operate at significantly lower cost than its IP-respecting counterparts, resulting in an unfair advantage. When these violations are allowed to persist, business practices become a race to the bottom. Forced to compete on a tilted playing field, other companies will also begin to use stolen IP simply to remain competitive in the marketplace.

Regardless of the specific reason, it is clear that the theft of IP is proving to be an inhibiting factor in realizing the value of currently held IP while depriving firms of funding aimed at the production of new IP. In the face of staggering losses, firms will have less motivation to innovate, have less money to invest in R&D, and hire fewer employees. They will also continue to be distracted by attempts to chase down the perpetrators of IP theft in a desperate, and often futile, attempt to stem their losses.

The studies give sobering evidence that the United States, along with other countries, faces one of the greatest and most vexing political-economic challenges in history. America's core economic strength is being attacked successfully on a mammoth scale, and we are well into the game.

²³ Ponemon Institute, "Second Annual Cost of Cyber Crime Study: Benchmark Study of U.S. Companies," Research Report, August 2011, http://www.arcsight.com/collateral/wh_tepapers/2011_Cost_of_Cyber_Crime_Study_August.pdf.

²⁴ Ibid.

²⁵ "Company Fined for Using Pirated Software to Gain Unfair Advantage over Massachusetts Businesses," Attorney General of Massachusetts, Press Release, October 18, 2012.

Appendix: Challenges in Measuring IP Loss

Studies often begin with disparate views as to what should be counted when measuring IP theft, resulting in wide variation between studies in terms of the bottom-line value of IP theft. In general terms, these definitions of “what counts” include:

- *Effects on industry.* Lost sales; lost brand value; reduced scope of operations; lost jobs and reduced ability to provide employee benefits; reduced ability to conduct R&D; increased IP protection expenses for prevention, remediation, and enforcement; increased costs from dealing with malware acquired from unlicensed software; reduced incentive to innovate.
- *Effects on government.* Lost tax revenue; increased IP protection expenses for prevention, remediation, and enforcement, including costs to store, secure, and destroy seized assets; benefit to criminal networks looking to launder money or harm the public; impact on national security; impact on civilian safety, in that illegally obtained goods and processes that depend on IP might not have safety-dependent updates (in the case of software) or appropriate protections may have been left out or deleted (in the case of counterfeit goods).
- *Effects on consumers.* Harm to health, harm to safety, costs incurred as a result of product failure, decreased or increased purchasing power.
- *Effects on the U.S. economy as a whole.* Decline in economic growth as incentives to innovate are reduced, lost trade revenue, impact on the environment; increase in companies with substandard working conditions.

Most existing research on IP theft uses one or more of the following indicators to create a broad yet sizeable estimate:

- *Volume of goods (VOG) seized by U.S. Customs and Border Protection (CBP).* While often used as a baseline for estimates, the limitations of using VOG include uncertainty regarding whether it reflects the aggregate of the loss, whether the assessed percentage of loss can be known, or simply whether it represents the maximum volume that CBP is able to capture given its resources. CBP seizures are an inadequate metric for a number of categories of loss, including digital piracy and trade-secret theft.
- *Dollar value of goods seized by CBP.* In using the value of seized goods in estimating total loss, one must first determine whether to measure production cost, domestic value, the manufacturer’s suggested retail price, or some interim price point depending upon methodology.²⁶ As with VOG, it is also unclear if these numbers reflect the totality or a set fraction of the problem, or simply the maximum volume that CBP is able to capture given its resources. It is also a poor measure of digital piracy.
- *Ratio of the volume or value of illegitimate goods to legitimate goods in a particular industry.* This approach often uses CBP data as a primary indicator, but can use specialty formulas derived from surveys.
- *Extrapolations based upon consumer surveys.* This methodology often attempts to combine quantitative data (how many goods were pirated) with more qualitative data (how much value was actually lost based upon knowledge of consumer behavior).

Survey questions may focus on the following: customer willingness to pay for counterfeit goods; personal ethics regarding piracy; number of illegitimate purchases during a set timeframe;

²⁶ For example, BSA and IDC use a formula that suggests that the value of pirated goods = [(legitimate market value) / (1 - piracy rate) - legitimate market value]. However, this formula does not appear to be universal.

minimum expectations regarding quality; pricing points that would eliminate incentives for piracy; awareness of and reactions to penalties or side effects (including health, safety, and legal). This method can be especially useful for measuring losses in software or other digital products that are not reflected in CBP data. Surveys can ask consumers to indicate how many of a certain unit they have installed to estimate total products available and then subtract that number from the known number of units sold. Negative numbers can indicate the extent of piracy in a given industry.

However, a survey approach has limitations. It can be cost and labor intensive, it can be distorted by reporting bias, and is subject to the quality of the survey design.

- *Economic multipliers.* This approach shows how capital changes in one industry affect output and employment in associated industries.

The Bureau of Economic Analysis at the Department of Commerce has published guidelines that make regional multipliers available through its Regional Input-Output Modeling System (RIMS II).

- *“Rule of thumb.”* The U.S. Government Accountability Office (USGAO) argues that there is no reliable “rule of thumb” for estimating the percentage of a given industry that is dominated by piracy.

Other difficulties to bear in mind in the measurement challenge include the following:

- Many agencies such as the Department of Commerce and the FBI rely on industry statistics rather than original research, which can result in inconsistent or unverifiable methodologies.
- Some industries do not want to expose the scale of counterfeiting and thus may underreport. Increased IP theft may increase overall revenue directed towards a particular IP, as sampling results in greater product exposure. IP theft can allow companies to “move into the aftermarket”—effectively acquiring knowledge that can allow them to become true competitors rather than solely continuing to copy products. This phenomenon may be even more difficult to capture in a cost assessment.
- Research by the USGAO indicates that three widely cited studies on the impact of counterfeiting on the U.S. economy—attributed to the FBI, CBP, and FTC—“cannot be substantiated due to the absence of underlying studies,” creating additional challenges for researchers.

Types of IP Theft

IP theft varies widely in both type and method. It ranges from more commonly known forms, such as software and music piracy, to more elaborate types, such as the use of economic espionage tactics to steal complex industrial trade secrets. Each type of IPR violation harms an economy in unique ways and brings with it a discrete set of challenges that make both deterrence and enforcement difficult.

In the chapters that follow, we discuss each type of IP theft, how it is perpetrated, how it affects the local economy, how it costs American jobs, and why each type is so inherently difficult to stop. The anecdotes we use are real, documented stories, based on facts largely available in the public domain. They support some of our early conclusions as a commission—namely, that IP theft in general is substantially human, manifestly local, and unceasingly pervasive.

The stories that most people hear or imagine when thinking about IP theft, economic espionage, or trade-secret theft are the grist of high-tech espionage thrillers. However, while it is true that the rise of personal computing has added a new dynamic to protecting intellectual property, it is important to remember that nearly all IP loss, no matter how high-tech, still requires a human component. It is rare that a significant violation is perpetrated through cyber methods alone. In order for IP theft to be successful, a human element is needed. While cyber methods add new challenges, the fight is still human.

Additionally, the mention of global IP thieves often conjures up images of a foreign enemy based somewhere on the other side of a vast ocean. State-sponsored efforts immediately leap to mind—for example, Shanghai-based PLA Unit 61398, which has been identified as the source of many recent cyberattacks.¹ In reality, however, most IP theft is committed within American offices, factories, and even neighborhoods and homes. Our research has shown that large IP losses, the ones that affect the American economy and national security in the most significant ways, are committed within U.S. borders.

Finally, IP theft and its effects are not isolated to a few high-tech industries or sectors. There are a total of 27-million jobs within the U.S. IP-intensive economy, which is nearly 20% of all jobs in the American economy.² However, IP is used everywhere and in nearly all jobs. Even though a sector may not be dedicated to creating IP, it still uses intellectual property or is in some way supported by industries that are within the IP-intensive economy. With an economy as interconnected as ours, when IP is lost in one sector, the negative effects of this loss are felt throughout.

In the chapters that follow, we examine the global environment with regard to IP theft through case studies and analysis in the areas of patent, trade-secret, trademark, and copyright law.

¹ “Chinese Cyber-attacks: Hello, Unit 61398,” *Economist*, February 19, 2013, <http://www.economist.com/blogs/analects/2013/02/chinese-cyber-attacks>.

² U.S. Department of Commerce, “Intellectual Property and the U.S. Economy: Industries in Focus,” prepared by the Economics and Statistics Administration and U.S. Patent and Trademark Office, March 2012.

Patent Violations

Viewing China's development of a patent system in a global historical context provides a vivid illustration of the large amount of progress that the country has achieved in a relatively short period of time. Patent protection, along with copyright, was one of the earliest forms of IP protection, formally dating to fifteenth-century Italy and the Venetian Statute of 1474. In England, the late Tudors (c. 1561) initiated the practice of issuing "letters patent" granting monopolies on the manufacture and sale of commodities. The policy was intended to attract foreign craftsmen and tradespeople to settle in the country and make use of their knowledge and skills domestically.¹ This practice was extended by Elizabeth I and later James I into the early seventeenth century to encompass the inventions of native Englishmen as well, solidifying the granting of monopolies as a discretionary means of extracting income and maintaining political power.²

By the end of the reign of James I, changes began to occur that would alter the political and social landscape, eventually giving birth to a diverse intellectual environment tolerant of opposing viewpoints. A fairly developed patent system emerged, along with institutions to enforce an individual's claim to original creation.³ The process began with the deprecation of the royal issuance of letters patent for monopolies by Parliament in 1621.⁴ This was immediately followed by the promulgation of the Statute of Monopolies in 1624, the first patent law formally defining invention, and setting a fourteen-year period as the standard for patents.⁵ The statute also stipulated parliamentary approval for all patents, although a compromise in section 6 allowed the crown to retain power of letters patent only when issued to "the true and first inventor" of "new manufactures." This would remain the effective patent law for all of England's industrial revolution until 1852, when a new law established a patent office.⁶

In the United States, patent rights were authorized in Article I of the Constitution: "The Congress shall have power... To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries."⁷ The United States has generally maintained this utilitarian view by providing patent protection with the belief that it would incentivize innovation and economic development. Thomas Jefferson, one of the first patent commissioners, wrote in a 1789 letter to James Madison that the Bill of Rights should include the language "monopolies may be allowed to persons for... their own inventions in the arts for a term not exceeding—years but for no longer term and no other purpose."⁸ The founders believed that this

¹ Ron Harris, "Government and the Economy, 1688–1850," in *The Cambridge Economic History of Modern Britain Volume 1: Industrialisation 1700–1860*, ed. Roderick Floud and Paul Johnson (Cambridge: Cambridge University Press, 2004), 204–37; and UK Intellectual Property Office, "Tudors and Stuarts," <http://www.ipo.gov.uk/types/patent/p-about/p-what-is/p-history/p-history-tudor.htm>.

² UK Intellectual Property Office, "Tudors and Stuarts."

³ See Lyman Ray Patterson, *Copyright in Historical Perspective* (Nashville: Vanderbilt University Press, 1968); and Douglass C. North and Robert Paul Thomas, *The Rise of the Western World: A New Economic History* (Cambridge: Cambridge University Press, 1973).

⁴ Nigel Stirk, "Intellectual Property and the Role of Manufacturers: Definitions from the Late Eighteenth Century," *Journal of Historical Geography* 27, no. 4 (2001): 475–92.

⁵ *Ibid.*

⁶ Harris, "Government and the Economy, 1688–1850."

⁷ U.S. Const. art. I, § 8, cl. 8.

⁸ Thomas Jefferson to James Madison, "On The Liberty to Write, Speak, and Publish and Its Limits," August 28, 1789.

inherently “monopolistic” policy generally incentivized innovation. If researchers and inventors are not assured a reasonable expectation of return, they are less likely to expend time, money, and energy in developing new innovations. This is especially true in today’s modern economy, where R&D expenditures for new high-tech innovation can run into the billions of dollars. When patent laws are violated or inventions misappropriated internationally, incentive for innovation is greatly reduced and revenue is diverted from innovating companies to infringing companies. A review of the 2012 Special 301 report from the office of the USTR indicates that although there has been progress rooting out patent violations, infringing activities and weak patent regimes remain a global problem even in some of the world’s largest economies.

China itself has made great progress in its nascent patent system. In the fewer than three decades since the introduction of a modern patent regime in China (enacted in 1985), the PRC has become the leading country in the world in terms of the number of patents filed in domestic offices. Over the past decade and a half alone, domestic patent applications have increased from around 105,000 in 1997 to over 1.6 million in 2011.⁹ This flurry of activity may be seen as a response to a concerted government effort to spark innovative activity. It is led not only by many of the largest Chinese companies (e.g., the technology companies ZTE and Huawei) but also by many smaller companies taking advantage of government incentives such as tax breaks and financial rewards available to firms that actively file patents both domestically and abroad.¹⁰ Yet while the overall numbers may create an impression of increased innovative activity, they should be taken with caution. The evidence suggests that the steep increase in the number of patents reflects in part a greater incentive simply to patent, rather than to innovate. This “ecosystem of incentive” provides tenure to professors, *hukou* (residence) permits to students and workers, cash bonuses and rebates to filers, and even bonuses to patent examiners based on the number of patents approved.¹¹

*Patent Infringement*¹²

A study by the U.S. International Trade Commission found that U.S. firms estimate losses to Chinese patent infringers to have topped \$1.3 billion in 2009 alone.¹³ Although many of these companies could not identify whether or not they thought patent infringement had either increased or decreased during the polling period of 2007–9, substantially more thought that it had increased (24%) than decreased (<1%).¹⁴ A significant number of these companies also noted that as a result of

⁹ Figures cover both resident and nonresident applications. See World Intellectual Property Organization (WIPO), Country Statistical Profiles (China), http://www.wipo.int/ipstats/en/statistics/country_profile/countries/cn.html.

¹⁰ WIPO, Country Statistical Profiles (China). See also “China to Provide Financial Incentives for Filing Patent Applications Abroad,” China IPR, web log, June 12, 2012, <http://chinaipr.com/2012/06/12/china-to-provide-financial-incentives-for-filing-patent-applications-abroad>.

¹¹ “Innovation in China: Patents, Yes; Ideas, Maybe,” *Economist*, October 14, 2010, <http://www.economist.com/node/17257940>.

¹² Infringement of a patent occurs when a non-patent holder practices all the steps of the patented invention without authorization, whether or not that entity was previously aware of the existence of the patent. Infringement can be direct or indirect. In both the United States and China, direct infringement requires one actor to perform each step of the patented method or system. U.S. law allows for two types of indirect infringement, contributory and induced. 35 U.S.C. § 271(b) defines induced infringement as “[w]hoever actively induces infringement of a patent shall be liable as an infringer” and requires the patentee to show that another person actually infringed and that the alleged inducer knew of the patent and, nevertheless, knowingly induced the infringing acts with a specific intent to encourage infringement by that person. Contributory infringement requires that there is direct infringement, that the accused infringer had knowledge of the patent, that the component has no substantial non-infringing uses, and that the component is a material part of the invention. China does not have specific doctrine related to indirect infringement; rather, claims for all forms of IPR infringement are handled under its Tort Liability Law, under which section 8 provides for joint and several liability for tortious acts in general. See Patrick E. King, Timothy T. Lau, and Gautam V. Kene, “Navigating the Shoals of Joint Infringement, Indirect Infringement, and Territoriality Doctrines: A Comparative Analysis of Chinese and American Patent Laws,” *Columbia Journal of Asian Law* 25, no. 2 (2012): 275, 277, 81. See also *Vita-Mix Corp. v. Basic Holding, Inc.*, 581 F.3d 1317, 1328 (Fed. Cir. 2009); and *Fujitsu Ltd. v. NETGEAR Inc.*, 620 F.3d 1321, 1326 (Fed. Cir. 2010).

¹³ USITC, *China: Effects of Intellectual Property Infringement and Indigenous Innovation Policies on the U.S. Economy*, no. 332-519, USITC Publication 4226, May 2011, 3-37, <http://www.usitc.gov/publications/332/pub4226.pdf>.

¹⁴ *Ibid.*, 3-40.

the losses, they put less money into R&D and were forced to divert funds to legal costs that otherwise would have gone to R&D.¹⁵

Industries with high levels of R&D expenditures, such as biotechnology, high-technology, and pharmaceutical companies, typically rely on the protection provided by patent systems (usually for twenty years or more) to recoup expenses in product development and realize profit from their inventions. In this way, patents provide incentive to these companies to continually innovate. Patents not only form the core of the assets for large R&D-centric companies but also offer important protection for the inventions of small start-up companies that may be seeking early-round venture capital investment.¹⁶

The Utility Model Patents

One result of the recent Chinese emphasis on the volume of patents has been an exponential increase in the number of utility model patents. Utility model patents, sometimes referred to as “petty patents,” are distinct from invention model patents in that they confer a patent term of ten years instead of twenty, require only a basic description of the subject matter being patented, and do not require an extensive examination in order to determine whether the subject matter of the application is actually innovative.¹⁷ Although China is not the only country with a patent law that allows such patents—several other countries, including Germany, Japan, South Korea, and Australia, feature utility model patents as part of their system—no other country makes such extensive use of this form. While these patents were originally intended to spur innovation by serving as a limited-time protection and are restricted in their use to physical goods, the speed with which they can be obtained and their effectiveness as a tool in litigation have resulted in a dramatic upsurge in this type of patent.¹⁸ Filing of utility model patents in China was already on the rise in the mid-2000s, but it began to explode at the start of China’s indigenous-innovation campaign in 2006 and after Schneider Electric, a French electronics company, lost a landmark \$45-million case in 2007. The case was brought by Chint Group, a Chinese company that held a utility model patent for a miniature circuit breaker similar to one sold by Schneider.¹⁹ Between 2007 and 2011, filings by residents for utility model patents, which had been growing at an increasing rate of about 10,000 to 20,000 per year for nearly a decade, ballooned from 180,000 to 580,000 per year. By way of contrast, the second-largest filer of utility model patents, Germany, saw only about 16,000 total utility model applications in 2011.²⁰

An unfortunate side effect of the state-led indigenous-innovation campaign, as well as the rush to file patents following high-value verdicts, is that patents granted under China’s utility model system are creating a “patent thicket.” U.S. companies must now navigate through a large volume of patents that may be of questionable value if they desire to operate in China.²¹ A recent report prepared by Thomas Moga for the U.S. Chamber of Commerce concluded that utility model patents in China not only do not serve their original purpose of encouraging inventors. Because they are cheap, not

¹⁵ USITC, *China: Effects of Intellectual Property Infringement*, 3-40.

¹⁶ *Ibid.*, 3-37.

¹⁷ *Ibid.*, 3-40.

¹⁸ Bob Stembridge, “Chinese Utility Models—A Lesser-Known IP Strategy,” *Intellectual Asset Management Magazine*, July/August 2010.

¹⁹ “France’s Schneider Loses China Patent Case—Xinhua,” Reuters, September 29, 2007.

²⁰ WIPO, *Country Statistical Profiles (China)*.

²¹ Thomas T. Moga, “China’s Utility Model Patent System: Innovation or Deterrent?” U.S. Chamber of Commerce, November 2012, <http://uscham.com/V5aXyq>.

rigorously examined, quickly granted, and difficult to invalidate, these patents have in fact become “disruptive to normal business growth” and may even be leading to a rise in nonpracticing entities (i.e., patent trolls) that seek to register patents that may already exist abroad for the sole purpose of litigating against these foreign patent holders if they seek to enter the Chinese market.²² Utility model patents based on questionable research, copied ideas (sometimes even including photocopies of old patents in the applications), and even old, invalidated technology are being pursued and granted in record numbers.²³

These are not the only reasons, however, for the proliferation of low-quality patents in China. A 2012 report by the European Chamber of Commerce in China also noted that the problem is systemic, stating that it is rooted “in a wide range of policies and other measures, as well as administrative and enforcement approaches, that do not seem to be effectively addressed at present, nor on course to be effectively addressed, and in some cases are not even discussed at all.”²⁴

The rise of utility model patents has produced a multitude of negative consequences in China for U.S. companies. One consequence is higher business transaction costs as a result of uncertainty with regard to the scope and validity of granted patents, whether an invention is patentable, or whether a patent will even be enforced. Another negative effect is the encouragement of unnecessary patent disputes, resulting in greater litigation costs. In addition, this system has created an increasing cycle of patent abuse whereby domestic parties in China race to file utility model patents based on recently disclosed foreign patents or leaked product images or descriptions. They then sue the foreign company when it tries to market these products in China.²⁵ According to a Beijing-based attorney at the international law firm Orrick, Herrington & Sutcliffe, one can “literally copy patents from any country and have them filed and granted in China as a utility model patent.”²⁶ It appears that Chinese companies are using such means to stockpile utility model patents with the goal of going after foreign companies as soon as they seek to enter the Chinese market.²⁷ Dan Prud’homme, manager of the IPR and R&D groups at the European Chamber of Commerce in China, remarked to an IP-management publication that some sources put the number of utility model patents filed with the intent of being asserted offensively at 50%. He further argued that there are many “concerning cases” where patents were “filed on inventions that were already part of the prior art and were used as harassment tools, barriers to entry and restrictions on freedom to operate.”²⁸ This trend makes it increasingly evident that the utility model system is being abused to provide what is effectively a state-sanctioned tool for the extortion of global businesses.

Anecdotally, such extortion appears to be becoming increasingly flagrant. In a recent instance of harassment in fall 2012, Hong Kong company Goophone released a product purportedly based on a leaked image of Apple’s iPhone 5 and promptly threatened to sue Apple if it proceeded to release its

²² Moga, “China’s Utility Model Patent System,” 8.

²³ *Ibid.*, 15–16, citing Toby Mak, *CIPA Journal* (April 2011): 235. Mak pointed to utility model patent ZL200520124981.7, which was a literal copy of the earlier granted utility model patent ZL02270703.4.

²⁴ Dan Prud’homme, “Dulling the Cutting Edge: How Patent Related Policies and Practices Hamper Innovation in China,” European Chamber of Commerce, August 2012, 18.

²⁵ *Ibid.*, 40.

²⁶ Julian Evans Pritchard and Annie Mark, “Innovate, Litigate, or Tax Rebate?” Caixin Online, September 11, 2012, <http://english.caixin.com/2012-09-11/100436101.html>.

²⁷ Jane Denny, “New Litigation Dangers Emerge in China,” *Intellectual Asset Management Magazine*, October 25, 2011, <http://www.iam-magazine.com/blog/detail.aspx?g=7d14a2b9-34ca-495c-9d8d-ec18d892cbae&q>.

²⁸ Joff Wild, “Chinese Author ties Plan to Take Action on Bad Faith Utility Model and Design Patent Applications,” *Intellectual Asset Management Magazine*, February 22, 2013.

as-yet-unannounced smartphone in China.²⁹ Among other things, Goophone threatened to assert its patents for the design of the phone—a claim that indicates Goophone’s use of the utility model patent framework to obtain fast coverage of the leaked design.³⁰ To be sure, Chinese authorities recognize that there are substantial problems with this system as it is applied in China and are taking steps to address these issues.³¹ Recent publications from the U.S. Chamber of Commerce and the EU Chamber of Commerce in China have made several recommendations aimed at bolstering the utility model system in China.³² Among these suggestions are recognizing the statutory requirement for innovation in utility model patents, meaning an actual evaluation of inventiveness; adopting the requirement that the loser pays court costs in lawsuits; making utility model patents easier to invalidate by broadening the scope of what is admissible as prior art; reducing barriers to obtaining preliminary injunctions; and strengthening rules on discovery and evidence preservation. All of these measures would provide strong disincentives to abuse the utility model system in China.

²⁹ Dexter Roberts, “Enter Goophone I5, Looking a Lot Like Apple’s iPhone 5,” *Bloomberg Businessweek*, September 6, 2012, <http://www.businessweek.com/articles/2012-09-06/enter-goophone-i5-looking-a-lot-like-apples-iphone-5>.

³⁰ Joff Wild, “Apple’s Chinese iPhone 5 Patent Problem Is Probably Not a Problem at All,” *Intellectual Asset Management Magazine*, September 9, 2012.

³¹ Prud’homme, “Dulling the Cutting Edge,” 26, 29–33.

³² See, for example, Prud’homme, “Dulling the Cutting Edge”; and Moga, “China’s Utility Model Patent System.”

Trade-Secret Theft

Patents only represent one method for protecting the competitiveness of inventions in the marketplace. Due to public-disclosure requirements for patent protection and the difficulty of enforcing patents in other nations and markets, many firms choose to keep their competitive edge by opting not to patent their inventions and trying instead to keep them as trade secrets.¹ A famous example of this calculus dates to late eighteenth-century England, where overly ambiguous patents led to almost a century of stalled innovation with regard to the development of the steam engine.² This state of affairs would influence famed porcelain manufacturer Josiah Wedgwood to abandon the patent process entirely, resorting instead to constant innovation and secrecy in order to maintain his lead in the porcelain industry.³

Protecting proprietary information as a trade secret, however, poses its own challenges and may not be any safer than the patent process. Foreign firms and individuals are increasingly focusing on the theft of trade secrets, primarily through two avenues: industrial and economic espionage and cyber espionage.

Industrial and Economic Espionage

Titanium dioxide, also known as titanium white, is one of the most valuable and ubiquitous chemicals in the world. It has been used to whiten consumer goods such as car paint, sunscreen, paper, plastics, toothpaste, and cosmetics, and was even used to paint the Saturn V rocket. If a product is white, it probably contains titanium white. In 2012, it was estimated that the worldwide market value for the pigment was \$17 billion, with DuPont controlling nearly 20% of that market.⁴

As manufacturing has increased exponentially in China and other Asian countries, the demand for titanium white has also increased. After DuPont refused to sell its proprietary manufacturing process to China, the Chinese began looking for different avenues to obtain DuPont's secret chlorination production method. According to an indictment filed by the FBI, the "People's Republic of China (PRC) publicly identified the development of chloride-route titanium dioxide (TiO₂) production technology as a scientific and economic priority."⁵ Prosecutors believe that in the 1990s, Walter Liew, a California resident, assembled a team of former DuPont employees for the purposes of conveying the company's proprietary technology to entities in the PRC.⁶ Pangang Group Co. Ltd., a Chinese state-owned enterprise, awarded Liew a \$17 million contract to build a factory in China that could produce 100,000 metric tons of titanium white.⁷ The FBI listed five individuals within the United

¹ "Intellectual Property: Can You Keep a Secret?" *Economist*, March 16, 2013, <http://www.economist.com/news/business/21573580-patent-idea-you-must-publish-it-many-firms-prefer-secrecy-can-you-keep-secret>.

² Nigel Stirk, "Intellectual Property and the Role of Manufacturers: Definitions from the Late Eighteenth Century," *Journal of Historical Geography* 27, no. 4 (2001): 475–92.

³ *Ibid.*, 479.

⁴ Paul Elias, "Economic Spying Case over DuPont's Chemical Grows," Associated Press, March 10, 2012, available at <http://finance.yahoo.com/news/economic-spying-case-over-duponts-160258759.html>.

⁵ *United States v. Pangang Group International Economic & Trading Company*, 2012 WL 400340 (N.D. Cal.).

⁶ *United States v. Walter Lian-Heen Liew*, 2012 WL 400340 (N.D. Cal.).

⁷ Elias, "Economic Spying Case."

States and a number of Chinese entities and individuals as defendants in conspiring to steal the formula from DuPont. One of the U.S. defendants, Tze Chao, who worked at DuPont from 1966 to 2002, was charged with conspiracy to commit economic espionage.⁸ Pangang officials allegedly hired Chao and instructed him to work with Liew in Liew's "development" of the DuPont formula.⁹ In his guilty plea, Chao told prosecutors that officials from the PRC "overtly appealed to my Chinese ethnicity and asked me to work for the good of the PRC."¹⁰

While federal prosecutors successfully obtained a plea bargain from Chao, their case against Pangang Group has been less successful. In an attempt to bring Pangang officials to court, on February 9, 2012, the U.S. government delivered a summons for each of the Pangang Group defendants to Brenda Kong. Ms. Kong was the office manager at a company called Pan America, which is owned in part by Pangang Group.¹¹ The trial judge, however, held that serving the court summons to Pan America was an improper method for serving Pangang Group and quashed the indictment. Pangang now runs the largest titanium complex in China and is one of the country's largest titanium white producers.¹²

Industrial espionage is nothing new. It is a classic business tactic used by less than reputable organizations to try and obtain a competitor's secrets in order to gain an economic advantage in the marketplace. The USITC reported that in 2009 U.S. firms in the IP-intensive economy lost roughly \$1.1 billion from the misappropriation of trade secrets to China alone.¹³ The range of this estimate is particularly uncertain because many victims of economic espionage and trade-secret theft are unaware that they were ever robbed.¹⁴ Among those who are aware of their losses, many choose to not report them for business reasons.¹⁵ While many U.S. firms are noting some improvement in other areas of IPR protection, protecting trade secrets remains a significant challenge internationally, particularly in China.¹⁶ Industrial espionage, however, is not only a problem in China. The Office of the National Counterintelligence Executive, after noting China as a "persistent collector," stated that Russia,

motivated by [its] high dependence on natural resources, the need to diversify its economy, and the belief that the global economic system is tilted toward U.S. and other Western interests at the expense of Russia, [is] using [human intelligence], cyber, and other operations to collect economic information and technology to support Russia's economic development and security.¹⁷

⁸ Elias, "Economic Spying Case."

⁹ *Liew*, 2012 WL 400340 (N.D. Cal.).

¹⁰ "FBI Traces Trail of Spy Ring to China," *Wall Street Journal*, March 10, 2012.

¹¹ *United States v. Pangang Group Co., Ltd.*, 879 F. Supp. 2d 1052, 1056 (N.D. Cal. 2012).

¹² Karen Gullo, "Former DuPont Worker Pleads Guilty in Economic Espionage Case," Bloomberg, March 2, 2012, <http://www.bloomberg.com/news/2012-03-02/former-dupont-worker-pleads-guilty-in-trade-secrets-case.html>.

¹³ USITC, *China: Effects of Intellectual Property Infringement and Indigenous Innovation Policies on the U.S. Economy*, no. 332-519, USITC Publication 4226, May 2011, 3-37, <http://www.usitc.gov/publications/332/pub4226.pdf>.

¹⁴ Office of the National Counterintelligence Executive, "Foreign Spies Stealing U.S. Economic Secrets in Cyberspace," report to Congress on Foreign Economic Collection and Industrial Espionage, 2009-2011, October 2011, http://www.ncix.gov/publications/reports/fecie_all/Foreign_Economic_Collection_2011.pdf

¹⁵ *Ibid.*

¹⁶ USTR, "2012 Special 301 Report," April 2012.

¹⁷ Office of the National Counterintelligence Executive, "Foreign Spies."

The report maintained that both China and Russia would “remain aggressive and capable collectors of sensitive U.S. economic information and technologies, particularly in cyberspace.”¹⁸

In many ways, trade-secret theft is a foreseeable outgrowth of expanding international markets. When large multinational companies expand their overseas operations, they almost inevitably face challenges related to supply accountability and protection against such theft. Their foreign manufacturing operations and joint-venture partners require customer lists, internal standards, manufacturing processes, information on sources of goods, recipes, and production and sales strategies in order to carry out their operational responsibilities.¹⁹ Each new piece of information that is sent overseas opens a company’s supply chain and puts its valuable IP at risk.

Another reason that trade-secret theft and economic espionage are so challenging to curtail is because it is notoriously difficult to enforce current law within the established legal framework. In the mid-1990s, the U.S. Congress responded to the growing problem of international trade-secret theft by passing the Economic Espionage Act of 1996 (EEA). When President Clinton signed the legislation, he stated that the new law “will help us crack down on acts like software piracy and copyright infringement that cost American businesses billions of dollars in lost revenues. And it will advance our national security.”²⁰

The EEA criminalized two distinct actions: economic espionage and theft of trade secrets. Economic espionage is defined as stealing, misappropriating, or receiving trade secrets while “intending or knowing that the offense will benefit any foreign government, foreign instrumentality, or foreign agent.”²¹ Theft of trade secrets, on the other hand, is defined as stealing, misappropriating, or receiving such secrets “with intent to convert [the] trade secret... to the economic benefit of anyone other than the owner thereof.”²²

Thus, the key distinction between economic espionage and theft of trade secrets is who benefits. Economic espionage is done for the benefit of a foreign nation, whereas theft of trade secrets is done for the economic benefit of an individual or organization.

Because economic espionage requires that the act be done with intent to benefit a foreign nation, it is a much more difficult crime to prosecute. The first conviction for economic espionage under the EEA was handed down in *United States v. Dongfan Chung* in 2009. Chung, who is a Chinese native and U.S. citizen, was a stress engineer at Boeing who worked on the fuselage for the U.S. space shuttle, among other projects.²³ Upon arresting him, federal prosecutors found 300,000 pages of documents in his home, including “a veritable treasure trove of Boeing’s documents relating to the Space Shuttle, Delta IV Rocket, F-15 fighter, B-52 bomber, CH-46/47 Chinook helicopter, and other proprietary aerospace and military technologies.”²⁴ Chung was convicted of economic espionage and sentenced to fifteen years in prison.

It is more common, however, for federal prosecutors to charge a defendant with trade-secret theft because it does not require that they prove the defendant acted with intent to benefit a foreign power. One example is the case of Xiang Dong “Mike” Yu, who pleaded guilty in 2010 to trade-secret theft

¹⁸ Office of the National Counterintelligence Executive, “Foreign Spies.”

¹⁹ Center for Responsible Enterprise And Trade (CREATE), “Trade Secret Theft, Managing the Growing Theft in Supply Chains,” 2012.

²⁰ Bill Clinton, “Statement on Signing the Economic Espionage Act of 1996,” October 11, 1996, available from Government Printing Office, <http://www.gpo.gov/fdsys/pkg/WCPD-1996-10-14/html/WCPD-1996-10-14-Pg2040.htm>.

²¹ *Economic Espionage Act of 1996*, Public Law 104-294, codified at U.S. Code 18 (1996), §1831.

²² *Ibid.*, § 1832.

²³ Ann Woolner et al., “The Great Brain Robbery,” *Bloomberg Businessweek*, March 15, 2012.

²⁴ *United States v. Dongfan Chung*, 633 F. Supp. 2d 1135 (C.D. Cal. 2009).

after copying 4,000 proprietary documents right before leaving his job at Ford. He then took the documents with him to his new job at Beijing Automotive. Yu was sentenced to nearly six years.²⁵

One important aspect of the EEA is its extraterritorial jurisdiction component. The law protects against theft in three instances: the act occurred in the United States; the act occurred outside the United States, but an act in furtherance of the offense was committed in the United States; or the violator is a U.S. person or organization.²⁶ Thus, the EEA can be used both to prosecute foreign persons and to prosecute theft outside the United States as long as either the violator is a U.S. person or organization or an act in furtherance of the offense was committed in the United States.²⁷ While this semi-broad reach is useful in defining trade-secret theft, it is still limited in that prosecutors lack enforcement and proper service mechanisms against individuals and entities located outside the United States, such as Pangang Group. Prosecutors cannot charge alleged violators of the EEA until they cross U.S. borders.

In a recent development, on December 28, 2012, President Obama signed the Theft of Trade Secrets Clarification Act. The act was a response to a recent case involving a Goldman Sachs programmer who, on his last day at work, transferred 500,000 lines of source code to a private server to take with him to his new job.²⁸ After the trial court found him guilty of theft of a trade secret, the Court of Appeals for the Second Circuit overturned this conviction, holding that the stolen code was not a trade secret “that is related to or included in a product that is produced for or placed in interstate or foreign commerce.”²⁹ The new law rewords § 1832(a) of the EEA by removing this limitation on its application and instead broadening the statute to apply to “a product or service used in or intended for use” in interstate or foreign commerce.³⁰ This minor change expands the EEA’s reach in two ways. First, it removes the limitation of trade secrets to goods (which the U.S. Court of Appeals for the Second Circuit recently held does not include software code) and defines services as secrets as well.³¹ Second, it removes the limitation on the law’s applicability to goods to be placed in interstate or foreign commerce, expanding it to goods or services to be used or intended for use in interstate or foreign commerce.

This expanded reach may give the United States an added tool to prosecute IP-infringement activities abroad. Nonetheless, while this clarification helps strengthen the definition of crimes under the EEA, its extraterritorial reach remains limited. Once a secret has been stolen and the perpetrator has left the country, there is little a prosecutor can do to enforce the law. Furthermore, there is nothing a victim of economic espionage can do because the EEA currently does not provide for a private civil cause of action for victims. The limits of the EEA are especially conspicuous when looking at the number of cases prosecuted under the law. Since the passage of the EEA in 1996, there have been only around one hundred indictments and a handful of convictions.³² Notably, of the seven cases adjudicated under the EEA in 2010, six involved some link to China.³³

²⁵ Woolner et al., “The Great Brain Robbery.”

²⁶ FBI, “Economic Espionage,” <http://www.fbi.gov/about-us/investigate/counterintelligence/economic-espionage>.

²⁷ *Ibid.*

²⁸ *U.S. v. Sergey Aleynikov*, 676 F.3d 71, 73 (2nd Cir. 2012).

²⁹ *Ibid.*

³⁰ *Theft of Trade Secrets Clarification Act of 2012*, S. 3642, available at <http://thehill.com/images/stories/blogs/flooraction/jan2012/s3642.pdf>. The act rewords language in § 1832(a) of the EEA.

³¹ *Aleynikov*, 676 F.3d 71, 76.

³² “Intellectual Property: Can You Keep a Secret?”

³³ Office of the National Counterintelligence Executive, “Foreign Spies.”

Cyberespionage

The rise of the Internet has provided the world the fastest and most effective communications system in history. However, this system, in conjunction with traditional espionage methods, is being used to steal some of U.S. businesses' most valuable trade secrets. In the past two years, an unprecedented number of cyberattacks have been uncovered against major corporations, nonprofit institutions, and governments alike. The vast majority of these attacks have been traced back to China. A single attack against RSA, the maker of the widely used SecurID tokens, resulted in the compromise of at least 3 major defense contractors.³⁴ The same attack compromised security at an estimated 720 companies, including 20% of the Fortune 100.³⁵ Through another series of attacks, dubbed operation Shady RAT, it was discovered that petabytes of highly proprietary information, including sensitive military and infrastructure data, had been siphoned off from the U.S. government and its allies, supranational organizations such as the United Nations, and many other sovereign nations and independent organizations over a period of more than five years.³⁶ Notably, General Keith Alexander, the head of the U.S. military's Cyber Command, said that one U.S. company alone recently lost \$1 billion worth of intellectual property over the course of a couple of days.³⁷

In a world where the highest-value assets are intangible and easy to transfer over networks, espionage has taken on a new dimension. The size and scale of recent attacks point to state sponsors, meaning that such events are no longer being perpetrated by ad hoc groups operating in the shadows but are much more organized and nationalized. According to a report released on November 1, 2011, representing fourteen U.S. intelligence agencies, such attacks will accelerate in coming years as a "growing and persistent threat."³⁸ In its white paper on Shady RAT, McAfee indicated that the attack was more than likely the work of a group operating on behalf of a state actor. While not calling out China specifically, the geographical data discovered by McAfee's cyber forensic team on the spread of the attack strongly suggests China's involvement.³⁹

These attacks are having a devastating effect on U.S. economic interests both at home and abroad. Throughout 2011 and into 2012, the cost to organizations of cybercrime continued upward unabated. A 2011 study by the Ponemon Institute found that the median annualized cost for 50 benchmarked companies was \$5.9 million per year and ranged from \$1.5 million to \$36.5 million per company. This is a \$2.1 million, or 56%, increase from the median cost of \$3.8 million to benchmarked companies in 2010. The study also found that smaller organizations incur almost four times the per capita cost (\$1,088) as larger organizations (\$284) in dealing with cyberattacks.⁴⁰

In addition, the Ponemon study found that cyberattacks are common occurrences, with participating companies experiencing 72 successful attacks per week—an average of 1.4 per

³⁴ Zeljka Zorj, "RSA Admits SecurID Tokens Have Been Compromised," Help Net Security, June 7, 2011, <http://www.net-security.org/secworld.php?id=11122>.

³⁵ Brian Krebs, "Who Else Was Hit by the RSA Attackers?" Krebs on Security, web log, October 2011, <http://krebsonsecurity.com/2011/10/who-else-was-hit-by-the-rsa-attackers>.

³⁶ Peter Bright, "Operation Shady Rat: Five-Year Attack Hit 14 Countries," *Ars Technica*, August 3, 2011, <http://arstechnica.com/security/news/2011/08/operation-shady-rat-five-year-hack-attack-hit-14-countries.ars>; and "Massive Global Cyberattack Targeting U.S., U.N. Discovered; Experts Blame China," *Fox News*, August 3, 2011, available at <http://www.foxnews.com/scitech/2011/08/03/massive-global-cyberattack-targeting-us-un-discovered-experts-blame-china>.

³⁷ Ellen Nakashima, "In a World of Cybertheft, U.S. Names China, Russia as Main Culprits," *Washington Post*, November 3, 2011.

³⁸ Siobhan Gorman, "China Singled Out for Cyber Spying," *Wall Street Journal*, November 4, 2011.

³⁹ Dmitri Alperovitch, "Revealed: Operation Shady RAT," McAfee, August 2011.

⁴⁰ Ponemon Institute, "Second Annual Cost of Cyber Crime Study: Benchmark Study of U.S. Companies," Research Report, August 2011, http://www.arcsight.com/collateral/wh_tepapers/2011_Cost_of_Cyber_Crime_Study_August.pdf.

organization polled—representing a 44% increase from the previous year.⁴¹ This figure is consistent with recently available information from Cisco Systems, which found a 46% increase in web malware during the first quarter of 2011 alone, with malicious webmail increasing by an astounding 391%.⁴² The Ponemon study also found that the major costs from these intrusions were those related to information theft (40%), followed closely by costs associated with disruption to business and lost productivity (28%).⁴³

Web- and email-based malware attacks continue to gain prominence as a prime attack vector for cybercriminals. Most such attacks operate by sending a targeted person or group of people a personalized email and convincing them to open an attachment containing malicious software that grants the cyberattacker broad access to their systems. The malware is thus intended to be executed by the target on the same day (or close to the same day) that it is sent. Such “zero day” attacks are highly customized and take advantage of previously unknown software vulnerabilities that prevent detection by existing antivirus or signature-based systems installed at most organizations. During the fourth quarter of 2011, 33% of web malware encountered by Cisco Systems was zero-day in nature and not detectable by the traditional signature-based systems at the time of attack.⁴⁴ The onslaught of zero-day attack vectors is reflected in the increase in web malware hosts, as recorded by Cisco, from an average 14,217 per month in 2010 to 20,141 in 2011—a 30% increase.⁴⁵ Likewise, in an April 2012 report, Symantec recorded an increase in the number of advanced persistent threats from an average of 77 per day in 2010 to 82 per day in 2011.⁴⁶ The Symantec report noted that such attacks differ from conventional targeted attacks in key ways, including by employing a high degree of customization, using stealthy and patient methods to avoid detection, being more tightly focused on gaining access to high-value information and organizations of strategic importance, and displaying signs of originating from well-funded and highly staffed operators (such as military or state intelligence organizations).⁴⁷

Of further concern, it is now clear that companies and industries in every sector are being targeted, although the extent to which they are suffering attacks varies by industry segment. The Ponemon study’s findings indicate that the three top sectors being targeted are defense, utilities and energy, and financial services, although even companies in retail, hospitality, and consumer products are under fire.⁴⁸ This data largely tracks with the “Cisco 4Q11 Global Threat Report.” Pharmaceutical and chemical companies topped the list of companies targeted with malware at 422% of the median, followed closely by agriculture and mining and energy, oil, and gas.⁴⁹ Finally, Symantec’s 2011 report also makes the important point that it is not just large companies that are being hit by targeted attacks. To the contrary, more than half of all targeted attacks recorded by Symantec in 2011 were directed at companies with fewer than 2,500 employees and almost 18% targeted companies with 250 or fewer employees. Adding to the difficulty in preparing for and intercepting such attacks, the

⁴¹ Ponemon Institute, “Second Annual Cost of Cyber Crime.”

⁴² Cisco Systems, “Cisco 1Q11 Global Threat Report,” 2011, http://www.cisco.com/en/US/prod/collateral/vpndev/cisco_global_threat_report_1Q2011.pdf.

⁴³ Ibid.

⁴⁴ Cisco Systems, “Cisco 4Q11 Global Threat Report,” 2012, http://www.cisco.com/web/about/security/intelligence/reports/cisco_global_threat_report_4Q11.pdf.

⁴⁵ Ibid.

⁴⁶ Symantec, “2011 Internet Security Threat Report,” April 2012, 14, available at <http://www.symantec.com/threatreport>.

⁴⁷ Ibid., 15.

⁴⁸ Ponemon Institute, “Second Annual Cost of Cyber Crime,” 4.

⁴⁹ Cisco Systems, “Cisco 4Q11 Global Threat Report,” 4.

majority tend to target lower-level employees, who may lack direct access to sensitive information but be more susceptible to compromise.⁵⁰

In the rapidly evolving landscape of cyberespionage, it has become clear that not even the smallest organizations or lowest-level employees are safe from attack. Of equal concern is that effective and deeply penetrating cyberattacks are occurring across a broad spectrum of IP-intensive industries. Unfortunately, despite pressing China on the issue for several years, none of the United States' diplomatic efforts seem to have had any effect in abating the scale of the threat. Then U.S. defense secretary Leon Panetta remarked after a recent trip to China that the most important thing was that China was willing to even engage in a dialogue on the issue of cyberattacks.⁵¹ Richard Bejtlich, president of the cybersecurity firm Mandiant, described the issue more bluntly, stating that the efforts of U.S. and Chinese officials have lacked any impact at all and that “the Chinese don't seem to care. So I don't have any hope that the dialogue is reaching anyone of note.”⁵²

⁵⁰ Symantec, “2011 Internet Security Threat Report,” 17.

⁵¹ Lolita C. Baldor, “Chinese Cyber Attacks on U.S. Continue Totally Unabated, Leon Panetta Complains,” Associated Press, September 20, 2012.

⁵² Baldor, “Chinese Cyber Attacks.”

Trademark Violations

Apple is one of the most popular brands in the world, so when an Apple store was opened in the city of Kunming, China, its six million residents were excited to take advantage of the products and services offered. The new store came complete with the large distinct wooden tables, sleek interior design, large colorful advertisements, and helpful staff members wearing the blue shirts donned by Apple store employees worldwide.¹ Everything was seemingly in place, except for one major problem—this was not actually an Apple store. The store in Kunming had appropriated Apple’s trademarks and trade dress—even convincing its own employees that they were working for Apple itself—in order to sell Apple products and provide Apple-branded services, all without the company’s permission.²

Some have argued that the public’s initial shock at the discovery of these fake stores was overblown. The products being sold by the store appear to have been legitimate Apple products, even though the source of the products was unknown.³ The example, however, clearly demonstrates the ubiquity of trademark infringement internationally and the lengths to which infringers are willing to go in order to convincingly counterfeit goods and services, diverting profits from trademark owners to themselves.

A “trademark” is simply a word, phrase, symbol, or design that identifies and distinguishes the sources of the goods of one party from those of others.⁴ Unlike the protections granted to patents and copyrights, trademark protection is not directly derived from the U.S. Constitution. For many years, it only existed as a common law right derived from a party’s actual usage of the mark and defended in state courts.⁵ It was not until Congress passed the first federal trademark law in 1881, under its Commerce Clause authority, that trademarks received nationwide protection.⁶ Since that time, trademark jurisprudence has grown substantially. Statutes have been continually amended and updated under the Lanham Act, originally enacted as a federal trademark statute in 1946 and frequently amended since that time.⁷

Unlike patents and copyrights, trademarks do not confer protection for the use or replication of specific products. Trademark protection can be violated in several ways. For one, trademarks can be infringed when they are misappropriated. Misappropriation occurs when an existing mark is replicated onto a product without the trademark holder’s authorization (counterfeiting).⁸ The most ubiquitous examples are purses or shoes available at sidewalk stands in cities such as New York and

¹ Minning Yu, “Benefit of the Doubt: Obstacles to Discovery in Claims against Chinese Counterfeiters,” *Fordham Law Review* (April 2013).

² Melanie Lee, “Fake Apple Store Even Fools Staff,” Reuters, July 21, 2011.

³ “Mitt Romney Called Out on Fake Apple Store,” *Wall Street Journal*, China Realtime Report, October 17, 2012, <http://blogs.wsj.com/chinarealtime/2012/10/17/china-fake-apple-store-blogger-romney-misusing-the-story>.

⁴ U.S. Department of Commerce, “Intellectual Property and the U.S. Economy: Industries in Focus,” prepared by the Economics and Statistics Administration and U.S. Patent and Trademark Office, March 2012.

⁵ “Overview of Trademark Law,” Harvard University, Berkman Center for Internet and Society, <http://cyber.law.harvard.edu/metaschool/fisher/domain/tm.htm>

⁶ *Ibid.*

⁷ *Lanham Trademark Act of 1946*, Public Law 79–489, codified at U.S. Code 15, § 1051, available at <http://www.law.cornell.edu/uscode/text/15/1051>.

⁸ Andrew C. Mertha, *The Politics of Piracy: Intellectual Property in Contemporary China* (Ithaca: Cornell University Press, 2005).

Beijing (and increasingly on auction websites) that are not authorized by the owner of the brand they carry. In addition, trademarks can be infringed on when a manufacturer uses marks or design elements very similar to those of a competitor in order to confuse consumers and trick them into purchasing a product.⁹ Strong trademark protections provide significant benefits to an economy by allowing entities to derive benefits from investment in their brands. Where trademark protection is weak, both consumers and producers suffer. Consumers are hurt because they may be receiving an inferior product or service, while producers suffer because they will reap a lower reward for their investment in their mark. Perhaps worse, if the trademark is famous, producers may suffer from brand dilution or other negative effects on their brand's reputation as a result of the infringement.

Consumers benefit from trademark protection in a number of ways, all stemming from the information trademarks provide about a product's origin and quality. This in turn, creates a positive incentive for companies to create higher-quality, longer-lasting products. When a company uses its trademark on goods or services that it provides, it will generally work to ensure that the goods are of a sufficiently high quality to maintain its identity in the marketplace. In this way, strong trademark protections allow brands to serve as a signal of quality to the consumer. Simply put, such protections foster the development of better goods and services.¹⁰

Producers, for their part, benefit from strong trademark protection because it helps them maintain long-standing relationships with consumers. For instance, when a company produces high-quality products, provides excellent service, and invests in carefully marketing its products, it builds goodwill that translates into a higher level of consumer confidence. Consumers will express this confidence by returning to the company repeatedly, generating long-term revenue streams for the producer. When these elements are not present, however, consumers may be dissuaded from purchasing future products or services from that company.

The Economic Costs of Counterfeiting

Counterfeiting is a rampant practice in countries that possess even a modest manufacturing industry. The list of consumer goods that are counterfeited is long and includes apparel, footwear, mobile phones, herbal remedies, computer and networking equipment, batteries, cigarettes, cosmetics, home appliances, cement, auto parts, and more. The bulk of losses to American business in the light and consumer-goods manufacturing sector is primarily due to trademark violations and counterfeit products.¹¹ When a consumer purchases a counterfeit good, the true trademark holder loses that revenue.

Some observers have argued that estimates of losses are exaggerated because of potentially low substitution rates. The argument is that a consumer who purchases lower-priced counterfeit goods would not have purchased a legitimate product if the fakes were not available. Therefore, the true trademark holders have not actually lost revenue. While this may be true for some small physical markets, many of these counterfeit products are frequently showing up for sale on eBay, Amazon Marketplace, Craigslist, and other legitimate websites with access to a global consumer base, where unsuspecting customers may believe that they have found a discounted legitimate product rather

⁹ Mertha, *The Politics of Piracy*.

¹⁰ Ibid.

¹¹ USITC, *China: Effects of Intellectual Property Infringement and Indigenous Innovation Policies on the U.S. Economy*, no. 332-519, USITC Publication 4226, May 2011, 3-37, <http://www.usitc.gov/publications/332/pub4226.pdf>.

than a fake.¹² If consumers believe that they are buying a legitimate product to begin with, chances are that they still would have purchased one if the knock-off were unavailable.

Furthermore, the loss to producers is much more significant than the immediate loss of revenue. There is also a long-term threat to the brand itself. Whether it is cosmetics, appliances, apparel, or auto parts, counterfeit goods frequently fall short of the industry and quality standards by which legitimate goods are measured. As they enter the marketplace, low-quality knock-off goods and services can hurt a company's reputation by decreasing consumer confidence, diluting the brand, and harming long-term revenues. Revisiting the Apple example, the fake Kunming store offered repair and support services for the Apple products it sold. However, because the employees had not been trained according to Apple's standards, the quality of service they offered is unknown. To the extent that the technical support and customer service provided at these illicit outlets were below the exceptionally high standard set by Apple in its own stores, such experiences could damage Apple's reputation in the eyes of customers, leading them to purchase products from another source in the future.

Overall, rampant trademark infringement lowers product quality, decreases consumer confidence, and reduces legitimate business revenue.

Barriers to Enforcement and Recovery

In a 2009 USITC survey of U.S. companies, more firms reported losses from trademark infringement by Chinese entities—an estimated \$6.1 billion in losses in that year alone—than from other forms of Chinese IPR infringement. When these losses could be attributed to a specific market, 37.7% identified China, 32.3% identified the United States, and 30.1% identified “all other markets.”¹³ This spread illustrates that the problem is not just trademark infringement inside China but also involves goods being shipped into the United States. In fact, U.S. Customs and Border Protection announced that it made “22,848 intellectual property rights seizures with a manufacturer's suggested retail value of \$1.26 billion” in 2012, with goods from China responsible for 72% of this amount.¹⁴ Companies have also reported problems registering their trademarks in China, including long backlogs that require a wait of up to two years, trademarks with similar names being registered by competitors, companies registering an identical mark in a different product class, and “squatting” by people who register someone else's trademark as their own.¹⁵ The latter is a problem specific to China's system, which grants rights to the first person to file for a trademark, whereas the U.S. system protects the party who is first to use the mark in commerce. Even as companies gain traction on policing their own brands in China, counterfeiting continues to grow. Factors include the shift from traditional centers such as Guangzhou to smaller “living room” operations, continued lax penalties for retailers selling fake goods, and the growth of Internet sales, such as on eBay, Taobao, or Alibaba.¹⁶ Online sales of counterfeit goods, in particular, have been growing at an alarming rate. U.S. Customs and Border Protection reported a shift in 2007–11 toward lower-value shipments

¹² USITC, *China: Effects of Intellectual Property Infringement*, 3-37.

¹³ *Ibid.*, 3-31.

¹⁴ Counterfeit handbags and wallets constituted roughly 40% of seizures in 2012, followed by watches and jewelry (15%), and apparel and accessories (11%). See “Intellectual Property Rights Fiscal Year 2012 Seizure Statistics,” U.S. Customs and Border Protection, 2012, <http://1.usa.gov/13WfmP>.

¹⁵ USITC, *China: Effects of Intellectual Property Infringement*, 3-34.

¹⁶ *Ibid.*, 3-33.

by international mail and express courier, presumably to individual buyers, and away from larger container shipments to bulk purchasers.¹⁷

In a series of recent decisions, courts in China have also indicated a change from their earlier reasoning that using trademarks on goods while manufacturing items for export constitutes “use” of the mark.¹⁸ This would allow, for example, Nike to enforce its Chinese trademark rights against the manufacturer producing shoes for sale in Spain, where another entity holds the rights to the Nike mark. Through these decisions, it appears that Chinese courts are increasingly willing to consider such original equipment manufacturing activities to be a form of “reasonable use,” and that it should also be required to show that such use is likely to result in confusion among consumers in the relevant Chinese market as to the source of the goods.¹⁹ These decisions could make it more difficult for brand owners to enforce their trademarks in China by closing one door they had previously used to shut down the manufacture of goods bearing their mark. These decisions also leave unanswered the question of how Chinese courts will determine the legitimate owner of the mark in the destination country, as well as how they will determine the “relevant public” in evaluating the likelihood of confusion.²⁰

Given the large number of companies reporting trademark-related losses attributable to Chinese IPR violations that occur in the United States, and the high value of items being seized by U.S. Customs and Border Protection, owners of global brands have begun to fight back through the U.S. legal system. Notably, Gucci America and Tiffany have been attempting to obtain information on parties in China who have been selling counterfeit goods over eBay.²¹ A recent report described the problems that these companies encountered in trying to obtain bank and contact information regarding the absentee defendants. Established protocols under the Hague Convention have proved both slow-moving and unfruitful, with Chinese banks frequently citing secrecy laws as a shield against discovery of the counterfeiters’ bank account information.²² Without access to this information, it is impossible for the companies that are suffering losses due to trademark infringement to calculate the value of their losses and uncover other potential defendants in cases where sellers were acting as middlemen for the original manufacturer.²³

These examples make clear that U.S. companies face a sobering local environment for protecting their trademarks within China. Companies continue to have difficulty tracking down perpetrators utilizing global websites, payment systems, and the international mail system. The next chapter examines the subject of copyright and presents the staggering rate at which this form of intellectual property is being exploited and stolen.

¹⁷ “Intellectual Property Rights Fiscal Year 2011 Seizure Statistics,” U.S. Customs and Border Protection, 2011.

¹⁸ George Chan, August Zhang, and Chris Bailey, “OEM and the Concept of ‘Reasonable Use’ of a Trademark,” *World Trademark Review*, April/May 2013, 72.

¹⁹ *Ibid.*

²⁰ *Ibid.*, 75.

²¹ *Gucci America, Inc. v. Weixing Li*, no. 10 Civ. 4974(RJS), 2011 WL 6156936 (S.D.N.Y. August 23, 2011); *Tiffany (NJ) LLC v. Qi*, No. 10 Civ. 9471(WHP) (S.D.N.Y. January 3, 2011); and *Tiffany (NJ) LLC v. Forbse*, no. 11 Civ. 4976(NRB) (S.D.N.Y. August 3, 2011).

²² Yu, “Benefit of the Doubt,” 3001-02.

²³ *Ibid.*, 3008.

Copyright Infringement

In 1999, a political scientist was in an economically well-developed area of China studying, ironically, intellectual property rights. While interviewing an official who worked in the Office of the Education, Science, Culture, and Public Health Committee of the Provincial People's Congress, the researcher mentioned that he was interested in purchasing a CD-ROM set of China's national and local laws, but even at the reduced price of \$1,000, this was more than the academic could afford. The government official took the researcher to a market notorious for openly selling pirated software. The researcher walked away with the entire set for roughly \$1.50.¹

Copyright law protects original works of authorship that are in a fixed, tangible form of expression.² Put another way, copyright protects the expression of ideas.³ Like patent protection, copyright was one of the early forms of IP protection afforded by the U.S. Constitution.⁴ While such protection originally covered tangible items like books and paintings, over time Congress and the courts have extended it to include audio recordings, movies, and computer software.⁵ A common form of copyright infringement is the production of pirated goods, which are any goods made without the consent of the copyright holder. These may take the form of physical books or DVDs in a market in Shenzhen or digital downloads made available to a broader audience via the Internet.⁶ The purpose of copyright protection, again similar to patent protection, is to maintain a positive incentive to write, create, and publish new works, since such innovation is generally seen as an overall benefit to society.⁷

The USITC estimates that copyright infringement is the most costly form of IP loss for the United States with respect to China, costing U.S. producers nearly \$24 billion in 2009.⁸ Not surprisingly, IP theft has hurt the information services industry the most, with losses in 2009 of nearly \$26 billion.⁹ Globally, some estimates place the commercial value of software theft at over \$60 billion.¹⁰ Yet the true cost remains unknown for numerous and sometimes contradictory reasons. First among these is the unknown substitution rate.¹¹ Many studies simply calculate how many versions of a particular piece of software are currently installed on computers and compare it with how many copies were sold.¹² They then multiply that figure by the retail price to determine “lost revenues,” or the value

¹ This story is told at length and in greater detail in Andrew C. Mertha, *The Politics of Piracy: Intellectual Property in Contemporary China* (Ithaca: Cornell University Press, 2005).

² U.S. Department of Commerce, “Intellectual Property and the U.S. Economy: Industries in Focus,” prepared by the Economics and Statistics Administration and U.S. Patent and Trademark Office, March 2012.

³ Mertha, *The Politics of Piracy*.

⁴ U.S. Const. art. I, § 8.

⁵ Mertha, *The Politics of Piracy*.

⁶ USGAO, “Intellectual Property: Observations on Efforts to Quantify the Economic Effects of Counterfeit or Pirated Goods,” Report to Congressional Committees, GAO-10-423, April 2010.

⁷ Mertha, *The Politics of Piracy*.

⁸ USITC, *China: Effects of Intellectual Property Infringement and Indigenous Innovation Policies on the U.S. Economy*, no. 332-519, USITC Publication 4226, May 2011, <http://www.usitc.gov/publications/332/pub4226.pdf>.

⁹ Ibid.

¹⁰ BSA, “Shadow Market: 2011 BSA Global Software Piracy Study,” 9th ed., May 2012.

¹¹ USGAO, “Intellectual Property.”

¹² See, for example, BSA, “Shadow Market.”

lost if all software installations had been purchased legally. The problem with this approach is that if piracy were not an option, some of these consumers, particularly in low-income economies, would never purchase the software because it is priced too high.¹³

On the other hand, studies that use survey methods to estimate losses may provide estimates that are too low because many companies opt to not report their losses for financial and business reasons.¹⁴ As an example, one high-tech software company that the Commission spoke to in its investigation reported that it had sold a single copy of a piece of software to a bank in China. Later, 30 million copies of software traced to that single license contacted the corporate servers of this company for software updates. Between this anecdote and countless others, it is clear that the true loss to companies from piracy is difficult to accurately measure but unarguably substantial.

China is not alone in its high piracy rates; software piracy is in fact a global problem. In 2011, many countries exceeded China's piracy rate of 77%, including Vietnam (81%), Pakistan (86%), and Venezuela (88%).¹⁵ Yet though the higher piracy rates in these and other countries should not be ignored, the sheer size of the Chinese market makes it the most significant focus for improvement. In 2011, China had the second-largest commercial value of pirated software at nearly \$9 billion. Russia was third with \$3.2 billion, while first place belonged to the United States, with a commercial value of pirated software approaching \$10 billion. However, with a piracy rate of only 19%, the United States had nearly \$39 billion more in legitimate sales.¹⁶

Ukraine was recently declared to be a "priority foreign country" by the U.S. Trade Representative in its annual Special 301 Report—the first country given this designation in seven years.¹⁷ The report cites Ukraine's persistent failure to combat online piracy as a primary reason for its 301 status. Most striking, however, is the pervasive use of illegal and unlicensed software within the Ukrainian government itself. Industry reports show similar findings. According to a study by the Business Software Alliance, the country's piracy rate has hovered around 85% since 2007 and has shown no improvement.¹⁸ In contrast, Ukraine is not listed by the BSA as one of the top-twenty possessors of pirated software as measured by commercial value. Presumably, this is due to the relatively small size of the Ukrainian software market.¹⁹

While pirated software is the most highly publicized form of international and domestic copyright infringement, the entertainment industry also experiences significant losses from piracy. A 2007 study estimates that the U.S. economy loses \$12.5 billion in total output annually due to piracy of sound recordings.²⁰ A similar 2007 study estimates that movie piracy now results in total lost output among all U.S. industries of \$20.5 billion annually.²¹ As with similar software piracy studies, however, these estimates are limited by uncertain substitution rates.²² In China, 99% of all music downloads are illegal. The total music revenue in the country for 2010, including both digital and physical sales,

¹³ USGAO, "Intellectual Property."

¹⁴ Ibid.

¹⁵ BSA, "Shadow Market."

¹⁶ Ibid.

¹⁷ USTR, "2013 Special 301 Report," May 2013.

¹⁸ BSA, "Shadow Market."

¹⁹ Ibid.

²⁰ Stephen E. Siwek, "The True Cost of Sound Recording Piracy to the U.S. Economy," Institute for Policy Innovation, Policy Report, no. 188, August 2007.

²¹ Ibid.

²² USGAO, "Intellectual Property."

was only \$64 million. To put this figure in perspective, it is less than total sales in Thailand, which registered \$68 million in sales in 2010.²³ Thailand has a population and GDP (based on purchasing power parity) twenty times smaller than that of China. If China had purchased the same amount of music on a per capita basis as Thailand, a country not known for staunch IP protections, sales would have been nearly \$1.4 billion.²⁴

²³ USTR, “2013 Special 301 Report.”

²⁴ International Monetary Fund, World Economic Outlook Database, April 2013.

U.S. Government Responses

U.S. administration efforts to date have made important strides in protecting intellectual property, although much work remains to be done. The position of the Intellectual Property Enforcement Coordinator (IPEC) was established by Congress through the Prioritizing Resources and Organization for Intellectual Property Act of 2008 (PRO-IP Act). The administration housed the position within the Office of Management and Budget, staffing it with members of various bureaucracies, largely from the enforcement side. Veteran U.S. trade negotiator and IP counsel Victoria Espinel was appointed the first IPEC. The administration has pushed forward on the following five policy fronts.

1. Joint Strategic Plan on Intellectual Property Enforcement

The administration released the Joint Strategic Plan on Intellectual Property Enforcement in June 2010. The plan's central tenets included 33 action items to improve intellectual property enforcement, falling into six categories:¹

1. Leading by example and working to ensure that the U.S. government does not purchase or use infringing products
2. Being transparent in policymaking and enforcement
3. Improving coordination of law enforcement at the federal, state, and local levels; of overseas personnel; and of international training efforts
4. Enforcing U.S. rights internationally in order to ensure that the United States is effectively working with foreign governments
5. Working to secure the U.S. supply chain by attempting to limit the infringing products entering the country
6. Building a data-driven government and ensuring that U.S. policies are as well-informed as possible by improving data collection on IP-enforcement efforts, measuring the economic impact of IP industries, and assessing U.S. laws to ensure that they effectively protect and enforce IP rights

2. Foreign Economic Espionage Penalty Enhancement Act

The Foreign Economic Espionage Penalty Enhancement Act of 2012 (H.R. 6029) was signed into law by President Obama on January 14, 2013. This act significantly increases maximum penalties for the misappropriation of trade secrets to benefit a foreign government, allowing penalties of up to \$5 million for individuals and up to three times the actual value of the trade secret for organizations. This is a significant increase from the respective \$500,000 and \$10 million caps on penalties that limited the effectiveness of the previous version of the statute. Because the new law is equipped to more adequately reflect the actual value of a stolen trade secret, it may provide greater incentive for prosecutors to pursue EEA violations, while increasing pressure on violators of U.S. trade-secret laws.

¹ The following list draws from the Executive Office of the President of the United States, "Joint Strategic Plan on Intellectual Property Enforcement," 2010.

The passage of this bill came shortly after the Theft of Trade Secrets Clarification Act of 2012, which was signed into law on December 28, 2012, and expands section 1832 of the EEA to include trade secrets “related to a product or service used in or intended for use in interstate or foreign commerce.” Taken together, these two modifications to the EEA provide important new enforcement and deterrent tools to prosecutors.

Despite their usefulness, more still needs to be done. There is currently no federal private right of action under the EEA for those who hold trade secrets. Thus, only government prosecutors can file lawsuits in order to seek redress for violations of the statute. Such a bill was introduced in July of last year (the Protecting American Trade Secrets and Innovation Act of 2012, S. 3389), but the Senate Judiciary Committee chose to not act on the bill. The recent speedy passage of the Foreign Economic Espionage Penalty Enhancement Act and the Theft of Trade Secrets Clarification Act, however, indicates a shift in momentum favoring legislation designed to protect U.S. intellectual property. Both bills were rapidly passed with nearly unanimous votes and were quickly signed into law by the president.

3. Executive Order on Cybersecurity

The administration has also recently issued an executive order on cybersecurity that:

- directs increased sharing of unclassified information from government entities to private-sector providers of critical infrastructure;
- proposes to bring more subject-matter experts from the private sector into temporary government service;
- increases the quantity and specificity of threat information to the private sector;
- establishes a consultative process to coordinate improvements to the cybersecurity of critical infrastructure;
- directs the National Institute of Standards and Technology to develop a framework to reduce cyber risks to critical infrastructure (the Cybersecurity Framework); and
- develops procedures for implementing a risk-based approach to determining which infrastructure is most vital.²

While this executive order is an important first step, there are some challenges. First, although the potential impacts of the budget sequester are still unclear, it could conceivably result in fewer resources being available to accomplish these tasks, especially in view of their urgent timelines. Second, while the goal of increased information-sharing is important and laudable, the executive order does not create new authorities for such sharing. It essentially tells government agencies to do a better job than they are doing now. Third, the order does not protect the sharing of information from a request or lawsuit under the Freedom of Information Act, nor can it. Only Congress can create these important protections. Fourth, the direction to the National Institute of Standards and Technology to develop guidelines, which other agencies are then directed to implement, is a compliance-oriented approach that may not actually increase security. As technology and the nature of the threats constantly evolve, regulations will have a hard time keeping up.

² “Executive Order—Improving Critical Infrastructure Cybersecurity,” White House, Executive Order, February 12, 2013, <http://www.whitehouse.gov/the-press-office/2013/02/12/executive-order-improving-critical-infrastructure-cybersecurity>.

Perhaps most importantly, the executive order does not address what can or ought to be done against perpetrators. With such an approach, it risks making the victims of cybercrime bear disproportionate costs to prevent loss, while doing little to raise the costs to perpetrators. The IP Commission Report recommends several measures to increase the deterrent value of U.S. policy against cybercrime.

4. Strategy on Mitigating the Theft of U.S. Trade Secrets

In February 2013, the White House released its “Administration Strategy on Mitigating the Theft of U.S. Trade Secrets.” The strategy has five main pillars:

1. international engagement, including diplomatic messaging and use of trade policy tools
2. company-to-company sharing of best practices to reduce the risk of trade secret theft
3. investigation and prosecution of trade secret theft and increased information sharing between law enforcement, the intelligence community, and companies,
4. a review of U.S. legislation,
5. increasing public awareness of the risks of trade secret theft.³

Although the strategy has many important components, its singular shortcoming is that it focuses almost exclusively on preventing loss from the perspective of the potential victim of trade-secret theft. The strategy does not address what ought to be done to raise the costs to the people and institutions that commit such theft. The IP Commission Report builds on this solid foundation by offering recommendations for substantive executive orders and legislative proposals that raise the costs of stealing U.S. intellectual property and thus increase deterrence.

5. U.S. Capacity-Building Efforts in Foreign Countries

The May 2013 Special 301 Report by the U.S. Trade Representative also notes some important IP capacity-building efforts undertaken by the U.S. government:⁴

- The Global Intellectual Property Academy (GIPA) in the Office of Policy and External Affairs at the U.S. Patent and Trademark Office (USPTO) “offers programs in the United States and around the world to provide education, training, and capacity-building on IPR protection and enforcement. These programs are offered to patent, trademark, and copyright officials, judges and prosecutors, police and customs officials, foreign policymakers, and U.S. rights holders.” The report adds that in 2012 “GIPA provided training to 9,217 foreign IPR officials from 130 countries, through 140 separate programs.”
- The report notes that U.S. government agencies, such as the Department of State and the U.S. Copyright Office, “conduct conferences and training symposia in Washington, D.C. In March 2012, for example, the Copyright Office, with co-sponsorship from the World Intellectual Property Organization, hosted an international training symposium for representatives from

³ Office of the U.S. Intellectual Property Enforcement Coordinator, “Intellectual Property Spotlight,” January/February 2013, 1. For the text of the strategy, see Executive Office of the President of the United States, “Administration Strategy on Mitigating the Theft of U.S. Trade Secrets,” 2013.

⁴ The items in the following bulleted list are drawn from Office of the USTR, “2013 Special 301 Report,” May 2013, 16–18, <http://www.ustr.gov/sites/default/files/05012013%202013%20Special%20301%20Report.pdf>.

17 developing countries and countries in transition on emerging issues in copyright and related rights.”

- In addition, “the USPTO’s Office of Policy and External Affairs provides capacity building in countries around the world, and has concluded agreements with more than 40 national, regional, and international IPR organizations.”
- Further, “the Department of Commerce’s International Trade Administration (ITA) collaborates with the private sector to develop programs to heighten the awareness of the dangers of counterfeit products and of the economic value of IPR to national economies.”
- In 2012, the Immigration and Customs Enforcement’s Homeland Security Investigations conducted training programs overseas through the National IPR Coordination Center and in conjunction with INTERPOL.
- The Department of State “provides training funds each year to U.S. Government agencies that provide IPR enforcement training and technical assistance to foreign governments.”
- The “government-to-government technical assistance” provided by the Commerce Department’s Commercial Law Development Program is in large part focused on IPR protection.
- The Department of Justice’s Criminal Division, which is funded by the Department of State, provided IPR-enforcement training to foreign officials in cooperation with other U.S. agencies.

Developments in China

The IP Commission Report demonstrates through a variety of metrics that IP theft is a global problem but that Chinese-origin IP theft is disproportionately large in size and impact. Notwithstanding this evidence, it should be noted that China has made important strides in improving its IP protection.

China's patent system, in particular, has made progress, according to some measures. As chapter 4 observes, China now grants more patents than any other country (more than 1.6 million in 2011 alone). While many are utility or "petty" patents and of low quality, the process of granting patents reflects important steps along a road toward greater rule of law.¹ However, as chapter 4 also noted, the increase in patents largely represents a response to government incentives programs to patent rather than to innovate.

Other highlights of the Chinese system include better IP-enforcement and IP-protection strategies. Some important trends are worthy of highlighting in data made available from reporting on IP enforcement in 2012:

- In 2012, civil IP cases increased by nearly 50% to a total of 87,419 cases accepted. (This is more than five times the total of six years prior.)
- The courts accepted 7,840 criminal IP cases, an increase of more than 150% over 2011.
- Patent administrative appeals remained mostly static over previous years, suggesting that it is still difficult to appeal a decision of the State Intellectual Property Office.
- There were 420 specialized IPR tribunals in 2012. The number of basic courts that can hear IP cases increased from 29 in 2009 to 69 in 2012, but there was no change in the number of high courts engaged in the effort to combine civil, criminal, and administrative cases since 2009. However, China has nothing like the U.S. Court of Appeals for the Federal Circuit, which is an example of an appellate patent court.²

China's State Intellectual Property Office released its national IP strategy for 2013 in March 2013. Key elements of this ambitious plan include:³

- Prepare a work plan for intellectual property in China's strategic and emerging industries
- Prioritize patent examination for industries such as clean energy
- Improve statistical reporting on copyright, and prepare a report on the contribution of the copyright industries to China's economy
- Increase the number of basic courts hearing IP cases, the number of intermediate courts hearing patent cases, and the experiments in combining civil, criminal, and administrative IP cases
- Promote openness in administrative proceedings with model rules

¹ WIPO, Country Statistical Profiles (China), http://www.wipo.int/ipstats/en/statistics/country_profile/countries/cn.html.

² See "Supreme People's Court Annual Report Shows Continued Meteoric Growth in Litigation and Increasing Professionalism of the Court," China IPR, web log, April 25, 2013, available at <http://www.chinaipr.com>.

³ The following list draws from the "Promotion Plan for the Implementation of the National Intellectual Property Strategy in 2013," Office of the Inter-Ministerial Joint Meeting for Implementation of the National Intellectual Property Strategy, available at <http://www.cipnews.com.cn/showArticle.asp?Articleid=26744>.

- Improve coordination between administrative and criminal enforcement
- Promote software legalization by the government and preinstallation of legal software
- Improve patent administrative enforcement
- Conduct preparatory work for China to join the Hague Convention on industrial designs
- Enhance the protection of geographical indications, including at the border, and proceed with the negotiation of the Sino-European agreement on geographical indications
- Develop access and benefit-sharing rules for genetic resources
- Improve IP management in national science and technology projects, and develop new rules and practices for transgenic biotechnology, including new rules on IP protection
- Work to improve the situation for overseas students returning to China
- Continue efforts to increase IP-capable people in China, including a focus on textbooks for teaching the young, and begin to develop IP-service professions, including new regulations on patent and trademark agents and law firms handling patent matters

Supporters of developments in China make note of the “stage of economic development” dynamic for Beijing. They essentially argue that when China begins producing its own intellectual property in significant quantities, the country’s own entrepreneurs and inventors will put pressure on political and Communist Party leaders to change the laws and improve IP protections. There is evidence that this is already happening.⁴

The Special 301 Report released in May 2013 by the U.S. Trade Representative notes some additional ways in which China’s IP-protection system has made improvements.⁵

- On January 1, 2013, a new Chinese civil procedure law went into effect that might address some hurdles U.S. plaintiffs face in seeking redress in Chinese civil court actions.
- Also effective January 1, 2013, the Supreme People’s Court issued a judicial interpretation on the liability of Internet intermediaries entitled “Rules of Supreme Court on Several Issues Concerning the Application of Law in Adjudication of Civil Disputes Related to Infringement of Right of Communication over Information Networks.”
- China invited comment on numerous draft rules and guidelines for proposed regulations governing domestic IPR enforcement, suggesting a degree of willingness to hear foreign inputs.
- China’s State Council established a permanent national leading group office (Leading Group) to better coordinate and improve the country’s efforts to combat IP infringement and the manufacture and sale of counterfeit goods. Under the Leading Group, eleven special campaigns concentrating on key IP concerns were completed in 2012. This development is potentially of great importance.
- In May 2011, the Chinese government reported that software legalization in central government offices was complete. At the provincial level, a similar effort was reported to have been completed by the end of 2012. Software legalization efforts have more recently extended to Chinese state-owned enterprises (SOE). In 2012, China confirmed that it requires SOEs “to purchase and use legitimate software, including but not limited to operating system and office suite software.”⁶

⁴ USTR, “2012 Special 301 Report,” April 2012, <http://1.usa.gov/1kSucw>.

⁵ USTR, “2013 Special 301 Report,” May 2013, 32–33, <http://www.ustr.gov/sites/default/files/05012013%202013%20Special%20301%20Report.pdf>.

⁶ *Ibid.*, 34.

- China has made important commitments regarding technology transfer as well: “That technology transfer and technological cooperation shall be decided by businesses independently and will not be used by the Chinese Government as a pre-condition for market access,” and “to treat and protect intellectual property rights (IPR) owned or developed in other countries the same as domestically owned or developed IPR.” In addition, at the 2012 Joint Commission on Commerce and Trade, China “reaffirmed that technology transfer and technology cooperation are the autonomous decisions of enterprises” and further pledged that “if departmental or local documents contain language inconsistent with the above commitment, China will correct them in a timely manner.”⁷

⁷ USTR, “2013 Special 301 Report,” 36.

Short-term Solutions: Agile Administration Executive Action

The immediate actions we are recommending, largely regulatory or made effective via executive order, seek to provide immediate redress to a range of IP-theft problems.

Recommendation:

Raise the policy and enforcement priority of IP protection in the U.S. government. Designate the national security advisor as the principal policy coordinator for all actions regarding the protection of American intellectual property.

The position of the U.S. Intellectual Property Enforcement Coordinator, established by Congress in 2008, is currently a statutory office in the Office of Management and Budget. The office is staffed by U.S. government personnel mostly on detail from other enforcement agencies. The current coordinator is well respected, and her office is busy at the working level, yet the importance of the problem demands higher-level attention.

The theft of intellectual property poses enormous challenges to American national security and the welfare of the nation, as has been demonstrated in the preceding chapters. The risks include the possibility that theft of sensitive military or dual-use technologies can benefit potential adversaries. Other challenges extend to the potential degradation of the industrial base, in part from the sheer breadth and volume of attacks (see chapter 5). Although it is certainly true that not all problems rise to a national security challenge, the means by which IP is stolen (including foreign government involvement) and the recent assertion by the president's national security advisor that the U.S. government must take action to safeguard American companies in response to massive cyber and other attacks demonstrate that IP theft is a national security priority.¹

The nature of the challenge is complex and broad in scope, with significant ramifications for bilateral relations with China and other major countries with which the United States has many common and conflicting interests. Therefore, the responsibility for interagency coordination must reside in the White House. Such a set of challenges requires the direct involvement of the president's principal advisor on national security issues to ensure that it is given the proper priority and the full engagement of the U.S. government.

While the Commission believes that policy coordination and emphasis on IP protection need to be accomplished at the White House level, it does not recommend that the detailed work of implementing an effective program can or should be supervised by White House staff. Efforts to protect American intellectual property will involve literally thousands of detailed actions—data gathering and research, interagency coordination, work with the private sector, coordination with Congress, and interactions with foreign government agencies. This work must be done by expert officials across many departments and agencies working together in interagency teams with a great deal of private-sector outreach. The government needs to develop an interagency team of expert

¹ In his speech to the Asia Society in March 2013, the president's national security advisor, Thomas Donilon, made clear the linkage between attacks on American companies, especially via cyber means, and U.S. national security.

officials similar to, but even more active than, the Committee on Foreign Investment in the United States (CFIUS). Membership on the interagency team would include, at a minimum, representatives from the Commerce Department, FBI, Justice Department, Office of the Director of National Intelligence, State Department, U.S. Customs and Border Protection, U.S. Patent and Trademark Office, and U.S. Trade Representative.

Accomplishing all of these specific actions under a higher-priority IP-protection program will require the leadership of a cabinet-level official charged with sufficient responsibility.

Recommendation:

Establish the secretary of commerce as the principal government official responsible for enhancing and implementing policies regarding the protection of intellectual property, enforcement of implementation actions, and policy development.

The USTR has statutory authority to identify, monitor, and assess foreign countries for their protection of intellectual property and adherence to trade-agreement obligations. The USTR is principally and properly focused on the international trade environment. The Commission recognizes this important role for the USTR and seeks to complement it by strengthening the authority of the secretary of commerce to organize operational elements of the U.S. government to improve IP-protection measures.²

Despite the great work being done by the office of the USTR through the Special 301 Report and ongoing bilateral and multilateral negotiations, as well as increased enforcement efforts through the Office of the Intellectual Property Enforcement Coordinator, IP-related losses by U.S. companies appear to be getting worse. Chapter 1 discusses this and other problems with the current U.S. policy responses to the theft of IP by foreign actors.

The secretary of commerce has sufficient human, budget, and investigative resources to address the full range of IP-protection issues. The under secretary of commerce for intellectual property/director of the USPTO is already the president's advisor on intellectual property policy. Giving the secretary of commerce statutory authority for overall responsibility for implementation of IP policy builds on existing authorities and leverages the other existing capabilities within the Commerce Department.

The Commission recommends that an executive order be drafted that assigns the secretary of commerce the following responsibilities:

- Publication of an annual report describing the state of IP protection, including both overall numbers of violations and descriptions of major violations, as well as the effectiveness of U.S. IP-protection policy with recommendations to improve
- Responsibility for recommending to the secretary of homeland security the sequester of imported goods that have been judged to contain or benefit from stolen U.S. intellectual property
- Responsibility for recommending to the secretary of the treasury the sanctioning of individuals and companies that have stolen U.S. intellectual property

² The USTR's Special 301 Report states the following: "Pursuant to Section 182 of the Trade Act of 1974, as amended by the Omnibus Trade and Competitiveness Act of 1988 and the Uruguay Round Agreements Act ('Special 301'), USTR is required to identify those countries that deny adequate and effective protection for IPR or deny fair and equitable market access for persons that rely on IPR protection. The USTR is required to designate countries that have the most onerous or egregious acts, policies, or practices and whose acts, policies, or practices have the greatest adverse impact (actual or potential) on the relevant U.S. products as 'Priority Foreign Countries. USTR has created a 'Priority Watch List' and 'Watch List' under Special 301 provisions. Placement of a trading partner on the Priority Watch List or Watch List indicates that particular problems exist in that country with respect to IPR protection, enforcement, or market access for persons relying on IPR." Office of the United States Trade Representative, "2013 Special 301 Report," May 2013, 57, <http://www.ustr.gov/sites/default/files/05012013%202013%20Special%20301%20Report.pdf>.

- Responsibility for developing and chairing an interagency team of expert officials from all involved departments to develop a detailed body of knowledge on the full extent of foreign misappropriation of U.S. intellectual property, and to recommend counter-employing the full range of official sanctions

Recommendation:

Establish a quick-response capability to sequester imported goods that incorporate stolen or pirated materials or were made with a business process that includes illegally procured intellectual property, strengthening the existing 337 process of the Tariff Act.

The example of thousands of counterfeit parts arriving on U.S. shores, as discussed in chapter 1, and the increasing use of the international mail system to send trademark-infringing goods into the United States, highlighted in chapter 6, both point to a need to provide a faster process to identify and sequester goods entering the U.S. market from abroad.

While faster than federal court litigation, the current USITC sequestration process pursuant to Section 337 of the Tariff Act of 1930 is still too lengthy and bureaucratic to protect American companies that find their products or processes infringed upon by goods entering the United States. Under current practice, a case is not accepted by the USITC unless a lengthy complaint is submitted. Moreover, after an investigation (of unbounded duration) if the administrative law judge assigned to the case supports a finding of IP violations, a judgment preventing goods from entering the U.S. market takes effect 60 days after the judgment. Average case time is more than a year. While provisions for temporary relief exist, the rules emphasize compliance above stopping illegal use of the intellectual property of others.³

As mentioned in chapter 1, the profitable life cycle of certain goods is strongest in the immediate days and weeks following the product's release. In this context, the existing Section 337 process does not provide a rapid enough mechanism for companies to seek injunctions and compensation for infringement. In an era in which the profitable life cycles of some goods and processes can be measured in days and weeks, the existing Section 337 process is in desperate need of overhaul.

What is needed is a faster process that can sequester goods suspected of containing illegally obtained IP (under a "probable cause" standard of proof) until rapid judgment can be made that the goods or processes contain no illegal IP. Once the judgment is made, then the company's export license for those goods is revoked if the presence of illegal IP is confirmed, or the goods are released for import if no infringement of IP is confirmed.

For this recommendation, the sequestration would be triggered either by U.S. government information or by information provided by companies as they scan their own markets. The government team described below must ensure that the procedures for a U.S. company to trigger a complaint are not so burdensome that small and medium-sized U.S. companies are discouraged from using them. If lengthy procedures become necessary, then the government team needs to establish a "help desk" to assist smaller companies in submitting complaints.

Once theft of a product or process is alleged, the interagency team described above would consider the case under an expedited deadline. This process would set a lower standard of proof for the merits of the allegation, a standard similar to the "probable cause" used for the issuance of warrants to law-enforcement officers to make searches, on the premise that speed is the most important dimension

³ USITC, "Section 337 Investigations: Answers to Frequently Asked Questions," March 2009, http://www.usitc.gov/intellectual_property/documents/337_faqs.pdf.

in limiting losses to rights holders. An expedited legal review would then ensue within a strict time frame to determine whether to keep the goods impounded or allow them to enter the U.S. market.

American businesses consider a “bar to entry” dimension to be an essential component of a broad-based IP-enforcement program, as it serves to prevent economic harm to American companies from occurring while a careful review of a product is undertaken. Restricting the entry of IP-invalid goods or services both protects the market share of IP-compliant companies and conveys a powerful deterrent message to potential violators. A mandatory legal review ensures that the rights of companies entering the U.S. market are protected. Evidence from a study by the *Michigan Law Review* finds that default rates are rising faster than the increase in USITC 337 cases in recent years, thereby keeping counterfeit goods from the American market. This trend suggests that in many cases the mere threat of a USITC investigation serves the deterrent purposes of preventing counterfeit goods from entering the U.S. market.⁴

This recommendation has two potential negative effects that must be monitored and, if necessary, mitigated. Companies found not to be in violation could, in some cases, sue the U.S. government for loss of revenue. A swift and transparent adjudication process should mitigate this potential effect. Another potential downside of this process is that it could create a perverse incentive for American companies to lodge false allegations against foreign competitors as a means to gain a short-term advantage. The interagency team that accepts and evaluates complaints will quickly learn whether the system is being manipulated and can easily decline to accept additional complaints from these American companies.

While this process would have no effect on goods or processes that do not enter the U.S. market, it will have a strong deterrent effect on major foreign companies with international ambitions, as it forces them to choose between obtaining IP illegally and selling in the U.S. market. This quick-response capability is based on identification of a particular good or service that incorporates stolen IP. The penalty for the infraction is taken against the product or service. When a Chinese or other foreign company is identified as a repeat offender, using stolen IP on a larger scale, then action needs to be taken against the company itself.

Recommendation:

Empower the secretary of the treasury, on the recommendation of the secretary of commerce, to deny the use of the American banking system to foreign companies that repeatedly benefit from the misappropriation of American intellectual property.⁵

Foreign companies that sell goods or services in the American market, or do business in dollar-denominated markets, such as the international oil market, must use American banks to clear their transactions. Chapter 1 discusses how companies may illegally make use of the IP of American companies as part of their supply chains, and chapters 6 and 7 discuss misappropriation of IP through trademark and copyright infringement. Companies that repeatedly misappropriate the intellectual property of an American company—either as incorporated within their product or as part of the business process (machine tools, business software, etc.) that created the good or service—should forfeit the privilege of using the American banking system.

⁴ John C. Evans, “Addressing Default Trends in Patent-Based Section 337 Proceedings in the United States International Trade Commission,” *Michigan Law Review* 106, no. 4 (2008).

⁵ Using the language “use or benefit from” implies a broader reach. It includes not only the thieves of the IP but also those who, for example, have licensed IP but use it past the expiration of the license or use it for a purpose that is not covered by the license.

International banks are the gateway to the American economy. Banking restrictions have proved to be an extremely effective tool in controlling financial operations related to other illegal international activities, such as terrorism, money laundering, and drug smuggling. Making compliance with IP laws a prerequisite for entry into the U.S. market, and utilizing the financial system as the gatekeeper of that process, creates an enforcement tool without geographical boundaries. Companies that make use of stolen American IP anywhere in the world would suddenly face the real prospect of severe restrictions on their ability to access the U.S. banking system.

The same Commerce-led interagency team established in the recommendations above would have the expertise, experience, and charter to determine which foreign companies should be subject to this sanction. When the interagency team observes repeated confirmed instances of IP theft by a foreign company, it would forward the name of that company to the secretary of the treasury for financial sanctions for a period of time.

The Commission does not prescribe specific lengths of time for the sanction to be imposed, nor procedures for a foreign company to be removed from the sanctions. These procedures should be at the discretion of the interagency team, based on its experience. The Commission is fairly certain that, unlike in the cases of terrorist financing that supports ideologically driven mayhem or inherently illegal activities such as drug-smuggling or money-laundering, using American financial institutions to sanction market-sensitive enterprises that steal IP would have enormous deterrent value. The number of companies that are stealing IP would likely dwindle rapidly.

Chinese or other foreign companies may resort to tactics such as the use of “reverse mergers” and the creation of shell companies and subsidiaries to protect parent companies from these financial sanctions. The interagency team would thus need to establish procedures to ensure that the penalties affect the parent company.

This recommendation would add one more set of administrative requirements and open one more potential basis for suits to the already heavy burdens placed on American international banks. On the other hand, it establishes no new processes or mechanisms to the existing requirements for understanding their customers, which ensure that U.S. banks are not being used for other forms of illegal activity. Foreign companies and governments may consider bringing action against the United States in the WTO for these procedures, but the Commission believes that this is a risk worth taking.

Recommendation:

Increase Department of Justice and FBI resources to investigate and prosecute cases of trade-secret theft, especially those enabled by cyber means.

While issues of IP protection are not necessarily new, as the Commission and this report point out, what has changed dramatically in recent years is the way in which new capabilities, such as cyber, have affected and enabled the stealing of trade secrets. The discussion in chapter 1 of cyber methods sets the background for the importance of this recommendation.

The Department of Justice and FBI need more resources to investigate the sharp increase in trade-secret theft cases, and the Commission strongly recommends the increase of investigative and prosecutorial resources. These resources are especially needed to investigate cases where the theft was perpetrated against small businesses and start-ups, as mentioned in chapter 1. Start-ups and small businesses are an indispensable part of the United States’ culture of innovation, are being increasingly targeted by IP thieves, and have fewer resources to defend themselves.

Recommendation:

Consider the degree of protection afforded to American companies' IP a criterion for approving major foreign investments in the United States under the Committee on Foreign Investment in the U.S. process.

CFIUS is an interagency committee authorized to review transactions that could result in control of a U.S. business by a foreign entity in order to determine the effect of such transactions on the national security of the United States. If CFIUS finds that a covered transaction presents national security risks and that other provisions of law do not provide adequate authority to address the risks, then CFIUS may enter into an agreement with or impose conditions on parties to mitigate such risks or may refer the case to the president for action.⁶

As demonstrated by the flood of counterfeit parts discussed in chapter 1, as well as by widespread cyber infiltrations discussed in chapters 1 and 5, the Commission assesses that the theft of American intellectual property has direct implications for national security. Given that CFIUS has a large amount of flexibility in evaluating potential transactions, it seems appropriate for CFIUS to factor into its judgment the degree to which the foreign actor protects intellectual property.

Recommendation:

Enforce strict supply-chain accountability for acquisitions by U.S. government departments and agencies by June 1, 2014, and work to enhance corporate accountability for the IP integrity of the supply chain.

Chapter 1 discusses the ways in which companies that use illegal IP as part of their supply chain, either as a process or part of an end product, gain an unfair advantage in the marketplace against those who are careful to audit and patrol their suppliers and factories. The U.S. government should not be giving business to contractors that use stolen IP in the goods and services they provide, including their subcontractors and subcomponents. Governments traditionally have imposed heightened requirements on contractors on the rationale that taxpayer funds should not be used to support businesses that engage in unethical or illegal conduct.

At least with regard to software, legal bases currently exist to impose IP compliance requirements on federal contractors. Executive Order 13103, signed by President Clinton on September 30, 1998, requires not only that federal agencies use legal software in their own operations, but also that they impose similar requirements on contractors:

Contractors and recipients of Federal financial assistance, including recipients of grants and loan guarantee assistance, should have appropriate systems and controls in place to ensure that Federal funds are not used to acquire, operate, or maintain computer software in violation of applicable copyright laws. If agencies become aware that contractors or recipients are using Federal funds to acquire, operate, or maintain computer software in violation of copyright laws and determine that such actions of the contractors or recipients may affect the

⁶ "CFIUS operates pursuant to section 721 of the Defense Production Act of 1950, as amended by the Foreign Investment and National Security Act of 2007 (FINSIA) (section 721) and as implemented by Executive Order 11858, as amended, and regulations at 31 C.F.R. Part 800... The members of CFIUS include the heads of the following departments and offices: Department of the Treasury (chair); Department of Justice; Department of Homeland Security; Department of Commerce; Department of Defense; Department of State; Department of Energy; Office of the U.S. Trade Representative; and Office of Science & Technology Policy. The Office of Management & Budget, Council of Economic Advisors, National Security Council, National Economic Council, and Homeland Security Council are observers. The Director of National Intelligence and the Secretary of Labor are non-voting, *ex-officio* members of CFIUS with roles as defined by statute and regulation." See U.S. Department of the Treasury, "The Committee on Foreign Investment in the United States (CFIUS)," December 20, 2012, <http://www.treasury.gov/resource-center/international/Pages/Committee-on-Foreign-Investment-in-US.aspx>.

integrity of the agency's contracting and Federal financial assistance processes, agencies shall take such measures, including the use of certifications or written assurances, as the agency head deems appropriate and consistent with the requirements of law.

Other provisions of U.S. procurement law provide additional bases for requiring federal contractors to use legal software. The Federal Acquisition Regulation (FAR), which governs most federal contracts, requires contracts expected to exceed \$5,000,000 and a performance period of 120 days or more to include a clause requiring the contractor to comply with applicable laws and generally adhere to ethical business practices.⁷ Similarly, contracts for the acquisition of commercial items must contain the clause at FAR 52.212-4, *Contract Terms and Conditions—Commercial Items*, one provision of which provides that contractors “shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.”⁸

Federal agencies should enforce Executive Order 13103 more aggressively, including by requiring contractors to certify that they comply with the order as a condition of bidding on federal contracts. Federal agencies also should interpret Executive Order 13103's provision prohibiting contractors from using federal funds to acquire, operate, or maintain unlicensed software to bar the use of unlicensed software throughout the contractor's business operations. Consideration should be given to applying the same rules to subcontractors.

Additionally, organizations such as CREATE and Verafirm have developed processes that assist companies with increasing the accountability of their supply-chain providers.⁹ Companies can be held accountable through their supply chains for certain marine content in fish products, textiles produced by minors, and toxic materials in consumable products. Thus, these companies can be held accountable for ensuring that the supply chains and processes they oversee are also IP-protection compliant.

Beyond its recommendations for the U.S. government, the Commission encourages businesses to improve their audits and accountability for their own supply chains. Corporate executives should be encouraged to adopt a zero-tolerance policy toward IP theft within their companies and with their suppliers, including foreign suppliers, and to consider a mechanism whereby the company can be alerted about known or suspected IP theft, including in their supply chains. Companies also should seek to implement best practices with regard to supply-chain IP compliance. Specifically, companies should implement audit provisions in supply-chain agreements requiring suppliers to increase accountability.

Over time, what could develop is a process whereby an IP certification, or “IP passport,” could be awarded to companies with a high degree of integrity in their international supply chains. This would have demonstrable benefits for the speed with which the goods and services enter the U.S. market.

The Commission acknowledges that for some small and medium-sized enterprises increasing accountability in supply chains can pose a burden. However, the Commission also notes that increasing such protection actually improves the legal standing of companies in the event of lawsuits.

⁷ See Federal Acquisition Regulation §3.1004(a), requiring use of contract clause at §FAR 52.203-13, *Contractor Code of Business Ethics and Conduct*, which require contractors to “promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law,” to have an internal control system that establishes “standards and procedures to facilitate timely discovery of improper conduct in connection with Government contracts,” and to impose “disciplinary action for improper conduct or for failing to take reasonable steps to prevent or detect improper conduct.”

⁸ 48 CFR 52.212-4(q).

⁹ See CREATE, “Tools and Training,” <http://www.create.org/tools-training>; and Verafirm, “About Verafirm,” <https://www.verafirm.org/Pages/General/About.aspx>.

Recommendation:

Require the Securities and Exchange Commission (SEC) to investigate whether the knowing, systematic, or widespread use of stolen software or other stolen IP within a listed company is or should be subject to executive and auditor disclosure rules and, if so, to issue guidance to that effect (a “red flag” provision).

Chapter 1 describes the degree to which supply chains are an increasing source of IP theft. Further targeting the misappropriation of IP in globalized supply chains, the SEC can play a significant role as a watchdog with regard to U.S.-listed companies. In recent years, U.S. policymakers and regulators have become increasingly active in requiring publicly listed companies to promote legal compliance and root out fraud. This is based in part on the rationale that a corporate culture that tolerates legal violations and fraud is more likely to engage in conduct that could mislead investors about the company’s financial health.

An example of this can be found in Section 302 of the Sarbanes-Oxley Act. The SEC rules for implementing Section 302 require the CEO and CFO of a listed company (including a foreign private issuer) to disclose any fraud to the company’s auditors and board of directors, whether or not material, that involves management or other employees who have a significant role in the company’s internal control over financial reporting.¹⁰ Failure to act on known fraud may subject the CEO and CFO to personal liability, which could extend to board members in certain cases.

Separately, the Securities Exchange Act provides that if a company’s auditors become “aware of information indicating that an illegal act (*whether or not perceived to have a material effect on the financial statements of the company*) has or may have occurred,” the auditor must inform “the appropriate level” of the company’s management and insure that the company’s audit committee—or board of directors in the absence of an audit committee—is “adequately informed with respect to illegal acts” that the auditor has detected.¹¹ A company’s use of stolen software falls within the scope of this provision, yet most auditing firms today do not routinely audit listed companies for legal software use.

The Commerce-led interagency team proposed in the two previous recommendations will also have information that should be provided to the SEC to be used in the regulation of both companies that are currently listed on American stock exchanges and those that are applying for listing.

There is ample evidence that stolen software can introduce security vulnerabilities into a company’s IT system.¹² Use of such software within a corporation is a “red flag” of inadequate internal controls more broadly. If the SEC makes such a finding, it should work with other international securities regulators to implement a standardized approach.

Recommendation:

Greatly expand the number of green cards available to foreign students who earn science, technology, engineering, and mathematics (STEM) graduate degrees in American universities.

Chapter 1 highlights the issue of highly skilled foreign students who are unable to stay in the United States after graduation due to U.S. government limitations on visas. According to a recent

¹⁰ Securities Exchange Act of 1934, rules 13a-14, 15d-14.

¹¹ Securities Exchange Act of 1934, §10A(b)(1).

¹² See John F. Gantz et al., “The Dangerous World of Counterfeit and Pirated Software: How Pirated Software Can Compromise the Cybersecurity of Consumers, Enterprises, and Nations...and the Resultant Costs in Time and Money,” IDC, White Paper, no. 239751, March 2013, 3–4, <http://www.computerworld.com.pt/media/2013/03/IDC030513.pdf>.

Brookings Institution study, in 2010 more than 96,000 foreign students were in the United States pursuing graduate degrees in STEM fields. However, a mere 19,000 stayed after graduation to work in the United States. Many American high-tech companies have publicly advocated increasing the number of visas available for these scientists and engineers in order to help them fill open jobs. However, the loss of these valuable workers has other damaging effects. Many of the 77,000 graduates who return home every year have knowledge of American intellectual property, gained in the course of their studies or in internships during their time in the United States. This intellectual property is of great benefit to foreign companies, enabling them to more quickly and effectively compete with American companies, both in overseas markets and even in the American market.

Several proposals to reform U.S. immigration procedures would make earning a green card for graduate students in STEM fields an easier process after graduation and with a job offer in hand. The Brookings study estimated that numerous metropolitan areas, especially in the Midwest, would see dramatic benefits if a much larger percentage of foreign students were permitted to stay.¹³

The Commission supports such initiatives on immigration reform. Sending qualified and talented scientists and engineers home almost ensures that their American educations will benefit other nations' economic development and will represent missed opportunities for the American economy.

To be sure, some of the foreign students who would remain in the United States under the terms of this arrangement would be subject to pressure or inducements from home countries and companies to commit IP theft while working for a U.S. company. There have been multiple cases of the FBI prosecuting green card holders. Nonetheless, if the full range of this report's recommendations were adopted to deal with IP theft systemically, the Commission judges that this risk is far outweighed by the potential benefits of such a program.

¹³ Neil Ruiz, "Immigration Facts on Foreign Students," Brookings Institution, April 9, 2013, <http://www.brookings.edu/research/interactives/2013/facts-on-foreign-students>.

Medium-term Solutions: Legislative and Legal Reform

These are efforts that will strengthen the U.S. legal system, which possesses inadequate legal remedies for the scale of the problems we face, and increase the priority of IP protection in U.S. diplomatic missions overseas.

Recommendation:

Amend the Economic Espionage Act to provide a private right of action for those who hold trade secrets and further to make the Court of Appeals for the Federal Circuit (CAFC) the appellate court for all actions under this statute.

The EEA was passed in 1996 to criminalize trade-secret theft at the federal level in order to provide a mechanism to stem losses to U.S. entities as a result of such theft. Two amendments recently signed into law by President Obama serve to broaden the scope of protection (Theft of Trade Secrets Clarification Act of 2012) and to increase monetary penalties for criminal activities under the EEA (Foreign Economic Espionage Penalty Enhancement Act of 2012).

As discussed in depth in chapter 5, while the EEA has been somewhat helpful in protecting IP internationally, there are still some deficiencies that need to be addressed. Missing from the EEA is a private civil cause of action that would enable companies to individually pursue the perpetrators of economic espionage in federal court, though the statute does create a limited civil cause of action allowing the U.S. attorney general to seek injunctive relief against offenders. Under current law, companies and individuals are left to pursue their cases for trade-secret misappropriation in state courts, which gives rise to many of its own complications, including limited access to evidence and difficulty in enforcing judgments.¹

An amendment allowing a private civil cause of action under the EEA would allow the rights holders themselves, rather than just government prosecutors, to file lawsuits in order to protect their proprietary methods and information. This could also help alleviate the burden on federal prosecutors, who are already suffering from severe resource constraints when it comes to pursuing EEA actions.

¹ A bill that would have provided a private civil cause of action at the federal level for economic espionage was introduced in July 2012, entitled the Protecting American Trade Secrets and Innovation Act of 2012. The bill would have amended §1836 of the EEA to allow a person who is aggrieved by an act of economic espionage, theft of a trade secret, or misappropriation of a trade secret that is related to or included in a product that is produced for or placed in interstate or foreign commerce to bring a civil action under the EEA, instead of requiring that the civil action be brought by the U.S. attorney general.

As summarized by the Library of Congress, the bill contained the following provisions: “Requires a complaint filed in such an action to: (1) describe with specificity the reasonable measures taken to protect the secrecy of the alleged trade secrets in dispute, and (2) include a sworn representation by the party asserting the claim that the dispute involves either substantial need for nationwide service of process or misappropriation of trade secrets from the United States to another country. Authorizes the court, in a civil action, upon ex parte application and if the court finds by clear and convincing evidence that issuing the order is necessary to prevent irreparable harm, to issue an order providing for: (1) the seizure of any property (including computers) used or intended to be used to commit or facilitate the commission of the alleged violation, and (2) the preservation of evidence. Sets forth provisions regarding the scope of such an order, rights of a party injured by a seizure under such an order, and remedies with respect to civil actions brought under this Act. Establishes a three-year limitations period, beginning when the misappropriation is discovered or should have been discovered.” See Library of Congress, “Summary: S.3389—112th Congress (2011–2012),” available at [http://beta.congress.gov/bill/112th%20Congress%20\(2011-2012\)-congress/senate-bill/3389](http://beta.congress.gov/bill/112th%20Congress%20(2011-2012)-congress/senate-bill/3389).

The second proposed change to the Economic Espionage Act mandates that the appellate court for all actions under the EEA would be the Court of Appeals for the Federal Circuit. The CAFC serves as the appellate court for nearly all IP-related cases, and thus has a high degree of competency on IP issues. Making the CAFC the appellate court for all EEA issues ensures a degree of continuity in judicial opinion. Moreover, it helps support the federal circuit in expanding extraterritorial enforcement.

Recommendation:

The U.S. Federal Trade Commission (FTC) should investigate instances of foreign companies stealing IP and use its broad enforcement powers under Section 5 of the FTC Act to obtain meaningful sanctions against any foreign companies that use stolen IP. The Commission also recommends that attorneys general of other states follow the example of the recent aggressive enforcement actions against IP theft taken by the California and Massachusetts attorneys general.

Most businesses today rely on software and other information technologies to improve their efficiency and productivity. In a 2008 study, the U.S. Department of Commerce found a significant correlation between IT investment and productivity growth.² In 2010, U.S. manufacturers spent nearly \$30 billion on software in order to run their businesses more efficiently and to gain a competitive edge.³ Many of these companies operate on tight margins where small differences in costs can significantly affect their profits and market success.

When a foreign company uses stolen software to run its business and then competes in a U.S. market against companies that use legal software, this distorts competition in the United States by providing the foreign company with an unfair and artificial cost advantage. If left unaddressed, this creates perverse incentives by providing a competitive advantage to companies that engage in illegal conduct and placing at a competitive disadvantage those law-abiding companies that may be more innovative or efficient but that pay for their software. These market distortions may reduce lawful competition and lead to suboptimal investments in innovation, since enterprises that pay for their software and lose sales to firms that engage in software theft will have fewer resources to invest in R&D. Over time, software theft by foreign companies whose products or services are offered in U.S. markets will distort competition in these markets and will leave U.S. consumers worse off. Reiterating the earlier notions of chapter 1, these losses are becoming more and more potent due to shorter product life cycles. In industries that gain the vast majority of their revenues during the first few months of a product release, the enforcement mechanisms need to be equally responsive.

Legislatures in Washington State and Louisiana have passed laws specifically targeting this form of unfair competition,⁴ while state attorneys general in California and Massachusetts recently announced actions against foreign manufacturers' use of stolen software under these states' respective

² According to the Department of Commerce, "average growth for IT-intensive industries for this period [1989–2001] was 3.03 percent, far exceeding growth in the less IT-intensive industries which averaged 0.42 percent." U.S. Department of Commerce, Economics and Statistics Administration, *Digital Economy 2003*, December 2003, 45–54, http://www.esa.doc.gov/sites/default/files/reports/documents/dig_econ_2003.pdf.

³ Ben Law, Ted Dangson, and Stephen Minton, "United States Black Book: State IT Spending by Vertical Market—2Q11," IDC, September 2011.

⁴ 2011 Wash. Leg. Serv. Ch. 98 (codified at Wash. Rev. Code §§ 19.330.010–100); and 2010 La. Sess. Law Serv. Act 74 (codified at La. Rev. Stat. § 51:1427).

existing unfair-competition laws.⁵ Also, 39 state and territorial attorneys general recently sent a letter to the FTC highlighting the problem, pledging to seek ways to use the powers of their respective offices to address the issue, and urging the FTC to consider how Section 5 of the FTC Act could be brought to bear on the problem at the federal level.⁶

This recommendation is a complement to enacting a federal private right of action under a revised EEA. At the state level, the accumulation of case law will serve as a longer-term deterrent to illegal gain as a result of the misappropriation of intellectual property. State case law also extends to the unlawful use of pirated software in the production of a good. The Massachusetts attorney general recently brought a successful case against a Thai company, which settled out of court after paying a fine.⁷

Recommendation:

Expand and strengthen diplomatic priorities in the protection of American intellectual property by increasing the diplomatic rank of IP attachés assigned to priority embassies and by making the protection of intellectual property one of the criteria on which ambassadors are graded.

In countries with which the United States has a particularly challenging relationship in the field of IP protection, one way the United States can demonstrate the priority with which it holds the protection of intellectual property is by giving appropriately senior rank to its IP attaché. By doing so, the United States also facilitates more effective interactions with host countries and will contribute to more mature rule of law perspectives in many developing nations, as discussed in chapter 1.

Similarly, if the criteria on which U.S. ambassadors are evaluated on an annual basis include their efforts to protect American intellectual property, as they now include efforts to promote American exports, they would likely find new and innovative ways to protect IP. Moreover, adopting this recommendation will send a strong message to the host country.

⁵ Commonwealth of Massachusetts, Attorney General's Office, "Company Fined for Using Pirated Software to Gain Unfair Advantage Over Massachusetts Businesses," Press Release, October 18, 2012, <http://www.mass.gov/ago/news-and-updates/press-releases/2012/2012-10-18-narong-seafood-co.html>; and State of California Department of Justice, Office of the Attorney General, "Attorney General Kamala D. Harris Files Unfair Competition Lawsuits Over Use of Pirated Software in Apparel Industry," Press Release, January 24, 2013, <http://oag.ca.gov/news/press-releases/attorney-general-kamala-d-harris-files-unfair-competition-lawsuits-over-use>.

⁶ National Association of Attorneys General to FTC Commissioners and the Director of the Bureau of Competition, Washington, D.C., November 4, 2011, <http://www.naag.org/assets/files/pdf/signons/FTCA%20Enforcement%20Final.PDF>.

⁷ Marjorie Nesin, "Fish Company Pays AG's fine for IT Piracy," *Gloucester Daily Times*, October 22, 2012, <http://www.gloucestertimes.com/local/x1684128598/Fish-company-pays-AGs-fine-for-IT-piracy>.

Long-term Solutions: Capacity-building

This set of recommendations is aspirational in nature. The recommendations seek to build consensus in priority countries for the support of IP protection.

Recommendation:

Help build institutions in priority countries that contribute toward a “rule of law” environment in ways that protect intellectual property.

Currently, there is a range of efforts, both public and private, that contributes to the development of rule of law in China and other foreign countries that do not protect intellectual property. These should be encouraged and endorsed by Congress and the administration as extremely cost-effective ways to bring about systemic change.

In particular, the U.S. Patent and Trademark Office organizes a range of capacity-building efforts, such as U.S.-China legal exchanges, which include the participation of sitting American judges. These efforts are largely cost-free to taxpayers—being funded by the fees that the USPTO collects—and have been enormously effective. Of particular importance are efforts that demonstrate the purposes and value of an independent judiciary.

Recommendation:

Develop a program that encourages technological innovation to improve the ability to detect counterfeit goods and products.

The U.S. government has become quite good at motivating developments in the government and private sectors through a range of incentive programs. Such programs are often quite successful at developing new technological solutions that can have important policy impacts.

Innovation for the purposes of greater protection against counterfeiting also sends important messages about the value the U.S. government places on domestic innovation. Technologies that could more simply and reliably detect counterfeit items or verify the authenticity of true products are examples. Such an initiative is also self-reinforcing: innovation that protects existing innovation is thus both a goal and a means to an end.

Recommendation:

Ensure that top U.S. officials from all agencies push to move China, in particular, beyond a policy of indigenous innovation toward becoming a self-innovating economy.

As discussed in chapter 1, China in particular needs to continue to reform its IP-protection system. It is assessed that China will become a stronger supporter of intellectual property when Chinese innovators demand more domestic protection for their own technological advances. Chinese inventors and entrepreneurs are on the cusp of tremendous breakthroughs in a range of sectors. What they lack are the legal and regulatory protections at home that will enable them to realize the benefits of their ideas.

Bringing to an end the use of Chinese-granted “petty patents,” as described in chapter 4, would be an important early step toward becoming an innovation economy. The system of petty, or utility, patents does not advance China toward becoming a technological leader. Quite the contrary, petty patents actually impede innovation because the system incentivizes the copying of others’ work.

Recommendation:

Encourage the development of IP “centers of excellence” on a regional basis within China and other priority countries.

Incentivizing provincial and municipal leaders in countries such as China, Russia, and India to create business environments that protect intellectual property is a critical long-term activity. One of the ways the U.S. government can encourage better protection of intellectual property in China is pointing foreign investment toward those cities and provinces with stronger protection of intellectual property. Increased levels of foreign investment would then have positive impacts on helping reach the levels of economic growth that mark outstanding local leaders as destined for promotion.

This can be an enormously challenging process, especially in countries that have uneven IP-protection regimes in place. Developing a nongovernmental assessment and rating system, as described below, is a first step toward encouraging the development of IP centers of excellence.

Recommendation:

Establish in the private, nonprofit sector an assessment/rating system of levels of IP legal protection, beginning with China but extending to other countries as well.

The assessment would focus on the regional or sub-national level and could be conducted by an international consortium of relevant educational and business associations to provide both a status report and a directional indicator—improvement or regression—of the level of IP protection within a specific region. Such an assessment system would help identify geographical regions in which IP protection is notably stronger than in others. Implicit within the development of such a system is that foreign investors would use its findings to inform their own investment patterns in IP protection-challenged countries such as China, Russia, and India.

Cyber Solutions

There are two types of intruders into corporate computer networks that are connected to the Internet. The “opportunistic hacker” uses the Internet to run probing attacks against many networks and then intrudes wherever he finds vulnerability. The “targeted hacker” seeks to take specific proprietary information in a specific network belonging to a specific government agency or private company. Whereas some hackers target entities for individual ideological reasons, many others are sponsored by a government agency, often for direct military purposes—intelligence and reconnaissance—or to damage military networks. Other targeted hackers seek to intrude on behalf of a foreign corporate competitor into the network of a U.S. corporation, often to take specific information to gain a business advantage. Cyberattacks, in combination with traditional economic espionage activities involving human efforts targeted against corporate proprietary information, can result in the theft of highly protected trade secrets.

The sheer scale of cyberattacks on American companies, with corresponding economic interests at stake, causes the issue of IP to rise to a genuine national security concern. The administration recognizes this new reality. As National Security Advisor Tom Donilon said recently, “the United States will do all it must to protect our national networks, critical infrastructure, and our valuable public and private sector property.”¹

Vulnerability Mitigation Is Effective Only against Opportunistic Hackers

Almost all network security approaches to date have been based on the concept of vulnerability mitigation, which seeks to strengthen one’s existing network security by pursuing the newest and best software, network appliances, regular updates, updated firewalls, most recent patches to software weaknesses, and so forth. Moreover, they place a high burden on network administrators to comply with established minimum requirements and manage the integration of an ever-expanding universe of security products. Vulnerability mitigation is a fundamentally passive approach to network defense. Companies spend inordinate amounts of money attempting to protect their networks against all threats, but in reality only succeed in keeping out the opportunistic hackers who may otherwise have no direct interest in the information of a particular company. Thus, the costs borne by individual companies to defend themselves have no effect on the incentives of opportunistic hackers. Time and opportunity are on their side. If presented with a challenging network defense, they simply move on to more lightly defended networks. *Perhaps more importantly, vulnerability-mitigation measures have proved largely ineffective in defending against targeted hackers, who are hired specifically to pursue American corporations’ intellectual property.*

A different concept for security, known as threat-based deterrence, has been identified as a means to protect the most important information in corporate or government networks.

¹ Thomas Donilon, “The United States and the Asia-Pacific in 2013” (speech to the Asia Society, New York, March 11, 2013), <http://www.whitehouse.gov/the-press-office/2013/03/11/remarks-tom-donilon-national-security-advisory-president-united-states-a>.

Threat-based Deterrence against Targeted Hackers

Even the best security systems using vulnerability-mitigation measures, including those with full-time dedicated operations centers, cannot be relied on for protection against the most highly skilled targeted hackers. A network exists in order to share information with authorized users, and a targeted hacker, given enough time, will always be able to penetrate even the best network defenses.

Effective security concepts against targeted attacks must be based on the reality that a perfect defense against intrusion is impossible. The security concept of threat-based deterrence is designed to introduce countermeasures against targeted hackers to the point that they decide it is no longer worth making the attacks in the first place. In short, it reverses the time, opportunity, and resource advantage of the targeted attacker by reducing his incentives and raising his costs without raising costs for the defender. Conceptual thinking about and effective tools for threat-based deterrence are in their infancy, but their development is a very high priority both for the U.S. government and for private companies.

Chapter 1 provides an in-depth review of the extent to which cyberattacks affect the U.S. national economy, and chapter 5 discusses the problem of cyberespionage in detail.

Recommendation:

Encourage adherence to best-in-class vulnerability-mitigation measures by companies and governments in the face of an evolving cybersecurity environment.

Despite their limited utility against skilled and persistent targeted hackers, computer security systems still need to maintain not only the most up-to-date vulnerability-mitigation measures, such as firewalls, password-protection systems, and other passive measures. They should also install active systems that monitor activity on the network, detect anomalous behavior, and trigger intrusion alarms that initiate both network and physical actions immediately. This is a full-time effort. Organizations need network operators “standing watch” who are prepared to take actions based on the indications provided by their systems, and who keep a “man in the loop” to ensure that machine responses cannot be manipulated. Organizations need to have systems—software, hardware, and staff—to take real-time action to shut down free movement around the house, lock inside doors, and immobilize attackers once the alarms indicate that an intrusion has started. Some government agencies and a few corporations have comprehensive security systems like this, but most do not.

Finally, emphasis should be given to developing cutting-edge technologies that will promote a healthier Internet ecosystem. Examples of such technologies come in many forms. For one, since a large number of the successful targeted attacks are still arriving in the form of email campaigns containing links or files exploiting a zero-day vulnerability in common software packages, systems that are capable of rapidly analyzing the behavior of unknown files and links are an important element. So too is technology that allows for the isolation of computing environments so that damage is limited to a quarantined area and cannot infect the rest of the network. Last, systems providing advanced, real-time network analysis would also be a necessary element of this ecosystem.

Recommendation:

Support efforts by American private entities both to identify and to recover or render inoperable intellectual property stolen through cyber means.

Some information or data developed by companies must remain exposed to the Internet and thus may not be physically isolated from it. In these cases, protection must be undertaken for the files themselves and not just the network, which always has the ability to be compromised. Companies should consider marking their electronic files through techniques such as “meta-tagging,” “beaconing,” and “watermarking.” Such tools allow for awareness of whether protected information has left an authorized network and can potentially identify the location of files in the event that they are stolen.

Additionally, software can be written that will allow only authorized users to open files containing valuable information. If an unauthorized person accesses the information, a range of actions might then occur. For example, the file could be rendered inaccessible and the unauthorized user’s computer could be locked down, with instructions on how to contact law enforcement to get the password needed to unlock the account. Such measures do not violate existing laws on the use of the Internet, yet they serve to blunt attacks and stabilize a cyber incident to provide both time and evidence for law enforcement to become involved.

Recommendation:

Reconcile necessary changes in the law with a changing technical environment.

When theft of valuable information, including intellectual property, occurs at network speed, sometimes merely containing a situation until law enforcement can become involved is not an entirely satisfactory course of action. While not currently permitted under U.S. law, there are increasing calls for creating a more permissive environment for active network defense that allows companies not only to stabilize a situation but to take further steps, including actively retrieving stolen information, altering it within the intruder’s networks, or even destroying the information within an unauthorized network. Additional measures go further, including photographing the hacker using his own system’s camera, implanting malware in the hacker’s network, or even physically disabling or destroying the hacker’s own computer or network.

The legal underpinnings of such actions taken at network speed within the networks of hackers, even when undertaken by governments, have not yet been developed. Further, the de facto sanctioning of corporate cyber retribution is not supported by established legal precedents and norms. Part of the basis for this bias against “offensive cyber” in the law includes the potential for collateral damage on the Internet. An action against a hacker designed to recover a stolen information file or to degrade or damage the computer system of a hacker might degrade or damage the computer or network systems of an innocent third party. The challenges are compounded if the hacker is in one country and the victim in another.

For these reasons and others, the Commission does not recommend specific revised laws under present circumstances. However, current law and law-enforcement procedures simply have not kept pace with the technology of hacking and the speed of the Internet. Almost all the advantages are on the side of the hacker; the current situation is not sustainable. Moreover, as has been shown above, entirely defensive measures are likely to continue to become increasingly expensive and decreasingly effective, while being unlikely to change the cost-benefit calculus of targeted hackers away from attacking corporate networks.

New options need to be considered. As a first step, corporations need better information, and thus an open, two-way communications flow between companies and U.S. government agencies is more necessary than ever before. Companies cannot be asked to share more information unless they have a reasonable expectation that they will receive useful information in return, and they need protections from lawsuits if they do provide information. The Cyber Information Security Protection Act is an example of a statutory effort to address this problem, and the Commission recommends its passage.

Second, an aggressive assessment of the sufficiency of current legal norms to address the new circumstances needs to be undertaken, and new statutes should be considered. The law needs to be clarified to match common sense. The Department of Homeland Security, the Department of Defense, and law enforcement agencies should have the legal authority to use threat-based deterrence systems that operate at network speed against unauthorized intrusions into national security and critical infrastructure networks.

Finally, new laws might be considered for corporations and individuals to protect themselves in an environment where law enforcement is very limited. Statutes should be formulated that protect companies seeking to deter entry into their networks and prevent exploitation of their own network information while properly empowered law-enforcement authorities are mobilized in a timely way against attackers. Informed deliberations over whether corporations and individuals should be legally able to conduct threat-based deterrence operations against network intrusion, without doing undue harm to an attacker or to innocent third parties, ought to be undertaken.

Potential Future Measures

The Commission considered three additional ideas for protecting the intellectual property of American companies that it does not recommend at this time. In the future, if the loss of IP continues at current levels, these measures ought to be considered.

Recommend that Congress and the administration authorize aggressive cyber actions against cyber IP thieves. Currently, Internet attacks against hackers for purposes of self-defense are as illegal under U.S. law as the attacks by hackers themselves. As discussed in the cyber recommendations above, if counterattacks against hackers were legal, there are many techniques that companies could employ that would cause severe damage to the capability of those conducting IP theft. These attacks would raise the cost to IP thieves of their actions, potentially deterring them from undertaking these activities in the first place.

The Commission is not ready to endorse this recommendation because of the larger questions of collateral damage caused by computer attacks, the dangers of misuse of legal hacking authorities, and the potential for nondestructive countermeasures such as beaconing, tagging, and self-destructing that are currently in development to stymie hackers without the potential for destructive collateral damage. Further work and research are necessary before moving ahead.

Recommend to Congress and the administration that U.S. funding to the World Health Organization (WHO) program budget in whole or in part be withheld until (1) the WHO's process of certifying national regulatory agencies includes attestation that IP protection is an essential part of the regulatory evaluation process, and (2) the WHO refrains from prequalifying any product until the regulating agency of jurisdiction demonstrates and certifies that it does not violate IP rights. An additional approach—a carrot approach—would be to have a specified WHO contribution by the U.S. government, in addition to current funding, that would be dedicated to developing, implementing, and evaluating the above improvements to the regulatory and prequalification processes.

The U.S. government has leverage at the WHO chiefly because of its financial support, which consists of annual “means tested” contributions to the WHO’s program budget and “voluntary” contributions whose total value is about \$350 million. This support from the United States can be a carrot or a stick to influence the WHO’s actions.

Multilateral coordination may also be possible. For example, the IP of Japanese-developed medicine is frequently stolen, and Japan’s current annual and voluntary contributions to the WHO total over \$70 million.

The Commission believes this recommendation has strong promise but is not ready to endorse it. To be acted upon, this recommendation requires careful assessment of the likely impacts and the potential for unintended consequences. It will be essential to ensure that the poorest and most vulnerable across the world continue to have access to life-saving, high-quality health interventions, now and in the future. In fact, IP protections are vital to that outcome, because they preserve incentives for innovation and foster predictable markets for manufacturers. Developing consensus around the policy solution among policymakers and manufacturers, particularly regarding the source of any additional funding, will be the necessary next step.

Recommend that Congress and the administration impose a tariff on all Chinese-origin imports, designed to raise 150% of all U.S. losses from Chinese IP theft in the previous year, as estimated by the secretary of commerce. This tariff would be subject to modification by the president on national security grounds.

The argument for this proposal is that only by seriously limiting the U.S. market for Chinese goods and services will sufficient incentive be created for Chinese authorities to systematically reduce IP theft. The method proposed to accomplish that goal is to impose the calibrated tariff just described. While such action would allow retaliation, the huge Chinese trade surplus with the United States could cause the retaliation to be ineffective. Chinese exports to the United States are between three and four times the dollar value of U.S. exports to China.

The Commission is not prepared to make such a recommendation now because of the difficulty of estimating the value of stolen IP, the difficulty of identifying the appropriate imports, and the many legal questions raised by such an action under the United States' WTO obligations. If major IP theft continues or increases, however, the proposal should be further refined and considered.

Dennis C. Blair is the former U.S. Director of National Intelligence. In this role he led sixteen national intelligence agencies, administering a budget of \$50 billion and providing integrated intelligence support to the president, Congress, and operations in the field. Prior to rejoining the government, he held the John M. Shalikashvili Chair in National Security Studies with The National Bureau of Asian Research, served as Deputy Director of the Project for National Security Reform, and as a member of the Energy Security Leadership Council of Securing America's Future Energy.

From 2003 to 2006, Admiral Blair was President and Chief Executive Officer of the Institute for Defense Analyses, a federally funded research and development center based in Alexandria, Virginia, that supports the Department of Defense, the Department of Homeland Security, and the intelligence community. He has been a director of two public companies, EDO and Tyco International, and has served on the boards of many nonprofit organizations.

Prior to retiring from the U.S. Navy in 2002, Admiral Blair served as Commander in Chief of U.S. Pacific Command, the largest of the combatant commands. During his 34-year Navy career, he also served on guided missile destroyers in both the Atlantic and Pacific fleets and commanded the Kitty Hawk Battle Group. Ashore, Admiral Blair served as Director of the Joint Staff and held budget and policy positions on the National Security Council and several major Navy staffs.

A graduate of the U.S. Naval Academy, Admiral Blair earned a master's degree in history and languages from Oxford University as a Rhodes scholar and was a White House Fellow at the Department of Housing and Urban Development. He has been awarded four Defense Distinguished Service medals and three National Intelligence Distinguished Service medals, and has received decorations from the governments of Japan, Thailand, Korea, Australia, the Philippines, and Taiwan.

Jon M. Huntsman, Jr., is the former U.S. Ambassador to China (2009–11) and former Governor of Utah (2005–9).

Governor Huntsman was appointed U.S. Ambassador to China by President Barack Obama and confirmed by the Senate on August 7, 2009. As ambassador, he focused on working closely with American business owners to facilitate commerce in the growing Asian market and advocating for the release of American citizens wrongfully imprisoned.

As governor, he cut waste and made government more efficient. As a result, Utah held its AAA bond rating and earned national accolades for debt management. Under his leadership, Utah ranked number one in the nation in job creation and was named the best-managed state by the Pew Research Center.

Prior to serving as governor, he was named U.S. Ambassador to Singapore, becoming the youngest head of an American diplomatic mission in a century. Governor Huntsman also served as U.S. Trade Ambassador under President George W. Bush, during which time he helped negotiate dozens of free trade agreements with Asian and African nations.

Governor Huntsman holds a BA in international politics from the University of Pennsylvania.

Craig R. Barrett is a leading advocate for improving education in the United States and around the world. He is also a vocal spokesman for the value technology can provide in raising social and economic standards globally.

Dr. Barrett joined Intel Corporation in 1974 and held positions of Vice President, Senior Vice President, and Executive Vice President from 1984 to 1990. In 1992, he was elected to Intel Corporation's Board of Directors and was promoted to chief operating officer in 1993. Dr. Barrett became Intel's fourth President in 1997, Chief Executive Officer in 1998, and Chairman of the Board in 2005, a post he held until May 2009.

Dr. Barrett has served on numerous boards and policy and government panels. Until June 2009, he was Chairman of the United Nations Global Alliance for Information and Communication Technologies and Development, which works to bring computers and other technology to developing parts of the world. Dr. Barrett has also been an appointee of the President's Advisory Committee for Trade Policy and Negotiations and the American Health Information Community. He has co-chaired the Business Coalition for Student Achievement and the National Innovation Initiative Leadership Council, and has served as a member of the Board of Trustees for the U.S. Council for International Business and the Clinton Global Initiative Education Advisory Board. Dr. Barrett has been a member of the National Governors' Association Task Force on Innovation America, the National Infrastructure Advisory Council, and the Committee on Scientific Communication and National Security, and served on the Board of Directors of the U.S. Semiconductor Industry Association, the National Action Council for Minorities in Engineering, and TechNet.

Dr. Barrett received BS, MS, and PhD degrees in Materials Science from Stanford University. After graduation, he joined the faculty of Stanford University in the Department of Materials Science and Engineering, and remained through 1974. He was a Fulbright Fellow at Danish Technical University in Denmark in 1972 and a NATO Postdoctoral Fellow at the National Physical Laboratory in England from 1964 to 1965.

Slade Gorton is a former U.S. Senator (1981–87 and 1989–2001) and a member of the National Commission on Terrorist Attacks Upon the United States.

Senator Gorton's years in the Senate saw him appointed to powerful committee posts including Appropriations; Budget; Commerce, Science and Transportation; and Energy and Natural Resources. He served as the Chairman of the Interior Appropriations Subcommittee (1995–2001), the Commerce Subcommittees on Consumer Affairs (1995–99), and the Aviation Committee (1999–2000). He was also a member of the Republican leadership as counsel to the majority leader (1996–2000).

Senator Gorton began his political career in 1958 as a Washington State representative, and he went on to serve as state House Majority Leader. In 1968, he was elected Attorney General of Washington State, in which capacity he argued fourteen cases before the U.S. Supreme Court. In June 1980, Senator Gorton received the Wyman Award, the highest honor accorded by the National Association of Attorneys General.

Senator Gorton also served on the President's Consumer Advisory Council (1975–77) and on the Washington State Criminal Justice Training Commission (1969–1981). He was chairman of the Washington State Law & Justice Commission (1969–76), and served as an instructor in constitutional law to public administration graduate students at the University of Puget Sound

Senator Gorton received his BA from Dartmouth College and his JD from Columbia Law School.

William J. Lynn III is the CEO of DRS Technologies, Inc., and former U.S. Deputy Secretary of Defense (2009–2011).

As Deputy Secretary of Defense, Mr. Lynn served under Secretaries Robert Gates and Leon Panetta, managing three million personnel and overseeing an annual budget of \$700 billion. He also personally led the department's efforts in cybersecurity, space strategy, and energy policy.

From 2002 to 2009, Mr. Lynn was Senior Vice President of Government Operations and Strategy at the Raytheon Company. Previously, he served as Under Secretary of Defense (Comptroller) from 1997 to 2001 and as Director of Program Analysis and Evaluation in the Office of the Secretary of Defense from 1993 to 1997. Mr. Lynn also worked on the staff of Senator Ted Kennedy as his counsel for the Senate Armed Services Committee.

He has been recognized for numerous professional and service contributions, including four Department of Defense medals for distinguished public service, the Joint Distinguished Civilian Service Award from the Chairman of the Joint Chiefs of Staff, and awards from the U.S. Army, Navy, and Air Force.

Mr. Lynn holds a law degree from Cornell Law School and a master's degree in public affairs from the Woodrow Wilson School of Public and International Affairs at Princeton University. He is also a graduate of Dartmouth College.

Deborah Wince-Smith is the President and CEO of the Council on Competitiveness. Founded in 1986, this unique business-labor-academia coalition of leading CEOs, university presidents, and labor union leaders puts forth actionable public policy solutions to make America more competitive in the global marketplace.

In 2004, Ms. Wince-Smith spearheaded the groundbreaking National Innovation Initiative (NII). The NII shaped the bipartisan America COMPETES Act, created state and regional innovation initiatives, and brought a global focus to innovation. She has also led a bilateral dialogue between the United States and Brazil on competitiveness and innovation strategy, including leading the 2007 and 2010 U.S.-Brazil Innovation Summit.

Ms. Wince-Smith serves as a director of several publicly and privately held companies, leading national and international organizations, and U.S. government advisory committees. She is also a Senate-confirmed member of the Oversight Board of the IRS. She recently chaired the secretary of commerce's Advisory Committee on Strengthening America's Communities and currently serves on the secretary of state's Advisory Committee on International Economic Policy. During her seventeen-year tenure in the federal government, Ms. Wince-Smith held leading positions in the areas of science, technology policy, and international economic affairs. Most notably, she served as the nation's first Senate-confirmed Assistant Secretary of Commerce for Technology Policy in the administration of President George H.W. Bush.

Ms. Wince-Smith received a BA from Vassar College and was one of the first female students to enter King's College at the University of Cambridge, where she read for a master's degree in classical archaeology. In 2006, she received an honorary doctorate in humanities from Michigan State University.

Michael K. Young is the President of the University of Washington. Also a tenured Professor of Law, he has a distinguished record as an academic leader with broad experience in public service and diplomacy. As president of the University of Washington, he leads the nation's top public university (second among all universities) in attracting federal research funding.

Prior to his appointment at the University of Washington, he served as President and Distinguished Professor of Law at the University of Utah. Under President Young's leadership, Utah raised its stature nationally and internationally.

Before assuming the presidency at Utah, he was Dean and Lobingier Professor of Comparative Law and Jurisprudence at the George Washington University Law School. He was also a Professor at Columbia University for more than twenty years, and prior to joining the Columbia University faculty, he served as a law clerk to the late Chief (then Associate) Justice William H. Rehnquist of the U.S. Supreme Court.

President Young has held numerous government positions, including Deputy Under Secretary for Economic and Agricultural Affairs and Ambassador for Trade and Environmental Affairs in the Department of State during the presidency of George H.W. Bush. He also served as a member of the U.S. Commission on International Religious Freedom from 1998 to 2005 and chaired the commission on two occasions.

He has published extensively on a wide range of topics, including the Japanese legal system, dispute resolution, mergers and acquisitions, labor relations, the legal profession, comparative law, industrial policy, international trade law, the North American Free Trade Agreement, the General Agreement on Tariffs and Trade, international environmental law, and international human rights and freedom of religion. He is a member of the Council on Foreign Relations and a Fellow of the American Bar Foundation.

President Young received a BA from Brigham Young University and a JD from Harvard Law School, where he served as a note editor of the *Harvard Law Review*.

— LIST OF COMMON ABBREVIATIONS —

AmCham China	American Chamber of Commerce in the People's Republic of China
BIO	Biotechnology Industry Organization
BSA	Business Software Alliance
CAFC	Court of Appeals for the Federal Circuit
CBP	U.S. Customs and Border Protection
CFIUS	Committee on Foreign Investment in the United States
EEA	Economic Espionage Act of 1996
FBI	Federal Bureau of Investigation
FDI	Foreign Direct Investment
FTC	U.S. Federal Trade Commission
GDP	Gross Domestic Product
GIPA	Global Intellectual Property Academy
IDC	International Data Corporation
IP	intellectual property
IPEC	Intellectual Property Enforcement Coordinator
IPR	intellectual property rights
OECD	Organisation for Economic Co-operation and Development
PLA	People's Liberation Army
PRC	People's Republic of China
SEC	U.S. Securities and Exchange Commission
SOE	state-owned enterprise
STEM	science, technology, engineering, and mathematics
TRIPS	Trade-Related Aspects of Intellectual Property Rights
USGAO	U.S. Government Accountability Office
USITC	U.S. International Trade Commission
USPTO	U.S. Patent and Trademark Office
USTR	U.S. Trade Representative
VOG	volume of goods
WIPO	World Intellectual Property Organization
WHO	World Health Organization
WTO	World Trade Organization

THE IP COMMISSION

THE COMMISSION ON THE THEFT OF
AMERICAN INTELLECTUAL PROPERTY

The Commission on the Theft of American Intellectual Property is an independent and bipartisan initiative of leading Americans from the private sector, public service in national security and foreign affairs, academe, and politics. The three purposes of the Commission are to:

1. Document and assess the causes, scale, and other major dimensions of international intellectual property theft as they affect the United States
2. Document and assess the role of China in international intellectual property theft
3. Propose appropriate U.S. policy responses that would mitigate ongoing and future damage and obtain greater enforcement of intellectual property rights by China and other infringers

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William J. Lynn III

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Exhibit DIDP A36

Implementation Advisory Group for Competition, Consumer Trust & Consumer Choice (IAG-CCT): Final Recommendations on Metrics for CCT Review

26 September, 2014

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Executive Summary

The Implementation Advisory Group for Competition, Consumer Trust & Consumer Choice (IAG-CCT) was convened in October 2013 by the ICANN Board of Directors to evaluate metrics proposed by the Generic Names Supporting Organization (GNSO) and the At-Large Advisory Committee (ALAC). After eight months of deliberation, the group presents the metrics referenced herein to be used for ICANN's review of the New gTLD Program, as mandated by the Affirmation of Commitments (AOC), section 9.3.¹

The IAG-CCT's mandate was to develop a set of recommendations on the metrics suggested for the eventual review team to compile and analyze. The group evaluated each metric on its feasibility, utility and cost-effectiveness. Its evaluation considered data available to the review team both internally from ICANN, as well as that which may be acquired from third party sources. The CCT review is one of four periodic reviews called for in the AOC focused on the following four objectives:

1. Ensuring accountability, transparency and the interests of global Internet users;
2. Preserving security, stability and resiliency of the DNS;
3. Promoting competition, consumer trust and consumer choice; and
4. Whois policy.

In its discussions, the 28 IAG-CCT members debated the merits of the recommended metrics, including whether targeted values demonstrated that a particular metric would be useful in evaluating the impact of the New gTLD Program. Where the IAG-CCT's recommendations differed from those of the GNSO and ALAC, members consulted with their communities to share the IAG-CCT's rationale and determine whether the collective recommendations sufficiently addressed the larger community's goals. Ultimately, the group came to a consensus on the below recommendations.

The CCT review is expected to launch after new gTLDs have been in operation for one year. However, in order to establish a baseline for activity in the current TLD space, some metrics were measured soon after they were deemed to be feasible and useful for the review team to ensure an accurate baseline was captured.

Recommendations

The IAG-CCT reviewed the 70 recommended metrics from the GNSO and ALAC and makes the following recommendations:

- Collect data on 65 metrics, with some adjustments to terms and parameters for data collection.
- Delete 5 metrics.
- Add one new metric on the impact of name collisions on new gTLD registrations.

¹ Affirmation of Commitments, 9.3: "ICANN will ensure that as it contemplates expanding the top-level domain space, the various issues that are involved (including competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection) will be adequately addressed prior to implementation. If and when new gTLDs (whether in ASCII or other language character sets) have been in operation for one year, ICANN will organize a review that will examine the extent to which the introduction or expansion of gTLDs has promoted competition, consumer trust and consumer choice, as well as effectiveness of (a) the application and evaluation process, and (b) safeguards put in place to mitigate issues involved in the introduction or expansion. ICANN will organize a further review of its execution of the above commitments two years after the first review, and then no less frequently than every four years."

Of the 65 recommended metrics, several included baseline figures that capture a snapshot of behaviors and activity in the domain name marketplace prior to the saturation of new gTLDs. Depending on the metric, the baseline period may span from one year to multiple years prior to the delegation of new gTLDs.

ICANN staff recommends a baseline period of two years prior to the first delegation of a new gTLD in October 2013.

Background

ICANN's Affirmation of Commitments (AoC) is one of the key documents guiding the organization's operating principles. As an agreement between ICANN and the U.S. Department of Commerce, the AoC lays out commitments from both sides to: ensure that decisions made related to the global technical coordination of the DNS are made in the public interest and are accountable and transparent; preserve the security, stability and resiliency of the DNS; promote competition, consumer trust, and consumer choice in the DNS marketplace; and facilitate international participation in DNS technical coordination. While the U.S. Department of Commerce in March 2014 announced its intention to transition its oversight of the IANA functions to the multistakeholder community, ICANN plans to maintain its commitments, including those explicitly prescribed in the document.

As one of the four key objectives to be evaluated as part of the AoC, the CCT review will also help inform how ICANN may approach a second round of new gTLDs, from the opening of the application process to delegation. To that end, the ICANN Board tasked the GNSO and ALAC to propose metrics that would not only inform this review but also provide insight into how to improve on the rollout of a new round of gTLD applications.

The ICANN Board asked the GNSO and ALAC to come up with metrics in December 2010. In June 2011, at the ICANN meeting in Singapore, a working group was formed to come up with recommended metrics for the CCT review. The working group's goal was to provide the ICANN Board with definitions, measures, and targets that could be useful to the CCT review team. In December 2012, the group presented the board with a document detailing 70 recommended metrics, with proposed definitions and three-year targets.²

The ICANN Board formed the IAG-CCT in September 2013 to review those recommended metrics and make recommendations to the review team based on an evaluation of the feasibility, utility and cost-effectiveness of each of the proposed 70 metrics. The group first met in November 2013, first via conference call, then in-person at the ICANN 48 meeting in Buenos Aires.

With the IAG-CCT's recommendations in hand, the ICANN Board may now take steps toward forming a review team to collecting the recommended data points, considering those recommendations made by the IAG-CCT. The CCT evaluation will provide insight into how the program fared, how the next round of applications might be improved, as well as provide general information on how people use the internet, view the DNS, and collect opinions Internet users may have about ICANN.

² See the updated document, "Advice requested by the ICANN Board regarding definitions, measures, and targets for competition, consumer trust and consumer choice," for a summary of the updated recommendations.

Previous new gTLD evaluations

Part of the IAG-CCT's mandate was to assess historical data regarding metrics used to evaluate earlier rounds of new gTLDs in 2000 and 2004. Five previous reports provided input on several metrics to evaluate past rounds and provide recommendations on implementation of future rounds of new gTLD delegations. With the selection in 2000 of seven new gTLDs (which were subsequently delegated in 2001 and 2002), the domain name space increased from 7 to 14. The seven new gTLDs chosen for delegation in 2000 included four unsponsored (.biz, .info, .name and .pro) and three sponsored TLDs: .aero, .coop and .museum. Six more sponsored gTLDs were introduced in 2003: .asia, .cat, .jobs, .mobi, .tel and .travel.

"The Final Report of the New TLD Evaluation Process Planning Task Force³," published in 2002, explored various topics like the opportunities and risks associated with parallel processing, quickening the pace of gTLD launches against the risk of cutting short the evaluation of the program, and setting priorities for the future evaluation team. The report's aim was to set the parameters for a future evaluation team, which published "A Plan for Action Regarding New gTLDs,"⁴ in 2002. That report found that sponsored TLDs seemed to generate fewer community and business concerns and generate fewer problems than unsponsored TLDs. For example, there were less worries about trademark infringement and cybersquatting in the sponsored space. Further, sponsored TLDs had fewer and less complex start-up and launch phase concerns.

Another report, published in 2004, by the Organization for Economic Co-operation and Development, "Generic Top Level Domain Names: Market Development and Allocation Issues,"⁵ found that ICANN's changes to the market structure for registering gTLDs has been successful. In particular, the division between registry and registrar functions has led to more competition with lower prices and greater innovation. The report did note, however, the early defensive registrations, domain name speculation and traffic aggregation has made it difficult to evaluate the early success of new gTLDs. The report tracked second-level domain name registrations in major gTLDs and ccTLDs, as well as geographic locations of registrations. In addition, it charted geographic locations of registries and registry operators and evaluated the market share of registries and registrars.

Also in 2004, Summit Strategies International's "Evaluation of the New gTLDs: Policy and Legal Issues"⁶ determined that the 2000 round of new gTLDs introduced some competition to the domain name marketplace, but indicated that how much competition was debatable. The report noted that examining market share, choice and price elasticity indicates a minimal level of enhanced competition. Other evidence the report notes indicates that registrants were finding new uses for domain names in the new gTLDs and that the new gTLDs may have attracted domain name registrants who didn't previously have any registrations.

A 2005 report from the World Intellectual Property Organization (WIPO), "New Generic Top-Level Domains: Intellectual Property Considerations⁷," explored the concerns and benefits of new gTLDs for IP

³ See: <http://archive.icann.org/en/committees/ntepptf/final-report-31jul02.htm>

⁴ See: <https://archive.icann.org/en/committees/ntepptf/new-gtld-action-plan-18oct02.htm#I-Analysis>

⁵ See: <http://www.oecd.org/internet/ieconomy/32996948.pdf>

⁶ See: <http://www.icann.org/tlds/new-gtld-eval-31aug04.pdf>

⁷ See: <http://www.wipo.int/amc/en/domains/reports/newgtld-ip/>

owners. On the one hand, the cost of policing registered marks and other protected names were highlighted as a concern of the expansion, the report also noted benefits for rights holders in an expanded DNS with potentially more relevant TLDs or TLDs identified with their brands.

Metric evaluation

The IAG-CCT met on a regular basis starting in November 2013 until the publication of this report. The first few meetings focused on categorizing the original 70 recommended metrics. They were grouped by ICANN staff into those where data was easily accessible; those whose data was deemed to be more difficult to compile due to challenges in acquiring meaningful statistics; metrics whose data came with a price tag; and those whose values or targets were unclear and thus were unlikely to provide meaningful input for the evaluation. Staff provided feedback to the IAG on each of these evaluation axes. Based on the final analysis, the group settled on its recommendations, which are detailed below.

The IAG took several passes at evaluating metrics. First, they explored those which staff deemed to be easily collectible and clearly useful to the evaluation. Of those, metrics that had baseline data that needed to be captured immediately as a snapshot in time were categorized as the first priority for collection. In the case of the global consumer survey of Internet users, registrants and potential registrants, and the economic study, the group discussed possible methodologies and related costs before coming to a consensus on a recommendation that was made to the ICANN Board at the ICANN 49 meeting in Singapore. For more on the survey and the economic study, see the First Priority Metrics section below.

The remaining metrics, upon further investigation by both ICANN staff and IAG-CCT members, were deemed to require outside resources, and thus came with a cost or needed further definition or clarification in order to make an informed recommendation. Based upon their evaluation for feasibility, utility and cost-effectiveness, the IAG-CCT members recommended the next subset of metrics for collection.

Some of the metrics that are included in the recommendation come with caveats for the analysis as the data produced may not offer a complete picture of the metric's indication of the New gTLD Program's success. For example, metrics 5.2, 5.3 and 5.4 are all related to growth in use of tools that hide domain names, such as QR codes or URL shorteners, and the use of Google or Facebook for hosted pages with domain names that may not be otherwise memorable. There was disagreement among IAG-CCT members on whether an increase in the use of such tools is indicative of trust in the DNS. Some members argued that an increase in the use of tools is more a reflection of increased choice to consumers using the Internet or simply a change in the nature of how Internet users employ technology. Others suggested that an increase in the use of such tools as compared with modest increases of registration and traffic in domain names registered in new gTLDs as opposed to domain names in the legacy space is an indication of a lack of trust. The group agreed to collect the data to offer the review team a robust cross-section of sources for their evaluation.

For the five metrics that were not recommended for inclusion in the review, the IAG-CCT members, together with staff, evaluated the data sources available for the five metrics that were flagged as potentially difficult to measure. The group collectively determined that those metrics were either redundant or that the data was not sufficiently available to provide meaningful insight.

First priority metrics

Baseline and available data

In an effort to categorize a subset of metrics as leading priorities, 37 of the 70 metrics were highlighted as falling into this category. These metrics were included because they calculated data that was readily available either internally or could be easily obtained from third party sources. They also represented data which were deemed to provide useful insight into the New gTLD Program.

Several of these metrics required the collection of baseline data to allow for a later comparison when domain name registrations in new gTLDs begin to saturate the market. IAG-CCT members expressed concern that some of this baseline data could become more difficult to obtain or no longer be available for collection with the passage of time. This issue was of particular concern with regard to the consumer survey as well as the economic study, as detailed below.

Table 1: First priority metrics

Metric	Description	Data source	Category
1.1	% DNS Service Availability (present SLA is 100%).	Internal, technical services team and registry reporting	Trust
1.2	% Availability for Registration Data Directory Services (RDDS). (SLA is 98%)	Internal, technical services team	Trust
1.3	% of Service Availability for Shared Registration Services (SRS, using EPP). (SLA is 98%). Open TLDs only.	Internal, technical services team	Trust
1.6	Relative incidence of breach notices issued to Registry operators for contract or policy compliance matters.	Internal, compliance team	Trust
1.7	Relative incidence of breach notices issued to Registrars, for contract or policy compliance matters.	Internal, compliance team	Trust
1.8	Relative Incidence of Registry & Registrar general complaints submitted to ICANN's Internic System.	Internal, compliance team	Trust
1.9	Relative incidence of combined UDRP and URS Complaints. URS is required only in new gTLDs, so combined UDRP and URS complaints may be comparable to UDRP complaints in legacy gTLDs	Internal, compliance team	Trust
1.10	Relative incidence of combined UDRP and URS Decisions against registrants.	Internal, collecting UDRP and URS providers' decisions	Trust
1.12	Decisions against Registry Operator arising from Registry Restrictions Dispute Resolutions Procedure (RRDRP).	Internal, collecting RRDRP decisions	Trust
1.20	Quantity and relative incidence of complaints regarding inaccurate, invalid, or suspect WHOIS records in new gTLD.	Internal, compliance team	Trust
1.22	Qualitative comparison of mission and purpose set forth in Question 18 of the new gTLD Application with current actual	Internal/external. Qualitative study may be conducted externally or may require a third	Trust

	use of the gTLD.	party's analysis.	
2.4	Quantity of TLDs using IDN scripts or languages other than English.	Internal, registry agreements	Choice
2.5	Quantity of Registrar websites offering IDN scripts or languages other than English.	Internal, registry and registrar agreements, websites	Choice
2.7	Quantity of different national legal regimes where new gTLD Registry Operators are based.	Internal, registry agreements	Choice
2.11	Measure the increased geographic diversity of registrants across all new gTLDs, as indication of new choices created by gTLD expansion.	Internal, technical services team, Whois records, zone files. Note that Whois records may not be a reliable record of geographic locations of registrants.	Choice
3.1	Quantity of total TLDs before and after expansion.	Internal, registry agreements	Competition
3.2	Quantity of gTLDs before and after expansion.	Internal, registry agreements	Competition
3.3	Quantity of unique gTLD Registry Operators before and after expansion.	Internal, registry agreements	Competition
3.4	Quantity of unique gTLD Registry Service Providers before and after expansion.	Internal, registry agreements	Competition
3.5	Quantity of Registrars before and after expansion, along with indication of country where Registrar is based. This measure should count only registrars distributing Open gTLDs.	Internal, registrar accreditation agreements	Competition
3.6	Relative share of new gTLD registrations held by "new entrants". For purposes of this measure, "new entrants" are gTLDs run by Registry Operators that did not operate a legacy gTLD. A "new entrant" is one whose ownership is not among owners of legacy gTLD registries.	Internal, registry agreements	Competition
7.1	How many gTLD registries have privacy policies which are clearly and easily accessible by end users	Internal, registry websites	Trust
7.2	How many gTLD registries have allocation policies which are clearly and easily accessible by end users, even if those policies simply restrict or prohibit public availability	Internal, registry websites	Trust
7.3	How many registries disclose end-user information regarding their codes of conduct for sub-domain owner/operators	Internal, registry websites	Trust
8.1	How many complaints are received by ICANN related to confusion or	Internal, compliance team	Trust

	misunderstanding of TLD functions		
8.3	How many registries have been the subject of complaints related to their Public Interest Commitments (PICs)	Internal, compliance team	Trust
8.4	How many registries have lost a dispute resolution process related to their PICs	Internal, compliance team	Trust
9.1	Are end-user software applications capable of implementing all of the new gTLDs; Can browsers and DNS clients in end-user systems resolve all new gTLDs	Internal, technical services team. Universal acceptance study will examine this and metric 9.2.	Trust
9.2	Which browsers or other end-user applications require plugins or user-installed enhancements in order to use new gTLDs	See 9.1.	Trust
9.3	Number of reports of name collisions	Internal, technical services team	Trust

Consumer survey and economic study

Another subset of metrics derived from the first priority class were categorized as requiring a global consumer survey to gauge public opinion not only on the New gTLD Program, but also on general use and understanding of the DNS. As anticipated in the ICANN Board of Directors Resolution 2014.03.27.22 – 2014.03.27.26,⁸ passed at the ICANN 49 meeting in Singapore, the two studies are critical “to establish a benchmark of the current state of the generic domain name sector prior to the widespread adoption and use of new gTLDs.”

After gaining board approval for the two studies, two smaller groups of IAG-CCT members split into ad hoc working groups to provide feedback to ICANN staff on the RFPs that were to be written. A timeline for the consumer survey RFP was agreed upon:

RFP released	16 July 2014
Respondent proposals due	6 August 2014
Target date for contracting	24 September 2014

With this timeline in mind, ICANN anticipates the launch of a baseline survey in either late 2014 or early 2015 with a follow-on survey to be conducted one year later. ICANN staff contacted more than 20 survey firms with an invitation to participate in the survey, in addition to publicly making the RFP available on the ICANN website: <https://www.icann.org/resources/pages/rfps-2012-02-25-en>

Table 2: Survey metrics

Metric	Description	Considerations/Definitions	Category
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⁸ See: <https://features.icann.org/collection-benchmarking-metrics-new-gtld-program-support-future-aoc-review-competition-consumer>

<p>1.4</p>	<p>Survey of perceived consumer trust in DNS, relative to experiences before the gTLD expansion. Survey could at least measure experiences with phishing, malware and spam; confusion about new gTLDs; user experience in reaching meaningful second-level domains; registrant experience in being in a different gTLD; Registrant and Internet users' experience with regard to cybersquatting. Survey to be conducted every two years (biennial).</p>	<p>CONSIDERATIONS: Note that questions related to trust should also include measures of awareness about new gTLDs, and DNS in general. Capture baseline of attitudes now – do not ask survey respondents to recall past attitudes. ICANN provides the following definitions as a starting point for the contracted vendor to refine these terms into clear, common-language definitions that can easily translate into other languages:</p> <p>Consumer: Actual Internet users and registrants, and potential registrants.</p> <p>Consumer trust: The confidence Consumers have in the domain name system. This includes (i) trust in the consistency of name resolution (ii) confidence that a TLD registry operator is fulfilling the Registry's stated purpose and is complying with ICANN policies and applicable national laws and (iii) confidence in ICANN's compliance function.</p> <p>Consumer choice: The range of options available to Consumers for domain scripts and languages, and for TLDs that offer meaningful choices as to the proposed purpose and integrity of their domain name registrants.</p> <p>Phishing: Using social and technical engineering to steal consumers' personal identity data and financial account credentials.</p> <p>Malware: Short for malicious software, used to disrupt computer operations, gather sensitive information or gain access to private computer systems.</p> <p>Spam: Electronic junk mail or junk newsgroup postings. Some people define spam even more generally as</p>	<p>Trust</p>
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		<p>any unsolicited email.</p> <p>Second-level domains: The data directly before the top-level domain (TLD). For example, in www.example.com, “example” represents the second level domain, as the suffix “(dot)-com” represents the TLD. The SLD is generally the portion of the URL that identifies the website's domain name.</p> <p>Cybersquatting: Registering, trafficking in, or using a domain name with bad faith intent to profit from the goodwill of a trademark belonging to someone else. Note: While the IAG-CCT proposed this as a starting point for a definition in the RFP for the global consumer survey, there was divergence in the group’s opinion on how narrowly to define cybersquatting. In particular, some group members indicated that measuring bad faith registrations would be difficult and potentially indiscernible to the average Internet user.</p> <p>gTLDs: A TLD (top-level domain) appears in a domain name as the string of letters following the last (right-most) dot, such as “net” in www.example.net. A gTLD (generic TLD) is a TLD that does not correspond to any country code.</p>	
2.1	<p>Measure potential registrants’ understanding of TLD benefits and restrictions, such that potential registrants can make informed choices about registration of their domain names.</p>	<p>CONSIDERATIONS FOR 2.1 AND 2.2: Survey should not serve as a venue to explain policies or to explain the nature of gTLD benefits or restrictions. It is reasonable to assume that registrants’ and end-users’ understanding and knowledge of gTLD benefits and restrictions will be conditional on their awareness of new gTLDs. Therefore, ICANN anticipates survey questions</p>	Choice

		regarding this metric will likely include skip patterns to target survey respondents who are aware of the issues, while allowing survey respondents who are unaware to move to the next section of the survey.	
2.2	Measure Internet users’ understanding of TLD eligibility restrictions, such that Internet users can make informed choices about reliance on domain names in that TLD.	CONSIDERATIONS: See considerations in 2.1.	Choice
2.3	Biennial surveys of perceived consumer choice in DNS, relative to experience before the gTLD expansion. Survey should assess public awareness of new gTLDs. Survey should also measure costs of defensive or duplicate registrations. Survey should assess motivations, intent and satisfaction with new gTLDs.		Choice
2.10	Automated analysis or online survey to determine the number of “duplicate” registrations in new gTLDs.	<p>CONSIDERATIONS FOR 2.10, 2.13, and 4.3: Responses will likely be dependent on awareness of new gTLDs and perhaps on the financial resources of registrants. For registrants who are aware of new gTLDs, the survey instrument should be constructed to measure:</p> <ol style="list-style-type: none"> 1. Prevalence of registrants holding multiple domains 2. Motivation for registering (e.g., defensive) and not registering (e.g., lack of resources) multiple domains, regardless of knowledge of new gTLDs. 3. For registrants who are aware of expansion, measure attitudes towards expansion and satisfaction with expansion of gTLDs. For example, the instrument might inquire about what the expansion means to the respondent (what are the 	Choice

		implications, such as providing increased choice or necessitating defensive measures), and inquiries about the potential benefits in comparison to the potential costs.	
2.12	Survey or Study to gauge the frequency with which users access Internet resources via tools that do not reveal the TLD (e.g. QR Codes, search results, apps, etc., that do not display URLs).	CONSIDERATIONS: If this metric is also used to inform trust in the DNS, will need to disentangle the issue of familiarity from why users choose these tools. To operationalize these metric, contractors will work with ICANN to devise a list of relevant examples of tools that do not reveal gTLDs, and to describe the examples in plain language.	Choice
2.13	Biennial survey of perceived consumer choice relative to experiences before the gTLD expansion. Survey should assess public awareness of new gTLDs. Survey should also measure costs of defensive or duplicate registrations. Survey should assess motivations, intent, and satisfaction with new gTLDs.	CONSIDERATIONS: See 2.10.	Choice
4.1	Frequency of success in reaching the intended information supplier through direct entry of domain names.		Trust
4.2	Frequency of landing at unintended destinations.		Trust
4.3	Frequency of redundant or defensive domains (i.e., multiple domains pointing to the same destination)	CONSIDERATIONS: See 2.10.	Trust
5.1	Relative preference or explicit use of domain names versus search engines for end-user general Internet use.	CONSIDERATIONS: The survey should also consider including as part of this topic, other tools that do not reveal TLDs such as those mentioned in Metric 2.12.	Trust

Metrics 3.9-3.11 were determined to require a third party's economic analysis of wholesale and retail pricing in the new gTLD space, as well as other indicators of non-price-related competition indicators. Because pricing in the legacy gTLD space may shift with the introduction of new gTLD domain names,

IAG-CCT members felt it was important to launch this study as soon as possible to ensure a sufficient baseline of data was available for comparison when new gTLD domain names become more prevalent online. The study will place high importance on confidentiality of pricing data, particularly as it relates to specific registries, to guard against the appearance of collusion, and to protect registries' and registrars' competitive positions.

In addition to the issues raised in metrics 3.9-3.11, the IAG-CCT members recommended several additional issues to be considered in the study. The following considerations were included in the RFP for the economic study published in September 2014:

- How are consumers informed about or able to purchase so-called “premium” domain names? And how do registrars identify domain names for premium pricing?
- How many domain names have been withdrawn from general availability due to speculation or bulk registrations?
- Which registries are supported by which registrars?
- How do registrars present TLDs on their websites, i.e. in terms of shelf space?
- Is shelf space fixed, randomly rotated, or adaptable according to different criteria, such as price?
- Do registrars give priority on their websites or within their pricing and service offerings to gTLDs which they operate or with which they are otherwise associated?

ICANN anticipates contracting a vendor to conduct this study by November 2014.

Table 3: Economic study metrics

Metric	Description	Category
3.9	Wholesale price of domains in new gTLD domains offered to the general public. TLD attributes should be noted with the data (i.e. open TLDs, closed keyword TLDs, country of operations, single registrant, etc.).	Competition
3.10	Retail price of domains in new gTLD domains offered to the general public. TLD attributes should be noted with the data (i.e. open TLDs, closed keyword TLDs, country of operations, single registrant, etc.).	Competition
3.11	Qualitative assessment of non-price indicia of competition through innovations that benefit registrants and users, particularly for new markets served.	Competition

Remaining metrics

The remaining metrics were evaluated based on feasibility, utility and cost-effectiveness – the three axes for analysis prescribed in the IAG-CCT’s mandate from the ICANN Board. ICANN staff and IAG-CCT members worked together to research possible data sources, evaluate their applicability to the review and provide feedback to the review team. Most of these remaining metrics were adopted in the recommendation for inclusion in the review. The remaining metrics were broken into two categories: Those that would require multiple data sources that may not be sufficient to provide a complete picture, and those that were recommended for exclusion.

Table 4: Remaining metrics for evaluation

Metric	Description	Data source/considerations	Category
1.5	% Uptime for Registrar services such as WHOIS, contact info, and complaints, assuming that SLAs are established for these measures in the new RAA.	Internal, technical services and RAAs, dependent upon established SLAs	Trust
1.11	Quantity of intellectual property claims and cost of domain name policing relating to new gTLDs. Relative incidence of IP claims made in good faith should be measured in 3 areas: IP claims against registrants regarding second level domains in new gTLDs; IP claims against registrars regarding Second level domains in new gTLDs; IP claims against new gTLD registries regarding second level domains and TLDs. Quantity of second level domains acquired because of infringement or other violations of IP rights of acquiring parties; and Cost of domain name policing and enforcement efforts by IP owners.	External, IAG-CCT members exploring feasibility with International Trademark Association (INTA,) which has expressed an interesting in polling their members on this topic. Subject to some definition of terms, such as which costs would be included, whether these are internal or external (in-house vs. outside counsel.)	Trust
1.13	Quantity of Compliance Concerns regarding Applicable National Laws, including reported data security breaches.	Internal, compliance team. Data security breaches are tracked, but not concerns related to applicable national laws. Rephrased to read: Quantity of compliance concerns regarding data security breaches.	Trust
1.14	Quantity and relative incidence of domain takedowns.	External, will require reporting from registries	Trust
1.15	Quantity and relative incidence of spam from domains in new gTLDs, which could be measured via specialized email addresses and methodologies.	External, multiple sources will likely be required to capture a comprehensive picture of abusive activity in the DNS. Possible sources include the Anti-Phishing Working Group, Surbl, Spamhaus and others.	Trust
1.16	Quantity and relative incidence of fraudulent transactions caused by phishing sites in new gTLDs.	See 1.15.	Trust
1.17	Quantity and relative incidence of detected phishing sites using new gTLDs	See 1.15.	Trust
1.18	Quantity and relative incidence of detected botnets and malware distributed using new gTLDs.	See 1.15.	Trust
1.21	Relative incidence of errors in new gTLD	Internal, technical services team.	Trust

	zones.	Will require some clearer definition of "errors."	
2.8	Measure share of Sunrise registrations & domain blocks to total registrations in each new gTLD.	Internal, may require some data from registries.	Choice
2.9	Relative share of new gTLD registrations already having the same domain in legacy TLDs prior to expansion. For this measure, count all registrations that redirect to domains in legacy TLDs. Open gTLDs only.	Internal, technical services team. The team can query redirects in the system to SLDs that match between legacy TLDs and new gTLDs.	Choice
2.10	Automated analysis or online survey to determine the number of "duplicate" registrations in new gTLDs. For purposes of this measure, "duplicate" registrations are those where registrant reports having (and still maintaining) the same domain name in a legacy gTLD. Open gTLDs only.	Internal, consumer survey results. 2.10 is related to 2.9 but may require survey results from a statistically significant sample of relevant registrants.	Choice
2.14	DNS traffic in new gTLDs should be compared to contemporary user traffic in legacy gTLDs. DNS traffic is an indicator of trust, choice, and competition. If comprehensive traffic data is not available, sampling should be used.	External, registry reports, DNS traffic market research. Some of the data may be reported by registry operators, while some purchased data may be required for a more complete picture.	Choice
3.7	To assess competitive impact of new gTLDs, measure the quantity of second level registrations per gTLD and ccTLD on a weekly or other interval. TLD attributes should be noted with the data (i.e. open TLDs, closed keyword TLDs, registration, country of operations, single registrant, etc.).	Internal, external, zone files. While gTLD zone file data is readily available, ccTLD data is not or may have use restrictions. This may limit the review team's ability to comprehensively analyze the data.	Competition
3.8	Quantity of "unique" second level registrations in the new gTLD space where that same string does not appear as a registration in any other TLD on a weekly or other interval basis (data analyzed in conjunction with website traffic identified in metric 2.14). Open gTLDs only.	See 2.14 and 3.7.	Competition
4.4	Frequency of dead-end domains (registered but do not resolve)	Internal, technical services team. May require comparing zone files to Whois records.	Trust
4.5	Numbers of complaints received by ICANN regarding improper use of	Internal, compliance team. Will require defining "improper use"	Trust

	domains	with categories of compliance categories already tracked in system.	
5.2	Growth in use of hosted pages for organizations (such as Facebook or Google+)	External, market research. May want to consider in parallel with survey metrics related to use of tools that hide URLs.	Trust
5.3	Growth in use of QR codes	See 5.2.	Trust
5.4	Growth in use of URL shortening services	See 5.2.	Trust
5.5	Growth in registrations in ccTLDs relative to gTLDs	Internal, technical services team. Will require data from ccTLDs, which may not provide a representative sample. In addition, ccTLD data may have use restrictions.	Trust
6.2	Number of complaints to police agencies alleging fraud or misrepresentation based on – or traced to – domain names	External, fraud reports, government and law enforcement authorities. May be difficult to gather a representative sample of data that can be traced to domain names. May have to rely on reports more generally tracking cyber crime.	Trust

Metrics that may require contextual analysis or rephrasing

A subset of metrics were identified as requiring additional contextual analysis in the final review or rephrasing to capture the available data. Twelve metrics fell into this category. Among them:

1.5: % Uptime for Registrar services such as WHOIS, contact info, and complaints, assuming that SLAs are established for these measures in the new RAA.

ICANN’s technical services team can provide data on this metric provided the SLAs are established and ICANN receives reportable data.

1.11: Quantity of intellectual property claims and cost of domain name policing relating to new gTLDs. Relative incidence of IP claims made in good faith should be measured in 3 areas: IP claims against registrants regarding second level domains in new gTLDs; IP claims against registrars regarding Second level domains in new gTLDs; IP claims against new gTLD registries regarding second level domains and TLDs. Quantity of second level domains acquired because of infringement or other violations of IP rights of acquiring parties; and cost of domain name policing and enforcement efforts by IP owners.

IAG-CCT members and ICANN staff continue to explore avenues for collecting this data. The International Trademark Association (INTA) has expressed an interesting in polling its members on this topic.

1.13: Quantity of compliance concerns regarding applicable national laws, including reported data security breaches.

ICANN staff working with its liaisons in the law enforcement community determined there was no reliable way to gather data linking compliance concerns and “applicable” national laws. As such, the group decided to drop the first part of the metric. In addition, as data security breaches are required to be reported to ICANN, this part of the metric will be counted. The rephrased metric now reads: “Number of reported data security breaches.”

1.14 Quantity and relative incidence of domain takedowns.

ICANN will reach out to registries to provide this information, which they are not required to provide. It will be important to gauge the incidences of takedowns in the context of the reasons for the takedowns. For examples, were domains taken down for nonpayment of services or due to law enforcement concerns? The relative incidence of various justifications may provide greater insight into the nature of abusive behavior in particular TLDs. It may also require additional information from governments or law enforcement authorities, who may only provide partial data on some of these requests.

1.15 Quantity and relative incidence of spam from domains in new gTLDs, which could be measured via specialized email addresses and methodologies.

1.16 Quantity and relative incidence of fraudulent transactions caused by phishing sites in new gTLDs.

1.17 Quantity and relative incidence of detected phishing sites using new gTLDs

1.18 Quantity and relative incidence of detected botnets and malware distributed using new gTLDs.

Data on abusive behavior in the DNS is widely available and collected by third parties. Though these data sets often come with a fee – and will require some technical expertise to interpret and analyze the numbers – the IAG-CCT members agreed that this is important data to collect and compare against a baseline of abusive behavior in the legacy TLDs. Given the fact that multiple streams of data define particularly botnets and malware in different ways, the group recommended exploring multiple sources of information to compare the data and help the review team reach a conclusion about how this behavior is changing over time. Spam and phishing statistics may be best provided by Spamhaus and the Anti-Phishing Working Group.

1.19: Quantity and relative incidence of sites found to be dealing in or distributing identities and account information used in identity fraud.

IAG-CCT members investigated the possibility of asking an academic or graduate students to conduct this research as it may require a complex mapping effort or more detailed research efforts than can be provided in-house. IAG-CCT members also noted the data that is available may only provide a snapshot of a larger, underground network, making it more important to capture a baseline soon.

1.21 Relative incidence of errors in new gTLD zones.

While this is data that can be internally gathered, IAG-CCT members were asked to provide a further definition of “errors” in the case of gTLD zones. Some initial definitions included the following: Errors may be caused by commas instead of dots, bad IP addresses or malformed domains. ICANN is working with its technical services team to better define measures to capture this data.

Upon consultation with ICANN’s technical services team, ICANN staff recommends using a test based on that which is used to measure lame delegations. In short, the test would query a given TLD for domain names registered and whether they are actually represented in the zone file. ICANN staff suggested that

syntactic errors (such as commas instead of dots) are extremely difficult to measure due to DNS resiliency. The distinction is that the chosen test should measure the quality of the registration data and not the quality of registrants' DNS operations.

2.6: The percentage of IDNs as compared to the total number of gTLDs in each script or language should be compared to the percentage of people who use each particular language or script.

IAG-CCT members decided that the numerator in this instance is the data in metrics 2.4 and 2.5 regarding IDN registrations and available registries. The group recommends the review team collect this data by comparing the numbers available to UNESCO or other data on languages spoken in the world if the review team so chooses. The group recommends the metric to be rephrased to read: "The number of registrations in IDN TLDs as compared to the total number of registrations in new gTLDs. Measure growth over time."

2.8: Measure share of Sunrise registrations & domain blocks to total registrations in each new gTLD.

IAG-CCT members agreed that this is an important metric to capture the nature of domain name transactions during the sunrise and launch periods. To provide a baseline for comparison, ICANN may need to require some legacy registries to provide sunrise and domain block information. For new gTLDs, registries will provide ICANN with sunrise data, but registries are not required to report domain blocks. Depending on the response ICANN receives from registry operators, the available data may be limited and thus difficult to analyze. It will be important to distinguish between domain blocks and IDN variants to ensure that the right set of data is being captured.

2.9: Relative share of new gTLD registrations already having the same domain in legacy TLDs prior to expansion. For this measure, count all registrations that redirect to domains in legacy TLDs. Open gTLDs only.

2.10: Automated analysis or online survey to determine the number of "duplicate" registrations in new gTLDs. For purposes of this measure, "duplicate" registrations are those where registrant reports having (and still maintaining) the same domain name in a legacy gTLD. Open gTLDs only.

The distinction between these two metrics is that 2.10 is meant to survey registrants who are maintaining identical sites in different TLDs, while 2.9 only looks at those domain names which redirect from new gTLDs to legacy TLDs. The group noted that 2.10 may be a challenge if the consumer survey does not sample a statistically significant sample of registrants. Further, ICANN's technical services team notes that this would be extremely difficult to measure using queries or other methodologies given the size of the data sets that must be compared. The IAG-CCT members agreed to recommend the review team put 2.10 on hold until it can confirm that 2.9 resulted in a statistically significant sample of relevant registrants.

2.14: DNS traffic in new gTLDs should be compared to contemporary user traffic in legacy gTLDs. DNS traffic is an indicator of trust, choice, and competition. If comprehensive traffic data is not available, sampling should be used.

Measuring traffic in new gTLDs may require the purchase of third party data. Sampling traffic in particular TLDs may not offer an accurate picture of traffic in the DNS. Registry operators report on queries that the TLD receives. This may be one source for capturing the data. Multiple vendors offer access to more complete data sources on DNS traffic, though the price tag may vary. ICANN staff recommends the review team revisit this topic to determine the best source of data.

3.7: To assess competitive impact of new gTLDs, measure the quantity of second level registrations per gTLD and ccTLD on a weekly or other interval. TLD attributes should be noted with the data (i.e. open TLDs, closed keyword TLDs, registration, country of operations, single registrant, etc.).

3.8: Quantity of “unique” second level registrations in the new gTLD space where that same string does not appear as a registration in any other TLD on a weekly or other interval basis (data analyzed in conjunction with website traffic identified in 2.14). Open gTLDs only.

While ICANN has access to zone files for gTLDs, there may be use restrictions for ccTLD zone files. With limitations on data available from ccTLDs IAG-CCT members acknowledged these metrics may prove challenging to gain a comprehensive picture of unique domain name registrations in the new gTLD space. Counting active domain name registrations may result in a clearer picture of rate of growth.

4.4: Frequency of dead-end domains (registered but do not resolve)

ICANN staff recommends further refining the definition of “dead-end domains.” Domains that are registered but do not resolve may be attributed to IDN variants, where a set of variants may be registered but only one may resolve. Measuring parked domains may also result in faulty data as some domains may be registered for email or other such purposes. Similarly, websites that redirect may also result in false reports of “dead-end domains.” Finally, a dead-end domain could be one registered and delegated but the authoritative servers for the name are inoperable, unreachable or otherwise misfiring. This might be a measure of how little a registrant values a name registration in the TLD or just bad management by the registrant.

4.5: Numbers of complaints received by ICANN regarding improper use of domains.

8.1: How many complaints are received by ICANN related to confusion or misunderstanding of TLD function?

These metrics both required further definition to be able to parse data available from ICANN’s contractual compliance department. Because the compliance department tracks complaints based on certain types of complaints, ICANN staff worked with the IAG-CCT members to identify complaint types that were most applicable to these metrics.

Complaints related to improper use of domains:

- Reports of alleged illegal activity: These complaints are referred to government or law enforcement agencies.
- Legitimate domain use: Registrants are not required to use their websites in any particular way.
- Website content: As ICANN does not have the authority to police website content, these complaints are closed.
- Hijacking (email or control panel): Hijacking of email addresses or access credentials should be reported to law enforcement.
- Denied OK – Evidence of fraud: The registrar was justified in refusing to transfer a domain name because of evidence of fraud.
- Spam: ICANN does not have authority to address complaints about spam.

Complaints related to confusion or misunderstanding of a TLD function:

- Non-IDN: The complaint is not for an IDN domain name.

- Registrar does not offer IDNs: Complaint about an IDN registered with a registrar that does not offer IDNs.
- Deletion OK: Registrar demonstration that deletion of a domain name was compliant with the 2013 RAA.
- Not a new gTLD: Complaint notice about trademark notices in a domain that is not a new gTLD, which require trademark notices.
- Outside claims period: Trademark notice complaint that is outside the claim notice period.
- Non-2013 RAA: Complaint is related to a 2013 RAA but the registrar is using a 2001 or 2009 version of the RAA.
- ccTLD: The complaint is related to a domain registered in a ccTLD. ICANN does not accredit ccTLD registrars.
- Customer service not in RAA: ICANN does not have contractual authority to address customer service issues that fall outside the RAA.
- Private dispute: The complaint indicates a private dispute between the complainant and a third party, over which ICANN does not have contractual authority.
- Spam: ICANN does not have authority to police spam.
- Website content: ICANN does not regulate website content.
- Complaint about wrong website: Complaint referred to a site that is not registered with the referenced registrar.
- Complaint about wrong entity: Complaint referenced a non-ICANN-accredited registrar or a wrong entity.
- Complaint outside data retention obligations: Complaint references data that registrars aren't obligated to maintain or those that can no longer be maintained due to age.
- Irrelevant: A Whois-related complaint for an irrelevant/invalid complaint.
- Complainant owns domain name: Complainant owns the domain name about which they are complaining.
- Complaint outside scope: Complaint falls outside provisions of registry agreement.
- ICANN not a registrar: ICANN doesn't register domain names.
- Not applicable to this TLD (Invalid): The complaint is not applicable to the generic, top-level domain (gTLD) of the complaint.
- Reseller/web hosting: Complaint falls outside the scope of the RAA and is with an entity that does not have a contractual relationship with ICANN.
- Blocked SLD confirmed (Invalid): The registry operator may reserve or block additional character strings at its own discretion; or the second level domain (SLD) name of the complaint is in the list of SLD names required to be blocked per the Alternate Path to Delegation Report of the gTLD of the complaint.

5.2: Growth in use of hosted pages for organizations (such as Facebook or Google+)

5.3: Growth in use of QR codes

5.4: Growth in use of URL shortening services

There was disagreement among IAG-CCT members on the utility of these metrics as gauges of trust in the DNS. Some members argued that growth in the use of alternative tools to access content on the Internet is more a reflection of changes in how people interact with the DNS than a measure of trust. As such, some members argued that it may be a better indicator of choice, though not choice in the DNS.

Other IAG-CCT members suggested the metrics are reliable indicators of trust because growth in the use of these services may indicate diminished trust in and use of what may arguably be more memorable domain names in the new gTLDs.

Because the data is available, for a fee, using market research and other web analytic firms, the group decided to recommend collection of this data to the review team. ICANN staff recommend considering the findings in context, perhaps in consideration with DNS traffic in new gTLDs to be measured in 2.14.

6.2: Number of complaints to police agencies alleging fraud or misrepresentation based on – or traced to – domain names

The review team may want to consider rephrasing this metric to be more broadly inclusive of cyber crime or cyber fraud, as opposed to connecting those crimes to domain names, which may be difficult to track. There is global data available on cyber crime, such as Kroll's Global Fraud Report and econsumer.gov, an initiative of the International Consumer Protection and Enforcement Network.

Metrics that were not recommended

The following metrics were deemed to be redundant, presented difficulties for data collection, or were defined in such a way that other metrics may be capturing the same information.

2.13: Biennial survey of perceived consumer choice relative to experiences before the gTLD expansion. Survey should assess public awareness of new gTLDs. Survey should also measure costs of defensive or duplicate registrations. Survey should assess motivations, intent, and satisfaction with new gTLDs.

IAG-CCT members decided this metric was duplicative of metric 2.3: Biennial surveys of perceived consumer choice in DNS, relative to experience before the gTLD expansion.

5.6: Growth of Software Defined Networking (SDN) as alternative to the DNS

For the purposes of this analysis, SDN was defined as those tools that hide a URL when navigating the Internet, such as QR codes. Given that the group recommended the collection of data related to tools that present an alternative to memorable domain names in metrics 5.2-5.4, the IAG-CCT members chose to recommend this metric for exclusion from the analysis. IAG-CCT members also noted another definition for SDN as a different approach to computer networking.

6.1: Number of consumer complaints to government agencies related to confusing or misleading domain names

The IAG-CCT members agreed that this would be difficult data to capture from government agencies that may track data in disparate ways. In addition, the group expressed concern that the "confusing or misleading domain names" may be difficult to define in a consistent way across different legal environments and cultures.

6.3: Number of fraud investigations where WHOIS information positively assisted investigation and identification of offending parties

The group recommended this metric be excluded from the evaluation as feedback indicated law enforcement would be unwilling to reveal their investigation techniques in a public way, nor were they likely to keep track of this data on a larger scale. Further, some members suggested that there was little connection between this metric and the success of the New gTLD Program.

8.2: How many registries are subject to Compliance activity based on reported breaches of RAA?

The group members agreed that metric 1.6, Relative incidence of breach notices issued to Registry operators for contract or policy compliance matters, covers this topic given that registries are not subject to compliance activity based on reported breaches of an RAA. Further, metric 1.7 also captures compliance activity related to registrar breach notices: Relative incidence of breach notices issued to Registrars, for contract or policy compliance matters. Consequently, this measure was recommended for exclusion.

Proposed new metrics

Over the course of its discussions, IAG-CCT members raised examples of potential abuses in the New gTLD Program and debated potential sources of data that may be able to quantify some of that activity. As a result, the group came up with 14 potential new metrics. The group came to the consensus that many of these could be included in the economic study ICANN is commissioning to evaluate pricing trends and marketing models. Others were deemed difficult to obtain or would rely on contracted parties providing the data. Below are listed each of the metrics followed by both IAG-CCT and staff feedback on their utility.

Evaluation

1. Number or percentage of failed registrations
2. Percentage or number of pre-registrations that converted into real registrations
3. Number of registrars who accepted pre-registrations on gTLDs but did not enter into a contract with the registry

Evaluation: ICANN does not have access to this data and would have to ask registrars for their cooperation in providing this information. With more than 1,000 accredited registrars, it could prove difficult to capture a meaningful sample of registrars willing to provide the necessary data. Further, some of the data may not be an accurate indicator of trust or choice. For example, in metric 1, failed registrations may be due to canceled credit card transactions or a registrant changing her mind. Similarly with metric 2, an increase over time may simply be an indicator of trust in a registrar and not necessarily in the DNS. Some data related to metric 3 may be captured in the economic study insofar as it relates to registrars marketing new gTLDs.

4. How were users informed or able to purchase premium names?

Evaluation: The group recommended incorporating this question into the economic study.

5. Number of registrations that are non-arms-length transactions.
6. If a registration was non-arms-length transaction how was the domain used?

Evaluation: Arms-length transactions were defined as those which involve a third party in the registration of a domain name. For example, if a registry is registering domain names through a related party, it would be considered an arms-length transaction. If it was directly registering domain names, that would be considered non-arms-length. The data may be difficult to obtain as it relies on registries' self-reporting these figures. Gathering a representative sample of these figures from enough new gTLDs to draw valid conclusions may be a challenge.

The metrics question the impact of such behavior on consumer trust and choice. These metrics may be somewhat addressed in metric 2.8, the share of sunrise registrations and domain blocks in new

gTLDs. Evaluating these registrations for motive may be difficult to establish. Survey metrics related to registrants' experiences attempting to register domain names in new gTLDs may help to provide context for this metric.

7. Which registries and TLDs are supported by which registrars?
8. How does each registrar present each TLD on their websites, from the point of view of "shelf space" and the user experience?
9. Is the presentation or prioritization of "shelf space" among available TLDs is fixed, randomly rotated, or adaptable according to different criteria, including payment?
10. Do registrars give priority, on their websites or within their pricing and service offerings, to TLDs which they own (as vertically integrated registrars) or with which they are otherwise associated?
11. Data on the registration of domain names in the new gTLDs.
12. Data on the numbers of domains which have been withdrawn from consumer choice by speculation or bulk registrations.
13. Baseline data on wholesale/retail prices charged for 'premium' valued domains across the spectrum of new Registries.

Evaluation: IAG-CCT members agreed that these questions could all be incorporated into the RFP for the economic study, particularly as they relate to marketing of new gTLDs.

14. Number of reports of name collisions

Evaluation: IAG-CCT members felt that given the attention this issue has received and ICANN's own plans to track incidences of such collisions, this would be an important metric to include. It will be included in the category of trust metrics.

Conclusion

The IAG-CCT members worked together over the course of nearly a year to reach consensus on the recommendations made in this report. While there may have been disagreement on some metrics, this report aims to present a complete picture of the various viewpoints that were considered in the group's discussions in order to inform more fully the review team's own plans for moving forward with its review plan.

By using the IAG-CCT's mandate to evaluate each metric for feasibility, utility and cost-effectiveness, the group used a consistent approach in composing its advice. The final group of 66 recommended metrics represents the IAG-CCT'S attempt to capture a complete picture of the New gTLD's Program's progress through several lenses encapsulating competition, consumer choice and consumer trust. These represent several axes of ICANN's own internally available data, as well as external sources, such as the global consumer survey, economic study and market research.

The IAG-CCT submits this report with the goal of serving as a useful tool as the review team begins to tackle the challenge of the CCT review.

Appendix 1: Original proposed metrics

Note: All metrics were recommended by the Generic Names Supporting Organization (GNSO) and the At-Large Advisory Committee (ALAC).

METRIC	DESCRIPTION	CATEGORY
1.1	% DNS Service Availability (present SLA is 100%).	Trust
1.2	% Availability for Registration Data Directory Services (RDDS). (SLA is 98%).	Trust
1.3	% of Service Availability for Shared Registration Services (SRS, using EPP). (SLA is 98%). Open TLDs only	Trust
1.4	Survey of perceived consumer trust in DNS, relative to experiences before the gTLD expansion. Survey could at least measure experiences with phishing, parking sites, malware and spam; confusion about new gTLDs; user experience in reaching meaningful second-level TLDs; registrant experience in being in a different gTLD; Registrant and Internet users' experience with regard to cybersquatting. Survey to be conducted every two years (biennial).	Trust
1.5	% Uptime for Registrar services such as WHOIS, contact info, and complaints, assuming that SLAs are established for these measures in the new RAA.	Trust
1.6	Relative incidence of breach notices issued to Registry operators for contract or policy compliance matters.	Trust
1.7	Relative incidence of breach notices issued to Registrars, for contract or policy compliance matters.	Trust
1.8	Relative Incidence of Registry & Registrar general complaints submitted to ICANN's Internic System.	Trust
1.9	Relative incidence of combined UDRP and URS Complaints. URS is required only in new gTLDs, so combined UDRP and URS complaints may be comparable to UDRP complaints in legacy gTLDs	Trust
1.10	Relative incidence of combined UDRP and URS Decisions against registrants.	Trust

1.11	<p>Quantity of intellectual property claims and cost of domain name policing relating to new gTLDs.</p> <p>Relative incidence of IP claims made in good faith should be measured in 3 areas:</p> <p>IP claims against registrants regarding second level domains in new gTLDs;</p> <p>IP claims against registrars regarding Second level domains in new gTLDs;</p> <p>IP claims against new gTLD registries regarding second level domains and TLDs.</p> <p>Quantity of second level domains acquired because of infringement or other violations of IP rights of acquiring parties; and</p> <p>Cost of domain name policing and enforcement efforts by IP owners.</p>	Trust
1.12	Decisions against Registry Operator arising from Registry Restrictions Dispute Resolutions Procedure (RRDRP).	Trust
1.13	Quantity of Compliance Concerns regarding Applicable National Laws, including reported data security breaches.	Trust
1.14	Quantity and relative incidence of Domain Takedowns.	Trust
1.15	Quantity and relative incidence of spam from domains in new gTLDs, which could be measured via specialized email addresses and methodologies.	Trust
1.16	Quantity and relative incidence of fraudulent transactions caused by phishing sites in new gTLDs.	Trust
1.17	Quantity and relative incidence of detected phishing sites using new gTLDs.	Trust
1.18	Quantity and relative incidence of detected botnets and malware distributed using new gTLDs.	Trust
1.19	Quantity and relative incidence of sites found to be dealing in or distributing identities and account information used in identity fraud.	Trust
1.20	Quantity and relative incidence of complaints regarding inaccurate, invalid, or suspect WHOIS records in new gTLD.	Trust
1.21	Relative incidence of errors in new gTLD zones.	Trust
1.22	Qualitative comparison of mission and purpose set forth in Question 18 of the new gTLD Application with current actual use of the gTLD.	Trust
2.1	Measure potential registrants' understanding of TLD benefits and restrictions, such that potential registrants can make informed choices about registration of their domain names.	Choice

2.2	Measure Internet users' understanding of TLD eligibility restrictions, such that Internet users can make informed choices about reliance on domain names in that TLD.	Choice
2.3	Biennial surveys of perceived consumer choice in DNS, relative to experience before the gTLD expansion.	Choice
2.4	Quantity of TLDs using IDN scripts or languages other than English.	Choice
2.5	Quantity of Registrar websites offering IDN scripts or languages other than English.	Choice
2.6	The percentage of IDNs as compared to the total number of gTLDs in each script or language should be compared to the percentage of people who use each particular language or script.	Choice
2.7	Quantity of different national legal regimes where new gTLD Registry Operators are based.	Choice
2.8	Measure share of Sunrise registrations & domain blocks to total registrations in each new gTLD.	Choice
2.9	Relative share of new gTLD registrations already having the same domain in legacy TLDs prior to expansion.	Choice
2.10	Automated analysis or online survey to determine the number of "duplicate" registrations in new gTLDs.	Choice
2.11	Measure the increased geographic diversity of registrants across all new gTLDs, as indication of new choices created by gTLD expansion.	Choice
2.12	Survey or Study to gauge the frequency with which users access internet resources via tools that do not reveal the TLD (e.g. QR Codes, search results, apps, etc., that do not display URLs).	Choice
2.13	Biennial survey of perceived consumer choice relative to experiences before the gTLD expansion. Survey should assess public awareness of new gTLDs. Survey should also measure costs of defensive or duplicate registrations. Survey should assess motivations, intent, and satisfaction with new gTLDs.	Choice
2.14	DNS traffic in new gTLDs should be compared to contemporary user traffic in legacy gTLDs. DNS traffic is an indicator of trust, choice, and competition. If comprehensive traffic data is not available, sampling should be used.	Choice
3.1	Quantity of total TLDs before and after expansion.	Competition
3.2	Quantity of gTLDs before and after expansion.	Competition
3.3	Quantity of unique gTLD Registry Operators before and after	Competition

	expansion.	
3.4	Quantity of unique gTLD Registry Service Providers before and after expansion.	Competition
3.5	Quantity of Registrars before and after expansion, along with indication of country where Registrar is based. This measure should count only registrars distributing Open gTLDs.	Competition
3.6	Relative share of new gTLD registrations held by “new entrants”. For purposes of this measure, “new entrants” are gTLDs run by Registry Operators that did not operate a legacy gTLD. A "new entrant" is one whose ownership is not among owners of legacy gTLD registries.	Competition
3.7	To assess competitive impact of new gTLDs, measure the quantity of second level registrations per gTLD and ccTLD on a weekly or other interval. TLD attributes should be noted with the data (i.e. open TLDs, closed keyword TLDs, registration, country of operations, single registrant, etc.).	Competition
3.8	Quantity of “unique” second level registrations in the new gTLD space where that same string does not appear as a registration in any other TLD on a weekly or other interval basis (data analyzed in conjunction with website traffic identified in Choice). Open gTLDs only.	Competition
3.9	Wholesale price of domains in new gTLD domains offered to the general public. TLD attributes should be noted with the data (i.e. open TLDs, closed keyword TLDs, country of operations, single registrant, etc.).	Competition
3.10	Retail price of domains in new gTLD domains offered to the general public. TLD attributes should be noted with the data (i.e. open TLDs, closed keyword TLDs, country of operations, single registrant, etc.).	Competition
3.11	Qualitative assessment of non-price indicia of competition through innovations that benefit registrants and users, particularly for new markets served.	Competition
4.1	Frequency of success in reaching the intended information supplier through direct entry of domain names	Trust
4.2	Frequency of landing at unintended destinations	Trust
4.3	Frequency of redundant or defensive domains (i.e., multiple domains pointing to the same destination)	Trust
4.4	Frequency of dead-end domains (registered but do not resolve)	Trust
4.5	Numbers of complaints received by ICANN regarding improper use of domains	Trust

5.1	Relative preference of explicit use of domain names versus search engines for end-user general Internet use	Trust
5.2	Growth in use of hosted pages for organizations (such as Facebook or Google+)	Trust
5.3	Growth in use of QR codes	Trust
5.4	Growth in use of URL shortening services	Trust
5.5	Growth in registrations in ccTLDs relative to gTLDs	Trust
5.6	Growth of Software Defined Networking (SDN) as alternative to the DNS	Choice
6.1	Number of consumer complaints to government agencies related to confusing or misleading domain names	Trust
6.2	Number of complaints to police agencies alleging fraud or misrepresentation based on – or traced to – domain names	Trust
6.3	Number of fraud investigations where WHOIS information positively assisted investigation and identification of offending parties	Trust
7.1	How many gTLD registries have privacy policies which are clearly and easily accessible by end users	Trust
7.2	How many gTLD registries have allocation policies which are clearly and easily accessible by end users, even if those policies simply restrict or prohibit public availability	Trust
7.3	How many registries disclose end-user information regarding their codes of conduct for sub-domain owner/operators	Trust
8.1	How many complaints are received by ICANN related to confusion or misunderstanding of TLD functions	Trust
8.2	How many registries are subject to Compliance activity based on reported breaches of RAA?	Trust
8.3	How many registries have been the subject of complaints related to their Public Interest Commitments (PICs)	Trust
8.4	How many registries have lost a dispute resolution process related to their PICs	Trust
9.1	Are end-user software applications capable of implementing all of the new gTLDs; Can browsers and DNS clients in end-user systems resolve all new gTLDs	Trust
9.2	Which browsers or other end-user applications require plugins or user-installed enhancements in order to use new gTLDs	Trust

Appendix 2: Recommended metrics, reorganization, and data collection phases

Working together with ICANN staff, the IAG-CCT came to a consensus on reorganizing the metrics to better represent the various categories of data that will be collected. Each category of data would then be examined on the axes of choice, competition and trust. As such, the group proposes the following structure for the eventual review team report:

- I. Technical metrics
- II. Registration data
- III. Law enforcement/domain abuse
- IV. DNS use/choice
- V. Compliance
- VI. Global consumer survey
- VII. Qualitative studies

Also included below are the recommended phases for data collection. Phases were broken down to account for metrics that required a baseline, as well as collection to begin one year after new gTLDs have been in operation. The phases represent the following time periods:

Phase 1: Baseline metrics requiring immediate collection, March-September 2014

Phase 2: Baseline metrics that do not require immediate collection, June-September 2014

Phase 3: Metrics that are readily available in-house, October 2014-until collected

Phase 4: All metrics that are due to be collected one year after the launch of new gTLDs

Phase 4A: Technical services and compliance metrics, October-December 2014

Phase 4B: Registry and registrar-related metrics, November 2014-January 2015

Phase 4C: Consumer survey, qualitative studies, December 2014-February 2016

Technical metrics

#	Description	Category	Baseline phase	General collection phase
1.1	% DNS Service Availability (present SLA is 100%).	Trust		3
1.2	% Availability for Registration Data Directory Services (RDDS). (SLA is 98%).	Trust		3
1.3	% of Service Availability for Shared Registration Services (SRS, using EPP). (SLA is 98%). Open TLDs only	Trust		3

1.5	% Uptime for Registrar services such as WHOIS, contact info, and complaints, assuming that SLAs are established for these measures in the new RAA.	Trust		4B
1.21	Relative incidence of errors in new gTLD zones.	Trust		4A
2.10	Automated analysis or online survey to determine the number of “duplicate” registrations in new gTLDs.	Choice		4B
2.14	DNS traffic in new gTLDs should be compared to contemporary user traffic in legacy gTLDs. DNS traffic is an indicator of trust, choice, and competition. If comprehensive traffic data is not available, sampling should be used.	Choice	2	4A
4.4	Frequency of dead-end domains (registered but do not resolve)	Trust		
9.1	Are end-user software applications capable of implementing all of the new gTLDs; Can browsers and DNS clients in end-user systems resolve all new gTLDs	Trust		4A
9.2	Which browsers or other end-user applications require plugins or user-installed enhancements in order to use new gTLDs	Trust		4A
9.3	Number of reports of name collisions	Choice		4A

Registration data

#	Description	Category	Baseline phase	General collection phase
2.11	Measure the increased geographic diversity of registrants across all new gTLDs, as indication of new choices created by gTLD expansion.	Choice		4A
2.4	Quantity of TLDs using IDN scripts or languages other than English.	Choice	2	4B
2.5	Quantity of Registrar websites offering IDN scripts or languages other than English.	Choice	2	4B
2.6	The number of registrations in IDN TLDs as compared to the total number of registrations in new gTLDs. Measure growth over time.	Choice	2	4B
2.7	Quantity of different national legal regimes where new gTLD Registry Operators are based.	Choice	1	4A
2.8	Measure share of Sunrise registrations & domain blocks to total registrations in each new gTLD.	Choice	2	4A

2.9	Relative share of new gTLD registrations already having the same domain in legacy TLDs prior to expansion.	Choice	2	4A
3.1	Quantity of total TLDs before and after expansion.	Competition		3
3.2	Quantity of gTLDs before and after expansion.	Competition	1	4B
3.3	Quantity of unique gTLD Registry Operators before and after expansion.	Competition	3	4B
3.4	Quantity of unique gTLD Registry Service Providers before and after expansion.	Competition	3	4B
3.5	Quantity of Registrars ⁵ before and after expansion, along with indication of country where Registrar is based. This measure should count only registrars distributing Open gTLDs.	Competition	3	4B
3.6	Relative share of new gTLD registrations held by “new entrants”. For purposes of this measure, “new entrants” are gTLDs run by Registry Operators that did not operate a legacy gTLD. A “new entrant” is one whose ownership is not among owners of legacy gTLD registries.	Competition	2	4A
3.7	To assess competitive impact of new gTLDs, measure the quantity of second level registrations per gTLD and ccTLD on a weekly or other interval. TLD attributes should be noted with the data (i.e. open TLDs, closed keyword TLDs, registration, country of operations, single registrant, etc.).	Competition	1	4A
3.8	Quantity of “unique” second level registrations in the new gTLD space where that same string does not appear as a registration in any other TLD on a weekly or other interval basis (data analyzed in conjunction with website traffic identified in Choice). Open gTLDs only.	Competition	2	4A
5.5	Growth in registrations in ccTLDs relative to gTLDs	Trust	2	4B
7.1	How many gTLD registries have privacy policies which are clearly and easily accessible by end users	Trust	1	4B
7.2	How many gTLD registries have allocation policies which are clearly and easily accessible by end users, even if those policies simply restrict or prohibit public availability	Trust	1	4B
7.3	How many registries disclose end-user information regarding their codes of conduct for sub-domain owner/operators	Trust	1	4B

Law enforcement/domain abuse

#	Description	Category	Baseline phase	General collection phase
1.11	Quantity of intellectual property claims and cost of domain name policing relating to new gTLDs. Relative incidence of IP claims made in good faith should be measured in 3 areas: IP claims against registrants regarding second level domains in new gTLDs; IP claims against registrars regarding Second level domains in new gTLDs; IP claims against new gTLD registries regarding second level domains and TLDs. Quantity of second level domains acquired because of infringement or other violations of IP rights of acquiring parties; and Cost of domain name policing and enforcement efforts by IP owners.	Trust	1	4C
1.13	Number of reported data security breaches.	Trust	2	4A
1.14	Quantity and relative incidence of Domain Takedowns.	Trust		4B
1.15	Quantity and relative incidence of spam from domains in new gTLDs, which could be measured via specialized email addresses and methodologies.	Trust		4B
1.16	Quantity and relative incidence of fraudulent transactions caused by phishing sites in new gTLDs.	Trust		4C
1.17	Quantity and relative incidence of detected phishing sites using new gTLDs.	Trust	2	4A
1.18	Quantity and relative incidence of detected botnets and malware distributed using new gTLDs.	Trust	2	4A
1.19	Quantity and relative incidence of sites found to be dealing in or distributing identities and account information used in identity fraud.	Trust	2	4A
6.2	Number of complaints to police agencies alleging fraud or misrepresentation based on – or traced to – domain names	Trust	1	4B

DNS use/choice

#	Description	Category	Baseline phase	General collection phase
5.2	Growth in use of hosted pages for organizations (such as Facebook or Google+)	Trust	1	4B
5.3	Growth in use of QR codes	Trust	1	4B

5.4	Growth in use of URL shortening services	Trust	1	4B
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Compliance metrics

#	Description	Category	Baseline phase	General collection phase
1.6	Relative incidence of breach notices issued to Registry operators for contract or policy compliance matters.	Trust	1	4A
1.7	Relative incidence of breach notices issued to Registrars, for contract or policy compliance matters.	Trust	1	4A
1.8	Relative Incidence of Registry & Registrar general complaints submitted to ICANN's Internic System.	Trust	1	4A
1.9	Relative incidence of combined UDRP and URS Complaints. URS is required only in new gTLDs, so combined UDRP and URS complaints may be comparable to UDRP complaints in legacy gTLDs	Trust	1	4A
1.10	Relative incidence of combined UDRP and URS Decisions against registrants.	Trust	1	4A
1.12	Decisions against Registry Operator arising from Registry Restrictions Dispute Resolutions Procedure (RRDRP).	Trust		3
1.20	Quantity and relative incidence of complaints regarding inaccurate, invalid, or suspect WHOIS records in new gTLD.	Trust	1	4A
4.5	Numbers of complaints received by ICANN regarding improper use of domains	Trust	1	4A
8.1	How many complaints are received by ICANN related to confusion or misunderstanding of TLD functions	Trust	1	4A
8.3	How many registries have been the subject of complaints related to their Public Interest Commitments (PICs)	Trust		3
8.4	How many registries have lost a dispute resolution process related to their PICs	Trust		3

Surveys

#	Description	Category	Baseline phase	General collection phase
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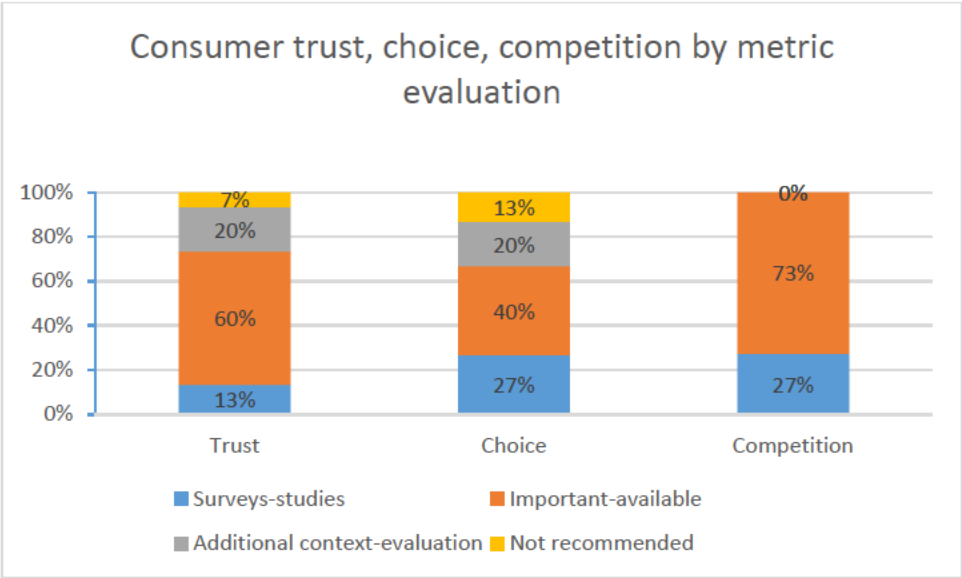
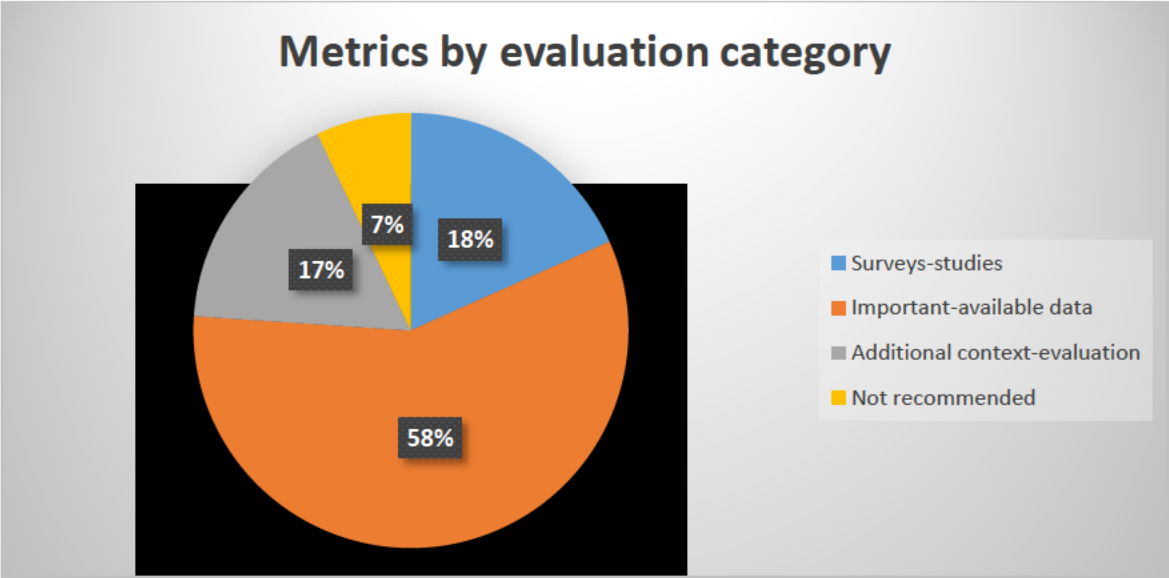
1.4	Survey of perceived consumer trust in DNS, relative to experiences before the gTLD expansion. Survey could at least measure experiences with phishing, parking sites, malware and spam; confusion about new gTLDs; user experience in reaching meaningful second-level TLDs; registrant experience in being in a different gTLD; Registrant and Internet users' experience with regard to cybersquatting. Survey to be conducted every two years (biennial).	Trust	1	4C
2.1	Measure potential registrants' understanding of TLD benefits and restrictions, such that potential registrants can make informed choices about registration of their domain names.	Choice	1	4C
2.2	Measure Internet users' understanding of TLD eligibility restrictions, such that Internet users can make informed choices about reliance on domain names in that TLD.	Choice	1	4C
2.3	Biennial surveys of perceived consumer choice in DNS, relative to experience before the gTLD expansion.	Choice	1	4C
2.12	Survey or Study to gauge the frequency with which users access internet resources via tools that do not reveal the TLD (e.g. QR Codes, search results, apps, etc., that do not display URLs).	Choice	1	4C
4.1	Frequency of success in reaching the intended information supplier through direct entry of domain names	Trust	1	4C
4.2	Frequency of landing at unintended destinations	Trust	1	4C
4.3	Frequency of redundant or defensive domains (ie, multiple domains pointing to the same destination)	Trust	1	4C
5.1	Relative preference of explicit use of domain names versus search engines for end-user general Internet use	Trust	1	4C

Qualitative studies

#	Description	Category	Baseline phase	General collection phase
1.22	Qualitative comparison of mission and purpose set forth in Question 18 of the new gTLD Application with current actual use of the gTLD.	Trust	1	4C
3.10	Retail price of domains in new gTLD domains offered to the general public. TLD attributes should be noted with the data (i.e. open TLDs, closed keyword TLDs, country of operations, single registrant, etc.).	Competition	1	4C

3.11	Qualitative assessment of non-price indicia of competition through innovations that benefit registrants and users, particularly for new markets served.	Competition	1	4C
3.9	Wholesale price of domains in new gTLD domains offered to the general public. TLD attributes should be noted with the data (i.e. open TLDs, closed keyword TLDs, country of operations, single registrant, etc.).	Competition	1	4C

Appendix 3: Metrics breakdown



Appendix 4: Team composition

A list of all meetings, including links to agendas, recordings and transcripts is available at the following link: <https://community.icann.org/display/IAG/IAG-CCT+Conference+Call+Schedule>

Candidate	Country	Affiliation	SOI
A.B. Ishiaku	Nigeria		Adamu Ishiaku - SOI
Carlton Samuels	Jamaica	ALAC	Carlton Samuels - SOI
Cheryl Langdon-Orr	Australia	Currently serve as ICANN NomCom Chair; Affiliation also (in order) ccNSO (please note they have given Council endorsement for me to represent their interests in this work and as no ccNSO SOI exists you should note I am a Director of auDA the ccTLD for AU, have been for more than 10 years and am active in the ccNSO community and have served on ccNSO Council; Also a Member of At-Large ALS ISOC-AU Regional Asia Pacific ; various ALAC appointment roles; Individual Member of the GNSO's Non Commercial Stakeholder Group.	Cheryl Langdon-Orr - SOI
Christa Taylor	Canada		Christa Taylor - SOI
Christopher Wilkinson	Europe/Great Britain	ISOC-Wallonia; EURid	Christopher Wilkinson - SOI
Cintra Sooknanan	Caribbean/Trinidad and Tobago	NPOC; Internet Society Trinidad and Tobago Chapter (ISOC-TT)	Cintra Sooknanan SOI
Darryl C. Wilson	United States		Darryl Wilson SOI
David C. Stuckman	United States		David Stuckman - SOI
Ephraim Percy Kenyanito	Kenya		Ephraim Percy Kenyanito SOI
Evan Leibovitch	Canada	ALAC / ISOC Canada	ALAC SOI /GNSO SOI

Jeffrey Thomas	United States		Jeffrey Thomas - SOI
Jeremy Rowley	United States		Jeremy Rowley - SOI
Jonathan Zuck	Belgium		Jonathan Zuck - SOI
Judy Song-Marshall	United States		Judy Song-Marshall - SOI
Mason Cole	United States	RySG	Mason Cole - SOI
Michael A. Flynn	United States		Michael A Flynn - SOI
Michael Graham			Michael Graham - SOI
Michael R. Nelson	United States		Michael R. Nelson - SOI
Nathalie Coupet	Haiti / USA		Nathalie Coupet SOI
Olga Cavalli	Argentina		Olga Cavalli SOI
Phil Buckingham	United Kingdom		Phil Buckingham - SOI
Ray Fassett	United States		Ray Fassett - SOI
Reg Levy	United States	RySG	Levy - SOI.pdf
Ron Andruff	Canada / US	RNA Partners / BC constituency	Ron Andruff SOI
Rudi Vansnick	Belgium (EU)	NPOC / NCSG	Rudi Vansnick SOI
Santiago Rodriguez Ortiz	Colombia		Santiago Rodriguez - SOI
Steve DelBianco	United States	NetChoice / Business Constituency	DelBianco - SOI
Tony	United States		Tony Onorato

Onorato			- SOI
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Exhibit DIDP A37



<http://internetidentity.com>

IID Predicts Massive Botnet Takeover of IoT Devices by 2017

December 1 2015

Cybersecurity firm also anticipates a spate of domain failures, leading to demise of websites relying on them

TACOMA, Wash. — December 1, 2015 — IID (<http://www.internetidentity.com/>), the source for clear cyberthreat intelligence, today announced its predictions for 2017 and beyond. After analyzing billions of pieces of cyberthreat data, IID anticipates Internet of Things (IoT) devices will increasingly become part of large-scale botnets, websites utilizing many of the new generic top-level domains (gTLDs) will go dark and China-based cybercrime will undergo a marked shift.

IID isn't interested in making safe, short-range prognostications whose outcomes are already inevitable. That's why its latest forecast looks at least two years ahead, much like IID's predictions did [in previous years \(http://internetidentity.com/predictions/\)](http://internetidentity.com/predictions/).

Botnets Invade IoT

IID predicts that by the end of 2017, botnet operators seeking new frontiers will execute a full-scale invasion of compromised Internet of Things (IoT) devices such as wearables and connected home products. A botnet is a collective of private computers, infected with malware, that are controlled by cybercriminals to launch mass attacks, unbeknownst to their owners.

These "zombified" IoT devices, upon being hijacked by cybercriminals into their botnet army via malware, will be used for a variety of nefarious purposes, including:

- Executing network-based attacks, such as Distributed Denial of Service attacks, against large companies by commanding these IoT bots to overwhelm systems with fake traffic.
- Deceitfully or forcefully redirecting users to commercial content in order to generate revenue, in what is essentially a form of marketing or affiliate fraud (e.g. pay-per-click fraud).
- Spying on users for the purpose of extortion or political influence.

"The increasingly advanced technical capabilities of IoT devices such as autonomous consumer-grade drones and smart appliances will not be able to keep pace with security and privacy requirements. This will drive large-scale compromises of IoT devices," said IID Vice President of Threat Intelligence Sean Tierney. "As these devices are used to attack other networks or for retaliatory attacks, it will eventually lead to the 'Battle of the Botnet' for domination of IoT."

gTLD Websites Go Dark

When the Internet Corporation for Assigned Names and Numbers (ICANN), which oversees the Domain Name System, began the process to issue hundreds of new gTLDs in 2013, the possibilities seemed limitless. Today, gTLDs run the gamut from “.apartments” to “.dentist” to “.porn” and so on. But looking ahead, many of these TLDs, as well as websites and other services that rely on them, could be short-lived because their adoption has been much smaller than anticipated.

IID anticipates an unprecedented series of domain registry failures as a result of the lack of gTLD popularity by 2017 in the form of bankruptcies and abandonment. “Most new gTLDs have failed to take off and many have already been riddled with so many fraudulent and junk registrations that they are being blocked wholesale,” said IID President and CTO Rod Rasmussen. “This will eventually cause ripple effects on the entire domain registration ecosystem, including consolidation and mass consumer confusion as unprofitable TLDs are dropped by their sponsoring registries.”

Should a gTLD go down, it would take any resident websites, email or other services with it, forcing their owners to scramble for new virtual real estate. There is a process in place to continue support of struggling registry operations until a larger registry or organization buys them in auction and rescues them. However, questions abound as to who would risk an investment in poorly performing TLDs, especially as they start to number in the hundreds. “That’s why eventually some are going to just plain go dark,” added Rasmussen.

The writing is already on the wall. For instance, in its original Fiscal Year 2015 budget draft, ICANN predicted 33 million new gTLD domain name registrations—a number it later revised to just 15 million. According to ntldstats.com, the final tally for FY2015, which ended June 30, 2015, was only 4.9 million registrations.

Chinese Cybercrime Reshapes Geopolitics

IID also predicts that if the downturn in the Chinese economy continues, this could drive exponential growth of organized cybercriminal enterprises within the country. IID expects that by 2017 these “persistent criminal enterprises” will rival and ultimately surpass Eastern European organized cybercrime in scope, size and complexity.

Moreover, IID predicts that the Russian Chinese Cyber Alliance will dissolve by 2019, after these same Chinese cybercriminal organizations start aggressively targeting Eastern European citizens, companies and even rival cybercrime organizations—funneling their stolen money into China. Such a development would undermine Russia’s original strategy behind the pact, which was to form stronger ties with the Eastern powers in response to strained relations with the U.S.

However, IID predicts yet another tidal change by 2020, as China becomes a leading proponent of Internet security in response to its own citizens and banks being increasingly victimized by cyberattacks that threaten the Chinese economy.

About IID

IID is a cybersecurity company. Its flagship product, [ActiveTrust](http://internetidentity.com/activetrust/) (<http://internetidentity.com/activetrust/>), adds clarity to cyberthreat intelligence by distilling threat data from thousands of trusted sources, and fusing it into actionable intelligence delivered to security professionals and automated infrastructure. Fortune 500 companies and U.S. government agencies leverage IID to detect and mitigate threats, making ActiveTrust one of the world’s largest commercial cyberthreat data exchange. For more go to internetidentity.com (<http://internetidentity.com/>).

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Exhibit DIDP A38

.rocks



65,147 (0.41% (percent of total registered domains))

Registry: Rightside Registry (/registry/Rightside-Registry) (<http://www.rightside.co>)

Registry Backend: Rightside Registry (/backend/Rightside-Registry) (<http://rightside.co>)

Documents:

DR (<http://www.iana.org/domains/root/db/rocks.html>) | RA (<http://www.icann.org/en/about/agreements/registries/rocks>)

quantcast (<http://www.quantcast.com/>) Rank: titanexclusive.rocks (31,996) (<https://www.quantcast.com/titanexclusive.rocks>)

Alexa (<http://www.alexa.com/>) Rank: file.rocks (18,732) (<http://www.alexa.com/siteinfo/file.rocks>)

Registrations of .rocks

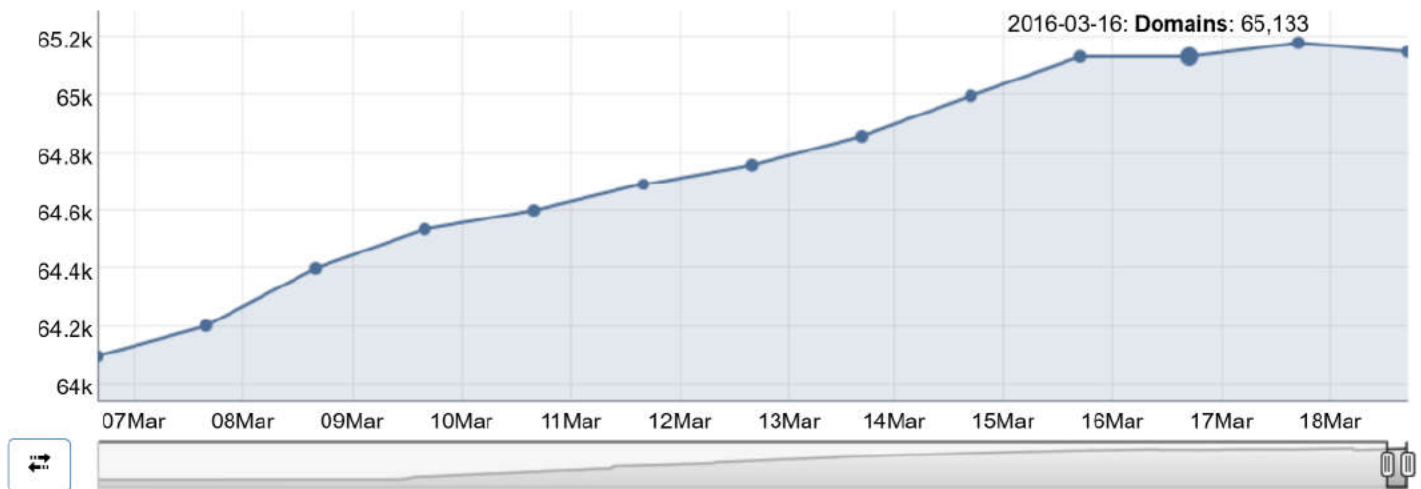


Exhibit DIDP A39



Transparency Report

Specified Domain: torrents.rocks

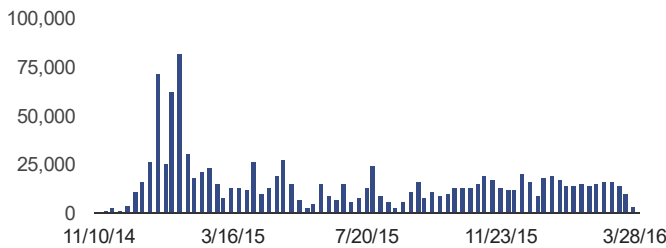
Do you own this domain? Sign up with [Webmaster Tools](#) to be notified when we receive copyright removal requests regarding URLs for your domain.

Total Requests: 46,412
Median Requests per Week: 661

URLs Requested to be Removed: 1,145,272
% Indexed URLs ⓘ < 50%
Median URLs per Week: 13,681

Most Recent Request: Mar 29, 2016
First Available Request: Nov 11, 2014

URLs Requested to be Removed Per Week





Transparency Report

Specified Domain: extratorrent.rocks

Do you own this domain? Sign up with [Webmaster Tools](#) to be notified when we receive copyright removal requests regarding URLs for your domain.

Total Requests: 15,791

Median Requests per Week: 183

URLs Requested to be Removed: 940,971

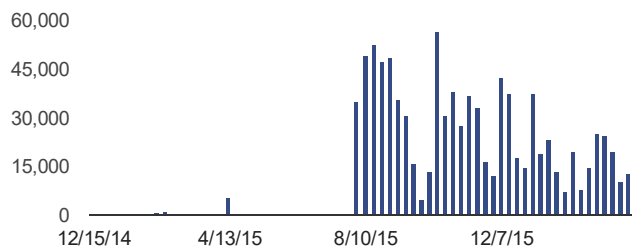
% Indexed URLs ⓘ ≥ 50%

Median URLs per Week: 6,614

Most Recent Request: Mar 30, 2016

First Available Request: Dec 17, 2014

URLs Requested to be Removed Per Week





Transparency Report

Specified Domain: kickasstorrents.rocks

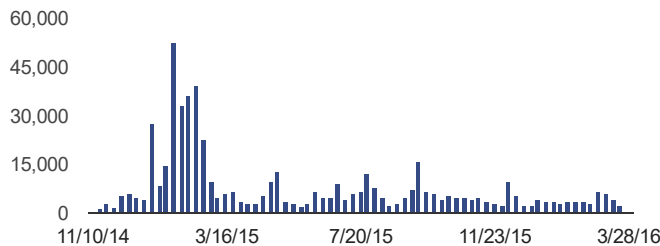
Do you own this domain? Sign up with [Webmaster Tools](#) to be notified when we receive copyright removal requests regarding URLs for your domain.

Total Requests:	43,395
Median Requests per Week:	604

URLs Requested to be Removed:	561,065
% Indexed URLs ⓘ	< 10%
Median URLs per Week:	4,776

Most Recent Request:	Mar 29, 2016
First Available Request:	Nov 10, 2014

URLs Requested to be Removed Per Week





Transparency Report

Specified Domain: kickasstorrent.rocks

Do you own this domain? Sign up with [Webmaster Tools](#) to be notified when we receive copyright removal requests regarding URLs for your domain.

Total Requests: 38,151

Median Requests per Week: 574

URLs Requested to be Removed: 507,161

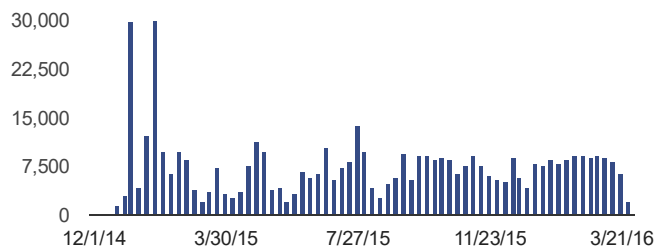
% Indexed URLs ⓘ < 50%

Median URLs per Week: 7,240

Most Recent Request: Mar 29, 2016

First Available Request: Dec 4, 2014

URLs Requested to be Removed Per Week





Transparency Report

Specified Domain: kickass-torrent.rocks

Do you own this domain? Sign up with [Webmaster Tools](#) to be notified when we receive copyright removal requests regarding URLs for your domain.

Total Requests: 32,179

Median Requests per Week: 792

URLs Requested to be Removed: 434,016

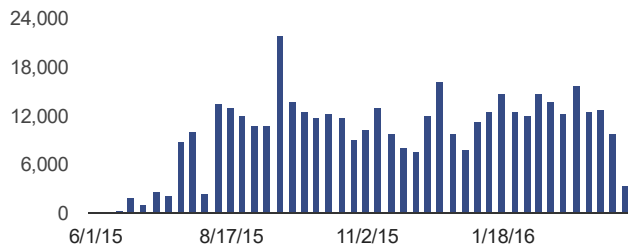
% Indexed URLs ⓘ < 50%

Median URLs per Week: 11,502

Most Recent Request: Mar 29, 2016

First Available Request: Jun 3, 2015

URLs Requested to be Removed Per Week





Transparency Report

Specified Domain: kickass-torrents.rocks

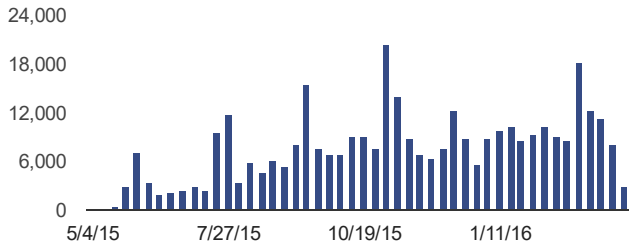
Do you own this domain? Sign up with [Webmaster Tools](#) to be notified when we receive copyright removal requests regarding URLs for your domain.

Total Requests: 34,350
Median Requests per Week: 779

URLs Requested to be Removed: 361,161
% Indexed URLs ⓘ < 50%
Median URLs per Week: 7,616

Most Recent Request: Mar 29, 2016
First Available Request: May 10, 2015

URLs Requested to be Removed Per Week





Transparency Report

Specified Domain: kickasstorrentz.rocks

Do you own this domain? Sign up with [Webmaster Tools](#) to be notified when we receive copyright removal requests regarding URLs for your domain.

Total Requests: 35,110

Median Requests per Week: 818

URLs Requested to be Removed: 322,996

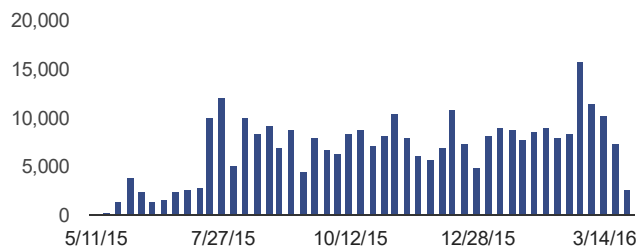
% Indexed URLs ⓘ < 50%

Median URLs per Week: 7,853

Most Recent Request: Mar 29, 2016

First Available Request: May 15, 2015

URLs Requested to be Removed Per Week





Transparency Report

Specified Domain: thepiratebay.rocks

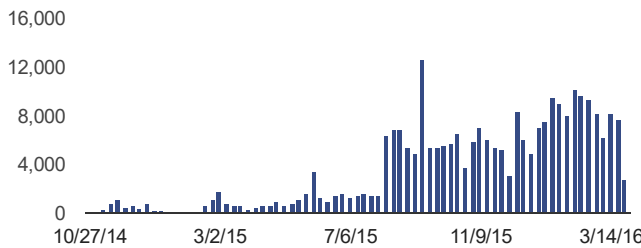
Do you own this domain? Sign up with [Webmaster Tools](#) to be notified when we receive copyright removal requests regarding URLs for your domain.

Total Requests: 21,736
 Median Requests per Week: 256

URLs Requested to be Removed: 264,147
 % Indexed URLs ⓘ < 50%
 Median URLs per Week: 1,632

Most Recent Request: Mar 29, 2016
 First Available Request: Oct 27, 2014

URLs Requested to be Removed Per Week





Transparency Report

Specified Domain: kickass.rocks

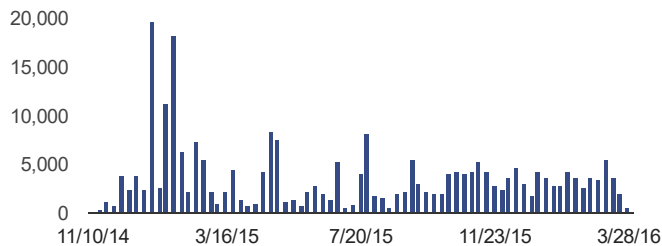
Do you own this domain? Sign up with [Webmaster Tools](#) to be notified when we receive copyright removal requests regarding URLs for your domain.

Total Requests: 28,232
Median Requests per Week: 360

URLs Requested to be Removed: 263,673
% Indexed URLs ⓘ < 50%
Median URLs per Week: 2,894

Most Recent Request: Mar 29, 2016
First Available Request: Nov 13, 2014

URLs Requested to be Removed Per Week





Transparency Report

Specified Domain: mp3song.rocks

Do you own this domain? Sign up with [Webmaster Tools](#) to be notified when we receive copyright removal requests regarding URLs for your domain.

Total Requests: 4,115
Median Requests per Week: 28

URLs Requested to be Removed: 208,260
% Indexed URLs ⓘ < 50%
Median URLs per Week: 30

Most Recent Request: Mar 27, 2016
First Available Request: Apr 15, 2015

URLs Requested to be Removed Per Week

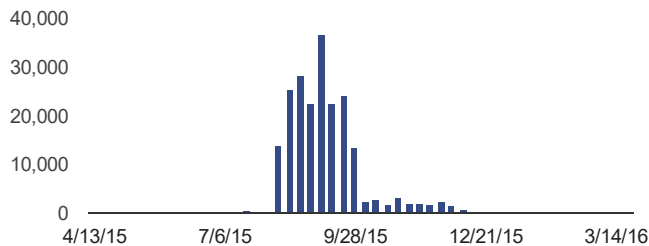


Exhibit DIDP A40



Transparency Report

Google regularly receives requests from copyright owners and reporting organizations that represent them to remove search results that link to material that allegedly infringes copyrights. Each request names specific URLs to be removed, and we list the domain portions of URLs requested to be removed under specified domains.

URLs requested to be removed from Search per week



This data consists of the copyright removal notices received for Search since 2011, with *some omissions*

What's not included?

Copyright removal requests received for Search in the past month

79,946,626 URLs Requested to be Removed

69,323 Specified domains

6,634 Copyright Owners

3,085 Reporting Organizations

Close Ad X

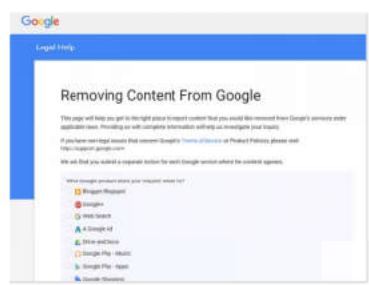
AdChoices

TAG Google , Copyright , DMCA

Google Copyright Takedowns Have Increased About 1 Billion Percent Since 2006

By Robin Burks, Tech Times | March 7, 12:50 PM

Like Follow Share Tweet Reddit 0 Comments SUBSCRIBE



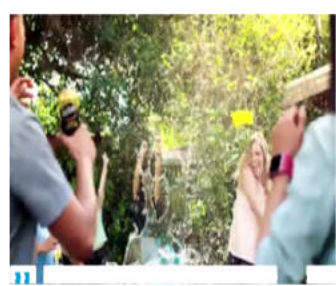
Since 2006, Google has drastically increased how many sites it has taken down from its search engine results due to complaints of copyright infringement under the Digital Millennium Copyright Act (DMCA) of 1998. (Photo : Google)

In 1998, President Bill Clinton signed the the Digital Millennium Copyright Act into law. That law makes it a criminal offense to circumvent digital rights management (DRM), which protects copyright on the Internet.

Sites like Google didn't really start enforcing the law, though, until around 2006, but since then the site **has taken down over a billion percent more links** since the law went into effect. This is due to the fact that copyright holders now have software that can search for links (generally for pirated pieces of software, music and video) at a faster rate, meaning that more links get reported.

TorrentFreak reports that, on average, Google gets around 100,000 links reported each hour. And that is twice the amount that the site received around this time last year. The site estimates that next year will see an even more drastic increase in reports.

"Data gathered by TorrentFreak from Google's Transparency Report shows that the number of links reported in DMCA notices has more than doubled compared to last year, and quadrupled in comparison to the year before," writes TorrentFreak on its website. "March 2014 Google was asked to remove roughly six million links per week, growing to eight million in 2015 and a whopping 19 million last week."



Although some of the links reported aren't violating the DMCA, most are. This means that Google stays busy in taking down links pointing to websites related to piracy, but the company still feels that it manages to stay in line with the requests it receives.

"We process more takedown notices, and faster, than any other search engine," Google told TorrentFreak. "We receive notices for a tiny fraction of everything we host and index, which nonetheless amounts to millions of copyright removal requests per week that are processed, on average, in under six hours."

However, the search engine does not go so far as to remove domain names, something most would argue supports censorship, although copyright holders argue that sites that infringe should be barred from Google's index.

One might believe that spending so much time and effort on these takedowns is useless, because it seems that for every copyright-infringing site, two more spring up in its place. Many might see Google's success in taking down links as a sign that the DMCA works, but most would probably just think it's counter-productive to waste so many resources on what is, essentially, a pointless endeavor.

Like Follow Share Tweet Reddit 0 Comments SUBSCRIBE

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GOOGLE ASKED TO REMOVE 558 MILLION "PIRATE" LINKS IN 2015

BY [ERNESTO](#) ON [DECEMBER 30, 2015](#)

C: [92](#)

Copyright holders asked Google to remove more than 560,000,000 allegedly infringing links from its search engine in 2015. The staggering number is an increase of 60% compared to the year before. According to Google the continued surge is a testament that the DMCA takedown process is working, but some copyright holders disagree.

In recent years copyright holders have overloaded Google with DMCA takedown notices, targeting links to pirated content.

The majority of these requests are sent by the music and movie industries, targeting thousands of different websites. In recent years the volume of takedown notices has increased spectacularly and this trend continued in 2015.



Google doesn't report yearly figures, but at TF we processed all the weekly reports and found that the number of URLs submitted by copyright holders last year surpassed the 558 million mark – 558,860,089 at the time of writing.

For the first time ever the number of reported URLs has surpassed half a billion in a 12-month period. This is an increase of 60 percent compared

to last year, when the search engine processed 345 million pirate links.

The majority of the links are being removed from the search results. However, Google sometimes takes “no action” if they are deemed not to be infringing or if they have been taken down previously.

This year most takedown requests were sent for the domains chomikuj.pl, rapidgator.net and uploaded.net, with more than seven million targeted URLs each. The UK Music industry group BPI is the top copyright holder of 2015, good for more than 65 million reported links.

URLs requested to be removed from Search per week



Looking at the totals for this year we further see that 329,469 different domain names were targeted by 27,035 copyright holders. Interestingly, these staggering numbers are interpreted differently by Google and various copyright holders.

A few weeks ago Google [told](#) the U.S. Intellectual Property Enforcement Coordinator that it has taken various measures to help copyright holders, including swift removals.

“We process more takedown notices, and faster, than any other search engine,” the search giant commented.

“We receive notices for a tiny fraction of everything we host and index, which nonetheless amounts to millions of copyright removal requests per week that are processed, on average, in under six hours.”



The company rejects broader actions, such as the removal of entire domain names, as this would prove counterproductive and lead to overbroad censorship.

Many copyright holders, however, don't share these concerns. Over the years groups such as the MPAA and RIAA have repeatedly argued that clearly infringing sites should be [barred](#) from Google's index. In addition, they want Google to make sure that pirated content [stays down](#).

While Google believes that the billion reported URLs are a sign that the DMCA takedown process is working properly, rightsholders see it as a signal of an unbeatable game of whack-a-mole.

As this stalemate continues we can expect the number of reported pages to continue to rise in the future, adding millions of new URLs on a daily basis. Perhaps there will be a billion reported pirate links in 2016?

Tagged in: [2015](#), [DMCA](#), [google](#)

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GOOGLE ASKED TO REMOVE 100,000 'PIRATE LINKS' EVERY HOUR

BY ERNESTO ON MARCH 6, 2016

C: 54

Copyright holders are continuing to increase the number of pirate links they want Google to remove from its search results, which have now reached a record-breaking 100,000 reported URLs per hour. This remarkable milestone is more than double the number of pirated links that were reported around the same time last year.

In recent years copyright holders have overloaded Google with DMCA takedown notices, targeting links to pirated content.

These requests have increased dramatically over the years. In 2008, the search engine received [only a few dozen](#) takedown notices during the entire year, but today it processes two million per day on average.



Data gathered by TorrentFreak from Google's Transparency Report shows that the number of links reported in DMCA notices has more than doubled compared to last year, and quadrupled in comparison to the year before.

March 2014 Google was asked to remove roughly six million links per week, growing to eight million in 2015 and a whopping 19 million last

week.

As an illustration of the sheer volume, this means that Google is now being asked to remove well over 100,000 links to alleged copyright infringing material every hour.

The number of notices continues to increase at a rapid pace and at the current rate the search engine will have to process a billion reported links this year alone. This same milestone previously took well over a decade to reach.

The graph below illustrates this sharp rise in takedown notices.



While not all takedown requests are accurate, the majority of the reported links are. As a result many popular pirate sites are now less visible in Google's search results, since Google [downranks](#) sites for which it receives a high number of takedown requests.

In [a submission](#) to the Intellectual Property Enforcement Coordinator a few months ago Google stated that the continued removal surge doesn't influence its takedown speeds.

"We process more takedown notices, and faster, than any other search engine," the search giant commented.

"We receive notices for a tiny fraction of everything we host and index, which nonetheless amounts to millions of copyright removal requests per

week that are processed, on average, in under six hours.”



The company rejects broader actions, such as the removal of entire domain names, as this would prove counterproductive and lead to overbroad censorship.

Copyright holders, however, don't share these concerns. Over the years groups such as the MPAA and RIAA have repeatedly argued that clearly infringing sites should be barred from Google's index. In addition, they want Google to promote legal services.

While Google believes that the billion reported URLs are a sign that the DMCA takedown process is working properly, rightsholders see it as a signal of an unbeatable game of whack-a-mole.

As this stalemate continues, we can expect the number of reported pages to continue to rise in the future, adding millions of new URLs on a daily basis.

Tagged in: [DMCA](#), [google](#)

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Exhibit DIDP A41



The Internet Corporation for Assigned Names and Numbers

23 June 2015

Thomas Schneider
Chair, ICANN Governmental Advisory Committee

Re: GAC advice re Category 1 Safeguards for New gTLDs

Dear Mr. Schneider:

We understand that there are ongoing discussions within the GAC regarding whether and how the Board New gTLD Program Committee (NGPC) and ICANN have accepted and implemented the GAC's Category 1 Safeguard Advice. To help inform these discussions, we thought it might be helpful to provide the following overview of the NGPC's consideration and ICANN's subsequent implementation of this advice.

In the Beijing Communiqué (April 2013), the GAC [advised](#) the Board that “strings that are linked to regulated or professional sectors should operate in a way that is consistent with applicable laws. These strings are likely to invoke a level of implied trust from consumers, and carry higher levels of risk associated with consumer harm.”

- The GAC detailed five (5) safeguards that should apply to a list of strings linked to these sectors. See Annex 1.
- The GAC also identified three (3) additional targeted safeguards that should apply to a limited subset of strings associated with market sectors with clear and/or regulated entry requirements in multiple jurisdictions. See Annex 2.

On 29 October 2013, the NGPC sent a [letter](#) to the GAC about its proposed implementation of the Category 1 Safeguard advice in the Beijing Communiqué.

- The NGPC proposed to modify the text of the Category 1 Safeguards as appropriate to meet the spirit and intent of the advice in a manner that allowed the requirements to be implemented as Public Interest Commitments (PICs) in Specification 11 of the New gTLD Registry Agreement. See Annex 3.
- The NGPC also proposed additional PICs for strings associated with inherently governmental functions, and strings that have a risk of cyber bullying/harassment. See Annex 4.
- The NGPC also proposed to distinguish the list of strings between those that the NGPC considered to be associated with market sectors or industries that have highly-regulated entry requirements in multiple jurisdictions, and those that do not. The Category 1 Safeguards in the PIC would apply to the TLDs based on how the TLD string was categorized (i.e. the highly-regulated TLDs would have 8 additional PICs, and the others would have 3 additional PICs). See Annex 5.

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In the Buenos Aires Communiqué (November 2013), the GAC reported that, “The GAC welcomed the response of the Board to the GAC’s Beijing Communiqué advice on Category 1 and Category 2 safeguards. The GAC received useful information regarding implementation of the safeguards during its discussions with the New gTLD Program Committee. GAC members asked for clarification of a number of issues regarding Category 2 Safeguards – Restricted Access and look forward to ICANN’s response.”

On 5 February 2014, the NGPC accepted the GAC’s Category 1 Safeguard advice in an iteration of the Scorecard, and directed the President and CEO to implement the advice consistent with the [implementation framework](#) originally sent to the GAC in the NGPC’s 29 October 2013 letter.

I hope this information is helpful. Please let us know if you have any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen Crocker", written in a cursive style.

Dr. Stephen Crocker
Chair, ICANN Board Of Directors

Annex 1

Beijing Communiqué - Safeguards Applicable to Category 1 Strings

1. Registry operators will include in its acceptable use policy that registrants comply with all applicable laws, including those that relate to privacy, data collection, consumer protection (including in relation to misleading and deceptive conduct), fair lending, debt collection, organic farming, disclosure of data, and financial disclosures.
2. Registry operators will require registrars at the time of registration to notify registrants of this requirement.
3. Registry operators will require that registrants who collect and maintain sensitive health and financial data implement reasonable and appropriate security measures commensurate with the offering of those services, as defined by applicable law and recognized industry standards.
4. Establish a working relationship with the relevant regulatory, or industry self-regulatory, bodies, including developing a strategy to mitigate as much as possible the risks of fraudulent, and other illegal, activities.
5. Registrants must be required by the registry operators to notify to them a single point of contact which must be kept up-to-date, for the notification of complaints or reports of registration abuse, as well as the contact details of the relevant regulatory, or industry self-regulatory, bodies in their main place of business.

Annex 2

Beijing Communiqué - Targeted safeguards for a limited subset of Category 1 strings associated with market sectors with clear and/or regulated entry requirements in multiple jurisdictions.

6. At the time of registration, the registry operator must verify and validate the registrants' authorisations, charters, licenses and/or other related credentials for participation in that sector.
7. In case of doubt with regard to the authenticity of licenses or credentials, Registry Operators should consult with relevant national supervisory authorities, or their equivalents.
8. The registry operator must conduct periodic post-registration checks to ensure registrants' validity and compliance with the above requirements in order to ensure they continue to conform to appropriate regulations and licensing requirements and generally conduct their activities in the interests of the consumers they serve.

Annex 3

NGPC Proposal (29 October 2013): Category 1 Safeguards as Public Interest Commitments in Specification 11 of the New gTLD Registry Agreement

1. Registry Operators will include a provision in their Registry-Registrar Agreements that requires registrars to include in their Registration Agreements a provision requiring registrants to comply with all applicable laws, including those that relate to privacy, data collection, consumer protection (including in relation to misleading and deceptive conduct), fair lending, debt collection, organic farming, disclosure of data, and financial disclosures.
2. Registry Operators will include a provision in their Registry-Registrar Agreements that requires registrars at the time of registration to notify registrants of the requirement to comply with all applicable laws.
3. Registry Operators will include a provision in their Registry-Registrar Agreements that requires registrars to include in their Registration Agreements a provision requiring that registrants who collect and maintain sensitive health and financial data implement reasonable and appropriate security measures commensurate with the offering of those services, as defined by applicable law.
4. Registry Operators will proactively create a clear pathway for the creation of a working relationship with the relevant regulatory or industry self-regulatory bodies by publicizing a point of contact and inviting such bodies to establish a channel of communication, including for the purpose of facilitating the development of a strategy to mitigate the risks of fraudulent and other illegal activities.
5. Registry Operators will include a provision in their Registry-Registrar Agreements that requires registrars to include in their Registration Agreements a provision requiring registrants to provide administrative contact information, which must be kept up-to-date, for the notification of complaints or reports of registration abuse, as well as the contact details of the relevant regulatory, or industry self-regulatory, bodies in their main place of business.
6. Registry Operators will include a provision in their Registry-Registrar Agreements that requires registrars to include in their Registration Agreements a provision requiring a representation that the registrant possesses any necessary authorizations, charters, licenses and/or other related credentials for participation in the sector associated with the TLD.
7. If a Registry Operator receives a complaint expressing doubt with regard to the authenticity of licenses or credentials, Registry Operators should consult with relevant national supervisory authorities, or their equivalents regarding the authenticity.

8. Registry Operators will include a provision in their Registry-Registrar Agreements that requires registrars to include in their Registration Agreements a provision requiring registrants to report any material changes to the validity of the registrants' authorizations, charters, licenses and/or other related credentials for participation in the sector associated with the TLD in order to ensure they continue to conform to appropriate regulations and licensing requirements and generally conduct their activities in the interests of the consumers they serve.

Annex 4

NGPC Proposal (29 October 2013): Additional PICs for strings associated with inherently governmental functions, and strings that have a risk of cyber bullying/harassment.

9. Registry Operator will include a provision in its Registry-Registrar Agreements that requires registrars to include in their Registration Agreements a provision requiring a representation that the registrant will take steps to ensure against misrepresenting or falsely implying that the registrant or its business is affiliated with, sponsored or endorsed by one or more country's or government's military forces if such affiliation, sponsorship or endorsement does not exist.
10. Registry Operator will develop and publish registration policies to minimize the risk of cyber bullying and/or harassment.

Annex 5

Regulated Sectors/Open Entry Requirements in Multiple Jurisdictions (Category 1 Safeguards 1-3 applicable)	Highly-regulated Sectors/Closed Entry Requirements in Multiple Jurisdictions (Category 1 Safeguards 1-8 applicable)
Children: .kid, .kids, .kinder, .game, .games, .juegos, .play, .school, .schule, toys	
Environmental: .earth, .eco, .green, .bio, .organic	
Health and Fitness: .care, .diet, .fit, .fitness, .health, .heart, .hiv, .rehab, .clinic, .healthy (IDN Chinese equivalent), .dental, .physio, .healthcare, .med, .organic, .doctor	Health and Fitness: .pharmacy, .surgery, .dentist, .dds, .hospital, .medical
Financial: capital, .cash, .cashbackbonus, .broker, .brokers, .claims, .exchange, .finance, .financial, .forex, .fund, .investments, .lease, .loan, .loans, .market, .markets, .money, .pay, .payu, .retirement, .save, .trading, .credit, .insure, .netbank, .tax, .travelersinsurance, .financialaid, .vermogensberatung, .mortgage, .reit	Financial: .bank, .banque, .creditunion, .creditcard, .insurance, .ira, .lifeinsurance, .mutualfunds, .mutuelle, .vermogensberater, and .versicherung, .autoinsurance, .carinsurance
	Gambling: .bet, .bingo, .lotto, .poker, .spreadbetting, .casino
Charity: .care, .gives, .giving	Charity: .charity (and IDN Chinese equivalent)
Education: .degree, .mba	Education: .university
Intellectual Property: .audio, .book (and IDN equivalent), .broadway, .film, .game, .games, .juegos, .movie, .music, .software, .song, .tunes, .fashion (and IDN equivalent), .video, .app, .art, .author, .band, .beats, .cloud (and IDN equivalent), .data, .design, .digital, .download, .entertainment, .fan, .fans, .free, .gratis, .discount, .sale, .hiphop, .media, .news, .online, .pictures, .radio, .rip, .show, .theater, .theatre, .tour, .tours, .tvs, .video, .zip	
Professional Services: .accountant, .accountants, .architect,	Professional Services: .abogado, .attorney, .cpa, .dentist, .dds, .lawyer,

Regulated Sectors/Open Entry Requirements in Multiple Jurisdictions (Category 1 Safeguards 1-3 applicable)	Highly-regulated Sectors/Closed Entry Requirements in Multiple Jurisdictions (Category 1 Safeguards 1-8 applicable)
.associates, .broker, .brokers, .engineer, .legal, .realtor, .realty, .vet, .engineering, .law	.doctor
Corporate Identifiers: .limited	Corporate Identifiers: .corp, .gmbh, .inc, .llc, .llp, .ltda, .ltd, .sarl, .srl, .sal
Generic Geographic Terms: .capital .town, .city	
.reise, .reisen .weather	

Exhibit DIDP A42



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Copyright, the public interest, and free trade

Submitted by Terry Hart on March 25, 2014



“The public good fully coincides...with the claims of individuals,” wrote James Madison of the Constitution’s Copyright Clause, which secures the exclusive rights of creators. These rights, like any form of private property, serve as the building blocks of a free market, promoting economic growth and individual liberty. Madison’s remarks remain just as true after more than two hundred years. “The issues of authors are intertwined with the interests of the public,” [wrote Register of Copyrights Maria Pallante](#) last year. “As the first beneficiaries of the copyright law, authors are not a counterweight to the public interest but are instead at the very center of the equation.”

Pallante went on to note that “A law that does not provide for authors would be illogical—hardly a copyright law at all. And it would not deserve the respect of the public.”

Copyright benefits the public by creating a marketplace for creative and expressive works. This marketplace currently contributes [over \\$1 trillion a year to U.S. GDP](#), directly employs 5.4 million people (with average wages 33% higher than national average), and generates \$141 billion in exports. The existence of this marketplace further incentivizes the creation and dissemination of works which promote the progress of art, science, culture, and knowledge.

Consumers experience this benefit firsthand. Millions of consumers are able to enjoy films, music, books, and other creative works on numerous platforms that did not exist even a decade ago. Today, for example, there are over [70 online platforms for watching films and television shows](#), over [450 licensed online platforms for music](#) worldwide, and [countless others](#) for accessing other types of works. The public benefit is not limited to entertainment markets. Scholarly publishers, for example, have [invested hundreds of millions of dollars](#) to “create, publish, distribute and maintain scholarly articles on the Internet and in other digital formats”, making these works more accessible to the public and other scholars.

The public benefits of a robust copyright system are not solely economic. Copyright protects human rights. Article 27 of the [Universal Declaration of Human Rights](#) (UDHR), adopted in 1948 by the UN General Assembly, states:

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Copyright also advances free speech values. The [Supreme Court has said](#), “the Framers intended copyright itself to be the engine of free expression. By establishing a marketable right to the use of one’s expression, copyright supplies the economic incentive to create and disseminate ideas.” Indeed, creators and the creative communities are on the front lines defending their—and by extension everyone’s—right to free expression.

The strong economic, noneconomic, and cultural contributions of copyright make it a vital and necessary component of trade policy. As with any policy issue, there are other interests at play, but it is important to include copyright’s public interest in the conversation to see the entire picture. That is why today the Copyright Alliance filed a comment to the US Trade Advisory Committee making these points regarding the [creation of a new Public Interest Trade Advisory Committee](#). The U.S. has recognized since its very beginning that a robust copyright system engenders tremendous public benefit. The inclusion of those who could speak to this inherent public benefit of copyright on PITAC would improve the trade policy advice sought by the USTR, particularly if it comes from representatives of a diverse array of creators, who generate this public benefit through the creation and dissemination of new, expressive works.

[Copyright Alliance USTR PITAC Comment](#)

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Exhibit DIDP A43

Universal Declaration of Human Rights

Preamble

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, therefore,

The General Assembly,

Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by

teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3

Everyone has the right to life, liberty and security of person.

Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6

Everyone has the right to recognition everywhere as a person before the law.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier

penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13

1. Everyone has the right to freedom of movement and residence within the borders of each State.
2. Everyone has the right to leave any country, including his own, and to return to his country.

Article 14

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.
2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15

1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17

1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20

1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.

Article 21

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right to equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
3. Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.
2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

Exhibit DIDP A44



GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS



Implementing
the United Nations
"Protect, Respect and
Remedy" Framework



UNITED NATIONS



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

**Implementing
the United Nations
“Protect, Respect and
Remedy” Framework**



UNITED NATIONS

New York and Geneva, 2011



**UNITED NATIONS
HUMAN RIGHTS**
OFFICE OF THE HIGH COMMISSIONER

Note

The designations employed and the presentation of the material in this publication do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations concerning the legal status of any country, territory, city or area, or of its authorities, or concerning the delimitation of its frontiers or boundaries.

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This publication contains the "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework", which were developed by the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises. The Special Representative annexed the Guiding Principles to his final report to the Human Rights Council (A/HRC/17/31), which also includes an introduction to the Guiding Principles and an overview of the process that led to their development.

The Human Rights Council endorsed the Guiding Principles in its resolution 17/4 of 16 June 2011.

GENERAL PRINCIPLES

These Guiding Principles are grounded in recognition of:

- (a) States' existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- (b) The role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights;
- (c) The need for rights and obligations to be matched to appropriate and effective remedies when breached.

These Guiding Principles apply to all States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure.

These Guiding Principles should be understood as a coherent whole and should be read, individually and collectively, in terms of their objective of enhancing standards and practices with regard to business and human rights so as to achieve tangible results for affected individuals and communities, and thereby also contributing to a socially sustainable globalization.

Nothing in these Guiding Principles should be read as creating new international law obligations, or as limiting or undermining any legal obligations a State may have undertaken or be subject to under international law with regard to human rights.

These Guiding Principles should be implemented in a non-discriminatory manner, with particular attention to the rights and needs of, as well as the challenges faced by, individuals from groups or populations that may be at heightened risk of becoming vulnerable or marginalized, and with due regard to the different risks that may be faced by women and men.

I. THE STATE DUTY TO PROTECT HUMAN RIGHTS

A. FOUNDATIONAL PRINCIPLES

1. **States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.**

Commentary

States' international human rights law obligations require that they respect, protect and fulfil the human rights of individuals within their territory and/or jurisdiction. This includes the duty to protect against human rights abuse by third parties, including business enterprises.

The State duty to protect is a standard of conduct. Therefore, States are not per se responsible for human rights abuse by private actors. However, States may breach their international human rights law obligations where such abuse can be attributed to them, or where they fail to take appropriate steps to prevent, investigate, punish and redress private actors' abuse. While States generally have discretion in deciding upon these steps, they should consider the full range of permissible preventative and remedial measures, including policies, legislation, regulations and adjudication. States also have the duty to protect and promote the rule of law, including by taking measures to ensure equality before the law, fairness in its application, and by providing for adequate accountability, legal certainty, and procedural and legal transparency.

This chapter focuses on preventative measures while chapter III outlines remedial measures.

2. **States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.**

Commentary

At present States are not generally required under international human rights law to regulate the extraterritorial activities of businesses domiciled in their

territory and/or jurisdiction. Nor are they generally prohibited from doing so, provided there is a recognized jurisdictional basis. Within these parameters some human rights treaty bodies recommend that home States take steps to prevent abuse abroad by business enterprises within their jurisdiction.

There are strong policy reasons for home States to set out clearly the expectation that businesses respect human rights abroad, especially where the State itself is involved in or supports those businesses. The reasons include ensuring predictability for business enterprises by providing coherent and consistent messages, and preserving the State's own reputation.

States have adopted a range of approaches in this regard. Some are domestic measures with extraterritorial implications. Examples include requirements on "parent" companies to report on the global operations of the entire enterprise; multilateral soft-law instruments such as the Guidelines for Multinational Enterprises of the Organisation for Economic Co-operation and Development; and performance standards required by institutions that support overseas investments. Other approaches amount to direct extraterritorial legislation and enforcement. This includes criminal regimes that allow for prosecutions based on the nationality of the perpetrator no matter where the offence occurs. Various factors may contribute to the perceived and actual reasonableness of States' actions, for example whether they are grounded in multilateral agreement.

B. OPERATIONAL PRINCIPLES

GENERAL STATE REGULATORY AND POLICY FUNCTIONS

3. In meeting their duty to protect, States should:

- (a) Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps;**
- (b) Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights;**
- (c) Provide effective guidance to business enterprises on how to respect human rights throughout their operations;**
- (d) Encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts.**

Commentary

States should not assume that businesses invariably prefer, or benefit from, State inaction, and they should consider a smart mix of measures – national and international, mandatory and voluntary – to foster business respect for human rights.

The failure to enforce existing laws that directly or indirectly regulate business respect for human rights is often a significant legal gap in State practice. Such laws might range from non-discrimination and labour laws to environmental, property, privacy and anti-bribery laws. Therefore, it is important for States to consider whether such laws are currently being enforced effectively, and if not, why this is the case and what measures may reasonably correct the situation.

It is equally important for States to review whether these laws provide the necessary coverage in light of evolving circumstances and whether, together with relevant policies, they provide an environment conducive to business respect for human rights. For example, greater clarity in some areas of law and policy, such as those governing access to land, including entitlements in relation to ownership or use of land, is often necessary to protect both rights-holders and business enterprises.

Laws and policies that govern the creation and ongoing operation of business enterprises, such as corporate and securities laws, directly shape business behaviour. Yet their implications for human rights remain poorly understood. For example, there is a lack of clarity in corporate and securities law regarding what companies and their officers are permitted, let alone required, to do regarding human rights. Laws and policies in this area should provide sufficient guidance to enable enterprises to respect human rights, with due regard to the role of existing governance structures such as corporate boards.

Guidance to business enterprises on respecting human rights should indicate expected outcomes and help share best practices. It should advise on appropriate methods, including human rights due diligence, and how to consider effectively issues of gender, vulnerability and/or marginalization, recognizing the specific challenges that may be faced by indigenous peoples, women, national or ethnic minorities, religious and linguistic

minorities, children, persons with disabilities, and migrant workers and their families.

National human rights institutions that comply with the Paris Principles have an important role to play in helping States identify whether relevant laws are aligned with their human rights obligations and are being effectively enforced, and in providing guidance on human rights also to business enterprises and other non-State actors.

Communication by business enterprises on how they address their human rights impacts can range from informal engagement with affected stakeholders to formal public reporting. State encouragement of, or where appropriate requirements for, such communication are important in fostering respect for human rights by business enterprises. Incentives to communicate adequate information could include provisions to give weight to such self-reporting in the event of any judicial or administrative proceeding. A requirement to communicate can be particularly appropriate where the nature of business operations or operating contexts pose a significant risk to human rights. Policies or laws in this area can usefully clarify what and how businesses should communicate, helping to ensure both the accessibility and accuracy of communications.

Any stipulation of what would constitute adequate communication should take into account risks that it may pose to the safety and security of individuals and facilities; legitimate requirements of commercial confidentiality; and variations in companies' size and structures.

Financial reporting requirements should clarify that human rights impacts in some instances may be "material" or "significant" to the economic performance of the business enterprise.

THE STATE-BUSINESS NEXUS

- 4. States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence.**

Commentary

States individually are the primary duty-bearers under international human rights law, and collectively they are the trustees of the international human rights regime. Where a business enterprise is controlled by the State or where its acts can be attributed otherwise to the State, an abuse of human rights by the business enterprise may entail a violation of the State's own international law obligations. Moreover, the closer a business enterprise is to the State, or the more it relies on statutory authority or taxpayer support, the stronger the State's policy rationale becomes for ensuring that the enterprise respects human rights.

Where States own or control business enterprises, they have greatest means within their powers to ensure that relevant policies, legislation and regulations regarding respect for human rights are implemented. Senior management typically reports to State agencies, and associated government departments have greater scope for scrutiny and oversight, including ensuring that effective human rights due diligence is implemented. (These enterprises are also subject to the corporate responsibility to respect human rights, addressed in chapter II.)

A range of agencies linked formally or informally to the State may provide support and services to business activities. These include export credit agencies, official investment insurance or guarantee agencies, development agencies and development finance institutions. Where these agencies do not explicitly consider the actual and potential adverse impacts on human rights of beneficiary enterprises, they put themselves at risk – in reputational, financial, political and potentially legal terms – for supporting any such harm, and they may add to the human rights challenges faced by the recipient State.

Given these risks, States should encourage and, where appropriate, require human rights due diligence by the agencies themselves and by those business enterprises or projects receiving their support. A requirement for human rights due diligence is most likely to be appropriate where the nature of business operations or operating contexts pose significant risk to human rights.

- 5. States should exercise adequate oversight in order to meet their international human rights obligations when they contract with, or legislate for, business enterprises to provide services that may impact upon the enjoyment of human rights.**

Commentary

States do not relinquish their international human rights law obligations when they privatize the delivery of services that may impact upon the enjoyment of human rights. Failure by States to ensure that business enterprises performing such services operate in a manner consistent with the State's human rights obligations may entail both reputational and legal consequences for the State itself. As a necessary step, the relevant service contracts or enabling legislation should clarify the State's expectations that these enterprises respect human rights. States should ensure that they can effectively oversee the enterprises' activities, including through the provision of adequate independent monitoring and accountability mechanisms.

- 6. States should promote respect for human rights by business enterprises with which they conduct commercial transactions.**

Commentary

States conduct a variety of commercial transactions with business enterprises, not least through their procurement activities. This provides States – individually and collectively – with unique opportunities to promote awareness of and respect for human rights by those enterprises, including through the terms of contracts, with due regard to States' relevant obligations under national and international law.

SUPPORTING BUSINESS RESPECT FOR HUMAN RIGHTS IN CONFLICT-AFFECTED AREAS

- 7. Because the risk of gross human rights abuses is heightened in conflict-affected areas, States should help ensure that business enterprises operating in those contexts are not involved with such abuses, including by:**
- (a) Engaging at the earliest stage possible with business enterprises to help them identify, prevent and mitigate the human rights-related risks of their activities and business relationships;**

- (b) Providing adequate assistance to business enterprises to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence;**
- (c) Denying access to public support and services for a business enterprise that is involved with gross human rights abuses and refuses to cooperate in addressing the situation;**
- (d) Ensuring that their current policies, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses.**

Commentary

Some of the worst human rights abuses involving business occur amid conflict over the control of territory, resources or a Government itself – where the human rights regime cannot be expected to function as intended. Responsible businesses increasingly seek guidance from States about how to avoid contributing to human rights harm in these difficult contexts. Innovative and practical approaches are needed. In particular, it is important to pay attention to the risk of sexual and gender-based violence, which is especially prevalent during times of conflict.

It is important for all States to address issues early before situations on the ground deteriorate. In conflict-affected areas, the “host” State may be unable to protect human rights adequately due to a lack of effective control. Where transnational corporations are involved, their “home” States therefore have roles to play in assisting both those corporations and host States to ensure that businesses are not involved with human rights abuse, while neighboring States can provide important additional support.

To achieve greater policy coherence and assist business enterprises adequately in such situations, home States should foster closer cooperation among their development assistance agencies, foreign and trade ministries, and export finance institutions in their capitals and within their embassies, as well as between these agencies and host Government actors; develop early-warning indicators to alert government agencies and business enterprises to problems; and attach appropriate consequences to any failure by enterprises to cooperate in these contexts, including by denying or withdrawing existing public support or services, or where that is not possible, denying their future provision.

States should warn business enterprises of the heightened risk of being involved with gross abuses of human rights in conflict-affected areas. They should review whether their policies, legislation, regulations and enforcement measures effectively address this heightened risk, including through provisions for human rights due diligence by business. Where they identify gaps, States should take appropriate steps to address them. This may include exploring civil, administrative or criminal liability for enterprises domiciled or operating in their territory and/or jurisdiction that commit or contribute to gross human rights abuses. Moreover, States should consider multilateral approaches to prevent and address such acts, as well as support effective collective initiatives.

All these measures are in addition to States' obligations under international humanitarian law in situations of armed conflict, and under international criminal law.

ENSURING POLICY COHERENCE

- 8. States should ensure that governmental departments, agencies and other State-based institutions that shape business practices are aware of and observe the State's human rights obligations when fulfilling their respective mandates, including by providing them with relevant information, training and support.**

Commentary

There is no inevitable tension between States' human rights obligations and the laws and policies they put in place that shape business practices. However, at times, States have to make difficult balancing decisions to reconcile different societal needs. To achieve the appropriate balance, States need to take a broad approach to managing the business and human rights agenda, aimed at ensuring both vertical and horizontal domestic policy coherence.

Vertical policy coherence entails States having the necessary policies, laws and processes to implement their international human rights law obligations. Horizontal policy coherence means supporting and equipping departments and agencies, at both the national and subnational levels, that shape business practices – including those responsible for corporate law

and securities regulation, investment, export credit and insurance, trade and labour – to be informed of and act in a manner compatible with the Governments’ human rights obligations.

- 9. States should maintain adequate domestic policy space to meet their human rights obligations when pursuing business-related policy objectives with other States or business enterprises, for instance through investment treaties or contracts.**

Commentary

Economic agreements concluded by States, either with other States or with business enterprises – such as bilateral investment treaties, free-trade agreements or contracts for investment projects – create economic opportunities for States. But they can also affect the domestic policy space of Governments. For example, the terms of international investment agreements may constrain States from fully implementing new human rights legislation, or put them at risk of binding international arbitration if they do so. Therefore, States should ensure that they retain adequate policy and regulatory ability to protect human rights under the terms of such agreements, while providing the necessary investor protection.

- 10. States, when acting as members of multilateral institutions that deal with business-related issues, should:**
- (a) Seek to ensure that those institutions neither restrain the ability of their member States to meet their duty to protect nor hinder business enterprises from respecting human rights;**
 - (b) Encourage those institutions, within their respective mandates and capacities, to promote business respect for human rights and, where requested, to help States meet their duty to protect against human rights abuse by business enterprises, including through technical assistance, capacity-building and awareness-raising;**
 - (c) Draw on these Guiding Principles to promote shared understanding and advance international cooperation in the management of business and human rights challenges.**

Commentary

Greater policy coherence is also needed at the international level, including where States participate in multilateral institutions that deal with business-related issues, such as international trade and financial institutions. States retain their international human rights law obligations when they participate in such institutions.

Capacity-building and awareness-raising through such institutions can play a vital role in helping all States to fulfil their duty to protect, including by enabling the sharing of information about challenges and best practices, thus promoting more consistent approaches.

Collective action through multilateral institutions can help States level the playing field with regard to business respect for human rights, but it should do so by raising the performance of laggards. Cooperation between States, multilateral institutions and other stakeholders can also play an important role. These Guiding Principles provide a common reference point in this regard, and could serve as a useful basis for building a cumulative positive effect that takes into account the respective roles and responsibilities of all relevant stakeholders.

II. THE CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS

A. FOUNDATIONAL PRINCIPLES

- 11. Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.**

Commentary

The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States' abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights.

Addressing adverse human rights impacts requires taking adequate measures for their prevention, mitigation and, where appropriate, remediation.

Business enterprises may undertake other commitments or activities to support and promote human rights, which may contribute to the enjoyment of rights. But this does not offset a failure to respect human rights throughout their operations.

Business enterprises should not undermine States' abilities to meet their own human rights obligations, including by actions that might weaken the integrity of judicial processes.

- 12. The responsibility of business enterprises to respect human rights refers to internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work.**

Commentary

Because business enterprises can have an impact on virtually the entire spectrum of internationally recognized human rights, their responsibility to

respect applies to all such rights. In practice, some human rights may be at greater risk than others in particular industries or contexts, and therefore will be the focus of heightened attention. However, situations may change, so all human rights should be the subject of periodic review.

An authoritative list of the core internationally recognized human rights is contained in the International Bill of Human Rights (consisting of the Universal Declaration of Human Rights and the main instruments through which it has been codified: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights), coupled with the principles concerning fundamental rights in the eight ILO core conventions as set out in the Declaration on Fundamental Principles and Rights at Work. These are the benchmarks against which other social actors assess the human rights impacts of business enterprises. The responsibility of business enterprises to respect human rights is distinct from issues of legal liability and enforcement, which remain defined largely by national law provisions in relevant jurisdictions.

Depending on circumstances, business enterprises may need to consider additional standards. For instance, enterprises should respect the human rights of individuals belonging to specific groups or populations that require particular attention, where they may have adverse human rights impacts on them. In this connection, United Nations instruments have elaborated further on the rights of indigenous peoples; women; national or ethnic, religious and linguistic minorities; children; persons with disabilities; and migrant workers and their families. Moreover, in situations of armed conflict enterprises should respect the standards of international humanitarian law.

13. The responsibility to respect human rights requires that business enterprises:

- (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;**
- (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.**

Commentary

Business enterprises may be involved with adverse human rights impacts either through their own activities or as a result of their business relationships with other parties. Guiding Principle 19 elaborates further on the implications for how business enterprises should address these situations. For the purpose of these Guiding Principles a business enterprise's "activities" are understood to include both actions and omissions; and its "business relationships" are understood to include relationships with business partners, entities in its value chain, and any other non-State or State entity directly linked to its business operations, products or services.

- 14. The responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure. Nevertheless, the scale and complexity of the means through which enterprises meet that responsibility may vary according to these factors and with the severity of the enterprise's adverse human rights impacts.**

Commentary

The means through which a business enterprise meets its responsibility to respect human rights will be proportional to, among other factors, its size. Small and medium-sized enterprises may have less capacity as well as more informal processes and management structures than larger companies, so their respective policies and processes will take on different forms. But some small and medium-sized enterprises can have severe human rights impacts, which will require corresponding measures regardless of their size. Severity of impacts will be judged by their scale, scope and irremediable character. The means through which a business enterprise meets its responsibility to respect human rights may also vary depending on whether, and the extent to which, it conducts business through a corporate group or individually. However, the responsibility to respect human rights applies fully and equally to all business enterprises.

- 15. In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including:**

- (a) A policy commitment to meet their responsibility to respect human rights;
- (b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;
- (c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.

Commentary

Business enterprises need to know and show that they respect human rights. They cannot do so unless they have certain policies and processes in place. Principles 16 to 24 elaborate further on these.

B. OPERATIONAL PRINCIPLES

POLICY COMMITMENT

- 16. As the basis for embedding their responsibility to respect human rights, business enterprises should express their commitment to meet this responsibility through a statement of policy that:**
- (a) Is approved at the most senior level of the business enterprise;
 - (b) Is informed by relevant internal and/or external expertise;
 - (c) Stipulates the enterprise's human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services;
 - (d) Is publicly available and communicated internally and externally to all personnel, business partners and other relevant parties;
 - (e) Is reflected in operational policies and procedures necessary to embed it throughout the business enterprise.

Commentary

The term "statement" is used generically, to describe whatever means an enterprise employs to set out publicly its responsibilities, commitments, and expectations.

The level of expertise required to ensure that the policy statement is adequately informed will vary according to the complexity of the business enterprise's

operations. Expertise can be drawn from various sources, ranging from credible online or written resources to consultation with recognized experts. The statement of commitment should be publicly available. It should be communicated actively to entities with which the enterprise has contractual relationships; others directly linked to its operations, which may include State security forces; investors; and, in the case of operations with significant human rights risks, to the potentially affected stakeholders.

Internal communication of the statement and of related policies and procedures should make clear what the lines and systems of accountability will be, and should be supported by any necessary training for personnel in relevant business functions.

Just as States should work towards policy coherence, so business enterprises need to strive for coherence between their responsibility to respect human rights and policies and procedures that govern their wider business activities and relationships. This should include, for example, policies and procedures that set financial and other performance incentives for personnel; procurement practices; and lobbying activities where human rights are at stake.

Through these and any other appropriate means, the policy statement should be embedded from the top of the business enterprise through all its functions, which otherwise may act without awareness or regard for human rights.

HUMAN RIGHTS DUE DILIGENCE

17. In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. Human rights due diligence:

- (a) Should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships;**

- (b) Will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations;**
- (c) Should be ongoing, recognizing that the human rights risks may change over time as the business enterprise's operations and operating context evolve.**

Commentary

This Principle defines the parameters for human rights due diligence, while Principles 18 through 21 elaborate its essential components.

Human rights risks are understood to be the business enterprise's potential adverse human rights impacts. Potential impacts should be addressed through prevention or mitigation, while actual impacts – those that have already occurred – should be a subject for remediation (Principle 22).

Human rights due diligence can be included within broader enterprise risk-management systems, provided that it goes beyond simply identifying and managing material risks to the company itself, to include risks to rights-holders.

Human rights due diligence should be initiated as early as possible in the development of a new activity or relationship, given that human rights risks can be increased or mitigated already at the stage of structuring contracts or other agreements, and may be inherited through mergers or acquisitions.

Where business enterprises have large numbers of entities in their value chains it may be unreasonably difficult to conduct due diligence for adverse human rights impacts across them all. If so, business enterprises should identify general areas where the risk of adverse human rights impacts is most significant, whether due to certain suppliers' or clients' operating context, the particular operations, products or services involved, or other relevant considerations, and prioritize these for human rights due diligence.

Questions of complicity may arise when a business enterprise contributes to, or is seen as contributing to, adverse human rights impacts caused by other parties. Complicity has both non-legal and legal meanings. As a non-legal matter, business enterprises may be perceived as being "complicit" in the acts of another party where, for example, they are seen to benefit from an abuse committed by that party.

As a legal matter, most national jurisdictions prohibit complicity in the commission of a crime, and a number allow for criminal liability of business enterprises in such cases. Typically, civil actions can also be based on an enterprise's alleged contribution to a harm, although these may not be framed in human rights terms. The weight of international criminal law jurisprudence indicates that the relevant standard for aiding and abetting is knowingly providing practical assistance or encouragement that has a substantial effect on the commission of a crime.

Conducting appropriate human rights due diligence should help business enterprises address the risk of legal claims against them by showing that they took every reasonable step to avoid involvement with an alleged human rights abuse. However, business enterprises conducting such due diligence should not assume that, by itself, this will automatically and fully absolve them from liability for causing or contributing to human rights abuses.

18. In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. This process should:

- (a) Draw on internal and/or independent external human rights expertise;**
- (b) Involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation.**

Commentary

The initial step in conducting human rights due diligence is to identify and assess the nature of the actual and potential adverse human rights impacts with which a business enterprise may be involved. The purpose is to understand the specific impacts on specific people, given a specific context of operations. Typically this includes assessing the human rights context prior to a proposed business activity, where possible; identifying who may be affected; cataloguing the relevant human rights standards and issues; and projecting how the proposed activity and associated business relationships could have adverse human rights impacts on those identified.

In this process, business enterprises should pay special attention to any particular human rights impacts on individuals from groups or populations that may be at heightened risk of vulnerability or marginalization, and bear in mind the different risks that may be faced by women and men.

While processes for assessing human rights impacts can be incorporated within other processes such as risk assessments or environmental and social impact assessments, they should include all internationally recognized human rights as a reference point, since enterprises may potentially impact virtually any of these rights.

Because human rights situations are dynamic, assessments of human rights impacts should be undertaken at regular intervals: prior to a new activity or relationship; prior to major decisions or changes in the operation (e.g. market entry, product launch, policy change, or wider changes to the business); in response to or anticipation of changes in the operating environment (e.g. rising social tensions); and periodically throughout the life of an activity or relationship.

To enable business enterprises to assess their human rights impacts accurately, they should seek to understand the concerns of potentially affected stakeholders by consulting them directly in a manner that takes into account language and other potential barriers to effective engagement. In situations where such consultation is not possible, business enterprises should consider reasonable alternatives such as consulting credible, independent expert resources, including human rights defenders and others from civil society.

The assessment of human rights impacts informs subsequent steps in the human rights due diligence process.

19. In order to prevent and mitigate adverse human rights impacts, business enterprises should integrate the findings from their impact assessments across relevant internal functions and processes, and take appropriate action.

- (a) Effective integration requires that:**
 - (i) Responsibility for addressing such impacts is assigned to the appropriate level and function within the business enterprise;**

(ii) Internal decision-making, budget allocations and oversight processes enable effective responses to such impacts.

(b) Appropriate action will vary according to:

(i) Whether the business enterprise causes or contributes to an adverse impact, or whether it is involved solely because the impact is directly linked to its operations, products or services by a business relationship;

(ii) The extent of its leverage in addressing the adverse impact.

Commentary

The horizontal integration across the business enterprise of specific findings from assessing human rights impacts can only be effective if its human rights policy commitment has been embedded into all relevant business functions. This is required to ensure that the assessment findings are properly understood, given due weight, and acted upon.

In assessing human rights impacts, business enterprises will have looked for both actual and potential adverse impacts. Potential impacts should be prevented or mitigated through the horizontal integration of findings across the business enterprise, while actual impacts—those that have already occurred – should be a subject for remediation (Principle 22).

Where a business enterprise causes or may cause an adverse human rights impact, it should take the necessary steps to cease or prevent the impact.

Where a business enterprise contributes or may contribute to an adverse human rights impact, it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impact to the greatest extent possible. Leverage is considered to exist where the enterprise has the ability to effect change in the wrongful practices of an entity that causes a harm.

Where a business enterprise has not contributed to an adverse human rights impact, but that impact is nevertheless directly linked to its operations, products or services by its business relationship with another entity, the situation is more complex. Among the factors that will enter into the determination of the appropriate action in such situations are the

enterprise's leverage over the entity concerned, how crucial the relationship is to the enterprise, the severity of the abuse, and whether terminating the relationship with the entity itself would have adverse human rights consequences.

The more complex the situation and its implications for human rights, the stronger is the case for the enterprise to draw on independent expert advice in deciding how to respond.

If the business enterprise has leverage to prevent or mitigate the adverse impact, it should exercise it. And if it lacks leverage there may be ways for the enterprise to increase it. Leverage may be increased by, for example, offering capacity-building or other incentives to the related entity, or collaborating with other actors.

There are situations in which the enterprise lacks the leverage to prevent or mitigate adverse impacts and is unable to increase its leverage. Here, the enterprise should consider ending the relationship, taking into account credible assessments of potential adverse human rights impacts of doing so.

Where the relationship is "crucial" to the enterprise, ending it raises further challenges. A relationship could be deemed as crucial if it provides a product or service that is essential to the enterprise's business, and for which no reasonable alternative source exists. Here the severity of the adverse human rights impact must also be considered: the more severe the abuse, the more quickly the enterprise will need to see change before it takes a decision on whether it should end the relationship. In any case, for as long as the abuse continues and the enterprise remains in the relationship, it should be able to demonstrate its own ongoing efforts to mitigate the impact and be prepared to accept any consequences – reputational, financial or legal – of the continuing connection.

20. In order to verify whether adverse human rights impacts are being addressed, business enterprises should track the effectiveness of their response. Tracking should:

- (a) Be based on appropriate qualitative and quantitative indicators;**
- (b) Draw on feedback from both internal and external sources, including affected stakeholders.**

Commentary

Tracking is necessary in order for a business enterprise to know if its human rights policies are being implemented optimally, whether it has responded effectively to the identified human rights impacts, and to drive continuous improvement.

Business enterprises should make particular efforts to track the effectiveness of their responses to impacts on individuals from groups or populations that may be at heightened risk of vulnerability or marginalization.

Tracking should be integrated into relevant internal reporting processes. Business enterprises might employ tools they already use in relation to other issues. This could include performance contracts and reviews as well as surveys and audits, using gender-disaggregated data where relevant. Operational-level grievance mechanisms can also provide important feedback on the effectiveness of the business enterprise's human rights due diligence from those directly affected (see Principle 29).

21. In order to account for how they address their human rights impacts, business enterprises should be prepared to communicate this externally, particularly when concerns are raised by or on behalf of affected stakeholders. Business enterprises whose operations or operating contexts pose risks of severe human rights impacts should report formally on how they address them. In all instances, communications should:

- (a) Be of a form and frequency that reflect an enterprise's human rights impacts and that are accessible to its intended audiences;**
- (b) Provide information that is sufficient to evaluate the adequacy of an enterprise's response to the particular human rights impact involved;**
- (c) In turn not pose risks to affected stakeholders, personnel or to legitimate requirements of commercial confidentiality.**

Commentary

The responsibility to respect human rights requires that business enterprises have in place policies and processes through which they can both know

and show that they respect human rights in practice. Showing involves communication, providing a measure of transparency and accountability to individuals or groups who may be impacted and to other relevant stakeholders, including investors.

Communication can take a variety of forms, including in-person meetings, online dialogues, consultation with affected stakeholders, and formal public reports. Formal reporting is itself evolving, from traditional annual reports and corporate responsibility/sustainability reports, to include online updates and integrated financial and non-financial reports.

Formal reporting by enterprises is expected where risks of severe human rights impacts exist, whether this is due to the nature of the business operations or operating contexts. The reporting should cover topics and indicators concerning how enterprises identify and address adverse impacts on human rights. Independent verification of human rights reporting can strengthen its content and credibility. Sector-specific indicators can provide helpful additional detail.

REMEDATION

22. Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes.

Commentary

Even with the best policies and practices, a business enterprise may cause or contribute to an adverse human rights impact that it has not foreseen or been able to prevent.

Where a business enterprise identifies such a situation, whether through its human rights due diligence process or other means, its responsibility to respect human rights requires active engagement in remediation, by itself or in cooperation with other actors. Operational-level grievance mechanisms for those potentially impacted by the business enterprise's activities can be one effective means of enabling remediation when they meet certain core criteria, as set out in Principle 31.

Where adverse impacts have occurred that the business enterprise has not caused or contributed to, but which are directly linked to its operations,

products or services by a business relationship, the responsibility to respect human rights does not require that the enterprise itself provide for remediation, though it may take a role in doing so.

Some situations, in particular where crimes are alleged, typically will require cooperation with judicial mechanisms.

Further guidance on mechanisms through which remediation may be sought, including where allegations of adverse human rights impacts are contested, is included in chapter III on access to remedy.

ISSUES OF CONTEXT

23. In all contexts, business enterprises should:

- (a) Comply with all applicable laws and respect internationally recognized human rights, wherever they operate;**
- (b) Seek ways to honour the principles of internationally recognized human rights when faced with conflicting requirements;**
- (c) Treat the risk of causing or contributing to gross human rights abuses as a legal compliance issue wherever they operate.**

Commentary

Although particular country and local contexts may affect the human rights risks of an enterprise's activities and business relationships, all business enterprises have the same responsibility to respect human rights wherever they operate. Where the domestic context renders it impossible to meet this responsibility fully, business enterprises are expected to respect the principles of internationally recognized human rights to the greatest extent possible in the circumstances, and to be able to demonstrate their efforts in this regard.

Some operating environments, such as conflict-affected areas, may increase the risks of enterprises being complicit in gross human rights abuses committed by other actors (security forces, for example). Business enterprises should treat this risk as a legal compliance issue, given the expanding web of potential corporate legal liability arising from extraterritorial civil claims, and from the incorporation of the provisions of the Rome Statute of the International Criminal Court in jurisdictions that provide for corporate

criminal responsibility. In addition, corporate directors, officers and employees may be subject to individual liability for acts that amount to gross human rights abuses.

In complex contexts such as these, business enterprises should ensure that they do not exacerbate the situation. In assessing how best to respond, they will often be well advised to draw on not only expertise and cross-functional consultation within the enterprise, but also to consult externally with credible, independent experts, including from Governments, civil society, national human rights institutions and relevant multi-stakeholder initiatives.

24. Where it is necessary to prioritize actions to address actual and potential adverse human rights impacts, business enterprises should first seek to prevent and mitigate those that are most severe or where delayed response would make them irremediable.

Commentary

While business enterprises should address all their adverse human rights impacts, it may not always be possible to address them simultaneously. In the absence of specific legal guidance, if prioritization is necessary business enterprises should begin with those human rights impacts that would be most severe, recognizing that a delayed response may affect remediability. Severity is not an absolute concept in this context, but is relative to the other human rights impacts the business enterprise has identified.

III. ACCESS TO REMEDY

A. FOUNDATIONAL PRINCIPLE

- 25. As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.**

Commentary

Unless States take appropriate steps to investigate, punish and redress business-related human rights abuses when they do occur, the State duty to protect can be rendered weak or even meaningless.

Access to effective remedy has both procedural and substantive aspects. The remedies provided by the grievance mechanisms discussed in this section may take a range of substantive forms the aim of which, generally speaking, will be to counteract or make good any human rights harms that have occurred. Remedy may include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition. Procedures for the provision of remedy should be impartial, protected from corruption and free from political or other attempts to influence the outcome.

For the purpose of these Guiding Principles, a grievance is understood to be a perceived injustice evoking an individual's or a group's sense of entitlement, which may be based on law, contract, explicit or implicit promises, customary practice, or general notions of fairness of aggrieved communities. The term grievance mechanism is used to indicate any routinized, State-based or non-State-based, judicial or non-judicial process through which grievances concerning business-related human rights abuse can be raised and remedy can be sought.

State-based grievance mechanisms may be administered by a branch or agency of the State, or by an independent body on a statutory or constitutional basis. They may be judicial or non-judicial. In some

mechanisms, those affected are directly involved in seeking remedy; in others, an intermediary seeks remedy on their behalf. Examples include the courts (for both criminal and civil actions), labour tribunals, national human rights institutions, National Contact Points under the Guidelines for Multinational Enterprises of the Organisation for Economic Co-operation and Development, many ombudsperson offices, and Government-run complaints offices.

Ensuring access to remedy for business-related human rights abuses requires also that States facilitate public awareness and understanding of these mechanisms, how they can be accessed, and any support (financial or expert) for doing so.

State-based judicial and non-judicial grievance mechanisms should form the foundation of a wider system of remedy. Within such a system, operational-level grievance mechanisms can provide early stage recourse and resolution. State-based and operational-level mechanisms, in turn, can be supplemented or enhanced by the remedial functions of collaborative initiatives as well as those of international and regional human rights mechanisms. Further guidance with regard to these mechanisms is provided in Guiding Principles 26 to 31.

B. OPERATIONAL PRINCIPLES

STATE-BASED JUDICIAL MECHANISMS

26. States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy.

Commentary

Effective judicial mechanisms are at the core of ensuring access to remedy. Their ability to address business-related human rights abuses depends on their impartiality, integrity and ability to accord due process.

States should ensure that they do not erect barriers to prevent legitimate cases from being brought before the courts in situations where judicial recourse is an essential part of accessing remedy or alternative sources of effective remedy are unavailable. They should also ensure that the provision

of justice is not prevented by corruption of the judicial process, that courts are independent of economic or political pressures from other State agents and from business actors, and that the legitimate and peaceful activities of human rights defenders are not obstructed.

Legal barriers that can prevent legitimate cases involving business-related human rights abuse from being addressed can arise where, for example:

- The way in which legal responsibility is attributed among members of a corporate group under domestic criminal and civil laws facilitates the avoidance of appropriate accountability;
- Where claimants face a denial of justice in a host State and cannot access home State courts regardless of the merits of the claim;
- Where certain groups, such as indigenous peoples and migrants, are excluded from the same level of legal protection of their human rights that applies to the wider population.

Practical and procedural barriers to accessing judicial remedy can arise where, for example:

- The costs of bringing claims go beyond being an appropriate deterrent to unmeritorious cases and/or cannot be reduced to reasonable levels through Government support, "market-based" mechanisms (such as litigation insurance and legal fee structures), or other means;
- Claimants experience difficulty in securing legal representation, due to a lack of resources or of other incentives for lawyers to advise claimants in this area;
- There are inadequate options for aggregating claims or enabling representative proceedings (such as class actions and other collective action procedures), and this prevents effective remedy for individual claimants;
- State prosecutors lack adequate resources, expertise and support to meet the State's own obligations to investigate individual and business involvement in human rights-related crimes.

Many of these barriers are the result of, or compounded by, the frequent imbalances between the parties to business-related human rights claims, such as in their financial resources, access to information and expertise. Moreover, whether through active discrimination or as the unintended

consequences of the way judicial mechanisms are designed and operate, individuals from groups or populations at heightened risk of vulnerability or marginalization often face additional cultural, social, physical and financial impediments to accessing, using and benefiting from these mechanisms. Particular attention should be given to the rights and specific needs of such groups or populations at each stage of the remedial process: access, procedures and outcome.

STATE-BASED NON-JUDICIAL GRIEVANCE MECHANISMS

27. States should provide effective and appropriate non-judicial grievance mechanisms, alongside judicial mechanisms, as part of a comprehensive State-based system for the remedy of business-related human rights abuse.

Commentary

Administrative, legislative and other non-judicial mechanisms play an essential role in complementing and supplementing judicial mechanisms. Even where judicial systems are effective and well-resourced, they cannot carry the burden of addressing all alleged abuses; judicial remedy is not always required; nor is it always the favoured approach for all claimants.

Gaps in the provision of remedy for business-related human rights abuses could be filled, where appropriate, by expanding the mandates of existing non-judicial mechanisms and/or by adding new mechanisms. These may be mediation-based, adjudicative or follow other culturally appropriate and rights-compatible processes – or involve some combination of these – depending on the issues concerned, any public interest involved, and the potential needs of the parties. To ensure their effectiveness, they should meet the criteria set out in Principle 31.

National human rights institutions have a particularly important role to play in this regard.

As with judicial mechanisms, States should consider ways to address any imbalances between the parties to business-related human rights claims and any additional barriers to access faced by individuals from groups or populations at heightened risk of vulnerability or marginalization.

NON-STATE-BASED GRIEVANCE MECHANISMS

28. States should consider ways to facilitate access to effective non-State-based grievance mechanisms dealing with business-related human rights harms.

Commentary

One category of non-State-based grievance mechanisms encompasses those administered by a business enterprise alone or with stakeholders, by an industry association or a multi-stakeholder group. They are non-judicial, but may use adjudicative, dialogue-based or other culturally appropriate and rights-compatible processes. These mechanisms may offer particular benefits such as speed of access and remediation, reduced costs and/or transnational reach.

Another category comprises regional and international human rights bodies. These have dealt most often with alleged violations by States of their obligations to respect human rights. However, some have also dealt with the failure of a State to meet its duty to protect against human rights abuse by business enterprises.

States can play a helpful role in raising awareness of, or otherwise facilitating access to, such options, alongside the mechanisms provided by States themselves.

29. To make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted.

Commentary

Operational-level grievance mechanisms are accessible directly to individuals and communities who may be adversely impacted by a business enterprise. They are typically administered by enterprises, alone or in collaboration with others, including relevant stakeholders. They may also be provided through recourse to a mutually acceptable external expert or body. They do not require that those bringing a complaint first access other means of recourse. They can engage the business enterprise directly in assessing the issues and seeking remediation of any harm.

Operational-level grievance mechanisms perform two key functions regarding the responsibility of business enterprises to respect human rights.

- First, they support the identification of adverse human rights impacts as a part of an enterprise's ongoing human rights due diligence. They do so by providing a channel for those directly impacted by the enterprise's operations to raise concerns when they believe they are being or will be adversely impacted. By analysing trends and patterns in complaints, business enterprises can also identify systemic problems and adapt their practices accordingly;
- Second, these mechanisms make it possible for grievances, once identified, to be addressed and for adverse impacts to be remediated early and directly by the business enterprise, thereby preventing harms from compounding and grievances from escalating.

Such mechanisms need not require that a complaint or grievance amount to an alleged human rights abuse before it can be raised, but specifically aim to identify any legitimate concerns of those who may be adversely impacted. If those concerns are not identified and addressed, they may over time escalate into more major disputes and human rights abuses.

Operational-level grievance mechanisms should reflect certain criteria to ensure their effectiveness in practice (Principle 31). These criteria can be met through many different forms of grievance mechanism according to the demands of scale, resource, sector, culture and other parameters.

Operational-level grievance mechanisms can be important complements to wider stakeholder engagement and collective bargaining processes, but cannot substitute for either. They should not be used to undermine the role of legitimate trade unions in addressing labour-related disputes, nor to preclude access to judicial or other non-judicial grievance mechanisms.

30. Industry, multi-stakeholder and other collaborative initiatives that are based on respect for human rights-related standards should ensure that effective grievance mechanisms are available.

Commentary

Human rights-related standards are increasingly reflected in commitments undertaken by industry bodies, multi-stakeholder and other collaborative initiatives, through codes of conduct, performance standards, global

framework agreements between trade unions and transnational corporations, and similar undertakings.

Such collaborative initiatives should ensure the availability of effective mechanisms through which affected parties or their legitimate representatives can raise concerns when they believe the commitments in question have not been met. The legitimacy of such initiatives may be put at risk if they do not provide for such mechanisms. The mechanisms could be at the level of individual members, of the collaborative initiative, or both. These mechanisms should provide for accountability and help enable the remediation of adverse human rights impacts.

EFFECTIVENESS CRITERIA FOR NON-JUDICIAL GRIEVANCE MECHANISMS

31. In order to ensure their effectiveness, non-judicial grievance mechanisms, both State-based and non-State-based, should be:

- (a) Legitimate: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;**
- (b) Accessible: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;**
- (c) Predictable: providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;**
- (d) Equitable: seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;**
- (e) Transparent: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;**

- (f) **Rights-compatible: ensuring that outcomes and remedies accord with internationally recognized human rights;**
- (g) **A source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms;**

Operational-level mechanisms should also be:

- (h) **Based on engagement and dialogue: consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.**

Commentary

A grievance mechanism can only serve its purpose if the people it is intended to serve know about it, trust it and are able to use it. These criteria provide a benchmark for designing, revising or assessing a non-judicial grievance mechanism to help ensure that it is effective in practice. Poorly designed or implemented grievance mechanisms can risk compounding a sense of grievance amongst affected stakeholders by heightening their sense of disempowerment and disrespect by the process.

The first seven criteria apply to any State-based or non-State-based, adjudicative or dialogue-based mechanism. The eighth criterion is specific to operational-level mechanisms that business enterprises help administer.

The term “grievance mechanism” is used here as a term of art. The term itself may not always be appropriate or helpful when applied to a specific mechanism, but the criteria for effectiveness remain the same. Commentary on the specific criteria follows:

- (a) Stakeholders for whose use a mechanism is intended must trust it if they are to choose to use it. Accountability for ensuring that the parties to a grievance process cannot interfere with its fair conduct is typically one important factor in building stakeholder trust;
- (b) Barriers to access may include a lack of awareness of the mechanism, language, literacy, costs, physical location and fears of reprisal;
- (c) In order for a mechanism to be trusted and used, it should provide public information about the procedure it offers. Time frames for

- each stage should be respected wherever possible, while allowing that flexibility may sometimes be needed;
- (d) In grievances or disputes between business enterprises and affected stakeholders, the latter frequently have much less access to information and expert resources, and often lack the financial resources to pay for them. Where this imbalance is not redressed, it can reduce both the achievement and perception of a fair process and make it harder to arrive at durable solutions;
 - (e) Communicating regularly with parties about the progress of individual grievances can be essential to retaining confidence in the process. Providing transparency about the mechanism's performance to wider stakeholders, through statistics, case studies or more detailed information about the handling of certain cases, can be important to demonstrate its legitimacy and retain broad trust. At the same time, confidentiality of the dialogue between parties and of individuals' identities should be provided where necessary;
 - (f) Grievances are frequently not framed in terms of human rights and many do not initially raise human rights concerns. Regardless, where outcomes have implications for human rights, care should be taken to ensure that they are in line with internationally recognized human rights;
 - (g) Regular analysis of the frequency, patterns and causes of grievances can enable the institution administering the mechanism to identify and influence policies, procedures or practices that should be altered to prevent future harm;
 - (h) For an operational-level grievance mechanism, engaging with affected stakeholder groups about its design and performance can help to ensure that it meets their needs, that they will use it in practice, and that there is a shared interest in ensuring its success. Since a business enterprise cannot, with legitimacy, both be the subject of complaints and unilaterally determine their outcome, these mechanisms should focus on reaching agreed solutions through dialogue. Where adjudication is needed, this should be provided by a legitimate, independent third-party mechanism.



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▼ Governance

▼ Governance Documents

Guidelines

Articles of Incorporation

▶ Bylaws

Board Code of Conduct

Board Conflicts of Interest Policy

Board Statements of Interest

Lobbying Disclosures & Contribution Reports

Summary of Conflicts of Interest and Ethics Practices Review

▶ Agreements

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Operational Metrics

▶ Identifier Systems Security, Stability and Resiliency (SSR)

▶ ccTLDs

▶ Internationalized Domain Names

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ARTICLES OF INCORPORATION OF INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

This page is available in: English العربية Español Français Русский

As Revised November 21 1998

1 The name of this corporation is **Internet Corporation for Assigned Names and Numbers** (the "Corporation")

2 The name of the Corporation's initial agent for service of process in the State of California United States of America is **ICANN Corporation System**

3 This Corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the California Nonprofit Public Benefit Corporation Law for charitable and public purposes. The Corporation is organized and will be operated exclusively for charitable educational and scientific purposes within the meaning of § 501 (c)(3) of the Internal Revenue Code of 1986 as amended (the "Code") or the corresponding provision of any future United States tax code. Any reference in these Articles to the Code shall include the corresponding provisions of any future United States tax code. In furtherance of the foregoing purposes and in recognition of the fact that the name is an instrumental part of the work owned by no single nation individual or organization the Corporation shall except as limited by Article 5 hereof pursue the charitable and public purposes of lessening the burdens of government and promoting the global public interest in the operational stability of the name by (i) coordinating the assignment of numerical technical parameters as needed to maintain universal connectivity on the name (ii) performing and overseeing functions related to the coordination of the name Protocol ("IP") address space (iii) performing and overseeing functions related to the coordination of the name domain name system ("DNS") including the development of policies for determining the circumstances under which new top-level domains are added to the DNS root system (iv) overseeing operation of the authoritative name DNS root server system and (v) engaging in any other related lawful activity in furtherance of items (i) through (iv)

4 The Corporation shall operate for the benefit of the name community as a whole carrying out its activities in conformity with relevant principles of international law and applicable in international conventions and local law and to the extent appropriate and consistent with these Articles and its Bylaws through open and transparent processes that enable competition and open entry in name-related markets. To this effect the Corporation shall cooperate as appropriate with relevant international organizations

5 No withdrawal of any other provision (other than Article 8) of these Articles

a The Corporation shall not carry on any other activities not permitted to be carried on (i) by a corporation exempt from United States income tax under § 501 (c)(3) of the Code or (ii) by a corporation contributions of which are deductible under § 170 (c)(2) of the Code

b No substantial part of the activities of the Corporation shall be the carrying on of propaganda or otherwise attempting to influence legislation and the Corporation shall be empowered to make the election under § 501 (h) of the Code

c The Corporation shall not participate in or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office

d No part of the net earnings of the Corporation shall inure to the benefit of or be distributable to its members directors trustees or other private persons except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article 3 hereof

e No one shall be a director officer or trustee of the Corporation if he or she is an individual who is prohibited from serving as a director officer or trustee of the Corporation by one or more "disqualified persons" (as defined in § 4946 of the Code) or if he or she is an individual who is prohibited from serving as a director officer or trustee of the Corporation by one or more organizations described in paragraph (1) or (2) of § 509 (a) of the Code

6 To the full extent permitted by the California Nonprofit Public Benefit Corporation Law or any other applicable laws present or hereafter in effect no director or officer of the Corporation shall be personally liable to the Corporation or its members should the Corporation elect to have members in the future for or with respect to any acts or omissions in the performance of his or her duties as a director or officer of the Corporation. Any repeal or modification of this Article 6 shall not adversely affect any right or protection of a director or officer of the Corporation existing immediately prior to such repeal or modification

7 Upon the dissolution of the Corporation the Corporation's assets shall be distributed for one or more of the exempt purposes set forth in Article 3 hereof and if possible to a § 501 (c)(3) organization organized and operated exclusively to lessen the burdens of government and promote the global public interest in the operational stability of the name or shall be distributed to a governmental entity for such purposes or for such other charitable and public purposes that lessen the burdens of government by providing for the operational stability of the name. Any assets not so disposed of shall be disposed of by a court of competent jurisdiction of the country in which the principal office of the Corporation is then located exclusively for such purposes or to such organization or organizations as such court shall determine that are organized and operated exclusively for such purposes unless no such corporation exists and in such case any assets not disposed of shall be distributed to a § 501(c)(3) corporation chosen by such court

8 No withdrawal of anything or the contrary in these Articles if the Corporation determines that it will not be treated as a corporation exempt from federal income tax under § 501(c)(3) of the Code all references herein to § 501(c)(3) of the Code shall be deemed to refer to § 501(c)(6) of the Code and Article 5(a)(ii) (b) (c) and (e) shall be deemed not to be a part of these Articles

9 These Articles may be amended by the affirmative vote of a two-thirds of the directors of the Corporation

When the Corporation has members, any such amendment must be ratified by a two-thirds (2/3) majority of the members voting on any proposed amendment.



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Community Wiki



ICANN Blog

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PGP Keys
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Reviews
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Accountability
Mechanisms
Independent Review
Process
Request for
Reconsideration
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Resources

▶ [About ICANN \(Internet Corporation for Assigned Names and Numbers\) \(/resources/pages/welcome-2012-02-25-en\)](#)

▶ [Board \(/resources/pages/board-of-directors-2014-03-19-en\)](#)

▼ [Accountability \(/resources/accountability\)](#)

▶ [Accountability Mechanisms \(/resources/pages/mechanisms-2014-03-20-en\)](#)

▼ [Reviews \(/resources/reviews\)](#)

▶ [Organizational Reviews \(/resources/reviews/org\)](#)

▼ [AoC Reviews \(/resources/reviews/aoc\)](#)

Accountability & Transparency

Competition, Consumer Trust and Consumer Choice Review (CCT (Competition, Consumer Choice & Consumer Trust))

Objectives of the CCT (Competition, Consumer Choice & Consumer Trust) Review

Under the [Affirmation of Commitments \(AoC\) \(https://www.icann.org/resources/pages/affirmation-of-commitments-2009-09-30-en\)](#), ICANN (Internet Corporation for Assigned Names and Numbers) is committed to ensuring that, as it contemplates expanding the top-level domain space, the various issues that are involved will be adequately addressed prior to implementation. These include issues such as competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection. The AoC also requires ICANN (Internet Corporation for Assigned Names and Numbers) to convene a community-driven review to examine the extent to which the introduction or expansion of gTLDs has promoted competition, consumer trust and consumer choice, as well as the effectiveness of:

- The application and evaluation process
- Safeguards put in place to mitigate issues involved in the introduction or expansion

Timeline of Review

- The AoC specifies that the review will be organized if and when new gTLDs have been in operation for one year
- Subsequent reviews are to be organized two years after the first review, and then no less frequently than every four years

Under this timeline, the first [CCT \(Competition, Consumer Choice & Consumer Trust\) Review](#) was launched in October 2015.

Review	Call for Volunteers	Review Team	Final	Board	Deta
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(/resources/reviews/aoc/atr)

WHOIS (WHOIS (pronounced "who is"; not an acronym))

(/resources/reviews/aoc/whois)

Security, Stability (Security, Stability and Resiliency), and Resiliency

(/resources/reviews/aoc/ssr)

Competition, Consumer Trust & Consumer Choice

(/resources/reviews/aoc/cct)

Expected Standards of Behavior (/resources/pages/expected-standards-2012-05-15-en)

Enhancing ICANN (Internet Corporation for Assigned Names and Numbers) Accountability and Governance (https://community.icann.org/x/ogDxAg)


► Governance (/resources/pages/governance-2012-02-25-en)

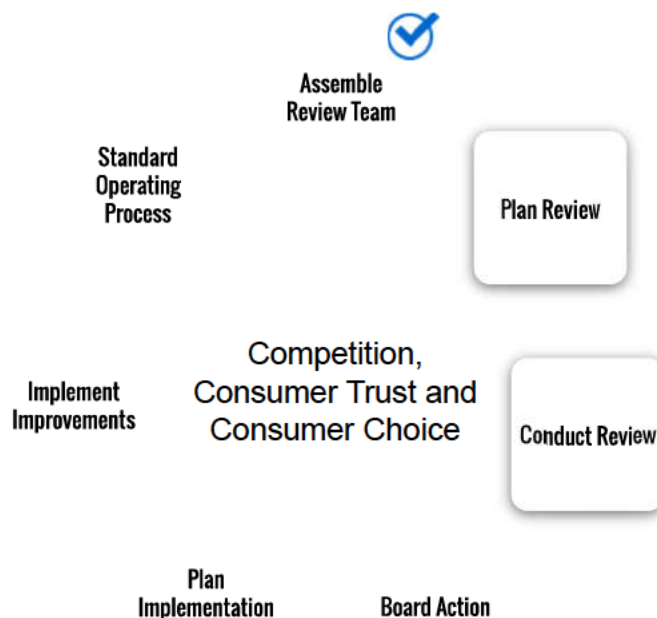
► Groups (/resources/pages/groups-2012-02-06-en)

Business (/resources/pages/business)

► Contractual Compliance (/resources/pages/compliance-2012-02-25-en)

		Announced	Report Issued	Action	
CCT (Competition, Consumer Choice & Consumer Trust)	1 October 2015 (https://www.icann.org/resources/pages/call-volunteers-cct-rt-2015-10-01-en)	23 December 2015 (https://www.icann.org/news/announcement-2-2015-12-23-en)			

The graphic below illustrates phases and status of each review - a  indicates that all activities within a given phase have been completed. The chart that follows the graphic provides further details of key activities and milestones within each phase – you can view these details by clicking on each of the phases in the graphic. The table also contains links to relevant documents.



Competition, Consumer Trust and Consumer Choice				
Phase	Activity	Description	Start Date	Documents
Assemble Review Team	Call for Volunteers	Public announcement inviting	1 Oct 2015	Arabic (https://www.icann.org/news/announcement-2015-11-02-ar)

▶ Registrars (</resources/pages/registrars-0d-2012-02-25-en>)

▶ Registries (</resources/pages/registries-46-2012-02-25-en>)

Operational Metrics (</resources/pages/metrics-gdd-2015-01-30-en>)

▶ Identifier Systems Security, Stability (Security, Stability and Resiliency) and Resiliency (IS-SSR) (</resources/pages/is-ssr-2014-11-24-en>)

▶ ccTLDs (</resources/pages/cctlds-21-2012-02-25-en>)

▶ Internationalized Domain Names (</resources/pages/idn-2012-02-25-en>)

▶ Universal Acceptance Initiative (</resources/pages/universal-acceptance-2012-02-25-en>)

▶ Policy (</resources/pages/policy-01-2012-02-25-en>)

▶ Public Comment (</public-comments>)

▶ Technical Functions (</resources/pages/technical-functions-2015-10-15-en>)

▶ Contact (</resources/pages/contact-2012-02-06-en>)

▶ Help (</resources/pages/help-2012-02-03-en>)

Phase	Activity	Description	Start Date	Documents
		volunteers to submit application		Chinese (https://www.icann.org/news/announcement-2015-11-02-zh) English (https://www.icann.org/news/announcement-2015-11-02-en) French (https://www.icann.org/news/announcement-2015-11-02-fr) Portuguese (https://www.icann.org/news/announcement-2015-11-02-pt) Russian (https://www.icann.org/news/announcement-2015-11-02-ru) Spanish (https://www.icann.org/news/announcement-2015-11-02-es)
	Applications	Applications Received for CCT (Competition, Consumer Choice & Consumer Trust)	16 Nov 2015	English (https://www.icann.org/resources/reviews/aoc/cct/applications)
	Appointment of review team members	Appointment of review team members based on AoC requirements	23 Dec 2015	English (https://www.icann.org/news/announcement-2-2015-12-23-en)
Plan Review	Various	Review team activities and detailed information available on the community wiki	23 Dec 2015	English (https://community.icann.org/pages/viewpage.action?pageId=56135383)

Metrics to Support the CCT (Competition, Consumer Choice & Consumer Trust) Review

ICANN (Internet Corporation for Assigned Names and Numbers) has been conducting a series of activities to prepare for this upcoming review. These activities include developing metrics and collecting data for benchmarking purposes to be available to the review team when it is selected. A comprehensive set of metrics and data were adopted by the ICANN (Internet Corporation for Assigned Names and Numbers) Board based on recommendations from the community. These metrics have been collected by ICANN (Internet Corporation for Assigned Names and Numbers) to assess various aspects of new gTLDs. For further information related to the work of the community

that proposed these metrics, please visit the [IAG-CCT \(Competition, Consumer Choice & Consumer Trust\) Wiki \(https://community.icann.org/pages/viewpage.action?pageId=42734299\)](https://community.icann.org/pages/viewpage.action?pageId=42734299).

The metrics and data collected by ICANN (Internet Corporation for Assigned Names and Numbers) to support the [CCT \(Competition, Consumer Choice & Consumer Trust\) Review](https://www.icann.org/resources/reviews/cct/metrics) are published [here \(https://www.icann.org/resources/reviews/cct/metrics\)](https://www.icann.org/resources/reviews/cct/metrics). ICANN (Internet Corporation for Assigned Names and Numbers) commissioned a global survey and economic study to gather data on some of the recommended metrics. The baseline report on [consumers \(https://www.icann.org/news/announcement-2015-05-29-en\)](https://www.icann.org/news/announcement-2015-05-29-en) and [registrants \(https://www.icann.org/news/announcement-2015-09-25-en\)](https://www.icann.org/news/announcement-2015-09-25-en) has been published, as well as the baseline [assessment of competition in the domain name marketplace \(https://www.icann.org/news/announcement-2-2015-09-28-en\)](https://www.icann.org/news/announcement-2-2015-09-28-en).

Global Consumer and Registrant (Registrant) Surveys

ICANN (Internet Corporation for Assigned Names and Numbers) commissioned a global survey to measure aspects of consumer awareness, perceived consumer choice, experience and trust related to the current generic top-level domain (gTLD (generic Top Level Domain)) landscape and the domain name system (DNS (Domain Name System)). Nielsen was retained to conduct an initial survey to create a meaningful baseline of data on Internet users' and domain name registrants' attitudes and will perform a follow-on survey, to generate a set of comparison data to inform the CCT (Competition, Consumer Choice & Consumer Trust) Review. This second survey will be conducted one year after the first survey was conducted to determine how opinions may have changed over time and as more new gTLDs are available in the domain name marketplace.

ICANN (Internet Corporation for Assigned Names and Numbers) has published the [Phase One Results from Multiyear Consumer Study of the Domain Name \(Domain Name\) Landscape \(https://www.icann.org/news/announcement-2015-05-29-en\)](https://www.icann.org/news/announcement-2015-05-29-en). The Phase One study surveyed 6,144 consumers aged 18+ representing Asia, Europe, Africa, North America and South America, and was administered in 18 languages and drawn from 24 countries. The research was conducted by Nielsen between February 2-19, 2015. The full Phase One Report is available [here \(http://newgtlds.icann.org/en/reviews/cct/global-consumer-survey-29may15-en.pdf\)](http://newgtlds.icann.org/en/reviews/cct/global-consumer-survey-29may15-en.pdf).

ICANN (Internet Corporation for Assigned Names and Numbers) also commissioned Nielsen to conduct a global survey of domain name registrants and their perceived sense of trust and choice in the domain name space. Results from the Phase One survey are available [here \(https://www.icann.org/news/announcement-2015-09-25-en\)](https://www.icann.org/news/announcement-2015-09-25-en).

Economic Study

ICANN (Internet Corporation for Assigned Names and Numbers) retained the Analysis Group to conduct an economic study examining pricing trends and other competition indicators in the global [DNS \(Domain Name System\) market](https://www.icann.org/resources/terms/glossary). The Analysis Group designed and executed an initial study to create a meaningful baseline of data on multiple factors of competition and will perform a follow-on study one year later, to generate and analyze a set of comparison data.

Results from the Phase One study are available [here \(http://newgtlds.icann.org/en/announcements-and-media/announcement-28sep15-en\)](http://newgtlds.icann.org/en/announcements-and-media/announcement-28sep15-en).

Additional Information

More information on the [CCT \(Competition, Consumer Choice & Consumer Trust\) Review](#) is available on the [CCT \(Competition, Consumer Choice & Consumer Trust\)-Wiki](#) (<https://community.icann.org/pages/viewpage.action?pageId=56135383>).

Please provide your feedback [here \(/forms/accountabilityfeedback\)](/forms/accountabilityfeedback)



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[Learning \(/en/about/learning\)](#)

[Participate \(/en/about/participate\)](#)

[Groups \(https://www.icann.org/resources/pages/groups-2012-02-06-en\)](#)

[Board \(/resources/pages/board-of-directors-2014-03-19-en\)](#)

[President's Corner \(/presidents-corner\)](#)

[Staff \(/en/about/staff\)](#)

[Careers \(https://icann-openhire.sikroad.com/epostings/index.cfm?fuseaction=app](#)

[positions&company_id=16025&version=1\)](#)

[Newsletter \(/en/news/newsletter\)](#)

[Development and Public Responsibility \(https://www.icann.org/development-and-public-responsibility\)](#)

Contact Us

[Offices \(https://forms.icann.org/en/contact\)](#)

[Global Support \(/resources/pages/customer-support-2015-06-22-en\)](#)

[Security Team \(/about/staff/security\)](#)

[PGP Keys \(/en/contact/pgp-keys\)](#)

[Certificate Authority \(/contact/certificate-authority\)](#)

[Registry Liaison \(/resources/pages/contact-f2-2012-02-25-en\)](#)

[AOC Review \(http://forms.icann.org/en/about/aoc-review/contact\)](#)

[Reviews \(http://forms.icann.org/en/groups/reviews/contact\)](#)

[Request a Speaker \(http://forms.icann.org/en/contact/speakers\)](#)

[For Journalists \(/en/news/press\)](#)

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[Accountability Mechanisms \(/en/news/in-focus/accountability/mechanisms\)](#)

[Independent Review Process \(/resources/pages/irp-2012-02-25-en\)](#)

[Request for Reconsideration \(/groups/board/governance/reconsideration\)](#)

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[Dashboard Beta \(https://www.icann.org/dashboard\)](#)

[RFPs \(/en/news/rfps\)](#)

[Litigation \(/en/news/litigation\)](#)

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[Dispute Resolution \(/en/help/dispute-resolution\)](#)

[Domain Name Dispute Resolution \(/en/help/dndr\)](#)

[Name Collision \(/en/help/name-collision\)](#)

[Registrar Problems \(/en/news/announcements/announcement-06mar07-en.htm\)](#)

[WHOIS \(http://whois.icann.org/\)](#)

Exhibit DIDP A47

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Resources

- ▶ [About ICANN \(Internet Corporation for Assigned Names and Numbers\) \(/resources/pages/welcome-2012-02-25-en\)](#)

- ▶ [Board \(/resources/pages/board-of-directors-2014-03-19-en\)](#)

- ▶ [Accountability \(/resources\)](#)

AFFIRMATION OF COMMITMENTS BY THE UNITED STATES DEPARTMENT OF COMMERCE AND THE INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

This page is available in:

/accountability)	English
<ul style="list-style-type: none"> ▶ Governance (/resources /pages /governance-2012-02-25-en) 	العربية (http://www.icann.org/resources/pages/affirmation-of-commitments-2009-09-30-ar) Deutsch (http://www.icann.org/resources/pages/affirmation-of-commitments-2009-09-30-de) Español (http://www.icann.org/resources/pages/affirmation-of-commitments-2009-09-30-es) Français (http://www.icann.org/resources/pages/affirmation-of-commitments-2009-09-30-fr)
<ul style="list-style-type: none"> ▶ Groups (/resources /pages/groups-2012-02-06-en) 	Italiano (http://www.icann.org/resources/pages/affirmation-of-commitments-2009-09-30-it) 日本語 (http://www.icann.org/resources/pages/affirmation-of-commitments-2009-09-30-ja)
Business (/resources /pages/business)	한국어 (http://www.icann.org/resources/pages/affirmation-of-commitments-2009-09-30-ko) Português (http://www.icann.org/resources/pages/affirmation-of-commitments-2009-09-30-pt)
<ul style="list-style-type: none"> ▶ Contractual Compliance (/resources /pages /compliance-2012-02-25-en) 	Русский (http://www.icann.org/resources/pages/affirmation-of-commitments-2009-09-30-ru) 中文 (http://www.icann.org/resources/pages/affirmation-of-commitments-2009-09-30-zh)
<ul style="list-style-type: none"> ▶ Registrars (/resources /pages /registrars-0d-2012-02-25-en) 	<p>1. This document constitutes an Affirmation of Commitments (Affirmation) by the United States Department of Commerce ("<u>DOC (Department of Commerce (USA))</u>") and the Internet Corporation for Assigned Names and Numbers ("<u>ICANN (Internet Corporation for Assigned Names and Numbers)</u>"), a not-for-profit corporation. In recognition of the conclusion of the Joint Project Agreement and to institutionalize and memorialize the technical coordination of the Internet's domain name and addressing system (<u>DNS (Domain Name System)</u>)¹, globally by a private sector led organization, the parties agree as follows:</p>
<ul style="list-style-type: none"> ▶ Registries (/resources /pages /registries-46-2012-02-25-en) 	<p>2. The Internet is a transformative technology that will continue to empower people around the globe, spur innovation, facilitate trade and commerce, and enable the free and unfettered flow of information. One of the elements of the Internet's success is a highly decentralized network that enables and encourages decision-making at a local level. Notwithstanding this decentralization, global technical coordination of the Internet's underlying infrastructure - the <u>DNS (Domain Name System)</u> - is required to ensure interoperability.</p>
Operational Metrics (/resources /pages/metrics-gdd-2015-01-30-en)	
<ul style="list-style-type: none"> ▶ Identifier 	<p>3. This document affirms key commitments by <u>DOC (Department of</u></p>

<p>Systems Security, Stability (Security, Stability and Resiliency) and Resiliency (IS-SSR) (/resources/pages/is-ssr-2014-11-24-en)</p>	<p>Commerce (USA)) and ICANN (Internet Corporation for Assigned Names and Numbers), including commitments to: (a) ensure that decisions made related to the global technical coordination of the <u>DNS (Domain Name System)</u> are made in the public interest and are accountable and transparent; (b) preserve the security, stability and resiliency of the <u>DNS (Domain Name System)</u>; (c) promote competition, consumer trust, and consumer choice in the <u>DNS (Domain Name System)</u> marketplace; and (d) facilitate international participation in <u>DNS (Domain Name System)</u> technical coordination.</p>
<p>▶ ccTLDs (/resources/pages/cctlds-21-2012-02-25-en)</p>	<p>4. <u>DOC (Department of Commerce (USA))</u> affirms its commitment to a multi-stakeholder, private sector led, bottom-up policy development model for <u>DNS (Domain Name System)</u> technical coordination that acts for the benefit of global Internet users. A private coordinating process, the outcomes of which reflect the public interest, is best able to flexibly meet the changing needs of the Internet and of Internet users. <u>ICANN (Internet Corporation for Assigned Names and Numbers)</u> and <u>DOC (Department of Commerce (USA))</u> recognize that there is a group of participants that engage in <u>ICANN (Internet Corporation for Assigned Names and Numbers)</u>'s processes to a greater extent than Internet users generally. To ensure that its decisions are in the public interest, and not just the interests of a particular set of stakeholders, <u>ICANN (Internet Corporation for Assigned Names and Numbers)</u> commits to perform and publish analyses of the positive and negative effects of its decisions on the public, including any financial impact on the public, and the positive or negative impact (if any) on the systemic security, stability and resiliency of the <u>DNS (Domain Name System)</u>.</p>
<p>▶ Internationalized Domain Names (/resources/pages/idn-2012-02-25-en)</p>	<p>5. <u>DOC (Department of Commerce (USA))</u> recognizes the importance of global Internet users being able to use the Internet in their local languages and character sets, and endorses the rapid introduction of internationalized country code top level domain names (ccTLDs), provided related security, stability and resiliency issues are first addressed. Nothing in this document is an expression of support by <u>DOC (Department of Commerce (USA))</u> of any specific plan or proposal for the implementation of new generic top level domain names (gTLDs) or is an expression by <u>DOC (Department of Commerce (USA))</u> of a view that the potential consumer benefits of new gTLDs outweigh the potential costs.</p>
<p>▶ Universal Acceptance Initiative (/resources/pages/universal-acceptance-2012-02-25-en)</p>	<p>6. <u>DOC (Department of Commerce (USA))</u> also affirms the United States Government's commitment to ongoing participation in <u>ICANN (Internet</u></p>
<p>▶ Policy (/resources/pages/policy-01-2012-02-25-en)</p>	
<p>▶ Public Comment (/public-comments)</p>	
<p>▶ Technical Functions (/resources/pages/technical-</p>	

functions-
2015-10-15-en)

► Contact
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/pages/help-
2012-02-03-en)

Corporation for Assigned Names and Numbers)'s Governmental Advisory Committee (Advisory Committee) (GAC (Governmental Advisory Committee)). DOC (Department of Commerce (USA)) recognizes the important role of the GAC (Governmental Advisory Committee) with respect to ICANN (Internet Corporation for Assigned Names and Numbers) decision-making and execution of tasks and of the effective consideration by ICANN (Internet Corporation for Assigned Names and Numbers) of GAC (Governmental Advisory Committee) input on the public policy aspects of the technical coordination of the Internet DNS (Domain Name System).

7. ICANN (Internet Corporation for Assigned Names and Numbers) commits to adhere to transparent and accountable budgeting processes, fact-based policy development, cross-community deliberations, and responsive consultation procedures that provide detailed explanations of the basis for decisions, including how comments have influenced the development of policy consideration, and to publish each year an annual report that sets out ICANN (Internet Corporation for Assigned Names and Numbers)'s progress against ICANN (Internet Corporation for Assigned Names and Numbers)'s bylaws, responsibilities, and strategic and operating plans. In addition, ICANN (Internet Corporation for Assigned Names and Numbers) commits to provide a thorough and reasoned explanation of decisions taken, the rationale thereof and the sources of data and information on which ICANN (Internet Corporation for Assigned Names and Numbers) relied.

8. ICANN (Internet Corporation for Assigned Names and Numbers) affirms its commitments to: (a) maintain the capacity and ability to coordinate the Internet DNS (Domain Name System) at the overall level and to work for the maintenance of a single, interoperable Internet; (b) remain a not for profit corporation, headquartered in the United States of America with offices around the world to meet the needs of a global community; and (c) to operate as a multi-stakeholder, private sector led organization with input from the public, for whose benefit ICANN (Internet Corporation for Assigned Names and Numbers) shall in all events act. ICANN (Internet Corporation for Assigned Names and Numbers) is a private organization and nothing in this Affirmation should be construed as control by any one entity.

9. Recognizing that ICANN (Internet Corporation for Assigned Names and Numbers) will evolve and adapt to fulfill its limited, but important technical mission of coordinating the DNS (Domain Name System), ICANN (Internet

Corporation for Assigned Names and Numbers) further commits to take the following specific actions together with ongoing commitment reviews specified below:

9.1 Ensuring accountability, transparency and the interests of global Internet users: ICANN (Internet Corporation for Assigned Names and Numbers) commits to maintain and improve robust mechanisms for public input, accountability, and transparency so as to ensure that the outcomes of its decision-making will reflect the public interest and be accountable to all stakeholders by: (a) continually assessing and improving ICANN (Internet Corporation for Assigned Names and Numbers) Board of Directors (Board) governance which shall include an ongoing evaluation of Board performance, the Board selection process, the extent to which Board composition meets ICANN (Internet Corporation for Assigned Names and Numbers)'s present and future needs, and the consideration of an appeal mechanism for Board decisions; (b) assessing the role and effectiveness of the GAC (Governmental Advisory Committee) and its interaction with the Board and making recommendations for improvement to ensure effective consideration by ICANN (Internet Corporation for Assigned Names and Numbers) of GAC (Governmental Advisory Committee) input on the public policy aspects of the technical coordination of the DNS (Domain Name System); (c) continually assessing and improving the processes by which ICANN (Internet Corporation for Assigned Names and Numbers) receives public input (including adequate explanation of decisions taken and the rationale thereof); (d) continually assessing the extent to which ICANN (Internet Corporation for Assigned Names and Numbers)'s decisions are embraced, supported and accepted by the public and the Internet community; and (e) assessing the policy development process to facilitate enhanced cross community deliberations, and effective and timely policy development. ICANN (Internet Corporation for Assigned Names and Numbers) will organize a review of its execution of the above commitments no less frequently than every three years, with the first such review concluding no later than December 31, 2010. The review will be performed by volunteer community members and the review team will be constituted and published for public comment, and will include the following (or their designated nominees): the Chair of the GAC (Governmental Advisory

Committee), the Chair of the Board of ICANN (Internet Corporation for Assigned Names and Numbers), the Assistant Secretary for Communications and Information of the DOC (Department of Commerce (USA)), representatives of the relevant ICANN (Internet Corporation for Assigned Names and Numbers) Advisory Committees (Advisory Committees) and Supporting Organizations (Supporting Organizations) and independent experts. Composition of the review team will be agreed jointly by the Chair of the GAC (Governmental Advisory Committee) (in consultation with GAC (Governmental Advisory Committee) members) and the Chair of the Board of ICANN (Internet Corporation for Assigned Names and Numbers). Resulting recommendations of the reviews will be provided to the Board and posted for public comment. The Board will take action within six months of receipt of the recommendations. Each of the foregoing reviews shall consider the extent to which the assessments and actions undertaken by ICANN (Internet Corporation for Assigned Names and Numbers) have been successful in ensuring that ICANN (Internet Corporation for Assigned Names and Numbers) is acting transparently, is accountable for its decision-making, and acts in the public interest. Integral to the foregoing reviews will be assessments of the extent to which the Board and staff have implemented the recommendations arising out of the other commitment reviews enumerated below.

9.2 Preserving security, stability and resiliency: ICANN (Internet Corporation for Assigned Names and Numbers) has developed a plan to enhance the operational stability, reliability, resiliency, security, and global interoperability of the DNS (Domain Name System), which will be regularly updated by ICANN (Internet Corporation for Assigned Names and Numbers) to reflect emerging threats to the DNS (Domain Name System). ICANN (Internet Corporation for Assigned Names and Numbers) will organize a review of its execution of the above commitments no less frequently than every three years. The first such review shall commence one year from the effective date of this Affirmation. Particular attention will be paid to: (a) security, stability and resiliency matters, both physical and network, relating to the secure and stable coordination of the Internet DNS (Domain Name System); (b) ensuring appropriate contingency planning; and (c) maintaining clear processes. Each of the reviews conducted under this section will

assess the extent to which ICANN (Internet Corporation for Assigned Names and Numbers) has successfully implemented the security plan, the effectiveness of the plan to deal with actual and potential challenges and threats, and the extent to which the security plan is sufficiently robust to meet future challenges and threats to the security, stability and resiliency of the Internet DNS (Domain Name System), consistent with ICANN (Internet Corporation for Assigned Names and Numbers)'s limited technical mission. The review will be performed by volunteer community members and the review team will be constituted and published for public comment, and will include the following (or their designated nominees): the Chair of the GAC (Governmental Advisory Committee), the CEO of ICANN (Internet Corporation for Assigned Names and Numbers), representatives of the relevant Advisory Committees (Advisory Committees) and Supporting Organizations (Supporting Organizations), and independent experts. Composition of the review team will be agreed jointly by the Chair of the GAC (Governmental Advisory Committee) (in consultation with GAC (Governmental Advisory Committee) members) and the CEO of ICANN (Internet Corporation for Assigned Names and Numbers). Resulting recommendations of the reviews will be provided to the Board and posted for public comment. The Board will take action within six months of receipt of the recommendations.

9.3 Promoting competition, consumer trust, and consumer choice:
ICANN (Internet Corporation for Assigned Names and Numbers) will ensure that as it contemplates expanding the top-level domain space, the various issues that are involved (including competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection) will be adequately addressed prior to implementation. If and when new gTLDs (whether in ASCII or other language character sets) have been in operation for one year, ICANN (Internet Corporation for Assigned Names and Numbers) will organize a review that will examine the extent to which the introduction or expansion of gTLDs has promoted competition, consumer trust and consumer choice, as well as effectiveness of (a) the application and evaluation process, and (b) safeguards put in place to mitigate issues involved in the introduction or expansion. ICANN (Internet Corporation for Assigned Names and Numbers) will organize

a further review of its execution of the above commitments two years after the first review, and then no less frequently than every four years. The reviews will be performed by volunteer community members and the review team will be constituted and published for public comment, and will include the following (or their designated nominees): the Chair of the GAC (Governmental Advisory Committee), the CEO of ICANN (Internet Corporation for Assigned Names and Numbers), representatives of the relevant Advisory Committees (Advisory Committees) and Supporting Organizations (Supporting Organizations), and independent experts. Composition of the review team will be agreed jointly by the Chair of the GAC (Governmental Advisory Committee) (in consultation with GAC (Governmental Advisory Committee) members) and the CEO of ICANN (Internet Corporation for Assigned Names and Numbers). Resulting recommendations of the reviews will be provided to the Board and posted for public comment. The Board will take action within six months of receipt of the recommendations.

9.3.1 ICANN (Internet Corporation for Assigned Names and Numbers) additionally commits to enforcing its existing policy relating to WHOIS (WHOIS (pronounced "who is"; not an acronym)), subject to applicable laws. Such existing policy requires that ICANN (Internet Corporation for Assigned Names and Numbers) implement measures to maintain timely, unrestricted and public access to accurate and complete WHOIS (WHOIS (pronounced "who is"; not an acronym)) information, including registrant, technical, billing, and administrative contact information. One year from the effective date of this document and then no less frequently than every three years thereafter, ICANN (Internet Corporation for Assigned Names and Numbers) will organize a review of WHOIS (WHOIS (pronounced "who is"; not an acronym)) policy and its implementation to assess the extent to which WHOIS (WHOIS (pronounced "who is"; not an acronym)) policy is effective and its implementation meets the legitimate needs of law enforcement and promotes consumer trust. The review will be performed by volunteer community members and the review team will be constituted and published for public comment, and will include the following (or their designated nominees): the Chair of the GAC (Governmental Advisory Committee), the CEO of ICANN (Internet Corporation for Assigned

Names and Numbers), representatives of the relevant Advisory Committees (Advisory Committees) and Supporting Organizations (Supporting Organizations), as well as experts, and representatives of the global law enforcement community, and global privacy experts.

Composition of the review team will be agreed jointly by the Chair of the GAC (Governmental Advisory Committee) (in consultation with GAC (Governmental Advisory Committee) members) and the CEO of ICANN (Internet Corporation for Assigned Names and Numbers).

Resulting recommendations of the reviews will be provided to the Board and posted for public comment. The Board will take action within six months of receipt of the recommendations.

10. To facilitate transparency and openness in ICANN (Internet Corporation for Assigned Names and Numbers)'s deliberations and operations, the terms and output of each of the reviews will be published for public comment. Each review team will consider such public comment and amend the review as it deems appropriate before it issues its final report to the Board.

11. The DOC (Department of Commerce (USA)) enters into this Affirmation of Commitments pursuant to its authority under 15 U.S.C. 1512 and 47 U.S.C. 902. ICANN (Internet Corporation for Assigned Names and Numbers) commits to this Affirmation according to its Articles of Incorporation and its Bylaws. This agreement will become effective October 1, 2009. The agreement is intended to be long-standing, but may be amended at any time by mutual consent of the parties. Any party may terminate this Affirmation of Commitments by providing 120 days written notice to the other party. This Affirmation contemplates no transfer of funds between the parties. In the event this Affirmation of Commitments is terminated, each party shall be solely responsible for the payment of any expenses it has incurred. All obligations of the DOC (Department of Commerce (USA)) under this Affirmation of Commitments are subject to the availability of funds.

FOR THE NATIONAL
TELECOMMUNICATIONS
INFORMATION ADMINISTRATION:

Name: Lawrence E. Strickling
 Title: Assistant Secretary for
 Communications and Information

Date: September 30, 2009

FOR THE INTERNET CORPORATION
 AND FOR ASSIGNED NAMES AND
 NUMBERS:

Name: Rod Beckstrom
 Title: President and CEO

Date: September 30, 2009

¹For the purposes of this Affirmation the Internet's domain name and addressing system (DNS (Domain Name System)) is defined as: domain names; Internet protocol addresses and autonomous system numbers; protocol port and parameter numbers. ICANN (Internet Corporation for Assigned Names and Numbers) coordinates these identifiers at the overall level, consistent with its mission.



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Who We Are

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openhire.silkroad.com
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/index.cfm?fuseaction=app.allpositions&
amp:company_id=16025&organizational
amp:version=1)

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en.htm)

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Exhibit DIDP A48



KnujOn March 2016: Internet Limbo

KnujOn Report Concerning Issues of Consumer Trust on the Internet as they apply to the Internet Corporation of Assigned Names and Numbers (ICANN), the ICANN Compliance Function, ICANN Registries, and ICANN Registrars. Any comments or questions should be sent to g_bruen@knujon.com.

Sections

- 1. Introduction**
- 2. Public Face of ICANN**
- 3. Registries and Registrars**
- 4. Conclusion and Recommendations**

Abstract

This document discusses the availability, accessibility and utility of abuse or fraud complaint resources for Internet consumers along with related high-level abuse data. This is not an official statement from the ICANN At-Large Advisory Committee (ALAC), but it is rather done in the spirit of ALAC duty number 2: *“Keeping the community of individual Internet users informed about the significant news from ICANN.”*¹ We would like to think Internet governance is a shining city on hill, but it may be more like something which languishes in the depths Tartarus. In this report we begin from the outside-in, from the lost user perspective. Section 1 analyzes ICANN’s current state and mission. Section 2 examines ICANN’s website from the perspective of a user as to how its enforcement mechanisms deal with consumers. Section 3 details how the portions of the Internet under ICANN’s management (registries and registrars) rate in terms of abuse. Section 4 provides some recommendations for improving the situation.

About the Author

Garth Bruen is an educator, researcher, policy developer, investigator and programmer. Garth specializes in automating and streamlining public policy and bureaucracy to ensure proper enforcement, extend access to the citizenry, and identify process breakpoints. Garth is the author of *WHOIS Running the Internet: Protocol, Policy and Privacy*.²

About KnujOn.com

KnujOn.com, LLC is an independent abuse handler and Internet security research organization based in Boston, Massachusetts. KnujOn processes abuse data in the form of spam and other security threats to develop a clear picture of problems facing the Internet. KnujOn builds profiles of online criminal groups, evaluates the quality of registrars and Internet Service Providers, issues WHOIS challenges, documents policy failures, develops policy initiatives, tests compliance mechanisms, issues reports to professional investigators, and educates the public about complex Internet security issues. We see our role as one of assisting the ordinary Internet user in navigating the dense technical bureaucracy of the global network and augmenting public services in the face of rampant illicit electronic traffic.

¹ <https://www.icann.org/resources/pages/governance/bylaws-en/#XI>

² <http://whois.knujon.com>

1. Introduction: Limbo

Any Internet user faced with abuse or fraud, in trying to understand the the situation, finds themselves in a dark wood having wandered off the straight path. This savage and stubborn wilderness is easy to fall into. The netherworld is not simply close to the legitimate Internet, it is integrated. Even for those well-versed in Internet technology and policy, the journey is difficult. For ordinary Internet users there is little or no hope of getting abuses addressed without relentless effort, overcoming a sharp learning curve. For those attempting to climb out of the pit and understand The Internet Corporation of Assigned Names and Numbers' approach to abuse, the words they read are cruel.

Right now the entire Internet is in Limbo. The U.S. government announced the oversight transition of the Internet number function to the global stakeholder community on 14 March 2014. The format of this proposed governance is still being defined. The U.S. Commerce Department extended the transition period for another year because the work needed more time. Several of the proposals have been rejected already, but at ICANN55 Marrakech the work of the Cross Community Working Group is moving forward.

How ICANN impacts consumers

Websites are the consumer-facing portion of the Internet. Websites are *domain names* at their root. Domain names are the province of ICANN which is the manager of the Domain Name System (DNS). This makes ICANN the ultimate point of origin for any generic (gTLD) domain name, not only in terms of policy but also money since ICANN receives indirect fees for domain names and direct fees from the registrars who sponsor them. It is primarily domain name sales which fund ICANN. This, however, does not apply to Country-Code domains (ccTLDs) which are under the management of specific sovereign governments.

What are ICANN's obligations?

ICANN has a number of policies and obligations concerning their relationship with the Internet user. These include issues such as competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection³

³ <https://www.icann.org/resources/reviews/aoc/cct>

The issue of great concern now is the transition of the Internet Assigned Numbers Authority⁴ (IANA) function from the U.S. government to ICANN, which depending on who you talk to is either the most important thing that has ever happened, the worst thing that has ever happened, or merely a symbolic milestone. Regardless, stewardship of the Internet is a critical task and the Internet community is changed with developing the best proposal for the transfer. The transition proposal must have broad community support and address the following four principles: 1) Support and **enhance the multistakeholder** model; 2) Maintain the security, stability, and resiliency of the Internet DNS; 3) Meet the needs and expectations of the **global customers** and partners of the IANA services; 4) and, Maintain the openness of the Internet.⁵ The specific portion of addressing the four items is a mandated process for Enhancing ICANN Accountability which is split into two parts:

Work Stream 1: focused on mechanisms enhancing ICANN accountability that must be in place or committed to within the time frame of the IANA Stewardship Transition;

Work Stream 2: focused on addressing accountability topics for which a timeline for developing solutions and full implementation may extend beyond the IANA Stewardship Transition.

The question asked in this paper is about whether ICANN has a comprehensive plan to address abuse and cybercrime, which falls into ICANN's mandate, in a way that reaches the ordinary consumer. How does the work being done now prepare it to earn the consumer trust? What does ICANN mean by invoking "consumer trust" and what does it really mean to the organization? Here we will try to be you guide through this nebulous underworld.

⁴ <http://www.iana.org>

⁵ <https://www.icann.org/stewardship-accountability>

2. The Public Face of ICANN to the Consumer

The first public face of ICANN to the consumer is of course <http://icann.org>. Here we examine what an Internet consumer might encounter when attempting to understand how to deal with the negative aspects of the Domain Name System. We starts in the most outer circle and slowly moves to the center.

2.1. From Page One of ICANN's website

In reading this, try to forget any depth of experience you may have and imagine you are one of the millions around the globe connecting to the Internet for the first time. There are no clear statements or links at icann.org concerning Internet abuse, fraud, criminality, etc. The word "consumer" does not appear on the front page. So, we must hunt and click through links that appear relevant. Here, we detail the most promising links first.

2.1.1. Get Started: The first link which lists a number of "Beginner's Guides" which are focused on being directly involved in the ICANN community and not so much on consumer issues. These guides are comprehensive and well-written but do to address the issues were concerned with⁶. One may wonder why ICANN should provide a specific guide for consumers, but the fact is they have created specific guides for journalists⁷ and various other parties.

2.1.2. Public Responsibility: This is a wonderful program but it is focused on *"respond(ing) to Community and Regional needs...designed to strengthen the multistakeholder model by addressing participation needs."*⁸

2.1.3. Global Support: Support sounds like a good term, but this only applies to contracted parties and the existing community⁹, it is not support in the basic sense.

2.1.4. Security Team: ICANN has a great security team, but this refers to overall structural security and not that of end users¹⁰. Should ICANN provide security for the entire Internet? No, that is not the issue here.

2.1.5. Accountability and Transparency: The sub-links are examined below, but this is a high-level view of accountability and transparency. It does not provide either

⁶ <https://www.icann.org/resources/pages/beginners-guides-2012-03-06-en>

⁷ <https://www.icann.org/resources/pages/press-2014-03-17-en>

⁸ <https://www.icann.org/development-and-public-responsibility>

⁹ <https://www.icann.org/resources/pages/customer-support-2015-06-22-en>

¹⁰ <https://www.icann.org/resources/pages/security-2012-02-25-en>

accountability or transparency to the end user in a meaningful way, and we will explain why.

2.1.5.1. Accountability Mechanisms: This provides an overview of of the specific functions¹¹ but the summaries do not provide real utility for the consumer.

2.1.5.2. Independent Review Process: All of the process here concerns commercial parties directly involved in ICANN's business.¹²

2.1.5.3. Request for Reconsideration: This refers to parties already involved in ICANN's business who are dealing with a policy decision¹³. Again, not applicable to consumers.

2.1.4.4. Ombudsman: In the common sense an ombudsman is supposed to be an impartial arbitrator in an organization who handles complaints about the organization. This is again, further down the road from the perspective of the consumer. In general, the ICANN ombudsman has an inherent conflict of interest since the office is funded by ICANN and accountable to ICANN's board. Not the ideal situation. The actual function and results of the ombudsman will be analyzed in a future report and are troubling.

2.1.6. Help: Help! The simplest of words for someone with a problem. Below we detail how this help does not address consumer problems.

2.1.6.1. Dispute Resolution: A high-level view of different issues, mostly for commercial parties¹⁴. There is one link "Spam and Viruses" which we will examine below.

2.1.6.2. Domain Name Dispute Resolution: Concerns policies of trademarks and domains, not for ordinary consumers¹⁵.

2.1.6.3. Registrar Problems: Here, we finally get some answers, but they are not good: "*ICANN does not address consumer complaints [pertaining to spam and viruses]*"¹⁶

¹¹ <https://www.icann.org/resources/pages/mechanisms-2014-03-20-en>

¹² <https://www.icann.org/resources/pages/accountability/irp-en>

¹³ <https://www.icann.org/resources/pages/accountability/reconsideration-en>

¹⁴ <https://www.icann.org/resources/pages/dispute-resolution-2012-02-25-en#spam>

¹⁵ <https://www.icann.org/resources/pages/dndr-2012-02-25-en>

¹⁶ <https://www.icann.org/news/announcement-2007-03-06-en>

2.1.7. Using **Search**: Exhausted, the consumer might turn to the search function. Using the site search yields the most promising, yet eventually most disappointing results. We search for some of the most common terms that consumers might use: phishing, spam, abuse and virus. The results are examined below.

2.1.7.1. Phishing

Multiple documents returned include some critical incident reports, most importantly “About Phishing¹⁷” which will be discussed further. The document is two years old and directs consumers to file complaints with the U.S. Federal Trade Commission¹⁸ (FTC) or the International Consumer Protection and Enforcement Network¹⁹ (ICPEN). The links do not open a new window or tab but rather in the existing browser window which completely exits the user from ICANN’s website. The FTC has a dedicated site for complains²⁰. Both sites have complaint interfaces. ICPEN has referrals to specific national consumer agencies (clicking on the U.S. brings the user back to the FTC). However, these sites are not evaluated here for their utility or effect. We are focused on what ICANN does for the consumer.

2.1.7.2. Spam

Multiple documents, two in particular: “About Whois for Spam Complaints²¹” and “About Spam, Phishing & Website Content²²” All of the pages carry the proviso “*Complaints about [malware, spam, phishing, viruses, content] are outside of ICANN's scope and authority*”. The page is also available in Arabic²³, Spanish²⁴, French²⁵, Russian²⁶ and Chinese²⁷. These translations also point to the FTC website which is problematic. The

¹⁷ <https://www.icann.org/resources/pages/phishing-2013-05-03-en>

¹⁸ <https://www.ftc.gov>

¹⁹ <https://icpen.org>

²⁰ <https://www.ftccomplaintassistant.gov/#crnt&panel1-1>

²¹ <https://www.icann.org/resources/pages/spam-2013-03-22-en>

²² <https://www.icann.org/resources/pages/web-2013-05-03-en>

²³ <https://www.icann.org/resources/pages/spam-2013-03-22-ar>

²⁴ <https://www.icann.org/resources/pages/spam-2013-03-22-es>

²⁵ <https://www.icann.org/resources/pages/spam-2013-03-22-fr>

²⁶ <https://www.icann.org/resources/pages/spam-2013-03-22-ru>

²⁷ <https://www.icann.org/resources/pages/spam-2013-03-22-zh>

FTC website is not available in these languages and the FTC mainly accepts complaints from Americans only. The links: *Learn More* and *Take Action* lead to the same content. Most unfortunate is the rather promising result entitled: “*How can I help protect myself from spam, phishing and other Internet fraud?*” What does the consumer find at this link²⁸?

QUESTION #20: How can I help protect myself from spam, phishing and other Internet fraud?

 Lecture contents locked

Enroll In Course to Unlock

It is not helpful to hide information which might benefit the Internet consumer. It may be a useful course, but this is not a direct to consumer approach.

2.1.7.3. Abuse

The first two pages that appear direct the user to IANA’s website. There are very specific documents here about the structure of Internet Protocol addresses²⁹ (IP). IPs are behind domains, but they are not domains, they are the underlying portion of the DNS. The IANA documents go to lengths to instruct Internet users to look somewhere else for handling abuse issues³⁰.

²⁸ <http://learn.icann.org/courses/the-beginner-s-guide-to-domain-names/lectures/621022>

²⁹ <https://www.iana.org/help/abuse-answers>

³⁰ <https://www.iana.org/abuse>

In summary, there is a lack of direct communication to the consumer or Internet end user. Specific attempts to address Internet abuse lead to a direct “no” or a redirection to an external source. The next document in the search results is entitled “*Update On Steps To Combat Abuse And Illegal Activity*”³¹, a blog which will be discussed in section 2.2. Another search result is called “*Abuse Contact Data Complaint Form*”³² which is a useful form, but it does not directly relate to end-user complaints about abuse, but rather a lack of abuse contact information published by a specific registrar. This would be useful *after* the user attempts and fails to contact the registrar. However, since this process is not linked, spelled out, or mandated it would be unlikely most Internet users would even get to this point. The next search result “*Registrar Abuse Reports*”³³ actually has a good explanation of the requirement for registrars to have published abuse contact information and is linked to the Abuse Contact Data Complaint Form.³⁴ Unfortunately, since this information is not directly linked from the topic pages on Spam, Phishing, and Malware, it is unlikely the Internet user would get to this level.

³¹ <https://www.icann.org/news/blog/update-on-steps-to-combat-abuse-and-illegal-activity>

³² <https://forms.icann.org/en/resources/compliance/complaints/registrars/standards-complaint-form>

³³ <https://www.icann.org/resources/pages/abuse-2014-01-29-en>

³⁴ <https://forms.icann.org/en/resources/compliance/registries/abuse-contact/form>

2.2. From the Horse's Mouth

Domains are at the root of websites and email addresses. Domains are obtained through registrars with ICANN contracts. The contracts of registrars contain specific conditions and the sponsorship obligations of a domain owner are also stated. This makes the various types of abuses of domain names the duty of ICANN's contractual compliance department. Most Internet users would only know this if they simply read the preceding explanation. Contractual compliance is a concept completely foreign to most consumers and they would have no realization that the function of ICANN's compliance area directly impacts their safe use of the Internet. This is the first hurdle any victimized Internet user must overcome. In order to properly access domain-based abuse they must know that it is an issue of contractual compliance.

2.2.1. ICANN Compliance and Consumer Trust

The stated vision and mission of ICANN Compliance is to be a *trusted Contractual Compliance service provider by preserving the security, stability and resiliency of the Domain Name System and promoting consumer trust*³⁵. The "consumer trust" part is directly from the ICANN Affirmation of Commitments³⁶ and a requirement for a valid IANA stewardship transition. However, statements issued by ICANN Compliance (as well as its general actions) disregard the stated mission. Specifically, Compliance issued three blogs in 2015 (detailed below and editorialized) which appear, by their nature to completely contradict ICANN's mission and mandate. ICANN has documented policies concerning "*abusive registrations of domain names*"³⁷ and require registrants to "*not knowingly use the domain name in violation of any applicable laws or regulations*"³⁸. It would seem that anyone part of a such an agreement would be held to it, but the realities at ICANN are more complex.

³⁵ <https://www.icann.org/en/system/files/files/contractual-compliance-complaint-03sep15-en.pdf>

³⁶ <https://www.icann.org/resources/pages/affirmation-of-commitments-2009-09-30-en>

³⁷ <https://www.icann.org/resources/pages/help/dndr/udrp-en>

³⁸ <https://www.icann.org/resources/pages/policy-2012-02-25-en>

2.2.2. Blog 1: “Community Outreach On Interpretation and Enforcement of the 2013 RAA”³⁹

This inaugural announcement, by its virtue, is directive and not consensus based. The invocation of the word “interpretation” places all of the control concerning DNS enforcement in the hands of one department and ultimately one person. To compound this issue, ICANN Compliance has historically refused to answer questions about their process which makes it difficult if not possible to audit. The only document consumers might find describing a process is called *Compliance Process and Approach*⁴⁰ but it only applies to issues ICANN compliance takes on as formal matter, it does not show how complaints from consumers get to this level, and in fact there is no real path. The reason often cited is that open discussion of the Compliance process would *jeopardize the relationship with contracted parties*, which clearly trumps consumer trust, accountability, and transparency. ICANN policy is supposed to be consensus-driven. In this blog, the compliance director sets out to address four issues: 1) Forwarding abuse reports to the registered name holder; 2) Whether there are any circumstances in which not forwarding an abuse report to the registered name holder is justified; 3) How a registrar should respond if the registered name holder ignores the abuse report and fails to respond; 4) What should be communicated back to the party that filed the abuse report. This seems reasonable on the surface, but the details make it problematic. This blog is more of a blueprint for rejecting complaints, as do the next two blogs. The title of the blog also mentions outreach, but Compliance Outreach only refers to the regular constituency groups at ICANN like the Intellectual Property holders and the registrars themselves. Outreach is not targeting Internet consumers and did not meet with the At-Large stakeholders.

³⁹ <https://www.icann.org/news/blog/community-outreach-on-interpretation-and-enforcement-of-the-2013-rra>

⁴⁰ <https://www.icann.org/resources/pages/approach-processes-2012-02-25-en>

2.2.3. Blog 2: “ICANN Is Not the Internet Content Police”⁴¹

Yesterday, I published a blog informing the community about efforts I am making to offer greater clarity regarding ICANN's interpretation and enforcement of certain key provisions of the 2013 RAA⁴²

A brief reading of this statement reveals serious issues. The clear reading of the statement shows pains taken by compliance to explain a position, and not a blog about what they are doing to enforce policy. A contract created in consultation with by the global multi-stakeholder community should not be subject to the interpretation of a single person. The compliance director does not own the relationship between ICANN and the world's Internet users, it is not his to bargain with and dispose with at will. The illegal activity in question here concerns the fraudulent representation which occurs *inside* of contractual activity. The clear goal of the blog is to highlight things which reasonable people would not saddle ICANN with while ignoring long-term failures of ICANN to properly vet and police their commercial agents within the contractual authority. This blog is a distraction move, an attempt to push any responsibility outside of ICANN. By the compliance director using “interpretation” of the contract it is possible to push any problem outside of ICANN's remit without any opportunity to question.

What is at the core of this effort? It boils down to two points in the blog, that enforcement would either be A) “*effectively putting the website out of business*”⁴³ and/or B) “*effectively putting the registrar out of business.*”⁴⁴ This is the summary of ICANN's problem, registrants and registrars provide income to ICANN therefore enforcing the rules is a disincentive to profit. This is not a multi-stakeholder policy for a non-profit organization.

⁴¹ <https://www.icann.org/news/blog/icann-is-not-the-internet-content-police>

⁴² <https://www.icann.org/news/blog/icann-is-not-the-internet-content-police>

⁴³ <https://www.icann.org/news/blog/icann-is-not-the-internet-content-police>

⁴⁴ <https://www.icann.org/news/blog/icann-is-not-the-internet-content-police>

2.2.4. Blog 3: “Update On Steps To Combat Abuse And Illegal Activity”⁴⁵

The third compliance blog⁴⁶ appears to be a direct criticism of Internet abuse reporters. The compliance director launches this criticism of Internet users:

*Registrars also receive complaints on occasion that have been generated by automated programs. Sometimes a registrar will receive the identical complaint from an automated program multiple times on the same day or over the course of a week.*⁴⁷

There is no attempt here to explain why this might be the case. Spam containing the same domain names are sent to thousands if not millions of Internet users. Malware impacts users and servers on a massive scale. If there are multiple complaints about a site, would it not be a good idea to further examine the data instead of rejecting it?

Sometimes a complaining party who is dissatisfied with a registrar's response to a complaint keeps submitting the identical complaint over and over again.

There is a failure here to provide guidance to complaining parties or explain track which registrars have a pattern of rejecting complaints from Internet users. There are seven requirements for complaint submitters and four reasonable steps for registrars in response to the complaints. Following the apparent logic in all of this it seems that if A) the complaint in question is not about something illegal the registrar is not obligated to do anything; if B) the issue is not illegal in the registrar’s jurisdiction the registrar is not obligated to do anything; and if C) it is illegal in registrar’s jurisdiction the user should be reporting it to law enforcement and not the registrar.

The biggest failure here is that ICANN has taken itself out of the information flow - this is completely between a user and a registrar. There is a missed opportunity for ICANN to collect meaningful statistics on the nature of complaints and the parties involved. There is no way here for ICANN to become aware of consumer abuse and hence develop new strategies for combatting abuse and illegal activity.

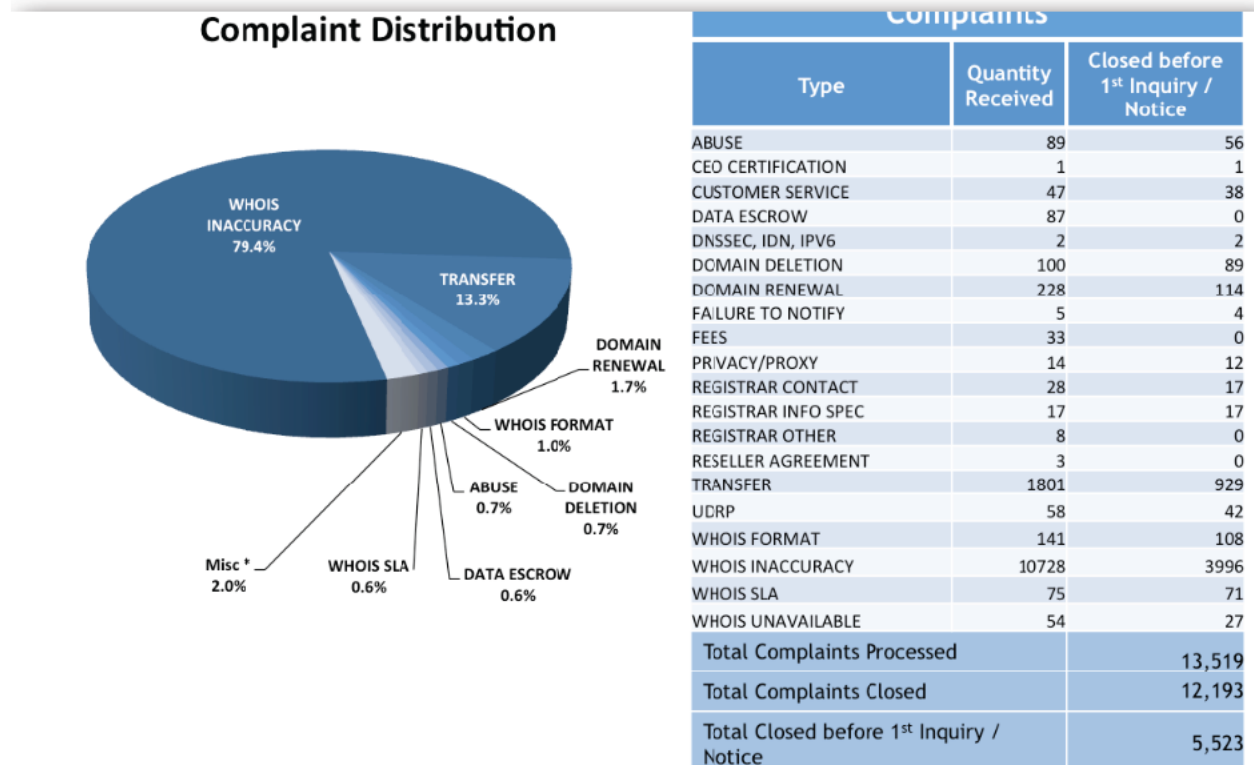
⁴⁵ <https://www.icann.org/news/blog/update-on-steps-to-combat-abuse-and-illegal-activity>

⁴⁶ <https://www.icann.org/news/blog/update-on-steps-to-combat-abuse-and-illegal-activity>

⁴⁷ <https://www.icann.org/news/blog/update-on-steps-to-combat-abuse-and-illegal-activity>

2.2.5. Blogs Do Not Reflect Real Compliance Data

The three blogs issued by the head of compliance (detailed above) go to pains to describe the problems associated with *invalid* abuse complaints. The blogs explain that ICANN is not the content police, that ICANN cannot tackle issues of blasphemy, hate speech or pornography. The blogs have been the source of much discussion and debate with ICANN CEO Fadi Chehade referring to them frequently. The constant drumbeat is that ICANN cannot act on these abuse complaints. The attention leads one to believe that compliance is overwhelmed by invalid abuse complaints that are out of scope. However, compliance quarterly reports tell a different story. According to the most recent quarterly report 96.7% of the compliance complaints are for contractual matters⁴⁸ (mostly WHOIS inaccuracy and domain transfer issue). Only 0.7% of the complaints are for “abuse”. (below chart is from compliance report⁴⁹)



The first quarter report has more or less the same distribution with only slight fluctuation in the counts⁵⁰. So, why so much focus on an issue which does not appear to amount

⁴⁸ <https://www.icann.org/en/system/files/files/compliance-update-jun15-en.pdf>

⁴⁹ <https://www.icann.org/en/system/files/files/compliance-update-jun15-en.pdf>

⁵⁰ <https://www.icann.org/en/system/files/files/compliance-update-mar15-en.pdf>

for much? It would seem that the public flogging of the community for submitting “invalid abuse complaints” is uncalled for.

2.2.6. Direct Questions for Compliance

At ICANN’s 54th meeting this author had the opportunity to engage with the compliance director in a recorded session⁵¹. The questions were intended to define how the issue of Consumer Trust is being engendered within the organization’s critical functions.

The first question was not intended to be controversial (on Consumer Trust on ICANN’s Website), rather it was meant for ICANN to explain how it *engages* consumers through its website. The exchange that followed was unexpected and disappointing.

Bruen: ...consumer trust is a huge issue and part of your mission statement. Have you developed a consumer-centric space on ICANN’s website?

Grogan: ICANN’s mission is really the coordination of the number system for the Internet - this is what most of our resources are devoted to...we’re not focused on content and commerce...we have not created in compliance a consumer-centric space.

Bruen: Do you disagree that consumer-trust is part of your department’s mission statement?

Grogan: I’m talking about what ICANN’s overall fundamental remit is.

Bruen: Is [consumer trust] part of the Affirmation of Commitments?

Grogan: It’s mentioned

Bruen: Is consumer trust part of the IANA transition requirements?

Grogan: I am not part of that process so I don’t want to speak to it.

Bruen: But can you speak to [consumer trust] being part of your department’s mission statement?

Grogan: It’s not part our mission statement as a department as far I am aware.⁵²

⁵¹ <https://meetings.icann.org/en/dublin54/schedule/mon-naralo/ac-naralo-19oct15-en>

⁵² <https://meetings.icann.org/en/dublin54/schedule/mon-naralo/transcript-naralo-19oct15-en>

This entire dialogue is distressing since it seems to reject ICANN’s core principles in practice. Consumer trust is not merely *mentioned* in the Affirmation of Commitments, it is one of the main tenets. The title of section 9.3 is “*Promoting competition, **consumer trust**, and consumer choice*”⁵³. This section is in essence the embodiment of the commitment of ICANN. In specific detail the section defines the promotion of consumer trust as including “consumer protection” and “malicious abuse issues”. The document in particular details the requirements of ICANN to develop WHOIS policy that promotes consumer trust. In particular reference to the Grogan response, the following is the ICANN Compliance mission statement⁵⁴:



Contractual Compliance

Contracts are enforced through Contractual Compliance. The mission is to preserve the security, stability and resiliency of the Domain Name System and to promote consumer trust through prevention, transparency and enforcement.

As part of his answer in addressing consumers on ICANN’s website, Grogan pointed to a new video which was reviewed after the session. The video is not geared towards Internet consumers, the video is for domain *registrants* experiencing transfer issues. The video is important and well-produced but has little to do with Internet users.

⁵³ <https://www.icann.org/resources/pages/affirmation-of-commitments-2009-09-30-en>

⁵⁴ <https://www.icann.org/en/system/files/files/contractual-compliance-complaint-03sep15-en.pdf>

What follows are questions about compliance consulting with consumer groups:

Bruen: Have you ever met with the Better Business Bureau in the United States?

Grogan: Personally no.

Bruen: Have you ever met with the Canadian Consumers Union?

Grogan: No⁵⁵

In trying to ascertain who ICANN Compliance met with, Grogan then names FDA which is a U.S. government agency and the MPAA which is a media industry group. The next question concerned ICANN staff assignments for Consumer Safeguards

Bruen: How many staff the 25 compliance staff members are focused on consumer issues?

Grogan: There's not a single staff member that's solely committed to that.⁵⁶

The last statement turned out to be extremely problematic, because one year prior to this meeting ICANN announced the creation of a Consumer Safeguard Director:

A newly created position of Consumer Safeguards Director will also report to Grogan, and will focus specifically on implementation of those ICANN contract safeguards directed toward protecting consumers.⁵⁷

However, there is no such staff person at ICANN and to our knowledge ICANN has not posted a job opening for such a position⁵⁸.

⁵⁵ <https://meetings.icann.org/en/dublin54/schedule/mon-naralo/transcript-naralo-19oct15-en>

⁵⁶ <https://meetings.icann.org/en/dublin54/schedule/mon-naralo/transcript-naralo-19oct15-en>

⁵⁷ <https://www.icann.org/news/announcement-2014-10-12-en>

⁵⁸ https://icann-openhire.silkroad.com/epostings/index.cfm?fuseaction=app.allpositions&company_id=16025&version=1

2.2.7. Results

The data and discussions above lead to an official letter from the ICANN At-Large Advisory Council to ICANN's CEO and Board of directors⁵⁹. Issued in December 2015, this letter requests clarification on 1) the status of the hiring of a Consumer Safeguard Director, 2) ICANN's philosophy on Consumer Trust, and 3) outreach to the greater community on issues of Consumer Trust. The ICANN CEO replied quickly⁶⁰ restating the commitment to hiring a Consumer Safeguard director, embracing the philosophy of Consumer Trust and engaging the community in its development. The letter specifically states a new Consumer Safeguard should be hired by the ICANN55 meeting in March 2016. As of this publishing, we have received no further information from ICANN on this appointment.

⁵⁹ <https://www.icann.org/en/system/files/correspondence/greenberg-to-chehade-02dec15-en.pdf>

⁶⁰ <https://www.icann.org/en/system/files/correspondence/chehade-to-greenberg-21dec15-en.pdf>

3. The Data: Registries and Registrars

The previous section details how the Internet end user might interact with ICANN if they had problem, but most users do not know what ICANN is. The next layer of user interaction concerns Registries and Registrars. Registries sponsor top-level domain extensions (TLDs) and registrars sponsor specific domain names. Both entities are accredited by ICANN. Registries manage what is to the *right* of the dot (e.g. .com, .edu, .net, etc.), registry *customers*, as it were, are the registrars. Registrars manage what is to the *left* of the dot (e.g. yahoo.com, amazon.com, etc.). A website is built upon a domain name which is obtained from a registrar. The registrar places the domain name in the Domain Name System through a registry. Registries and Registrars are listed in the next two sections based on the *rate* of abuse reported to Knujon, in the last six months, by thousands of Internet users who submit spam samples and report domain-based malware attacks.

3.1. gTLD Registry Data

Roughly 500 of the gTLDs are empty or virtually empty. Some of these are not yet launched, some are closed or have extreme restrictions (this number does not include ccTLDs). The 25 TLDs below have particular abuse issues. The remaining 400 plus TLDs all have some level of abuse but it does not reach the same level of seriousness as exhibited by the 25 listed here. Only four (4) of the TLDs with high rates of abuse are *legacy* TLDs and not *new* gTLDs. The legacy TLDs with abuse issues are mostly there due to general *volume* of registrations; these particular TLDs have overall *lower* percentages of abused domains as compared to the abused new gTLDs. The general trend is that certain new gTLDs are rapidly replacing exiting registries for spam and abuse. It is important to note that 10 of these abused TLDs are sponsored by a single company: Famous Four Media. The TLDs rated below all have scores *lower* than 50 which indicates problems with spam and abuse. Details were sent directly to the registries before this report was released. For each TLD the registrars with the most abused sponsored domains are shown. If one registrar has the overwhelming percentage, only that registrar is shown in **bold**; registrars marked with an * are also recorded here as one of the most reported registrars for abuse in section 3.2. Parties marked with a † responded to us prior to publishing. Parties marked with a ■ responded in an automated method or were non-committal. Registrars with less than 5% of the domains are generally not shown but available upon request.

3.1.1. **.download** (Score: 11)

dot Support Limited (Famous Four Media)

2nd Floor Leisure Island Business Centre, Ocean Village, Gibraltar, GX11 1AA
Gibraltar. registry@famousfourmedia.com, +350 21650000

99.84% of the reported spammed .download domains were registered through **Alpnames Limited***

3.1.2. **.work** (Score: 12) †

Top Level Domain Holdings Limited (Minds + Machines Ltd)

Craigmuir Chambers, Road Town Tortola VG 1110, British
Virgin Islands, support@mm-registry.com, +353.14301689

Three registrars sponsor the bulk of reported .work domains:

eNom Inc*: 56.14%

PDR Ltd.*: 24.88%

Instra Corporation Pty Ltd.: 13.98%

3.1.3. **.review** (Score: 15)

dot Review Limited (Famous Four Media)

2nd Floor Leisure Island Business Centre, Ocean Village, Gibraltar, GX11 1AA
Gibraltar. registry@famousfourmedia.com, +350 21650000

91.73% of the reported spammed .review domains were registered through **Alpnames Limited***

3.1.4. **.science** (Score: 16)

dot Science Limited (Famous Four Media)

2nd Floor Leisure Island Business Centre, Ocean Village, Gibraltar, GX11 1AA
Gibraltar. registry@famousfourmedia.com, +350 21650000

Four registrars sponsor the bulk of reported .science domains:

PDR Ltd.*: 37.81%

NameCheap Inc.*: 28.57%

Alpnames Limited*: 13.24%

Key-Systems LLC: 8.38%

3.1.5. **.link** (Score: 17)

Uniregistry, Corp.

Governors Square, Unit 3-110, 23 Lime Tree Bay Avenue, Grand Cayman, Cayman Islands, PO Box 1361, George Town, KY1-1108, Cayman Islands, contact@uniregistry.com, +1.3457496263

Two registrars sponsor the bulk of reported .link domains

eNom Inc.*: 67.81%

NameCheap Inc.*: 17.04%

3.1.6. **.top** (Score: 19) †

Jiangsu Bangning Science & Technology Co.,Ltd.

3th Floor, BangNing Technology Park, 2 YuHua Avenue, Yuhuatai District, Nanjing City, Jiangsu Province. China, newgtld@55hl.com, +86 13915996396

94.57% of the reported spammed .top domains were registered through **Alpnames Limited***

3.1.7. **.date** (Score: 19)

dot Date Limited (Famous Four Media)

2nd Floor Leisure Island Business Centre, Ocean Village, Gibraltar, GX11 1AA
Gibraltar

95.05% of the reported spammed .date domains were registered through **Alpnames Limited***

3.1.8. **.faith** (Score: 20)

dot Faith Limited (Famous Four Media)

2nd Floor Leisure Island Business Centre, Ocean Village, Gibraltar, GX11 1AA
Gibraltar

92.06% of the reported spammed .faith domains were registered through **Alpnames Limited***

3.1.9. **.asia** (Score: 23) - Legacy/Sponsored †

DotAsia Organisation Ltd., 12/F, Daily House, 35-37 Haiphong Road, Tsim Sha Tsui, Kowloon, Hong Kong, admin@iana.whois.asia, +852 2244 7900

Three registrars sponsor the bulk of reported .asia domains

BigRock Solutions Ltd.*: 66.16%

GMO Internet, Inc.: 18.61%

PDR Ltd.*: 12.17%

3.1.10. **.win** (Score: 24)

First Registry Limited (Famous Four Media)

2nd Floor Leisure Island Business Centre, Ocean Village, Gibraltar, GX11 1AA

Gibraltar

96.99% of the reported spammed .win domains were registered through **Alpnames Limited***

3.1.11. **.com** (Score: 25) - Legacy ▀

VeriSign Global Registry Services

12061 Bluemont Way, Reston Virginia 20190, United States, info@verisign-grs.com, +1 703 925-6999

Four registrars sponsor the bulk of reported .com domains

eNom Inc.*: 41.39%

GoDaddy.com LLC: 23.38%

Network Solutions LLC: 5.57%

PDR Ltd.*: 5.19%

3.1.12. **.info** (Score: 25) - Legacy

Afilias Limited

Office 107, 3013 Lake Drive, CityWest, Dublin 24, Ireland, domainadmin@afilias.info, +1 215 706 5700

Four registrars sponsor the bulk of reported .info domains

GoDaddy.com LLC: 47.64%

CSL Computer Service Langenbach GmbH: 10.04%

Wild West Domains LLC: 9.03%

eNom Inc.*: 5.34%

3.1.13. **.biz** (Score: 25) - Legacy

Neustar, Inc.

Loudoun Tech Center, 46000 Center Oak Plaza, Sterling Virginia 20166, United States, registrytechnical2@neustar.biz, +1 571 434 5487

Five registrars sponsor the bulk of reported .biz domains

PDR Ltd.*: 35.37%

eNom Inc.*: 30.27%

BigRock Solutions Ltd.*: 10.34%

NameCheap Inc.*: 6.17%

GoDaddy.com LLC: 5.74%

3.1.14. **.xyz** (Score: 25) †

XYZ.COM LLC

2121 E Tropicana Ave, Las Vegas, NV 89119, United States, hello@xyz.com, +1.7027632191

Two registrars sponsor the bulk of reported .xyz domains

NameCheap Inc.*: 82.34%

PDR Ltd.*: 8.85%

3.1.15. **.net** (Score: 28) - Legacy ▀

VeriSign Global Registry Services

12061 Bluemont Way, Reston Virginia 20190, United States, info@verisign-grs.com, +1 703 925-6999

Five registrars sponsor the bulk of reported .net domains

eNom Inc.*: 28.05%

GoDaddy.com LLC: 16.47%

PDR Ltd.*: 8.31%

Name.com Inc.*: 5.22%

Internet.bs Corp*.: 5.13%

3.1.16. **.org** (Score: 32) - Legacy

Public Interest Registry (PIR)

1775 Wiehle Avenue, Suite 102A, Reston Virginia 20190, United States,

mcoon@pir.org, +1 703 889 5762

Four registrars sponsor the bulk of reported .org domains

PDR Ltd.*: 22.91%

GoDaddy.com LLC: 22.82%

eNom Inc.*: 20.48%

Network Solutions LLC: 9.73%

3.1.17. **.rocks** (Score: 32)

United TLD Holdco, LTD.

One Clarendon Row, Dublin 2, Co. Dublin, Ireland, jeff@unitedtld.com, +1 425 298

2607

99.58% of the reported spammed .rocks domains were registered through **eNom Inc.***

3.1.18. **.party** (Score: 34)

Blue Sky Registry Limited (Famous Four Media)

2nd Floor, Leisure Island Business Centre, Ocean Village, Gibraltar, GX11 1AA,

Gibraltar, registry@famousfourmedia.com, 0035021650000

93.81% of the reported spammed .party domains were registered through **Alpnames Limited***

3.1.19. **.cricket** (Score: 35)

dot Cricket Limited (Famous Four Media)

2nd Floor Leisure Island Business Centre, Ocean Village, Gibraltar, GX11 1AA,

Gibraltar, registry@famousfourmedia.com, 0035021650000

Three registrars sponsor the bulk of reported .cricket domains

PDR Ltd.*: 81.40%

Alpnames Limited*: 12.94%

Key-Systems LLC: 5.67%

3.1.20. **.trade** (Score: 35)

Elite Registry Limited (Famous Four Media)
2nd Floor, Leisure Island Business Centre, Ocean Village, Gibraltar, GX11 1AA
Gibraltar, registry@famousfourmedia.com, 0035021650000

Two registrars sponsor the bulk of reported .trade domains

Alpnames Limited*: 75.61%

Alibaba Cloud Computing Ltd.: 21.95%

3.1.21. **.space** (Score: 37) †

DotSpace Inc.

Directiplex, Next to Andheri Subway, Old Nagardas Road, Andheri (East), Mumbai,
Maharashtra, 400069, India, admin@radixregistry.com, +1.4154494774x8522

Four registrars sponsor the bulk of reported .space domains

PDR Ltd.*: 37.81%

NameCheap Inc.*: 28.57%

Alpnames Limited*: 13.24%

Key-Systems LLC: 8.38%

3.1.22. **.click** (Score: 40)

Uniregistry, Corp.

Governors Square, Unit 3-110, 23 Lime Tree Bay Avenue, Grand Cayman, Cayman
Islands, PO Box 1361, George Town, KY1-1108, Cayman Islands,
contact@uniregistry.com, +1.3457496263

Four registrars sponsor the bulk of reported .click domains

GMO Internet, Inc.: 28.54%

eNom Inc.*: 25.42%

PDR Ltd.*: 23.40%

Uniregistrar Corp: 16.41%

3.1.23. **.webcam** (Score: 40)

dot Webcam Limited (Famous Four Media)

2nd Floor, Leisure Island Business Centre, Ocean Village, Gibraltar, GX11 1AA,
Gibraltar, registry@famousfourmedia.com, 0035021650000

95.01% of the reported spammed .webcam domains were registered through

Alpnames Limited*

3.1.24. **.help** (Score: 40)

Uniregistry, Corp.

Governors Square, Unit 3-110, 23 Lime Tree Bay Avenue, Grand Cayman, Cayman Islands, PO Box 1361, George Town, KY1-1108, Cayman Islands, contact@uniregistry.com, +1.3457496263

99.87% of the reported spammed .help domains were registered through **Uniregistrar Corp**

3.1.25. **.club** (Score: 42)

.CLUB DOMAINS, LLC

1640 West Oakland Park, Blvd 304, Oakland Park, Florida 33311, United States, howard@dotclub.com, (954) 530-2580

Three registrars sponsor the bulk of reported .club domains

PDR Ltd.*: 59.60%

NameCheap Inc.*: 27.20%

eNom Inc.*: 7.40%

3.2. Registrar Data

All registrars with reported abuse have been scored, but not all abuse rates raise a level of concern. Many registrars have manageable situations and are proactive. Scores closer to zero indicate serious issues. The factors for scoring are varied but include the number of abused domains in contrast to the registrar's portfolio, the number of reported instances, and many other data points. 12 registrars with scores *below* 100 are listed here with details of the administrators with the most reported abused domains. These details were forwarded to each registrar prior to publishing.

3.2.1. Alpnames Limited (Score: 27) †

Alpnames Limited, Suite 3, 2nd floor, Montarik House, 3 Bedlam Court, Gibraltar GX11, 1AA, Gibraltar, +442031379682, db@alpnames.com

Below is a list of the top 100 domains administrators reported for abuse.

admin (Alpnames)	reported domains
fbrightsolutions@gmail.com	1534
baifratdomain@gmail.com	1361
admin@growthtune.work	1323
wade@higgsandassociates.com	1279
gofwuletul@gmail.com	1273
audacitymediallc01@outlook.com	1147
lucyhillgau@aol.com	811
adwodguru@gmail.com	766
lindsaydoddsgan@aol.com	735
karl.ramdy@gmail.com	721
krismark.copina123@yahoo.com	691
domain@roverfour.science	667
mfurst999@gmail.com	662
superman.superman@aol.com	618
ramdy.montives@yahoo.com	616
futurebrightsolutions123@yahoo.com	598
sheisamonsterlalala@mail.com	595
bobbiesmyleyem@aol.com	587
estherdinneenam@aol.com	583
yellowmediaads101@outlook.com	573
will.curry1@aol.com	563
delacruzvince49@yahoo.com	559
rudds bunch@yahoo.com	554
chezzyonesyouknow@mail.com	538

admin (Alpnames)	reported domains
theresegirteca@aol.com	537
stephaniecassidyeg@aol.com	503
mariabidgooduk@aol.com	490
aimifrostvad@aol.com	481
keelyconstableyda@aol.com	480
keishadentmeb@aol.com	443
susietippleea@aol.com	436
yellowmediadomainmanager@outlook.com	434
thcurry@consultant.com	413
rwnutra@aol.com	407
kxmediasol17@gmail.com	392
sromero@post.com	386
tumbalikarlkenji@yahoo.com	379
admin@acare.science	375
futurebrightsolutions444@outlook.com	374
sheenamarievaldez@outlook.com	363
clairehandcyr@aol.com	359
emailwhois@aol.com	355
commoncore1@aol.com	352
shannonnaeempi@aol.com	346
rajsingh01114@gmail.com	325
aloriamdomain@gmail.com	320
leejustin428@yahoo.com	315
bigjulieeee@hotmail.com	312
ingridyateslo@aol.com	301
domaincampaign111@mail.com	273
destinationweb@engineer.com	272
vanessajones659@gmx.com	269
pennyfeneckdui@aol.com	269
rogthomp@mail.com	264
maxinehewittyki@aol.com	252
hbyron03@gmail.com	251
m.shiwali.ms@gmail.com	244
verysmartnida@gmail.com	242
judithobrienuka@aol.com	238
admin@rwnutra.com	233
vhalighorphis1101@yahoo.com	232
traceymilnegli@aol.com	225

admin (Alpnames)	reported domains
brookekayleipo@aol.com	221
ericsimpson465@gmx.com	220
kayalmondve@aol.com	220
neilglover957@gmx.com	218
sammyguy@usa.com	218
audacitymediallc@yahoo.com	215
manke9799@gmail.com	213
futurebrightsolutions@yahoo.com	201
toddpkoster@yahoo.com	197
lucashughes251@gmx.com	196
samanthahamilton559@gmx.com	191
jeanwillis223@gmail.com	189
mmas.girl@gmail.com	187
chingychangy111@yahoo.com	186
justinalolor@mail.com	180
andreaamphlettcim@aol.com	179
yellowedia11011@yahoo.com	174
rajendra.kaur@india.com	169
jonnyboy1@usa.com	163
danreputation@outlook.com	163
elstangeti@aol.com	162
dubeyjoyti34@gmail.com	158
kevinpayne476@gmx.com	157
kxmediasolutions117@yahoo.com	155
charanram1234@yahoo.in	152
timopru523@gmail.com	147
alorewdomain@gmail.com	140
rhiantenagliaci@aol.com	140
getservic09@gmail.com	138
jakibrookeaos@aol.com	134
accelerated.tester@gmail.com	134
ruwtanino@gmail.com	133
perlinchickie@yahoo.com	129
saveojuliat@india.com	125
rochelkarimi26@gmail.com	111
admin@heelin.faith	110
likemalik0@gmail.com	110
tanesh.piyush12@gmail.com	109

3.2.2. eNom Inc. (Score: 31)

eNom, Inc., 15801 NE 24th ST, Bellevue WA 55436, United States, 425-274-4500, legal@enom.com

Below is a list of the top 95 domains administrators reported for abuse.

admin (eNom)	reported domains
WHOIS@BLUEHOST.COM	7252
GRANT_JAMES2@AOL.COM	2913
SUPPORT@HOSTMONSTER.COM	2794
LARRYFLIN22@GMAIL.COM	2678
ANCELETINC@GMAIL.COM	2045
WEBMASTER@VARNETSERVICES.COM	1994
simpleinfo2121@gmail.com	1352
WEBMASTER@NIZMEDIAGROUP.NET	1271
uptimehosting@outlook.com	1169
ADMIN@VVS DATABASEREL.COM	1117
TECH@WESTSYNCDATACENTER.COM	1054
ADMIN@N4SGROUPCOMM.COM	1001
SMITH@MARQANDSMITH.NET	905
researchpromocenter@gmail.com	880
VV2@VV2GROUP.COM	825
destinationweb@bellair.net	803
WHOIS@JUSTHOST.COM	782
michaelp77x@gmail.com	736
AshleyBeanily@aol.com	720
eriecaggiano@yahoo.com	715
AlisonsDegraagfd@aol.com	633
tyadamssd@gmail.com	600
AC@ACNOTIFICATIONS.NET	599
MHOMES223@INBOX.COM	593
2006@NIP.NET	547
S2KHOST@GMAIL.COM	539
RIVERPLATEMEDIA@GMAIL.COM	530
ADMIN@QZWCONNECTIONS.COM	516
MATTWOLFEITS@GMAIL.COM	498
coloplatinumhosting@tech-center.com	488

admin (eNom)	reported domains
REPLY@NATIONALRESEARCHFCS.COM	487
StaceiSwannvsu@aol.com	478
BROKERAGE@BUYDOMAINS.COM	450
DOMAINS@HOSTGATOR.COM	437
MIKEPRESCOTT7777@GMAIL.COM	429
INFO@CONSULTANTSOFFNETPATHGREEN.COM	426
cassyzambrano@yahoo.com	426
CRAYTETECH@GMAIL.COM	416
stassinopolusjane@yahoo.com	402
FIALLOSNETWORK@GMAIL.COM	402
cntproductions@fastservice.com	393
THEGOAT4EVER@GMAIL.COM	390
C3@C3TNNETNET.NET	388
DOMNET7@MAIL.RU	383
CS@CONTACTDESK.NET	381
EsterTorres550@gmail.com	362
KRO@KROMEDIAGROUP.COM	354
DOMAIN@LUTGROUPELL.COM	345
MIKEPRESCOTT4@GMAIL.COM	341
ADMIN@PEEKEREALMNET.NET	324
MJTMARKETINGINC@GMAIL.COM	321
DOMNET6@MAIL.RU	313
SUPPORT@NAMECHEAP.COM	310
transientmarketingdirect@gmail.com	309
globalsystems190@gmail.com	306
hostingteam@fastservice.com	303
zane_lyle@yahoo.com	298
WALL@IZVOGANSSYS.COM	297
vitalerutherford@yahoo.com	297
arethabouliane@yahoo.com	295
destinationweb@outlook.com	292
SPAUL234@OUTLOOK.COM	286
PARCELGROUPEMARKETING@GMAIL.COM	285
NOC@UPDATENOTICEMESSAGES.COM	284
robertnorthern81@gmail.com	277
CONTACTMASTER33@GMAIL.COM	275
RONJ2396@GMAIL.COM	272
DOMAIN@MEMBERUPDATESYSTEMS.COM	265

admin (eNom)	reported domains
skysofthosting123@workmail.com	258
RH.ITT.FIRM@GMAIL.COM	255
debee.selway@yahoo.com	255
CarolinePitchforddav@aol.com	254
dale.cora@yahoo.com	244
TECHADMIN@CLOUDTECHVPS.COM	235
destinationweb@engineer.com	231
EPOSCOMPANY11@GMAIL.COM	230
stplanetmedia@gmail.com	229
EOJ@EOJRELATIONS.COM	227
RICGOMEZ334@MAIL.COM	225
POSTMASTER@AOGMEDIAGROUPFARM.COM	224
aaatechsuprt@gmail.com	223
WHOIS-ADMIN@ARCHEO.COM	216
digitalweb@webname.com	212
ReneeWasjonesbk@aol.com	209
PBX@NYM.HUSH.COM	204
GOOGLECLIENTS@ENOM.COM	201
JAKIQUINNGEU@AOL.COM	200
SHARRONSTROUDTU@AOL.COM	199
YAROSLAV.SKOROBOGATYY@GMAIL.COM	196
HARTBEATSOUND22@GMAIL.COM	195
JAY7NYC@HOTMAIL.COM	195
sharitymcaleavey@yahoo.com	195
ricky.alexis@aol.com	194
GAMESEO25@GMAIL.COM	190
RuthAstonipo@aol.com	189

3.3.3. Internet.bs Corp. (Score: 32)

Internet Domain Service BS Corp, Ocean Centre, Montagu Foreshore, East Bay Street
Nassau The Bahamas P.O. BOX SS-19084, Bahamas, +1.5162347819,
info@support.internet.bs

admin (internet.BS)	reported domains
dynamicresponse1@gmail.com	220
taskmaster@bluemediagroups.net	117
bluemediagroup1@gmail.com	101
rungergun@gmail.com	70
AfnicRoleObject@internet.bs	59
steve807jam@hotmail.com	55
deliveryagent99@gmail.com	51
jenn22093y@outlook.com	44
info@cdnproperties.com	41
ivan-kalshnikov@safe-mail.net	39
vpqerasmusfg@yahoo.com	36
hele0129ne@outlook.com	35
contact@scarletttechnologies.com	32
chiccodin@aol.com	29
falabellalogos2012@gmail.com	28
monjeur@monjeurenterprisesltd.com	27
br1924an@hotmail.com	27
ti1435m@hotmail.com	24
contact@hammerheaddomains.com	22
yybyranndd@yahoo.com	22
steph9283ne@outlook.com	22
ri91432rd@hotmail.com	21
frazysandi0142@outlook.com	21
jas872on@hotmail.com	21
pritty linda7823@hotmail.com	21
ujjcristinfid@yahoo.com	20
jonatwork6806@outlook.com	20
nickis05inlv@hotmail.com	20
maalca2012@gmail.com	19
info@hostingtechnologyworld.com	18
kevin298n834@outlook.com	17
domain@serverlet.com	17

admin (internet.BS)	reported domains
bardana02wi89@outlook.com	17
co892rey8m@hotmail.com	16
steve098jam@hotmail.com	16
dan.snyder1980@gmail.com	16
fergithere98sa@outlook.com	16
emmisonf8re@outlook.com	16
vincentedaniels@gmail.com	16
vgphaidraupr@yahoo.com	16
win1forlinda63@hotmail.com	16
laur9125a@hotmail.com	16
domainsadmin@rstracking.com	15
ca2934rl@hotmail.com	15
anonymous@nowhere.xx.fr	15
steve44simmons@yahoo.com	14
jmitts0923@hotmail.com	14
hollins834maria@outlook.com	14
gresh02alisa7@hotmail.com	13
karen65hlly@outlook.com	13
ntrozaliejq@yahoo.com	13
duff23jenn92@outlook.com	13
rhevinnieqv@yahoo.com	13
jenn82vego29@hotmail.com	13
larrypage7347@armyspy.com	13
bstafford893@hotmail.com	13
more25katy19@hotmail.com	13
akfrichyfxb@yahoo.com	13
vygabrielabrb@yahoo.com	13
astith9202@outlook.com	13
barnett92linda1@outlook.com	12
jessievalle2014@gmail.com	12
griffin982katy@outlook.com	12
yssfabricessv@yahoo.com	12
paulh8921@outlook.com	12
braden92leah1@hotmail.com	12
warner53traci22@hotmail.com	12
jdub9@gmail.com	12
getreached@outlook.com	12
lori23bold91@hotmail.com	12

admin (internet.BS)	reported domains
crzymichelle237@outlook.com	11
info@financetechhosting.com	11
domains@offshore-hosting-service.com	11
testjoker1@gmail.com	11
m902gill34@outlook.com	11
lpmike53@gmail.com	11
oxmindadb@yahoo.com	11
info@longlinehosting.com	11
britt69baxter@yahoo.com	10
jrichardson@gmail.com	10
pete22tracy32@outlook.com	10
contact@broadswordhosting.com	10
mneeley15342@gmail.com	10
rachisinlv22@outlook.com	10
neat17carolc2@hotmail.com	10
njavinitakde@yahoo.com	10
topgiftcardguys@gmail.com	10
daugh32alex@outlook.com	10
suthdan3902@hotmail.com	10

3.3.4. Moniker Online Services LLC (Score: 48)

Moniker Online Services LLC, 1245 South Powerline Road, #293, Pompano Beach FL, 33069, United States, 800-688-6311, bwittenburg@key-systems.net

sadmin (Moniker)	reported domains
khimmus@southernonlinemedia.com	497
matthewtayloraaa@gmail.com	349
sysrenew@adknowledge.com	222
lulu.ngoan@usa.com	209
adult.parking@gmail.com	97
domainadmincontact@gmail.com	91
domains@percivalrock.com	88
info@tychism.com	80
tontin930@yahoo.com	72
mike@aivanetwork.com	70
postmaster@wesmushed.com	68
partnersupport@snapnames.com	65
kikitony123123@gmail.com	61
admin@adminmanagerllc.com	50
domainadmin@tm-online.net	47
admin@mediarevenue.com	46
moshenhm@gmail.com	45
rondacampbell@4rumchat.net	43
clairedanes33@gmail.com	42
dotcomproducts@yahoo.com	42
gatherinfo@gmx.com	41
abuse@americanmadecompany.com	35
email816@aol.com	34
domkeeper777@gmail.com	32
lippifranco76@gmail.com	31
fraudcheck@moniker.com	31
mixenmedia@gmail.com	30
cathy@secpay.com	29
adminam@snapnames.com	29
farn_29@hotmail.com	29
gishadomains@gmail.com	28
johnalexander687@yahoo.com	28
vinnie@independentmediagroup.com	28

sadmin (Moniker)	reported domains
trunk_you_88@hotmail.com	28
dns@gnousa.com	27
dns-admin@fma.net	27
admin@pinnacleipsource.com	26
domains@cyhawk.com	26
admin@domainassetholdings.com	25
domainadmin@acceas.com	25
kristina@4rumchat.net	25
proxy@privateregistrationservices.com	25
brokerage@buydomains.com	23
flexibility@pisem.net	23
michail@infoincaworld.com	23
duece27@gmail.com	22
admin@CRABLESS.NAME	21
postmaster@blahing.name	21
sarah198mooo@hotmail.com	20
frances2good@outlook.com	20
acquirethisname@gmail.com	20
tanja@masterjedi.net	20
webmaster@prolastlimited.com	20
abuse@pismomediemail.com	19
ceo@blueriveralliance.com	19
gregorybrondou@yahoo.com	19
admin@domainsgeneral.com	19
domainprivacyservice@gmail.com	19
loural24@outlook.com	18
phil_p22@outlook.com	17
neallee545@yahoo.com	17
marketingtest8@gmail.com	16
petermacus@outlook.com	15
pjohn83@outlook.com	15
buy@domainshop.com	15
domainadmin@flm.net	14
mandrik@gmail.com	14
traviswolf502@yahoo.com	14
douglas@tychism.com	14
janet@domainsgeneral.com	14
office@btabic.com	13

sadmin (Moniker)	reported domains
vernjames@outlook.com	13
sergey1313@gmail.com	13
ecorpcom@gmail.com	12
robert@4rumchat.net	12
contact@findyourdomain.com	12
bhennessy@perkinscoie.com	12
thelmalowery@gmail.com	11
info@xenya.com	11
robkasen@gmail.com	11
contact@roundscripts.com	11
tonya@UHOSTINGCOMPANY.COM	11
abuse@xactmail.cc	11
domadm@mustneed.com	11
josejphfouchejr@4rumchat.net	11
support@adilizer.com	11
accounting@domainownershiplimited.com	11
admin@telepathy.com	10
support@domaincapital.com	10
info@virtual360publishing.com	10
accounting@contentownershiplimited.com	10
scranton199@gmail.com	10
katteinc@gmail.com	10
key21@dreamwiz.com	10
domains@original.com	10

3.3.5. NameCheap Inc. (Score: 49) 🚩

NameCheap, Inc., 11400 West Olympic Blvd., Suite 200, Los Angeles CA 90064, United States, 323-448-0232, support@namecheap.com

admin (Namecheap)	domains reported
jimmie.decoaster@aol.com	489
adreactionltd@gmail.com	470
accelerated.tester@gmail.com	378
yellowmedia13@gmail.com	354
dalhaze91@gmail.com	321
paulfpeterson@yahoo.com	249
thresholdads@gmail.com	219
sromero@post.com	199
aphroditepartners@gmail.com	174
operations@elitemodernmarketing.com	144
advertising@gamblingscope.com	132
wade@higgsandassociates.com	119
accelerated.brian@gmail.com	117
JakiQuinngeu@aol.com	114
aaatechsuprt@gmail.com	108
sammyguy@usa.com	101
glennsanchez26@gmail.com	100
accelerated.eric@gmail.com	96
frankcponce@jourrapide.com	92
DhannaCambriameu@aol.com	89
jessievalle16@gmail.com	87
vitiante@loveyou.lu	85
HaleyTraylinges@aol.com	80
will.curry1@aol.com	80
SharronStroudtu@aol.com	78
admin@heelin.faith	77
JaneenLoomesynd@aol.com	75
amer_enterprises@hotmail.com	75
RuthAstonipo@aol.com	65
StaceiSwannvsu@aol.com	63
toddpkoster@yahoo.com	62
it@systream.net	57
xdelivered@gmail.com	54

admin (Namecheap)	domains reported
Ideatarg@yahoo.com	51
rjbecker81@yahoo.com	50
ReneeWasjonesebk@aol.com	48
admin@maviler.work	47
bcolby@neturn.com	47
rhetty@mail.com	47
sbrand1099@hotmail.com	44
debee.selway@yahoo.com	42
wpkap@wpkap.de	41
savethecheerleadersavetheworld@gmail.com	40
mjohnson@neturn.com	40
rootlt4@yahoo.com	35
DaniellaChadwickbil@aol.com	35
maggieanderson303@aol.com	35
admin@hostingmadeeasy.info	32
rwatson@neturn.com	31
info@torontohostingpros.com	31
support@51del.com	30
cassyzambrano@yahoo.com	28
NoemiyeKoobco8772@hotmail.com	27
RachaelFeneckuga@aol.com	27
tristan@lumail.lu	26
davidfannylove@gmail.com	26
newrenegade2016@gmail.com	26
arhoades@neturn.com	26
trlanzalotto@mail.com	25
williamcsnell@neturn.com	25
vitalerutherford@yahoo.com	24
boblilwaters@mail.com	24
futuristicmail@inbox.com	24
jones@aol.com	24
constanceulysses@aol.com	24
resumes@clerk.com	23
rishab.shukla01@gmail.com	23
cchaddietedlow@yahoo.com	23
testoffers0@gmail.com	22
boblslkjwaters@email.com	22
m.shiwali.ms@gmail.com	21

admin (Namecheap)	domains reported
stevelay143@gmail.com	21
bobbilskjwaters@email.com	21
caleb@mediareresultsgroup.com	20
dealydan951@yahoo.com	20
bobeltwaters@email.com	20
ClareHemsworthog@aol.com	20
dan_hapler@aol.com	19
julianhenry89@aol.com	19
bobdhwaters@email.com	17
bobloslowaters@email.com	17
vivsachdeva@hotmail.com	17
claimfreerewards@gmail.com	17
bobboslwaters@email.com	17
joleneharper2@aol.com	16
krismark.copina123@yahoo.com	16
Skyescent123@hotmail.com	16
landonjake44@outlook.com	16
tenebrous@unseen.is	16
danielma33@secretrich.com	15
tkmark713@gmail.com	15
tech@suncastmedia.com	15
carey@usdpi.org	14
andersonjeff54@yahoo.com	13
engbills180001@gmail.com	12
whitearrow6969@gmail.com	11
jpcserv2@juno.com	11
earlhoward542@hotmail.com	11
tlanzalotto@email.com	10
nande101@gmail.com	10

3.3.6. Name.com Inc. (Score: 65) †

Name.com, Inc., P.O. Box 6197, Denver CO 80206, United States, 1-720-249-2374, support@name.com (OR) 5808 Lake Washington Blvd. Suite 300, Kirkland, WA 98033, US, 425-298-2293, transfers@name.com

admin (Name.com)	domains reported
aaa1@riip.com	1116
aaa3domain@gmail.com	537
susandimattoe2@hotmail.com	204
custservice20@gmail.com	146
sudanolisa@hotmail.com	126
csr11customer@live.com	118
contact@BasedServices.org	100
clipagabriel@rocketmail.com	99
csr8customer@live.com	95
custservice21@gmail.com	80
christyqueen55@hotmail.com	78
info@metatrader4fx.com	78
digitalweb@webname.com	75
choawill@yahoo.com	73
customservice19@gmail.com	71
eboxinbox@outlook.com	61
n.petersfl@gmail.com	60
hostmaster@proxad.net	60
admin@telepathy.com	59
techsupport@aaa-enterprise.com	56
blahman1871@gmail.com	52
hostmaster@targetedpages.com	52
matpage1402@hotmail.com	51
jimyoungconsole@gmail.com	48
csr3customer@gmail.com	45
rcmdelivery@outlook.com	42
contact@skyridgehosting.com	42
admin@mycooloffers.net	42
admin@besthostway.com	40
pennariverdam@hotmail.com	38
easystreetmkt@gmail.com	37
contact@campusflashlight.com	36

admin (Name.com)	domains reported
contact@CelebritiesFansClub.com	36
waychoa@yahoo.com	33
customservice17@gmail.com	33
Administrator@dninquiry.com	30
castlerockz123@gmail.com	29
diaz.chris355@gmail.com	27
chenxi38992@yahoo.com	26
support@galaxiehost.com	25
ghitam@rocketmail.com	24
accounts@intersolved.com	23
custservice15@gmail.com	23
mwilson09817@gmail.com	21
dnsadmin@skyridgehosting.com	21
hostmaster@nationsay.com	20
SerinaThalmanh4183@hotmail.com	20
custservice16@gmail.com	19
csr13customer@live.ca	19
email.whois@aol.com	18
GarySlaughterfgbf@gmail.com	18
tatiana28ey@163.com	18
madgolfer22@hotmail.com	18
tonyrobinson@mailinator.com	17
blazebane10@gmail.com	16
custservice14@gmail.com	16
digimarketing99@gmail.com	16
dommngmt@gmail.com	16
WayneClaxtonmghgmn@gmail.com	15
bersteinjohn33@gmail.com	14
customservices18@gmail.com	14
domaines@phpnet.org	14
gugebusiness@gmail.com	14
kiladen@gmail.com	14
pheasantvalleymarketing@hotmail.com	14
yildizmail@ymail.com	13
markph1978@gmail.com	13
support@mavenhosting.com	13
sales@gonamesales.com	13
maykelly536@yahoo.com	13

admin (Name.com)	domains reported
erberg89@gmx.de	12
help@vpsserving.com	12
haob2b@gmail.com	12
jessevo25084@yahoo.com	12
stephenshars561@yahoo.com	12
jetmail14@gmail.com	12
KayVadners7562@hotmail.com	12
ericmathews1332@yahoo.com	12
chris202p@gmail.com	11
simmons david250@gmail.com	11
custserv550@gmail.com	11
gerenciaservidores@gmail.com	11
support@o2switch.fr	11
jnzeus2@yahoo.com	11
jmjadsinc@gmail.com	11
ALEXLERMAN@ALEXLERMAN.COM	10
sarlmondialproje.166404@spamfree.b	10
StevenAlexanderghfdg@gmail.com	10
mandrik@gmail.com	10
domainmanager@moniker.com	10
computersurfer99@gmail.com	10
ig2tgroup@gmail.com	10

3.3.7. PDR Ltd. d/b/a PublicDomainRegistry.com (Score: 66)

PDR Ltd. d/b/a PublicDomainRegistry.com, Directiplex, Mogra Village, Nagardas Road, Andheri (East), Mumbai Maharashtra 400069, India, +1 2013775952, tldadmin@logicboxes.com

admin (PDR)	reported domains
admin@offercentral.club	905
tenebrous@lumail.lu	666
admin@tvspots4less.com	651
thcurry@consultant.com	472
privacy@RespectedResponse.org	307
mfurst999@gmail.com	289
rjwhois@gmail.com	268
rjfords@yahoo.com	257
ronj2396@gmail.com	243
knowledgec2@aol.com	242
nutra@earthlink.net	235
will@tvspots4less.com	213
dynamicresponse1@gmail.com	198
affirmanalytics@gmail.com	182
kashi_aguilar@yahoo.com.ph	170
privacyprotect@dynamicdolphin.com	153
mandy@fairviewpromotions.com	147
AndrewELamere@rhyta.com	144
asteamici@gmail.com	132
frankcponce@jourrapide.com	120
dmserv@post.com	119
masterwebinfo@ig.com.br	112
josephdstich@yahoo.com	107
goyal.tanya1002@gmail.com	105
yellowmediaads101@outlook.com	104
marketingexperts007@outlook.com	98
vinco.domains@gmail.com	97
jlhedley@linuxmail.org	88
artrewhdomain@gmail.com	86
aiuckc@gmail.com	78
catherinemorris80@yahoo.com	78
limbarestul@gmail.com	71

admin (PDR)	reported domains
superman.superman@aol.com	70
janggassodomen@yahoo.com	70
admin@demographic-ads.com	68
leorevs111@yahoo.com	67
zhanghaozhanghao@hotmail.com	66
ricardo@quoracom.net	62
tanesej.piyush12@gmail.com	59
karlaaguilar111@yahoo.com	58
verysmartnida@gmail.com	58
will.curry1@aol.com	58
vaidik.joshi6@gmail.com	57
admin@coral.plus.com	55
info@quotafull.com	55
dnsadm@sadecehosting.com	54
mat.hanker@yahoo.com	52
turbalosaging@yahoo.com	52
ambak.baki@yahoo.com	52
powerpositionmarketing@gmail.com	52
titit.bontit@yahoo.com	51
knobbyhill24@gmail.com	49
keriforrest62@gmail.com	48
sendla@yeah.net	46
allen.brewer@gmx.com	46
domadmin@privateregistrations.ws	46
cretzudomain@gmail.com	46
info@redehost.com.br	43
morris.catherine@mail.ru	43
romitbhati2@gmail.com	42
webhostseeker12@hotmail.com	42
jstark007@outlook.com	42
skysofthosting123@workmail.com	41
tldadmin@logicboxes.com	41
naveengupta2015@yandex.com	41
michaelkkrick@yahoo.com	40
abhi_dubey@outlook.com	40
lawrence.ledford@gmx.com	40
miha_smirnuy@yahoo.com	39
hr168foxmail@yahoo.com	39

admin (PDR)	reported domains
lokeshtripathi62@gmail.com	38
johnny.knight@gmx.com	38
chetaksingh303@gmail.com	36
kineticclinemediagroup@mail.com	35
ChristopherEBaker@teleworm.us	35
deepakssing8889@gmail.com	35
douglas@tychism.com	35
domeny@consultingservice.pl	34
m.shiwali.ms@gmail.com	34
admin@v3connect.com	34
newtorkvw@gmail.com	31
support@nic.ua	31
nix.rivera@gmx.com	30
mmathur022@gmail.com	30
tytryetytye@walla.com	29
mayurirawat46@gmail.com	29
gordonlee715@gmail.com	28
andyrun988@gmail.com	28
johnblentz1101@yahoo.com	27
hostmaster@ptisp.pt	26
gary.gifford@gmx.com	26
summer.singh0091@gmail.com	26
elsa.fuentes@yandex.com	25
joe.fink@gmx.com	25
vipin19.asati@gmail.com	25
patsyreed@yandex.com	24
contact@destinyindustries.com	24

3.3.8. Dynadot LLC (Score: 72) †

Dynadot, LLC, P.O. Box 345, San Mateo CA 94401, United States, 1-650-262-0100, info@dynadot.com

admin (Dynadot)	reported domains
tech@viral-media.net	2269
computersurfer99@gmail.com	888
affirmanalytics@gmail.com	673
thomaspatterns@gmail.com	120
domains@virustracker.info	99
fullforceservices.kevin@gmail.com	80
evq@evqgroupmidwest.com	54
whitedothosts@gmail.com	53
jamesgarf2014@gmail.com	42
adgaruma@outlook.com	34
domkeeper777@gmail.com	32
eli@nonnegative.com	28
harvestedemailfromwhois@elephantenterprisesllc	25
calimarketingmania@gmail.com	22
info@adrenalineads.net	21
joebravo2007@gmail.com	20
rubena.lowe@gmail.com	17
flexhostingltd@gmail.com	16
abuse@woot-web.com	16
domainreg@sunsetfish.com	14
support@viral-media.net	14
collectivemediabakery@mail.com	12
posti-1@suncomet.com	12
kcwebguy@yahoo.com	10
hk@eaglefuture.com	10
stevendupras@ymail.com	10

3.3.9. BigRock Solutions Ltd. (Score: 74) †

BigRock Solutions Ltd., Acme ITech Park, Old Nagardas Road, Next to Andheri Subway, Andheri (E), Mumbai Maharashtra 400 069, India, +91 22 30797900, registrar@bigrock.com

admin (BigRock)	reported domains
dynamicresponse1@gmail.com	592
deliveryagent99@gmail.com	365
abhi_dubey@outlook.com	312
info@accel-marketing.net	226
garry_b_graff@consultant.com	157
romitbhati2@gmail.com	124
raghav1458@gmail.com	123
likemalik0@gmail.com	95
wisechoicemedia@comcast.net	82
info@callingpartsnumb.biz	76
ronj2396@gmail.com	74
affirmanalytics@gmail.com	67
privacy@respectedresponse.org	61
ajeesharma55@gmail.com	51
veerendra_malviya@yahoo.com	46
kumar_rahul968@yahoo.com	45
babyfrakstan@gmail.com	39
amitduggal896@yahoo.com	38
toongmarting@yahoo.com	38
james.burrow15@gmail.com	37
mishraanamika097@gmail.com	37
gheorghitamutu@gmail.com	35
kabney@streamingmediahosting.com	34
tgcg01@yahoo.com	34
aslam.khan12358@yahoo.com	33
support@tomorastudio.com	31
amigleotan1111@yahoo.com	30
pholyjames101@yahoo.com	29
titit.bontit@yahoo.com	28
yourdomaincontact@yahoo.com	26
abuse@whatagiveaway.com	25
kayung.ming@yahoo.com	25

admin (BigRock)	reported domains
dilip192kud@gmail.com	24
larry.sanders38@yahoo.com	24
anoopsharma0092@yahoo.com	24
albert.somi1989@gmx.com	23
derekthompsontwo@yahoo.com	23
mjennifer393@yahoo.com	23
aalokdwivedi568@yahoo.com	23
vik585ashsharma@gmail.com	21
rq34fwfe@yahoo.com	18
vipul.tiwari07o@gmail.com	18
will@tvspots4less.com	18
ranuv327@gmail.com	17
intercontinentaldomaininc@gmail.com	16
euliceeliseo@yahoo.com	16
simarpreet5231@gmail.com	14
aumaseaguilar111@yahoo.com	13
drop2japan@gmx.com	13
nitin.bhore255@yahoo.com	12
shufflemark1@gmail.com	12
maheshmeena58@yahoo.com	12
dynamicresponse2@gmail.com	12
sunil.mazumdar22@yahoo.com	12
richkimble1977@gmail.com	12
livysweets@mail.com	12
asisi.ming@yahoo.com	12
suneel15kumar@gmail.com	12
kekero.hekya@yahoo.com	12
franklewes101@yahoo.com	12
kody.abney@grandstream.com	11
vvvconnect@gmail.com	11
vinamoralec101@yahoo.com	11
bajaj.223varun@gmail.com	11
ajinkya567kumar@gmail.com	10
josephdstich@yahoo.com	10
marlonalmario55@yahoo.com	10
leorevita111@yahoo.com	10
kenjimontives111@yahoo.com	10
veronicatan111@yahoo.com	10

admin (BigRock)	reported domains
ram154kumar@yahoo.in	10
rjbecker81@yahoo.com	10
alphainfolab.sanjay@gmail.com	10
help@offercentral.club	10
chenielarios101@yahoo.com	10
jethrouy43@yahoo.com.ph	10
prahlad.yg@gmail.com	10

3.3.10. Regional Network Information Center JSC dba RU-CENTER (Score: 76)

Regional Network Information Center, JSC dba RU-CENTER, 2/1, 3d Khoroshevskaya, Str., Moscow 123308, Russian Federation, +7 495 737 6975, tld-adm@nic.ru

admin (RU-Center)	reported domains
info@netangels.ru	7
penchevpenko@yahoo.com	6
markovochn@yandex.ru	4
mark.adamenko@gmail.com	4
admin@compubyte.vg	4
u217936@masterhost.ru	4
symsallen@yahoo.com	3
kovalev@holodilnik.ru	3
domenreg@softline.ru	3
Darwin_Medina@wolke7.net	3
noc@kdvm.ru	3
dolbonavt@gmail.com	3
miwosofeess@mail.com	3
service@nvhost.ru	2
slim2001.88@mail.ru	2
louiespencer@yandex.com	2
amurtsev@gmail.com	2
9350000@bk.ru	2
bezgranichnik@gmail.com	2
HOSTMASTER@GOLDSPACE.NET	2
roman.petriv@mail.ru	2
info@webstyle.ru	2
xingbhaitradings@yahoo.com	2
info@df.ru	2
joblack330@yahoo.com	2
santa_cl@bk.ru	2
TracyClement354@yahoo.com	2
wolflanddogs@gmail.com	2
Lapusik2085@yandex.ru	2
teror1r@live.com	2
domains@itib.info	2
vebservice@yahoo.com	2
combichem@gmail.com	2

admin (RU-Center)	reported domains
paralizat@web.de	2
drup@list.ru	2
evvan@mail.ru	2
rebecca.schmelting@gmx.de	2
wasserkauf@hotmail.com	2
nic@caravan.ru	2
svyaztel@gmail.com	2
nedvigimost@gmail.com	2
stakinghat918@hotmail.com	2
total_invest@mail.ru	2
noc@iprojects.ru	2
yury@rosintel.com	2
keyaipservices@gmail.com	2
deta@mail.ru	2

3.3.11. Intersolved-HI.com Inc. (Score: 86)

Intersolved-HI.com, Inc., 2967 Michelson Dr, Suite G489, Irvine CA 92612, United States, 9495001700, tan@pheenix.com

admins (Intersolved-HI)	reported domains
domains@candranet.com	403
domains@canadadrugsit.com	76
sales@intersolved.com	60
markalbers@comcast.net	59
accounts@intersolved.com	55
THQFEANPGJ6SBTYH@rebelprivacy.com	44
T3PNW6O8L2LLYPJE@rebelprivacy.com	43
ATMIW9DO6EMNKWO4@rebelprivacy.com	39
royce4sale@aol.com	38
UGA7NO8YM1839MNI@rebelprivacy.com	37
markalbers@adelphia.net	24
judith@coollawyer.com	19
Mark@paipinc.com	19
sales@goname.com	14
6BVJJC9BI1D1Y11Q@rebelprivacy.com	12
greatcoms@gmail.com	12
2M185J23A2I3HO7H@rebelprivacy.com	10

3.3.12 Above.com Pty Ltd. (Score: 97)

Above.com Pty Ltd., 8 East Concourse, Beaumaris VIC 3193, Australia, +61 3 9589 7946, hostmaster@above.com

admin (Above)	reported domains
windinv@yahoo.com	47
hostmaster@vautron.de	23
newfields@hushmail.com	22
WOLFI@WOLFIS.COM	20
mm@ddf.lu	17
395791986@qq.com	14
domains@karco.org	11
domains@intbrands.com	11
bobrovki@gmail.com	10

Registrars with scores above 100 are listed for reference without specific details. Details are available at knujon.com

3.3.13. TLD Registrar Solutions Ltd. (Score: 104)

3.3.14 OVH sas (Score: 109)

3.3.15 Instra Corporation Pty Ltd. (Score: 109)

3.3.16. DomainContext Inc. (Score: 113)

3.3.17. CSL Computer Service Langenbach GmbH d/b/a joker.com (Score: 119)

3.3.18. Active Registrar Inc. (Score: 119)

3.3.19. Trunkoz Technologies Pvt Ltd. d/b/a OwnRegistrar.com (Score: 133)

3.3.20. Bizcn.com Inc. (Score: 135)

3.3.21. Key-Systems GmbH (Score: 136)

3.3.22. DNC Holdings Inc. (Score: 148)

3.3.23. UK-2 Limited (Score: 153)

3.3.24. EvoPlus Ltd. (Score: 154)

3.3.25. Nanjing Imperiosus Technology Co. Ltd. (Score: 156)

3.3.26. register.com Inc. (Score: 161)

3.3.27. Namesilo LLC (Score: 165)

3.3.28. Network Solutions LLC (Score: 167)

3.3.29. Center of Ukrainian Internet Names dba UKRNames (Score: 168)

3.3.30. CommuniGal Communication Ltd. (Score: 175)

3.3.31. Universo Online S/A (UOL) (Score: 184)

3.3.32. Domain.com LLC (Score: 190)

3.3.33. Regtime Ltd. (Score: 198)

3.3.34. SafeNames Ltd. (Score: 199)

4. Conclusion and Recommendations

It may seem like a disconnect to some readers that this document starts with a discussion of the ICANN's website and ends with a list of the most abused registries and registrars. However, this is the core of the issue. ICANN is not connecting to consumers, but the abusive parties are connecting to consumers. So what the consumer sees is the ugly side of the Internet. The actual access to ICANN's complaint or compliance process is hidden. ICANN's website structure appears designed to avoid accepting complaints from consumers and deflecting any responsibility to external entities. Whether by design or negligence, the problem needs to be addressed immediately. Obfuscation and misdirection are not strategies for gaining consumer trust. ICANN has made a considerable effort to balance the potential influence of global governments over Internet policy. However, the constant message to consumers of "go to the police".

What ICANN needs to do is: 1) Publish an informational PDF for consumers the same way it does for journalists, lawyers and others, 2) Create and deploy an obvious and easily navigable visual workflow for guiding Internet users, 3) Conduct outreach to global consumer groups as recommended by consumer experts, 4) Dedicate a staff lead within compliance to handle consumer issues, 5) Test all their procedures and methods for from the Internet user perspective, 6) Properly link all public information, and 7) Collect and report on back Internet user abuse data.

The registries and registrars listed in this report vary wildly in their responses. Some are helpful and proactive, but this is entirely voluntary. ICANN can lead by example and truly include the Internet consumer by being proactive on serious issues that impact the entire global network. This is not outside of the remit.

Exhibit DIDP A49

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[IANA STEWARDSHIP](#)

[& ACCOUNTABILITY \(/STEWARDSHIP-ACCOUNTABILITY\)](#)

Details

ICANN (Internet Corporation for Assigned Names and Numbers) Is Not the Internet Content Police

[ICANN \(Internet Corporation for Assigned Names and Numbers\) Blog](#)



Author: Allen R. Grogan | [ICANN \(Internet Corporation for Assigned Names and Numbers\) Chief Contract Compliance Officer](#)

12 Jun 2015



Allow me to say this clearly and succinctly – ICANN (Internet Corporation for Assigned Names and Numbers) is not a global regulator of Internet content, nor should the 2013 Registry Accreditation Agreement (RAA (Registrar Accreditation Agreement)) be interpreted in such a way as to put us in that role. Our mission is to coordinate, at the overall level, the global Internet's systems of unique identifiers, and in particular, to ensure the stable and secure operation of the Internet's unique identifiers. ICANN (Internet Corporation for Assigned Names and Numbers) was never granted, nor was it ever intended that ICANN (Internet Corporation for Assigned Names and Numbers) be granted, the authority to act as a regulator of Internet content.

Institutions already exist that have political legitimacy and are charged with interpreting and enforcing laws and regulations around the world. These institutions, including law enforcement (local and national police agencies as well as intergovernmental organizations like Interpol), regulatory agencies and judicial systems, have the expertise, experience and legitimacy to police illegal activity and to address difficult questions such as jurisdiction and conflicts of law. In most countries, these institutions also offer procedural due process and mechanisms for appeal and are experienced in addressing difficult issues such as the proportionality of remedies. If content is to be policed, the burden is on these institutions, and not ICANN (Internet Corporation for Assigned Names and Numbers), to undertake such regulation.

Some members of the Internet community advocate that ICANN (Internet Corporation for Assigned Names and Numbers) should assume greater

responsibility for policing illegal activity on the Internet. Specifically, some maintain that if a website sponsored by a signatory to the 2013 [RAA \(Registrar Accreditation Agreement\)](#) is engaged in illegal activity, [ICANN \(Internet Corporation for Assigned Names and Numbers\)](#) should require that registrar to determine whether the website is engaged in illegal activity, demand that the website operator or registered domain name owner cease the illegal activity, and suspend the domain name if the website operator or registered domain name owner does not cease the illegal activity, effectively putting the website out of business. If the registrar refuses to suspend the domain name, some further maintain that [ICANN \(Internet Corporation for Assigned Names and Numbers\)](#) should terminate the registrar's accreditation under the 2013 Registrar Accreditation Agreement, effectively putting the registrar out of business.

Yesterday, I published a [blog \(/news/blog/community-outreach-on-interpretation-and-enforcement-of-the-2013-raa\)](/news/blog/community-outreach-on-interpretation-and-enforcement-of-the-2013-raa) informing the community about efforts I am making to offer greater clarity regarding [ICANN \(Internet Corporation for Assigned Names and Numbers\)](#)'s interpretation and enforcement of certain key provisions of the 2013 [RAA \(Registrar Accreditation Agreement\)](#). Since [ICANN \(Internet Corporation for Assigned Names and Numbers\)](#) 52, I have held discussions with members of the Registrar Stakeholder Group, representatives of the [IPC \(Intellectual Property Constituency\)](#) and intellectual property owners, members of civil society, various parties that have submitted abuse reports under the 2013 [RAA \(Registrar Accreditation Agreement\)](#) and other interested parties, to solicit their views on these matters. Perhaps not surprisingly, the views expressed by various stakeholders within the [ICANN \(Internet Corporation for Assigned Names and Numbers\)](#) community regarding interpretation of the 2013 [RAA \(Registrar Accreditation Agreement\)](#) are wide-ranging and divergent. I hope the outcome of these discussions will be for [ICANN \(Internet Corporation for Assigned Names and Numbers\)](#) to provide greater clarity on how we interpret and enforce key provisions of the 2013 [RAA \(Registrar Accreditation Agreement\)](#).

Though the appropriate interpretation of 2013 [RAA \(Registrar Accreditation Agreement\)](#) is the subject of debate, there are clear-cut boundaries between [ICANN \(Internet Corporation for Assigned Names and Numbers\)](#) enforcing its contracts and the enforcement of laws and regulations by the institutions mentioned earlier. A blanket rule requiring

suspension of any domain name alleged to be involved in illegal activity goes beyond ICANN (Internet Corporation for Assigned Names and Numbers)'s remit and would inevitably put ICANN (Internet Corporation for Assigned Names and Numbers) in the position of interpreting and enforcing laws regulating website content. At worst, it would put ICANN (Internet Corporation for Assigned Names and Numbers) squarely in the position of censoring, or requiring others to censor, Internet content.

Challenges of Regulating Illegal Activity Online

To understand why, let's consider some of the activities that are illegal in various countries. To be clear, I am not trying to single out, criticize or disparage laws enacted by any particular government. ICANN (Internet Corporation for Assigned Names and Numbers) is a multinational community with diverse stakeholders, and we always need to be mindful of differences among our community members. ICANN (Internet Corporation for Assigned Names and Numbers) and the ICANN (Internet Corporation for Assigned Names and Numbers) community have great respect for cultural, religious and political diversity and recognize that the values of one country or religion may not be shared with another.

- **Blasphemy and Religious Defamation**

More than two-dozen countries, found everywhere from Western Europe to Asia to Africa, have laws or policies that penalize blasphemy, i.e., remarks or actions considered to be contemptuous of God.

- **Hate Speech**

Laws and regulations prohibiting hate speech are common and the enactment of such laws has been increasing in recent years.

Nearly 100 countries have laws, rules or policies forbidding defamation of religion or hate speech against members of religious groups.

More than a dozen countries have instituted laws under which holocaust denial is a punishable offense.

In some instances a website operator attempting to comply with the law regulating content in one country could run afoul of a conflicting law in another country. For example, hate speech laws in a number of countries have been interpreted to prohibit incitement of hatred or exposing a person to detestation and vilification on the basis of his or her sexual orientation. In contrast, laws enacted in other countries have prohibited use of the Internet to promote homosexuality or have outlawed content that promotes the attractiveness or normalcy of LGBT relationships.

- **Pornography**

Laws banning sexually explicit material are common. However, in some countries nude photographs or even photographs of uncovered legs and arms of women may run afoul of the law, while in other countries the same content would be considered protected free speech or artistic expression.

- **Laws Targeting Political Dissidents**

Many countries have laws targeted toward suppressing peaceful and legitimate domestic political opposition. In some countries it is illegal to spread "false news" about the government or public officials, produce caricatures of or make derogatory statements about public officials online, or incite dissatisfaction with the government via Internet posts. In the light of mass public protests that have brought down or destabilized governments in recent years, many countries have enacted legislation prohibiting the use of websites and social media to organize "unlawful" demonstrations and street protests.

Implications for ICANN (Internet Corporation for Assigned Names and Numbers)

The simple fact is that many laws in effect in numerous countries render content itself illegal. However the 2013 RAA (Registrar Accreditation Agreement) is interpreted, it cannot mean that ICANN (Internet Corporation for Assigned Names and Numbers) is responsible for making

factual and legal determinations as to whether content violates the law. ICANN (Internet Corporation for Assigned Names and Numbers) cannot be put in the position of requiring suspension of domain names on the basis of allegations of blasphemy, hate speech, holocaust denial, political organizing, full or partial nudity or a host of other content that may be illegal somewhere in the world. That would be inconsistent with ICANN (Internet Corporation for Assigned Names and Numbers)'s mission, ICANN (Internet Corporation for Assigned Names and Numbers)'s limited remit and ICANN (Internet Corporation for Assigned Names and Numbers)'s responsibility to operate in accordance with a consensus-driven multistakeholder model.

ICANN (Internet Corporation for Assigned Names and Numbers)'s Mission

I am not suggesting that ICANN (Internet Corporation for Assigned Names and Numbers) abdicate any of its responsibilities. Rather, I am suggesting that ICANN (Internet Corporation for Assigned Names and Numbers) needs to remain within the scope of its limited responsibilities, remit and authority, and not step outside those boundaries. ICANN (Internet Corporation for Assigned Names and Numbers)'s mission and mandate, as set forth in its bylaws, is "to coordinate, at the overall level, the global Internet's systems of unique identifiers, and in particular, to ensure the stable and secure operation of the Internet's unique identifiers." ICANN (Internet Corporation for Assigned Names and Numbers)'s mission statement sets forth a limited remit that is largely technical in nature. It says nothing about ICANN (Internet Corporation for Assigned Names and Numbers) being empowered to act as a global regulator of content and illegal activity throughout the world.

The Role of Other Institutions

If a website is alleged to violate a law governing content in a particular country, the institutions that have the legitimacy and authority to decide whether the content in fact violates the law, and to impose appropriate remedies, are local law enforcement, regulators, prosecutors and courts, not ICANN (Internet Corporation for Assigned Names and Numbers). No one has vested in ICANN (Internet Corporation for Assigned Names and Numbers) the authority to act as judge and jury, to make factual and legal determinations and to impose remedies for violations of laws or

regulations in every country around the world. ICANN (Internet Corporation for Assigned Names and Numbers) does not have the authority, expertise or resources to do so.

The regulation of content by governments raises complex substantive and procedural issues. Consider website content, such as pornography or banned political speech, that may violate content laws in Country X. If the domain name owner is located in Country A, the website operator in Country J and the web hosting company in Country Z, all of them may assert that they are not subject to the laws of Country X and not subject to the jurisdiction of its courts. Judicial systems are the institutions equipped to deal with these difficult issues, not ICANN (Internet Corporation for Assigned Names and Numbers).

Note, also, that the suspension of a domain name is tantamount to injunctive relief and may put a website operator out of business. Legal systems in many countries consider this an extraordinary remedy that would only be imposed after an adversarial hearing, procedural and substantive due process, and cautious assessment by the court of whether it is an appropriate and proportionate remedy for the alleged violation of law, or whether a less onerous remedy would sufficiently address the violation. It is neither reasonable nor appropriate for ICANN (Internet Corporation for Assigned Names and Numbers) to bypass the institutions that are charged with making these determinations and to impose unilaterally a remedy that might or might not be available through the judicial system, particularly where ICANN (Internet Corporation for Assigned Names and Numbers) has no direct contractual relationship with the impacted domain name registrant or website operator.

Significantly, the institutions charged with investigating violations of the law also have substantial resources, expertise and personnel to undertake these activities: the F.B.I. in the United States has approximately 35,000 employees, and India and China each has more than 1.5 million people in their respective police forces.

In contrast, ICANN (Internet Corporation for Assigned Names and Numbers) has total staff of slightly more than 300 people, and only about two-dozen involved in contractual compliance. ICANN (Internet Corporation for Assigned Names and Numbers) has no contractual relationship with registrants or website operators and no investigatory or subpoena power over them. Neither ICANN (Internet Corporation for

Assigned Names and Numbers) nor registrars have any ability to edit or remove content from websites. It is simply unrealistic to place the worldwide burden of policing illegal content on websites on [ICANN](#) (Internet Corporation for Assigned Names and Numbers).

Are Some Illegal Activities Different Than Others?

In blogs I will publish in the coming weeks, I intend to address whether the nature of certain illegal activities makes them different from those cited above. Some in the [ICANN](#) (Internet Corporation for Assigned Names and Numbers) community contend that a distinction should be made where laws are not directed purely at regulating content per se, but at other illegal activities that are engaged in by a website operator. Some in the community advocate that illegal activities that pose a substantial and imminent threat to safety, health or human life be treated differently than other classes of illegal activities. Others in the community assert that there are areas of the law relating to illegal activity on websites that are sufficiently uniform throughout the world that they should be treated differently, for example, where the law in virtually every country recognizes the activity in question to be illegal and there is international consensus reflected in multinational treaties. In practice, many in the Internet community treat certain illegal activities such as child pornography or human trafficking in a class by themselves.

I hope this blog has helped to clarify why [ICANN](#) (Internet Corporation for Assigned Names and Numbers) is not and cannot be a content regulator. My goal is for this and future postings to be catalysts for ongoing discussion among the [ICANN](#) (Internet Corporation for Assigned Names and Numbers) multistakeholder community, and I welcome all of your thoughts. [ICANN](#) (Internet Corporation for Assigned Names and Numbers)'s contractual compliance department will be conducting a number of sessions at [ICANN](#) (Internet Corporation for Assigned Names and Numbers) 53 in Buenos Aires. I encourage you to attend, and please reach out to me at one of these sessions, in the hallway, or after [ICANN](#) (Internet Corporation for Assigned Names and Numbers) 53 if you would like to discuss any of these issues.

Comments

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[Conduct at ICANN \(Internet Corporation for Assigned Names and Numbers\) Meetings \(/news/blog/conduct-at-icann-meetings\)](/news/blog/conduct-at-icann-meetings)

[Contributing to Sustainable Development Goals \(/news/blog/contributing-to-sustainable-development-goals\)](/news/blog/contributing-to-sustainable-development-goals)

[Lending Clarity to Security \(Security – Security, Stability and Resiliency \(SSR\)\)Risk Definitions - For ICANN \(Internet Corporation for Assigned Names and Numbers\) Community and Beyond \(/news/blog/lending-clarity-to-security-risk-definitions-for-icann-community-and-beyond\)](/news/blog/lending-clarity-to-security-security-security-stability-and-resiliency-ssr-risk-definitions-for-icann-internet-corporation-for-assigned-names-and-numbers-community-and-beyond)



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[Community Wiki](https://community.icann.org)

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(https://www.icann.org
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/pages/groups-
2012-02-06-en)

[Board](#)
(/resources
/pages/board-
of-directors-
2014-03-19-en)

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(/presidents-
corner)

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/index.cfm?fuseaction=app.allpositions&
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collision)

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/announcement-
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en.htm)

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Resources

- ▶ [About ICANN \(Internet Corporation for Assigned Names and Numbers\) \(/resources/pages/welcome-2012-02-25-en\)](#)

- ▶ [Board \(/resources/pages/board-of-directors-2014-03-19-en\)](#)

- ▶ [Accountability \(/resources\)](#)

About Copyright Infringement

This page is available in:

English |

[العربية \(http://www.icann.org/resources/pages/copyright-2013-05-03-ar\)](http://www.icann.org/resources/pages/copyright-2013-05-03-ar) |

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Complaints regarding copyright infringement due to Internet and website content are outside of [ICANN \(Internet Corporation for Assigned Names and Numbers\)](#)'s scope and authority. For these types of complaints, please refer to one of the options listed below:

1. You may want to contact the website owner directly.
2. You may want to retain legal counsel to determine what rights and remedies are available to you.

Exhibit DIDP A51



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 16, 2011

Dr. Stephen D. Crocker
Chairman of the Board of Directors
Internet Corporation for Assigned Names and Numbers
1101 New York Avenue N.W.
Suite 930
Washington, D.C. 20005

Rod Beckstrom
President and CEO
Internet Corporation for Assigned Names and Numbers
325 Lytton Avenue, Suite 300
Palo Alto, California 94301

Re: Consumer Protection Concerns Regarding New gTLDs

Dear Dr. Crocker and Mr. Beckstrom:

We write in reference to the Internet Corporation for Assigned Names and Numbers' (ICANN) plan to open the application period for new generic top-level domains (new gTLDs) on January 12, 2012. As you know, the Federal Trade Commission ("FTC" or "Commission") expressed concerns about the need for more consumer protection safeguards during the Board's consideration of the gTLD program's expansion. The FTC has also long urged for the improvement of ICANN policies that affect consumers engaged in e-commerce or that frustrate law enforcement efforts to identify and locate bad actors.

We write now to highlight again the potential for significant consumer harm resulting from the unprecedented increase in new gTLDs. Before approving any new gTLD applications, we urge ICANN to take the steps described below to mitigate the risk of serious consumer injury and to improve the accuracy of Whois data.

We also urge ICANN to take immediate steps to address the FTC's and the Governmental Advisory Committee's (GAC) longstanding concerns with various ICANN policies and procedures. The exponential expansion of the number of gTLDs will only increase the challenge of developing and implementing solutions to the problems the FTC and the GAC have previously brought to ICANN's attention. In the Affirmation of Commitments, ICANN pledged to ensure that various issues involved in the expansion of the gTLD space—including consumer protection and malicious abuse issues—would "be adequately addressed prior to

implementation.”¹ We look forward to working with ICANN as it honors these commitments to ensure that the new gTLD program benefits both consumers and businesses alike.

1. Federal Trade Commission

The FTC is an independent agency of the United States government that enforces competition and consumer protection laws.² The FTC fulfills its consumer protection mission in a variety of ways—through civil enforcement actions, policy development, rulemaking, and consumer and business education.

The principal consumer protection statute that the FTC enforces is the FTC Act, which prohibits “unfair or deceptive acts or practices.”³ The FTC has used its authority to take action against a wide variety of Internet-related threats, including bringing a substantial number of cases involving online consumer fraud and almost 100 spam and spyware cases.⁴ In addition, the FTC has made a high priority of protecting consumers’ privacy and improving the security of their sensitive personal information, both online and offline.⁵

¹ See Affirmation of Commitments, at 9.3, available at <http://www.icann.org/en/documents/affirmation-of-commitments-30sep09-en.htm>.

² The Commission is headed by five Commissioners, nominated by the President and confirmed by the Senate, each serving a seven-year term. The President chooses one Commissioner to act as Chairman. No more than three Commissioners can be of the same political party.

³ See 15 U.S.C. § 45. The FTC also enforces several other consumer protection statutes. See, e.g., Restore Online Shopper’s Confidence Act, Pub. L. 111-345, 124 Stat. 3618 (2010); Children’s Online Privacy Protection Act, 15 U.S.C. §§ 6501-6506; CAN-SPAM Act, 15 U.S.C. § 7701-7713; Truth in Lending Act, 15 U.S.C. §§ 1601-1667f; Fair Credit Reporting Act, 15 U.S.C. §§ 1681-1681u; Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692-1692o; Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101-6108.

⁴ See, e.g., *FTC v. Flora*, No. SACV11-00299-AG-(JEMx) (C.D. Cal., filed Feb. 22, 2011), press release available at <http://www.ftc.gov/opa/2011/02/loan.shtm>; *FTC v. Johnson*, No. 2:10-cv-02203 (D. Nev., filed Dec. 21, 2010), press release available at <http://www.ftc.gov/opa/2011/01/iworks.shtm>; *FTC v. Infusion Media, Inc.*, No. 09-CV-01112 (D. Nev., filed June 22, 2009), press release available at <http://www.ftc.gov/opa/2010/10/googlemoney.shtm>; *FTC v. Pricewert LLC*, No. 09-CV-2407 (N.D. Cal., filed June 1, 2009), press release available at <http://www.ftc.gov/opa/2010/05/perm.shtm>; *FTC v. Innovative Mktg., Inc.*, No. 08-CV-3233-RDB (D. Md., filed Dec. 2, 2008), press release available at <http://www.ftc.gov/opa/2011/01/winsoftware.shtm>; *FTC v. CyberSpy Software, LLC*, No. 08-CV-0187 (M.D. Fla., filed Nov. 5, 2008), press release available at <http://www.ftc.gov/opa/2008/11/cyberspy.shtm>; *FTC v. Spear Sys., Inc.*, No. 07C-5597 (N.D. Ill., filed Oct. 3, 2007), press release available at <http://www.ftc.gov/opa/2009/07/spear.shtm>; *FTC v. ERG Ventures, LLC*, No. 3:06-CV-00578-LRH-VPC (D. Nev., filed Oct. 30, 2006), press release available at <http://www.ftc.gov/opa/2006/11/mediamotor.shtm>; *FTC v. Enternet Media*, No. CV 05-7777 CAS (C.D. Cal., filed Nov. 1, 2005), press release available at <http://www.ftc.gov/opa/2006/09/enternet.shtm>; *FTC v. Cleverlink Trading Ltd*, No. 05C 2889 (N.D. Ill., filed May 16, 2005), press release available at <http://www.ftc.gov/opa/2006/09/spammers.shtm>.

2. Federal Trade Commission Investigations

Our ability to protect consumers in cases involving unfair or deceptive practices online often depends on navigating an environment in which scam artists easily manipulate the domain name system to evade detection. We routinely consult Whois services in Internet investigations to identify website operators. However, the Whois information often contains incomplete or inaccurate data or, increasingly, proxy registrations, which shield the contact information for the underlying domain name registrant. To give just one example, in a case against illegal spammers promoting pornography websites, false Whois data slowed down our ability to identify and locate the individuals behind the operation,⁶ requiring the FTC investigators to spend additional time consulting multiple other sources. In other instances, we have encountered Whois information with facially false address and contact information, including websites registered to “God,” “Bill Clinton,” and “Mickey Mouse.”⁷ In Internet investigations, identifying domain name registrants immediately is especially important, as fraudsters often change sites frequently to evade detection.

The FTC has highlighted these concerns about Whois with ICANN and other stakeholders for more than a decade.⁸ In particular, we have testified before Congress on Whois

⁵ See, e.g., *In the Matter of Facebook, Inc.*, FTC File No. 092-3184 (proposed settlement posted for public comment on Nov. 29, 2011), *press release available at* <http://www.ftc.gov/opa/2011/11/privacysettlement.shtm>; *In the Matter of ScanScout, Inc.*, FTC File No. 102-3185 (proposed settlement posted for public comment on Nov. 8, 2011), *press release available at* <http://www.ftc.gov/opa/2011/11/scanscout.shtm>; *In the Matter of Google, Inc.*, FTC Docket No. C-4336 (Oct. 13, 2011), *press release available at* <http://www.ftc.gov/opa/2011/10/buzz.shtm>; *U.S. v. W3 Innovations, LLC*, No. CV-11-03958-PSG (N.D. Cal., filed Aug. 12, 2011), *press release available at* <http://www.ftc.gov/opa/2011/08/w3mobileapps.shtm>; *U.S. v. Teletrack, Inc.*, No. 1:11-CV-2060 (filed June 24, 2011), *press release available at* <http://www.ftc.gov/opa/2011/06/teletrack.shtm>; *In the Matter of Lookout Servs., Inc.*, FTC Docket NO. C-4326 (June 15, 2011), *press release available at* <http://www.ftc.gov/opa/2011/05/ceridianlookout.shtm>; *In the Matter of Ceridian Corp.*, FTC Docket No. C-4325 (June 8, 2011), *press release available at* <http://www.ftc.gov/opa/2011/05/ceridianlookout.shtm>; *In the Matter of Twitter, Inc.*, FTC Docket NO. C-4316 (Mar. 2, 2011), *press release available at* <http://www.ftc.gov/opa/2011/03/twitter.shtm>.

⁶ See *FTC v. Global Net Solutions, Inc.*, No. CV-S-05-0002-PMP (LRL) (D. Nev., filed Jan. 3, 2005), *press release available at* <http://www.ftc.gov/opa/2005/11/globalnet.shtm>.

⁷ See *Hearing on the Accuracy and Integrity of the Whois Database Before the Subcomm. on Courts, the Internet, and Intellectual Prop. of the House Comm. on the Judiciary*, 107th Cong. (2002) (Prepared Statement of the Federal Trade Commission, presented by Howard Beales).

⁸ See Letter from Comm’r Jon Leibowitz to Peter Dengate Thrush, (former) Chairman, ICANN Board of Directors, Dr. Paul Twomey, (former) President and CEO, ICANN, and Jonathan Nevett, (former) Chair, Registrar Constituency (Feb. 8, 2008) [hereinafter “Whois and RAA Letter”]; *Hearing on Internet Governance: The Future of ICANN Before the Subcomm. on Trade, Tourism, and Econ. Dev. of the Senate Committee on Commerce, Science, and Transp.*, 109th Cong. (2006) (Prepared Statement of the Federal Trade Commission, presented by Comm’r Leibowitz), *available at* <http://www.ftc.gov/os/testimony/P035302igovernancefutureicanncommissiontestsenate09202006.pdf>; *Hearing on ICANN and the Whois Database: Providing Access to Protect Consumers from Phishing*

information several times, issued a Commission statement on Whois services, delivered presentations to the GAC, participated as a panelist in joint sessions organized by the GAC and the Generic Names Supporting Organization (GNSO), provided briefings to the ICANN Board, and worked directly with a wide range of stakeholders to develop pragmatic solutions to this difficult problem.

The FTC has not been alone in highlighting the importance of this issue or in its effort to urge ICANN to develop effective solutions to Whois problems. In 2003, the Organization for Economic Co-operation and Development's Committee on Consumer Policy issued a policy paper unequivocally stating that for commercial registrants, all contact data "should be accurate and publicly available via Whois."⁹ In 2007, the GAC issued policy principles urging ICANN stakeholders to "improve the accuracy of Whois data, and in particular, to reduce the incidence of deliberately false Whois data."¹⁰ In 2009, global law enforcement agencies, led by the U.S. Federal Bureau of Investigation and the UK Serious Organized Crime Agency, issued a set of law enforcement recommendations to improve a wide range of ICANN policies, including the accuracy of Whois data. In October 2011, the GAC reiterated its previous requests for the Board to address the law enforcement recommendations.¹¹ Last week, ICANN's own Whois Review Team issued its draft report, acknowledging the "very real truth that the current system is broken

Before the Subcomm. on Fin. Institutions and Consumer Credit of the House Comm. on Fin. Servs., 109th Cong. (2006) (Prepared Statement of the Federal Trade Commission, presented by Eileen Harrington), available at <http://www.ftc.gov/os/2006/07/P035302PublicAccessstoWHOISDatabasesTestimonyHouse.pdf>; FTC, Prepared Statement of the Federal Trade Commission before the ICANN Meeting Concerning Whois Databases (June 2006); Letter from Comm'r Jon Leibowitz to Dr. Paul Twomey, (former) President and CEO, ICANN (Feb. 9, 2005); *Hearing on the Accuracy and Integrity of the Whois Database Before the Subcomm. on Courts, the Internet, and Intellectual Prop. of the House Comm. on the Judiciary*, 107th Cong. (2002) (Prepared Statement of the Federal Trade Commission, presented by Howard Beales); and Comment of the Staff of the FTC Bureau of Consumer Protection before the ICANN Public Comment Forum, In the Matter of Tentative Agreements among ICANN, U.S. Dep't of Commerce, and Network Solutions, Inc. (Oct. 29, 1999).

⁹ OECD, *Consumer Policy Considerations on the Importance of Accurate and Available Whois Data*, at 8 (June 2, 2003), available at [http://www.oecd.org/officialdocuments/displaydocumentpdf/?cote=dsti/cp\(2003\)1/final&doclanguage=en](http://www.oecd.org/officialdocuments/displaydocumentpdf/?cote=dsti/cp(2003)1/final&doclanguage=en).

¹⁰ Governmental Advisory Committee, GAC Principles Regarding gTLD Whois Services, at 4.1 (Mar. 28, 2007), available at https://gacweb.icann.org/download/attachments/1540132/WHOIS_principles.pdf?version=1&modificationDate=1312460331000.

¹¹ See Governmental Advisory Committee, GAC Communiqué-Dakar, at III (Oct. 27, 2011), available at <https://gacweb.icann.org/download/attachments/4816912/Communique+Dakar+-+27+October+2011.pdf?version=1&modificationDate=1319796551000>.

and needs to be repaired.”¹² ICANN has failed to adequately address this problem for over a decade.

A rapid, exponential expansion of gTLDs has the potential to magnify both the abuse of the domain name system and the corresponding challenges we encounter in tracking down Internet fraudsters. In particular, the proliferation of existing scams, such as phishing, is likely to become a serious challenge given the infinite opportunities that scam artists will now have at their fingertips. Fraudsters will be able to register misspellings of businesses, including financial institutions, in each of the new gTLDs, create copycat websites, and obtain sensitive consumer data with relative ease before shutting down the site and launching a new one. The potential for consumer confusion in other variations of these types of scams is significant. As an example, “ABC bank” could be registered in .com, but another entity could register “ABC” in a new .bank gTLD, and a different entity could register “ABC” in a new .finance gTLD. Scam artists could easily take advantage of this potential for confusion to defraud consumers.

In addition, the number of individuals with access to the Internet infrastructure will substantially increase. This creates an increased possibility that malefactors, or others who lack the interest or capacity to comply with contractual obligations, will operate registries. It is inevitable that malefactors may still pass a background screening due to inadequate or incomplete records. Or, malefactors could use straw men to assist them and be the party “on record” with ICANN. Either way, a registry operated by a bad actor would be a haven for malicious conduct. As discussed below, ICANN’s contractual compliance office has encountered tremendous challenges trying to secure compliance under the current framework, and the unprecedented increase in domain registries only increases the risk of a lawless frontier in which bad actors violate contractual provisions with impunity, resulting in practices that ultimately harm consumers. The gTLD expansion will also increase the number of entities in foreign jurisdictions with relevant data on registrants. This will likely cause further delays in obtaining registrant data in investigations of global fraud schemes. In short, the potential for consumer harm is great, and ICANN has the responsibility both to assess and mitigate these risks.¹³

¹² See Whois Review Team, Final Report (Draft), at 5 (Dec. 5, 2011), *available at* <http://www.icann.org/en/reviews/affirmation/whois-rt-draft-final-report-05dec11-en.pdf>.

¹³ As the U.S. government, the GAC, and several other stakeholders have urged, ICANN should conduct a more thorough economic study to assess the costs and benefits of introducing a significant number of new gTLDs. See Letter from Assistant Secretary Strickling to Rod Beckstrom, President and CEO, ICANN (Dec. 2, 2010), *available at* <http://forum.icann.org/lists/5gtld-guide/pdf3Ep9MhQVGO.pdf>; Governmental Advisory Committee, GAC Communiqué—Cartagena, at 5 (Dec. 9, 2010), *available at* https://gacweb.icann.org/download/attachments/1540144/GAC_39_Cartagena_Communique.pdf?version=1&modificationDate=1312225168000; Letter from Janis Karklins, (former) Chairman, Governmental Advisory Committee to Peter Dengate Thrush, (former) Chairman, ICANN Board of Directors (Aug. 18, 2009), *available at* <http://www.icann.org/en/correspondence/karklins-to-dengate-thrush-18aug09-en.pdf> (“The GAC remains concerned that the threshold question has not been answered whether the introduction of new gTLDs provides potential benefits to consumers that will not be outweighed by the potential harms.”).

3. Recommended Changes to the New gTLD Program

In light of the dramatically increased opportunity for consumer fraud, distribution of malware, and proliferation of other malicious activity, it is critical that ICANN take immediate steps to ensure that consumer protection is not compromised by the introduction of new gTLDs. Accordingly, we urge ICANN to: (1) implement the new gTLD program as a pilot program and substantially reduce the number of gTLDs that are introduced in the first application round, (2) strengthen ICANN's contractual compliance program, in particular by hiring additional compliance staff, (3) develop a new ongoing program to monitor consumer issues that arise during the first round of implementing the new gTLD program, (4) conduct an assessment of each new proposed gTLD's risk of consumer harm as part of the evaluation and approval process, and (5) improve the accuracy of Whois data, including by imposing a registrant verification requirement. We strongly believe that ICANN should address these issues before it approves any new gTLD applications. If ICANN fails to address these issues responsibly, the introduction of new gTLDs could pose a significant threat to consumers and undermine consumer confidence in the Internet.¹⁴

As you know, the GAC and several other stakeholders in the ICANN Community urged the Board to revise the gTLD applicant guidebook, which sets forth the new gTLD evaluation and approval process. Stakeholders urged ICANN to address the potential for malicious conduct and implement certain consumer protection safeguards before authorizing the launch of the new gTLD program.¹⁵ Although changes were made to the guidebook to include some safeguards,

¹⁴ We are aware that a wide range of stakeholders has expressed concern about potential conflicts of interest on the ICANN Board. *See, e.g.,* Eric Engleman, *ICANN Departures After Web Suffix Vote Draw Criticism*, Wash. Post, August 20, 2011, available at http://www.washingtonpost.com/business/icann-departures-draw-criticism/2011/08/19/gIQAzpeDTJ_story_1.html. According to these critics, several members of the Board have affiliations with entities that have a financial stake in the expansion of new gTLDs. *See* Esther Dyson, *What's in a Domain Name?* (Aug. 25, 2011), <http://globalpublicsquare.blogs.cnn.com/2011/08/25/whats-in-a-domain-name/>.

In light of the potential for the appearance of impropriety to exist, we believe that ICANN should promote transparency, accountability, and confidence in its decision-making processes by developing a more comprehensive conflict of interest and ethics policy that prevents individuals with actual and potential conflicts of interest from participating in the deliberations and decisions for which the conflict exists or which raise an appearance of impropriety. We are aware of the Board's ongoing effort to review and revise its current conflict of interest policies. *See* Board Member Rules on Conflicts of Interest for New gTLDs (Dec. 8, 2011), <http://www.icann.org/en/minutes/resolutions-08dec11-en.htm#4>. The implementation of a more robust and comprehensive conflict of interest policy is especially important in light of the public interests that ICANN is charged with protecting, and the substantial impact the Board's decisions has on consumers operating in the online world. Accordingly, we encourage ICANN to complete the ongoing reviews of its conflict of interest and ethics practices and implement a revised Board conflict of interest policy before approving any new gTLD applications.

¹⁵ These safeguards included imposing an obligation on new gTLD registry operators to respond to law enforcement requests; maintaining a requirement that new gTLD registry operators maintain a "thick" Whois service; expanding the categories of criminal offenses screened during the vetting process, which could serve as a basis for disqualifying new gTLD applicants; adding civil consumer protection decisions

ICANN failed to respond effectively to all of the concerns that were raised, did not implement some of its commitments to improve the new gTLD program, and did not provide adequate solutions to widely documented problems in the existing gTLD marketplace. Indeed, despite offering some protections, the safeguards now in place do not provide comprehensive solutions to the problems likely to arise as a result of the introduction of new gTLDs. For example, while registries will be required to maintain “thick” Whois services, the lack of meaningful obligations to ensure Whois accuracy, such as registrant verification, still hampers the ability of law enforcement agencies to track down Internet fraudsters quickly. We recognize that ICANN has taken some of the GAC’s concerns into account, but we urge ICANN to do more to protect consumers and adequately address law enforcement concerns.

A. Implement New gTLDs as a Pilot Program

Despite the modest improvements to the new gTLD program, overarching consumer protection concerns persist. As an initial matter, the potential number of expected new gTLDs is itself a serious challenge. The initial estimate for expected applications was 500, but recent estimates have suggested that there could be more than 1500 applications. If the number of approved new gTLDs reaches even the minimum estimate, the Internet landscape will change dramatically. Indeed, an increase from 22 existing gTLDs to 500 gTLDs would be an unprecedented expansion of the domain name system. Among other things, the number of registered websites is likely to increase exponentially, the number of registry operators and other actors with an operational role in the Internet ecosystem will expand, and the ability to locate and identify bad actors will be frustrated significantly due to a likely increase in the number of registries located in different countries and limited ability to obtain relevant data maintained abroad.

We understand that ICANN is currently considering batching applications in the event that the number of new gTLD applications exceeds initial expectations, and that it has set a maximum of 1,000 gTLDs to be introduced per year. We strongly believe that ICANN should substantially reduce the maximum number of new gTLDs that could be introduced in the initial round to a much smaller number. Indeed, doubling the number of existing gTLDs in one year would be an aggressive increase. The imposition of a more reasonable limit is necessary to curb

to the background screening process; publicly disclosing the names of the principal officers associated with the new gTLD application; and adding an extra point in the scoring criteria for applicants that include measures to promote Whois accuracy.

The U.S. Department of Commerce’s National Telecommunications and Information Administration, which serves as the U.S. representative to the GAC, contributed significantly to the GAC’s efforts to enhance protections for consumers and implement recommendations from law enforcement agencies. FTC staff provided input on these issues both as part of the U.S. delegation to the GAC and directly to ICANN. The Department of Commerce has worked extensively to enhance ICANN’s accountability and ensure that ICANN develops consensus-based policies in a fair, open, and transparent manner. We believe that ICANN represents an important multi-stakeholder model for Internet governance, which has been critical to keeping the Internet open and innovative, and we encourage ICANN to enhance its efficacy by implementing comprehensive solutions to these consumer protection issues.

the risks inherent in expanding the number of gTLDs, including the proliferation of malicious conduct. We recommend that ICANN use this round as a limited pilot program, as it has done in previous rounds, assess the organization's ability to evaluate, introduce, and manage additional gTLDs, conduct an assessment of the increased risks posed by the program, and then consider whether a more significant expansion would be appropriate.

B. Strengthen ICANN's Contractual Compliance Program

Currently, ICANN is ill-equipped to handle the contract enforcement for the 22 existing gTLDs and several hundred accredited registrars. In particular, ICANN lacks an adequate number of compliance staff, has failed to close contractual loopholes that limit the existing compliance staff's ability to take action against registrars and registries, and needs to implement a more rigorous enforcement program.¹⁶ The likely effect of introducing large numbers of new gTLDs is that it will significantly increase the number of entities that operate pursuant to registry contracts with ICANN. In addition, the number of registered domain names will increase as Internet users begin to register domains in new gTLDs. This will likely increase the number of complaints the compliance office receives, including those related to Whois data accuracy. Thus, the expansion of the gTLD space will require a substantial increase in resources devoted to contract enforcement and improvement of policies that hold both registries and registrars accountable.

During the GAC-Board consultations earlier this year, the Board announced its commitment to augment ICANN's contractual compliance function with additional resources. The GAC, in unambiguous terms, emphasized that a "strengthened contract compliance function must be in place prior to the launch of new gTLDs."¹⁷ Specifically, the GAC highlighted the

¹⁶ In the registrar context, despite its knowledge of proposed law enforcement recommendations to amend the Registrar Accreditation Agreement that were presented in October 2009, the Board only recently took action to ensure that these concerns would be addressed in contractual negotiations between the Board and the registrars. See <http://www.icann.org/en/minutes/resolutions-28oct11-en.htm#7>.

¹⁷ See GAC comments on the ICANN Board's response to the GAC Scorecard, at 9 (Apr. 12, 2011), available at <http://www.icann.org/en/topics/new-gtlds/gac-comments-board-response-gac-scorecard-12apr11-en.pdf>. The GAC stated:

The GAC appreciates the Board's agreement to strengthen ICANN's contractual compliance function. The GAC respectfully requests ICANN, in the coming weeks, to identify the amount of personnel it intends to hire to support the compliance function and the timeline for hiring. In particular, the GAC would like to know how many staff ICANN intends to have in place prior to the expected launch of new gTLDs. As ICANN adds new resources to its compliance program, the GAC encourages ICANN to ensure that it is staffed globally, perhaps using regional compliance officers consistent with the five RIR regions. The GAC believes that a robust compliance program is necessary to enforce registry and registrar contracts and that a strengthened contract compliance function must be in place prior to the launch of new gTLDs.

Id. (emphasis added).

need to hire enough staff to address contractual compliance issues for hundreds of new registry contracts. However, contrary to the Board’s commitment, ICANN has not yet hired additional compliance staff to support the registry contract support program. It is also unclear whether ICANN has taken any other steps to improve its contract enforcement program, and whether those steps are adequate to handle the myriad issues that will arise with such a dramatic increase in the number of registries. In FY12, ICANN budgeted only a 25 percent increase for all contractual compliance resources, despite the likelihood that the number of new gTLD contracts could increase in 2013 by over 2000 percent.¹⁸ Further, the total expected staffing level for contractual compliance in FY12 is equal to the staffing level in FY10,¹⁹ lacking the substantial increase necessary to respond to additional compliance issues resulting from the introduction of new gTLDs. Notably, ICANN’s own Whois Review Team has highlighted the lack of compliance resources available to address existing gTLD contractual concerns, recommending that ICANN should allocate “sufficient resources, through the budget process, to ensure that ICANN compliance staff is fully resourced to take a proactive regulatory role and encourage a culture of compliance.”²⁰

In addition to adequately staffing its contractual compliance program, ICANN should strengthen its contracts to ensure that registries and registrars are obligated to adhere to stringent policies that promote consumer trust and enhance security. In particular, these contracts should require verification of domain name registrants, impose further obligations on registrars for maintaining accurate Whois data, and hold domain name resellers accountable. ICANN should also ensure that the contracts provide adequate sanctions for noncompliance. In 2008, then-FTC Commissioner Leibowitz highlighted in his letter to ICANN that: “The FTC frequently has observed that transparent enforcement mechanisms are an essential element of effective private sector self-regulation and that there must be *meaningful consequences* for noncompliance.”²¹ ICANN’s Whois Review Team recently advocated for a similar approach, recommending in its draft final report that “ICANN should ensure that clear, enforceable and graduated sanctions apply to registries, registrars and registrants that do not comply with its Whois policies.”²² Significantly, ICANN must also ensure that its compliance team vigorously enforces these contracts.

¹⁸ See ICANN FY12 Operating Plan and Budget Fiscal Year Ending 30 June 2012, at 14, available at <http://www.icann.org/en/financials/adopted-opplan-budget-fy12-09sep11-en.pdf>.

¹⁹ *Id.* at 45.

²⁰ See Whois Review Team, Final Report (Draft), at 9 (Dec. 5, 2011), available at <http://www.icann.org/en/reviews/affirmation/whois-rt-draft-final-report-05dec11-en.pdf>.

²¹ See Whois and RAA Letter, *supra* note 5, at 5 (emphasis in original). The letter addressed issues relating to registrar contracts, which were amended in 2009 to provide some intermediate sanctions, but the principle applies equally to registry contracts.

²² See Whois Review Team, Final Report (Draft), at 9 (Dec. 5, 2011), available at <http://www.icann.org/en/reviews/affirmation/whois-rt-draft-final-report-05dec11-en.pdf>.

As the GAC and other stakeholders have emphasized, ICANN must adequately strengthen its contractual compliance program before it approves any new gTLD applications to ensure that consumers' interests are protected and the commitments made by gTLD registries are enforced.

C. Develop Program to Monitor Consumer Issues During New gTLD Implementation

Further, in light of the substantial impact the introduction of new gTLDs will likely have on consumers, the investment of additional resources into the contractual compliance program is really just the first step in developing an overall more effective approach. To address the issue in a comprehensive manner, we recommend that ICANN create a new program under its compliance framework that monitors consumer issues arising during the implementation of the new gTLD program, reviews the feasibility of existing mechanisms for addressing consumer issues, applies current contractual enforcement tools to resolve these issues, identifies areas where new policies may be needed, and outlines a plan for working with ICANN's supporting organizations on policy development processes that address these issues. We are aware that the compliance office has operated a C-Ticket System that captures and tracks complaints, many of which relate to consumer issues, and that ICANN follows up on complaints that fall within its purview. However, we believe that ICANN should supplement this work, and that the Board should provide more direction by approaching consumer issues more systematically and developing a dedicated program that is well resourced and that proactively addresses these issues.

ICANN should act now to ensure that consumer interests are protected in the gTLD implementation process. We understand that, pursuant to the Affirmation of Commitments, ICANN will conduct a review of the new gTLD program one year after it has been in operation, followed by subsequent reviews, and that the issue of consumer trust and consumer choice will be a key focus of that review.²³ We intend to participate actively in this review process.²⁴

²³ See Affirmation of Commitments, available at <http://www.icann.org/en/documents/affirmation-of-commitments-30sep09-en.htm>. The Affirmation of Commitments states, in relevant part:

9.3 Promoting competition, consumer trust, and consumer choice: ICANN will ensure that as it contemplates expanding the top-level domain space, the various issues that are involved (including competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, and rights protection) will be adequately addressed prior to implementation. If and when new gTLDs (whether in ASCII or other language character sets) have been in operation for one year, ICANN will organize a review that will examine the extent to which the introduction or expansion of gTLDs has promoted competition, consumer trust and consumer choice, as well as effectiveness of (a) the application and evaluation process, and (b) safeguards put in place to mitigate issues involved in the introduction or expansion. ICANN will organize a further review of its execution of the above commitments two years after the first review, and then no less frequently than every four years.

Id.

However, in advance of the competition, consumer trust, and consumer choice review, ICANN should create a program that monitors and addresses consumer issues on an ongoing basis to ensure that the potential for consumer harm resulting from the introduction of new gTLDs is addressed effectively and timely.

D. Evaluate Proposed gTLDs' Potential Harm to Consumers

Attention to consumer issues should not be relegated to an external review process but rather function as an integral part of the new gTLD evaluation process. During the GAC-Board new gTLD consultations, the GAC recommended that proposed gTLDs implicating regulated industries or gTLDs that were otherwise particularly susceptible to abuse (e.g., .kids, .bank) should receive additional vetting and scrutiny. The Board rejected this proposal and did not provide an alternative that adequately addresses this concern.²⁵ ICANN should conduct its own evaluation of the potential consumer risks associated with each proposed new gTLD, especially those that will inherently raise heightened concern among stakeholders. Accordingly, we urge ICANN to reconsider its decision not to apply additional vetting or scrutiny to proposed gTLDs associated with regulated industries or gTLDs that are particularly susceptible to abuse and pose an increased risk of consumer fraud, or to otherwise incorporate the risk of consumer harm into the evaluation process for each proposed gTLD.

E. Improve Whois Accuracy

As we have advocated for more than a decade, and as discussed earlier in this letter, ICANN should improve the accuracy of Whois data.²⁶ A wide range of stakeholders has strongly urged ICANN to address this problem, including the GAC, which noted in its 2007

²⁴ We are aware that a cross-constituency working group has been formed to address preliminary matters related to this review. We are also aware that ICANN will be reviewing aspects of new gTLD implementation as a result of concerns raised by the GAC.

²⁵ The Board supplemented the evaluation and approval process with a GAC early warning mechanism, which allows individual governments to notify applicants via the GAC that they have concerns about a proposed gTLD, as well as preserving the ability of the GAC to provide consensus advice on a particular application. Certainly, these mechanisms allow governments an important opportunity to communicate their views about proposed gTLDs, but they do not obviate the need for ICANN to conduct its own assessment of potential consumer harm during the evaluation process.

²⁶ *See supra* note 8. We recognize, as we have done in the past, that ICANN's Whois policies should protect the privacy of individual registrants. *See* FTC, Prepared Statement of the Federal Trade Commission before the ICANN Meeting Concerning Whois Databases, at 9 (June 2006) ("The FTC, as the primary enforcement agency for U.S. consumer privacy and data security laws, is very concerned about protecting consumers' privacy. Thus, the Commission has always recognized that non-commercial registrants may require some privacy protection from *public* access to their contact information, without compromising appropriate real-time access by law enforcement agencies.").

Whois principles, that “stakeholders should work to improve the accuracy of Whois data, and in particular, to reduce the incidence of deliberately false Whois data.”²⁷

The violations of Whois data accuracy requirements are pervasive, and ICANN’s response to this persistent problem has been woefully inadequate. As ICANN’s own Whois Review Team recognized,

Cyber security and cybercrime experts make extensive use of WHOIS to thwart and respond to a varied set of threats. Information contained within WHOIS is invaluable in these efforts and practitioners have conveyed to us their frustration at the continuing high levels of inaccuracy of WHOIS data. **We find that ICANN has neglected to respond to the needs of this community both in the accuracy of WHOIS data and in response times for access and action.**²⁸

We believe, as law enforcement agencies from around the world have advocated, that registrars should be required to implement verification procedures when registering domain names. Such efforts could significantly reduce the incidence of completely inaccurate data. In addition to imposing verification requirements, ICANN should adopt any other appropriate measures to reduce the amount of inaccurate Whois data.²⁹ We urge ICANN to develop and to implement a plan to address the problem of Whois inaccuracy before new gTLDs are introduced, which will likely exacerbate these problems.


In sum, the dramatic introduction of new gTLDs poses significant risks to consumers, and ICANN should take the steps described above to reduce the potential for consumer injury before approving any new gTLD applications. We look forward to working with ICANN to ensure that adequate consumer protection safeguards are implemented in the new—and existing—gTLD marketplace.

²⁷ See Governmental Advisory Committee, GAC Principles Regarding gTLD Whois Services, at 4.1 (Mar. 28, 2007), *available at* https://gacweb.icann.org/download/attachments/1540132/WHOIS_principles.pdf?version=1&modificationDate=1312460331000.

²⁸ See Whois Review Team, Final Report (Draft), at 7 (Dec. 5, 2011), *available at* <http://www.icann.org/en/reviews/affirmation/whois-rt-draft-final-report-05dec11-en.pdf> (emphasis added). In March, an Interpol representative delivered a blistering critique of the Whois system during ICANN’s Forum on DNS Abuse, noting that “Accurate WHOIS is a joke. It just doesn't happen. We don't see it. We never get it. Even if we do see something within it that might give us indications, it's -- it's always a dead end and it's a waste of time even trying. And for me, what's the point in having a WHOIS database if it can't be accurate? Somebody has to be responsible for having that accurate. Somebody has to be. I'm sorry. And whoever that “somebody” is, can you please step up to the plate and do your work?” See Transcript: Forum on DNS Abuse (Mar. 14, 2011), *available at* <http://svsf40.icann.org/node/22219>.

²⁹ See also Whois Review Team, Final Report (Draft), at 9 (Dec. 5, 2011), *available at* <http://www.icann.org/en/reviews/affirmation/whois-rt-draft-final-report-05dec11-en.pdf> (recommending that ICANN take appropriate measures to reduce the number of unreachable Whois registrations).


Sincerely,



Jon Leibowitz
Chairman



J. Thomas Rosch
Commissioner



Edith Ramirez
Commissioner



Julie Brill
Commissioner

cc: The Honorable John D. Rockefeller IV
Chairman, Committee on Commerce, Science, and Transportation
United States Senate

The Honorable Kay Bailey Hutchison
Ranking Member, Committee on Commerce, Science, and Transportation
United States Senate

The Honorable Fred Upton
Chairman, Committee on Energy and Commerce
United States House of Representatives

The Honorable Henry A. Waxman
Ranking Member
Committee on Energy and Commerce
United States House of Representatives

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate

The Honorable Charles E. Grassley
Ranking Member
Committee on the Judiciary
United States Senate

The Honorable Lamar Smith
Chairman
Committee on the Judiciary
United States House of Representatives

The Honorable John Conyers, Jr.
Ranking Member
Committee on the Judiciary
United States House of Representatives

The Honorable Bob Goodlatte
Chairman
Subcommittee on Intellectual Property, Competition, and the Internet
Committee on the Judiciary
United States House of Representatives

The Honorable Melvin Watt
Ranking Member
Subcommittee on Intellectual Property, Competition, and the Internet
Committee on the Judiciary
United States House of Representatives

The Honorable Greg Walden
Chairman
Subcommittee on Communications and Technology
Committee on Energy and Commerce
United States House of Representatives

The Honorable Anna Eshoo
Ranking Member
Subcommittee on Communications and Technology
Committee on Energy and Commerce
United States House of Representatives

The Honorable Mary Bono Mack
Chairman
Subcommittee on Commerce, Manufacturing and Trade
Committee on Energy and Commerce
United States House of Representatives

The Honorable G.K. Butterfield
Ranking Member
Subcommittee on Commerce, Manufacturing and Trade
Committee on Energy and Commerce
United States House of Representatives

The Honorable John Bryson
Secretary
United States Department of Commerce

The Honorable Lawrence E. Strickling
Assistant Secretary for Communications and Information and Administrator
National Telecommunications and Information Administration
United States Department of Commerce



FEDERAL TRADE COMMISSION
 PROTECTING AMERICA'S CONSUMERS

FTC Warns That Rapid Expansion of Internet Domain Name System Could Leave Consumers More Vulnerable to Online Fraud

Letter Urges ICANN to Implement Pilot Program, Take New Steps to Protect Consumers

FOR RELEASE

December 16, 2011

TAGS: [Internet Corporation for Assigned Names and Numbers \(ICANN\)](#) | [Technology](#) | [Commissioners](#) | [Consumer Protection](#) | [Advertising and Marketing](#) | [Online Advertising and Marketing](#) | [Imposter](#)

The Federal Trade Commission today sent a letter to the Internet Corporation for Assigned Names and Numbers (ICANN), the organization that oversees Internet domain names, expressing concern that the organization's plan to dramatically expand the domain name system could leave consumers more vulnerable to online fraud and undermine law enforcers' ability to track down online scammers.

In its [letter to ICANN](#), the Commission warned that rapid expansion of the number of generic top-level domain names (gTLDs) – the part of the domain name to the right of the dot, such as ".com," ".net" and ".org" – could create a "dramatically increased opportunity for consumer fraud," and make it easier for scam artists to manipulate the system to avoid being detected by law enforcement authorities. The Commission urged ICANN – before approving any new gTLD applications – to take additional steps to protect consumers, including starting with a pilot program to work out potential problems.

"A rapid, exponential expansion of gTLDs has the potential to magnify both the abuse of the domain name system and the corresponding challenges we encounter in tracking down Internet fraudsters," the Commission's letter states.

ICANN intends to allow website operators to apply for new gTLDs starting on January 12, 2012.

The Commission letter noted that the FTC has raised consumer protection issues with ICANN for more than a decade. The Commission stated that the FTC and other law enforcement agencies need to navigate the domain name system in order to investigate cases of unfair or deceptive practices online, and the existing system already is open to manipulation by scam artists seeking to avoid detection. The FTC routinely consults the "Whois" service, which lists the identities and contact information of website operators. However, the Commission explained that the Whois service often contains incomplete or inaccurate data or, increasingly, proxy registrations, which shields contact information even for domain name registrants engaged in commercial activities.

The increase in website names that could be registered in the new gTLDs would put "infinite opportunities" at the fingertips of scam artists, who take advantage of consumers through tactics such as using misspelled names to create copycat websites, the Commission's letter states.

"In short, the potential for consumer harm is great, and ICANN has the responsibility both to assess and mitigate these risks,"

the letter states.

Before approving any new gTLD applications, the FTC urged ICANN to:

- implement the new program as a pilot program and substantially reduce the number of generic top level domains that are introduced as a result of the first application round;
- strengthen ICANN's contractual compliance program, in particular by hiring additional compliance staff;
- develop a new ongoing program to monitor consumer issues that arise during the first round of implementing the new gTLD program;
- assess each new proposed generic top level domain's risk of consumer harm as part of the evaluation and approval process;
- improve the accuracy of Whois data, including by imposing a registrant verification requirement.

The Commission letter warned "If ICANN fails to address these issues responsibly, the introduction of new gTLDs could pose a significant threat to consumers and undermine consumer confidence in the Internet."

The Federal Trade Commission works for consumers to prevent fraudulent, deceptive, and unfair business practices and to provide information to help spot, stop, and avoid them. To file a complaint in English or Spanish, visit the FTC's online [Complaint Assistant](#) or call 1-877-FTC-HELP (1-877-382-4357). The FTC enters complaints into Consumer Sentinel, a secure, online database available to more than 2,000 civil and criminal law enforcement agencies in the U.S. and abroad. The FTC's Web site provides free information on a variety of [consumer topics](#). Like the FTC on [Facebook](#) and follow us on [Twitter](#).

(ICANN Letter)

Contact Information

MEDIA CONTACT:

Claudia Bourne Farrell,
Office of Public Affairs
202-326-2181

STAFF CONTACT:

Shaundra Watson
Office of International Affairs
202-326-2777



ftc.gov

Exhibit DIDP A52

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http://newgtlds.icann.org/en/applicants/customer-service/change-requests Go

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New gTLD Application Change Request Process and Criteria

Requests for changes to applications may be submitted to the [New gTLD Customer Service Center \(CSC\)](#) (<http://web/20120912074616/https://gtldapp.icann.org/vpn/index.html>) by following these 2 steps:

1. Download and complete a [gTLD Application Change Request Form](#) (<http://web/20120912074616/http://newgtlds.icann.org/en/applicants/customer-service/change-requests/form-05sep12-en.docx>) [DOCX, 632 KB].
2. Log into the [CSC portal](#) (<http://web/20120912074616/https://gtldapp.icann.org/vpn/index.html>) with the primary contact's credentials and submit the Form.

ICANN will evaluate the requested changes against the 7 criteria below and inform the applicant whether the changes are approved or denied. ICANN will post all approved changes in a change log on the gTLD microsite. Relevant changes made to public portions of the application will be posted. Changes made to confidential portions of the application will not be posted, but only summarized to protect confidentiality of the applicant. Posting will occur once the applicant confirms that changes made are correct as requested. The change log is currently under development and will be made available soon.

Amended applications will be held for at least 30 days before passing on to the next phase in evaluation process to allow for public comment on that revised application. For example, an application in initial evaluation will not be identified as passing for at least 30 days until time for public comment enables an assessment of whether re-evaluation of the change is required.

Decision Criteria

Determination of whether changes will be approved will balance the following factors:

1. **Explanation** – Is a reasonable explanation provided?
2. **Evidence that original submission was in error** – Are there indicia to support an assertion that the change merely corrects an error?
3. **Other third parties affected** – Does the change affect other third parties materially?
4. **Precedents** – Is the change similar to others that have already been approved? Could the change lead others to request similar changes that could affect third parties or result in undesirable effects on the program?
5. **Fairness to applicants** – Would allowing the change be construed as fair to the general community? Would disallowing the change be construed as unfair?
6. **Materiality** – Would the change affect the evaluation score or require re-evaluation of some or all of the application? Would the change affect string contention or community priority consideration?
7. **Timing** – Does the timing interfere with the evaluation process in some way? ICANN reserves the right to require a re-evaluation of the application in the event of a material change. This could involve additional fees or evaluation in a subsequent application round. (AGB §1.2.7.)

Note that per section 1.2.7 of the Applicant Guidebook, if at any time during the evaluation process information previously submitted by an applicant becomes untrue or inaccurate, the applicant must promptly notify ICANN via submission of the appropriate forms. This includes applicant-specific information such as changes in financial position and changes in ownership or control of the applicant.

1. ICANN reserves the right to require a re-evaluation of the application in the event of a material change. This could involve additional fees or evaluation in a subsequent application round.
2. Failure to notify ICANN of any change in circumstances that would render any information provided in the application false or misleading may result in denial of the application.

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New Generic Top-Level Domains

NEW GTLD APPLICATION CHANGE REQUEST PROCESS AND CRITERIA

Requests for changes to applications may be submitted to the [New gTLD Customer Service Center \(CSC\) \(/web/20130421111822/https://myicann.secure.force.com/\)](http://web/20130421111822/https://myicann.secure.force.com/) by following these 2 steps:

1. Download and complete a [gTLD Application Change Request Form \(/web/20130421111822/http://newgtlds.icann.org/en/applicants/customer-service/change-requests/form-05sep12-en.docx\)](http://web/20130421111822/http://newgtlds.icann.org/en/applicants/customer-service/change-requests/form-05sep12-en.docx) [DOCX, 632 KB].
2. Log into the [CSC portal \(/web/20130421111822/https://myicann.secure.force.com/\)](http://web/20130421111822/https://myicann.secure.force.com/) with the primary contact's credentials and submit the Form.

ICANN will evaluate the requested changes against the 7 criteria below and inform the applicant whether the changes are approved or denied. ICANN will post all approved changes in a change log on the gTLD microsite. Relevant changes made to public portions of the application will be posted. Changes made to confidential portions of the application will not be posted, but only summarized to protect confidentiality of the applicant. Posting will occur once the applicant confirms that changes made are correct as requested. The change log is currently under development and will be made available soon.

Amended applications will be held for at least 30 days before passing on to the next phase in evaluation process to allow for public comment on that revised application. For example, an application in initial evaluation will not be identified as passing for at least 30 days until time for public comment enables an assessment of whether re-evaluation of the change is required.

Decision Criteria

Determination of whether changes will be approved will balance the following factors:

1. **Explanation** – Is a reasonable explanation provided?
2. **Evidence that original submission was in error** – Are there indicia to support an assertion that the change merely corrects an error?
3. **Other third parties affected** – Does the change affect other third parties materially?
4. **Precedents** – Is the change similar to others that have already been approved? Could the change lead others to request similar changes that could affect third parties or result in undesirable effects on the program?
5. **Fairness to applicants** – Would allowing the change be construed as fair to the general community? Would disallowing the change be construed as unfair?
6. **Materiality** – Would the change affect the evaluation score or require re-evaluation of some or all of the application? Would the change affect string contention or community priority consideration?
7. **Timing** – Does the timing interfere with the evaluation process in some way? ICANN reserves the right to require a re-evaluation of the application in the event of a material change. This could involve additional fees or evaluation in a subsequent application round. (AGB §1.2.7.)

Note that per section 1.2.7 of the Applicant Guidebook, if at any time during the evaluation process information previously submitted by an applicant becomes untrue or inaccurate, the applicant must promptly notify ICANN via submission of the appropriate forms. This includes applicant-specific information such as changes in financial position and changes in ownership or control of the applicant.

1. ICANN reserves the right to require a re-evaluation of the application in the event of a material change. This could involve additional fees or evaluation in a subsequent application round.
2. Failure to notify ICANN of any change in circumstances that would render any information provided in the application false or misleading may result in denial of the application.

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NEW GTLD APPLICATION CHANGE REQUEST PROCESS AND CRITERIA

[Overview](#)

[Determination Criteria](#)

[How to Submit a Change Request](#)

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[How Change Requests Impact Other New gTLD Program Processes](#)

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News & Views

Announcement: 30 September 2014 – [ICANN Updates Application Change Request Process \(web/20141009072805/http://newgtlds.icann.org/en/announcements-and-media/announcement-30sep14-en\)](#)

Announcement: 30 September 2014 – Change Request Advisory

Change Request Overview

Per section 1.2.7 of the Applicant Guidebook:

If at any time during the evaluation process information previously submitted by an applicant becomes untrue or inaccurate, the applicant must promptly notify ICANN via submission of the appropriate forms. This includes applicant-specific information such as changes in financial position and changes in ownership or control of the applicant.

This section of the Applicant Guidebook further states:

ICANN reserves the right to require a re-evaluation of the application in the event of a material change. This could involve additional fees or evaluation in a subsequent application round.

Failure to notify ICANN of any change in circumstances that would render any information provided in the application false or misleading may result in denial of the application.

The Application Change Request ("ACR") process was created during the application window in order to allow applicants to notify ICANN of changes to application materials.

Change Request Determination Criteria

Determination of whether changes will be approved will balance the following factors:

1. **Explanation** – Is a reasonable explanation provided?
2. **Evidence that original submission was in error** – Are there indicia to support an assertion that the change merely corrects an error?
3. **Other third parties affected** – Does the change affect other third parties materially?
4. **Precedents** – Is the change similar to others that have already been approved? Could the change lead others to request similar changes that could affect third parties or result in undesirable effects on the program?



reserves the right to require a re-evaluation of the application in the event of a material change. This could involve additional fees or evaluation in a subsequent application round. (AGB §1.2.7.)

These criteria were carefully developed to enable applicants to make necessary changes to their applications while ensuring a fair and equitable process for all applicants.

In evaluating each change request, all available information is considered against the seven criteria above. The weight of each criterion may vary on a case-by-case basis, depending on the facts and circumstances surrounding the change request, the application, and the string.

Explanation – This criterion requires that the applicant provide an explanation for the requested changes. If an explanation is not provided, the applicant is given an opportunity to remediate. As such, this criterion is always met and does not bear as much weight as the other criteria.

Evidence that original submission was in error – This criterion is applicable in cases where the applicant requests a change to correct an error. In this case, the criterion requires that the applicant provide adequate information to support the request. There are few cases of change requests to correct an error. However, when such a case is submitted, this criterion is heavily weighted.

Other third parties affected – This criterion evaluates whether the change request materially impacts other third parties, particularly other applicants. In cases where a change to application material has the potential to materially impact the status of another applicant's application, this criterion is heavily weighted.

Precedents – This criterion assesses whether approval of the change request would create a new precedent, or if it would be in-line with other similar requests that have been approved. At this stage of the New gTLD Program, it is unlikely that a change request that would create a new precedent would be approved.

Fairness to applicants – This criterion evaluates whether approving a change request would put the applicant in a position of advantage or disadvantage compared to other applicants. This criterion is related to the "Other third parties affected" criterion, and if a change request is found to materially impact other third parties, it will likely be found to cause issues of unfairness.

Materiality – This criterion assesses how the change request will impact the status of the application and its competing applications, the string, the contention set, and any additional Program processes that it or its competing applications must complete such as Community Priority Evaluation ("CPE"). A change that is determined to be material in and of itself will not cause a change request to be rejected. However, it will cause other criteria to weigh more when considered in conjunction with each other.

Timing – This criterion determines whether the timing of the change request impacts the materiality, fairness to applicants, and other third parties affected criteria. In cases where timing of the change request is found to impact these criteria, it will be heavily weighted.

How to Submit a Change Request

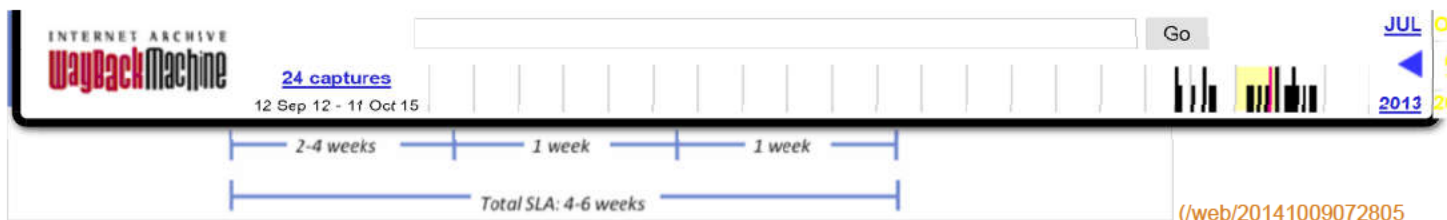
Requests for changes to application materials may be submitted to the [New gTLD Customer Service Center \(CSC\) \(/web/20141009072805/https://myicann.secure.force.com/\)](http://web/20141009072805/https://myicann.secure.force.com/) by following these 2 steps:

1. Download and complete a [gTLD Application Change Request Form \(/web/20141009072805/http://newgtlds.icann.org/en/applicants/customer-service/change-requests/form-12mar14-en.docx\)](http://web/20141009072805/http://newgtlds.icann.org/en/applicants/customer-service/change-requests/form-12mar14-en.docx) [DOCX, 569 KB].
2. Log into the [CSC portal \(/web/20141009072805/https://myicann.secure.force.com/\)](http://web/20141009072805/https://myicann.secure.force.com/) with the primary contact's credentials and submit the Form, along with redlines of the changes being requested. An example of a redline document can be viewed [here](#).

The standard change request process requires that any change to the application, including changes to the Primary Contact, be initiated by the Primary Contact and submitted via the appropriate login in the [CSC Portal \(/web/20141009072805/https://myicann.secure.force.com/\)](http://web/20141009072805/https://myicann.secure.force.com/). If the Primary Contact is no longer available to initiate the change, then the Secondary Contact may contact the CSC at [newgtld@icann.org \(mailto:newgtld@icann.org\)](mailto:newgtld@icann.org) to submit the change request.

Change Request Process

Below is a graphic depicting the change request process.



[/http://newgtlds.icann.org/sites/default/files/main-images/change-request-process-900x161-30sep14-en.png](http://newgtlds.icann.org/sites/default/files/main-images/change-request-process-900x161-30sep14-en.png)

Verification & Validation – In this step, ICANN verifies the applicant's credentials in order to ensure that only those authorized to make changes to the application are able to do so. Additionally, ICANN reviews the change request materials submitted by the applicant to ensure that a completed Change Request Form, appropriate redline documents, as well as all relevant supporting documentations are provided. This step is not counted in the 4-6 week SLA for change requests, because the amount of time to complete this step is highly dependent upon the applicant providing the required information. ICANN's work during this step is minimal. ICANN typically performs its work within 2 business days of receiving the requests or information from the applicant. Submission of incomplete information, and non-response to ICANN's request for required information are typical causes of delay in this step. ICANN will inform the applicant once this step is completed.

ICANN Review – Once verification and validation of the change request is completed, ICANN reviews the change request materials against the seven criteria above. In the event that additional information is required before a determination can be made, ICANN will reach out to the applicant to request the information. The SLA for this step of the process is 2-4 weeks, depending on the complexity of the change request and whether additional information is required.

Notification of Determination – Once ICANN completes its review of the change request, the applicant will be informed of the determination. Possible determinations include approval of the change request, denial of the change request, or deferral of the change request to a later time. The SLA for this step is one week to account for the drafting of denial or deferral letters if the change request is denied or deferred.

Changes Made and Posted – In this step, ICANN makes the requested and approved changes to the application. Changes that require a 30-day comment window will be posted on the [Application Status page \(/web/20141009072805/http://gtldresult.icann.org/application-result/applicationstatus\)](http://newgtlds.icann.org/sites/default/files/main-images/change-request-process-900x161-30sep14-en.png) of the New gTLD Microsite. Changes that do not require a 30-day comment window will not be posted. Refer to the "Change Requests Requiring 30-day Comment Window" section below for information on which changes will be posted for comments and which ones will not. Applicants will be notified once the changes are made. The notification will also inform applicants whether the changes are posted for comments, and whether application re-evaluation will be required.

Re-evaluation – This step is applicable to those change requests that require re-evaluation of the application. Once ICANN notifies the applicant that the changes are made and that re-evaluation is required, the change request case will be closed and a new re-evaluation case will be opened to assist the applicant through the re-evaluation process. Under the re-evaluation step, the applicant will be sent an invoice for the re-evaluation fee. Once payment is made, ICANN will proceed with the re-evaluation of the application. The re-evaluation will follow the same process and timelines as Extended Evaluation:

- 3 weeks: evaluators review the updated application, and issue Clarifying Questions if required.
- 6 weeks: applicants respond to Clarifying Questions.
- 2 weeks: evaluators review response to Clarifying Questions and deliver results to ICANN.
- 1 week: ICANN reviews and processes the results for publication. Note that if the re-evaluation results in any scoring changes, ICANN will update either the Initial or Extended Evaluation report and post it on the [Application Status page \(/web/20141009072805/https://gtldresult.icann.org/application-result/applicationstatus\)](http://newgtlds.icann.org/sites/default/files/main-images/change-request-process-900x161-30sep14-en.png) of the New gTLD Microsite. If the re-evaluation does not result in any scoring changes, no updates will be made.

Change Requests That Do Not Require A 30-day Comment Window

In the interest of allowing applicants to expeditiously move forward in the New gTLD Program, effective 1 October 2014, the following types of change requests will generally not be posted for comments for 30 days:

- Changes to confidential portions of the application
- Changes to primary and secondary contacts of the application
- Changes to the applicant's contact information (address, phone, fax, web address)
- Changes to applicant's stock symbol
- Changes to applicant's business/tax ID
- Changes to applicant's officers/directors
- Changes to name of applying entity*

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* This item refers to a simple name change of the applying entity only. It does not apply to changes in the applying entity itself such as the case of the application being assigned from a parent entity to a wholly-owned subsidiary.

How Change Requests Impact Other New gTLD Program Processes

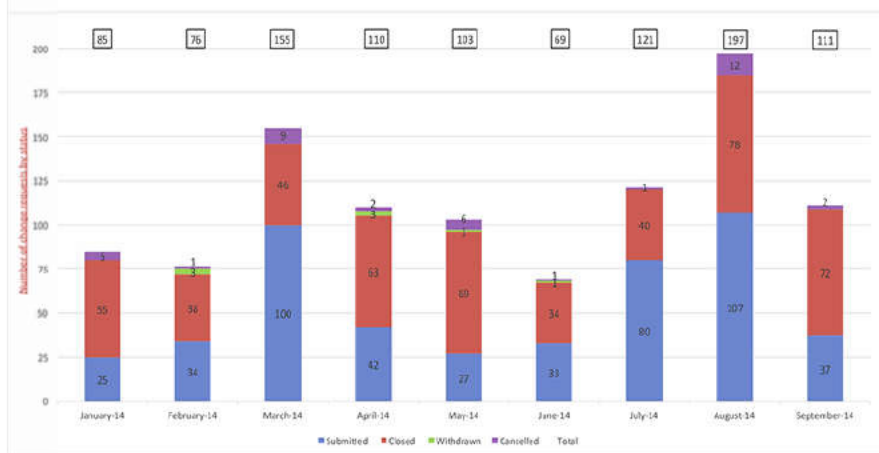
Contracting – If an applicant is eligible to be invited to Contracting, but there is a pending change request on the application, the applicant will not be invited until the change request completes processing. If the applicant has been invited to contracting and is progressing through the contracting process, a pending change request will cause delays and may impact the applicant’s ability to execute the Registry Agreement in a timely manner. If the applicant anticipates not being able to execute the Registry Agreement by the Registry Agreement execution deadline, ICANN recommends that the applicant [submit an extension request \(/web/20141009072805/http://newgtlds.icann.org/en/announcements-and-media/announcement-03sep14-en\)](http://newgtlds.icann.org/en/announcements-and-media/announcement-03sep14-en) in order to avoid missing the Registry Agreement execution deadline. Applicants will not receive a Registry Agreement until the change request completes processing, and the 30-comment window (if required) has concluded.

Contention Resolution – For Community Priority Evaluation, the applicant will only be invited once the change request completes processing and the 30-day comment window (if required) has concluded. For Auction, a pending change request will not prevent an Auction from being scheduled, but in some circumstances, the Auction may be delayed.

Statistics

Below are monthly change request statistics that will be updated on the first of every month.

	December-13	January-14	February-14	March-14	April-14	May-14	June-14	July-14	August-14	September-14	October-14	November-14	December-14
Submitted		25	34	100	42	27	33	80	107	37	0	0	0
Closed		55	38	46	63	69	34	40	78	72	0	0	0
Withdrawn		0	3	0	3	1	1	0	0	0	0	0	0
Cancelled		5	1	9	2	6	1	1	12	2	0	0	0
Total		85	76	155	110	103	69	121	197	111	0	0	0



(/web/20141009072805

[/http://newgtlds.icann.org/sites/default/files/main-images/monthly-posting-change-requests-960x480-30sep14-en.png\)](http://newgtlds.icann.org/sites/default/files/main-images/monthly-posting-change-requests-960x480-30sep14-en.png)

Resources

- [Change Request Form \(/web/20141009072805/http://newgtlds.icann.org/en/applicants/customer-service/change-requests/form-12mar14-en.docx\)](http://newgtlds.icann.org/en/applicants/customer-service/change-requests/form-12mar14-en.docx) [DOCX, 569 KB]
- [CSC Portal \(/web/20141009072805/https://myicann.secure.force.com/\)](https://myicann.secure.force.com/)
- [Example Redline Document \(/web/20141009072805/http://newgtlds.icann.org/en/applicants/customer-service/change-requests/redline-example-30sep14-en.pdf\)](http://newgtlds.icann.org/en/applicants/customer-service/change-requests/redline-example-30sep14-en.pdf) [PDF, 50 KB]
- [Change Request Advisory \(/web/20141009072805/http://newgtlds.icann.org/en/applicants/advisories/change-request-set-05sep14-en\)](http://newgtlds.icann.org/en/applicants/advisories/change-request-set-05sep14-en)

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New Generic Top-Level Domains

CHANGE REQUESTS

New gTLD Advisory

Advisory number: R1-A01-CR

Publication date: 5 September 2014

Change Request Criteria

As per the change request process posted at [http://newgtlds.icann.org/en/applicants/customer-service/change-requests \(/en/applicants/customer-service/change-requests\)](http://newgtlds.icann.org/en/applicants/customer-service/change-requests (/en/applicants/customer-service/change-requests)), ICANN evaluates change requests against 7 criteria:

1. **Explanation** – Is a reasonable explanation provided?
2. **Evidence that original submission was in error** – Are there indicia to support an assertion that the change merely corrects an error?
3. **Other third parties affected** – Does the change affect other third parties materially?
4. **Precedents** – Is the change similar to others that have already been approved? Could the change lead others to request similar changes that could affect third parties or result in undesirable effects on the program?
5. **Fairness to applicants** – Would allowing the change be construed as fair to the general community? Would disallowing the change be construed as unfair?
6. **Materiality** – Would the change affect the evaluation score or require re-evaluation of some or all of the application? Would the change affect string contention or community priority consideration?
7. **Timing** – Does the timing interfere with the evaluation process in some way? ICANN reserves the right to require a re-evaluation of the application in the event of a material change. This could involve additional fees or evaluation in a subsequent application round. (AGB §1.2.7.)

These criteria were carefully developed to enable applicants to make necessary changes to their applications while ensuring a fair and equitable process for all applicants.

In evaluating each change request, all available information is considered against the seven criteria above. The weight of each criterion may vary on a case-by-case basis, depending on the facts and circumstances surrounding the change request, the application, and the string.

Explanation – This criterion requires that the applicant provide an explanation for the requested changes. If an explanation is not provided, the applicant is given an opportunity to remediate. As such, this criterion is always met and does not bear as much weight as the other criteria.

Evidence that original submission was in error – This criterion is applicable in cases where the applicant requests a change to correct an error. In this case, the criterion requires that the applicant provide adequate information to support the request. There are few cases of change requests to correct an error. However, when such a case is submitted, this criterion is heavily weighted.

Other third parties affected – This criterion evaluates whether the change request materially impacts other third parties, particularly other applicants. In cases where a change to application material has the potential to materially impact the status of another applicant's application, this criterion is heavily weighted.

Precedents – This criterion assesses whether approval of the change request would create a new precedent, or if it would be in-line with other similar requests that have been approved. At this stage of the New gTLD Program, it is unlikely that a change request that would create a new precedent would be approved.

Fairness to applicants – This criterion evaluates whether approving a change request would put the applicant in a position of advantage or disadvantage compared to other applicants. This criterion is related to the "Other third parties affected" criterion and if a change request is found to materially impact other third parties, it will likely be found to cause issues of unfairness.

Materiality – This criterion assesses how the change request will impact the status of the application and its competing applications, the string, the contention set, and any additional Program processes that it or its competing applications must complete such as Community Priority Evaluation ("CPE"). A change that is determined to be material in and of itself will not cause a change request to be rejected. However, it will cause other criteria to weigh more when considered in conjunction with each other.

Timing – This criterion determines whether the timing of the change request impacts the materiality, fairness to applicants, and other third parties affected criteria. In cases where timing of the change request is found to impact these criteria, it will be heavily weighted.

Implications on Community Applications

ICANN has received inquiries regarding why requested changes to community definition and registration policies are deferred until after the completion of CPE.

In considering these types of change requests, the most relevant criteria are criteria three through seven. Criteria three, five, six, and seven are related and are considered together.

A change to update a community's definition and registration policies prior to contracting is material because: (1) other parties' decisions on whether to file an community objection to the application were made on the basis of what was in the application at the time of the objection window; (2) the community definition and registration policies serve as the basis for determining the merits of a community objection; and (3) they are evaluated during CPE.

Approval of a change request to update a community definition and registration policies would allow a CPE applicant to update its application based on learnings from previously posted CPE results. This causes issues of unfairness to the first applicants that went through CPE and did not have the benefit of learning from others. Allowing such a change request would also improve the CPE applicant's chances to prevail in CPE, negatively impacting the other applicants in the same contention set. Therefore, although viewed as necessary from the CPE applicant's perspective to maximize its ability to pass CPE, approval of a change request to update a community's definition and registration policies prior to the completion of CPE would cause issues of unfairness to other applicants in the same contention set.

As ICANN's responsibilities are to ensure fair and equitable treatment for all applicants, all change requests of these types have been deferred until after CPE. If an applicant successfully prevails in CPE and enters into contracting, ICANN will consider approving a change request to update the community definition and registration policies prior to execution of the Registry Agreement, provided there are no pending issues impacting the application (i.e., a pending accountability mechanism triggered on the string).

Implications on Exclusive-Generic Applications

On 28 September 2013, the New gTLD Program Committee ("NGPC") passed a [resolution \(http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-28sep13-en.htm#2.a\)](http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-28sep13-en.htm#2.a) directing ICANN staff "to move forward with the contracting process for applicants for strings identified in the Category 2 Safeguard Advice that are prepared to enter into the Registry Agreement as approved." On 9 October 2013, ICANN [announced \(http://newgtlds.icann.org/en/applicants/advisories/gac-cat2-advice-19mar14-en\)](http://newgtlds.icann.org/en/applicants/advisories/gac-cat2-advice-19mar14-en) an implementation plan per the NGPC's direction. Applicants subjected to Category 2 Safeguard Advice were asked to provide responses to the following three questions:

1. Will the TLD be operated as an exclusive access registry?
2. Does the current applicant state that the TLD will be operated as an exclusive registry?
3. Does the applicant have a pending change request regarding exclusive access?

Some applicants answered "No" to question one, "Yes" to question two, and "No" to question three, which means that although their applications state that the applied-for TLDs will be operated as exclusive access registries they will not operate them as such. For these

applicants, the implementation plan allows for them to submit change requests to align their applications with their intent. Once the change requests complete processing, these applications may move forward to contracting if all other eligibility criteria are met. Allowing applicants to change from being an exclusive to a non-exclusive registry does not create unfairness because exclusiveness is not an evaluation criterion and has no bearing on contention resolution.

In line with the announced GAC Category 2 implementation plan, ICANN has approved change requests from applicants wishing to address GAC Category 2 Advice by making their applications non-exclusive access registries and will continue to do so.

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New Generic Top-Level Domains

NEW GTLD APPLICATION CHANGE REQUEST PROCESS AND CRITERIA

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[How to Submit a Change Request](#)

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[Change Requests That Do Not Require A 30-day Comment Window](#)

[How Change Requests Impact Other New gTLD Program Processes](#)

[Statistics](#)

[Resources](#)

News & Views

Announcement: 30 September 2014 – [ICANN Updates Application Change Request Process \(http://newgtlds.icann.org/en/announcements-and-media/announcement-30sep14-en\)](http://newgtlds.icann.org/en/announcements-and-media/announcement-30sep14-en)

Announcement: 30 September 2014 – [Change Request Advisory \(http://newgtlds.icann.org/en/applicants/advisories/change-request-set-05sep14-en\)](http://newgtlds.icann.org/en/applicants/advisories/change-request-set-05sep14-en)

Change Request Overview

Per section 1.2.7 of the Applicant Guidebook:

If at any time during the evaluation process information previously submitted by an applicant becomes untrue or inaccurate, the applicant must promptly notify ICANN via submission of the appropriate forms. This includes applicant-specific information such as changes in financial position and changes in ownership or control of the applicant.

This section of the Applicant Guidebook further states:

ICANN reserves the right to require a re-evaluation of the application in the event of a material change. This could involve additional fees or evaluation in a subsequent application round.

Failure to notify ICANN of any change in circumstances that would render any information provided in the application false or misleading may result in denial of the application.

The Application Change Request ("ACR") process was created during the application window in order to allow applicants to notify ICANN of changes to application materials.

Change Request Determination Criteria

Determination of whether changes will be approved will balance the following factors:

1. **Explanation** – Is a reasonable explanation provided?
2. **Evidence that original submission was in error** – Are there indicia to support an assertion that the change merely corrects an error?

3. **Other third parties affected** – Does the change affect other third parties materially?
4. **Precedents** – Is the change similar to others that have already been approved? Could the change lead others to request similar changes that could affect third parties or result in undesirable effects on the program?
5. **Fairness to applicants** – Would allowing the change be construed as fair to the general community? Would disallowing the change be construed as unfair?
6. **Materiality** – Would the change affect the evaluation score or require re-evaluation of some or all of the application? Would the change affect string contention or community priority consideration?
7. **Timing** – Does the timing interfere with the evaluation process in some way? ICANN reserves the right to require a re-evaluation of the application in the event of a material change. This could involve additional fees or evaluation in a subsequent application round. (AGB §1.2.7.)

These criteria were carefully developed to enable applicants to make necessary changes to their applications while ensuring a fair and equitable process for all applicants.

In evaluating each change request, all available information is considered against the seven criteria above. The weight of each criterion may vary on a case-by-case basis, depending on the facts and circumstances surrounding the change request, the application, and the string.

Explanation – This criterion requires that the applicant provide an explanation for the requested changes. If an explanation is not provided, the applicant is given an opportunity to remediate. As such, this criterion is always met and does not bear as much weight as the other criteria.

Evidence that original submission was in error – This criterion is applicable in cases where the applicant requests a change to correct an error. In this case, the criterion requires that the applicant provide adequate information to support the request. There are few cases of change requests to correct an error. However, when such a case is submitted, this criterion is heavily weighted.

Other third parties affected – This criterion evaluates whether the change request materially impacts other third parties, particularly other applicants. In cases where a change to application material has the potential to materially impact the status of another applicant's application, this criterion is heavily weighted.

Precedents – This criterion assesses whether approval of the change request would create a new precedent, or if it would be in-line with other similar requests that have been approved. At this stage of the New gTLD Program, it is unlikely that a change request that would create a new precedent would be approved.

Fairness to applicants – This criterion evaluates whether approving a change request would put the applicant in a position of advantage or disadvantage compared to other applicants. This criterion is related to the "Other third parties affected" criterion, and if a change request is found to materially impact other third parties, it will likely be found to cause issues of unfairness.

Materiality – This criterion assesses how the change request will impact the status of the application and its competing applications, the string, the contention set, and any additional Program processes that it or its competing applications must complete such as Community Priority Evaluation ("CPE"). A change that is determined to be material in and of itself will not cause a change request to be rejected. However, it will cause other criteria to weigh more when considered in conjunction with each other.

Timing – This criterion determines whether the timing of the change request impacts the materiality, fairness to applicants, and other third parties affected criteria. In cases where timing of the change request is found to impact these criteria, it will be heavily weighted.

How to Submit a Change Request

Requests for changes to application materials may be submitted to the [New gTLD Customer Service Center \(CSC\)](#) (<https://myicann.secure.force.com/>) by following these 2 steps:

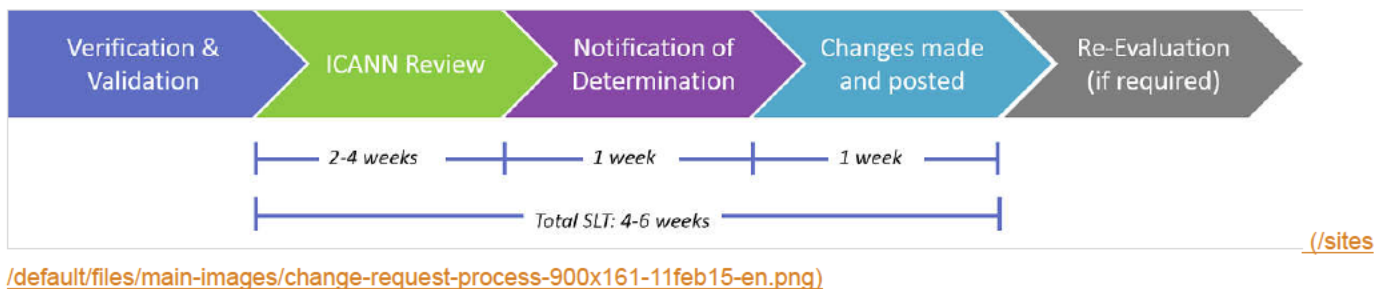
1. Download and complete a [gTLD Application Change Request Form \(/en/applicants/customer-service/change-requests/form-12mar14-en.docx\)](#) [DOCX, 569 KB].

2. Log into the [CSC portal \(https://myicann.secure.force.com/\)](https://myicann.secure.force.com/) with the primary contact's credentials and submit the Form, along with redlines of the changes being requested. An example of a redline document can be viewed [here](#).

The standard change request process requires that any change to the application, including changes to the Primary Contact, be initiated by the Primary Contact and submitted via the appropriate login in the [CSC Portal \(https://myicann.secure.force.com/\)](https://myicann.secure.force.com/). If the Primary Contact is no longer available to initiate the change, then the Secondary Contact may contact the CSC at newgtld@icann.org (<mailto:newgtld@icann.org>) to submit the change request.

Change Request Process

Below is a graphic depicting the change request process.



Verification & Validation – In this step, ICANN verifies the applicant's credentials in order to ensure that only those authorized to make changes to the application are able to do so. Additionally, ICANN reviews the change request materials submitted by the applicant to ensure that a completed Change Request Form, appropriate redline documents, as well as all relevant supporting documentations are provided. This step is not counted in the 4-6 week Service Level Target ("SLT") for change requests, because the amount of time to complete this step is highly dependent upon the applicant providing the required information. ICANN's work during this step is minimal. ICANN typically performs its work within 2 business days of receiving the requests or information from the applicant. Submission of incomplete information, and non-response to ICANN's request for required information are typical causes of delay in this step. ICANN will inform the applicant once this step is completed.

ICANN Review – Once verification and validation of the change request is completed, ICANN reviews the change request materials against the seven criteria above. In the event that additional information is required before a determination can be made, ICANN will reach out to the applicant to request the information. The SLT for this step of the process is 2-4 weeks, depending on the complexity of the change request and whether additional information is required.

Notification of Determination – Once ICANN completes its review of the change request, the applicant will be informed of the determination. Possible determinations include approval of the change request, denial of the change request, or deferral of the change request to a later time. The SLT for this step is one week to account for the drafting of denial or deferral letters if the change request is denied or deferred.

Changes Made and Posted – In this step, ICANN makes the requested and approved changes to the application. Changes that require a 30-day comment window will be posted on the [Application Status page \(http://gtldresult.icann.org/application-result/applicationstatus\)](http://gtldresult.icann.org/application-result/applicationstatus) of the New gTLD Microsite. Changes that do not require a 30-day comment window will not be posted. Refer to the "Change Requests Requiring 30-day Comment Window" section below for information on which changes will be posted for comments and which ones will not. Applicants will be notified once the changes are made. The notification will also inform applicants whether the changes are posted for comments, and whether application re-evaluation will be required.

Re-evaluation – This step is applicable to those change requests that require re-evaluation of the application. Once ICANN notifies the applicant that the changes are made and that re-evaluation is required, the change request case will be closed and a new re-evaluation case will be opened to assist the applicant through the re-evaluation process. Under the re-evaluation step, the applicant will be sent an invoice for the re-evaluation fee. Once payment is made, ICANN will proceed with the re-evaluation of the application. The re-evaluation will follow the same process and timelines as Extended Evaluation:

- 3 weeks: evaluators review the updated application, and issue Clarifying Questions if required.
- 6 weeks: applicants respond to Clarifying Questions.
- 2 weeks: evaluators review response to Clarifying Questions and deliver results to ICANN.
- 1 week: ICANN reviews and processes the results for publication. Note that if the re-evaluation results in any scoring changes, ICANN will update either the Initial or Extended Evaluation report and post it on the [Application Status page](https://gtldresult.icann.org/application-result/applicationstatus) (<https://gtldresult.icann.org/application-result/applicationstatus>) of the New gTLD Microsite. If the re-evaluation does not result in any scoring changes, no updates will be made.

Change Requests That Do Not Require A 30-day Comment Window

In the interest of allowing applicants to expeditiously move forward in the New gTLD Program, effective 1 October 2014, the following types of change requests will generally not be posted for comments for 30 days:

- Changes to confidential portions of the application
- Changes to primary and secondary contacts of the application
- Changes to the applicant's contact information (address, phone, fax, web address)
- Changes to applicant's stock symbol
- Changes to applicant's business/tax ID
- Changes to applicant's officers/directors
- Changes to name of applying entity*
- Changes to parent entity

Although these types of change requests generally will not be posted for comments, ICANN reserves the right to make exceptions in ICANN's discretion.

* This item refers to a simple name change of the applying entity only. It does not apply to changes in the applying entity itself such as the case of the application being assigned from a parent entity to a wholly-owned subsidiary.

How Change Requests Impact Other New gTLD Program Processes

Contracting – If an applicant is eligible to be invited to Contracting, but there is a pending change request on the application, the applicant will not be invited until the change request completes processing. If the applicant has been invited to contracting and is progressing through the contracting process, a pending change request will cause delays and may impact the applicant's ability to execute the Registry Agreement in a timely manner. If the applicant anticipates not being able to execute the Registry Agreement by the Registry Agreement execution deadline, ICANN recommends that the applicant [submit an extension request \(/en/announcements-and-media/announcement-03sep14-en\)](#) in order to avoid missing the Registry Agreement execution deadline. Applicants will not receive a Registry Agreement until the change request completes processing, and the 30-comment window (if required) has concluded.

Contention Resolution – For Community Priority Evaluation, the applicant will only be invited once the change request completes processing and the 30-day comment window (if required) has concluded. For Auction, a pending change request will not prevent an Auction from being scheduled, but in some circumstances, the Auction may be delayed.

Statistics

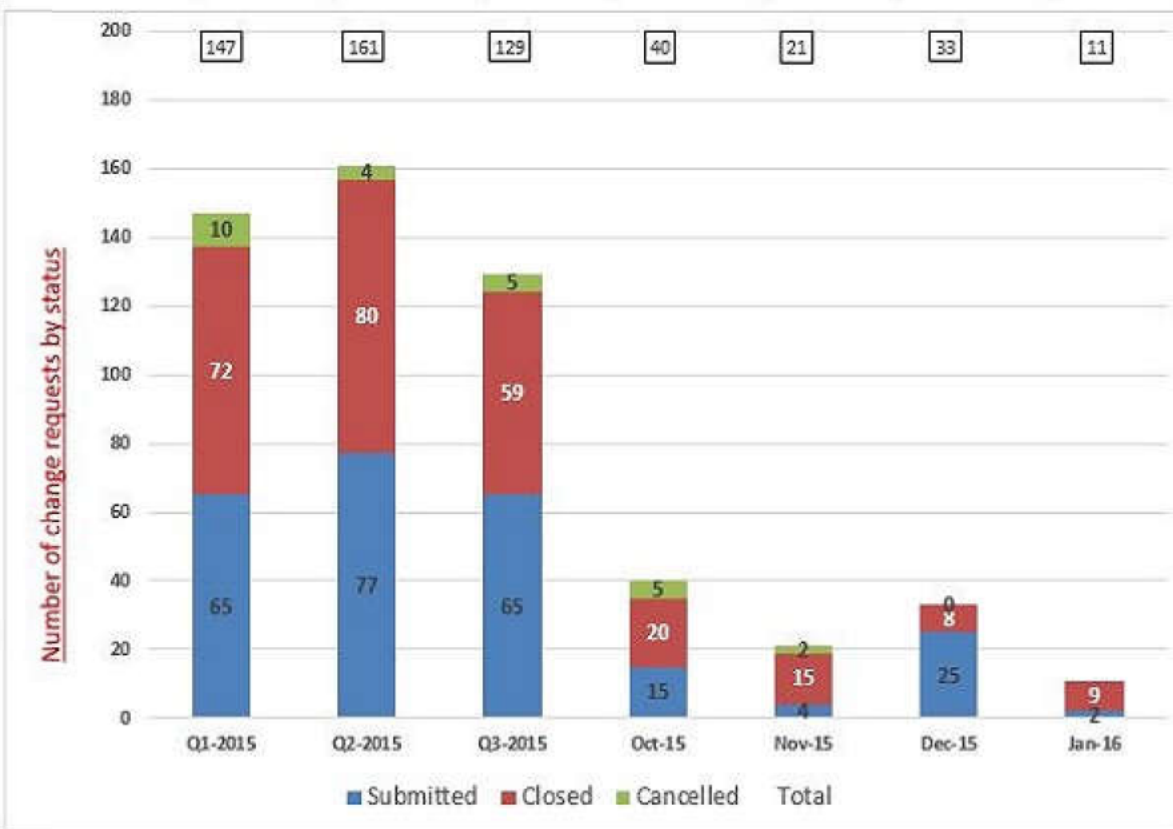
Below are monthly change request statistics that will be updated on the first Thursday of every month.

YTD: Monthly

	Q1-2015	Q2-2015	Q3-2015	Oct-15	Nov-15	Dec-15	Jan-16
Submitted	65	77	65	15	4	25	2
Closed	72	80	59	20	15	8	9
Cancelled	10	4	5	5	2	0	0
Total	147	161	129	40	21	33	11

FY15: Monthly

	Q1-2015	Q2-2015	Q3-2015	Oct-15	Nov-15	Dec-15	Jan-16
% ACR Processed within 6 weeks	96%	98%	100%	100%	100%	100%	100%
Average days to process within 6 weeks	7	9	9	14	8	4	14



(/sites/default/files

/main-images/monthly-posting-change-requests-600x666-08feb16-en.JPG)

Resources

- [Change Request Form \(/en/applicants/customer-service/change-requests/form-12mar14-en.docx\)](/en/applicants/customer-service/change-requests/form-12mar14-en.docx) [DOCX, 569 KB]
- [CSC Portal \(https://myicann.secure.force.com/\)](https://myicann.secure.force.com/)
- [Example Redline Document \(/en/applicants/customer-service/change-requests/redline-example-30sep14-en.pdf\)](/en/applicants/customer-service/change-requests/redline-example-30sep14-en.pdf) [PDF, 50 KB]
- [Change Request Advisory \(/en/applicants/advisories/change-request-set-05sep14-en\)](/en/applicants/advisories/change-request-set-05sep14-en)

Exhibit DIDP A53



Copyright Information

What is copyright?

Copyright is a property right that gives the creators of certain kinds of material rights to control the ways in which such material can be used. These rights are established as soon as the material has been created, with no need for official registration.

Copyright applies globally and is regulated by a number of international treaties and conventions (including the Berne Convention, the Universal Copyright Convention, the Rome Convention and the Geneva Convention).

What does "syndication" mean?

Syndication means supplying content to clients for republication in their own newspapers, magazines or books. We are happy to discuss any individual query that you might have about re-using our copyrighted material.

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"To source my stories, I read a tremendous amount of books and papers, I subscribe to research services, and I read *The Economist* religiously."

Jim Leitner

Founder of Falcon Management

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Exhibit DIDP A54

Community Priority Evaluation (CPE) Guidelines

Prepared by The Economist Intelligence Unit

Interconnection between Community Priority Evaluation (CPE) Guidelines and the Applicant Guidebook (AGB)

The CPE Guidelines are an accompanying document to the AGB, and are meant to provide additional clarity around the process and scoring principles outlined in the AGB. This document does not modify the AGB framework, nor does it change the intent or standards laid out in the AGB. The Economist Intelligence Unit (EIU) is committed to evaluating each applicant under the criteria outlined in the AGB. The CPE Guidelines are intended to increase transparency, fairness and predictability around the assessment process.

Criterion #1: Community Establishment

This section relates to the community as explicitly identified and defined according to statements in the application. (The implicit reach of the applied-for string is not considered here, but taken into account when scoring Criterion #2, “Nexus between Proposed String and Community.”)

Measured by

1-A Delineation

1-B Extension

A maximum of 4 points is possible on the Community Establishment criterion, and each sub-criterion has a maximum of 2 possible points.

1-A Delineation

AGB Criteria	Evaluation Guidelines
Scoring	
<p>2= Clearly delineated, organized, and pre-existing community.</p> <p>1= Clearly delineated and pre-existing community, but not fulfilling the requirements for a score of 2.</p> <p>0= Insufficient delineation and pre-existence for a score of 1.</p>	<p>The following questions must be scored when evaluating the application:</p> <p><i>Is the community clearly delineated?</i></p> <p><i>Is there at least one entity mainly dedicated to the community?</i></p> <p><i>Does the entity (referred to above) have documented evidence of community activities?</i></p> <p><i>Has the community been active since at least September 2007?</i></p>
Definitions	
<p>“Community” - Usage of the expression “community” has evolved considerably from its Latin origin – “communitas” meaning “fellowship” – while still implying more of cohesion than a mere commonality of interest. Notably, as “community” is used throughout the application, there should be: (a) an awareness and recognition of a community among its members; (b) some</p>	<p>The “community,” as it relates to Criterion #1, refers to the stated community in the application.</p> <p>Consider the following:</p> <ul style="list-style-type: none"> • <i>Was the entity established to administer the community?</i> • <i>Does the entity’s mission statement clearly identify the community?</i>

<p>understanding of the community’s existence prior to September 2007 (when the new gTLD policy recommendations were completed); and (c) extended tenure or longevity—non-transience—into the future.</p>	<p>Additional research may need to be performed to establish that there is documented evidence of community activities. Research may include reviewing the entity’s web site, including mission statements, charters, reviewing websites of community members (pertaining to groups), if applicable, etc.</p>
<p>"Delineation" relates to the membership of a community, where a clear and straight-forward membership definition scores high, while an unclear, dispersed or unbound definition scores low.</p>	<p>“Delineation” also refers to the extent to which a community has the requisite awareness and recognition from its members.</p> <p>The following non-exhaustive list denotes elements of straight-forward member definitions: fees, skill and/or accreditation requirements, privileges or benefits entitled to members, certifications aligned with community goals, etc.</p>
<p>"Pre-existing" means that a community has been active as such since before the new gTLD policy recommendations were completed in September 2007.</p>	
<p>"Organized" implies that there is at least one entity mainly dedicated to the community, with documented evidence of community activities.</p>	<p>“Mainly” could imply that the entity administering the community may have additional roles/functions beyond administering the community, but one of the key or primary purposes/functions of the entity is to administer a community or a community organization.</p> <p>Consider the following:</p> <ul style="list-style-type: none"> • <i>Was the entity established to administer the community?</i> • <i>Does the entity’s mission statement clearly identify the community?</i>
<p>Criterion 1-A guidelines</p>	
<p>With respect to “Delineation” and “Extension,” it should be noted that a community can consist of legal entities (for example, an association of suppliers of a particular service), of individuals (for example, a language community) or of a logical alliance of communities (for example, an international federation of national communities of a similar nature). All are viable as such, provided the requisite awareness and recognition of the</p>	<p>With respect to the Community, consider the following:</p> <ul style="list-style-type: none"> • <i>Are community members aware of the existence of the community as defined by the applicant?</i> • <i>Do community members recognize the community as defined by the applicant?</i>

<p>community is at hand among the members. Otherwise the application would be seen as not relating to a real community and score 0 on both “Delineation” and “Extension.”</p> <p>With respect to “Delineation,” if an application satisfactorily demonstrates all three relevant parameters (delineation, pre-existing and organized), then it scores a 2.</p>	<ul style="list-style-type: none"> • <i>Is there clear evidence of such awareness and recognition?</i>
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1-B Extension

AGB Criteria	Evaluation Guidelines
Scoring	
<p>Extension:</p> <p>2=Community of considerable size and longevity</p> <p>1=Community of either considerable size or longevity, but not fulfilling the requirements for a score of 2.</p> <p>0=Community of neither considerable size nor longevity</p>	<p>The following questions must be scored when evaluating the application:</p> <p><i>Is the community of considerable size?</i></p> <p><i>Does the community demonstrate longevity?</i></p>
Definitions	
<p>“Extension” relates to the dimensions of the community, regarding its number of members, geographical reach, and foreseeable activity lifetime, as further explained in the following.</p>	
<p>"Size" relates both to the number of members and the geographical reach of the community, and will be scored depending on the context rather than on absolute numbers - a geographic location community may count millions of members in a limited location, a language community may have a million members with some spread over the globe, a community of service providers may have "only" some hundred members although well spread over the globe, just to mention some examples - all these can be regarded as of "considerable size."</p>	<p>Consider the following:</p> <ul style="list-style-type: none"> • <i>Is the designated community large in terms of membership and/or geographic dispersion?</i>

<p>"Longevity" means that the pursuits of a community are of a lasting, non-transient nature.</p>	<p>Consider the following:</p> <ul style="list-style-type: none"> • <i>Is the community a relatively short-lived congregation (e.g. a group that forms to represent a one-off event)?</i> • <i>Is the community forward-looking (i.e. will it continue to exist in the future)?</i>
<p>Criterion 1-B Guidelines</p>	
<p>With respect to "Delineation" and "Extension," it should be noted that a community can consist of legal entities (for example, an association of suppliers of a particular service), of individuals (for example, a language community) or of a logical alliance of communities (for example, an international federation of national communities of a similar nature). All are viable as such, provided the requisite awareness and recognition of the community is at hand among the members. Otherwise the application would be seen as not relating to a real community and score 0 on both "Delineation" and "Extension."</p> <p>With respect to "Extension," if an application satisfactorily demonstrates both community size and longevity, it scores a 2.</p>	

Criterion #2: Nexus between Proposed String and Community

This section evaluates the relevance of the string to the specific community that it claims to represent.

Measured by

2-A Nexus

2-B Uniqueness

A maximum of 4 points is possible on the Nexus criterion, and with the Nexus sub-criterion having a maximum of 3 possible points, and the Uniqueness sub-criterion having a maximum of 1 possible point.

2-A Nexus

AGB Criteria	Evaluation Guidelines
Scoring	
<p>Nexus:</p> <p>3= The string matches the name of the community or is a well-known short-form or abbreviation of the community</p> <p>2= String identifies the community, but does not qualify for a score of 3</p> <p>0= String nexus does not fulfill the requirements for a score of 2</p>	<p>The following question must be scored when evaluating the application:</p> <p style="text-align: center;"><i>Does the string match the name of the community or is it a well-known short-form or abbreviation of the community name? The name may be, but does not need to be, the name of an organization dedicated to the community.</i></p>
Definitions	
<p>“Name” of the community means the established name by which the community is commonly known by others. It may be, but does not need to be, the name of an organization dedicated to the community.</p>	<p>“Others” refers to individuals outside of the community itself, as well as the most knowledgeable individuals in the wider geographic and language environment of direct relevance. It also refers to recognition from other organization(s), such as quasi-official, publicly recognized institutions, or other peer groups.</p>
<p>“Identify” means that the applied for string closely describes the community or the community members, without over-reaching substantially beyond the community.</p>	<p>“Match” is of a higher standard than “identify” and means ‘corresponds to’ or ‘is equal to’.</p> <p>“Identify” does not simply mean ‘describe’, but means ‘closely describes the community’.</p> <p>“Over-reaching substantially” means that the string indicates a wider geographical or thematic remit than the community has.</p>

	<p>Consider the following:</p> <ul style="list-style-type: none"> • <i>Does the string identify a wider or related community of which the applicant is a part, but is not specific to the applicant’s community?</i> • <i>Does the string capture a wider geographical/thematic remit than the community has? The “community” refers to the community as defined by the applicant.</i> • <i>An Internet search should be utilized to help understand whether the string identifies the community and is known by others.</i> • <i>Consider whether the application mission statement, community responses, and websites align.</i>
<p>Criterion 2-A Guidelines</p>	
<p>With respect to “Nexus,” for a score of 3, the essential aspect is that the applied-for string is commonly known by others as the identification / name of the community.</p> <p>With respect to “Nexus,” for a score of 2, the applied-for string should closely describe the community or the community members, without over-reaching substantially beyond the community. As an example, a string could qualify for a score of 2 if it is a noun that the typical community member would naturally be called in the context. If the string appears excessively broad (such as, for example, a globally well-known but local tennis club applying for “.TENNIS”) then it would not qualify for a 2.</p>	

2-B Uniqueness

<p>AGB Criteria</p>	<p>Evaluation Guidelines</p>
<p>Scoring</p>	
<p>Uniqueness: 1=String has no other significant meaning beyond</p>	<p>The following question must be scored when evaluating the application:</p>

<p>identifying the community described in the application. 0=String does not fulfill the requirement for a score of 1.</p>	<p><i>Does the string have any other significant meaning (to the public in general) beyond identifying the community described in the application?</i></p>
<p>Definitions</p>	
<p>“Identify” means that the applied for string closely describes the community or the community members, without over-reaching substantially beyond the community.</p>	<p>“Over-reaching substantially” means that the string indicates a wider geographical or thematic remit than the community has.</p>
<p>“Significant meaning” relates to the public in general, with consideration of the community language context added</p>	<p>Consider the following:</p> <ul style="list-style-type: none"> • <i>Will the public in general immediately think of the applying community when thinking of the applied-for string?</i> • <i>If the string is unfamiliar to the public in general, it may be an indicator of uniqueness.</i> • <i>Is the geography or activity implied by the string?</i> • <i>Is the size and delineation of the community inconsistent with the string?</i> • <i>An internet search should be utilized to find out whether there are repeated and frequent references to legal entities or communities other than the community referenced in the application.</i>
<p>Criterion 2-B Guidelines</p>	
<p>"Uniqueness" will be scored both with regard to the community context and from a general point of view. For example, a string for a particular geographic location community may seem unique from a general perspective, but would not score a 1 for uniqueness if it carries another significant meaning in the common language used in the relevant community location. The phrasing "...beyond identifying the community" in the score of 1 for "uniqueness" implies a requirement that the string does identify the community, i.e. scores</p>	

2 or 3 for "Nexus," in order to be eligible for a score of 1 for "Uniqueness."

It should be noted that "Uniqueness" is only about the meaning of the string - since the evaluation takes place to resolve contention there will obviously be other applications, community-based and/or standard, with identical or confusingly similar strings in the contention set to resolve, so the string will clearly not be "unique" in the sense of "alone."

Criterion #3: Registration Policies

This section evaluates the applicant’s registration policies as indicated in the application. Registration policies are the conditions that the future registry will set for prospective registrants, i.e. those desiring to register second-level domain names under the registry.

Measured by

3-A Eligibility

3-B Name Selection

3-C Content and Use

3-D Enforcement

A maximum of 4 points is possible on the Registration Policies criterion and each sub-criterion has a maximum of 1 possible point.

3-A Eligibility

AGB Criteria	Evaluation Guidelines
Scoring	
Eligibility: 1= Eligibility restricted to community members 0= Largely unrestricted approach to eligibility	The following question must be scored when evaluating the application: <i>Is eligibility for being allowed as a registrant restricted?</i>
Definitions	
“Eligibility” means the qualifications that organizations or individuals must have in order to be allowed as registrants by the registry.	
Criterion 3-A Guidelines	
With respect to “eligibility” the limitation to community “members” can invoke a formal membership but can also be satisfied in other ways, depending on the structure and orientation of the community at hand. For example, for a geographic location community TLD, a limitation to members of the community can be achieved by requiring that the registrant’s physical address be within the boundaries of the location.	

3-B Name Selection

AGB Criteria	Evaluation Guidelines
Scoring	
<p>Name selection: 1= Policies include name selection rules consistent with the articulated community-based purpose of the applied-for TLD 0= Policies do not fulfill the requirements for a score of 1</p>	<p>The following questions must be scored when evaluating the application:</p> <p style="text-align: center;"><i>Do the applicant’s policies include name selection rules?</i></p> <p style="text-align: center;"><i>Are name selection rules consistent with the articulated community-based purpose of the applied-for gTLD?</i></p>
Definitions	
<p>“Name selection” means the conditions that must be fulfilled for any second-level domain name to be deemed acceptable by the registry.</p>	<p>Consider the following:</p> <ul style="list-style-type: none"> • <i>Are the name selection rules consistent with the entity’s mission statement?</i>
Criterion 3-B Guidelines	
<p>With respect to “Name selection,” scoring of applications against these subcriteria will be done from a holistic perspective, with due regard for the particularities of the community explicitly addressed. For example, an application proposing a TLD for a language community may feature strict rules imposing this language for name selection as well as for content and use, scoring 1 on both B and C above. It could nevertheless include forbearance in the enforcement measures for tutorial sites assisting those wishing to learn the language and still score 1 on D. More restrictions do not automatically result in a higher score. The restrictions and corresponding enforcement mechanisms proposed by the applicant should show an alignment with the community-based purpose of the TLD and demonstrate continuing accountability to the community named in the application.</p>	

3-C Content and Use

AGB Criteria	Evaluation Guidelines
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Scoring	
<p>Content and use: 1= Policies include rules for content and use consistent with the articulated community-based purpose of the applied-for TLD 0= Policies do not fulfill the requirements for a score of 1</p>	<p>The following questions must be scored when evaluating the application:</p> <p><i>Do the applicant’s policies include content and use rules?</i></p> <p><i>If yes, are content and use rules consistent with the articulated community-based purpose of the applied-for gTLD?</i></p>
Definitions	
<p>“Content and use” means the restrictions stipulated by the registry as to the content provided in and the use of any second-level domain name in the registry.</p>	<p>Consider the following:</p> <ul style="list-style-type: none"> <i>Are the content and use rules consistent with the applicant’s mission statement?</i>
Criterion 3-C Guidelines	
<p>With respect to “Content and Use,” scoring of applications against these subcriteria will be done from a holistic perspective, with due regard for the particularities of the community explicitly addressed. For example, an application proposing a TLD for a language community may feature strict rules imposing this language for name selection as well as for content and use, scoring 1 on both B and C above. It could nevertheless include forbearance in the enforcement measures for tutorial sites assisting those wishing to learn the language and still score 1 on D. More restrictions do not automatically result in a higher score. The restrictions and corresponding enforcement mechanisms proposed by the applicant should show an alignment with the community-based purpose of the TLD and demonstrate continuing accountability to the community named in the application.</p>	

3-D Enforcement

AGB Criteria	Evaluation Guidelines
Scoring	
<p>Enforcement 1= Policies include specific enforcement measures</p>	<p>The following question must be scored when evaluating the application:</p>

<p>(e.g. investigation practices, penalties, takedown procedures) constituting a coherent set with appropriate appeal mechanisms 0= Policies do not fulfill the requirements for a score of 1</p>	<p><i>Do the policies include specific enforcement measures constituting a coherent set with appropriate appeal mechanisms?</i></p>
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Definitions

<p>“Enforcement” means the tools and provisions set out by the registry to prevent and remedy any breaches of the conditions by registrants.</p>	<p>“Coherent set” refers to enforcement measures that ensure continued accountability to the named community, and can include investigation practices, penalties, and takedown procedures with appropriate appeal mechanisms. This includes screening procedures for registrants, and provisions to prevent and remedy any breaches of its terms by registrants.</p> <p>Consider the following: Do the enforcement measures include:</p> <ul style="list-style-type: none"> • <i>Investigation practices</i> • <i>Penalties</i> • <i>Takedown procedures (e.g., removing the string)</i> • <i>Whether such measures are aligned with the community-based purpose of the TLD</i> • <i>Whether such measures demonstrate continuing accountability to the community named in the application</i>
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Criterion 3-D Guidelines

<p>With respect to “Enforcement,” scoring of applications against these subcriteria will be done from a holistic perspective, with due regard for the particularities of the community explicitly addressed. For example, an application proposing a TLD for a language community may feature strict rules imposing this language for name selection as well as for content and use, scoring 1 on both B and C above. It could nevertheless include forbearance in the enforcement measures for tutorial sites assisting those wishing to learn the language and still score 1 on D. More restrictions do not automatically result in a higher score. The restrictions and corresponding enforcement</p>	
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mechanisms proposed by the applicant should show an alignment with the community-based purpose of the TLD and demonstrate continuing accountability to the community named in the application.	
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Criterion #4: Community Endorsement

This section evaluates community support and/or opposition to the application. Support and opposition will be scored in relation to the communities explicitly addressed in the application, with due regard for communities implicitly addressed by the string.

Measured by

4-A Support

4-B Opposition

A maximum of 4 points is possible on the Community Endorsement criterion and each sub-criterion (Support and Opposition) has a maximum of 2 possible points.

4-A Support

AGB Criteria	Evaluation Guidelines
Scoring	
<p>Support:</p> <p>2= Applicant is, or has documented support from, the recognized community institution(s)/member organization(s), or has otherwise documented authority to represent the community</p> <p>1= Documented support from at least one group with relevance, but insufficient support for a score of 2</p> <p>0= Insufficient proof of support for a score of 1</p>	<p>The following questions must be scored when evaluating the application:</p> <p><i>Is the applicant the recognized community institution or member organization?</i></p> <p>To assess this question please consider the following:</p> <p><i>a. Consider whether the community institution or member organization is the clearly recognized representative of the community.</i></p> <p>If the applicant meets this provision, proceed to Letter(s) of support and their verification. If it does not, or if there is more than one recognized community institution or member organization (and the applicant is one of them), consider the following:</p> <p><i>Does the applicant have documented</i></p>

	<p><i>support from the recognized community institution(s)/member organization(s) to represent the community?</i></p> <p>If the applicant meets this provision, proceed to Letter(s) of support and their verification. If not, consider the following:</p> <p><i>Does the applicant have documented authority to represent the community?</i></p> <p>If the applicant meets this provision, proceed to Letter(s) of support and their verification. If not, consider the following:</p> <p><i>Does the applicant have support from at least one group with relevance?</i></p> <p>If the applicant meets this provision, proceed to Letter(s) of support and their verification.</p> <p>➤ Instructions on letter(s) of support requirements are located below, in Letter(s) of support and their verification</p>
Definitions	
<p>“Recognized” means the institution(s)/organization(s) that, through membership or otherwise, are clearly recognized by the community members as representative of that community.</p>	
<p>“Relevance” and “relevant” refer to the communities explicitly and implicitly addressed. This means that opposition from communities not identified in the application but with an association to the applied for string would be considered relevant.</p>	<p>The institution(s)/organization(s) could be deemed relevant when not identified in the application but has an association to the applied-for string.</p>
Criterion 4-A Guidelines	
<p>With respect to “Support,” it follows that documented support from, for example, the only national association relevant to a particular community on a national level would score a 2 if the string is clearly oriented to that national level, but only a 1 if the string implicitly addresses similar communities in other nations.</p>	<p>Letter(s) of support and their verification: Letter(s) of support must be evaluated to determine both the relevance of the organization and the validity of the documentation and must meet the criteria spelled out below. The letter(s) of support is an input used to determine the relevance of the organization and the validity of</p>

<p>Also with respect to “Support,” the plurals in brackets for a score of 2, relate to cases of multiple institutions/organizations. In such cases there must be documented support from institutions/organizations representing a majority of the overall community addressed in order to score 2.</p> <p>The applicant will score a 1 for “Support” if it does not have support from the majority of the recognized community institutions/member organizations, or does not provide full documentation that it has authority to represent the community with its application. A 0 will be scored on “Support” if the applicant fails to provide documentation showing support from recognized community institutions/community member organizations, or does not provide documentation showing that it has the authority to represent the community. It should be noted, however, that documented support from groups or communities that may be seen as implicitly addressed but have completely different orientations compared to the applicant community will not be required for a score of 2 regarding support.</p> <p>To be taken into account as relevant support, such documentation must contain a description of the process and rationale used in arriving at the expression of support. Consideration of support is not based merely on the number of comments or expressions of support received.</p>	<p>the documentation.</p> <p>Consider the following:</p> <p>Are there multiple institutions/organizations supporting the application, with documented support from institutions/organizations representing a majority of the overall community addressed?</p> <p>Does the applicant have support from the majority of the recognized community institution/member organizations?</p> <p>Has the applicant provided full documentation that it has authority to represent the community with its application?</p> <p>A majority of the overall community may be determined by, but not restricted to, considerations such as headcount, the geographic reach of the organizations, or other features such as the degree of power of the organizations.</p> <p><u>Determining relevance and recognition</u></p> <p><i>Is the organization relevant and/or recognized as per the definitions above?</i></p> <p><u>Letter requirements & validity</u></p> <p><i>Does the letter clearly express the organization’s support for the community-based application?</i></p> <p><i>Does the letter demonstrate the organization’s understanding of the string being requested?</i></p> <p><i>Is the documentation submitted by the applicant valid (i.e. the organization exists and the letter is authentic)?</i></p> <p>To be taken into account as relevant support, such documentation must contain a description of the process and rationale used in arriving at the expression of support. Consideration of support is not based merely on the number of comments or</p>
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	expressions of support received.
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4-B Opposition

AGB Criteria	Evaluation Guidelines
Scoring	
<p>Opposition:</p> <p>2= No opposition of relevance</p> <p>1= Relevant opposition from one group of non-negligible size</p> <p>0= Relevant opposition from two or more groups of non-negligible size</p>	<p>The following question must be scored when evaluating the application:</p> <p style="text-align: center;"><i>Does the application have any opposition that is deemed relevant?</i></p>
Definitions	
<p>“Relevance” and “relevant” refer to the communities explicitly and implicitly addressed. This means that opposition from communities not identified in the application but with an association to the applied for string would be considered relevant.</p>	<p>Consider the following:</p> <p>For “non-negligible” size, “relevant” and “relevance” consider:</p> <ul style="list-style-type: none"> • <i>If the application has opposition from communities that are deemed to be relevant.</i> • <i>If a web search may help determine relevance and size of the objecting organization(s).</i> • <i>If there is opposition by some other reputable organization(s), such as a quasi-official, publicly recognized organization(s) or a peer organization(s)?</i> • <i>If there is opposition from a part of the community explicitly or implicitly addressed?</i>
Criterion 4-B Guidelines	
<p>When scoring “Opposition,” previous objections to the application as well as public comments during the same application round will be taken into account and assessed in this context. There will be no presumption that such objections or comments would prevent a score of 2 or lead to any particular score for “Opposition.” To be taken into account as relevant opposition, such objections or</p>	<p>Letter(s) of opposition and their verification: Letter(s) of opposition should be evaluated to determine both the relevance of the organization and the validity of the documentation and should meet the criteria spelled out below.</p> <p><u>Determining relevance and recognition</u> <i>Is the organization relevant and/or</i></p>

<p>comments must be of a reasoned nature. Sources of opposition that are clearly spurious, unsubstantiated, made for a purpose incompatible with competition objectives, or filed for the purpose of obstruction will not be considered relevant.</p>	<p><i>recognized as per the definitions above?</i></p> <p><u>Letter requirements & validity</u></p> <p><i>Does the letter clearly express the organization's opposition to the applicant's application?</i></p> <p><i>Does the letter demonstrate the organization's understanding of the string being requested?</i></p> <p><i>Is the documentation submitted by the organization valid (i.e. the organization exists and the letter is authentic)?</i></p> <p>To be considered relevant opposition, such documentation should contain a description of the process and rationale used in arriving at the expression of opposition. Consideration of opposition is not based merely on the number of comments or expressions of opposition received.</p>
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Verification of letter(s) of support and opposition

Additional information on the verification of letter(s) of support and opposition:

- Changes in governments may result in new leadership at government agencies. As such, the signatory need only have held the position as of the date the letter was signed or sealed.
- A contact name should be provided in the letter(s) of support or opposition.
- The contact must send an email acknowledging that the letter is authentic, as a verbal acknowledgement is not sufficient.
- In cases where the letter was signed or sealed by an individual who is not currently holding that office or a position of authority, the letter is valid only if the individual was the appropriate authority at the time that the letter was signed or sealed.

About the Community Priority Evaluation Panel and its Processes

The Economist Intelligence Unit (EIU) is the business information arm of The Economist Group, publisher of The Economist. Through a global network of more than 900 analysts and contributors, the EIU continuously assesses political, economic, and business conditions in more than 200 countries. As the world's leading provider of country intelligence, the EIU helps executives, governments, and institutions by providing timely, reliable, and impartial analysis.

The EIU was selected as a Panel Firm for the gTLD evaluation process based on a number of criteria, including:

- The panel will be an internationally recognized firm or organization with significant demonstrated expertise in the evaluation and assessment of proposals in which the relationship of the proposal to a defined public or private community plays an important role.
- The provider must be able to convene a linguistically and culturally diverse panel capable, in the aggregate, of evaluating Applications from a wide variety of different communities.
- The panel must be able to exercise consistent and somewhat subjective judgment in making its evaluations in order to reach conclusions that are compelling and defensible, and
- The panel must be able to document the way in which it has done so in each case.

The evaluation process will respect the principles of fairness, transparency, avoiding potential conflicts of interest, and non-discrimination. Consistency of approach in scoring Applications will be of particular importance.

The following principles characterize the EIU evaluation process for gTLD applications:

- All EIU evaluators must ensure that no conflicts of interest exist.
- All EIU evaluators must undergo training and be fully cognizant of all CPE requirements as listed in the Applicant Guidebook. This process will include a pilot testing process.
- EIU evaluators are selected based on their knowledge of specific countries, regions and/or industries, as they pertain to Applications.
- Language skills will also be considered in the selection of evaluators and the assignment of specific Applications.
- All applications will be evaluated and scored, in the first instance by two evaluators, working independently.
- All Applications will subsequently be reviewed by members of the core project team to verify accuracy and compliance with the AGB, and to ensure consistency of approach across all applications.

- The EIU will work closely with ICANN when questions arise and when additional information may be required to evaluate an application.
- The EIU will fully cooperate with ICANN's quality control process.

Appendix K

CPE Panel Process

August 7, 2014

COMMUNITY PRIORITY EVALUATION PANEL AND ITS PROCESSES

Overview

At the time of submitting the new gTLD application, applicants had the opportunity to designate themselves as a community-based application, as prescribed in the section 1.2.3 of the Applicant Guidebook (AGB).

Community Priority Evaluation (CPE) is defined in section 4.2 of the AGB, and allows a community based-application to undergo an evaluation against the criteria as defined in section 4.2.3 of the AGB, to determine if the application warrants the minimum score of 14 points (out of a maximum of 16 points) to earn priority and thus win the contention set.

Only community-based applicants are eligible to participate in a community priority evaluation. A determination by a community priority panel, appointed by ICANN, must be made before a community name is awarded to an applicant. This determination will be based on the string and the completeness and validity of supporting documentation.

There are two possible outcomes to a Community Priority Evaluation:

- Determination that the application met the CPE requirements specified in the Applicant Guidebook (Section 4.2.2) to receive priority over other applications for the same or confusingly similar string = Prevalled.
- Determination that the application did not meet the CPE requirements specified in the Applicant Guidebook (Section 4.2.2) to receive priority over other applications for the same or confusingly similar string = Did not prevail.

Section 4.2.2 of the AGB prescribes that the Community Priority Evaluations will be conducted by an independent panel. ICANN selected the Economist Intelligence Unit (EIU) as the panel firm for Community Priority Evaluations.

The Economist Intelligence Unit

The Economist Intelligence Unit (EIU) was selected as a Panel Firm for the gTLD evaluation process. The EIU is the business information arm of The Economist Group, publisher of The Economist. Through a global network of more than 500 analysts and contributors, the EIU continuously assesses political, economic, and business conditions in more than 200 countries. As the world's leading provider of country intelligence, the EIU helps executives, governments, and institutions by providing timely, reliable, and impartial analysis.

The evaluation process respects the principles of fairness, transparency, avoidance of potential conflicts of interest, and non-discrimination. Consistency of approach in scoring applications is of particular importance. In this regard, the Economist Intelligence Unit has more than six decades of experience building evaluative frameworks and benchmarking models for its clients, including governments, corporations, academic institutions and NGOs. Applying scoring systems to complex questions is a core competence.

EIU evaluators and core team

The Community Priority Evaluation panel comprises a core team, in addition to several independent¹ evaluators. The core team comprises a Project Manager, who oversees the Community Priority Evaluation project, a Project Coordinator, who is in charge of the day-to-day management of the project and provides guidance to the independent evaluators, and other senior staff members, including The Economist Intelligence Unit's Executive Editor and Global Director of Public Policy. Together, this team assesses the evaluation results. Each application is assessed by seven individuals: two independent evaluators, and the core team, which comprises five people.

The following principles characterize the EIU evaluation process for gTLD applications:

- All EIU evaluators, including the core team, have ensured that no conflicts of interest exist.
- All EIU evaluators undergo regular training to ensure full understanding of all CPE requirements as listed in the Applicant Guidebook, as well as to ensure consistent judgment. This process included a pilot training process, which has been followed by regular training sessions to ensure that all evaluators have the same understanding of the evaluation process and procedures.
- EIU evaluators are highly qualified, they speak several languages and have expertise in applying criteria and standardized methodologies across a broad variety of issues in a consistent and systematic manner.
- Language skills and knowledge of specific regions are also considered in the selection of evaluators and the assignment of specific applications.

CPE Evaluation Process

The EIU evaluates applications for gTLDs once they become eligible for review under CPE.

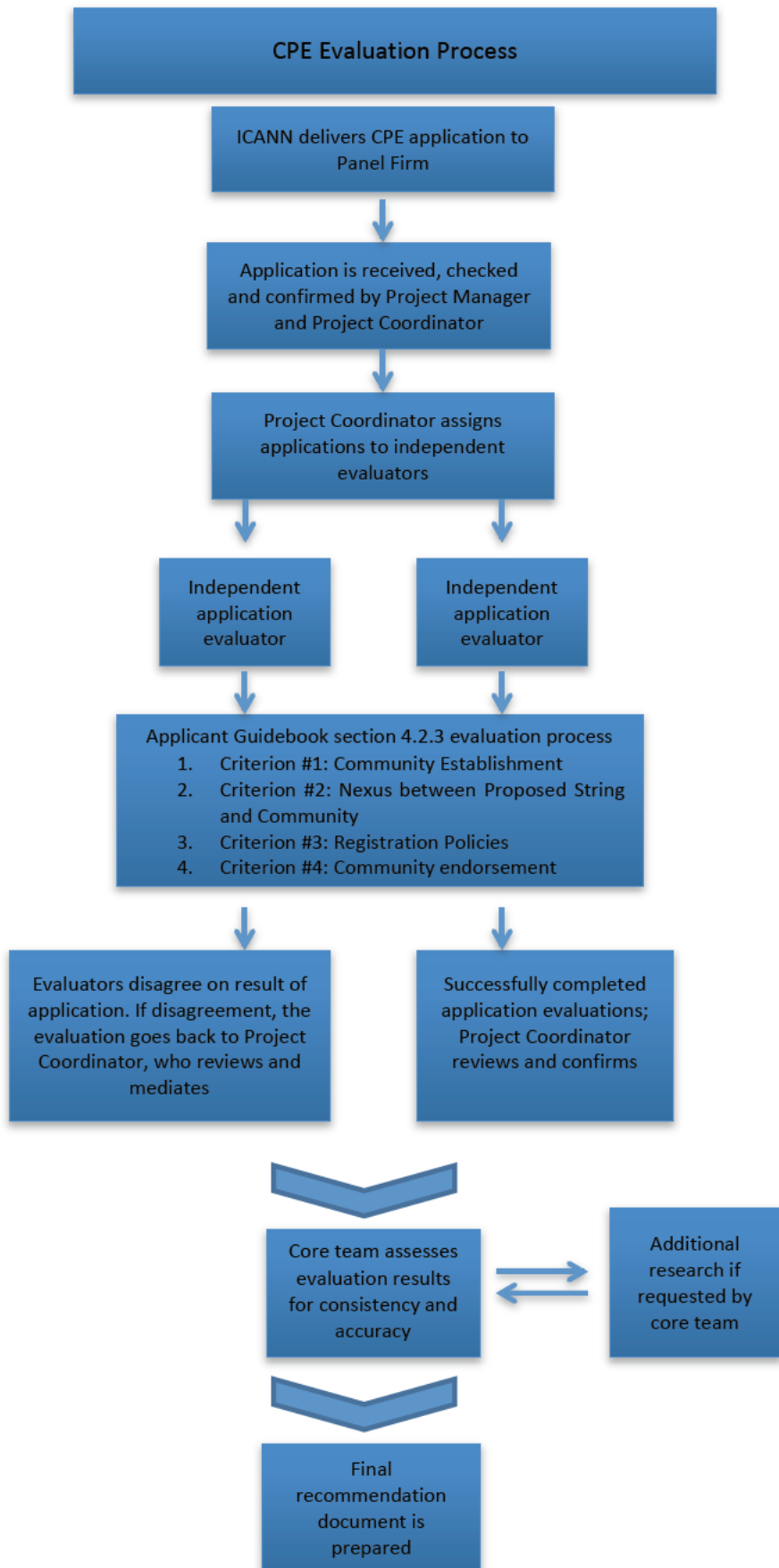
The evaluation process as described in section 4.2.3 of the Applicant Guidebook and discussed in the CPE Guidelines document is described below:

- The Panel Firm's Project Manager is notified by ICANN that an application for a gTLD is ready for CPE, and the application ID and public comments are delivered to the EIU. The EIU is responsible for gathering the application materials and other documentation, including letter(s) of support and relevant correspondence, from the public ICANN website. The EIU Project Manager reviews the application and associated materials, in conjunction with the EIU Project Coordinator. The Project Coordinator assigns the application to each of two evaluators, who work independently to assess and score the application.
- Each evaluator reviews the application and accompanying documentation, such as letter(s) of support and opposition. Based on this information and additional independent research, the evaluators assign scores to the four CPE criteria as defined in the Applicant Guidebook.
- As part of this process, one of the two evaluators assigned to assess the same string is asked to verify the letters of support and opposition. (Please see "Verification of letter(s) of support and opposition" section for further details.)
- When evaluating an application the CPE Panel also considers the public application comments. The public comments are provided to EIU by ICANN following the close of the 14-day window associated with the CPE invitation. For every comment of support/opposition received, the designated evaluator assesses the relevance of the organization of the poster along with the content of the comment. A separate verification of the comment author is not performed as the Application Comments

¹ The term "independent" means that the evaluators do not have any conflict of interest with CPE applicants. It also means that the evaluators sit outside the core EIU team; they provide individual evaluation results based on their assessment of the AGB criteria, application materials, and secondary research without any influence from core team members.

system requires that users register themselves with an active email account before they are allowed to post any comments. However, the evaluator will check the affiliated website to ascertain if the person sending the comment(s) is at that entity/organization named, unless the comment has been sent in an individual capacity.

- Once the two evaluators have completed this process, the evaluation results are reviewed by the Project Coordinator, who checks them for completeness and consistency with the procedures of the Applicant Guidebook.
- If the two evaluators disagree on one or more of the scores, the Project Coordinator mediates and works to achieve consensus, where possible.
- The Project Director and Project Coordinator, along with other members of the core team, meet to discuss the evaluators' results and to verify compliance with the Applicant Guidebook. Justifications for the scores are further refined and articulated in this phase.
- If the core team so decides, additional research may be carried out to answer questions that arise during the review, especially as they pertain to the qualitative aspects of the Applicant Guidebook scoring procedures.
- If the core team so decides, the EIU may provide a clarifying question (CQ) to be issued via ICANN to the applicant to clarify statements in the application materials and/or to inform the applicant that letter(s) of support could not be verified.
- When the core team achieves consensus on the scores for each application, an explanation, or justification, for each score is prepared. A final document with all scores and justifications for a given application, including a determination of whether the application earned the requisite 14 points for prevailing, is presented to ICANN.
- The Economist Intelligence Unit works with ICANN when questions arise or when additional process information may be required to evaluate an application.
- The Panel Firm exercises consistent judgment in making its evaluations in order to reach conclusions that are compelling and defensible, and documents the way in which it has done so in each case.



Verification of letter(s) of support and opposition

As part of this CPE evaluation process, one of the two evaluators assigned to assess the same string verifies the letters of support and opposition. This process is outlined below:

- On a regular basis, the EIU reviews ICANN's public correspondence page (<http://newgtlds.icann.org/en/program-status/correspondence>) for recently received correspondence to assess whether it is relevant to an ongoing evaluation. If it is relevant, the public correspondence is provided to the evaluators assigned to the evaluation for review.
- For every letter of support/opposition received, the designated evaluator assesses both the relevance of the organization and the validity of the documentation. Only one of the two evaluators is responsible for the letter verification process.
- With few exceptions, verification emails are sent to every entity that has sent a letter(s) of support or opposition to validate their identity and authority.
- The exceptions noted above regarding sending verification letter(s) include but may not be limited to:
 - If there are no contact details included in the letter(s). However, the evaluator will attempt to obtain this information through independent research.
 - If the person sending the letters(s) does not represent an organization. However, if the content of the letter(s) suggests that the individual sending a letter has sent this letter(s) on behalf of an organization/entity the evaluator will attempt to validate this affiliation.
- The verification email for letter(s) of support/opposition requests the following information from the author of the letter:
 - Confirmation of the authenticity of the organization(s) letter.
 - Confirmation that the sender of the letter has the authority to indicate the organization(s) support/opposition for the application.
 - In instances where the letter(s) of support do not clearly and explicitly endorse the applicant, the verification email asks for confirmation as to whether or not the organization(s) explicitly supports the community based application.
- To provide every opportunity for a response, the evaluator regularly contacts the organization for a response by email and phone for a period of at least a month.
- A verbal acknowledgement is not sufficient. The contacted individual must send an email to the EIU acknowledging that the letter is authentic.

Appendix L

CPE FAQ, Version 1.2

August 13, 2014

Community Priority Evaluation (CPE) Frequently Asked Questions

Version 1.2

Note: This version of the FAQ was updated on 13 August 2014. Several new questions have been added to the document, and some existing answers have also been updated to reflect changes to the process resulting from lessons learned during the past nine months of CPE operations.

Early Election

Q: Is early election required to participate in CPE?

A: No. Early election of CPE is optional and at the discretion of the applicant. Early election is, however, not a guarantee of eligibility to proceed with CPE. Early election status will be reflected on an Applicant's status on the New gTLD Application Status Page (<https://gtldresult.icann.org/application-result/applicationstatus/viewstatus>). Applicants will be invited to CPE once they are eligible, regardless of whether early election was made.

Timeline and Processing

Q: What are the eligibility requirements to begin CPE?

A: To begin CPE, there are eligibility requirements for both the application and the contention set. These requirements are listed below.

To begin CPE, an application must:

- be a self-designated Community Application per section 1.2.3 of the AGB
- be in a string contention set
- not have a pending change request
- not be in the 30-day application comment window for an approved changed request

Additionally, an applicant may only begin CPE if all members of the contention set (including the community applicant(s)) meet the following eligibility criteria:

- have completed evaluation
- have no pending objections
- have no unresolved GAC Advice
- are not classified in the "High-Risk" category of the New gTLD Collision Occurrence Management Plan, available here:
<http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-annex-1-07oct13-en.pdf>

Q: When will CPE start?

A: Invitations to begin CPE started in early October 2013 to eligible applicants. On an ongoing basis, applicants will be invited to begin CPE as each becomes eligible based on the eligibility requirements listed in the prior question. The evaluation will begin approximately 2-3 weeks after an invitation is sent. However, in order to allow sufficient time for the submission of Application Comments and Letters of Support/Opposition, CPE will begin no earlier than 14 days after an invitation is sent. The date that the invitation is sent will be posted on the CPE page of the New gTLD Microsite (<http://newgtlds.icann.org/en/applicants/cpe>).

Q: What is the fee for CPE?

A: The deposit fee for CPE is USD 22,000. An applicant who scores at or above the threshold for CPE will be refunded the full USD 22,000 deposit.

Q: What is the process to elect CPE?

A: One week before an application becomes eligible for CPE, a pre-invitation notice is sent to those applications that are likely to become eligible. The purpose of the pre-invitation is to verify payer information before the actual invitation is sent.

Once an application becomes eligible for CPE, ICANN will send an official invitation to the applicant via a case in the Customer Portal. If the Applicant wishes to pursue CPE, the Applicant must respond to the case within 21 days with the following: declaration that they are electing to pursue CPE, the CPE deposit payment form with the required details, and the CPE deposit payment itself (USD 22,000).

Q: How will I know when an application has been invited to elect CPE?

A: The CPE landing page on the New gTLD Microsite (<http://newgtlds.icann.org/en/applicants/cpe>) will be updated regularly to inform the community of each invitation date, election date and evaluation result for CPE. Additionally, the members of the contention set will be notified via Customer Portal when a member of their contention set is invited to CPE.

Q: What is the due date for submitting an application comment or letters of support or opposition to ensure the CPE Panel takes them into consideration?

A: Application comments and letters of support or opposition must be received within 14 days of the CPE invitation date posted on the CPE landing page on the New gTLD Microsite (<http://newgtlds.icann.org/en/applicants/cpe>). Application comments may be submitted at <http://newgtlds.icann.org/en/program-status/comments>. Letters of support or

opposition may be submitted via the methods described in the Letters of Support and Opposition section of the FAQs below. It is not guaranteed, however, that Application Comments and letters of support/opposition submitted after the 14 day period will be considered in the CPE Panel's evaluation of the the application.

Q: What is the Accelerated Invitation to CPE?

A: Accelerated Invitation to CPE is a process where the applicant can elect to start CPE earlier than the typical conditions would normally allow. An applicant may request early invitation to CPE in situations where outstanding eligibility criteria do not have the potential to directly impact the community applicant's membership in a contention set.

Q: What are the eligibility requirements to receive an Accelerated Invitation to CPE?

A: The application requesting CPE must have completed the following pre-requisites:

To be eligible for an accelerated invitation, an application must:

- be a self-designated Community Application per section 1.2.3 of the AGB
- be in an unresolved string contention set (Contention Set status is not Resolved)
- not have a pending change request
- not be in the 30-day application comment window for an approved changed request
- not be classified in the "High Risk" category of the Name Collisions Risk Management Plan, available here:
<http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-annex-1-07oct13-en.pdf>
- not have filed any pending Accountability Mechanism

Additionally, all applications in the contention set must have:

- completed evaluation
- no pending objections
- resolved all applicable GAC Advice

Q: When will I receive an Accelerated Invitation to CPE?

A: Once a community application has met the requirements listed above, ICANN will notify the applicant of the option to request an Accelerated Invitation to Elect CPE. Once an Applicant has requested the Accelerated Invitation, the standard CPE Invitation process will commence as described above, including notification to other members of the contention set and posting to the CPE status page (<http://newgtlds.icann.org/en/applicants/cpe>).

Q: Is there a deadline to request an Accelerated Invitation to CPE? How long do I have in order to decide to participate in CPE once I receive the Accelerated Invitation?

A: There is no deadline for requesting the Accelerated Invitation to CPE. A request can be made at any time while outstanding eligibility criteria are being resolved for other members of the contention set. Once the Accelerated Invitation has been requested, however, a response (i.e. decision to participate in CPE) must be received within 21 days.

Evaluation Panel

Q: What will be reviewed by the CPE Panel?

A: As part of its evaluation and in accordance with the AGB criteria in section 4.2.3 and the CPE Panel's guidelines (<http://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf>), the CPE Panel will review publicly available information such as the publicly available portions of the application, application comments on the application, objection determinations, and correspondence (letters of support or objection related to the application). The CPE Panel will also conduct any additional research as it sees fit.

Q: How will the CPE guidelines be used in performing evaluations?

A: The CPE guidelines are an accompanying document to the AGB and are intended to provide additional clarity around process and scoring principles as defined in the AGB. The CPE guidelines do not change the AGB framework or change the intent or standards established in the AGB.

Q: Where can I find out more about the CPE process?

A: More information about the process followed by the CPE panel can be found in the CPE Panel Process document (<http://newgtlds.icann.org/en/applicants/cpe/Community Priority Evaluation Panel Process.06AUG2014.pdf>).

Q: Will the CPE Panel ask clarifying questions?

A: Prior to the start of CPE evaluation, the CPE Panel may, but is not obligated to, request additional information from applicants if the CPE Panel feels that additional information is required to evaluate the application. If during the evaluation additional information is needed, the expectation is that clarifying questions will be issued by the CPE Panel to applicants in order to provide the opportunity to:

- Address any application comments that may impact the scoring of their application.
- Address any objection determinations not in their favor.
- Address any letters of opposition.
- Contact supporting organizations and ask them to respond to the CPE Panel's request for validation of letters of support or objection.

Applicants will be contacted via the Customer Service Portal if additional information is

required, and will be provided 28 days to respond to clarifying questions.

Q: Once CPE has started, approximately how long will the CPE Panel take to perform the evaluation?

A: The evaluation is expected to take approximately three to four months¹, depending on the number of letters of support or opposition requiring validation and the need for clarifying questions.

Q: In what order will applicants be invited and evaluated in CPE?

A: The order is firstly determined by the eligibility requirements as defined above. The priority number may be used as a secondary method to determine evaluation ordering in the unlikely event that volume exceeds the CPE Panel's capacity.

Letters of Support and Opposition

Q: How should additional letters of support/opposition be sent to ICANN?

A: Organizations that would like to submit letters of support or opposition for an application may send these letters to ICANN either electronically at newgtld@icann.org or by physical mail to ICANN's Los Angeles office. If these letters are addressed to ICANN, they will be treated as correspondence and posted on the New gTLD Correspondence page (<http://newgtlds.icann.org/en/program-status/correspondence>).

If the letters are addressed to the applicant, the applicant may send the letters to ICANN electronically at newgtld@icann.org to be posted as correspondence, with the following requirements:

- Include a cover letter to ICANN requesting that the letters be posted as correspondence. This cover letter should contain, at a minimum: application ID, string, and the applicant name for the application that they are supporting or opposing.
- Attach letters of support or opposition to the correspondence request. If such a request is received, ICANN will post the cover letter and the attachments as a single item of correspondence.

If an applicant submits letters of support via the change request process posted at <http://newgtlds.icann.org/en/applicants/customer-service/change-requests>, the letters of support will be processed as a change request and subject to the 30-day application comment period.

Q: Will the CPE Panel contact the person referenced in the letters of support and

¹ The prior version of the FAQ stated two to three months, but, as mentioned at the start of this document, lessons learned over the past nine months have showed that a better estimate for the length of the process is three to four months.

opposition?

A: The CPE Panel will attempt to validate all letters of support and opposition to ensure that the individuals who have signed the documents are in fact the sender, have the authority to speak on behalf of their institution, and that the panel clearly understands the intentions of the letter. This is similar to the Geographic Names Panel process of validating letters of support or non-objection. More information about the letter validation process can be found in the CPE Panel Process document ([http://newgtlds.icann.org/en/applicants/cpe/Community Priority Evaluation Panel Process.06AUG2014.pdf](http://newgtlds.icann.org/en/applicants/cpe/Community%20Priority%20Evaluation%20Panel%20Process.06AUG2014.pdf)).

As some of the contact information from the letters included in the application may no longer be accurate, it is suggested, but not required, that CPE applicants provide current contact information for the individuals who authored the letters of support for their application. This updated contact information can be submitted via the Customer Service Portal. The use of such information is at the discretion of the CPE Panel.

Appendix M

CPE FAQ, Version 1.3

September 10, 2014

Community Priority Evaluation (CPE) Frequently Asked Questions

Version 1.3

Note: This version of the FAQ was updated on 10 September 2014. No new questions have been added, but existing answers have been updated to reflect changes put forth in the “Update on Application Status and Contention Sets” Advisory.

Early Election

Q: Is early election required to participate in CPE?

A: No. Early election of CPE is optional and at the discretion of the applicant. Early election is, however, not a guarantee of eligibility to proceed with CPE. Early election status will be reflected on an Applicant’s status on the New gTLD Application Status Page (<https://gtldresult.icann.org/application-result/applicationstatus/viewstatus>). Applicants will be invited to CPE once they are eligible, regardless of whether early election was made.

Timeline and Processing

Q: What are the eligibility requirements to begin Standard CPE?

A: To be eligible to begin Standard CPE Processing, an application must:

- be a self-designated Community Application per section 1.2.3 of the AGB
- have an application status of “Active”
- be in an unresolved contention set (contention set status is either “Active” or “On-Hold” and at least one other application in the set has a status of either “Active or On-Hold”
- not have a pending change request
- not be in an active comment window for a recently approved changed request

Additionally, as per section 4.2 of the AGB, all remaining members of the contention set must have completed all previous stages of the process. All remaining applications in the contention set must:

- have completed evaluation
- have no pending objections
- have addressed all applicable GAC Advice
- not be classified in the “High Risk” category of the Name Collision Occurrence Management Framework

The Name Collision Occurrence Management Framework is available here:
<https://www.icann.org/en/system/files/files/name-collision-framework-30jul14-en.pdf>

Q: When will CPE start?

A: Invitations to begin CPE started in early October 2013 to eligible applicants. On an ongoing basis, applicants will be invited to begin CPE as each becomes eligible based on the eligibility requirements listed in the prior question. The evaluation will begin approximately 2-3 weeks after an invitation is sent. However, in order to allow sufficient time for the submission of Application Comments and Letters of Support/Opposition, CPE will begin no earlier than 14 days after an invitation is sent. The date that the invitation is sent will be posted on the CPE page of the New gTLD Microsite (<http://newgtlds.icann.org/en/applicants/cpe>).

Q: What is the fee for CPE?

A: The deposit fee for CPE is USD 22,000. An applicant that prevails in CPE will be refunded their full deposit amount.

Q: What is the process to elect CPE?

A: One week before an application becomes eligible for CPE, a pre-invitation notice is sent to those applications that are likely to become eligible. The purpose of the pre-invitation is to verify payer information before the actual invitation is sent.

Once an application becomes eligible for CPE, ICANN will send an official invitation to the applicant via a case in the Customer Portal. If the Applicant wishes to pursue CPE, the Applicant must respond to the case within 21 days with the following: declaration that they are electing to pursue CPE, the CPE deposit payment form with the required details, and the CPE deposit payment itself (USD 22,000).

Q: How will I know when an application has been invited to elect CPE?

A: The CPE landing page on the New gTLD Microsite (<http://newgtlds.icann.org/en/applicants/cpe>) will be updated regularly to inform the community of each invitation date, election date and evaluation result for CPE. Additionally, the members of the contention set will be notified via Customer Portal when a member of their contention set is invited to CPE.

Q: What is the due date for submitting an application comment or letters of support or opposition to ensure the CPE Panel takes them into consideration?

A: Application comments and letters of support or opposition must be received within 14 days of the CPE invitation date posted on the CPE landing page on the New gTLD

Microsite (<http://newgtlds.icann.org/en/applicants/cpe>). Application comments may be submitted at <http://newgtlds.icann.org/en/program-status/comments>. Letters of support or opposition may be submitted via the methods described in the Letters of Support and Opposition section of the FAQs below. It is not guaranteed, however, that Application Comments and letters of support/opposition submitted after the 14 day period will be considered in the CPE Panel's evaluation of the the application.

Q: What is the Accelerated Invitation to CPE?

A: Accelerated Invitation to CPE is a process where the applicant can elect to start CPE earlier than the typical conditions would normally allow. An applicant is able to request an Accelerated Invitation to CPE when outstanding eligibility criteria do not have the potential to impact the community applicant's membership in a contention set and/or when the contention set as a whole may not have met all eligibility requirements for the standard CPE Invitation process.

Q: What are the eligibility requirements to receive an Accelerated Invitation to CPE?

A: To be eligible for an Accelerated Invitation to CPE, an application must:

- be a self-designated Community Application per section 1.2.3 of the AGB
- have a status of "Active" or "On-Hold"
- be in an unresolved contention set (contention set status is either "Active" or "On-Hold" and at least one other application in the set has a status of either "Active or On-Hold")
- not have a pending change request
- not be in an active application comment window for an approved changed request
- have addressed all applicable GAC Advice

Additionally, as per section 4.2 of the AGB, all remaining members of the contention set must have completed all previous stages of the process. All remaining applications in the contention set must:

- have completed evaluation
- have no pending objections
- not be classified in the "High Risk" category of the Name Collision Occurrence Management Framework

Q: When will I receive an Accelerated Invitation to CPE?

A: Once a community application has met the requirements listed above, ICANN will notify the applicant of the option to request an Accelerated Invitation to Elect CPE. After an Applicant has requested the Accelerated Invitation, the standard CPE Invitation process will

commence as described above, including notification to other members of the contention set and posting to the CPE status page (<http://newgtlds.icann.org/en/applicants/cpe>).

Q: Is there a deadline to request an Accelerated Invitation to CPE? How long do I have in order to decide to participate in CPE once I receive the Accelerated Invitation?

A: There is no deadline for requesting the Accelerated Invitation to CPE. A request can be made at any time while outstanding eligibility criteria are being resolved for other members of the contention set. Once the Accelerated Invitation has been requested, however, a response (i.e. decision to participate in CPE) must be received within 21 days.

Evaluation Panel

Q: What will be reviewed by the CPE Panel?

A: As part of its evaluation and in accordance with the AGB criteria in section 4.2.3 and the CPE Panel's guidelines (<http://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf>), the CPE Panel will review publicly available information such as the publicly available portions of the application, application comments on the application, objection determinations, and correspondence (letters of support or objection related to the application). The CPE Panel will also conduct any additional research as it sees fit.

Q: How will the CPE guidelines be used in performing evaluations?

A: The CPE guidelines are an accompanying document to the AGB and are intended to provide additional clarity around process and scoring principles as defined in the AGB. The CPE guidelines do not change the AGB framework or change the intent or standards established in the AGB.

Q: Where can I find out more about the CPE process?

A: More information about the process followed by the CPE panel can be found in the CPE Panel Process document (<http://newgtlds.icann.org/en/applicants/cpe/Community Priority Evaluation Panel Process.06AUG2014.pdf>).

Q: Will the CPE Panel ask clarifying questions?

A: Prior to the start of CPE evaluation, the CPE Panel may, but is not obligated to, request additional information from applicants if the CPE Panel feels that additional information is required to evaluate the application. If during the evaluation additional information is needed, the expectation is that clarifying questions will be issued by the CPE Panel to applicants in order to provide the opportunity to:

- Address any application comments that may impact the scoring of their application.
- Address any objection determinations not in their favor.
- Address any letters of opposition.
- Contact supporting organizations and ask them to respond to the CPE Panel's request for validation of letters of support or objection.

Applicants will be contacted via the Customer Service Portal if additional information is required, and will be provided 28 days to respond to clarifying questions.

Q: Once CPE has started, approximately how long will the CPE Panel take to perform the evaluation?

A: The evaluation is expected to take approximately three to four months¹, depending on the number of letters of support or opposition requiring validation and the need for clarifying questions.

Q: In what order will applicants be invited and evaluated in CPE?

A: The order is firstly determined by the eligibility requirements as defined above. The priority number may be used as a secondary method to determine evaluation ordering in the unlikely event that volume exceeds the CPE Panel's capacity.

Letters of Support and Opposition

Q: How should additional letters of support/opposition be sent to ICANN?

A: Organizations that would like to submit letters of support or opposition for an application may send these letters to ICANN either electronically at newgtld@icann.org or by physical mail to ICANN's Los Angeles office. If these letters are addressed to ICANN, they will be treated as correspondence and posted on the New gTLD Correspondence page (<http://newgtlds.icann.org/en/program-status/correspondence>).

If the letters are addressed to the applicant, the applicant may send the letters to ICANN electronically at newgtld@icann.org to be posted as correspondence, with the following requirements:

- Include a cover letter to ICANN requesting that the letters be posted as correspondence. This cover letter should contain, at a minimum: application ID, string, and the applicant name for the application that they are supporting or opposing.
- Attach letters of support or opposition to the correspondence request. If such a request is received, ICANN will post the cover letter and the

¹ This number was changed in the 13 August 2014 version of the FAQs to reflect lessons learned.
10 September 2014 CPE FAQ v1.3

attachments as a single item of correspondence.

If an applicant submits letters of support via the change request process posted at <http://newgtlds.icann.org/en/applicants/customer-service/change-requests>, the letters of support will be processed as a change request and subject to the 30-day application comment period.

Q: Will the CPE Panel contact the person referenced in the letters of support and opposition?

A: The CPE Panel will attempt to validate all letters of support and opposition to ensure that the individuals who have signed the documents are in fact the sender, have the authority to speak on behalf of their institution, and that the panel clearly understands the intentions of the letter. This is similar to the Geographic Names Panel process of validating letters of support or non-objection. More information about the letter validation process can be found in the CPE Panel Process document (<http://newgtlds.icann.org/en/applicants/cpe/Community Priority Evaluation Panel Process.06AUG2014.pdf>).

As some of the contact information from the letters included in the application may no longer be accurate, it is suggested, but not required, that CPE applicants provide current contact information for the individuals who authored the letters of support for their application. This updated contact information can be submitted via the Customer Service Portal. The use of such information is at the discretion of the CPE Panel.

Should the CPE Panel be unable to contact or get a response from a material amount of relevant supporters such that it is impacting the scoring of the evaluation, they will issue a clarifying question to the applicant, requesting both updated contact information for those they have been unable to complete the verification with, and they will also request the applicant's assistance in getting a response from the supporter to the panel. These clarification questions will come from ICANN to the applicant via the customer portal, as indicated in previous questions on this FAQ page.

Appendix N

CPE Timeline, Version 2.0

September 10, 2014

Community Priority Evaluation > Timeline

▲ Invitations sent to eligible applicants

▲ Day 14: Deadline for application comment

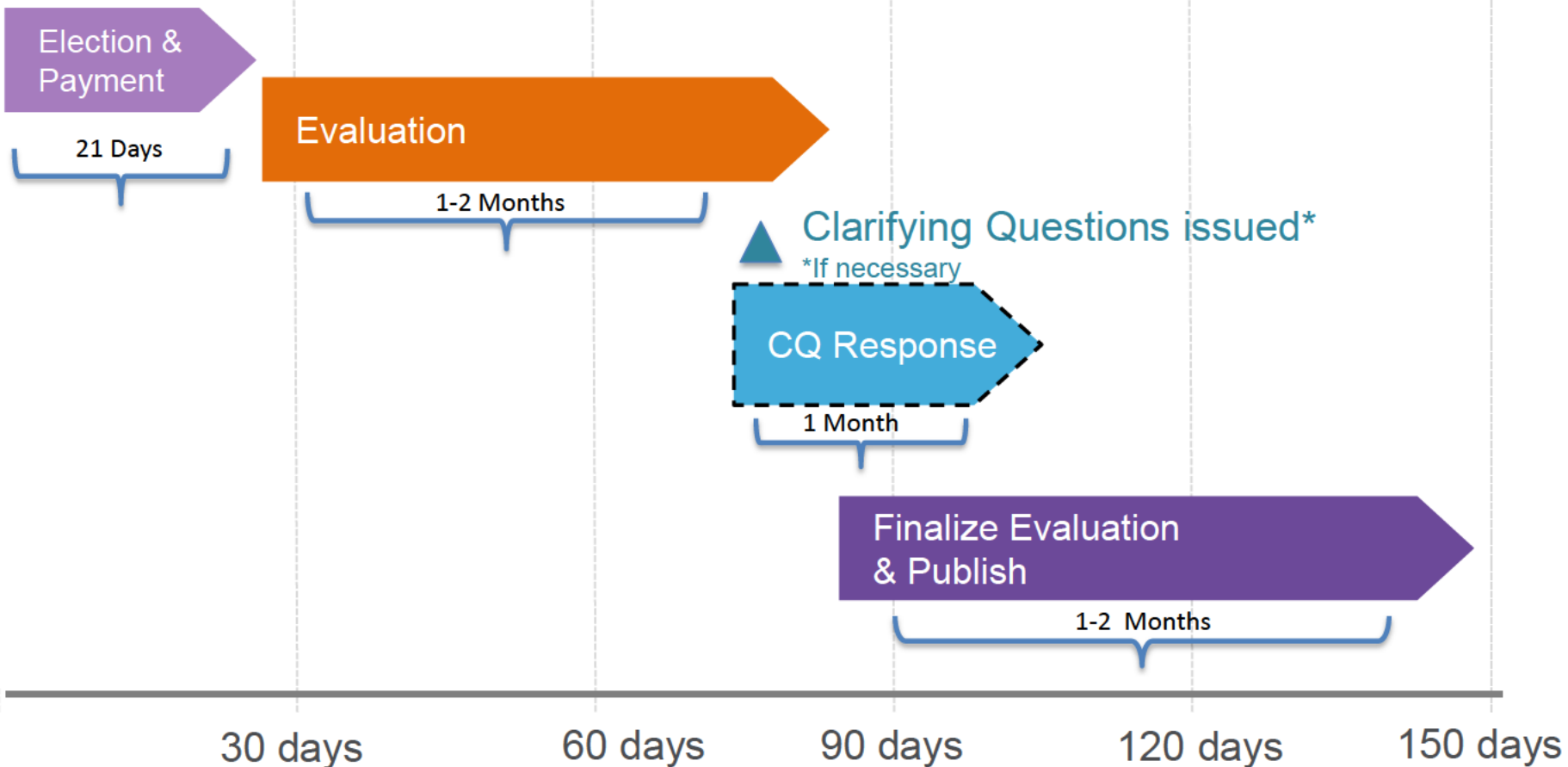


Exhibit DIDP A55

Berne Convention for the Protection of Literary and Artistic Works

**Paris Act
of July 24, 1971,
as amended on
September 28, 1979**

Berne Convention for the Protection of Literary and Artistic Works

**of September 9, 1886,
completed at PARIS on May 4, 1896,
revised at BERLIN on November 13, 1908,
completed at BERNE on March 20, 1914,
revised at ROME on June 2, 1928,
at BRUSSELS on June 26, 1948,
at STOCKHOLM on July 14, 1967,
and at PARIS on July 24, 1971,
and amended on September 28, 1979**

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<i>Article 2bis:</i>	<i>Possible Limitation of Protection of Certain Works:</i> 1. Certain speeches; 2. Certain uses of lectures and addresses; 3. Right to make collections of such works
<i>Article 3:</i>	<i>Criteria of Eligibility for Protection:</i> 1. Nationality of author; place of publication of work; 2. Residence of author; 3. "Published" works; 4. "Simultaneously published" works
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<i>Article 5:</i>	<i>Rights Guaranteed:</i> 1. and 2. Outside the country of origin; 3. In the country of origin; 4. "Country of origin"
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<i>Article 6bis:</i>	<i>Moral Rights:</i> 1. To claim authorship; to object to certain modifications and other derogatory actions; 2. After the author's death; 3. Means of redress
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<i>Article 8:</i>	<i>Right of Translation</i>

* This Table of Contents is added for the convenience of the reader. It does not appear in the original (English) text of the Convention.

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Article 10:	<i>Certain Free Uses of Works:</i> 1. Quotations; 2. Illustrations for teaching; 3. Indication of source and author
Article 10bis:	<i>Further Possible Free Uses of Works:</i> 1. Of certain articles and broadcast works; 2. Of works seen or heard in connection with current events
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Article 11bis:	<i>Broadcasting and Related Rights:</i> 1. Broadcasting and other wireless communications, public communication of broadcast by wire or rebroadcast, public communication of broadcast by loudspeaker or analogous instruments; 2. Compulsory licenses; 3. Recording; ephemeral recordings
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Appendix

SPECIAL PROVISIONS REGARDING DEVELOPING COUNTRIES

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The countries of the Union, being equally animated by the desire to protect, in as effective and uniform a manner as possible, the rights of authors in their literary and artistic works,

Recognizing the importance of the work of the Revision Conference held at Stockholm in 1967,

Have resolved to revise the Act adopted by the Stockholm Conference, while maintaining without change Articles 1 to 20 and 22 to 26 of that Act.

Consequently, the undersigned Plenipotentiaries, having presented their full powers, recognized as in good and due form, have agreed as follows:

Article 1

[*Establishment of a Union*]¹

The countries to which this Convention applies constitute a Union for the protection of the rights of authors in their literary and artistic works.

Article 2

[*Protected Works*: 1. “Literary and artistic works”; 2. Possible requirement of fixation; 3. Derivative works; 4. Official texts; 5. Collections; 6. Obligation to protect; beneficiaries of protection; 7. Works of applied art and industrial designs; 8. News]

(1) The expression “literary and artistic works” shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatico-musical works; choreographic works and entertainments in dumb show; musical compositions with or without words; cinematographic works to which are assimilated works expressed by a process analogous to cinematography; works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works to which are assimilated works expressed by a process analogous to photography; works of applied art; illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science.

(2) It shall, however, be a matter for legislation in the countries of the Union to prescribe that works in general or any specified categories of works shall not be protected unless they have been fixed in some material form.

(3) Translations, adaptations, arrangements of music and other alterations of a literary or artistic work shall be protected as original works without prejudice to the copyright in the original work.

(4) It shall be a matter for legislation in the countries of the Union to determine the protection to be granted to official texts of a legislative, administrative and legal nature, and to official translations of such texts.

(5) Collections of literary or artistic works such as encyclopaedias and anthologies which, by reason of the selection and arrangement of their contents, constitute intellectual creations shall be protected as such, without prejudice to the copyright in each of the works forming part of such collections.

¹ Each Article and the Appendix have been given titles to facilitate their identification. There are no titles in the signed (English) text.

(6) The works mentioned in this Article shall enjoy protection in all countries of the Union. This protection shall operate for the benefit of the author and his successors in title.

(7) Subject to the provisions of Article 7(4) of this Convention, it shall be a matter for legislation in the countries of the Union to determine the extent of the application of their laws to works of applied art and industrial designs and models, as well as the conditions under which such works, designs and models shall be protected. Works protected in the country of origin solely as designs and models shall be entitled in another country of the Union only to such special protection as is granted in that country to designs and models; however, if no such special protection is granted in that country, such works shall be protected as artistic works.

(8) The protection of this Convention shall not apply to news of the day or to miscellaneous facts having the character of mere items of press information.

Article 2^{bis}

[Possible Limitation of Protection of Certain Works: 1. Certain speeches; 2. Certain uses of lectures and addresses; 3. Right to make collections of such works]

(1) It shall be a matter for legislation in the countries of the Union to exclude, wholly or in part, from the protection provided by the preceding Article political speeches and speeches delivered in the course of legal proceedings.

(2) It shall also be a matter for legislation in the countries of the Union to determine the conditions under which lectures, addresses and other works of the same nature which are delivered in public may be reproduced by the press, broadcast, communicated to the public by wire and made the subject of public communication as envisaged in Article 11^{bis}(1) of this Convention, when such use is justified by the informatory purpose.

(3) Nevertheless, the author shall enjoy the exclusive right of making a collection of his works mentioned in the preceding paragraphs.

Article 3

[Criteria of Eligibility for Protection: 1. Nationality of author; place of publication of work; 2. Residence of author; 3. "Published" works; 4. "Simultaneously published" works]

(1) The protection of this Convention shall apply to:

- (a) authors who are nationals of one of the countries of the Union, for their works, whether published or not;
- (b) authors who are not nationals of one of the countries of the Union, for their works first published in one of those countries, or simultaneously in a country outside the Union and in a country of the Union.

(2) Authors who are not nationals of one of the countries of the Union but who have their habitual residence in one of them shall, for the purposes of this Convention, be assimilated to nationals of that country.

(3) The expression "published works" means works published with the consent of their authors, whatever may be the means of manufacture of the copies, provided that the availability of such copies has been such as to satisfy the reasonable requirements of the public, having regard to the nature of the work. The performance of a dramatic, dramatico-musical, cinematographic or musical work, the public recitation of a literary work, the communication by wire or the broadcasting of literary or artistic works, the exhibition of a work of art and the construction of a work of architecture shall not constitute publication.

(4) A work shall be considered as having been published simultaneously in several countries if it has been published in two or more countries within thirty days of its first publication.

Article 4

[*Criteria of Eligibility for Protection of Cinematographic Works, Works of Architecture and Certain Artistic Works*]

The protection of this Convention shall apply, even if the conditions of Article 3 are not fulfilled, to:

- (a) authors of cinematographic works the maker of which has his headquarters or habitual residence in one of the countries of the Union;
- (b) authors of works of architecture erected in a country of the Union or of other artistic works incorporated in a building or other structure located in a country of the Union.

Article 5

[*Rights Guaranteed: 1. and 2. Outside the country of origin; 3. In the country of origin; 4. "Country of origin"*]

(1) Authors shall enjoy, in respect of works for which they are protected under this Convention, in countries of the Union other than the country of origin, the rights which their respective laws do now or may hereafter grant to their nationals, as well as the rights specially granted by this Convention.

(2) The enjoyment and the exercise of these rights shall not be subject to any formality; such enjoyment and such exercise shall be independent of the existence of protection in the country of origin of the work. Consequently, apart from the provisions of this Convention, the extent of protection, as well as the means of redress afforded to the author to protect his rights, shall be governed exclusively by the laws of the country where protection is claimed.

(3) Protection in the country of origin is governed by domestic law. However, when the author is not a national of the country of origin of the work for which he is protected under this Convention, he shall enjoy in that country the same rights as national authors.

(4) The country of origin shall be considered to be:

- (a) in the case of works first published in a country of the Union, that country; in the case of works published simultaneously in several countries of the Union which grant different terms of protection, the country whose legislation grants the shortest term of protection;
- (b) in the case of works published simultaneously in a country outside the Union and in a country of the Union, the latter country;
- (c) in the case of unpublished works or of works first published in a country outside the Union, without simultaneous publication in a country of the Union, the country of the Union of which the author is a national, provided that:
 - (i) when these are cinematographic works the maker of which has his headquarters or his habitual residence in a country of the Union, the country of origin shall be that country, and
 - (ii) when these are works of architecture erected in a country of the Union or other artistic works incorporated in a building or other structure located in a country of the Union, the country of origin shall be that country.

Article 6

[*Possible Restriction of Protection in Respect of Certain Works of Nationals of Certain Countries Outside the Union: 1. In the country of the first publication and in other countries; 2. No retroactivity; 3. Notice*]

(1) Where any country outside the Union fails to protect in an adequate manner the works of authors who are nationals of one of the countries of the Union, the latter country may restrict the protection given to the works of authors who are, at the date of the first publication thereof, nationals of the other country and are not habitually resident in one of the countries of the Union. If the country of first publication avails itself of this right, the other countries of the Union shall not be required to grant to works thus subjected to special treatment a wider protection than that granted to them in the country of first publication.

(2) No restrictions introduced by virtue of the preceding paragraph shall affect the rights which an author may have acquired in respect of a work published in a country of the Union before such restrictions were put into force.

(3) The countries of the Union which restrict the grant of copyright in accordance with this Article shall give notice thereof to the Director General of the World Intellectual Property Organization (hereinafter designated as “the Director General”) by a written declaration specifying the countries in regard to which protection is restricted, and the restrictions to which rights of authors who are nationals of those countries are subjected. The Director General shall immediately communicate this declaration to all the countries of the Union.

Article 6^{bis}

[*Moral Rights*: 1. To claim authorship; to object to certain modifications and other derogatory actions; 2. After the author’s death; 3. Means of redress]

(1) Independently of the author’s economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation.

(2) The rights granted to the author in accordance with the preceding paragraph shall, after his death, be maintained, at least until the expiry of the economic rights, and shall be exercisable by the persons or institutions authorized by the legislation of the country where protection is claimed. However, those countries whose legislation, at the moment of their ratification of or accession to this Act, does not provide for the protection after the death of the author of all the rights set out in the preceding paragraph may provide that some of these rights may, after his death, cease to be maintained.

(3) The means of redress for safeguarding the rights granted by this Article shall be governed by the legislation of the country where protection is claimed.

Article 7

[*Term of Protection*: 1. Generally; 2. For cinematographic works; 3. For anonymous and pseudonymous works; 4. For photographic works and works of applied art; 5. Starting date of computation; 6. Longer terms; 7. Shorter terms; 8. Applicable law; “comparison” of terms]

(1) The term of protection granted by this Convention shall be the life of the author and fifty years after his death.

(2) However, in the case of cinematographic works, the countries of the Union may provide that the term of protection shall expire fifty years after the work has been made available to the public with the consent of the author, or, failing such an event within fifty years from the making of such a work, fifty years after the making.

(3) In the case of anonymous or pseudonymous works, the term of protection granted by this Convention shall expire fifty years after the work has been lawfully made available to the public. However, when the pseudonym adopted by the author leaves no doubt as to his identity, the term of protection shall be that provided in paragraph (1). If the author of an anonymous or pseudonymous work discloses his identity during the above-mentioned period, the term of protection applicable shall be that provided in paragraph (1). The countries of the Union shall not be required to protect anonymous or pseudonymous works in respect of which it is reasonable to presume that their author has been dead for fifty years.

(4) It shall be a matter for legislation in the countries of the Union to determine the term of protection of photographic works and that of works of applied art in so far as they are protected as artistic works; however, this term shall last at least until the end of a period of twenty-five years from the making of such a work.

(5) The term of protection subsequent to the death of the author and the terms provided by paragraphs (2), (3) and (4) shall run from the date of death or of the event referred to in those paragraphs, but such terms shall always be deemed to begin on the first of January of the year following the death or such event.

(6) The countries of the Union may grant a term of protection in excess of those provided by the preceding paragraphs.

(7) Those countries of the Union bound by the Rome Act of this Convention which grant, in their national legislation in force at the time of signature of the present Act, shorter terms of protection than those provided for in the preceding paragraphs shall have the right to maintain such terms when ratifying or acceding to the present Act.

(8) In any case, the term shall be governed by the legislation of the country where protection is claimed; however, unless the legislation of that country otherwise provides, the term shall not exceed the term fixed in the country of origin of the work.

Article 7^{bis}

[Term of Protection for Works of Joint Authorship]

The provisions of the preceding Article shall also apply in the case of a work of joint authorship, provided that the terms measured from the death of the author shall be calculated from the death of the last surviving author.

Article 8

[Right of Translation]

Authors of literary and artistic works protected by this Convention shall enjoy the exclusive right of making and of authorizing the translation of their works throughout the term of protection of their rights in the original works.

Article 9

[Right of Reproduction: 1. Generally; 2. Possible exceptions; 3. Sound and visual recordings]

(1) Authors of literary and artistic works protected by this Convention shall have the exclusive right of authorizing the reproduction of these works, in any manner or form.

(2) It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author.

(3) Any sound or visual recording shall be considered as a reproduction for the purposes of this Convention.

Article 10

[Certain Free Uses of Works: 1. Quotations; 2. Illustrations for teaching; 3. Indication of source and author]

(1) It shall be permissible to make quotations from a work which has already been lawfully made available to the public, provided that their making is compatible with fair practice, and their extent does not exceed that justified by the purpose, including quotations from newspaper articles and periodicals in the form of press summaries.

(2) It shall be a matter for legislation in the countries of the Union, and for special agreements existing or to be concluded between them, to permit the utilization, to the extent justified by the purpose, of literary or artistic works by way of illustration in publications, broadcasts or sound or visual recordings for teaching, provided such utilization is compatible with fair practice.

(3) Where use is made of works in accordance with the preceding paragraphs of this Article, mention shall be made of the source, and of the name of the author if it appears thereon.

Article 10^{bis}

[*Further Possible Free Uses of Works*: 1. Of certain articles and broadcast works; 2. Of works seen or heard in connection with current events]

(1) It shall be a matter for legislation in the countries of the Union to permit the reproduction by the press, the broadcasting or the communication to the public by wire of articles published in newspapers or periodicals on current economic, political or religious topics, and of broadcast works of the same character, in cases in which the reproduction, broadcasting or such communication thereof is not expressly reserved. Nevertheless, the source must always be clearly indicated; the legal consequences of a breach of this obligation shall be determined by the legislation of the country where protection is claimed.

(2) It shall also be a matter for legislation in the countries of the Union to determine the conditions under which, for the purpose of reporting current events by means of photography, cinematography, broadcasting or communication to the public by wire, literary or artistic works seen or heard in the course of the event may, to the extent justified by the informatory purpose, be reproduced and made available to the public.

Article 11

[*Certain Rights in Dramatic and Musical Works*: 1. Right of public performance and of communication to the public of a performance; 2. In respect of translations]

(1) Authors of dramatic, dramatico-musical and musical works shall enjoy the exclusive right of authorizing:

- (i) the public performance of their works, including such public performance by any means or process;
- (ii) any communication to the public of the performance of their works.

(2) Authors of dramatic or dramatico-musical works shall enjoy, during the full term of their rights in the original works, the same rights with respect to translations thereof.

Article 11^{bis}

[*Broadcasting and Related Rights*: 1. Broadcasting and other wireless communications, public communication of broadcast by wire or rebroadcast, public communication of broadcast by loudspeaker or analogous instruments; 2. Compulsory licenses; 3. Recording; ephemeral recordings]

(1) Authors of literary and artistic works shall enjoy the exclusive right of authorizing:

- (i) the broadcasting of their works or the communication thereof to the public by any other means of wireless diffusion of signs, sounds or images;
- (ii) any communication to the public by wire or by rebroadcasting of the broadcast of the work, when this communication is made by an organization other than the original one;
- (iii) the public communication by loudspeaker or any other analogous instrument transmitting, by signs, sounds or images, the broadcast of the work.

(2) It shall be a matter for legislation in the countries of the Union to determine the conditions under which the rights mentioned in the preceding paragraph may be exercised, but these conditions shall apply only in the countries where they have been prescribed. They shall not in any circumstances be prejudicial to the moral rights of the author, nor to his right to obtain equitable remuneration which, in the absence of agreement, shall be fixed by competent authority.

(3) In the absence of any contrary stipulation, permission granted in accordance with paragraph (1) of this Article shall not imply permission to record, by means of instruments recording sounds or images, the work broadcast. It shall, however, be a matter for legislation in the countries of the Union to determine the regulations for ephemeral recordings made by a broadcasting organization by means of its own facilities and used for its own broadcasts. The preservation of these recordings in official archives may, on the ground of their exceptional documentary character, be authorized by such legislation.

Article 11^{ter}

[*Certain Rights in Literary Works*: 1. Right of public recitation and of communication to the public of a recitation; 2. In respect of translations]

- (1) Authors of literary works shall enjoy the exclusive right of authorizing:
 - (i) the public recitation of their works, including such public recitation by any means or process;
 - (ii) any communication to the public of the recitation of their works.
- (2) Authors of literary works shall enjoy, during the full term of their rights in the original works, the same rights with respect to translations thereof.

Article 12

[*Right of Adaptation, Arrangement and Other Alteration*]

Authors of literary or artistic works shall enjoy the exclusive right of authorizing adaptations, arrangements and other alterations of their works.

Article 13

[*Possible Limitation of the Right of Recording of Musical Works and Any Words Pertaining Thereto*:

1. Compulsory licenses; 2. Transitory measures; 3. Seizure on importation of copies made without the author's permission]

(1) Each country of the Union may impose for itself reservations and conditions on the exclusive right granted to the author of a musical work and to the author of any words, the recording of which together with the musical work has already been authorized by the latter, to authorize the sound recording of that musical work, together with such words, if any; but all such reservations and conditions shall apply only in the countries which have imposed them and shall not, in any circumstances, be prejudicial to the rights of these authors to obtain equitable remuneration which, in the absence of agreement, shall be fixed by competent authority.

(2) Recordings of musical works made in a country of the Union in accordance with Article 13(3) of the Conventions signed at Rome on June 2, 1928, and at Brussels on June 26, 1948, may be reproduced in that country without the permission of the author of the musical work until a date two years after that country becomes bound by this Act.

(3) Recordings made in accordance with paragraphs (1) and (2) of this Article and imported without permission from the parties concerned into a country where they are treated as infringing recordings shall be liable to seizure.

Article 14

[*Cinematographic and Related Rights*: 1. Cinematographic adaptation and reproduction; distribution; public performance and public communication by wire of works thus adapted or reproduced; 2. Adaptation of cinematographic productions; 3. No compulsory licenses]

- (1) Authors of literary or artistic works shall have the exclusive right of authorizing:
 - (i) the cinematographic adaptation and reproduction of these works, and the distribution of the works thus adapted or reproduced;
 - (ii) the public performance and communication to the public by wire of the works thus adapted or reproduced.
- (2) The adaptation into any other artistic form of a cinematographic production derived from literary or artistic works shall, without prejudice to the authorization of the author of the cinematographic production, remain subject to the authorization of the authors of the original works.
- (3) The provisions of Article 13(1) shall not apply.

Article 14^{bis}

[*Special Provisions Concerning Cinematographic Works*: 1. Assimilation to “original” works; 2. Ownership; limitation of certain rights of certain contributors; 3. Certain other contributors]

(1) Without prejudice to the copyright in any work which may have been adapted or reproduced, a cinematographic work shall be protected as an original work. The owner of copyright in a cinematographic work shall enjoy the same rights as the author of an original work, including the rights referred to in the preceding Article.

(2)

(a) Ownership of copyright in a cinematographic work shall be a matter for legislation in the country where protection is claimed.

(b) However, in the countries of the Union which, by legislation, include among the owners of copyright in a cinematographic work authors who have brought contributions to the making of the work, such authors, if they have undertaken to bring such contributions, may not, in the absence of any contrary or special stipulation, object to the reproduction, distribution, public performance, communication to the public by wire, broadcasting or any other communication to the public, or to the subtitling or dubbing of texts, of the work.

(c) The question whether or not the form of the undertaking referred to above should, for the application of the preceding subparagraph (b), be in a written agreement or a written act of the same effect shall be a matter for the legislation of the country where the maker of the cinematographic work has his headquarters or habitual residence. However, it shall be a matter for the legislation of the country of the Union where protection is claimed to provide that the said undertaking shall be in a written agreement or a written act of the same effect. The countries whose legislation so provides shall notify the Director General by means of a written declaration, which will be immediately communicated by him to all the other countries of the Union.

(d) By “contrary or special stipulation” is meant any restrictive condition which is relevant to the aforesaid undertaking.

(3) Unless the national legislation provides to the contrary, the provisions of paragraph (2)(b) above shall not be applicable to authors of scenarios, dialogues and musical works created for the making of the cinematographic work, or to the principal director thereof. However, those countries of the Union whose legislation does not contain rules providing for the application of the said paragraph (2)(b) to such director shall notify the Director General by means of a written declaration, which will be immediately communicated by him to all the other countries of the Union.

Article 14^{ter}

[*“Droit de suite” in Works of Art and Manuscripts*:

1. Right to an interest in resales; 2. Applicable law; 3. Procedure]

(1) The author, or after his death the persons or institutions authorized by national legislation, shall, with respect to original works of art and original manuscripts of writers and composers, enjoy the inalienable right to an interest in any sale of the work subsequent to the first transfer by the author of the work.

(2) The protection provided by the preceding paragraph may be claimed in a country of the Union only if legislation in the country to which the author belongs so permits, and to the extent permitted by the country where this protection is claimed.

(3) The procedure for collection and the amounts shall be matters for determination by national legislation.

Article 15

[Right to Enforce Protected Rights: 1. Where author's name is indicated or where pseudonym leaves no doubt as to author's identity; 2. In the case of cinematographic works; 3. In the case of anonymous and pseudonymous works; 4. In the case of certain unpublished works of unknown authorship]

(1) In order that the author of a literary or artistic work protected by this Convention shall, in the absence of proof to the contrary, be regarded as such, and consequently be entitled to institute infringement proceedings in the countries of the Union, it shall be sufficient for his name to appear on the work in the usual manner. This paragraph shall be applicable even if this name is a pseudonym, where the pseudonym adopted by the author leaves no doubt as to his identity.

(2) The person or body corporate whose name appears on a cinematographic work in the usual manner shall, in the absence of proof to the contrary, be presumed to be the maker of the said work.

(3) In the case of anonymous and pseudonymous works, other than those referred to in paragraph (1) above, the publisher whose name appears on the work shall, in the absence of proof to the contrary, be deemed to represent the author, and in this capacity he shall be entitled to protect and enforce the author's rights. The provisions of this paragraph shall cease to apply when the author reveals his identity and establishes his claim to authorship of the work.

(4)

(a) In the case of unpublished works where the identity of the author is unknown, but where there is every ground to presume that he is a national of a country of the Union, it shall be a matter for legislation in that country to designate the competent authority which shall represent the author and shall be entitled to protect and enforce his rights in the countries of the Union.

(b) Countries of the Union which make such designation under the terms of this provision shall notify the Director General by means of a written declaration giving full information concerning the authority thus designated. The Director General shall at once communicate this declaration to all other countries of the Union.

Article 16

[Infringing Copies: 1. Seizure; 2. Seizure on importation; 3. Applicable law]

(1) Infringing copies of a work shall be liable to seizure in any country of the Union where the work enjoys legal protection.

(2) The provisions of the preceding paragraph shall also apply to reproductions coming from a country where the work is not protected, or has ceased to be protected.

(3) The seizure shall take place in accordance with the legislation of each country.

Article 17

[Possibility of Control of Circulation, Presentation and Exhibition of Works]

The provisions of this Convention cannot in any way affect the right of the Government of each country of the Union to permit, to control, or to prohibit, by legislation or regulation, the circulation, presentation, or exhibition of any work or production in regard to which the competent authority may find it necessary to exercise that right.

Article 18

[Works Existing on Convention's Entry Into Force: 1. Protectable where protection not yet expired in country of origin; 2. Non-protectable where protection already expired in country where it is claimed; 3. Application of these principles; 4. Special cases]

(1) This Convention shall apply to all works which, at the moment of its coming into force, have not yet fallen into the public domain in the country of origin through the expiry of the term of protection.

(2) If, however, through the expiry of the term of protection which was previously granted, a work has fallen into the public domain of the country where protection is claimed, that work shall not be protected anew.

(3) The application of this principle shall be subject to any provisions contained in special conventions to that effect existing or to be concluded between countries of the Union. In the absence of such provisions, the respective countries shall determine, each in so far as it is concerned, the conditions of application of this principle.

(4) The preceding provisions shall also apply in the case of new accessions to the Union and to cases in which protection is extended by the application of Article 7 or by the abandonment of reservations.

Article 19

[Protection Greater than Resulting from Convention]

The provisions of this Convention shall not preclude the making of a claim to the benefit of any greater protection which may be granted by legislation in a country of the Union.

Article 20

[Special Agreements Among Countries of the Union]

The Governments of the countries of the Union reserve the right to enter into special agreements among themselves, in so far as such agreements grant to authors more extensive rights than those granted by the Convention, or contain other provisions not contrary to this Convention. The provisions of existing agreements which satisfy these conditions shall remain applicable.

Article 21

[Special Provisions Regarding Developing Countries: 1. Reference to Appendix; 2. Appendix part of Act]

- (1) Special provisions regarding developing countries are included in the Appendix.
- (2) Subject to the provisions of Article 28(1)(b), the Appendix forms an integral part of this Act.

Article 22

[Assembly: 1. Constitution and composition; 2. Tasks; 3. Quorum, voting, observers; 4. Convocation; 5. Rules of procedure]

(1)
(a) The Union shall have an Assembly consisting of those countries of the Union which are bound by Articles 22 to 26.

(b) The Government of each country shall be represented by one delegate, who may be assisted by alternate delegates, advisors, and experts.

(c) The expenses of each delegation shall be borne by the Government which has appointed it.

(2)

(a) The Assembly shall:

(i) deal with all matters concerning the maintenance and development of the Union and the implementation of this Convention;

(ii) give directions concerning the preparation for conferences of revision to the International Bureau of Intellectual Property (hereinafter designated as "the International Bureau") referred to in the Convention Establishing the World Intellectual Property Organization (hereinafter designated as "the Organization"), due account being taken of any comments made by those countries of the Union which are not bound by Articles 22 to 26;

- (iii) review and approve the reports and activities of the Director General of the Organization concerning the Union, and give him all necessary instructions concerning matters within the competence of the Union;
- (iv) elect the members of the Executive Committee of the Assembly;
- (v) review and approve the reports and activities of its Executive Committee, and give instructions to such Committee;
- (vi) determine the program and adopt the biennial budget of the Union, and approve its final accounts;
- (vii) adopt the financial regulations of the Union;
- (viii) establish such committees of experts and working groups as may be necessary for the work of the Union;
- (ix) determine which countries not members of the Union and which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers;
- (x) adopt amendments to Articles 22 to 26;
- (xi) take any other appropriate action designed to further the objectives of the Union;
- (xii) exercise such other functions as are appropriate under this Convention;
- (xiii) subject to its acceptance, exercise such rights as are given to it in the Convention establishing the Organization.

(b) With respect to matters which are of interest also to other Unions administered by the Organization, the Assembly shall make its decisions after having heard the advice of the Coordination Committee of the Organization.

(3)

(a) Each country member of the Assembly shall have one vote.

(b) One-half of the countries members of the Assembly shall constitute a quorum.

(c) Notwithstanding the provisions of subparagraph (b), if, in any session, the number of countries represented is less than one-half but equal to or more than one-third of the countries members of the Assembly, the Assembly may make decisions but, with the exception of decisions concerning its own procedure, all such decisions shall take effect only if the following conditions are fulfilled. The International Bureau shall communicate the said decisions to the countries members of the Assembly which were not represented and shall invite them to express in writing their vote or abstention within a period of three months from the date of the communication. If, at the expiration of this period, the number of countries having thus expressed their vote or abstention attains the number of countries which was lacking for attaining the quorum in the session itself, such decisions shall take effect provided that at the same time the required majority still obtains.

(d) Subject to the provisions of Article 26(2), the decisions of the Assembly shall require two-thirds of the votes cast.

(e) Abstentions shall not be considered as votes.

(f) A delegate may represent, and vote in the name of, one country only.

(g) Countries of the Union not members of the Assembly shall be admitted to its meetings as observers.

(4)

(a) The Assembly shall meet once in every second calendar year in ordinary session upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the General Assembly of the Organization.

(b) The Assembly shall meet in extraordinary session upon convocation by the Director General, at the request of the Executive Committee or at the request of one-fourth of the countries members of the Assembly.

(5) The Assembly shall adopt its own rules of procedure.

Article 23

[*Executive Committee*: 1. Constitution; 2. Composition; 3. Number of members; 4. Geographical distribution; special agreements; 5. Term, limits of re-eligibility, rules of election; 6. Tasks; 7. Convocation; 8. Quorum, voting; 9. Observers; 10. Rules of procedure]

(1) The Assembly shall have an Executive Committee.

(2)

(a) The Executive Committee shall consist of countries elected by the Assembly from among countries members of the Assembly. Furthermore, the country on whose territory the Organization has its headquarters shall, subject to the provisions of Article 25(7)(b), have an ex officio seat on the Committee.

(b) The Government of each country member of the Executive Committee shall be represented by one delegate, who may be assisted by alternate delegates, advisors, and experts.

(c) The expenses of each delegation shall be borne by the Government which has appointed it.

(3) The number of countries members of the Executive Committee shall correspond to one-fourth of the number of countries members of the Assembly. In establishing the number of seats to be filled, remainders after division by four shall be disregarded.

(4) In electing the members of the Executive Committee, the Assembly shall have due regard to an equitable geographical distribution and to the need for countries party to the Special Agreements which might be established in relation with the Union to be among the countries constituting the Executive Committee.

(5)

(a) Each member of the Executive Committee shall serve from the close of the session of the Assembly which elected it to the close of the next ordinary session of the Assembly.

(b) Members of the Executive Committee may be re-elected, but not more than two-thirds of them.

(c) The Assembly shall establish the details of the rules governing the election and possible re-election of the members of the Executive Committee.

(6)

(a) The Executive Committee shall:

(i) prepare the draft agenda of the Assembly;

(ii) submit proposals to the Assembly respecting the draft program and biennial budget of the Union prepared by the Director General;

(iii) [*deleted*]

(iv) submit, with appropriate comments, to the Assembly the periodical reports of the Director General and the yearly audit reports on the accounts;

(v) in accordance with the decisions of the Assembly and having regard to circumstances arising between two ordinary sessions of the Assembly, take all necessary measures to ensure the execution of the program of the Union by the Director General;

(vi) perform such other functions as are allocated to it under this Convention.

(b) With respect to matters which are of interest also to other Unions administered by the Organization, the Executive Committee shall make its decisions after having heard the advice of the Coordination Committee of the Organization.

(7)

(a) The Executive Committee shall meet once a year in ordinary session upon convocation by the Director General, preferably during the same period and at the same place as the Coordination Committee of the Organization.

(b) The Executive Committee shall meet in extraordinary session upon convocation by the Director General, either on his own initiative, or at the request of its Chairman or one-fourth of its members.

(8)

(a) Each country member of the Executive Committee shall have one vote.

(b) One-half of the members of the Executive Committee shall constitute a quorum.

(c) Decisions shall be made by a simple majority of the votes cast.

(d) Abstentions shall not be considered as votes.

(e) A delegate may represent, and vote in the name of, one country only.

(9) Countries of the Union not members of the Executive Committee shall be admitted to its meetings as observers.

(10) The Executive Committee shall adopt its own rules of procedure.

Article 24

[*International Bureau*: 1. Tasks in general, Director General; 2. General information; 3. Periodical; 4. Information to countries; 5. Studies and services; 6. Participation in meetings; 7. Conferences of revision; 8. Other tasks]

(1)

(a) The administrative tasks with respect to the Union shall be performed by the International Bureau, which is a continuation of the Bureau of the Union united with the Bureau of the Union established by the International Convention for the Protection of Industrial Property.

(b) In particular, the International Bureau shall provide the secretariat of the various organs of the Union.

(c) The Director General of the Organization shall be the chief executive of the Union and shall represent the Union.

(2) The International Bureau shall assemble and publish information concerning the protection of copyright. Each country of the Union shall promptly communicate to the International Bureau all new laws and official texts concerning the protection of copyright.

(3) The International Bureau shall publish a monthly periodical.

(4) The International Bureau shall, on request, furnish information to any country of the Union on matters concerning the protection of copyright.

(5) The International Bureau shall conduct studies, and shall provide services, designed to facilitate the protection of copyright.

(6) The Director General and any staff member designated by him shall participate, without the right to vote, in all meetings of the Assembly, the Executive Committee and any other committee of experts or working group. The Director General, or a staff member designated by him, shall be ex officio secretary of these bodies.

(7)

(a) The International Bureau shall, in accordance with the directions of the Assembly and in cooperation with the Executive Committee, make the preparations for the conferences of revision of the provisions of the Convention other than Articles 22 to 26.

(b) The International Bureau may consult with intergovernmental and international non-governmental organizations concerning preparations for conferences of revision.

(c) The Director General and persons designated by him shall take part, without the right to vote, in the discussions at these conferences.

(8) The International Bureau shall carry out any other tasks assigned to it.

Article 25

[*Finances*: 1. Budget; 2. Coordination with other Unions; 3. Resources; 4. Contributions; possible extension of previous budget; 5. Fees and charges; 6. Working capital fund; 7. Advances by host Government; 8. Auditing of accounts]

(1)

(a) The Union shall have a budget.

(b) The budget of the Union shall include the income and expenses proper to the Union, its contribution to the budget of expenses common to the Unions, and, where applicable, the sum made available to the budget of the Conference of the Organization.

(c) Expenses not attributable exclusively to the Union but also to one or more other Unions administered by the Organization shall be considered as expenses common to the Unions. The share of the Union in such common expenses shall be in proportion to the interest the Union has in them.

(2) The budget of the Union shall be established with due regard to the requirements of coordination with the budgets of the other Unions administered by the Organization.

(3) The budget of the Union shall be financed from the following sources:

- (i) contributions of the countries of the Union;
- (ii) fees and charges due for services performed by the International Bureau in relation to the Union;
- (iii) sale of, or royalties on, the publications of the International Bureau concerning the Union;
- (iv) gifts, bequests, and subventions;
- (v) rents, interests, and other miscellaneous income.

(4)

(a) For the purpose of establishing its contribution towards the budget, each country of the Union shall belong to a class, and shall pay its annual contributions on the basis of a number of units fixed as follows:

Class I	25
Class II	20
Class III	15
Class IV	10
Class V	5
Class VI	3
Class VII	1

(b) Unless it has already done so, each country shall indicate, concurrently with depositing its instrument of ratification or accession, the class to which it wishes to belong. Any country may change class. If it chooses a lower class, the country must announce it to the Assembly at one of its ordinary sessions. Any such change shall take effect at the beginning of the calendar year following the session.

(c) The annual contribution of each country shall be an amount in the same proportion to the total sum to be contributed to the annual budget of the Union by all countries as the number of its units is to the total of the units of all contributing countries.

(d) Contributions shall become due on the first of January of each year.

(e) A country which is in arrears in the payment of its contributions shall have no vote in any of the organs of the Union of which it is a member if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. However, any organ of the Union may allow such a country to continue to exercise its vote in that organ if, and as long as, it is satisfied that the delay in payment is due to exceptional and unavoidable circumstances.

(f) If the budget is not adopted before the beginning of a new financial period, it shall be at the same level as the budget of the previous year, in accordance with the financial regulations.

(5) The amount of the fees and charges due for services rendered by the International Bureau in relation to the Union shall be established, and shall be reported to the Assembly and the Executive Committee, by the Director General.

(6)

(a) The Union shall have a working capital fund which shall be constituted by a single payment made by each country of the Union. If the fund becomes insufficient, an increase shall be decided by the Assembly.

(b) The amount of the initial payment of each country to the said fund or of its participation in the increase thereof shall be a proportion of the contribution of that country for the year in which the fund is established or the increase decided.

(c) The proportion and the terms of payment shall be fixed by the Assembly on the proposal of the Director General and after it has heard the advice of the Coordination Committee of the Organization.

(7)

(a) In the headquarters agreement concluded with the country on the territory of which the Organization has its headquarters, it shall be provided that, whenever the working capital fund is insufficient, such country shall grant advances. The amount of these advances and the conditions on which they are granted shall be the subject of separate agreements, in each case, between such country and the Organization. As long as it remains under the obligation to grant advances, such country shall have an ex officio seat on the Executive Committee.

(b) The country referred to in subparagraph (a) and the Organization shall each have the right to denounce the obligation to grant advances, by written notification. Denunciation shall take effect three years after the end of the year in which it has been notified.

(8) The auditing of the accounts shall be effected by one or more of the countries of the Union or by external auditors, as provided in the financial regulations. They shall be designated, with their agreement, by the Assembly.

Article 26

[Amendments: 1. Provisions susceptible of amendment by the Assembly; proposals; 2. Adoption; 3. Entry into force]

(1) Proposals for the amendment of Articles 22, 23, 24, 25, and the present Article, may be initiated by any country member of the Assembly, by the Executive Committee, or by the Director General. Such proposals shall be communicated by the Director General to the member countries of the Assembly at least six months in advance of their consideration by the Assembly.

(2) Amendments to the Articles referred to in paragraph (1) shall be adopted by the Assembly. Adoption shall require three-fourths of the votes cast, provided that any amendment of Article 22, and of the present paragraph, shall require four-fifths of the votes cast.

(3) Any amendment to the Articles referred to in paragraph (1) shall enter into force one month after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of the countries members of the Assembly at the time it adopted the amendment. Any amendment to the said Articles thus accepted shall bind all the countries which are members of the Assembly at the time the amendment enters into force, or which become members thereof at a subsequent date, provided that any amendment increasing the financial obligations of countries of the Union shall bind only those countries which have notified their acceptance of such amendment.

Article 27

[Revision: 1. Objective; 2. Conferences; 3. Adoption]

(1) This Convention shall be submitted to revision with a view to the introduction of amendments designed to improve the system of the Union.

(2) For this purpose, conferences shall be held successively in one of the countries of the Union among the delegates of the said countries.

(3) Subject to the provisions of Article 26 which apply to the amendment of Articles 22 to 26, any revision of this Act, including the Appendix, shall require the unanimity of the votes cast.

Article 28

[Acceptance and Entry Into Force of Act for Countries of the Union: 1. Ratification, accession; possibility of excluding certain provisions; withdrawal of exclusion; 2. Entry into force of Articles 1 to 21 and Appendix; 3. Entry into force of Articles 22 to 38]

(1)

(a) Any country of the Union which has signed this Act may ratify it, and, if it has not signed it, may accede to it. Instruments of ratification or accession shall be deposited with the Director General.

(b) Any country of the Union may declare in its instrument of ratification or accession that its ratification or accession shall not apply to Articles 1 to 21 and the Appendix, provided that, if such country has previously made a declaration under Article VI(1) of the Appendix, then it may declare in the said instrument only that its ratification or accession shall not apply to Articles 1 to 20.

(c) Any country of the Union which, in accordance with subparagraph (b), has excluded provisions therein referred to from the effects of its ratification or accession may at any later time declare that it extends the effects of its ratification or accession to those provisions. Such declaration shall be deposited with the Director General.

(2)

(a) Articles 1 to 21 and the Appendix shall enter into force three months after both of the following two conditions are fulfilled:

(i) at least five countries of the Union have ratified or acceded to this Act without making a declaration under paragraph (1)(b),

(ii) France, Spain, the United Kingdom of Great Britain and Northern Ireland, and the United States of America, have become bound by the Universal Copyright Convention as revised at Paris on July 24, 1971.

(b) The entry into force referred to in subparagraph (a) shall apply to those countries of the Union which, at least three months before the said entry into force, have deposited instruments of ratification or accession not containing a declaration under paragraph (1)(b).

(c) With respect to any country of the Union not covered by subparagraph (b) and which ratifies or accedes to this Act without making a declaration under paragraph (1)(b), Articles 1 to 21 and the Appendix shall enter into force three months after the date on which the Director General has notified the deposit of the relevant instrument of ratification or accession, unless a subsequent date has been indicated in the instrument deposited. In the latter case, Articles 1 to 21 and the Appendix shall enter into force with respect to that country on the date thus indicated.

(d) The provisions of subparagraphs (a) to (c) do not affect the application of Article VI of the Appendix.

(3) With respect to any country of the Union which ratifies or accedes to this Act with or without a declaration made under paragraph (1)(b), Articles 22 to 38 shall enter into force three months after the date on which the Director General has notified the deposit of the relevant instrument of ratification or accession, unless a subsequent date has been indicated in the instrument deposited. In the latter case, Articles 22 to 38 shall enter into force with respect to that country on the date thus indicated.

Article 29

[Acceptance and Entry Into Force for Countries Outside the Union: 1. Accession; 2. Entry into force]

(1) Any country outside the Union may accede to this Act and thereby become party to this Convention and a member of the Union. Instruments of accession shall be deposited with the Director General.

(2)

(a) Subject to subparagraph (b), this Convention shall enter into force with respect to any country outside the Union three months after the date on which the Director General has notified the deposit of its instrument of accession, unless a subsequent date has been indicated in the instrument deposited. In the latter case, this Convention shall enter into force with respect to that country on the date thus indicated.

(b) If the entry into force according to subparagraph (a) precedes the entry into force of Articles 1 to 21 and the Appendix according to Article 28(2)(a), the said country shall, in the meantime, be bound, instead of by Articles 1 to 21 and the Appendix, by Articles 1 to 20 of the Brussels Act of this Convention.

Article 29^{bis}

[*Effect of Acceptance of Act for the Purposes of Article 14(2) of the WIPO Convention*]

Ratification of or accession to this Act by any country not bound by Articles 22 to 38 of the Stockholm Act of this Convention shall, for the sole purposes of Article 14(2) of the Convention establishing the Organization, amount to ratification of or accession to the said Stockholm Act with the limitation set forth in Article 28(1)(b)(i) thereof.

Article 30

[*Reservations: 1. Limits of possibility of making reservations; 2. Earlier reservations; reservation as to the right of translation; withdrawal of reservation*]

(1) Subject to the exceptions permitted by paragraph (2) of this Article, by Article 28(1)(b), by Article 33(2), and by the Appendix, ratification or accession shall automatically entail acceptance of all the provisions and admission to all the advantages of this Convention.

(2)

(a) Any country of the Union ratifying or acceding to this Act may, subject to Article V(2) of the Appendix, retain the benefit of the reservations it has previously formulated on condition that it makes a declaration to that effect at the time of the deposit of its instrument of ratification or accession.

(b) Any country outside the Union may declare, in acceding to this Convention and subject to Article V(2) of the Appendix, that it intends to substitute, temporarily at least, for Article 8 of this Act concerning the right of translation, the provisions of Article 5 of the Union Convention of 1886, as completed at Paris in 1896, on the clear understanding that the said provisions are applicable only to translations into a language in general use in the said country. Subject to Article I(6)(b) of the Appendix, any country has the right to apply, in relation to the right of translation of works whose country of origin is a country availing itself of such a reservation, a protection which is equivalent to the protection granted by the latter country.

(c) Any country may withdraw such reservations at any time by notification addressed to the Director General.

Article 31

[*Applicability to Certain Territories: 1. Declaration; 2. Withdrawal of declaration; 3. Effective date; 4. Acceptance of factual situations not implied*]

(1) Any country may declare in its instrument of ratification or accession, or may inform the Director General by written notification at any time thereafter, that this Convention shall be applicable to all or part of those territories, designated in the declaration or notification, for the external relations of which it is responsible.

(2) Any country which has made such a declaration or given such a notification may, at any time, notify the Director General that this Convention shall cease to be applicable to all or part of such territories.

(3)

(a) Any declaration made under paragraph (1) shall take effect on the same date as the ratification or accession in which it was included, and any notification given under that paragraph shall take effect three months after its notification by the Director General.

(b) Any notification given under paragraph (2) shall take effect twelve months after its receipt by the Director General.

(4) This Article shall in no way be understood as implying the recognition or tacit acceptance by a country of the Union of the factual situation concerning a territory to which this Convention is made applicable by another country of the Union by virtue of a declaration under paragraph (1).

Article 32

[*Applicability of this Act and of Earlier Acts:* 1. As between countries already members of the Union; 2. As between a country becoming a member of the Union and other countries members of the Union; 3. Applicability of the Appendix in Certain Relations]

(1) This Act shall, as regards relations between the countries of the Union, and to the extent that it applies, replace the Berne Convention of September 9, 1886, and the subsequent Acts of revision. The Acts previously in force shall continue to be applicable, in their entirety or to the extent that this Act does not replace them by virtue of the preceding sentence, in relations with countries of the Union which do not ratify or accede to this Act.

(2) Countries outside the Union which become party to this Act shall, subject to paragraph (3), apply it with respect to any country of the Union not bound by this Act or which, although bound by this Act, has made a declaration pursuant to Article 28(1)(b). Such countries recognize that the said country of the Union, in its relations with them:

- (i) may apply the provisions of the most recent Act by which it is bound, and
- (ii) subject to Article I(6) of the Appendix, has the right to adapt the protection to the level provided for by this Act.

(3) Any country which has availed itself of any of the faculties provided for in the Appendix may apply the provisions of the Appendix relating to the faculty or faculties of which it has availed itself in its relations with any other country of the Union which is not bound by this Act, provided that the latter country has accepted the application of the said provisions.

Article 33

[*Disputes:* 1. Jurisdiction of the International Court of Justice; 2. Reservation as to such jurisdiction; 3. Withdrawal of reservation]

(1) Any dispute between two or more countries of the Union concerning the interpretation or application of this Convention, not settled by negotiation, may, by any one of the countries concerned, be brought before the International Court of Justice by application in conformity with the Statute of the Court, unless the countries concerned agree on some other method of settlement. The country bringing the dispute before the Court shall inform the International Bureau; the International Bureau shall bring the matter to the attention of the other countries of the Union.

(2) Each country may, at the time it signs this Act or deposits its instrument of ratification or accession, declare that it does not consider itself bound by the provisions of paragraph (1). With regard to any dispute between such country and any other country of the Union, the provisions of paragraph (1) shall not apply.

(3) Any country having made a declaration in accordance with the provisions of paragraph (2) may, at any time, withdraw its declaration by notification addressed to the Director General.

Article 34

[*Closing of Certain Earlier Provisions:* 1. Of earlier Acts; 2. Of the Protocol to the Stockholm Act]

(1) Subject to Article 29^{bis} no country may ratify or accede to earlier Acts of this Convention once Articles 1 to 21 and the Appendix have entered into force.

(2) Once Articles 1 to 21 and the Appendix have entered into force, no country may make a declaration under Article 5 of the Protocol Regarding Developing Countries attached to the Stockholm Act.

Article 35

[*Duration of the Convention; Denunciation:* 1. Unlimited duration; 2. Possibility of denunciation; 3. Effective date of denunciation; 4. Moratorium on denunciation]

(1) This Convention shall remain in force without limitation as to time.

(2) Any country may denounce this Act by notification addressed to the Director General. Such denunciation shall constitute also denunciation of all earlier Acts and shall affect only the country making it, the Convention remaining in full force and effect as regards the other countries of the Union.

(3) Denunciation shall take effect one year after the day on which the Director General has received the notification.

(4) The right of denunciation provided by this Article shall not be exercised by any country before the expiration of five years from the date upon which it becomes a member of the Union.

Article 36

[Application of the Convention: 1. Obligation to adopt the necessary measures; 2. Time from which obligation exists]

(1) Any country party to this Convention undertakes to adopt, in accordance with its constitution, the measures necessary to ensure the application of this Convention.

(2) It is understood that, at the time a country becomes bound by this Convention, it will be in a position under its domestic law to give effect to the provisions of this Convention.

Article 37

[Final Clauses: 1. Languages of the Act; 2. Signature; 3. Certified copies; 4. Registration; 5. Notifications]

(1)

(a) This Act shall be signed in a single copy in the French and English languages and, subject to paragraph (2), shall be deposited with the Director General.

(b) Official texts shall be established by the Director General, after consultation with the interested Governments, in the Arabic, German, Italian, Portuguese and Spanish languages, and such other languages as the Assembly may designate.

(c) In case of differences of opinion on the interpretation of the various texts, the French text shall prevail.

(2) This Act shall remain open for signature until January 31, 1972. Until that date, the copy referred to in paragraph (1)(a) shall be deposited with the Government of the French Republic.

(3) The Director General shall certify and transmit two copies of the signed text of this Act to the Governments of all countries of the Union and, on request, to the Government of any other country.

(4) The Director General shall register this Act with the Secretariat of the United Nations.

(5) The Director General shall notify the Governments of all countries of the Union of signatures, deposits of instruments of ratification or accession and any declarations included in such instruments or made pursuant to Articles 28(1)(c), 30(2)(a) and (b), and 33(2), entry into force of any provisions of this Act, notifications of denunciation, and notifications pursuant to Articles 30(2)(c), 31(1) and (2), 33(3), and 38(1), as well as the Appendix.

Article 38

[Transitory Provisions: 1. Exercise of the "five-year privilege"; 2. Bureau of the Union, Director of the Bureau; 3. Succession of Bureau of the Union]

(1) Countries of the Union which have not ratified or acceded to this Act and which are not bound by Articles 22 to 26 of the Stockholm Act of this Convention may, until April 26, 1975, exercise, if they so desire, the rights provided under the said Articles as if they were bound by them. Any country desiring to exercise such rights shall give written notification to this effect to the Director General; this notification shall be effective on the date of its receipt. Such countries shall be deemed to be members of the Assembly until the said date.

(2) As long as all the countries of the Union have not become Members of the Organization, the International Bureau of the Organization shall also function as the Bureau of the Union, and the Director General as the Director of the said Bureau.

(3) Once all the countries of the Union have become Members of the Organization, the rights, obligations, and property, of the Bureau of the Union shall devolve on the International Bureau of the Organization.

APPENDIX

[SPECIAL PROVISIONS REGARDING DEVELOPING COUNTRIES]

Article I

[Faculties Open to Developing Countries: 1. Availability of certain faculties; declaration: 2. Duration of effect of declaration, 3. Cessation of developing country status; 4. Existing stocks of copies; 5. Declarations concerning certain territories; 6. Limits of reciprocity]

(1) Any country regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations which ratifies or accedes to this Act, of which this Appendix forms an integral part, and which, having regard to its economic situation and its social or cultural needs, does not consider itself immediately in a position to make provision for the protection of all the rights as provided for in this Act, may, by a notification deposited with the Director General at the time of depositing its instrument of ratification or accession or, subject to Article V(1)(c), at any time thereafter, declare that it will avail itself of the faculty provided for in Article II, or of the faculty provided for in Article III, or of both of those faculties. It may, instead of availing itself of the faculty provided for in Article II, make a declaration according to Article V(1)(a).

(2)

(a) Any declaration under paragraph (1) notified before the expiration of the period of ten years from the entry into force of Articles 1 to 21 and this Appendix according to Article 28(2) shall be effective until the expiration of the said period. Any such declaration may be renewed in whole or in part for periods of ten years each by a notification deposited with the Director General not more than fifteen months and not less than three months before the expiration of the ten-year period then running.

(b) Any declaration under paragraph (1) notified after the expiration of the period of ten years from the entry into force of Articles 1 to 21 and this Appendix according to Article 28(2) shall be effective until the expiration of the ten-year period then running. Any such declaration may be renewed as provided for in the second sentence of subparagraph (a).

(3) Any country of the Union which has ceased to be regarded as a developing country as referred to in paragraph (1) shall no longer be entitled to renew its declaration as provided in paragraph (2), and, whether or not it formally withdraws its declaration, such country shall be precluded from availing itself of the faculties referred to in paragraph (1) from the expiration of the ten-year period then running or from the expiration of a period of three years after it has ceased to be regarded as a developing country, whichever period expires later.

(4) Where, at the time when the declaration made under paragraph (1) or (2) ceases to be effective, there are copies in stock which were made under a license granted by virtue of this Appendix, such copies may continue to be distributed until their stock is exhausted.

(5) Any country which is bound by the provisions of this Act and which has deposited a declaration or a notification in accordance with Article 31(1) with respect to the application of this Act to a particular territory, the situation of which can be regarded as analogous to that of the countries referred to in paragraph (1), may, in respect of such territory, make the declaration referred to in paragraph (1) and the notification of renewal referred to in paragraph (2). As long as such declaration or notification remains in effect, the provisions of this Appendix shall be applicable to the territory in respect of which it was made.

(6)

(a) The fact that a country avails itself of any of the faculties referred to in paragraph (1) does not permit another country to give less protection to works of which the country of origin is the former country than it is obliged to grant under Articles 1 to 20.

(b) The right to apply reciprocal treatment provided for in Article 30(2)(b), second sentence, shall not, until the date on which the period applicable under Article I(3) expires, be exercised in respect of works the country of origin of which is a country which has made a declaration according to Article V(1)(a).

Article II

[*Limitations on the Right of Translation:* 1. Licenses grantable by competent authority; 2. to 4. Conditions allowing the grant of such licenses; 5. Purposes for which licenses may be granted; 6. Termination of licenses; 7. Works composed mainly of illustrations; 8. Works withdrawn from circulation; 9. Licenses for broadcasting organizations]

(1) Any country which has declared that it will avail itself of the faculty provided for in this Article shall be entitled, so far as works published in printed or analogous forms of reproduction are concerned, to substitute for the exclusive right of translation provided for in Article 8 a system of non-exclusive and non-transferable licenses, granted by the competent authority under the following conditions and subject to Article IV.

(2)

(a) Subject to paragraph (3), if, after the expiration of a period of three years, or of any longer period determined by the national legislation of the said country, commencing on the date of the first publication of the work, a translation of such work has not been published in a language in general use in that country by the owner of the right of translation, or with his authorization, any national of such country may obtain a license to make a translation of the work in the said language and publish the translation in printed or analogous forms of reproduction.

(b) A license under the conditions provided for in this Article may also be granted if all the editions of the translation published in the language concerned are out of print.

(3)

(a) In the case of translations into a language which is not in general use in one or more developed countries which are members of the Union, a period of one year shall be substituted for the period of three years referred to in paragraph (2)(a).

(b) Any country referred to in paragraph (1) may, with the unanimous agreement of the developed countries which are members of the Union and in which the same language is in general use, substitute, in the case of translations into that language, for the period of three years referred to in paragraph (2)(a) a shorter period as determined by such agreement but not less than one year. However, the provisions of the foregoing sentence shall not apply where the language in question is English, French or Spanish. The Director General shall be notified of any such agreement by the Governments which have concluded it.

(4)

(a) No license obtainable after three years shall be granted under this Article until a further period of six months has elapsed, and no license obtainable after one year shall be granted under this Article until a further period of nine months has elapsed

(i) from the date on which the applicant complies with the requirements mentioned in Article IV(1), or

(ii) where the identity or the address of the owner of the right of translation is unknown, from the date on which the applicant sends, as provided for in Article IV(2), copies of his application submitted to the authority competent to grant the license.

(b) If, during the said period of six or nine months, a translation in the language in respect of which the application was made is published by the owner of the right of translation or with his authorization, no license under this Article shall be granted.

(5) Any license under this Article shall be granted only for the purpose of teaching, scholarship or research.

(6) If a translation of a work is published by the owner of the right of translation or with his authorization at a price reasonably related to that normally charged in the country for comparable works, any license granted under this Article shall terminate if such translation is in the same language and with substantially the same content as the translation published under the license. Any copies already made before the license terminates may continue to be distributed until their stock is exhausted.

(7) For works which are composed mainly of illustrations, a license to make and publish a translation of the text and to reproduce and publish the illustrations may be granted only if the conditions of Article III are also fulfilled.

(8) No license shall be granted under this Article when the author has withdrawn from circulation all copies of his work.

(9)

(a) A license to make a translation of a work which has been published in printed or analogous forms of reproduction may also be granted to any broadcasting organization having its headquarters in a country referred to in paragraph (1), upon an application made to the competent authority of that country by the said organization, provided that all of the following conditions are met:

- (i) the translation is made from a copy made and acquired in accordance with the laws of the said country;
- (ii) the translation is only for use in broadcasts intended exclusively for teaching or for the dissemination of the results of specialized technical or scientific research to experts in a particular profession;
- (iii) the translation is used exclusively for the purposes referred to in condition (ii) through broadcasts made lawfully and intended for recipients on the territory of the said country, including broadcasts made through the medium of sound or visual recordings lawfully and exclusively made for the purpose of such broadcasts;
- (iv) all uses made of the translation are without any commercial purpose.

(b) Sound or visual recordings of a translation which was made by a broadcasting organization under a license granted by virtue of this paragraph may, for the purposes and subject to the conditions referred to in subparagraph (a) and with the agreement of that organization, also be used by any other broadcasting organization having its headquarters in the country whose competent authority granted the license in question.

(c) Provided that all of the criteria and conditions set out in subparagraph (a) are met, a license may also be granted to a broadcasting organization to translate any text incorporated in an audio-visual fixation where such fixation was itself prepared and published for the sole purpose of being used in connection with systematic instructional activities.

(d) Subject to subparagraphs (a) to (c), the provisions of the preceding paragraphs shall apply to the grant and exercise of any license granted under this paragraph.

Article III

[Limitation on the Right of Reproduction: 1. Licenses grantable by competent authority; 2. to 5. Conditions allowing the grant of such licenses; 6. Termination of licenses; 7. Works to which this Article applies]

(1) Any country which has declared that it will avail itself of the faculty provided for in this Article shall be entitled to substitute for the exclusive right of reproduction provided for in Article 9 a system of non-exclusive and non-transferable licenses, granted by the competent authority under the following conditions and subject to Article IV.

(2)

(a) If, in relation to a work to which this Article applies by virtue of paragraph (7), after the expiration of

- (i) the relevant period specified in paragraph (3), commencing on the date of first publication of a particular edition of the work, or
- (ii) any longer period determined by national legislation of the country referred to in paragraph (1), commencing on the same date,

copies of such edition have not been distributed in that country to the general public or in connection with systematic instructional activities, by the owner of the right of reproduction or with his authorization, at a price reasonably related to that normally charged in the country for comparable works, any national of such country may obtain a license to reproduce and publish such edition at that or a lower price for use in connection with systematic instructional activities.

(b) A license to reproduce and publish an edition which has been distributed as described in subparagraph (a) may also be granted under the conditions provided for in this Article if, after the expiration of the applicable period, no authorized copies of that edition have been on sale for a period of six months in

the country concerned to the general public or in connection with systematic instructional activities at a price reasonably related to that normally charged in the country for comparable works.

- (3) The period referred to in paragraph (2)(a)(i) shall be five years, except that
- (i) for works of the natural and physical sciences, including mathematics, and of technology, the period shall be three years;
 - (ii) for works of fiction, poetry, drama and music, and for art books, the period shall be seven years.

(4)

(a) No license obtainable after three years shall be granted under this Article until a period of six months has elapsed

- (i) from the date on which the applicant complies with the requirements mentioned in Article IV(1), or
- (ii) where the identity or the address of the owner of the right of reproduction is unknown, from the date on which the applicant sends, as provided for in Article IV(2), copies of his application submitted to the authority competent to grant the license.

(b) Where licenses are obtainable after other periods and Article IV(2) is applicable, no license shall be granted until a period of three months has elapsed from the date of the dispatch of the copies of the application.

(c) If, during the period of six or three months referred to in subparagraphs (a) and (b), a distribution as described in paragraph (2)(a) has taken place, no license shall be granted under this Article.

(d) No license shall be granted if the author has withdrawn from circulation all copies of the edition for the reproduction and publication of which the license has been applied for.

(5) A license to reproduce and publish a translation of a work shall not be granted under this Article in the following cases:

- (i) where the translation was not published by the owner of the right of translation or with his authorization, or
- (ii) where the translation is not in a language in general use in the country in which the license is applied for.

(6) If copies of an edition of a work are distributed in the country referred to in paragraph (1) to the general public or in connection with systematic instructional activities, by the owner of the right of reproduction or with his authorization, at a price reasonably related to that normally charged in the country for comparable works, any license granted under this Article shall terminate if such edition is in the same language and with substantially the same content as the edition which was published under the said license. Any copies already made before the license terminates may continue to be distributed until their stock is exhausted.

(7)

(a) Subject to subparagraph (b), the works to which this Article applies shall be limited to works published in printed or analogous forms of reproduction.

(b) This Article shall also apply to the reproduction in audio-visual form of lawfully made audio-visual fixations including any protected works incorporated therein and to the translation of any incorporated text into a language in general use in the country in which the license is applied for, always provided that the audio-visual fixations in question were prepared and published for the sole purpose of being used in connection with systematic instructional activities.

Article IV

[Provisions Common to Licenses Under Articles II and III: 1 and 2. Procedure; 3. Indication of author and title of work; 4. Exportation of copies; 5. Notice; 6. Compensation]

(1) A license under Article II or Article III may be granted only if the applicant, in accordance with the procedure of the country concerned, establishes either that he has requested, and has been denied, authorization by the owner of the right to make and publish the translation or to reproduce and publish the

edition, as the case may be, or that, after due diligence on his part, he was unable to find the owner of the right. At the same time as making the request, the applicant shall inform any national or international information center referred to in paragraph (2).

(2) If the owner of the right cannot be found, the applicant for a license shall send, by registered airmail, copies of his application, submitted to the authority competent to grant the license, to the publisher whose name appears on the work and to any national or international information center which may have been designated, in a notification to that effect deposited with the Director General, by the Government of the country in which the publisher is believed to have his principal place of business.

(3) The name of the author shall be indicated on all copies of the translation or reproduction published under a license granted under Article II or Article III. The title of the work shall appear on all such copies. In the case of a translation, the original title of the work shall appear in any case on all the said copies.

(4)

(a) No license granted under Article II or Article III shall extend to the export of copies, and any such license shall be valid only for publication of the translation or of the reproduction, as the case may be, in the territory of the country in which it has been applied for.

(b) For the purposes of subparagraph (a), the notion of export shall include the sending of copies from any territory to the country which, in respect of that territory, has made a declaration under Article I(5).

(c) Where a governmental or other public entity of a country which has granted a license to make a translation under Article II into a language other than English, French or Spanish sends copies of a translation published under such license to another country, such sending of copies shall not, for the purposes of subparagraph (a), be considered to constitute export if all of the following conditions are met:

- (i) the recipients are individuals who are nationals of the country whose competent authority has granted the license, or organizations grouping such individuals;
- (ii) the copies are to be used only for the purpose of teaching, scholarship or research;
- (iii) the sending of the copies and their subsequent distribution to recipients is without any commercial purpose; and
- (iv) the country to which the copies have been sent has agreed with the country whose competent authority has granted the license to allow the receipt, or distribution, or both, and the Director General has been notified of the agreement by the Government of the country in which the license has been granted.

(5) All copies published under a license granted by virtue of Article II or Article III shall bear a notice in the appropriate language stating that the copies are available for distribution only in the country or territory to which the said license applies.

(6)

(a) Due provision shall be made at the national level to ensure

- (i) that the license provides, in favour of the owner of the right of translation or of reproduction, as the case may be, for just compensation that is consistent with standards of royalties normally operating on licenses freely negotiated between persons in the two countries concerned, and
- (ii) payment and transmittal of the compensation: should national currency regulations intervene, the competent authority shall make all efforts, by the use of international machinery, to ensure transmittal in internationally convertible currency or its equivalent.

(b) Due provision shall be made by national legislation to ensure a correct translation of the work, or an accurate reproduction of the particular edition, as the case may be.

Article V

[*Alternative Possibility for Limitation of the Right of Translation*: 1. Regime provided for under the 1886 and 1896 Acts; 2. No possibility of change to regime under Article II; 3. Time limit for choosing the alternative possibility]

(1)

(a) Any country entitled to make a declaration that it will avail itself of the faculty provided for in Article II may, instead, at the time of ratifying or acceding to this Act:

- (i) if it is a country to which Article 30(2)(a) applies, make a declaration under that provision as far as the right of translation is concerned;
- (ii) if it is a country to which Article 30(2)(a) does not apply, and even if it is not a country outside the Union, make a declaration as provided for in Article 30(2)(b), first sentence.

(b) In the case of a country which ceases to be regarded as a developing country as referred to in Article I(1), a declaration made according to this paragraph shall be effective until the date on which the period applicable under Article I(3) expires.

(c) Any country which has made a declaration according to this paragraph may not subsequently avail itself of the faculty provided for in Article II even if it withdraws the said declaration.

(2) Subject to paragraph (3), any country which has availed itself of the faculty provided for in Article II may not subsequently make a declaration according to paragraph (1).

(3) Any country which has ceased to be regarded as a developing country as referred to in Article I(1) may, not later than two years prior to the expiration of the period applicable under Article I(3), make a declaration to the effect provided for in Article 30(2)(b), first sentence, notwithstanding the fact that it is not a country outside the Union. Such declaration shall take effect at the date on which the period applicable under Article I(3) expires.

Article VI

[Possibilities of applying, or admitting the application of, certain provisions of the Appendix before becoming bound by it: 1. Declaration; 2. Depository and effective date of declaration]

(1) Any country of the Union may declare, as from the date of this Act, and at any time before becoming bound by Articles 1 to 21 and this Appendix:

- (i) if it is a country which, were it bound by Articles 1 to 21 and this Appendix, would be entitled to avail itself of the faculties referred to in Article I(1), that it will apply the provisions of Article II or of Article III or of both to works whose country of origin is a country which, pursuant to (ii) below, admits the application of those Articles to such works, or which is bound by Articles 1 to 21 and this Appendix; such declaration may, instead of referring to Article II, refer to Article V;
- (ii) that it admits the application of this Appendix to works of which it is the country of origin by countries which have made a declaration under (i) above or a notification under Article I.

(2) Any declaration made under paragraph (1) shall be in writing and shall be deposited with the Director General. The declaration shall become effective from the date of its deposit.



WIPO-Administered Treaties

Contracting Parties > Berne Convention (Total Contracting Parties : 171)

Contracting Party	Signature	Instrument	In Force	Details
Albania		Accession: December 2, 1993	March 6, 1994	Details
Algeria		Accession: January 19, 1998	April 19, 1998	Details
Andorra		Accession: March 2, 2004	June 2, 2004	Details
Antigua and Barbuda		Accession: December 17, 1999	March 17, 2000	Details
Argentina		Accession: May 5, 1967	June 10, 1967	Details
Armenia		Accession: July 19, 2000	October 19, 2000	Details
Australia		Declaration of Continued Application: April 14, 1928	April 14, 1928	Details
Austria		Accession: September 11, 1920	October 1, 1920	Details
Azerbaijan		Accession: March 4, 1999	June 4, 1999	Details
Bahamas		Declaration of Continued Application: July 5, 1976	July 10, 1973	Details
Bahrain		Accession: November 29, 1996	March 2, 1997	Details
Bangladesh		Accession: February 4, 1999	May 4, 1999	Details
Barbados		Accession: March 16, 1983	July 30, 1983	Details
Belarus		Accession: September 12, 1997	December 12, 1997	Details

Belgium	September 9, 1886	Ratification: September 5, 1887	December 5, 1887	Details
Belize		Accession: March 17, 2000	June 17, 2000	Details
Benin		Declaration of Continued Application: January 3, 1961	August 1, 1960	Details
Bhutan		Accession: August 25, 2004	November 25, 2004	Details
Bolivia (Plurinational State of)		Accession: August 4, 1993	November 4, 1993	Details
Bosnia and Herzegovina		Declaration of Continued Application: June 2, 1993	March 1, 1992	Details
Botswana		Accession: January 15, 1998	April 15, 1998	Details
Brazil		Accession: February 6, 1922	February 9, 1922	Details
Brunei Darussalam		Accession: May 30, 2006	August 30, 2006	Details
Bulgaria		Accession: December 5, 1921	December 5, 1921	Details
Burkina Faso		Accession: April 26, 1963	August 19, 1963	Details
Burundi		Accession: January 12, 2016	April 12, 2016	Details
Cabo Verde		Accession: April 7, 1997	July 7, 1997	Details
Cameroon		Declaration of Continued Application: September 21, 1964	January 1, 1960	Details
Canada		Declaration of Continued Application: April 10, 1928	April 10, 1928	Details
Central African Republic		Accession: May 31, 1977	September 3, 1977	Details

Chad		Accession: August 4, 1971	November 25, 1971	Details
Chile		Accession: April 9, 1970	June 5, 1970	Details
China		Accession: July 10, 1992	October 15, 1992	Details
Colombia		Accession: December 4, 1987	March 7, 1988	Details
Comoros		Accession: January 17, 2005	April 17, 2005	Details
Congo		Declaration of Continued Application: May 8, 1962	August 15, 1960	Details
Costa Rica		Accession: March 3, 1978	June 10, 1978	Details
Côte d'Ivoire		Accession: July 8, 1961	January 1, 1962	Details
Croatia		Declaration / Notification of Succession: July 28, 1992	October 8, 1991	Details
Cuba		Accession: November 20, 1996	February 20, 1997	Details
Cyprus		Declaration of Continued Application: February 24, 1964	August 16, 1960	Details
Czech Republic		Declaration of Continued Application: December 18, 1992	January 1, 1993	Details
Democratic People's Republic of Korea		Accession: January 28, 2003	April 28, 2003	Details
Democratic Republic of the Congo		Declaration of Continued Application: October 8, 1963	June 30, 1960	Details
Denmark		Accession: June 13, 1903	July 1, 1903	Details

Djibouti		Accession: February 13, 2002	May 13, 2002	Details
Dominica		Accession: May 7, 1999	August 7, 1999	Details
Dominican Republic		Accession: September 24, 1997	December 24, 1997	Details
Ecuador		Accession: July 8, 1991	October 9, 1991	Details
Egypt		Accession: March 2, 1977	June 7, 1977	Details
El Salvador		Accession: November 18, 1993	February 19, 1994	Details
Equatorial Guinea		Accession: March 26, 1997	June 26, 1997	Details
Estonia		Accession: July 26, 1994	October 26, 1994	Details
Fiji		Declaration of Continued Application: December 1, 1971	October 10, 1970	Details
Finland		Accession: March 23, 1928	April 1, 1928	Details
France	September 9, 1886	Ratification: September 5, 1887	December 5, 1887	Details
Gabon		Accession: December 19, 1961	March 26, 1962	Details
Gambia		Accession: December 7, 1992	March 7, 1993	Details
Georgia		Accession: February 16, 1995	May 16, 1995	Details
Germany	September 9, 1886	Ratification: September 5, 1887	December 5, 1887	Details
Ghana		Accession: July 11, 1991	October 11, 1991	Details
Greece		Accession: November 9, 1920	November 9, 1920	Details
Grenada		Accession: June 22, 1998	September 22, 1998	Details

Guatemala		Accession: April 28, 1997	July 28, 1997	Details
Guinea		Accession: August 13, 1980	November 20, 1980	Details
Guinea-Bissau		Accession: April 18, 1991	July 22, 1991	Details
Guyana		Accession: July 25, 1994	October 25, 1994	Details
Haiti		Accession: October 11, 1995	January 11, 1996	Details
Holy See		Accession: July 19, 1935	September 12, 1935	Details
Honduras		Accession: October 24, 1989	January 25, 1990	Details
Hungary		Accession: February 14, 1922	February 14, 1922	Details
Iceland		Accession: June 30, 1947	September 7, 1947	Details
India		Declaration of Continued Application: April 23, 1928	April 1, 1928	Details
Indonesia		Accession: June 5, 1997	September 5, 1997	Details
Ireland		Accession: October 5, 1927	October 5, 1927	Details
Israel		Accession: December 14, 1949	March 24, 1950	Details
Italy	September 9, 1886	Ratification: September 5, 1887	December 5, 1887	Details
Jamaica		Accession: September 28, 1993	January 1, 1994	Details
Japan		Accession: April 18, 1899	July 15, 1899	Details
Jordan		Accession: April 28, 1999	July 28, 1999	Details
Kazakhstan		Accession: January 12, 1999	April 12, 1999	Details

Kenya		Accession: March 11, 1993	June 11, 1993	Details
Kuwait		Accession: September 2, 2014	December 2, 2014	Details
Kyrgyzstan		Accession: April 8, 1999	July 8, 1999	Details
Lao People's Democratic Republic		Accession: December 14, 2011	March 14, 2012	Details
Latvia		Accession: May 11, 1995	August 11, 1995	Details
Lebanon		Accession: February 19, 1946	September 30, 1947	Details
Lesotho		Accession: June 27, 1989	September 28, 1989	Details
Liberia		Accession: December 8, 1988	March 8, 1989	Details
Libya		Accession: June 28, 1976	September 28, 1976	Details
Liechtenstein		Accession: July 20, 1931	July 30, 1931	Details
Lithuania		Accession: September 14, 1994	December 14, 1994	Details
Luxembourg		Accession: June 20, 1888	June 20, 1888	Details
Madagascar		Declaration of Continued Application: February 11, 1966	January 1, 1966	Details
Malawi		Accession: July 12, 1991	October 12, 1991	Details
Malaysia		Accession: June 28, 1990	October 1, 1990	Details
Mali		Declaration of Continued Application: March 19, 1962	March 19, 1962	Details
Malta		Declaration of Continued Application: May 29, 1968	September 21, 1964	Details

Mauritania		Accession: October 16, 1972	February 6, 1973	Details
Mauritius		Accession: February 9, 1989	May 10, 1989	Details
Mexico		Accession: May 9, 1967	June 11, 1967	Details
Micronesia (Federated States of)		Accession: July 7, 2003	October 7, 2003	Details
Monaco		Accession: May 30, 1889	May 30, 1889	Details
Mongolia		Accession: December 12, 1997	March 12, 1998	Details
Montenegro		Declaration of Continued Application: December 4, 2006	June 3, 2006	Details
Morocco		Accession: June 16, 1917	June 16, 1917	Details
Mozambique		Accession: August 22, 2013	November 22, 2013	Details
Namibia		Declaration of Continued Application: September 21, 1993	March 21, 1990	Details
Nepal		Accession: October 11, 2005	January 11, 2006	Details
Netherlands		Accession: October 9, 1912	November 1, 1912	Details
New Zealand		Declaration of Continued Application: April 26, 1928	April 24, 1928	Details
Nicaragua		Accession: May 23, 2000	August 23, 2000	Details
Niger		Declaration of Continued Application: May 2, 1962	August 3, 1960	Details
Nigeria		Accession: June 10, 1993	September 14, 1993	Details

Norway		Accession: April 13, 1896	April 13, 1896	Details
Oman		Accession: April 14, 1999	July 14, 1999	Details
Pakistan		Accession: June 4, 1948	July 5, 1948	Details
Panama		Accession: March 8, 1996	June 8, 1996	Details
Paraguay		Accession: September 9, 1991	January 2, 1992	Details
Peru		Accession: May 20, 1988	August 20, 1988	Details
Philippines		Accession: June 29, 1950	August 1, 1951	Details
Poland		Accession: January 28, 1920	January 28, 1920	Details
Portugal		Accession: March 29, 1911	March 29, 1911	Details
Qatar		Accession: April 5, 2000	July 5, 2000	Details
Republic of Korea		Accession: May 21, 1996	August 21, 1996	Details
Republic of Moldova		Accession: August 1, 1995	November 2, 1995	Details
Romania		Accession: August 28, 1926	January 1, 1927	Details
Russian Federation		Accession: December 9, 1994	March 13, 1995	Details
Rwanda		Accession: November 3, 1983	March 1, 1984	Details
Saint Kitts and Nevis		Accession: January 3, 1995	April 9, 1995	Details
Saint Lucia		Accession: May 21, 1993	August 24, 1993	Details
Saint Vincent and the Grenadines		Accession: May 29, 1995	August 29, 1995	Details
Samoa		Accession: April 21, 2006	July 21, 2006	Details

Sao Tome and Principe		Accession: March 14, 2016	June 14, 2016	Details
Saudi Arabia		Accession: December 11, 2003	March 11, 2004	Details
Senegal		Accession: June 30, 1962	August 25, 1962	Details
Serbia		Declaration of Continued Application: September 19, 2006	April 27, 1992	Details
Singapore		Accession: September 21, 1998	December 21, 1998	Details
Slovakia		Declaration of Continued Application: December 30, 1992	January 1, 1993	Details
Slovenia		Declaration of Continued Application: June 12, 1992	June 25, 1991	Details
South Africa		Declaration of Continued Application: October 3, 1928	October 3, 1928	Details
Spain	September 9, 1886	Ratification: September 5, 1887	December 5, 1887	Details
Sri Lanka		Declaration of Continued Application: July 20, 1959	February 4, 1948	Details
Sudan		Accession: September 28, 2000	December 28, 2000	Details
Suriname		Accession: November 16, 1976	February 23, 1977	Details
Swaziland		Accession: September 14, 1998	December 14, 1998	Details
Sweden		Accession: July 8, 1904	August 1, 1904	Details
Switzerland	September 9, 1886	Ratification: September 5, 1887	December 5, 1887	Details

Syrian Arab Republic		Accession: March 11, 2004	June 11, 2004	Details
Tajikistan		Accession: December 9, 1999	March 9, 2000	Details
Thailand		Accession: June 17, 1931	July 17, 1931	Details
the former Yugoslav Republic of Macedonia		Declaration / Notification of Succession: July 23, 1993	September 8, 1991	Details
Togo		Accession: January 28, 1975	April 30, 1975	Details
Tonga		Accession: March 14, 2001	June 14, 2001	Details
Trinidad and Tobago		Accession: May 16, 1988	August 16, 1988	Details
Tunisia	September 9, 1886	Ratification: September 5, 1887	December 5, 1887	Details
Turkey		Accession: October 27, 1951	January 1, 1952	Details
Turkmenistan		Accession: February 29, 2016	May 29, 2016	Details
Ukraine		Accession: July 25, 1995	October 25, 1995	Details
United Arab Emirates		Accession: April 14, 2004	July 14, 2004	Details
United Kingdom	September 9, 1886	Ratification: September 5, 1887	December 5, 1887	Details
United Republic of Tanzania		Accession: April 25, 1994	July 25, 1994	Details
United States of America		Accession: November 16, 1988	March 1, 1989	Details
Uruguay		Accession: June 7, 1967	July 10, 1967	Details
Uzbekistan		Accession: January 19, 2005	April 19, 2005	Details
Vanuatu		Accession: September 27, 2012	December 27, 2012	Details

Venezuela (Bolivarian Republic of)		Accession: September 20, 1982	December 30, 1982	Details
Viet Nam		Accession: July 26, 2004	October 26, 2004	Details
Yemen		Accession: April 14, 2008	July 14, 2008	Details
Zambia		Accession: September 13, 1991	January 2, 1992	Details
Zimbabwe		Declaration / Notification of Succession: September 18, 1981	April 18, 1980	Details

Exhibit DIDP A56

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Exhibit DIDP A57



New gTLD Program
Community Priority Evaluation Report
Report Date: 11 June 2014

Application ID:	1-1032-95136
Applied-for String:	HOTEL
Applicant Name:	HOTEL Top-Level-Domain s.a.r.l

Overall Community Priority Evaluation Summary

Community Priority Evaluation Result	Prevailed
<p>Thank you for your participation in the New gTLD Program. After careful consideration and extensive review of the information provided in your application, including documents of support, the Community Priority Evaluation panel determined that the application met the requirements specified in the Applicant Guidebook. Your application prevailed in Community Priority Evaluation.</p>	

Panel Summary

Overall Scoring	15 Point(s)	
<u>Criteria</u>	<u>Earned</u>	<u>Achievable</u>
#1: Community Establishment	4	4
#2: Nexus between Proposed String and Community	3	4
#3: Registration Policies	4	4
#4: Community Endorsement	4	4
Total	15	16
Minimum Required Total Score to Pass 14		

Criterion #1: Community Establishment	4/4 Point(s)
1-A Delineation	2/2 Point(s)
<p>The Community Priority Evaluation panel determined that the community as identified in the application met the criterion for Delineation as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the community is clearly delineated, organized and pre-existing. The application received the maximum score of 2 points under criterion 1-A: Delineation.</p> <p><u>Delineation</u> Two conditions must be met to fulfill the requirements for delineation: there must be a clear, straightforward membership definition, and there must be awareness and recognition of a community (as defined by the applicant) among its members.</p> <p>The community defined in the application (“HOTEL”) is:</p>	

The .hotel namespace will exclusively serve the global Hotel Community. The string “Hotel” is an internationally agreed word that has a clear definition of its meaning: According to DIN EN ISO 18513:2003, “A hotel is an establishment with services and additional facilities where accommodation and in most cases meals are available.” Therefore only entities which fulfil this definition are members of the Hotel Community and eligible to register a domain name under .hotel. .hotel domains will be available for registration to all companies which are member of the Hotel Community on a local, national and international level. The registration of .hotel domain names shall be dedicated to all entities and organizations representing such entities which fulfil the ISO definition quoted above:

1. Individual Hotels
2. Hotel Chains
3. Hotel Marketing organizations representing members from 1. and/or 2.
4. International, national and local Associations representing Hotels and Hotel Associations representing members from 1. and/or 2.
5. Other Organizations representing Hotels, Hotel Owners and other solely Hotel related organizations representing on members from 1. and/or 2.

These categories are a logical alliance of members, with the associations and the marketing organizations maintaining membership lists, directories and registers that can be used, among other public lists, directories and registers, to verify eligibility against the .hotel Eligibility requirements.

This community definition shows a clear and straightforward membership. The community is clearly defined because membership requires entities/associations to fulfill the ISO criterion for what constitutes a hotel. Furthermore, association with the hotel sector can be verified through membership lists, directories and registers.

In addition, the community as defined in the application has awareness and recognition among its members. This is because the community is defined in terms of its association with the hotel industry and the provision of specific hotel services.

The Community Priority Evaluation panel determined that the community as defined in the application satisfies both the conditions to fulfill the requirements for Delineation.

Organization

Two conditions need to be met to fulfill the requirements for organization: there must be at least one entity mainly dedicated to the community, and there must be documented evidence of community activities.

The community as defined in the application has at least one entity mainly dedicated to the community. There are, in fact, several entities that are mainly dedicated to the community, such as the International Hotel and Restaurant Association (IH&RA), Hospitality Europe (HOTREC), the American Hotel & Lodging Association (AH&LA) and China Hotel Association (CHA), among others. According to the application,

Among those associations the International Hotel and Restaurant Association (IH&RA) is the oldest one, which was founded in 1869/1946, is the only global business organization representing the hotel industry worldwide and it is the only global business organization representing the hospitality industry (hotels and restaurants) worldwide. Officially recognized by United Nations as the voice of the private sector globally, IH&RA monitors and lobbies all international agencies on behalf of this industry. Its members represent more than 300,000 hotels and thereby the majority of hotels worldwide.

The community as defined in the application has documented evidence of community activities. This is confirmed by detailed information on IH&RA’s website, as well as information on other hotel association websites.

The Community Priority Evaluation panel determined that the community as defined in the application

satisfies both the conditions to fulfill the requirements for Organization.

Pre-existence

To fulfill the requirements for pre-existence, the community must have been active prior to September 2007 (when the new gTLD policy recommendations were completed).

The community as defined in the application was active prior to September 2007. Hotels have existed in their current form since the 19th century, and the oldest hotel association is IH&RA, which, according to the entity's website, was first established in 1869 as the All Hotelmen Alliance. The organization has been operating under its present name since 1997.

The Community Priority Evaluation panel determined that the community as defined in the application fulfills the requirements for Pre-existence.

1-B Extension

2/2 Point(s)

The Community Priority Evaluation panel determined that the community as identified in the application met the criterion for Extension specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application demonstrates considerable size and longevity for the community. The application received a maximum score of 2 points under criterion 1-B: Extension.

Size

Two conditions must be met to fulfill the requirements for size: the community must be of considerable size and must display an awareness and recognition of a community among its members.

The community as defined in the application is of a considerable size. The community for .HOTEL as defined in the application is large in terms of the number of members. According to the applicant, "the global Hotel Community consists of more than 500,000 hotels and their associations".

In addition, the community as defined in the application has awareness and recognition among its members because the community is defined in terms of association with the provision of hotel services.

The Community Priority Evaluation panel determined that the community as defined in the application satisfies both the conditions to fulfill the requirements for Size.

Longevity

Two conditions must be met to fulfill the requirements for longevity: the community must demonstrate longevity and must display an awareness and recognition of a community among its members.

The community as defined in the application demonstrates longevity. The pursuits of the .HOTEL community are of a lasting, non-transient nature.

In addition, the community as defined in the application has awareness and recognition among its members because the community is defined in terms of association with the provision of hotel services.

The Community Priority Evaluation panel determined that the community as defined in the application satisfies both the conditions to fulfill the requirements for Longevity.

Criterion #2: Nexus between Proposed String and Community

3/4 Point(s)

2-A Nexus

2/3 Point(s)

The Community Priority Evaluation panel determined that the application met the criterion for Nexus as

specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook. The string identifies the name of the community, without over-reaching substantially beyond the community. The application received a score of 2 out of 3 points under criterion 2-A: Nexus.

To receive the maximum score for Nexus, the applied-for string must match the name of the community or be a well-known short-form or abbreviation of the community name. To receive a partial score for Nexus, the applied-for string must identify the community. “Identify” means that the applied-for string should closely describe the community or the community members, without over-reaching substantially beyond the community.

The applied-for string (.HOTEL) identifies the name of the community. According to the applicant,

The proposed top-level domain name, “HOTEL”, is a widely accepted and recognized string that globally identifies the Hotel Community and especially its members, the hotels.

The string nexus closely describes the community, without overreaching substantially beyond the community. The string identifies the name of the core community members (i.e. hotels and associations representing hotels). However, the community also includes some entities that are related to hotels, such as hotel marketing associations that represent hotels and hotel chains and which may not be automatically associated with the gTLD. However, these entities are considered to comprise only a small part of the community. Therefore, the string identifies the community, but does not over-reach substantially beyond the community, as the general public will generally associate the string with the community as defined by the applicant.

The Community Priority Evaluation panel determined that the applied-for string identifies the name of the community as defined in the application. It therefore partially meets the requirements for Nexus.

2-B Uniqueness

1 / 1 Point(s)

The Community Priority Evaluation panel determined that the application met the criterion for Uniqueness as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the string has no other significant meaning beyond identifying the community described in the application. The application received a maximum score of 1 point under criterion 2-B: Uniqueness.

To fulfill the requirements for Uniqueness, the string .HOTEL must have no other significant meaning beyond identifying the community described in the application. The Community Priority Evaluation panel determined that the applied-for string satisfies the condition to fulfill the requirements for Uniqueness.

Criterion #3: Registration Policies

4/4 Point(s)

3-A Eligibility

1 / 1 Point(s)

The Community Priority Evaluation panel determined that the application met the criterion for Eligibility, as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as eligibility is restricted to community members. The application received a maximum score of 1 point under criterion 3-A: Eligibility.

To fulfill the requirements for Eligibility, the registration policies must restrict the eligibility of prospective registrants to community members. The application demonstrates adherence to this requirement by restricting eligibility to the narrow category of hotels and their organizations as defined by ISO 18513, and verifying this association through membership lists, directories and registries. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Eligibility.

3-B Name Selection	<i>1/1 Point(s)</i>
<p>The Community Priority Evaluation panel determined that the application met the criterion for Name Selection as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as name selection rules are consistent with the articulated community-based purpose of the applied-for gTLD. The application received a maximum score of 1 point under criterion 3-B: Name Selection.</p> <p>To fulfill the requirements for Name Selection, the registration policies for name selection for registrants must be consistent with the articulated community-based purpose of the applied-for gTLD. The application demonstrates adherence to this requirement by specifying that eligible applicants will be entitled to register any domain name that is not reserved or registered at the time of their registration submission. Furthermore, the registry has set aside a list of domain names that will be reserved for the major hotel industry brands and sub-brands. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Name Selection.</p>	
3-C Content and Use	<i>1/1 Point(s)</i>
<p>The Community Priority Evaluation panel determined that the application met the criterion for Content and Use as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the rules for content and use are consistent with the articulated community-based purpose of the applied-for TLD. The application received a maximum score of 1 point under criterion 3-C: Content and Use.</p> <p>To fulfill the requirements for Content and Use, the registration policies must include rules for content and use for registrants that are consistent with the articulated community-based purpose of the applied-for gTLD. The application demonstrates adherence to this requirement by specifying that each domain name must display hotel community-related content relevant to the domain name, etc. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Content and Use.</p>	
3-D Enforcement	<i>1/1 Point(s)</i>
<p>The Community Priority Evaluation panel determined that the application met the criterion for Enforcement as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application provided specific enforcement measures as well as appropriate appeal mechanisms. The application received a maximum score of 1 point under criterion 3-D: Enforcement.</p> <p>Two conditions must be met to fulfill the requirements for Enforcement: the registration policies must include specific enforcement measures constituting a coherent set, and there must be appropriate appeals mechanisms. The applicant outlined policies that include specific enforcement measures constituting a coherent set. The applicant's registry will establish a process for questions and challenges that could arise from registrations and will conduct random checks on registered domains. There is also an appeals mechanism, whereby a registrant has the right to request a review of a decision to revoke its right to hold a domain name. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies both conditions to fulfill the requirements for Enforcement.</p>	

Criterion #4: Community Endorsement	4/4 Point(s)
4-A Support	<i>2/2 Point(s)</i>
<p>The Community Priority Evaluation panel determined that the application fully met the criterion for Support</p>	

specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the applicant had documented support from the recognized community institution(s)/member organization(s). The application received a maximum score of 2 points under criterion 4-A: Support.

To receive the maximum score for Support, the applicant is, or has documented support from, the recognized community institution(s)/member organization(s), or has otherwise documented authority to represent the community. “Recognized” means the institution(s)/organization(s) that, through membership or otherwise, are clearly recognized by the community members as representative of the community. To receive a partial score for Support, the applicant must have documented support from at least one group with relevance. “Relevance” refers to the communities explicitly and implicitly addressed.

The Community Priority Evaluation panel determined that the applicant was not the recognized community institution(s)/member organization(s). However, the applicant possesses documented support from the recognized community institution(s)/member organization(s), and this documentation contained a description of the process and rationale used in arriving at the expression of support. These groups constitute the recognized institutions to represent the community, and represent a majority of the overall community as defined by the applicant. The Community Priority Evaluation Panel determined that the applicant fully satisfies the requirements for Support.

4-B Opposition

2/2 Point(s)

The Community Priority Evaluation panel determined that the application met the criterion for Opposition specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application did not receive any relevant opposition. The application received the maximum score of 2 points under criterion 4-B: Opposition.

To receive the maximum score for Opposition, the application must not have received any opposition of relevance. To receive a partial score for Opposition, the application must have received relevant opposition from, at most, one group of non-negligible size. According to the Applicant Guidebook, “To be taken into account as relevant opposition, such objections or comments must be of a reasoned nature. Sources of opposition that are clearly spurious, unsubstantiated, made for a purpose incompatible with competition objectives, or filed for the purpose of obstruction will not be considered relevant”. “Relevance” and “relevant” refers to the communities explicitly and implicitly addressed.

The application received letters of opposition, which were determined not to be relevant, as they were either from groups of negligible size, or were from entities/communities that do not have an association with the applied for string. The Community Priority Evaluation Panel determined that these letters therefore were not relevant because they are not from the recognized community institutions/member organizations, nor were they from communities/entities that have an association with the hotel community. In addition, some letters were filed for the purpose of obstruction, and were therefore not considered relevant. The Community Priority Evaluation Panel determined that the applicant satisfies the requirements for Opposition.

Disclaimer: Please note that these Community Priority Evaluation results do not necessarily determine the final result of the application. In limited cases the results might be subject to change. These results do not constitute a waiver or amendment of any provision of the Applicant Guidebook or the Registry Agreement. For updated application status and complete details on the program, please refer to the Applicant Guidebook and the ICANN New gTLDs microsite at <newgtlds.icann.org>.

Exhibit DIDP A58

New gTLD Program
Community Priority Evaluation Report
 Report Date: 10 September 2014

Application ID:	1-1083-39123
Applied-for String:	RADIO
Applicant Name:	European Broadcasting Union

Overall Community Priority Evaluation Summary

Community Priority Evaluation Result	Prevailed
<p>Thank you for your participation in the New gTLD Program. After careful consideration and extensive review of the information provided in your application, including documents of support, the Community Priority Evaluation panel determined that the application met the requirements specified in the Applicant Guidebook. Your application prevailed in Community Priority Evaluation.</p>	

Panel Summary

Overall Scoring	14 Point(s)	
<u>Criteria</u>	<u>Earned</u>	<u>Achievable</u>
#1: Community Establishment	3	4
#2: Nexus between Proposed String and Community	3	4
#3: Registration Policies	4	4
#4: Community Endorsement	4	4
Total	14	16
Minimum Required Total Score to Pass <u>14</u>		

Criterion #1: Community Establishment	3/4 Point(s)
1-A Delineation	1/2 Point(s)
<p>The Community Priority Evaluation panel determined that the community as defined in the application partially met the criterion for Delineation as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as it is clearly delineated and pre-existing, but, as defined, is not sufficiently organized. The application received a score of 1 out of 2 points under criterion 1-A: Delineation.</p> <p><u>Delineation</u> Two conditions must be met to fulfill the requirements for delineation: there must be a clear, straightforward membership definition and there must be awareness and recognition of a community (as defined by the applicant) among its members.</p> <p>The community defined in the application (“RADIO”) is, as follows:</p> <p style="padding-left: 40px;">The Radio industry is composed of a huge number of very diverse radio broadcasters: public and private; international and local; commercial or community-oriented; general purpose, or sector-</p>	

specific; talk or music; big and small. All licensed radio broadcasters are part of the .radio community, and so are the associations, federations and unions they have created (such as the EBU, applicant for the .radio TLD with the support of its sister Unions; see below for more details on Radio industry representativeness). Also included are the radio professionals, those making radio the fundamental communications tool that it is.

However, the Radio industry keeps evolving and today, many stations are not only broadcasting in the traditional sense, but also webcasting and streaming their audio content via the Internet. Some are not broadcasters in the traditional sense: Internet radios are also part of the Radio community, and as such will be acknowledged by .radio TLD, as will podcasters. In all cases certain minimum standards on streaming or updating schedules will apply.

The .radio community also comprises the often overlooked amateur radio, which uses radio frequencies for communications to small circles of the public. Licensed radio amateurs and their clubs will also be part of the .radio community.

Finally, the community includes a variety of companies providing specific services or products to the Radio industry.

This community definition shows a clear and straightforward membership and is therefore well defined. Association with, and membership in, the radio community can be verified through licenses held by professional and amateur radio broadcasters; membership in radio-related associations, clubs and unions; internet radios that meet certain minimum standards; radio-related service providers that can be identified through trademarks; and radio industry partners and providers.

In addition, the community as defined in the application has awareness and recognition among its members. This is because the community as defined consists of entities and individuals that are in the radio industry¹, and as participants in this clearly defined industry, they have an awareness and recognition of their inclusion in the industry community. In addition, membership in the (industry) community is sufficiently structured, as the requirements listed in the community definition above show.

The Community Priority Evaluation panel determined that the community as defined in the application satisfies both of the conditions to fulfill the requirements for Delineation.

Organization

Two conditions need to be met to fulfill the requirements for organization: there must be at least one entity mainly dedicated to the community, and there must be documented evidence of community activities.

The community as defined in the application does not have one entity mainly dedicated to the community. There are several entities that represent parts of the radio community, such as the World Broadcasting Unions (WBU), the Association for International Broadcasting, the Association of European Radios, the Association Mondiale des Radiodiffuseurs Communautaires, the European Association of Television and Radio Sales Houses, the Union Radiophonique et Télévisuelle Internationale, and the Internet Media Device Alliance. Based on the Panel's research, these entities only represent certain segments of the community as defined by the applicant. For example, the WBU is the umbrella organization for eight regional broadcasting unions, but does not represent amateur radio. There is no entity that represents all of the radio member categories outlined by the applicant. According to the application:

¹ The radio industry is included in the North American Industrial Classification System (NAICS). It defines this industry as, "Establishments primarily engaged in broadcasting aural programs by radio to the public. Included in this industry are commercial, religious, educational, and other radio stations. Also included here are establishments primarily engaged in radio broadcasting and which produce radio program materials." This definition of the industry includes the vast majority of entities included in the defined community.

The Radio community is structured mainly under 8 world broadcasting Unions which represent radio broadcasting interests at the World Radio Frequencies Conferences and coordinate their work through the WBU, as described in response to Question 11H.

The WBU works through a number of permanent working commissions, such as the Technical Committee, which deals with technical standardization; the Sports Committee, dealing with the coverage of world sports events (such as Olympic Games and football world championships); ISOG (International Satellite Operations Group), dealing with satellite contribution circuit issues. Besides the WBU, other specialized broadcasting associations represent specific radio interests, such as the already mentioned AMARC and AER.

According to the AGB, "organized" implies that there is at least one entity mainly dedicated to the community, with documented evidence of community activities." As described above, there is no entity(ies) that represents all of the radio member categories outlined by the applicant. An "organized" community is one that is represented by at least one entity that encompasses the entire community as defined by the applicant. For example, there should be at least one entity that encompasses and organizes: "radio broadcasters, the associations, federations and unions they have created, radio professionals, Internet radios, podcasters, amateur radio (and their clubs), and companies providing specific services or products to the Radio industry." Based on information provided in the application materials and the Panel's research, there is no such entity that organizes the community defined in the application. Therefore, as there is no entity that is mainly dedicated to the community as defined in the .RADIO application, as the Panel has determined, there cannot be documented evidence of community activities.

The Community Priority Evaluation panel determined that the community as defined in the application does not satisfy either of the two conditions to fulfill the requirements for organization.

Pre-existence

To fulfill the requirements for pre-existence, the community must have been active prior to September 2007 (when the new gTLD policy recommendations were completed).

The community as defined in the application was active prior to September 2007. Radio broadcast technologies have existed in one form or another for nearly a century. As the industry has evolved² through the uptake of new technologies, so too has industry membership. For example, in the early years of the industry, members of the radio industry included radio professionals, broadcasters and companies providing products to the industry, amongst others. With the advent of the internet and other radio technologies, the community has expanded to include Internet radios, podcasters and others. The Panel acknowledges that not all elements of the community defined in the application have been in existence since the dawn of the industry; however, the proposed community segments have been active prior to September 2007.

The Community Priority Evaluation panel determined that the community as defined in the application fulfills the requirements for Pre-existence.

1-B Extension

2/2 Point(s)

The Community Priority Evaluation panel determined that the community as identified in the application met the criterion for Extension specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application demonstrates considerable size and longevity for the community. The application received a maximum score of 2 points under criterion 1-B: Extension.

² According to the US Federal Communications Commission, in 1906 the first program including speech and music was transmitted over the radio; by 1912 the US government put in place regulations for radio stations and operators. See http://transition.fcc.gov/omd/history/radio/documents/short_history.pdf

Size

Two conditions must be met to fulfill the requirements for size: the community must be of considerable size, and it must display an awareness and recognition of a community among its members.

The community as defined in the application is of a considerable size. The community for .RADIO as defined in the application is large in terms of the number of members. According to the application:

Currently, there are about 50,000 radio stations worldwide, according to the figure published by CIA World Facts on their website. In addition, there are at least another 50,000 web radios.

Moreover, the community as defined in the application has awareness and recognition among its members. This is because the community as defined consists of entities and individuals that are in the radio industry³, and as participants in this clearly defined industry, they have an awareness and recognition of their inclusion in the industry community.

The Community Priority Evaluation panel determined that the community as defined in the application satisfies both the conditions to fulfill the requirements for Size.

Longevity

Two conditions must be met to fulfill the requirements for longevity: the community must demonstrate longevity and it must display an awareness and recognition of a community among its members.

The community as defined in the application demonstrates longevity. The pursuits of the .RADIO community are of a lasting, non-transient nature. Radio services have, as noted, existed for more than a century and are likely to continue, although technological advances may change form and function.

Moreover, as mentioned previously, the community as defined in the application has awareness and recognition among its members. This is because the community as defined consists of entities and individuals that are in the radio industry⁴, and as participants in this clearly defined industry, they have an awareness and recognition of their inclusion in the industry community.

The Community Priority Evaluation panel determined that the community as defined in the application satisfies both the conditions to fulfill the requirements for Longevity.

Criterion #2: Nexus between Proposed String and Community

3/4 Point(s)

2-A Nexus

2/3 Point(s)

The Community Priority Evaluation panel determined that the application partially met the criterion for Nexus as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook. The string “identifies” the name of the community as defined in the application, without over-reaching substantially beyond the community, but it does not “match” the name of the community as defined. The application received a score of 2 out of 3 points under criterion 2-A: Nexus.

To receive the maximum score for Nexus, the applied-for string must “match” the name of the community or be a well-known short-form or abbreviation of the community name. To receive a partial score for Nexus, the applied-for string must “identify” the community. “Identify” means that the applied-for string should closely describe the community or the community members, without over-reaching substantially beyond the community.

The applied-for string (.RADIO) identifies the name of the community. According to the applicant:

³ Ibid

⁴ Ibid

Radio means the operators, services and technologies defined here as the Radio community. Radio also means, and is, audio broadcasting. The station broadcasting or streaming that audio content is radio, and the company performing the audio broadcasting is radio. A radio is the receiver used by the listener. Radio is the name everybody uses to refer to the entire industry, and the whole community.

With the advent of streaming via the Internet and the continuous delivery of audio content to broad groups of listeners, we now often refer to the new services as web, net or Internet radio.

The Radio community could not find any other name, even vaguely appropriate, to designate the TLD for its community. .radio is the TLD for the Radio community and could not be anything else. It is perfectly tuned.

The string closely describes the community, without overreaching substantially beyond the community. The string identifies the name of the core community members (i.e. licensed professional and amateur radio broadcasters and their associated unions and clubs, and Internet radio). However, the community, as defined in the application, also includes some entities that are only tangentially related to radio, such as companies providing specific services or products to radio broadcasting organizations and which may not be automatically associated with the gTLD string. For example, network interface equipment and software providers to the industry, based on the Panel's research, would not likely be associated with the word RADIO⁵. However, these entities are considered to comprise only a small part of the community. Since only a small part of the community as defined by the applicant extends beyond the reference of the string, it is not a substantial over-reach. Therefore, the string identifies the community, as the public will generally associate the string with the community as defined by the applicant.

The Community Priority Evaluation panel determined that the applied-for string identifies the name of the community as defined in the application. It therefore partially meets the requirements for Nexus.

2-B Uniqueness

1/1 Point(s)

The Community Priority Evaluation panel determined that the application met the criterion for Uniqueness as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the string has no other significant meaning beyond identifying the community described in the application. The application received a maximum score of 1 point under criterion 2-B: Uniqueness.

To fulfill the requirements for Uniqueness, the string must have no other significant meaning beyond identifying the community described in the application. The string as defined in the application demonstrates uniqueness, as the string does not have any other meaning beyond identifying the community described in the application. The Community Priority Evaluation panel determined that the applied-for string satisfies the condition to fulfill the requirements for Uniqueness.

Criterion #3: Registration Policies

4/4 Point(s)

3-A Eligibility

1/1 Point(s)

The Community Priority Evaluation panel determined that the application met the criterion for Eligibility as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as eligibility

⁵ There are numerous definitions of the word radio. These include: (a) the transmission and reception of electromagnetic waves of radio frequency, especially those carrying sound messages; (b) the activity or industry of broadcasting sound programs to the public; (c) an apparatus for receiving radio programs. Definition (b) closely reflects the core community as defined by the applicant, which includes: radio broadcasters, the associations, federations and unions they have created, radio professionals, Internet radios, podcasters, and amateur radio (and their clubs). However, the community members that provide "specific services or products to the Radio industry", such as software or interface equipment, would not be associated with the term "radio" by the general public.

is restricted to community members. The application received a maximum score of 1 point under criterion 3-A: Eligibility.

To fulfill the requirements for Eligibility, the registration policies must restrict the eligibility of prospective registrants to community members. The application demonstrates adherence to this requirement by restricting eligibility to the community categories mentioned in Delineation, and additionally requiring that the registered domain name be “accepted as legitimate; and beneficial to the cause and values of the radio industry; and commensurate with the role and importance of the registered domain name; and in good faith at the time of registration and thereafter.” (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Eligibility.

3-B Name Selection

1/1 Point(s)

The Community Priority Evaluation panel determined that the application met the criterion for Name Selection as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as name selection rules are consistent with the articulated community-based purpose of the applied-for TLD. The application received a maximum score of 1 point under criterion 3-B: Name Selection.

To fulfill the requirements for Name Selection, the registration policies for name selection for registrants must be consistent with the articulated, community-based purpose of the applied-for gTLD. The application demonstrates adherence to this requirement by specifying that the registrant’s nexus with the radio community and use of the domain must be commensurate with the role of the registered domain, and with the role and importance of the domain name based on the meaning an average user would reasonably assume in the context of the domain name. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Name Selection.

3-C Content and Use

1/1 Point(s)

The Community Priority Evaluation panel determined that the application met the criterion for Content and Use as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the rules for content and use are consistent with the articulated community-based purpose of the applied-for TLD. The application received a maximum score of 1 point under criterion 3-C: Content and Use.

To fulfill the requirements for Content and Use, the registration policies must include rules for content and use for registrants that are consistent with the articulated community-based purpose of the applied-for gTLD. The application demonstrates adherence to this requirement by specifying that use of the domain name must be beneficial to the cause and values of the radio industry, and commensurate with the role and importance of the registered domain name, etc. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies the condition to fulfill the requirements for Content and Use.

3-D Enforcement

1/1 Point(s)

The Community Priority Evaluation panel determined that the application met the criterion for Enforcement as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application provided specific enforcement measures as well as appropriate appeal mechanisms. The application received a maximum score of 1 point under criterion 3-D: Enforcement.

Two conditions must be met to fulfill the requirements for Enforcement: the registration policies must include specific enforcement measures constituting a coherent set, and there must be appropriate appeals mechanisms. The applicant outlined policies that include specific enforcement measures constituting a coherent set. The enforcement program is based on random checks, and if the content or use of an existing domain name shows bad faith, it will be suspended. There is also an appeals mechanism, which is managed in

the first instance by the registry, with appeals heard by an independent, alternative dispute resolution provider. (Comprehensive details are provided in Section 20e of the applicant documentation). The Community Priority Evaluation panel determined that the application satisfies both conditions to fulfill the requirements for Enforcement.

Criterion #4: Community Endorsement	4/4 Point(s)
4-A Support	2/2 Point(s)
<p>The Community Priority Evaluation panel determined that the application fully met the criterion for Support specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the applicant had documented support from the recognized community institution(s)/member organization(s). The application received a maximum score of 2 points under criterion 4-A: Support.</p> <p>To receive the maximum score for Support, the applicant is, or has documented support from, the recognized community institution(s)/member organization(s), or has otherwise documented authority to represent the community. “Recognized” means those institution(s)/organization(s) that, through membership or otherwise, are clearly recognized by the community members as representative of the community. To receive a partial score for Support, the applicant must have documented support from at least one group with relevance. “Relevance” refers to the communities explicitly and implicitly addressed.</p> <p>The Community Priority Evaluation panel determined that the applicant was not the recognized community institution(s)/member organization(s). However, the applicant possesses documented support from institutions/organizations representing a majority of the community addressed, and this documentation contained a description of the process and rationale used in arriving at the expression of support. The applicant received support from a broad range of recognized community institutions/member organizations, which represented different segments of the community as defined by the applicant. These entities represented a majority of the overall community. The Community Priority Evaluation Panel determined that the applicant fully satisfies the requirements for Support.</p>	
4-B Opposition	2/2 Point(s)
<p>The Community Priority Evaluation panel determined that the application met the criterion for Opposition specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application did not receive any relevant opposition. The application received the maximum score of 2 points under criterion 4-B: Opposition.</p> <p>To receive the maximum score for Opposition, the application must not have received any opposition of relevance. To receive a partial score for Opposition, the application must have received opposition from, at most, one group of non-negligible size.</p> <p>The application received letters of opposition, which were determined not to be relevant, as they were (1) from individuals or groups of negligible size, or (2) were not from communities either explicitly mentioned in the application nor from those with an implicit association to such communities. The Community Priority Evaluation Panel determined that the applicant satisfies the requirements for Opposition.</p>	

Disclaimer: Please note that these Community Priority Evaluation results do not necessarily determine the final result of the application. In limited cases the results might be subject to change. These results do not constitute a waiver or amendment of any provision of the Applicant Guidebook or the Registry Agreement. For updated application status and complete details on the program, please refer to the Applicant Guidebook and the ICANN New gTLDs microsite at <newgtlds.icann.org>.

Exhibit DIDP A59

SINGAPORE – ICANN Public Forum
Thursday, February 12, 2015 – 13:30 to 17:00
SGT ICANN – Singapore, Singapore

KUO-WEI WU: Thank you for your question. I think that we give the next person have a chance.

Next one. Sorry I speak in Chinese.

CONSTANTINE ROUSSOS: No problem. This is Constantine Roussos with .MUSIC. Page 22 of the final CPE guidelines state, "The evaluation process will respect the principles of fairness, transparency, avoiding potential conflicts of interest and non-discrimination."

We have some serious concerns. The chairman of Google, Eric Schmidt, is on the Board of "The Economist." Google is an applicant for .MUSIC. "The Economist" grades our CPE. This is a serious conflict of interest.



Secondly, as you may be aware, one of our competitors strategically rallied one of their supporters, which, again, is 100% conflict of interest, to file a spurious opposition letter to obstruct our application to benefit themselves. The basis of their claim was rooted on discrimination not compatible with competition objectives claiming that .MUSIC should be reserved to only select members of select organizations, an eligibility policy which is anti-competitive.

Both the EIU and ICANN agreed with this fact in recent CPE and reconsideration determinations that such a policy overreaches and that the majority of the community does not belong to these select organizations. This conflicted organization's opposition letter purposely singled us out. If this opposition was authentic, why did this organization not oppose Google or other open applicants who applied for .MUSIC, especially since these open applicants lack the restricted music tailored enhanced safeguards that our community application possesses to show the global music community and protect intellectual property?

Such scare tactics are prevalent at ICANN, especially for community applicants filed to game the CPE process and obstruct community applications to benefit their competing applications. Another clear conflict of interest.



Naturally, we expect ICANN and "The Economist" to receive letters from some portfolio competitors attacking our application aimed at similar obstruction as soon as we are invited to CPE.

How will ICANN ensure "The Economist" follows the CPE guidelines which state that the evaluation process will respect principles of fairness, transparency, avoiding potential conflicts of interest and non-discrimination? We will proceed with CPE but with disclosed prejudice. Thank you.

KUO-WEI WU: Any comment or thanks?

[Applause]

FADI CHEHADE: Thank you, Constantine, for your eloquent kind of layout of the issues. I appreciate it.

May I suggest, given the sensitivity of what you shared, that you send us a formal letter with -- explaining these conflicts and any concerns you have? And I can assure you that you can trust our process to deal with these things without prejudice as we always have.

CONSTANTINE ROUSSOS: Thank you, sir.



Exhibit DIDP A60

CPE Applicant Comparison: .MUSIC CPE vs .HOTEL CPE

	.MUSIC	Score	.HOTEL	Score
Definition	Strictly delineated and organized, <u>logical alliance</u> of communities of similar nature that relate to music (20A)		"a logical alliance of members, with the associations and the marketing organizations maintaining membership lists, directories and registers that can be used, among other public lists, directories and registers, to verify eligibility against the .hotel Eligibility requirements" (20A)	
Cohesion / Awareness	The .MUSIC CPE Report states: "While individuals within some of the member categories may show cohesion within a category or across a subset of the member categories, the number of individuals included in the defined community that do not show such cohesion is <u>considerable enough</u> that the community defined as a whole cannot be said to have the cohesion" (.MUSIC CPE Report, p.3). All music categories and subsets have cohesion because they all operate under a regulated sector and united under international law and international conventions. The ICANN Board approved GAC Category 1 Advice Safeguards accepting that the .MUSIC string has <u>cohesion under a regulated sector</u> . Further, DotMusic notes that the <u>vast majority</u> of the "logical alliance" Music Community defined <u>are musicians and artists</u> , who are clearly defined. As such, ICANN's subjective measure of "not considerable enough" is statistically insignificant. ICANN does not document nor substantiate its "conclusion" with any "compelling and defensible" evidence as required by the Guidelines.	No	"[T]he community is defined in terms of its association with the hotel industry and the provision of specific hotel services" (.HOTEL CPE Report, p.2). Conversely, ICANN disregarded DotMusic's "logical alliance" community definition, which is also similarly defined in terms of its association with a cohesive logical alliance. The .HOTEL definition was also a "logical alliance of members."	Yes
Mainly Dedicated Organisation	Globally-Recognized organizations include the International Federation of Musicians (has United Nations consultative status), the International Federation of the Phonographic Industry (has United Nations consultative status and administers the <u>ISRC international standard code</u> for uniquely identifying sound recordings and music video recordings under <u>ISO 3901</u>), the International Federation of Arts Councils and Culture Agencies (IFACCA) and ReverbNation (<u>representing all music categories and music subsets in their entirety in over 100 countries</u>)	No	China Hotel Association ("CHA") (.HOTEL CPE Report, p.2). ICANN determined that CHA representing hotels in one country, China, is a recognized organization mainly dedicated to the hotel community in its entirety. Conversely, ICANN penalized DotMusic giving zero points because "there is no single entity that serves all of these categories in all their geographic breadth." (.MUSIC CPE Report, p.5) DotMusic has many such entities	Yes
Preexistence and Longevity	"The community as defined in the application was <u>not active prior to September 2007</u> " (.MUSIC CPE Report). The " <u>logical alliance of communities that relate to music</u> " (the defined community in 20A) existed before 2007. The string's cohesive regulated sector and copyright existed before 2007. DotMusic's supporting organizations, the IFPI and the FIM were founded in <u>1933</u> and <u>1948</u> respectively.	No	Yes.	Yes
Community Establishment	No.	0/4	Yes.	4/4
Nexus	"[t]here is no "established name" for the applied-for string to match...for a full score on Nexus" (.MUSIC CPE Report, p.5). ICANN <u>disregarded</u> the established name of the community given in DotMusic's Application that entirely matches the string: "The name of the community served is the "Music Community" ("Community")... "MUSIC" matches the name of the Community entirely...The "MUSIC" string matches the name ("Name") of the Community and is the established name by which the Community is commonly known by others." (20A). "The .MUSIC string relates to the Community by [c]ompletely representing the entire Community" (20D)	3/4		
Support	DotMusic has support from organizations with members that represent over 95% of music consumed globally in its community defined. DotMusic meets the criterion of having " <u>support from institutions/organizations representing a majority of the community addressed</u> ," which ICANN disregarded and did <u>not</u> apply (that would have awarded DotMusic a total of 2 points).	1/2	"[T]hese groups constitute... <u>a majority of the overall community</u> as described by the applicant" (.HOTEL CPE Report, p.6).	2/2
Application	Link		Link	

CPE Applicant Comparison: .MUSIC CPE vs .RADIO CPE

	.MUSIC	Score	.RADIO	Score
Definition	Strictly delineated and organized, <u>logical alliance</u> of communities of similar nature that relate to music (20A)		"The Radio industry is composed of a huge number of very diverse radio broadcasters: public and private; international and local; commercial or community-oriented; general purpose, or sector-specific; talk or music; big and small. All licensed radio broadcasters are part of the .radio community, and so are the associations, federations and unions they have created. Also included are the radio professionals, those making radio the fundamental communications tool that it is." (20A)	
Cohesion / Awareness	The .MUSIC CPE Report states: "While individuals within some of the member categories may show cohesion within a category or across a subset of the member categories, the number of individuals included in the defined community that do not show such cohesion <u>is considerable enough</u> that the community defined as a whole cannot be said to have the cohesion" (.MUSIC CPE Report, p.3). All music categories and subsets have cohesion because they all operate under a regulated sector and united under international law and international conventions. The ICANN Board approved GAC Category 1 Advice Safeguards accepting that the .MUSIC string has <u>cohesion under a regulated sector</u> . Further, DotMusic notes that the <u>vast majority</u> of the "logical alliance" Music Community defined <u>are musicians and artists</u> , who are clearly defined. As such, ICANN's subjective measure of "not considerable enough" is statistically insignificant. ICANN does not document nor substantiate its "conclusion" with any "compelling and defensible" evidence as required by the Guidelines.	No	ICANN established that the radio community had cohesion solely on the basis of being "participants in ...[radio] industry" (.RADIO CPE Report, p.2). Conversely, DotMusic was not given any points even though its music community members in its delineated member music categories and music subsets participate in the music industry as well, yet ICANN penalized DotMusic with zero points.	Yes
Mainly Dedicated Organisation	Globally-Recognized organizations include the International Federation of Musicians (has United Nations consultative status), the International Federation of the Phonographic Industry (has United Nations consultative status and administers the <u>ISRC international standard code</u> for uniquely identifying sound recordings and music video recordings under <u>ISO 3901</u>), the International Federation of Arts Councils and Culture Agencies (IFACCA) and ReverbNation (<u>representing all music categories and music subsets in their entirety in over 100 countries</u>)	No		
Preexistence and Longevity	"The community as defined in the application was <u>not active prior to September 2007</u> " (.MUSIC CPE Report). The " <u>logical alliance</u> of communities that relate to music" (the defined community in 20A) existed before 2007. The string's cohesive regulated sector and copyright existed before 2007. DotMusic's supporting organizations, the IFPI and the FIM were founded in <u>1933</u> and <u>1948</u> respectively.	No	Yes.	Yes
Community Establishment	No.	0/4		
Nexus	"[t]here is no "established name" for the applied-for string to match...for a full score on Nexus" (.MUSIC CPE Report, p.5). ICANN <u>disregarded the established name</u> of the community given in DotMusic's Application that entirely matches the string: "The name of the community served is the "Music Community" ("Community")... "MUSIC" matches the name of the Community entirely...The "MUSIC" string matches the name ("Name") of the Community and is the established name by which the Community is commonly known by others." (20A). "The .MUSIC string relates to the Community by [c]ompletely representing the entire Community" (20D)	3/4		
Support	DotMusic has support from organizations with members that represent over 95% of music consumed globally in its community defined. DotMusic meets the criterion of having " <u>support from institutions/organizations representing a majority of the community addressed</u> ," which ICANN disregarded and did <u>not</u> apply (that would have awarded DotMusic a total of 2 points).	1/2	"[T]he applicant possesses documented support from institutions/organizations representing a majority of the community addressed" (.RADIO CPE Report, p.7).	2/2
Application	Link		Link	

CPE Applicant Comparison: .MUSIC CPE vs .SPA CPE

	.MUSIC	Score	.SPA	Score
Definition	Strictly delineated and organized, <u>logical alliance</u> of communities of similar nature that relate to music (20A)		"The spa community primarily includes: Spa operators, professionals and practitioners; Spa associations and their members around the world; Spa products and services manufacturers and distributors. The <u>secondary community generally</u> also includes holistic and personal wellness centers and organizations. While <u>these secondary community organizations do not relate directly to...spas</u> , they nevertheless <u>often overlap</u> with and participate in the spa community and <u>may share certain benefits</u> for the utilization of the .spa domain" (20A)	
Cohesion / Awareness	The .MUSIC CPE Report states: "While individuals within some of the member categories may show cohesion within a category or across a subset of the member categories, the number of individuals included in the defined community that do not show such cohesion is <u>considerable enough</u> that the community defined as a whole cannot be said to have the cohesion" (.MUSIC CPE Report, p.3). All music categories and subsets have cohesion because they all operate under a regulated sector and united under international law and international conventions. The ICANN Board approved GAC Category 1 Advice Safeguards accepting that the .MUSIC string has <u>cohesion under a regulated sector</u> . Further, DotMusic notes that the <u>vast majority</u> of the "logical alliance" Music Community defined <u>are musicians and artists</u> , who are clearly defined. As such, ICANN's subjective measure of "not considerable enough" is statistically insignificant. ICANN does not document nor substantiate its "conclusion" with any "compelling and defensible" evidence as required by the Guidelines.	No	"Members...recognize themselves as part of the spa community as evidenced...by their <u>inclusion</u> in industry organizations and <u>participation</u> in their events" (.SPA CPE Report, p.2). In contrast, ICANN rejected DotMusic's membership music categories and music subsets as not having the requisite awareness even though, similar to the spa community, all Music Community members also "participate" in music-related events and are included in music groups or music subsets.	Yes
Mainly Dedicated Organisation	Globally-Recognized organizations include the International Federation of Musicians (has United Nations consultative status), the International Federation of the Phonographic Industry (has United Nations consultative status and administers the <u>ISRC international standard code</u> for uniquely identifying sound recordings and music video recordings under <u>ISO 3901</u>), the International Federation of Arts Councils and Culture Agencies (IFACCA) and ReverbNation (<u>representing all music categories and music subsets in their entirety in over 100 countries</u>)	No	International Spa Association (.SPA CPE Report, p.2)	Yes
Prexistence and Longevity	"The community as defined in the application was <u>not active prior to September 2007</u> " (.MUSIC CPE Report). The " <u>logical alliance</u> of communities that relate to music" (the defined community in 20A) existed before 2007. The string's cohesive regulated sector and copyright existed before 2007. DotMusic's supporting organizations, the IFPI and the FIM were founded in <u>1933</u> and <u>1948</u> respectively.	No	Yes.	Yes
Community Establishment	No.	0/4	Yes.	4/4
Nexus	"[t]here is no "established name" for the applied-for string to match...for a full score on Nexus" (.MUSIC CPE Report, p.5). ICANN <u>disregarded the established name</u> of the community given in DotMusic's Application that entirely matches the string: "The name of the community served is the "Music Community" ("Community")... "MUSIC" matches the name of the Community entirely...The "MUSIC" string matches the name ("Name") of the Community and is the established name by which the Community is commonly known by others." (20A). "The .MUSIC string relates to the Community by [c]ompletely representing the entire Community" (20D)	3/4	The "secondary community" that "do[es] not relate directly to...spas" (20A) subset of the community, along with the principal spa community..."meets the requirement for "match" with regard to Nexus" (.SPA CPE Report, p.5)	4/4
Support	DotMusic has support from organizations with members that represent over 95% of music consumed globally in its community defined. DotMusic meets the criterion of having " <u>support from institutions/organizations representing a majority of the community addressed</u> ," which ICANN disregarded and did <u>not</u> apply (that would have awarded DotMusic a total of 2 points).	1/2		
Application	Link		Link	

CPE Applicant Comparison: .MUSIC CPE vs .ECO CPE

	.MUSIC	Score	.ECO	Score
Definition	Strictly delineated and organized, <u>logical alliance</u> of communities of similar nature that relate to music (20A)		"Members of the [environmental] Community are delineated from Internet users <u>generally</u> by community-recognized memberships, accreditations, registrations, and certifications that <u>demonstrate active commitment, practice and reporting</u> " (20A)	
Cohesion / Awareness	The .MUSIC CPE Report states: "While individuals within some of the member categories may show cohesion within a category or across a subset of the member categories, the number of individuals included in the defined community that do not show such cohesion is <u>considerable enough</u> that the community defined as a whole cannot be said to have the cohesion" (.MUSIC CPE Report, p.3). All music categories and subsets have cohesion because they all operate under a regulated sector and united under international law and international conventions. The ICANN Board approved GAC Category 1 Advice Safeguards accepting that the .MUSIC string has <u>cohesion under a regulated sector</u> . Further, DotMusic notes that the <u>vast majority</u> of the "logical alliance" Music Community defined <u>are musicians and artists</u> , who are clearly defined. As such, ICANN's subjective measure of "not considerable enough" is statistically insignificant. ICANN does not document nor substantiate its "conclusion" with any "compelling and defensible" evidence as required by the Guidelines.	No	"Cohesion and awareness is founded in... <u>demonstrable involvement in environmental activities</u> " which " <u>may vary among member categories</u> " (.ECO CPE Report, p.2). Conversely, the EIU penalized DotMusic with a grade of zero based on similar category variance and members that also have demonstrable involvement in music-related activities.	Yes
Mainly Dedicated Organisation	Globally-Recognized organizations include the International Federation of Musicians (has United Nations consultative status), the International Federation of the Phonographic Industry (has United Nations consultative status and administers the <u>ISRC international standard code</u> for uniquely identifying sound recordings and music video recordings under <u>ISO 3901</u>), the International Federation of Arts Councils and Culture Agencies (IFACCA) and ReverbNation (<u>representing all music categories and music subsets in their entirety in over 100 countries</u>)	No	Global Reporting Initiative (.ECO CPE Report, p.3)	Yes
Prexistence and Longevity	"The community as defined in the application was <u>not active prior to September 2007</u> " (.MUSIC CPE Report). The " <u>logical alliance of communities that relate to music</u> " (the defined community in 20A) existed before 2007. The string's cohesive regulated sector and copyright existed before 2007. DotMusic's supporting organizations, the IFPI and the FIM were founded in <u>1933</u> and <u>1948</u> respectively.	No	Yes.	Yes
Community Establishment	No.	0/4	Yes.	4/4
Nexus	"[t]here is no "established name" for the applied-for string to match...for a full score on Nexus" (.MUSIC CPE Report, p.5). ICANN <u>disregarded the established name</u> of the community given in DotMusic's Application that entirely matches the string: "The name of the community served is the "Music Community" ("Community")... "MUSIC" matches the name of the Community entirely...The "MUSIC" string matches the name ("Name") of the Community and is the established name by which the Community is commonly known by others." (20A). "The .MUSIC string relates to the Community by [c]ompletely representing the entire Community" (20D)	3/4		
Support	DotMusic has support from organizations with members that represent over 95% of music consumed globally in its community defined. DotMusic meets the criterion of having " <u>support from institutions/organizations representing a majority of the community addressed</u> ," which ICANN disregarded and did <u>not</u> apply (that would have awarded DotMusic a total of 2 points).	1/2		
Application	Link		Link	

CPE Applicant Comparison: .MUSIC CPE vs .OSAKA CPE

	.MUSIC	Score	.OSAKA	Score
Definition	Strictly delineated and organized, <u>logical alliance</u> of communities of similar nature that relate to music (20A)		"Members of the community are defined as those who are within the Osaka geographical area as well as those who self identify as having a tie to Osaka, or the culture of Osaka. Major participants of the community include, <u>but are not limited to</u> the following: Legal entities; Citizens; Governments and public sectors; Entities, including natural <u>persons who have a legitimate purpose in addressing the community</u> "(20A)	
Cohesion / Awareness	The .MUSIC CPE Report states: "While individuals within some of the member categories may show cohesion within a category or across a subset of the member categories, the number of individuals included in the defined community that do not show such cohesion <u>is considerable enough</u> that the community defined as a whole cannot be said to have the cohesion" (.MUSIC CPE Report, p.3). All music categories and subsets have cohesion because they all operate under a regulated sector and united under international law and international conventions. The ICANN Board approved GAC Category 1 Advice Safeguards accepting that the .MUSIC string has <u>cohesion under a regulated sector</u> . Further, DotMusic notes that the <u>vast majority</u> of the "logical alliance" Music Community defined <u>are musicians and artists</u> , who are clearly defined. As such, ICANN's subjective measure of "not considerable enough" is statistically insignificant. ICANN does not document nor substantiate its "conclusion" with any "compelling and defensible" evidence as required by the Guidelines.	No	ICANN determined the Osaka community defined had "cohesion" because members " <u>self identify as having a tie to Osaka, or the culture of Osaka</u> " (.OSAKA CPE Report, p.2). Similarly, DotMusic's "logical alliance" is "related to music" (i.e. has a tie to music) but its Application was penalized with zero points.	Yes
Mainly Dedicated Organisation	Globally-Recognized organizations include the International Federation of Musicians (has United Nations consultative status), the International Federation of the Phonographic Industry (has United Nations consultative status and administers the <u>ISRC international standard code</u> for uniquely identifying sound recordings and music video recordings under <u>ISO 3901</u>), the International Federation of Arts Councils and Culture Agencies (IFACCA) and ReverbNation (<u>representing all music categories and music subsets in their entirety in over 100 countries</u>)	No		
Preexistence and Longevity	"The community as defined in the application was <u>not active prior to September 2007</u> " (.MUSIC CPE Report). The " <u>logical alliance</u> of communities that relate to music" (the defined community in 20A) existed before 2007. The string's cohesive regulated sector and copyright existed before 2007. DotMusic's supporting organizations, the IFPI and the FIM were founded in <u>1933</u> and <u>1948</u> respectively.	No	Yes.	Yes
Community Establishment	No.	0/4	Yes.	4/4
Nexus	"[t]here is no "established name" for the applied-for string to match...for a full score on Nexus" (.MUSIC CPE Report, p.5). ICANN <u>disregarded the established name</u> of the community given in DotMusic's Application that entirely matches the string: "The name of the community served is the "Music Community" ("Community")... "MUSIC" matches the name of the Community entirely...The "MUSIC" string matches the name ("Name") of the Community and is the established name by which the Community is commonly known by others." (20A). "The .MUSIC string relates to the Community by [c]ompletely representing the entire Community" (20D)	3/4	"The string, ".osaka", <u>directly represents the Osaka community</u> " (.OSAKA CPE Report, p.2). Similarly, the string " <u>.music</u> " <u>directly represents the "Music Community</u> ," the established name in DotMusic's Application for the community. Yet, ICANN penalized DotMusic with a loss of a point.	4/4
Support	DotMusic has support from organizations with members that represent over 95% of music consumed globally in its community defined. DotMusic meets the criterion of having " <u>support from institutions/organizations representing a majority of the community addressed</u> ," which ICANN disregarded and did <u>not</u> apply (that would have awarded DotMusic a total of 2 points).	1/2		
Application	Link		Link	

CPE Applicant Comparison: .MUSIC CPE vs .GAY CPE

	.MUSIC	Score	.GAY	Score
Definition	Strictly delineated and organized, <u>logical alliance</u> of communities of similar nature that relate to music (20A)		"The Gay Community includes individuals who identify themselves as male or female homosexuals, bisexual, transgender, queer, intersex, ally." (20A)	
Cohesion / Awareness	The .MUSIC CPE Report states: "While individuals within some of the member categories may show cohesion within a category or across a subset of the member categories, the number of individuals included in the defined community that do not show such cohesion <u>is considerable enough</u> that the community defined as a whole cannot be said to have the cohesion" (.MUSIC CPE Report, p.3). All music categories and subsets have cohesion because they all operate under a regulated sector and united under international law and international conventions. The ICANN Board approved GAC Category 1 Advice Safeguards accepting that the .MUSIC string has <u>cohesion under a regulated sector</u> . Further, DotMusic notes that the <u>vast majority</u> of the "logical alliance" Music Community defined <u>are musicians and artists</u> , who are clearly defined. As such, ICANN's subjective measure of "not considerable enough" is statistically insignificant. ICANN does not document nor substantiate its "conclusion" with any "compelling and defensible" evidence as required by the Guidelines.	No	ICANN determined that stronger cohesion than DotMusic based on "an <u>implicit</u> recognition and awareness of belonging to a community of others who have <u>come out</u> as having non-normative sexual orientations or gender identities, or as their <u>allies</u> " (<u>emphasis added</u>) (.GAY CPE Report, p.2). In contradiction, ICANN determined DotMusic's "logical <u>alliance</u> " operating under a regulated sector that is united by copyright lacked any "cohesion" of belonging to a community and was penalized with zero points.	Yes
Mainly Dedicated Organisation	Globally-Recognized organizations include the International Federation of Musicians (has United Nations consultative status), the International Federation of the Phonographic Industry (has United Nations consultative status and administers the <u>ISRC international standard code</u> for uniquely identifying sound recordings and music video recordings under <u>ISO 3901</u>), the International Federation of Arts Councils and Culture Agencies (IFACCA) and ReverbNation (<u>representing all music categories and music subsets in their entirety in over 100 countries</u>)	No	International Lesbian, Gay, Bisexual, Trans and Intersex Association (.GAY CPE Report, p.3)	Yes
Prexistence and Longevity	"The community as defined in the application was <u>not active prior to September 2007</u> " (.MUSIC CPE Report). The " <u>logical alliance</u> of communities that relate to music" (the defined community in 20A) existed before 2007. The string's cohesive regulated sector and copyright existed before 2007. DotMusic's supporting organizations, the IFPI and the FIM were founded in <u>1933</u> and <u>1948</u> respectively.	No	Yes.	Yes
Community Establishment	No.	0/4	Yes.	4/4
Nexus	"[t]here is no "established name" for the applied-for string to match...for a full score on Nexus" (.MUSIC CPE Report, p.5). ICANN <u>disregarded the established name</u> of the community given in DotMusic's Application that entirely matches the string: "The name of the community served is the "Music Community" ("Community")... "MUSIC" matches the name of the Community entirely...The "MUSIC" string matches the name ("Name") of the Community and is the established name by which the Community is commonly known by others." (20A). "The .MUSIC string relates to the Community by [c]ompletely representing the entire Community" (20D)	3/4		
Support	DotMusic has support from organizations with members that represent over 95% of music consumed globally in its community defined. DotMusic meets the criterion of having " <u>support from institutions/organizations representing a majority of the community addressed</u> ," which ICANN disregarded and did <u>not</u> apply (that would have awarded DotMusic a total of 2 points).	1/2		
Application	Link		Link	

Exhibit DIDP A61

§ 452. Courts always open; powers unrestricted by expiration of sessions

All courts of the United States shall be deemed always open for the purpose of filing proper papers, issuing and returning process, and making motions and orders.

The continued existence or expiration of a session of a court in no way affects the power of the court to do any act or take any proceeding.

(June 25, 1948, ch. 646, 62 Stat. 907; Pub. L. 88 139, § 2, Oct. 16, 1963, 77 Stat. 248.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§13 and 302 (Mar. 3, 1911, ch. 231, §§9, 189, 36 Stat. 1088, 1143; Mar. 2, 1929, ch. 488, §1, 45 Stat. 1475).

Sections 13 and 302 of title 28, U.S.C., 1940 ed., related only to district courts and the Court of Customs and Patent Appeals, and this section has been written to cover all other courts of the United States.

Other provisions of said section 302 of title 28, U.S.C., 1940 ed., are incorporated in sections 214, 456, and 604 of this title.

The phrase "always open" means "never closed" and signifies the time when a court can exercise its functions. With respect to matters enumerated by statute or rule as to which the court is "always open," there is no time when the court is without power to act. (Ex parte Branch, 63 Ala. 383, 387.)

Section 13 of title 28, U.S.C., 1940 ed., provided that "The district courts, as courts of admiralty and as courts of equity, shall be deemed always open * * *" for enumerated purposes, and that the judge "at chambers or in the clerk's office, and in vacation as well as in term," may make orders and issue process. The revised section omits all reference to the nature of the action or proceeding and enumeration of the acts which may be performed by the court. This is in accord with Rules 45(c) and 56 of the new Federal Rules of Criminal Procedure which contain similar provisions with respect to criminal procedure both in the courts of appeals and in the district courts.

Rules 6(c) and 77(a) of the Federal Rules of Civil Procedure contain provisions similar to the second and first paragraphs, respectively, of this section with respect to civil actions in district courts.

AMENDMENTS

1963 Pub. L. 88 139 substituted "expiration of sessions" for "terms" in section catchline, and "session" for "term" in text.

§ 453. Oaths of justices and judges

Each justice or judge of the United States shall take the following oath or affirmation before performing the duties of his office: "I, _____, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as _____ under the Constitution and laws of the United States. So help me God."

(June 25, 1948, ch. 646, 62 Stat. 907; Pub. L. 101 650, title IV, §404, Dec. 1, 1990, 104 Stat. 5124.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §§241, 372, and District of Columbia Code, 1940 ed., §§11 203, 11 303 (R.S.D.C., §752, 18 Stat. pt. II, 90; Feb. 9, 1893, ch. 74, §3, 27 Stat. 435; Mar. 3, 1901, ch. 854, §223, 31 Stat. 1224; Mar. 3, 1911, ch. 231, §§136, 137, 257, 36 Stat. 1135, 1161; Feb. 25, 1919, ch. 29, §4, 40 Stat. 1157).

This section consolidates sections 11 203 and 11 303 of District of Columbia Code, 1940 ed., and section 372 of

title 28, U.S.C., 1940 ed., with that portion of section 241 of said title 28 providing that judges of the Court of Claims shall take an oath of office. The remainder of said section 241 comprises sections 171 and 173 of this title.

The phrase "justice or judge of the United States" was substituted for "justices of the Supreme Court, the circuit judges, and the district judges" appearing in said section 372, in order to extend the provisions of this section to judges of the Court of Claims, Customs Court, and Court of Customs and Patent Appeals and to all judges of any court which may be created by enactment of Congress. See definition in section 451 of this title.

The Attorney General has ruled that the expression "any judge of any court of the United States" applied to the Chief Justice and all judges of the Court of Claims. (21 Op. Atty. Gen. 449.)

AMENDMENTS

1990—Pub. L. 101-650 substituted "under the Constitution" for "according to the best of my abilities and understanding, agreeably to the Constitution".

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101 650 effective 90 days after Dec. 1, 1990, see section 407 of Pub. L. 101 650, set out as a note under section 332 of this title.

§ 454. Practice of law by justices and judges

Any justice or judge appointed under the authority of the United States who engages in the practice of law is guilty of a high misdemeanor.

(June 25, 1948, ch. 646, 62 Stat. 908.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §373 (Mar. 3, 1911, ch. 231, §258, 36 Stat. 1161).

Changes in phraseology were made.

§ 455. Disqualification of justice, judge, or magistrate judge

(a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

(3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

(4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

- (i) Is a party to the proceeding, or an officer, director, or trustee of a party;
- (ii) Is acting as a lawyer in the proceeding;
- (iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;
- (iv) Is to the judge's knowledge likely to be a material witness in the proceeding.

(c) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.

(d) For the purposes of this section the following words or phrases shall have the meaning indicated:

- (1) "proceeding" includes pretrial, trial, appellate review, or other stages of litigation;
- (2) the degree of relationship is calculated according to the civil law system;
- (3) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;
- (4) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party, except that:

- (i) Ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;
- (ii) An office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;
- (iii) The proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;
- (iv) Ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

(e) No justice, judge, or magistrate judge shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b). Where the ground for disqualification arises only under subsection (a), waiver may be accepted provided it is preceded by a full disclosure on the record of the basis for disqualification.

(f) Notwithstanding the preceding provisions of this section, if any justice, judge, magistrate judge, or bankruptcy judge to whom a matter has been assigned would be disqualified, after substantial judicial time has been devoted to the matter, because of the appearance or discovery, after the matter was assigned to him or her, that he or she individually or as a fiduciary, or his or her spouse or minor child residing in his or her household, has a financial interest in a party (other than an interest that could be substantially affected by the outcome), disqualification is not required if the justice, judge,

magistrate judge, bankruptcy judge, spouse or minor child, as the case may be, divests himself or herself of the interest that provides the grounds for the disqualification.

(June 25, 1948, ch. 646, 62 Stat. 908; Pub. L. 93 512, §1, Dec. 5, 1974, 88 Stat. 1609; Pub. L. 95-598, title II, §214(a), (b), Nov. 6, 1978, 92 Stat. 2661; Pub. L. 100 702, title X, §1007, Nov. 19, 1988, 102 Stat. 4667; Pub. L. 101 650, title III, §321, Dec. 1, 1990, 104 Stat. 5117.)

HISTORICAL AND REVISION NOTES

Based on title 28, U.S.C., 1940 ed., §24 (Mar. 3, 1911, ch. 231, §20, 36 Stat. 1090).

Section 24 of title 28, U.S.C., 1940 ed., applied only to district judges. The revised section is made applicable to all justices and judges of the United States.

The phrase "in which he has a substantial interest" was substituted for "concerned in interest in any suit."

The provision of section 24 of title 28, U.S.C., 1940 ed., as to giving notice of disqualification to the "senior circuit judge," and words "and thereupon such proceedings shall be had as are provided in sections 17 and 18 of this title," were omitted as unnecessary and covered by section 291 et seq. of this title relating to designation and assignment of judges. Such provision is not made by statute in case of disqualification or incapacity, for other cause. See sections 140, 143, and 144 of this title. If a judge or clerk of court is remiss in failing to notify the chief judge of the district or circuit, the judicial council of the circuit has ample power under section 332 of this title to apply a remedy.

Relationship to a party's attorney is included in the revised section as a basis of disqualification in conformity with the views of judges cognizant of the grave possibility of undesirable consequences resulting from a less inclusive rule.

Changes were made in phraseology.

AMENDMENTS

1988 Subsec. (f). Pub. L. 100 702 added subsec. (f).

1978 Pub. L. 95 598 struck out references to referees in bankruptcy in section catchline and in subsecs. (a) and (e).

1974 Pub. L. 93 512 substituted "Disqualification of justice, judge, magistrate, or referee in bankruptcy" for "Interest of justice or judge" in section catchline, reorganized structure of provisions, and expanded applicability to include magistrates and referees in bankruptcy and grounds for which disqualification may be based, and inserted provisions relating to waiver of disqualification.

CHANGE OF NAME

Words "magistrate judge" substituted for "magistrate" in section catchline and wherever appearing in subsecs. (a), (e), and (f) pursuant to section 321 of Pub. L. 101 650, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95 598 effective Oct. 1, 1979, see section 402(c) of Pub. L. 95 598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy. For procedures relating to Bankruptcy matters during transition period see note preceding section 151 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 3 of Pub. L. 93 512 provided that: "This Act [amending this section] shall not apply to the trial of any proceeding commenced prior to the date of this Act [Dec. 5, 1974], nor to appellate review of any proceeding which was fully submitted to the reviewing court prior to the date of this Act."

§ 456. Traveling expenses of justices and judges; official duty stations

(a) The Director of the Administrative Office of the United States Courts shall pay each justice or judge of the United States, and each retired justice or judge recalled or designated and assigned to active duty, while attending court or transacting official business at a place other than his official duty station for any continuous period of less than thirty calendar days (1) all necessary transportation expenses certified by the justice or judge; and (2) payments for subsistence expenses at rates or in amounts which the Director establishes, in accordance with regulations which the Director shall prescribe with the approval of the Judicial Conference of the United States and after considering the rates or amounts set by the Administrator of General Services and the President pursuant to section 5702 of title 5. The Director of the Administrative Office of the United States Courts shall also pay each justice or judge of the United States, and each retired justice or judge recalled or designated and assigned to active duty, while attending court or transacting official business under an assignment authorized under chapter 13 of this title which exceeds in duration a continuous period of thirty calendar days, all necessary transportation expenses and actual and necessary expenses of subsistence actually incurred, notwithstanding the provisions of section 5702 of title 5, in accordance with regulations which the Director shall prescribe with the approval of the Judicial Conference of the United States.

(b) The official duty station of the Chief Justice of the United States, the Justices of the Supreme Court of the United States, and the judges of the United States Court of Appeals for the District of Columbia Circuit, the United States Court of Appeals for the Federal Circuit, and the United States District Court for the District of Columbia shall be the District of Columbia.

(c) The official duty station of the judges of the United States Court of International Trade shall be New York City.

(d) The official duty station of each district judge shall be that place where a district court holds regular sessions at or near which the judge performs a substantial portion of his judicial work, which is nearest the place where he maintains his actual abode in which he customarily lives.

(e) The official duty station of a circuit judge shall be that place where a circuit or district court holds regular sessions at or near which the judge performs a substantial portion of his judicial work, or that place where the Director provides chambers to the judge where he performs a substantial portion of his judicial work, which is nearest the place where he maintains his actual abode in which he customarily lives.

(f) The official duty station of a retired judge shall be established in accordance with section 374 of this title.

(g) Each circuit or district judge whose official duty station is not fixed expressly by this section shall notify the Director of the Administrative Office of the United States Courts in writ-

ing of his actual abode and official duty station upon his appointment and from time to time thereafter as his official duty station may change.

(June 25, 1948, ch. 646, 62 Stat. 908; Aug. 8, 1953, ch. 376, 67 Stat. 488; Pub. L. 86-138, Aug. 7, 1959, 73 Stat. 285; Pub. L. 95-598, title II, §215, Nov. 6, 1978, 92 Stat. 2661; Pub. L. 96-417, title V, §501(11), Oct. 10, 1980, 94 Stat. 1742; Pub. L. 97-164, title I, §115(a)(1), Apr. 2, 1982, 96 Stat. 30; Pub. L. 99-234, title I, §107(d), Jan. 2, 1986, 99 Stat. 1759.)

HISTORICAL AND REVISION NOTES

Based on section 1102(d) of title 26, U.S.C., 1940 ed., Internal Revenue Code, and title 28, U.S.C., 1940 ed., §§218, 270, 296, 296a, 302, 374, 449 (Mar. 3, 1911, ch. 231, §§189, 259, 36 Stat. 1143, 1161, and §187(a) as added Oct. 10, 1940, ch. 843, §1, 54 Stat. 1101; and section 307 as added Aug. 7, 1939, ch. 501, §1, 53 Stat. 1224; Sept. 14, 1922, ch. 306, §2, 42 Stat. 838; Feb. 24, 1925, ch. 301, §2, 43 Stat. 965; May 29, 1928, ch. 852, §711, 45 Stat. 882; Mar. 2, 1929, ch. 485, §1, 45 Stat. 1475; June 23, 1930, ch. 573, §1, 46 Stat. 799; Feb. 10, 1939, ch. 2, §1102(d), 53 Stat. 159; Apr. 22, 1940, ch. 126, 54 Stat. 149; May 3, 1945, ch. 106, title I, §1, 59 Stat. 127; May 21, 1945, ch. 129, title IV, 59 Stat. 197; July 5, 1946, ch. 541, title IV, 60 Stat. 477).

Section 270 of title 28, U.S.C., 1940 ed., related to the Chief Justice and each judge of the Court of Claims and provided for payment of expenses on order of court.

Sections 296, 296a of title 28, U.S.C., 1940 ed., provided for payment of such expenses of the Customs Court judges.

Section 302 of title 28, U.S.C., 1940 ed., provided for the payment of expenses of a judge of the Court of Customs and Patent Appeals upon his certificate. It contained no \$10 limitation upon his daily subsistence expense and in addition authorized the necessary expenses for travel and attendance of one stenographic clerk who accompanied him. This latter provision is the basis for section 834 of this title. Other provisions of said section 302 of title 28, U.S.C., 1940 ed., are incorporated in sections 214 and 452 of this title.

Section 374 of title 28, U.S.C., 1940 ed., related to circuit justices, circuit judges and district judges, including district judges in Alaska, Hawaii, and Puerto Rico. References to these territories is omitted as unnecessary. Provision for Alaska judges is covered by section 460 of this title, and section 114 of title 48, U.S.C., 1940 ed., Territories and Insular Possessions, as amended by a separate section in the bill to enact this revision. Hawaii and Puerto Rico are included as districts by sections 91 and 119 of this title, and judges thereof are "judges of the United States" as defined in section 451 of this title.

The inconsistent provision of said section 270 of title 28, U.S.C., 1940 ed., with reference to payment on order of court was omitted to permit payment to every judge on his certificate.

The \$10 per day subsistence limitation applicable to all other judges was extended to the judges of the Court of Customs and Patent Appeals.

The provision of said section 270 of title 28, U.S.C., 1940 ed., relating to traveling expenses of commissioners and stenographers is incorporated in sections 792 and 794 of this title.

The provisions of said section 296 of title 28, U.S.C., 1940 ed., relating to organization of the Customs Court are the basis of sections 251, 252, 253, and 254 of this title. Other provisions of said section 296 are incorporated in sections 1581, 2071, 2639, and 2640 of this title, and the retirement provisions of that section are covered by sections 371 and 372 of this title.

The provision of section 296 of title 28, U.S.C., 1940 ed., expenses of retired judges was made applicable to all judges.

The provision of section 218 of title 28, U.S.C., 1940 ed., for payment of travel expenses of judges attending

Syllabus

LITEKY ET AL. *v.* UNITED STATESCERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE ELEVENTH CIRCUIT

No. 92–6921. Argued November 3, 1993—Decided March 7, 1994

Before and during petitioners' 1991 trial on federal criminal charges, the District Judge denied defense motions that he recuse himself pursuant to 28 U. S. C. § 455(a), which requires a federal judge to "disqualify himself in any proceeding in which his impartiality might reasonably be questioned." The first motion was based on rulings and statements this same judge made, which allegedly displayed impatience, disregard, and animosity toward the defense, during and after petitioner Bourgeois' 1983 bench trial on similar charges. The second motion was founded on the judge's admonishment of Bourgeois' counsel and co-defendants in front of the jury at the 1991 trial. In affirming petitioners' convictions, the Court of Appeals agreed with the District Judge that matters arising from judicial proceedings are not a proper basis for recusal.

Held: Required recusal under § 455(a) is subject to the limitation that has come to be known as the "extrajudicial source" doctrine. Pp. 543–556.

(a) The doctrine—see *United States v. Grinnell Corp.*, 384 U. S. 563, 583—applies to § 455(a). It was developed under § 144, which requires disqualification for "personal bias or prejudice." That phrase is repeated as a recusal ground in § 455(b)(1), and § 455(a), addressing disqualification for appearance of partiality, also covers "bias or prejudice." The absence of the word "personal" in § 455(a) does not preclude the doctrine's application, since the textual basis for the doctrine is the pejorative connotation of the words "bias or prejudice," which indicate a judicial predisposition that is *wrongful* or *inappropriate*. Similarly, because the term "partiality" refers only to such favoritism as is, for some reason, wrongful or inappropriate, § 455(a)'s requirement of recusal *whenever* there exists a genuine question concerning a judge's impartiality does not preclude the doctrine's application. A contrary finding would cause the statute, in a significant sense, to contradict itself, since (petitioners acknowledge) § 455(b)(1) embodies the doctrine, and § 455(a) duplicates § 455(b)'s protection with regard to "bias and prejudice." Pp. 543–553.

(b) However, it is better to speak of the existence of an "extrajudicial source" *factor*, than of a *doctrine*, because the presence of such a source does not necessarily establish bias, and its absence does not necessarily

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preclude bias. The consequences of that factor are twofold for purposes of this case. First, judicial rulings alone almost never constitute valid basis for a bias or partiality recusal motion. See *Grinnell, supra*, at 583. Apart from surrounding comments or accompanying opinion, they cannot possibly show reliance on an extrajudicial source; and, absent such reliance, they require recusal only when they evidence such deep-seated favoritism or antagonism as would make fair judgment impossible. Second, opinions formed by the judge on the basis of facts introduced or events occurring during current or prior proceedings are not grounds for a recusal motion unless they display a similar degree of favoritism or antagonism. Pp. 554–556.

(c) Application of the foregoing principles to the facts of this case demonstrates that none of the grounds petitioners assert required disqualification. They all consist of judicial rulings, routine trial administration efforts, and ordinary admonishments (whether or not legally supportable) to counsel and to witnesses. All occurred in the course of judicial proceedings, *and* neither (1) relied upon knowledge acquired outside such proceedings nor (2) displayed deep-seated and unequivocal antagonism that would render fair judgment impossible. P. 556.

973 F. 2d 910, affirmed.

SCALIA, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O’CONNOR, THOMAS, and GINSBURG, JJ., joined. KENNEDY, J., filed an opinion concurring in the judgment, in which BLACKMUN, STEVENS, and SOUTER, JJ., joined, *post*, p. 557.

Peter Thompson, by appointment of the Court, 509 U. S. 920, argued the cause and filed briefs for petitioners.

Thomas G. Hungar argued the cause for the United States. With him on the brief were *Solicitor General Days*, *Acting Assistant Attorney General Keeney*, *Deputy Solicitor General Bryson*, and *Joel M. Gershowitz*.

JUSTICE SCALIA delivered the opinion of the Court.

Section 455(a) of Title 28 of the United States Code requires a federal judge to “disqualify himself in any proceeding in which his impartiality might reasonably be questioned.” This case presents the question whether required recusal under this provision is subject to the limitation that has come to be known as the “extrajudicial source” doctrine.

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I

In the 1991 trial at issue here, petitioners were charged with willful destruction of property of the United States in violation of 18 U. S. C. § 1361. The indictment alleged that they had committed acts of vandalism, including the spilling of human blood on walls and various objects, at the Fort Benning Military Reservation. Before trial petitioners moved to disqualify the District Judge pursuant to 28 U. S. C. § 455(a). The motion relied on events that had occurred during and immediately after an earlier trial, involving petitioner Bourgeois, before the same District Judge.

In the 1983 bench trial, Bourgeois, a Catholic priest of the Maryknoll order, had been tried and convicted of various misdemeanors committed during a protest action, also on the federal enclave of Fort Benning. Petitioners claimed that recusal was required in the present case because the judge had displayed “impatience, disregard for the defense and animosity” toward Bourgeois, Bourgeois’ codefendants, and their beliefs. The alleged evidence of that included the following words and acts by the judge: stating at the outset of the trial that its purpose was to try a criminal case and not to provide a political forum; observing after Bourgeois’ opening statement (which described the purpose of his protest) that the statement ought to have been directed toward the anticipated evidentiary showing; limiting defense counsel’s cross-examination; questioning witnesses; periodically cautioning defense counsel to confine his questions to issues material to trial; similarly admonishing witnesses to keep answers responsive to actual questions directed to material issues; admonishing Bourgeois that closing argument was not a time for “making a speech” in a “political forum”; and giving Bourgeois what petitioners considered to be an excessive sentence. The final asserted ground for disqualification—and the one that counsel for petitioners described at oral argument as the most serious—was the judge’s interruption of the closing argument of one of Bourgeois’ codefendants,

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instructing him to cease the introduction of new facts, and to restrict himself to discussion of evidence already presented.

The District Judge denied petitioners' disqualification motion, stating that matters arising from judicial proceedings were not a proper basis for recusal. At the outset of the trial, Bourgeois' counsel informed the judge that he intended to focus his defense on the political motivation for petitioners' actions, which was to protest United States Government involvement in El Salvador. The judge said that he would allow petitioners to state their political purposes in opening argument and to testify about them as well, but that he would not allow long speeches or discussions concerning Government policy. When, in the course of opening argument, Bourgeois' counsel began to explain the circumstances surrounding certain events in El Salvador, the prosecutor objected, and the judge stated that he would not allow discussion about events in El Salvador. He then instructed defense counsel to limit his remarks to what he expected the evidence to show. At the close of the prosecution's case, Bourgeois renewed his disqualification motion, adding as grounds for it the District Judge's "admonishing [him] in front of the jury" regarding the opening statement, and the District Judge's unspecified "admonishing [of] others," in particular Bourgeois' two *pro se* codefendants. The motion was again denied. Petitioners were convicted of the offense charged.

Petitioners appealed, claiming that the District Judge violated 28 U. S. C. § 455(a) in refusing to recuse himself. The Eleventh Circuit affirmed the convictions, agreeing with the District Court that "matters arising out of the course of judicial proceedings are not a proper basis for recusal." 973 F. 2d 910 (1992). We granted certiorari. 508 U. S. 939 (1993).

II

Required judicial recusal for bias did not exist in England at the time of Blackstone. 3 W. Blackstone, Commentaries

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*361. Since 1792, federal statutes have compelled district judges to recuse themselves when they have an interest in the suit, or have been counsel to a party. See Act of May 8, 1792, ch. 36, § 11, 1 Stat. 278. In 1821, the basis of recusal was expanded to include all judicial relationship or connection with a party that would in the judge's opinion make it improper to sit. Act of Mar. 3, 1821, ch. 51, 3 Stat. 643. Not until 1911, however, was a provision enacted requiring district-judge recusal for bias *in general*. In its current form, codified at 28 U.S.C. § 144, that provision reads as follows:

“Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

“The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term at which the proceeding is to be heard, or good cause shall be shown for failure to file it within such time. A party may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith.”

Under § 144 and its predecessor, there came to be generally applied in the courts of appeals a doctrine, more standard in its formulation than clear in its application, requiring—to take its classic formulation found in an oft-cited opinion by Justice Douglas for this Court—that “[t]he alleged bias and prejudice to be disqualifying [under § 144] must stem from an extrajudicial source.” *United States v. Grinnell Corp.*, 384 U.S. 563, 583 (1966). We say that the doctrine was less than entirely clear in its application for

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several reasons. First, *Grinnell* (the only opinion of ours to recite the doctrine) clearly meant by “extrajudicial source” a source outside the judicial proceeding at hand—which would include as extrajudicial sources earlier judicial proceedings conducted by the same judge (as are at issue here).¹ Yet many, perhaps most, Courts of Appeals considered knowledge (and the resulting attitudes) that a judge properly acquired in an earlier proceeding *not* to be “extrajudicial.” See, e. g., *Lyons v. United States*, 325 F. 2d 370, 376 (CA9), cert. denied, 377 U. S. 969 (1964); *Craven v. United States*, 22 F. 2d 605, 607–608 (CA1 1927). Secondly, the doctrine was often quoted as justifying the refusal to consider trial *rulings* as the basis for §144 recusal. See, e. g., *Toth v. Trans World Airlines, Inc.*, 862 F. 2d 1381, 1387–1388 (CA9 1988); *Liberty Lobby, Inc. v. Dow Jones & Co.*, 838 F. 2d 1287, 1301 (CA DC), cert. denied, 488 U. S. 825 (1988). But trial *rulings* have a judicial *expression* rather than a judicial *source*. They may well be based upon extrajudicial knowledge or motives. Cf. *In re International Business Machines Corp.*, 618 F. 2d 923, 928, n. 6 (CA2 1980). And finally, even in cases in which the “source” of the bias or prejudice was clearly the proceedings themselves (for example, testimony introduced or an event occurring at trial which produced unsuppressible judicial animosity), the supposed doctrine would not necessarily be applied. See, e. g., *Davis v. Board of School Comm’rs of Mobile County*, 517 F. 2d 1044, 1051 (CA5 1975) (doctrine has “pervasive bias” exception), cert. denied, 425 U. S. 944 (1976);

¹That is clear when the language from *Grinnell* excerpted above is expanded to include its entire context: “The alleged bias and prejudice to be disqualifying must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case. *Berger v. United States*, 255 U. S. 22, 31. Any adverse attitudes that [the district judge in the present case] evinced toward the defendants were based on his study of the depositions and briefs which the parties had requested him to make.” 384 U. S., at 583. The cited case, *Berger*, had found recusal required on the basis of judicial remarks made in an earlier proceeding.

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Rice v. McKenzie, 581 F. 2d 1114, 1118 (CA4 1978) (doctrine “has always had limitations”).

Whatever the precise contours of the “extrajudicial source” doctrine (a subject to which we will revert shortly), it is the contention of petitioners that the doctrine has no application to § 455(a). Most Courts of Appeals to consider the matter have rejected this contention, see *United States v. Barry*, 961 F. 2d 260, 263 (CAD9 1992); *United States v. Sammons*, 918 F. 2d 592, 599 (CA6 1990); *McWhorter v. Birmingham*, 906 F. 2d 674, 678 (CA11 1990); *United States v. Mitchell*, 886 F. 2d 667, 671 (CA4 1989); *United States v. Merkt*, 794 F. 2d 950, 960 (CA5 1986), cert. denied, 480 U. S. 946 (1987); *Johnson v. Trueblood*, 629 F. 2d 287, 290–291 (CA3 1980), cert. denied, 450 U. S. 999 (1981); *United States v. Sibla*, 624 F. 2d 864, 869 (CA9 1980). Some, however, have agreed with it, see *United States v. Chantal*, 902 F. 2d 1018, 1023–1024 (CA1 1990); cf. *United States v. Coven*, 662 F. 2d 162, 168–169 (CA2 1981) (semble), cert. denied, 456 U. S. 916 (1982). To understand the arguments pro and con it is necessary to appreciate the major changes in prior law effected by the revision of § 455 in 1974.

Before 1974, § 455 was nothing more than the then-current version of the 1821 prohibition against a judge’s presiding who has an interest in the case or a relationship to a party. It read, quite simply:

“Any justice or judge of the United States shall disqualify himself in any case in which he has a substantial interest, has been of counsel, is or has been a material witness, or is so related to or connected with any party or his attorney as to render it improper, in his opinion, for him to sit on the trial, appeal, or other proceeding therein.” 28 U. S. C. § 455 (1970 ed.).

The 1974 revision made massive changes, so that § 455 now reads as follows:

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“(a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

“(b) He shall also disqualify himself in the following circumstances:

“(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

“(2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

“(3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

“(4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

“(5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

“(i) Is a party to the proceeding, or an officer, director, or trustee of a party;

“(ii) Is acting as a lawyer in the proceeding;

“(iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

“(iv) Is to the judge’s knowledge likely to be a material witness in the proceeding.”

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Almost all of the revision (paragraphs (b)(2) through (b)(5)) merely rendered objective and spelled out in detail the “interest” and “relationship” grounds of recusal that had previously been covered by § 455. But the other two paragraphs of the revision brought into § 455 elements of general “bias and prejudice” recusal that had previously been addressed only by § 144. Specifically, paragraph (b)(1) entirely duplicated the grounds of recusal set forth in § 144 (“bias or prejudice”), but (1) made them applicable to *all* justices, judges, and magistrates (and not just district judges), and (2) placed the obligation to identify the existence of those grounds upon the judge himself, rather than requiring recusal only in response to a party affidavit.

Subsection (a), the provision at issue here, was an entirely new “catchall” recusal provision, covering both “interest or relationship” and “bias or prejudice” grounds, see *Liljeberg v. Health Services Acquisition Corp.*, 486 U. S. 847 (1988)—but requiring them *all* to be evaluated on an *objective* basis, so that what matters is not the reality of bias or prejudice but its appearance. Quite simply and quite universally, recusal was required whenever “impartiality might reasonably be questioned.”

What effect these changes had upon the “extrajudicial source” doctrine—whether they in effect render it obsolete, of continuing relevance only to § 144, which seems to be properly invocable only when § 455(a) can be invoked anyway—depends upon what the basis for that doctrine was. Petitioners suggest that it consisted of the limitation of § 144 to “*personal* bias or prejudice,” bias or prejudice officially acquired being different from “personal” bias or prejudice. And, petitioners point out, while § 455(b)(1) retains the phrase “personal bias or prejudice,” § 455(a) proscribes all partiality, not merely the “personal” sort.

It is true that a number of Courts of Appeals have relied upon the word “personal” in restricting § 144 to extrajudicial sources, see, *e. g.*, *Craven v. United States*, 22 F. 2d 605, 607–

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608 (CA1 1927); *Ferrari v. United States*, 169 F. 2d 353, 355 (CA9 1948). And several cases have cited the absence of that word as a reason for excluding that restriction from § 455(a), see *United States v. Coven*, *supra*, at 168, cert. denied, 456 U. S. 916 (1982); *Panzardi-Alvarez v. United States*, 879 F. 2d 975, 983–984, and n. 6 (CA1), cert. denied, 493 U. S. 1082 (1989). It seems to us, however, that that mistakes the basis for the “extrajudicial source” doctrine. Petitioners’ suggestion that we relied upon the word “personal” in our *Grinnell* opinion is simply in error. The only reason *Grinnell* gave for its “extrajudicial source” holding was citation of our opinion almost half a century earlier in *Berger v. United States*, 255 U. S. 22 (1921). But that case, and the case which it in turn cited, *Ex parte American Steel Barrel Co.*, 230 U. S. 35 (1913), relied not upon the word “personal” in § 144, but upon its provision requiring the recusal affidavit to be filed 10 days before the beginning of the court term. That requirement was the reason we found it obvious in *Berger* that the affidavit “must be based upon facts antedating the trial, not those occurring during the trial,” 255 U. S., at 34; and the reason we said in *American Steel Barrel* that the recusal statute “was never intended to enable a discontented litigant to oust a judge because of adverse rulings made, . . . but to prevent his future action in the pending cause,” 230 U. S., at 44.

In our view, the proper (though unexpressed) rationale for *Grinnell*, and the basis of the modern “extrajudicial source” doctrine, is not the statutory term “personal”—for several reasons. First and foremost, that explanation is simply not the semantic success it pretends to be. Bias and prejudice seem to us not divided into the “personal” kind, which is offensive, and the official kind, which is perfectly all right. As generally used, these are pejorative terms, describing dispositions that are *never* appropriate. It is common to speak of “personal bias” or “personal prejudice” without meaning the adjective to do anything except emphasize the

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idiosyncratic nature of bias and prejudice, and certainly without implying that there is some other “nonpersonal,” benign category of those mental states. In a similar vein, one speaks of an individual’s “personal preference,” without implying that he could also have a “nonpersonal preference.” Secondly, interpreting the term “personal” to create a complete dichotomy between court-acquired and extrinsically acquired bias produces results so intolerable as to be absurd. Imagine, for example, a lengthy trial in which the presiding judge for the first time learns of an obscure religious sect, and acquires a passionate hatred for all its adherents. This would be “official” rather than “personal” bias, and would provide no basis for the judge’s recusing himself.

It seems to us that the origin of the “extrajudicial source” doctrine, and the key to understanding its flexible scope (or the so-called “exceptions” to it), is simply the pejorative connotation of the words “bias or prejudice.” Not *all* unfavorable disposition towards an individual (or his case) is properly described by those terms. One would not say, for example, that world opinion is biased or prejudiced against Adolf Hitler. The words connote a favorable or unfavorable disposition or opinion that is somehow *wrongful* or *inappropriate*, either because it is undeserved, or because it rests upon knowledge that the subject ought not to possess (for example, a criminal juror who has been biased or prejudiced by receipt of inadmissible evidence concerning the defendant’s prior criminal activities), or because it is excessive in degree (for example, a criminal juror who is so inflamed by properly admitted evidence of a defendant’s prior criminal activities that he will vote guilty regardless of the facts). The “extrajudicial source” doctrine is one application of this pejorativeness requirement to the terms “bias” and “prejudice” as they are used in §§144 and 455(b)(1) with specific reference to the work of judges.

The judge who presides at a trial may, upon completion of the evidence, be exceedingly ill disposed towards the defend-

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ant, who has been shown to be a thoroughly reprehensible person. But the judge is not thereby recusable for bias or prejudice, since his knowledge and the opinion it produced were properly and necessarily acquired in the course of the proceedings, and are indeed sometimes (as in a bench trial) necessary to completion of the judge's task. As Judge Jerome Frank pithily put it: "Impartiality is not gullibility. Disinterestedness does not mean child-like innocence. If the judge did not form judgments of the actors in those court-house dramas called trials, he could never render decisions." *In re J. P. Linahan, Inc.*, 138 F. 2d 650, 654 (CA2 1943). Also not subject to deprecatory characterization as "bias" or "prejudice" are opinions held by judges as a result of what they learned in earlier proceedings. It has long been regarded as normal and proper for a judge to sit in the same case upon its remand, and to sit in successive trials involving the same defendant.

It is wrong in theory, though it may not be too far off the mark as a practical matter, to suggest, as many opinions have, that "extrajudicial source" is the *only* basis for establishing disqualifying bias or prejudice. It is the *only common* basis, but not the exclusive one, since it is not the *exclusive* reason a predisposition can be wrongful or inappropriate. A favorable or unfavorable predisposition can also deserve to be characterized as "bias" or "prejudice" because, even though it springs from the facts adduced or the events occurring at trial, it is so extreme as to display clear inability to render fair judgment. (That explains what some courts have called the "pervasive bias" exception to the "extrajudicial source" doctrine. See, e. g., *Davis v. Board of School Comm'rs of Mobile County*, 517 F. 2d 1044, 1051 (CA5 1975), cert. denied, 425 U. S. 944 (1976).)

With this understanding of the "extrajudicial source" limitation in §§144 and 455(b)(1), we turn to the question whether it appears in §455(a) as well. Petitioners' argument for the negative based upon the mere absence of the

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word “personal” is, for the reasons described above, not persuasive. Petitioners also rely upon the categorical nature of § 455’s language: Recusal is required *whenever* there exists a genuine question concerning a judge’s impartiality, and not merely when the question arises from an extrajudicial source. A similar “plain-language” argument could be made, however, with regard to §§ 144 and 455(b)(1): They apply *whenever* bias or prejudice exists, and not merely when it derives from an extrajudicial source. As we have described, the latter argument is invalid because the pejorative connotation of the terms “bias” and “prejudice” demands that they be applied only to judicial predispositions that go beyond what is normal and acceptable. We think there is an equivalent pejorative connotation, with equivalent consequences, to the term “partiality.” See American Heritage Dictionary 1319 (3d ed. 1992) (“partiality” defined as “[f]avorable prejudice or bias”). A prospective juror in an insurance-claim case may be stricken as partial if he always votes for insurance companies; but not if he always votes for the party whom the terms of the contract support. “Partiality” does not refer to all favoritism, but only to such as is, for some reason, wrongful or inappropriate. Impartiality is not gullibility. Moreover, even if the pejorative connotation of “partiality” were not enough to import the “extrajudicial source” doctrine into § 455(a), the “reasonableness” limitation (recusal is required only if the judge’s impartiality “might *reasonably* be questioned”) would have the same effect. To demand the sort of “child-like innocence” that elimination of the “extrajudicial source” limitation would require is not reasonable.

Declining to find in the language of § 455(a) a limitation which (petitioners acknowledge) *is* contained in the language of § 455(b)(1) would cause the statute, in a significant sense, to contradict itself. As we have described, § 455(a) expands the protection of § 455(b), but duplicates some of its protection as well—not only with regard to bias and prejudice but also with regard to interest and relationship. Within the

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area of overlap, it is unreasonable to interpret § 455(a) (unless the language *requires* it) as implicitly eliminating a limitation explicitly set forth in § 455(b). It would obviously be wrong, for example, to hold that “impartiality could reasonably be questioned” simply because one of the parties is in the fourth degree of relationship to the judge. Section 455(b)(5), which addresses the matter of relationship specifically, ends the disability at the *third* degree of relationship, and that should obviously govern for purposes of § 455(a) as well. Similarly, § 455(b)(1), which addresses the matter of personal bias and prejudice specifically, contains the “extra-judicial source” limitation—and *that* limitation (since nothing in the text contradicts it) should govern for purposes of § 455(a) as well.²

²JUSTICE KENNEDY asserts that what we have said in this paragraph contradicts the proposition, established in *Liljeberg v. Health Services Acquisition Corp.*, 486 U. S. 847 (1988), that “subsections (a) and (b), while addressing many of the same underlying circumstances, are autonomous in operation.” *Post*, at 566. *Liljeberg* established no such thing. It established that subsection (a) requires recusal in some circumstances where subsection (b) does not—but that is something quite different from “autonomy,” which in the context in which JUSTICE KENNEDY uses it means that the one subsection is to be interpreted and applied without reference to the other.

It is correct that subsection (a) has a “broader reach” than subsection (b), *post*, at 567, but the provisions obviously have some ground in common as well, and should not be applied inconsistently there. *Liljeberg* concerned a respect in which subsection (a) *did* go beyond (b). Since subsection (a) deals with the *objective appearance* of partiality, any limitations contained in (b) that consist of a subjective-knowledge requirement are obviously inapplicable. Subsection (a) also goes beyond (b) in another important respect: It covers *all* aspects of partiality, and not merely those specifically addressed in subsection (b). However, when one of those aspects addressed in (b) *is* at issue, it is poor statutory construction to interpret (a) as nullifying the limitations (b) provides, except to the extent the text requires. Thus, as we have said, under subsection (a) as under (b)(5), fourth degree of kinship will not do.

What is at issue in the present case *is* an aspect of “partiality” already addressed in (b), personal bias or prejudice. The “objective appearance” principle of subsection (a) makes irrelevant the subjective limitation of

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Petitioners suggest that applying the “extrajudicial source” limitation to § 455(a) will cause disqualification of a trial judge to be more easily obtainable upon remand of a case by an appellate court than upon direct motion. We do not see why that necessarily follows; and if it does, why it is necessarily bad. Federal appellate courts’ ability to assign a case to a different judge on remand rests not on the recusal statutes alone, but on the appellate courts’ statutory power to “require such further proceedings to be had as may be just under the circumstances,” 28 U. S. C. § 2106. That may permit a different standard, and there may be pragmatic reasons for a different standard. We do not say so—but merely say that the standards applied on remand are irrelevant to the question before us here.

For all these reasons, we think that the “extrajudicial source” doctrine, as we have described it, applies to § 455(a). As we have described it, however, there is not much doctrine to the doctrine. The fact that an opinion held by a judge derives from a source outside judicial proceedings is not a *necessary* condition for “bias or prejudice” recusal, since predispositions developed during the course of a trial will sometimes (albeit rarely) suffice. Nor is it a *sufficient* condition for “bias or prejudice” recusal, since *some* opinions acquired outside the context of judicial proceedings (for example, the judge’s view of the law acquired in scholarly reading) will *not* suffice. Since neither the presence of an extrajudicial source necessarily establishes bias, nor the absence of an extrajudicial source necessarily precludes bias, it would be

(b)(1): The judge does not have to be *subjectively* biased or prejudiced, so long as he *appears* to be so. But nothing in subsection (a) eliminates the longstanding limitation of (b)(1), that “personal bias or prejudice” does not consist of a disposition that fails to satisfy the “extrajudicial source” doctrine. The objective appearance of an adverse disposition attributable to information acquired in a prior trial is not an objective appearance of personal bias or prejudice, and hence not an objective appearance of improper partiality.

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better to speak of the existence of a significant (and often determinative) “extrajudicial source” *factor*, than of an “extrajudicial source” *doctrine*, in recusal jurisprudence.

The facts of the present case do not require us to describe the consequences of that factor in complete detail. It is enough for present purposes to say the following: First, judicial rulings alone almost never constitute a valid basis for a bias or partiality motion. See *United States v. Grinnell Corp.*, 384 U. S., at 583. In and of themselves (*i. e.*, apart from surrounding comments or accompanying opinion), they cannot possibly show reliance upon an extrajudicial source; and can only in the rarest circumstances evidence the degree of favoritism or antagonism required (as discussed below) when no extrajudicial source is involved. Almost invariably, they are proper grounds for appeal, not for recusal. Second, opinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible. Thus, judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge. They *may* do so if they reveal an opinion that derives from an extrajudicial source; and they *will* do so if they reveal such a high degree of favoritism or antagonism as to make fair judgment impossible. An example of the latter (and perhaps of the former as well) is the statement that was alleged to have been made by the District Judge in *Berger v. United States*, 255 U. S. 22 (1921), a World War I espionage case against German-American defendants: “One must have a very judicial mind, indeed, not [to be] prejudiced against the German Americans” because their “hearts are reeking with disloyalty.” *Id.*, at 28 (internal quotation marks omitted). *Not* establishing bias or partiality, however, are expressions of impatience, dissatisfaction, annoy-

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ance, and even anger, that are within the bounds of what imperfect men and women, even after having been confirmed as federal judges, sometimes display. A judge's ordinary efforts at courtroom administration—even a stern and short-tempered judge's ordinary efforts at courtroom administration—remain immune.

III

Applying the principles we have discussed to the facts of the present case is not difficult. None of the grounds petitioners assert required disqualification. As we have described, petitioners' first recusal motion was based on rulings made, and statements uttered, by the District Judge during and after the 1983 trial; and petitioner Bourgeois' second recusal motion was founded on the judge's admonishment of Bourgeois' counsel and codefendants. In their briefs here, petitioners have referred to additional manifestations of alleged bias in the District Judge's conduct of the trial below, including the questions he put to certain witnesses, his alleged "anti-defendant tone," his cutting off of testimony said to be relevant to defendants' state of mind, and his post-trial refusal to allow petitioners to appeal *in forma pauperis*.³

All of these grounds are inadequate under the principles we have described above: They consist of judicial rulings, routine trial administration efforts, and ordinary admonishments (whether or not legally supportable) to counsel and to witnesses. All occurred in the course of judicial proceedings, *and* neither (1) relied upon knowledge acquired outside such proceedings nor (2) displayed deep-seated and unequivocal antagonism that would render fair judgment impossible.

The judgment of the Court of Appeals is

Affirmed.

³ Petitioners' brief also complains of the District Judge's refusal in the 1983 trial to call petitioner Bourgeois "Father," asserting that this "subtly manifested animosity toward Father Bourgeois." Brief for Petitioners 30. As we have discussed, when intrajudicial behavior is at issue, manifestations of animosity must be much more than subtle to establish bias.

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JUSTICE KENNEDY, with whom JUSTICE BLACKMUN, JUSTICE STEVENS, and JUSTICE SOUTER join, concurring in the judgment.

The Court's ultimate holding that petitioners did not assert sufficient grounds to disqualify the District Judge is unexceptionable. Nevertheless, I confine my concurrence to the judgment, for the Court's opinion announces a mistaken, unfortunate precedent in two respects. First, it accords nearly dispositive weight to the source of a judge's alleged partiality, to the point of stating that disqualification for intrajudicial partiality is not required unless it would make a fair hearing impossible. Second, the Court weakens the principal disqualification statute in the federal system, 28 U. S. C. § 455, by holding—contrary to our most recent interpretation of the statute in *Liljeberg v. Health Services Acquisition Corp.*, 486 U. S. 847 (1988)—that the broad protections afforded by subsection (a) are qualified by limitations explicit in the specific prohibitions of subsection (b).

I

We took this case to decide whether the reach of § 455(a) is limited by the so-called extrajudicial source rule. I agree with the Court insofar as it recognizes that there is no *per se* rule requiring that the alleged partiality arise from an extrajudicial source. In my view, however, the Court places undue emphasis upon the source of the challenged mindset in determining whether disqualification is mandated by § 455(a).

A

Section 455(a) provides that a judge “shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.” For present purposes, it should suffice to say that § 455(a) is triggered by an attitude or state of mind so resistant to fair and dispassionate inquiry as to cause a party, the public, or a reviewing court to have reasonable grounds to question the neutral and objective character of a

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judge's rulings or findings. I think all would agree that a high threshold is required to satisfy this standard. Thus, under § 455(a), a judge should be disqualified only if it appears that he or she harbors an aversion, hostility or disposition of a kind that a fair-minded person could not set aside when judging the dispute.

The statute does not refer to the source of the disqualifying partiality. And placing too much emphasis upon whether the source is extrajudicial or intrajudicial distracts from the central inquiry. One of the very objects of law is the impartiality of its judges in fact and appearance. So in one sense it could be said that any disqualifying state of mind must originate from a source outside law itself. That metaphysical inquiry, however, is beside the point. The relevant consideration under § 455(a) is the appearance of partiality, see *Liljeberg, supra*, at 860, not where it originated or how it was disclosed. If, for instance, a judge presiding over a retrial should state, based upon facts adduced and opinions formed during the original cause, an intent to ensure that one side or the other shall prevail, there can be little doubt that he or she must recuse. Cf. *Rugenstein v. Ottenheimer*, 78 Ore. 371, 372, 152 P. 215, 216 (1915) (reversing for judge's failure to disqualify himself on retrial, where judge had stated: "This case may be tried again, and it will be tried before me. I will see to that. And I will see that the woman gets another verdict and judgment that will stand").

I agree, then, with the Court's rejection of the *per se* rule applied by the Court of Appeals, which provides that "matters arising out of the course of judicial proceedings are not a proper basis for recusal" under § 455(a). 973 F. 2d 910 (CA11 1992). But the Court proceeds to discern in the statute an extrajudicial source interpretive doctrine, under which the source of an alleged deep-seated predisposition is a primary factor in the analysis. The Court's candid struggle to find a persuasive rationale for this approach demonstrates that prior attempts along those lines have fallen

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somewhat short of the mark. This, I submit, is due to the fact that the doctrine crept into the jurisprudence more by accident than design.

The term “extrajudicial source,” though not the interpretive doctrine bearing its name, has appeared in only one of our previous cases: *United States v. Grinnell Corp.*, 384 U. S. 563 (1966). Respondents in *Grinnell* alleged that the trial judge had a personal bias against them, and sought his disqualification and a new trial under 28 U. S. C. § 144. That statute, like § 455(b)(1), requires disqualification for “bias or prejudice.” In denying respondents’ claim, the Court stated that “[t]he alleged bias and prejudice to be disqualifying must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case.” 384 U. S., at 583.

Although *Grinnell*’s articulation of the extrajudicial source rule has a categorical aspect about it, the decision, on closer examination, proves not to erect a *per se* barrier. After reciting what appeared to be an absolute rule, the Court proceeded to make a few additional points: that certain in-court statements by the judge “reflected no more than his view that, if the facts were as the Government alleged, stringent relief was called for”; that during the trial the judge “repeatedly stated that he had not made up his mind on the merits”; and that another of the judge’s challenged statements did not “manifes[t] a closed mind on the merits of the case,” but rather was “a terse way” of reiterating a prior ruling. *Ibid.* Had we meant the extrajudicial source doctrine to be dispositive under § 144, those further remarks would have been unnecessary.

More to the point, *Grinnell* provides little justification for its announcement of the extrajudicial source rule, relying only upon a citation to *Berger v. United States*, 255 U. S. 22, 31 (1921). The cited passage from *Berger*, it turns out, does not bear the weight *Grinnell* places on it, but stands for the more limited proposition that the alleged bias “must be

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based upon something other than rulings in the case.” 255 U. S., at 31. *Berger*, in turn, relies upon an earlier case advancing the same narrow proposition, *Ex parte American Steel Barrel Co.*, 230 U. S. 35, 44 (1913) (predecessor of § 144 “was never intended to enable a discontented litigant to oust a judge because of adverse rulings made, for such rulings are reviewable otherwise”). There is a real difference, of course, between a rule providing that bias must arise from an extrajudicial source and one providing that judicial rulings alone cannot sustain a challenge for bias. *Grinnell*, therefore, provides a less than satisfactory rationale for reading the extrajudicial source doctrine into § 144 or the disqualification statutes at issue here. It should come as little surprise, then, that the Court does not enlist *Grinnell* to support its adoption of the doctrine.

The Court adverts to, but does not ratify, *ante*, at 549, an alternative rationale: the requirement in § 144 that a litigant’s recusal affidavit “be filed not less than 10 days before the beginning of the term at which the proceeding is to be heard,” unless “good cause [is] shown for failure to file it within such time.” If a litigant seeking disqualification must file an affidavit 10 days before the beginning of the term, the argument goes, the alleged bias cannot arise from events occurring or facts adduced during the litigation. See *Berger*, *supra*, at 34–35. That rationale fails as well. The 10-day rule has been an anachronism since 1963, when Congress abolished formal terms of court for United States district courts. See 28 U. S. C. § 138. In any event, the rule always had an exception for good cause. And even if the 10-day requirement could justify reading the extrajudicial source rule into § 144, it would not suffice as to § 455(a) or § 455(b)(1), which have no analogous requirement.

The Court is correct to reject yet another view, which has gained currency in several Courts of Appeals, that the term “personal” in §§ 144 and 455(b)(1) provides a textual home for the extrajudicial source doctrine. *Ante*, at 548–550.

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Given the flaws with prior attempts to justify the doctrine, the Court advances a new rationale: The doctrine arises from the pejorative connotation of the term “bias or prejudice” in §§ 144 and 455(b)(1) and the converse of the term “impartiality” in § 455(a). *Ante*, at 550, 552–553. This rationale, as the Court acknowledges, does not amount to much. It is beyond dispute that challenged opinions or predispositions arising from outside the courtroom need not be disqualifying. See, e.g., *United States v. Conforte*, 624 F. 2d 869, 878–881 (CA9), cert. denied, 449 U. S. 1012 (1980). Likewise, prejudiced opinions based upon matters disclosed at trial may rise to the level where recusal is required. See, e.g., *United States v. Holland*, 655 F. 2d 44 (CA5 1981); *Nicodemus v. Chrysler Corp.*, 596 F. 2d 152, 155–157, and n. 10 (CA6 1979). From this, the Court is correct to conclude that an allegation concerning some extrajudicial matter is neither a necessary nor a sufficient condition for disqualification under any of the recusal statutes. *Ante*, at 554–555. The Court nonetheless proceeds, without much explanation, to find “a significant (and often determinative) ‘extrajudicial source’ factor” in those statutes. *Ante*, at 555 (emphasis in original).

This last step warrants further attention. I recognize along with the Court that, as an empirical matter, doubts about a judge’s impartiality seldom have merit when the challenged mindset arises as a result of some judicial proceeding. The dichotomy between extrajudicial and intrajudicial sources, then, has some slight utility; it provides a convenient shorthand to explain how courts have confronted the disqualification issue in circumstances that recur with some frequency.

To take a common example, litigants (like petitioners here) often seek disqualification based upon a judge’s prior participation, in a judicial capacity, in some related litigation. Those allegations are meritless in most instances, and their prompt rejection is important so the case can proceed. Judges, if faithful to their oath, approach every aspect of

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each case with a neutral and objective disposition. They understand their duty to render decisions upon a proper record and to disregard earlier judicial contacts with a case or party.

Some may argue that a judge will feel the “motivation to vindicate a prior conclusion” when confronted with a question for the second or third time, for instance, upon trial after a remand. Ratner, *Disqualification of Judges for Prior Judicial Actions*, 3 *How. L. J.* 228, 229–230 (1957). Still, we accept the notion that the “conscientious judge will, as far as possible, make himself aware of his biases of this character, and, by that very self-knowledge, nullify their effect.” *In re J. P. Linahan, Inc.*, 138 F. 2d 650, 652 (CA2 1943). The acquired skill and capacity to disregard extraneous matters is one of the requisites of judicial office. As a matter of sound administration, moreover, it may be necessary and prudent to permit judges to preside over successive causes involving the same parties or issues. See Rules Governing Section 2255 Proceedings for the United States District Courts, Rule 4(a) (“The original motion shall be presented promptly to the judge of the district court who presided at the movant’s trial and sentenced him, or, if the judge who imposed sentence was not the trial judge, then it shall go to the judge who was in charge of that part of the proceedings being attacked by the movant”). The public character of the prior and present proceedings tends to reinforce the resolve of the judge to weigh with care the propriety of his or her decision to hear the case.

Out of this reconciliation of principle and practice comes the recognition that a judge’s prior judicial experience and contacts need not, and often do not, give rise to reasonable questions concerning impartiality.

B

There is no justification, however, for a strict rule dismissing allegations of intrajudicial partiality, or the appearance

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thereof, in every case. A judge may find it difficult to put aside views formed during some earlier proceeding. In that instance we would expect the judge to heed the judicial oath and step down, but that does not always occur. If through obduracy, honest mistake, or simple inability to attain self-knowledge the judge fails to acknowledge a disqualifying predisposition or circumstance, an appellate court must order recusal no matter what the source. As I noted above, the central inquiry under § 455(a) is the appearance of partiality, not its place of origin.

I must part, then, from the Court's adoption of a standard that places all but dispositive weight upon the source of the alleged disqualification. The Court holds that opinions arising during the course of judicial proceedings require disqualification under § 455(a) only if they "display a deep-seated favoritism or antagonism that would make fair judgment impossible." *Ante*, at 555. That standard is not a fair interpretation of the statute, and is quite insufficient to serve and protect the integrity of the courts. In practical effect, the Court's standard will be difficult to distinguish from a *per se* extrajudicial source rule, the very result the Court professes to reject.

The Court's "impossibility of fair judgment" test bears little resemblance to the objective standard Congress adopted in § 455(a): whether a judge's "impartiality might reasonably be questioned." The statutory standard, which the Court preserves for allegations of an extrajudicial nature, asks whether there is an appearance of partiality. See *Liljeberg*, 486 U. S., at 860 ("[t]he goal of section 455(a) is to avoid even the appearance of partiality") (internal quotation marks omitted); *United States v. Chantal*, 902 F. 2d 1018, 1023 (CA1 1990). The Court's standard, in contrast, asks whether fair judgment is impossible, and if this test demands some direct inquiry to the judge's actual, rather than apparent, state of mind, it defeats the underlying goal of § 455(a): to avoid the appearance of partiality even when no partiality exists.

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And in all events, the “impossibility of fair judgment” standard remains troubling due to its limited, almost preclusive character. As I interpret it, a § 455(a) challenge would fail even if it were shown that an unfair hearing were likely, for it could be argued that a fair hearing would be possible nonetheless. The integrity of the courts, as well as the interests of the parties and the public, are ill served by this rule. There are bound to be circumstances where a judge’s demeanor or attitude would raise reasonable questions concerning impartiality but would not devolve to the point where one would think fair judgment impossible.

When the prevailing standard of conduct imposed by the law for many of society’s enterprises is reasonableness, it seems most inappropriate to say that a judge is subject to disqualification only if concerns about his or her predisposed state of mind, or other improper connections to the case, make a fair hearing impossible. That is too lenient a test when the integrity of the judicial system is at stake. Disputes arousing deep passions often come to the courtroom, and justice may appear imperfect to parties and their supporters disappointed by the outcome. This we cannot change. We can, however, enforce society’s legitimate expectation that judges maintain, in fact and appearance, the conviction and discipline to resolve those disputes with detachment and impartiality.

The standard that ought to be adopted for all allegations of an apparent fixed predisposition, extrajudicial or otherwise, follows from the statute itself: Disqualification is required if an objective observer would entertain reasonable questions about the judge’s impartiality. If a judge’s attitude or state of mind leads a detached observer to conclude that a fair and impartial hearing is unlikely, the judge must be disqualified. Indeed, in such circumstances, I should think that any judge who understands the judicial office and oath would be the first to insist that another judge hear the case.

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In matters of ethics, appearance and reality often converge as one. See *Offutt v. United States*, 348 U. S. 11, 14 (1954) (“[J]ustice must satisfy the appearance of justice”); *Ex parte McCarthy*, [1924] 1 K. B. 256, 259 (1923) (“[J]ustice should not only be done, but should manifestly and undoubtedly be seen to be done”). I do not see how the appearance of fairness and neutrality can obtain if the bare possibility of a fair hearing is all that the law requires. Cf. *Marshall v. Jerrico, Inc.*, 446 U. S. 238, 242 (1980) (noting the importance of “preserv[ing] both the appearance and reality of fairness,” which “‘generat[es] the feeling, so important to a popular government, that justice has been done’”) (quoting *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U. S. 123, 172 (1951) (Frankfurter, J., concurring)).

Although the source of an alleged disqualification may be relevant in determining whether there is a reasonable appearance of impartiality, that determination can be explained in a straightforward manner without resort to a nearly dispositive extrajudicial source factor. I would apply the statute as written to all charges of partiality, extrajudicial or otherwise, secure in my view that district and appellate judges possess the wisdom and good sense to distinguish substantial from insufficient allegations and that our rules, as so interpreted, are sufficient to correct the occasional departure.

II

The Court’s effort to discern an “often dispositive” extrajudicial source factor in § 455(a) leads it to an additional error along the way. As noted above, the Court begins by explaining that the pejorative connotation of the term “bias or prejudice” demonstrates that the source of an alleged bias is significant under §§ 144 and 455(b)(1). The Court goes on to state that “it is unreasonable to interpret § 455(a) (unless the language *requires* it) as implicitly eliminating a limitation explicitly set forth in § 455(b).” *Ante*, at 553 (emphasis in original). That interpretation, the Court reasons, “would

KENNEDY, J., concurring in judgment

cause the statute, in a significant sense, to contradict itself.” *Ante*, at 552.

We rejected that very understanding of the interplay between §§ 455(a) and (b) in *Liljeberg v. Health Services Acquisition Corp.*, 486 U. S. 847 (1988). Respondent in *Liljeberg* sought to disqualify a district judge under § 455(a) because the judge (in his capacity as trustee of a university) had a financial interest in the litigation, albeit an interest of which he was unaware. Petitioner opposed disqualification, and asked us to interpret § 455(a) in light of § 455(b)(4), which provides for disqualification only if the judge “knows that he, individually or as a fiduciary, . . . has a financial interest in the subject matter in controversy or in a party to the proceeding.” According to petitioner, the explicit knowledge requirement in § 455(b)(4) indicated that Congress intended a similar requirement to govern § 455(a). See *Liljeberg*, 486 U. S., at 859, n. 8. Otherwise, petitioner contended, the knowledge requirement in § 455(b)(4) would be meaningless. *Ibid.*

In holding for respondent, we emphasized that there were “important differences” between subsections (a) and (b), and concluded that the explicit knowledge requirement under § 455(b)(4) does not apply to disqualification motions filed under § 455(a). *Id.*, at 859–860, and n. 8. *Liljeberg* teaches, contrary to what the Court says today, that limitations inherent in the various provisions of § 455(b) do not, by their own force, govern § 455(a) as well. The structure of § 455 makes clear that subsections (a) and (b), while addressing many of the same underlying circumstances, are autonomous in operation. Section 455(b) commences with the charge that a judge “shall also disqualify himself in the following circumstances”; Congress’ inclusion of the word “also” indicates that subsections (a) and (b) have independent force. Section 455(e), which permits parties to waive grounds for disqualification arising under § 455(a), but not § 455(b), provides further specific textual confirmation of the difference.

KENNEDY, J., concurring in judgment

The principal distinction between §§ 455(a) and (b) is apparent from the face of the statute. Section 455(b) delineates specific circumstances where recusal is mandated; these include instances of actual bias as well as specific instances where actual bias is assumed. See 28 U. S. C. § 455(b)(1) (“personal bias or prejudice”); § 455(b)(2) (judge “served as [a] lawyer in the matter in controversy” while in private practice); § 455(b)(3) (same while judge served in government employment); § 455(b)(4) (“financial interest” in the litigation); § 455(b)(5) (judge “within the third degree of relationship” to a party, lawyer, or material witness). Section 455(a), in contrast, addresses the appearance of partiality, guaranteeing not only that a partisan judge will not sit, but also that no reasonable person will have that suspicion. See *Liljeberg, supra*, at 860.

Because the appearance of partiality may arise when in fact there is none, see, e. g., *Hall v. Small Business Admin.*, 695 F. 2d 175, 179 (CA5 1983); *United States v. Ritter*, 540 F. 2d 459, 464 (CA10), cert. denied, 429 U. S. 951 (1976), the reach of § 455(a) is broader than that of § 455(b). One of the distinct concerns addressed by § 455(a) is that the appearance of impartiality be assured whether or not the alleged disqualifying circumstance is also addressed under § 455(b). In this respect, the statutory scheme ought to be understood as extending § 455(a) beyond the scope of § 455(b), and not confining § 455(a) in large part, as the Court would have it. See *ante*, at 553–554, n. 2. The broader reach of § 455(a) is confirmed by the rule permitting its more comprehensive provisions, but not the absolute rules of § 455(b), to be waived. See 28 U. S. C. § 455(e). And in all events, I suspect that any attempt to demarcate an “area of overlap” (*ante*, at 553) between §§ 455(a) and (b) will prove elusive in many instances.

Given the design of the statute, then, it is wrong to impose the explicit limitations of § 455(b) upon the more extensive protections afforded by § 455(a). See *Liljeberg, supra*,

KENNEDY, J., concurring in judgment

at 859–861, and n. 8. The Court’s construction of the statute undercuts the protection Congress put in place when enacting § 455(a) as an independent guarantee of judicial impartiality.

III

The Court describes in all necessary detail the unimpressive allegations of partiality, and the appearance thereof, in this case. The contested rulings and comments by the trial judge were designed to ensure the orderly conduct of petitioners’ trial. Nothing in those rulings or comments raises any inference of bias or partiality. I concur in the judgment.

Exhibit DIDP A63

Source URL: <http://www.hollywoodreporter.com/thr-esq/music-industry-a-listers-call-879718>

Music Industry A-Listers Call on Congress to Reform Copyright Act

1:48 PM PDT 3/31/2016 by Ashley Cullins

A day before a crucial deadline, the music industry is pulling no punches.



[1]

Getty Images

Katy Perry, Steven Tyler and Lionel Richie

Katy Perry, Steven Tyler and Lionel Richie are just a few of hundreds of artists, songwriters and others in the music industry who are calling on Washington to reform the Digital Millennium Copyright Act, according to a statement issued Thursday by the Recording Industry Association of America.

"Artists spanning a variety of genres and generations are submitting comments to the federal government's U.S. Copyright Office today and tomorrow demanding reforms to the antiquated DMCA which forces creators to police the entire Internet for instances of theft, placing an undue burden on these artists and unfairly favoring technology companies and rogue pirate sites," said the statement.

On Dec. 31, the Copyright Office announced its intent [2] to evaluate the safe harbor provisions of

the DMCA, which — to an extent — protect Internet service providers from third parties who illegally share content online.

“While Congress understood that it would be essential to address online infringement as the Internet continued to grow, it may have been difficult to anticipate the online world as we now know it, where each day users upload hundreds of millions of photos, videos and other items, and service providers receive over a million notices of alleged infringement,” said the announcement from the Copyright Office. “Among other issues, the Office will consider the costs and burdens of the notice-and-takedown process on large- and small-scale copyright owners, online service providers and the general public.”

The DMCA was signed into law by President Bill Clinton in 1998 with a goal of updating copyright laws for the digital age, but it's now disturbingly out of date, according to a petition from dozens of artists and songwriters that was filed Thursday.

"It has allowed major tech companies to grow and generate huge profits by creating ease of use for consumers to carry almost every recorded song in history in their pocket via a smartphone, while songwriters' and artists' earnings continue to diminish," the petition states. "Music consumption has skyrocketed, but the monies generated by individual writers and artists for that consumption has plummeted. The growth and support of technology companies should not be at the expense of artists and songwriters."

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The petition claims the safe harbor and notice-and-takedown provisions of the DMCA create a shield for tech companies and allow infringers to repost material after it has been removed.

"This outdated law forces us to stand by helplessly as billions of dollars in advertising is sold around illegal copies of our work," states the petition, which says the DMCA "thwarts the success" of digital services that pay musicians by allowing free, illegal copies of their works to be readily available.

It's not just individuals who are demanding change. The RIAA says 18 major music organizations submitted a 97-page joint brief "explaining the myriad flaws in the DMCA — a law passed during the dial-up era — and calling for reforms."

According to the brief, those flaws include a broken "notice-and-takedown" system, toothless repeat infringer policies and incentives for services to embrace willful blindness instead of preventing known and widespread infringement.

The music industry worked with Congress to draft and pass the DMCA and, at the time, felt it was a balanced compromise that addressed the concerns of copyright holders and service providers, but now these more than a dozen organizations feel it is antiquated and it's up to Congress, not the courts, to fix it.

“Almost 20 years later, the reality on the ground bears little resemblance to the expectations of the Music Community when the DMCA was passed,” states the brief. “The DMCA has now become a dysfunctional relic, not suited to the realities of the 21st Century.”

Those on the tech side of the issue don't feel the same way.

The Internet Association, a group that represents leading tech companies [3] like Facebook, Google and Netflix, commented on the issue [4] Tuesday and said the DMCA is working effectively as intended.

"The Digital Millennium Copyright Act creates safe harbors for Internet platforms by ensuring they will not be liable for what their users do, so long as the platforms act responsibly," says the post. "These smart laws allow people to post content that they have created on platforms — such as videos, reviews, pictures and text. In essence, this is what makes the Internet great."

The deadline to submit comments [5] is 11:59 p.m. ET on April 1.

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[2] <http://copyright.gov/policy/section512/>

[3] <https://internetassociation.org/our-members/>

[4] <http://blog.internetassociation.org/post/141914748038/dmca-infringement-takedowns-work>

[5] <http://www.copyright.gov/policy/section512/comment-submission/>

Exhibit DIDP A64

**U.S. Copyright Office
Library of Congress**

RE: Section 512 Study: Notice and Request for Public Comment, Docket No. 2015-7

COMMENTS OF RECORDING ARTISTS & SONGWRITERS

The recording artists and songwriters submitting this filing are an eclectic mix of international musicians, spanning a variety of genres and generations, who depend on the protection of copyright to earn their living.

Submitted by Rebecca Greenberg
Azoff MSG Entertainment & Global Music Rights

Songwriters' and Artists' Perspective on DMCA: A Threat to the Future of Creating Music

As songwriters and artists who are a vital contributing force to the U.S. and to American exports around the world, we are writing to express our concern about the ability of the next generation of creators to earn a living, given the legislative and judicial environment that has evolved in the wake of technological innovation over the last decade.

The existing laws -- and their interpretation by judges -- threaten the continued viability of songwriters and recording artists to survive from the creation of music. The next generation of creators may be silenced if the economics don't justify a career in the music industry.

One of the biggest problems confronting us as songwriters and recording artists today is the Digital Millennium Copyright Act. This law was written and passed in an era that is technologically out-of-date compared to the era in which we live. It has allowed major tech companies to grow and generate huge profits by creating ease of use for consumers to carry almost every recorded song in history in their pocket via a smartphone, while songwriters' and artists' earnings continue to diminish. Music consumption has skyrocketed, but the monies generated by individual writers and artists for that consumption has plummeted. The growth and support of technology companies should not be at the expense of artists and songwriters.

Section 512 of the DMCA has become the all-purpose shield that tech companies hide behind while they threaten the livelihood of music creators. The notice-and-takedown provision to which we refer allows ongoing infringements of the works we create since videos can immediately be re-posted, even after we have requested to have them removed. This outdated law forces us to stand by helplessly as billions of dollars in advertising is sold around illegal copies of our work. Most of the money goes to the tech services -- not to creators. In fact, according to a recently released report by the RIAA, U.S. vinyl sales generated more revenue for the music industry than ad-supported, free streaming by services like YouTube and Spotify over the past year.

The DMCA actually thwarts the success of digital services that are prepared to pay musicians a living wage. These legitimate services are having a difficult time getting consumers to pay for music when illegal copies of our music are readily made available through services that hide behind the DMCA.

As writers and artists who spend countless hours perfecting our craft, it is extremely demoralizing to have no control over poor quality reproductions of our songs or performances. For some acts, videos posted from live concerts are not reflective of the way we would choose to present our performances, and illegal lyric videos are created without our consent.

In sum, the DMCA simply doesn't work. It's impossible for tens of thousands of individual songwriters and artists to muster the resources necessary to comply with its application. The tech companies who benefit from the DMCA today were not the intended protectorate when it was signed into law nearly two decades ago. We ask you to recommend sensible reform that balances our interests as creators with the interests of the companies who exploit our creations for their financial enrichment. It's only then that consumers will truly benefit.

Respectfully submitted to the U.S. Copyright Office, *(signed as of 8 pm EST, 4/1/16)*

Bryan Adams	Estate of Ronnie James	Bruno Mars
Christina Aguilera	Dio	John Mayer
Arcade Fire	Carla Dirlikov	Shane McAnally
Saint Asonia	Kenny "Babyface" Edmonds	Steve Miller
Sara Bareilles	Melissa Etheridge	David Paich
Estate of Count Basie	Fifth Harmony	Pearl Jam
Tony Bennett	Mick Fleetwood	Katy Perry
Eric Bent	Estate of Glenn Frey	Dianne Reeves
Black Veil Brides	Estate of Judy Garland	Haley Reinhart
Benny Blanco	Siedah Garrett	Lionel Richie
Blue Oyster Cult	CeeLo Green	Mark Ronson
Jon Bon Jovi	Don Henley	Tom Scholz
Danielle Brisebois	Billy Idol	Troye Sivan
Garth Brooks	Billy Joel	JD Souther
Ryan Cabrera	Mick Jones	Ronnie Spector
Neko Case	Gabriel Kahane	Gwen Stefani
Kenny Chesney	Luke Laird	Rod Stewart
Bootsy Collins	Cyndi Lauper	Stone Temple Pilots
Chris Cornell	Amy Lee	Bernie Taupin
Sheryl Crow	Joanie Madden	James Taylor
Dave Matthews Band	Barry Manilow	Ryan Tedder
deadmau5	Maroon 5	The Ting Tings

Pete Townshend

Steven Tyler

Jim Vallance

Pharrell Williams

Kip Winger

Trisha Yearwood

Exhibit DIDP A65

**Before the
U.S. Copyright Office
Library of Congress**

In the Matter of:

Section 512 Study: Notice and
Request for Public Comment

Docket No. 2015-7

JOINT COMMENTS OF

**AMERICAN ASSOCIATION OF INDEPENDENT MUSIC;
AMERICAN FEDERATION OF MUSICIANS;
AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS;
AMERICANA MUSIC ASSOCIATION;
BROADCAST MUSIC, INC.;
CHRISTIAN MUSIC TRADE ASSOCIATION;
CHURCH MUSIC PUBLISHERS ASSOCIATION;
GLOBAL MUSIC RIGHTS;
THE LATIN ACADEMY OF RECORDING ARTS & SCIENCES, INC.;
MUSIC MANAGERS FORUM – UNITED STATES;
MUSIC PUBLISHERS ASSOCIATION;
NASHVILLE SONGWRITERS ASSOCIATION, INTERNATIONAL;
NATIONAL ACADEMY OF RECORDING ARTS AND SCIENCES;
NATIONAL MUSIC PUBLISHERS’ ASSOCIATION;
RECORDING INDUSTRY ASSOCIATION OF AMERICA;
RHYTHM AND BLUES FOUNDATION;
SCREEN ACTORS GUILD – AMERICAN FEDERATION OF TELEVISION
AND RADIO ARTISTS; SESAC HOLDINGS, INC.;
SONGWRITERS GUILD OF AMERICA, INC.;
AND SOUNDEXCHANGE.**

**Submitted by Jay Rosenthal, Esq. and Steven Metalitz, Esq.
Mitchell Silberberg & Knupp LLP**

The submitting parties (the “Music Community”), described in Appendix A hereto, are associations and organizations whose members create and disseminate a wide variety of copyrighted musical compositions and sound recordings. The Music Community has fully embraced the digital marketplace as the primary avenue for delivering high-quality content to music fans through a variety of exciting platforms. Collectively, the Music Community represents hundreds of thousands of songwriters, composers, music publishers, recording artists, record labels, studio professionals, and others, who rely on copyright protection for their livelihoods.

I. INTRODUCTION

By many measures, this should be a great moment for the music community.

More music is being enjoyed than ever before by fans around the globe. Fans enjoy music through a plethora of music services that offer consumers abundant choice and unprecedented access.¹ Digital platforms are using music to build and drive their businesses.²

But growing market distortions resulting from the pervasive misuse of the Digital Millennium Copyright Act (“DMCA”)³ by online platforms harm music creators and threaten their ability to succeed and thrive in the future.

The DMCA was supposed to provide balance between service providers and content owners, but instead it provides harmful “safe havens” under which many platforms either pay nothing or pay less than market value for music.

The Music Community’s list of frustrations with the DMCA is long. A broken “notice-and-takedown” system. Toothless repeat infringer policies. Active services mischaracterized as passive intermediaries. Incentives for services to embrace willful blindness instead of preventing known and widespread infringement. The words “representative list” read out of the statute.

DMCA reform is essential to bring about balance. A vibrant and healthy future for the music ecosystem depends on it.

Throughout these comments, we note various issues that should be addressed. We stand ready to work with Congress, the Copyright Office, and other stakeholders to develop practical solutions to these issues and enact comprehensive DMCA reform.

II. EXECUTIVE SUMMARY

Several factors have contributed to the failure of the DMCA to fulfill its purpose. To start, Congress enacted the DMCA in 1998 when dial-up Internet speeds and static web sites predominated. Soon thereafter, individuals could be worldwide publishers of content on peer-to-peer networks and service providers began to distribute massive amounts of content uploaded to their servers. And then came along more sophisticated search engines, social networks, and an explosion of smartphones and other mobile Internet access devices. The rules for service providers and tools for content creators set forth in the DMCA proved unsuitable for this new world.

¹ See whymusicmatters.com for a non-exclusive list and description of digital music services available in the United States.

² *Music Fuels the Internet*, RIAA, <http://www.musicfuels.com/>.

³ Unless otherwise stated, all references are to Title II of the DMCA, the Online Copyright Infringement Liability Limitation Act, which added Section 512 to Title 17, U.S. Code.

For example, the notice-and-takedown system has proved an ineffective tool for the volume of unauthorized digital music available, something akin to bailing out an ocean with a teaspoon. There is no evidence that Congress anticipated that Google or any service provider would receive and be required to respond to more than one billion takedown notices.⁴ Google wears this as a badge of honor, yet this fact emphasizes the failure of the DMCA to address the challenges faced by content owners today.

Given all of these fundamental changes, a law that might have made sense in 1998 is now not only obsolete but actually harmful. The problem is compounded by the fact that, as courts, too, have struggled to apply this outdated law for the present day, DMCA has been shifted from its original intent through a series of judicial rulings to strip away adequate protection for content owners.⁵ To start, courts have expanded application of the safe harbors well beyond the passive service providers of 1998 to more active distributors of music that compete directly with services that must obtain licenses. The result: a Hobson's Choice for content owners, either to license content for much less than it's worth, or have the broken notice-and-takedown system as the only recourse. Is it any surprise that in this distorted marketplace revenue from sales of vinyl records outpaces revenue from on-demand, ad-supported video platforms making billions of transmissions annually?⁶

Courts have also given little meaning to key provisions for content owners in the DMCA bargain. Examples include "red flag" knowledge, repeat infringer policies and representative lists. The result: safe harbor status for services that choose to stick their heads in the sand rather than do their fair share, forcing content owners to divert valuable resources from away creating content to sending minimally effective take down notices, or for content owners with limited resources, to actually refrain from sending takedown notices at all. Content owners, especially those with limited resources, simply cannot take on the entire digital universe alone.

At its worst, the DMCA safe harbors have become a business plan for profiting off of stolen content; at best, the system is a de facto government subsidy enriching some digital services at the expense of creators. This almost 20 year-old, 20th Century law should be updated.

⁴ *Google Asked to Remove 100,000 'Pirate Links' Every Hour*, TORRENTFREAK (Mar. 6, 2016), <https://torrentfreak.com/google-asked-to-remove-100000-pirate-links-every-hour-160306/> (estimating that Google will have to process a billion reported links this year alone, a milestone which previously took over a decade to reach).

⁵ Please see responses to Questions 5, 14, 19, 24 and 25 for a discussion of judicial interpretations of these provisions.

⁶ Cary Sherman, *Valuing Music In a Digital World*, FORBES (Sept. 23, 2015), <http://www.forbes.com/sites/realspin/2015/09/23/how-government-set-licensing-killed-the-music-industry/#23d7a29cf988>; see also Cary Sherman, *State of the Music Business: What the Numbers Tells Us*, RIAA (Mar. 22, 2016), <https://medium.com/@RIAA/state-of-the-music-business-what-the-numbers-tell-us-63ce1524b30#.wcdv03wso>; RIAA 2015 Year-End Sales & Shipments Data Report, available at <http://www.riaa.com/reports/riaa-2015-year-end-sales-shipments-data-report-riaa/>.

III. GENERAL EFFECTIVENESS OF SAFE HARBORS

To supplement the Music Community’s answers to the questions below, we have attached, as Appendix B, a detailed history of the pre-DMCA legal and economic ecosystem, including analysis of the cases and political history related to the passage of the DMCA.

1. Are the Section 512 safe harbors working as Congress intended?

In a word, NO. When it passed the DMCA in 1998, Congress intended to provide effective protection for copyright owners while allowing for the continued growth and development of the Internet. It intended to find a balance: limit liability for certain classes of passive service providers in exchange for effectively addressing infringement. Yet, today, digital services enjoy an (expanding) safe harbor while content owners face an increasing onslaught of digital infringement, with no effective recourse. This couldn’t possibly be what Congress meant to achieve.

To better understand Congress’s intent, it makes sense to recall the online experience of the late 1990s. When the DMCA was enacted, Internet access was slow; online material was difficult to locate; consumers in many countries lacked widespread access to the Internet; Internet businesses (including access providers, hosts, and website operators) largely earned income from subscription or use-based pricing; and computing devices were expensive and stationary.

Given Congress’s understandable inability to anticipate the dramatic transformation of the Internet, the DMCA has failed to scale, rendering it increasingly obsolete and futile from an enforcement standpoint. Consider that, since 2012, the Recording Industry Association of America (“RIAA”) has sent more than 175 million infringement notices in the aggregate to web site operators, their underlying hosting providers, and search engines. Many of these relate to works taken down on a particular site, only to see a repeat infringement of the same work appear on the same site.⁷ And then, that repeat infringement is often once again indexed by search engines. This is of particular concern as search engines are one of the leading ways to discover pirated music.⁸ This renders the notice-and-takedown process minimally effective at best.

Of course, what is expensive and difficult for large copyright owners is an impossible task for small copyright owners seeking to protect the value of their works.⁹ As described in response to Question 8, Maria Schneider, a three-time GRAMMY winning jazz and classical composer, bandleader and conductor noted in describing her frustration with the DMCA, “[t]he DMCA makes it my responsibility to police the entire

⁷ Please see responses to Questions 6 and 7 for examples of such repeat infringements.

⁸ Source: Survey of digital music listeners by consumer research firm MusicWatch; Russ Crupnick, *Bad Company, You Can’t Deny*, MUSICWATCH (Feb. 22, 2016), <http://www.musicwatchinc.com/blog/bad-company-you-cant-deny/>.

⁹ See Nelson Granados, *How Online Piracy Hurts Emerging Artists*, FORBES (Feb. 1, 2016), <http://www.forbes.com/sites/nelsongranados/2016/02/01/how-online-piracy-hurts-emerging-artists/#488ccf0a7fa2>.

Internet on a daily basis. As fast as I take my music down, it reappears again on the same site—an endless whack-a-mole game.”¹⁰ ESL Music and Thievery Corporation co-founder Eric Hilton has stated even more distinctly “if our music was taken down, it would almost immediately return on another site or even the same site. We were spending more and more resources on the takedown notices, and we were consistently getting less and less in return. Eventually, we decided to stop sending the notices altogether. It was simply an exercise of throwing good money after bad. So time and again, we released product realizing more and more that we had no real way to stop its unauthorized use and the erosion of its commercial viability.”¹¹

Unfortunately, large, sophisticated entertainment-oriented digital services have thrived as a result of this “whack-a-mole” process, premising business models on being shielded from responsibility by the safe harbors. As filmmaker Ellen Seidler asks, “Why does Google make it so damn difficult to send a DMCA notice?” She provides a step-by-step guide on takedown notices, with all the pitfalls and roadblocks set up by Google and writes, “Google has designed cutting edge online tech, but its DMCA procedures are something out of the Dark Ages. That’s no accident.”¹²

So what was the proper balance Congress sought in 1998? Congress understood that unchecked Internet-based infringement would damage copyright owners.¹³ Congress intended to retain for copyright owners the kind of “effective – not merely symbolic – protection” it had always provided for their property.¹⁴ Congress sought a balance by providing liability limitations to service providers that acted responsibly to help achieve the Internet’s potential. However, Congress certainly did not plan to sacrifice the health of America’s creative industries on the altar of the Internet’s success. Congress specifically did not adopt, as it did with respect to almost all other torts in the Communication Decency Act (“CDA”) two years earlier,¹⁵ blanket immunity for service providers.

Congress was clearly influenced by the existing legal landscape and the dominant views expressed in *Netcom* and its progeny.¹⁶ Importantly, Congress did not intend to absolve service providers of all liability so long as they responded to notices from copyright owners that identified specific infringing items. Instead, Congress’s approach was intended to: (i) preserve direct liability for service providers who actively engaged in infringing conduct, such as selectively choosing which user uploads to repackage and

¹⁰ See Section 512 of Title 17: Hearing Before the Subcomm. on Courts, Intell. Prop. and the Internet of the H. Comm on the Judiciary, 113th Cong. 57 (2014) (statement of Maria Schneider).

¹¹ ESL Music Letter, Appendix E. See also individual submission of MusicNotes on challenges faced with the notice-and-takedown system in connection with sheet music.

¹² Ellen Seidler, *Why does Google make it so damn difficult to send a DMCA notice?*, VOX INDIE (Feb. 24, 2016), <http://voxindie.org/why-does-google-make-it-so-damn-difficult-to-send-dmca-notice/>.

¹³ See also “The Law and Policy Landscape Pre-DMCA”, Appendix B, at 11-12.

¹⁴ Report of the Senate Committee on the Judiciary on S. 2037, the Digital Millennium Copyright Act, S. Rep. No. 105-190 (1998); see also Appendix B, at 10-11.

¹⁵ 47 U.S.C. § 230; see also Appendix B, at 7-12 (discussing the various limitations on the immunity for service providers).

¹⁶ *Religious Tech. Center v. Netcom On-Line Comm.*, 907 F. Supp. 1361 (N.D. Cal. 1995) (“*Netcom*”); see also Appendix B, at 8.

make publicly available; (ii) preserve contributory liability for service providers who substantially contributed to infringement while possessing knowledge of facts from which a reasonable person would deduce that infringement is occurring, unless the service provider took steps to stop the infringement upon obtaining such knowledge; and (iii) preserve vicarious liability for service providers who used infringing content to attract or retain users to their websites or networks (*i.e.*, where the value of the product or services was derived in part from access to infringing content) or charged users specific fees associated with infringing content. In short, the DMCA’s approach was intended to create safe harbors only for “innocent” actors.¹⁷

Congress was aware of arguments that it might be difficult for service providers to determine whether content transmitted by users qualified as infringing. Nevertheless, Congress believed that, in many cases, service providers “know infringement when they see it,”¹⁸ and concluded that service providers have a responsibility to take steps to prevent such conduct or risk full liability. When users post copies of recognizable works with recognizable copyright owners or aggregate infringing material and label it as such, services should act.

Of course, too many service providers do not proactively respond to infringement. Judicial decisions have further bolstered this skewed view of liability and responsibility. Courts have repeatedly required less and less – sometimes almost nothing – from Internet intermediaries, and more and more from the content owner. This was never Congress’s intent.

Note that Congress also believed that termination of access to a particular digital service was a reasonable method of deterring repeated copyright violations from persons who flagrantly abused their access in order to violate copyright law. It underscored the importance of this remedy by requiring *all* service providers to implement such methods if they wished to benefit from *any* of the four statutory safe harbors.¹⁹ Yet termination remains a particularly rare occurrence.

It is no surprise that the 2001 European Union E-Commerce Directive that established safe harbors similar to the safe harbors established by the DMCA is also currently under review within the European Union. Commenters there have criticized the Directive as similarly inapplicable to and ineffective in today’s digital marketplace, finding that it unfairly protects and advantages service providers at the expense of music and other rights holders.²⁰

Sadly, it is now clear that the explicit warning sounded in 1995 by the USPTO Working Group’s White Paper has been fulfilled: the safe harbors have “encourage[ed]

¹⁷ *ALS Scan v. RemarQ Communities, Inc.*, 239 F. 3d 619, 625 (4th Cir. 2001).

¹⁸ See Senate Judiciary Committee Report, S. Rep. No. 105-190, 49 (1998).

¹⁹ 17 U.S.C. § 512(i)(1)(A).

²⁰ See European Commission, *Public consultation on the regulatory environment for platforms, online intermediaries, data and cloud computing and the collaborative economy*, DIGITAL SINGLE MARKET (Sept. 9, 2015), <https://ec.europa.eu/digital-agenda/en/news/public-consultation-regulatory-environment-platforms-online-intermediaries-data-and-cloud>.

intentional and willful ignorance” on the part of service providers and “chok[ed] the development of marketplace tools that could be used to lessen ... the risk to copyright owners, including ... educating subscribers about infringement and using technological protections, such as tracking mechanisms.”²¹

2. Have courts properly construed the entities and activities covered by the Section 512 safe harbors?

For the most part, courts have *not* properly construed the entities and activities provisions covered by the Section 512 safe harbors.

As an initial matter, courts have generally construed the definition of “service provider” and the “activities” permissible under the safe harbors too broadly. Parties that are nothing like the passive, neutral online service providers that Congress had in mind when drafting and enacting the DMCA now take unfair advantage of the safe harbors. The safe harbors are relied upon by digital services that expressly attract users by hosting and publishing content and directly benefit from such increased user base by mining data and selling advertisements. What was intended to be a limitation on monetary damages for infringing activity by passive, neutral intermediaries has instead become a “get out of jail free” card for all but the most egregious actors.

Although some early cases seemed to recognize that Congress wanted judges to approach cases of online infringement pragmatically,²² too many courts have now diverged from this view.²³ Cases involving YouTube and Veoh exemplify the problem. Consider the following:

- Both services facilitated user access to videos uploaded by third parties and generated revenue by displaying advertising alongside videos;²⁴

²¹ See Appendix B, at 2.

²² See, e.g., *A&M Records, Inc. v. Napster, Inc.*, 54 U.S.P.Q.2d 1746 (N.D. Cal. 1998); *A&M Records, Inc. v. Napster, Inc.*, 2000 U.S. Dist. LEXIS 6243 (N.D. Cal. 2000); *A&M Records, Inc. v. Napster, Inc.*, 114 F. Supp. 2d 896 (N.D. Cal. 2000); *A&M Records, Inc. v. Napster, Inc.*, 239 F. 3d 1004 (9th Cir. 2001).

²³ One reason for this may be the courts improperly grafting principles behind the Communications Decency Act (CDA) onto the DMCA. See, e.g., *Hendrickson v. eBay, Inc.*, 165 F. Supp. 2d 1082 (C.D. Cal. 2001); *Hendrickson v. Amazon.com, Inc.*, 298 F. Supp. 2d 914 (C.D. Cal. 2003); *Corbis Corp. v. Amazon.com, Inc.*, 351 F. Supp. 2d 1090 (W.D. Wash. 2004). These cases embody judicial willingness to read the carefully crafted safe harbors too broadly so as to cover conduct, such as facilitating sales of merchandise, that the statute was never designed to protect. Later, poorly conceived claims involving Google’s search engine activities would also lead to broad pronouncements unfairly expanding the safe harbors beyond the four corners of the statute. See *Field v. Google Inc.*, 412 F. Supp. 2d 1106 (D. Nev. 2006); *Parker v. Google, Inc.*, 422 F. Supp. 2d 492 (E.D. Pa. 2006). Courts also sometimes conflated the principles beyond the CDA with those behind the DMCA, not recognizing key differences. See, e.g., *Perfect 10, Inc. v. CCBill, Inc.*, 488 F.3d 1102 (9th Cir. 2007); see also *Batzel v. Smith*, 333 F.3d 1018 (9th Cir. 2003) (“The Digital [Millennium Copyright] Act includes immunity provisions, similar to those of the Communications Decency Act.”).

²⁴ See *Io Grp., Inc. v. Veoh Networks, Inc.*, 586 F. Supp. 2d 1132, 1143 (N.D. Cal. 2008); *UMG Recordings, Inc. v. Veoh Networks Inc.*, 665 F. Supp. 2d 1099, 1117-18 (CD. Cal. 2009) (“*Veoh*”), *aff’d UMG Recordings, Inc. v. Shelter Capital Partners LLC*, 718 F.3d 1006, 1014 (9th Cir. Cal. 2013); *Viacom, Inc. v. YouTube, Inc.*, 718 F. Supp. 2d 514, 528-29 (S.D.N.Y. 2010) (“*Viacom*”), *aff’d in part and*

- Both generated massive traffic to their websites by hosting infringing material, and the court found they had “welcomed” infringing material on their services and advertised its availability.²⁵ Nevertheless, the district courts placed the entirety of the burden of identifying and noticing infringement on copyright owners.²⁶
- In *Veoh*, the court extended the safe harbor even though Veoh was informed that any music videos containing performances by certain listed recording artists were infringing, thereby reading the “representative list” language out of the statute.
- In *Viacom*, the district court decided that liability could attach only if YouTube had knowledge of each specific infringing clip.²⁷
- The court found that YouTube did not have the “right and ability to control infringing activity” even though the service’s founders decided to take down certain types of infringing content, such as full length films, and allow others to remain, including music videos.
- YouTube also had the capability of using digital fingerprinting to block infringing material, but chose to do so only when the content providers entered into licensing agreements with it.²⁸ The court sanctioned this behavior, ruling that the DMCA did not require YouTube to use this software to attempt to stop, for example, repeat postings of a video that had already been identified as infringing through a notice-and-takedown procedure.²⁹

These are but two examples that illustrate how the scales have tilted well beyond the balance Congress sought to create when passing the DMCA.³⁰

Such decisions also ignore how the technological tools available to digital services to prevent or limit systematic infringement have advanced.³¹ When commercial digital services rely on third party content to expand their user base and generate revenue,

remanded, Viacom, Inc. v. YouTube, Inc., 676 F.3d 19 (2d Cir. 2012) (“*Viacom II*”), *on remand Viacom Int’l, Inc. v. YouTube, Inc.*, 940 F. Supp. 2d 110, 115 (S.D.N.Y. 2013) (“*Viacom III*”).

²⁵ William Hensley, *Copyright Infringement Pushin’: Google, YouTube, and Viacom Fight for Supremacy in the Neighborhood that may be Controlled by the DMCA’s Safe Harbor Provision*, 51 IDEA 607 (2011) (“YouTube’s business model was designed to maximize the number of site viewers in order to increase advertising revenue to attract a buyer. To increase the number of viewers, they needed infringing material.”).

²⁶ *Viacom*, 718 F. Supp. 2d at 528-29.

²⁷ *Viacom III*, 940 F. Supp. 2d at 115. This decision astoundingly applauded the “wisdom of the legislative requirement” that places the burden on the copyright owner to identify and give notice of each infringement, and cited Viacom’s 100,000 takedown notices to YouTube in a single year as evidence that this “system is entirely workable.” *Id.*

²⁸ *Id.* at 119-120.

²⁹ *Id.* at 120.

³⁰ See also responses to Questions 14, 19 and 21 for discussion of erroneous decisions.

³¹ Please see responses to Questions 11 and 15 for a discussion of these technologies.

those services should not be able to avail themselves of the safe harbors simply because they use the public to populate the content on their sites and refuse to implement commercially available tools to weed out unlicensed third party copyrighted content. The DMCA must be rebalanced to address this fundamental unfairness.

3. How have Section 512's limitations on liability for online service providers impacted the growth and development of online services?

The DMCA has hurt the growth of legitimate services that are forced to compete with unlicensed services that use the safe harbors as a shield. Unfair competition impedes the marketplace. Here, unfair competition comes in two forms: completely unlicensed services; and services that negotiate “in the shadow of the law” to obtain below market rates. This distortion in the market stifles investment and ultimately reduces innovation and diversity of services and business models.

Again, the culprits are a variety of problems with the way the DMCA has worked in practice:

- Court interpretations that encourage user-generated content services to turn a blind eye to infringement rather than providing incentives for cooperation;
- A mindset of “use third party copyrighted works first, ask for a license later.”³² Consider that Flipagram, YouTube and SoundCloud all claimed safe harbor status in their early years while relying on music for their growth, and only sought licenses for music after they had obtained substantial audiences.
- Rogue services design and engineer their systems to make the DMCA irrelevant and ineffective in stopping their ongoing infringement. Consider Grooveshark, which profited from its infringing activity for years under the color of the DMCA safe harbor before ultimately being found liable for willful copyright infringement.³³

A balanced law would deter rogue actors from seeking to realize short term profits from music at the expense of music creators, owners, and legitimate digital services. Fixing the DMCA will help legitimate digital services flourish.

³² See Kurt Wagner, *Why Aren't More People Talking About Flipagram? (Q&A)*, RECODE.NET (Mar. 13, 2016), <http://recode.net/2016/03/13/why-arent-more-people-talking-about-flipagram-qa/> (quoting the CEO of Flipagram as saying, “we kind of just did it and [decided] we’d ask for permission after”).

³³ *Capitol Records, LLC v. Escape Media Group, Inc.*, 2014 U.S. Dist. LEXIS 183098, *76-79 (S.D.N.Y. May 28, 2014), *adopted* 2015 U.S. Dist. LEXIS 38007, *18-19, 30-32 (S.D.N.Y. Mar. 25, 2015) (“*Grooveshark*”).

4. How have Section 512’s limitations on liability for online service providers impacted the protection and value of copyrighted works, including licensing markets for such works?

In addition to hampering the growth of other digital music services that choose to partner with the Music Community and license music content, Section 512’s limitations on liability for digital service providers have negatively impacted the protection and value of copyrighted works, including licensing markets for such works in a number of ways:

- Overall protections are limited as the safe harbor allows for many variations of unauthorized use with no meaningful remedy, thus depressing the licensing market.
- The shadow of the safe harbor too often leads to a below market rate.
- When service providers decide to exploit music but not license it and instead hide behind the safe harbor wall, no monetary compensation is offered to content owners, who must also expend resources to identify infringements and send takedown notices.

Rather than encouraging cooperation between service providers and content owners to address infringement, the DMCA has led to certain service providers actively avoiding any knowledge of what is occurring on their service, declining to use readily available tools to limit infringements, and using flawed interpretations of the DMCA to avoid ensuring that works that have been noticed as infringing do not reappear on their service. By way of example, unauthorized uses of One Direction’s “Drag Me Down” reappeared over 2,700 times on YouTube following the first notice.³⁴ The problem is endemic in today’s Internet environment.³⁵ In addition, some social media networks invoke the safe harbors while enabling their users to shield their content from public searching – further impeding the enforcement of copyright rights.

Moreover, rogue actors design their systems to purportedly comply with the DMCA notice-and-take down regime, while actively encouraging infringing behavior, all under the color of the DMCA. As noted above, despite Grooveshark being ultimately found liable for copyright infringement for its egregious behavior,³⁶ it was able to profit from unauthorized use of music for years while the case was litigated. In that case, the court found that Grooveshark had created a “technological Pez dispenser” that required copyright owners to submit “successive takedown notices” in order to remove a single sound recording from the service.³⁷ This “actively prevented copyright owners from

³⁴ IFPI submission on regulatory environment for platforms, online intermediaries, data and cloud computing and the collaborative economy (Dec. 2015).

³⁵ Please see responses to Questions 6-12 for further examples of the DMCA’s failure as a regime to protect copyrighted works.

³⁶ *Grooveshark* at *102-03.

³⁷ *Grooveshark* at *19.

being able to issue meaningful DMCA takedown notifications.”³⁸ Others are so shameless as to publicly tout their activity and seek crowd sourced funding for their illegal efforts.³⁹

This type of brazen work-around of the DMCA by Grooveshark and other rogue actors of the DMCA devalues music and suppresses the legitimate market for it.

Furthermore, the deficiencies in the DMCA, compounded by flawed judicial interpretations of the DMCA has created a “culture of free” mentality, leading to market distortions. As IFPI explained, services directly licensed on the basis of full exclusive rights generated over \$1.3 billion for the music industry in 2014, whereas by comparison, the over 900 million music users of user-uploaded, on-demand streaming platforms generated less than half of that (approx. \$530 million) in the same year.⁴⁰ Based on available data, IFPI estimates that in 2014 YouTube paid out approximately \$0.72 per user per year to record companies, while in 2013 Spotify paid out \$20 per user (no equivalent 2014 data available).⁴¹ “The notice-and-takedown system—intended as a reasonable enforcement mechanism—has instead been subverted into a discount licensing system where copyright owners and artists are paid far less than their creativity is worth.”⁴²

³⁸ *Id.* at *21-22.

³⁹ A particularly egregious example was Aurous, a service that allowed users to search for, stream, and download pirated copies of popular music, and which was designed specifically to search for and retrieve copies from online sources notorious for offering pirated music. Aurous had promoted itself by linking to articles that call it “BitTorrent Music for Your Dad” and “Popcorn Time for Music”; in other words, as a site that made it incredibly easy to find and stream or download pirated music. Aurous brazenly began a crowdfunding campaign for its mobile app. *See* Aurous, “We need your help to bring Aurous to Iphone, Android and Windows phone! Please consider donating to our Indiegogo...”, TWITTER (Sept. 17, 2015, 11:55 am), <https://twitter.com/aurousapp/status/644585368440938496?lang=en>; Aurous, “Hey everyone who contributed to our @Indiegogo campaign, we've issued refunds for all our backers, Aurous will be released October 10th.”, TWITTER (Sept. 19, 2015, 1:00 pm), <https://twitter.com/aurousapp/status/645326516600086528?lang=en>. The RIAA, on behalf of its members, brought suit against Aurous, securing a judgment and permanent injunction that shut down the service. *See Atlantic Recording Corporation et al. v. Andrew Sampson*, Case No. 1:15-cv-23810 (S.D. Fla., filed Oct. 13, 2015); Judgment and Permanent Injunction, *id.* (Dec. 23, 2015).

⁴⁰ IFPI submission, *supra* n. 34.

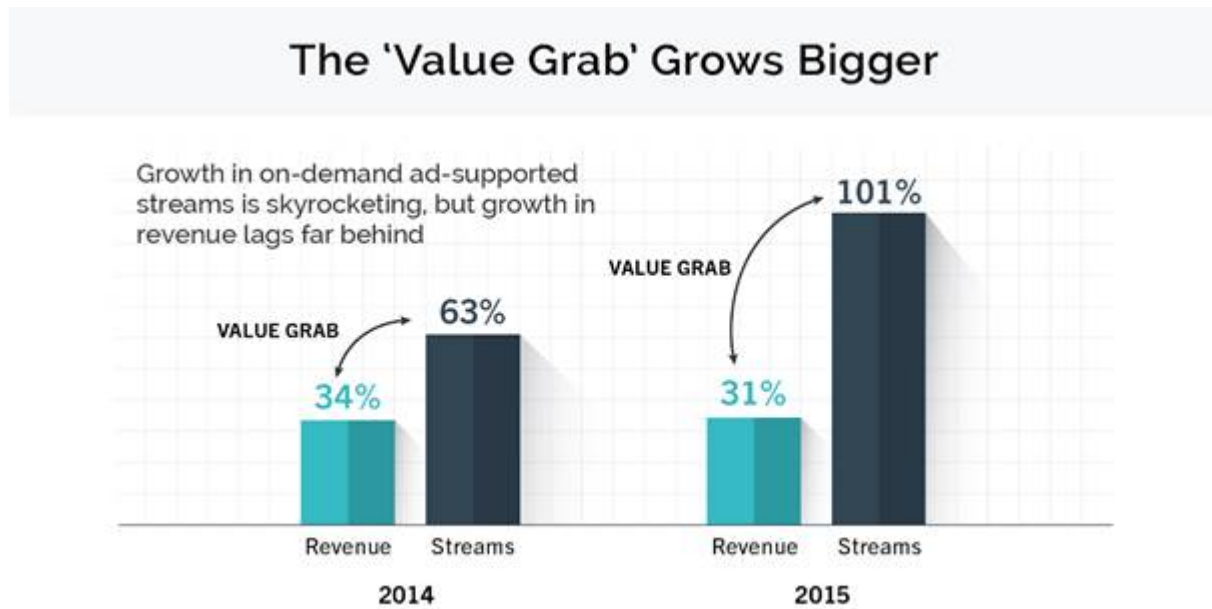
⁴¹ *Id.*

⁴² *See* Sherman, *supra* n. 6; *see also* IFPI submission, *supra* n. 34 (“[O]ur member companies, as content producers, are unable to negotiate fair commercial contractual terms with some online platforms, specifically those that rely on user-uploaded content (‘UUC’), such as YouTube, Dailymotion and SoundCloud. These services build up a user base off the back of UUC content, relying on the lack of clarity in the legal framework, and then make a “take it or leave it” offer. Music companies can license their content on the terms of offer, or not agree to license, knowing that in such case their content will still be available and that they will have no option other than engaging in notice-and-takedown procedures which are ultimately ineffective in handling the vast volumes of UUC. This leads to licenses being concluded at artificially low rates, causing a “value gap” between the income generated by such services from their use of music, and the revenues that are being returned to record companies and artists. This behavior harms creators and producers as well as other music services, consumers, and the economy as a whole.”).

Despite music being more popular than ever today,⁴³ U.S. music industry revenues have been virtually flat since 2010 and are down nearly 50% since the DMCA was enacted in 1998. This has led to what we call the “value grab”, creating market distortions that lead to bizarre statistics like vinyl records generating more revenue for the industry in 2015 than the billions of on-demand ad-supported music streams on YouTube and similar services.⁴⁴

This is further illustrated by the disparity between the annual growth of usage compared with revenues from on-demand ad-supported music streaming in the U.S. This category of music listening includes many popular services such as YouTube, Vevo, the free portion of Spotify, and other services as well.

Chart 4.1 – Disparity between growth in music streaming consumption versus growth in revenues from that streaming consumption



As shown in Chart 4.1, in 2014, on-demand, ad-supported streaming usage grew 63%, while revenues for sound recordings from that usage only grew 34%. This disparity – an indicator of the “value grab” – grew even wider in 2015. In 2015, on-demand, ad-

⁴³ “Demand for music online is higher than ever, with many sites directly dependent upon professionally produced, copyrighted music for their success. Over 65% of Americans ages 13+ agree that music is important to their lifestyle. American consumers spend, on average, more than 24 hours per week listening to music and, in a typical week, 75% of U.S. consumers listen to music online. Twelve of the top 20 most followed people on Twitter are from the Music Community. Fifteen of the top 20 celebrities on Facebook are musicians.” Music Community Written Submission Regarding Development of the Joint Strategic Plan on Intellectual Property Enforcement, in response to Request of the U.S. Intellectual Property Enforcement Coordinator for Public Comments, 80 Fed. Reg. 52800 (Oct. 15, 2015), Appendix C.

⁴⁴ At retail in the U.S., vinyl revenues outpaced revenues from all on-demand, ad supported music streaming services. See Sherman and RIAA 2015 Year-End Sales & Shipments Data Report, *supra* n. 6. Even at wholesale in the U.S., vinyl revenues outpaced revenues from total on-demand, ad supported music video steaming services.

supported music streaming consumption more than doubled in the U.S., while the revenues to the sound recording industry from that usage only grew 31%.

The fact is that, while the technology industry is benefitting from the increased availability of digital music, and profiting from the unprecedented consumption and interest in music, the Music Community is facing a shortfall.

The DMCA has prevented the Music Community from receiving its fair share of the significant and growing digital marketplace.⁴⁵ If the Music Community is to be successful through, creating, investing in, and rewarding music creators, it needs a digital marketplace operating in a free market that properly compensates creators and content owners.

5. Do the Section 512 safe harbors strike the correct balance between copyright owners and online service providers?

The DMCA Section 512 safe harbors may have initially been designed to provide a balanced approach. But after years of transformative technological developments and flawed judicial interpretations of what activities should be permitted to fall within the safe harbor (*i.e.*, what constitutes red flag knowledge, what qualifies as a representative list, etc.),⁴⁶ the DMCA no longer strikes the balance intended by Congress between copyright owners and service providers.

Significantly, broad judicial interpretations of “online service provider” have resulted in safe harbors protecting more than just passive and/or neutral, “innocent” service providers. The unbalanced safe harbors are now relied upon by digital services to attract visitors by hosting content. These services then benefit financially from mining data from, and selling advertisements based on, that increased audience. Some of these services then negotiate with content providers for licensing fees at below market rates (if any fees are paid at all), because the content owners’ only other option is a notice-and-takedown regime that simply does not work.⁴⁷

Some judicial decisions have dis-incentivized service providers from even taking steps to meaningfully stop infringement lest they be deemed to have red flag knowledge of infringement or discover the existence of repeat offenders. This makes service providers actively avoid doing otherwise reasonable things.

Initially Congress sought balance so that Section 512 limitations would enable a nascent online industry. However, given the flawed judicial interpretations of the DMCA, and the incredible growth and market power of this industry, protecting service providers that act as content distributors at the expense of creators is not a justifiable

⁴⁵ See David Israelite, *NMPA Head Says “Free” May Work For Pandora But is Devastating to Songwriters: Op-Ed*, BILLBOARD (Sept. 24, 2015), <http://www.billboard.com/articles/business/6707834/nmpa-david-israelite-oped-pandora-songwriter-payments>.

⁴⁶ Please see responses to Questions 2, 4, 19 and 21 for a more detailed discussion.

⁴⁷ Please see responses to Questions 3 and 4.

policy objective. Instead of enabling certain service providers to unfairly benefit from their exploitation of music, Congress should seek to create a level playing field.

IV. NOTICE-AND-TAKEDOWN PROCESS

6. **How effective is Section 512's notice-and-takedown process for addressing online infringement?**

Section 512's notice-and-takedown process, as implemented, is impracticable and ineffective on today's Internet. Music trade associations have sent notices of over 280 million infringements to Google alone.⁴⁸ Individuals and small-businesses which cannot afford such an undertaking are left without even this minimal protection under the DMCA against digital piracy.⁴⁹ These issues are exacerbated by the "whack-a-mole" nature of the notice-and-takedown process.⁵⁰ Certain service providers have been known to contribute to this problem by ignoring the rampant infringing activity occurring on their sites, and waiting to act until they receive copyright-owner notifications.⁵¹ These notifications may never come because of content owners' unawareness of infringement, or may only come once the infringement has gone viral.⁵² The DMCA was not intended to enable or allow service providers to profit from such widespread and repeat infringement, while shielding themselves from liability; yet it is doing just that.

Music has been particularly hard hit. To get a sense of the scope of the problem, consider that since 2012, RIAA alone has noticed over 175 million infringements of music. In just the short period between the Grammy nominations (December 7, 2015) and the Grammy awards (February 16, 2016), nearly 4,000 unique infringing links were noticed to digital services for just the five nominated "Record of the Year" tracks.⁵³

In addition, there has also been escalating damage from the unauthorized dissemination of pre-release music, *i.e.*, albums slated for commercial release that have not yet been commercially released to the public.⁵⁴ In these circumstances, the

⁴⁸ Source: Google Copyright Transparency Report for infringements noticed by RIAA, BPI, and IFPI.

⁴⁹ See also Granados, *supra* n. 9. Kimberly James, President of indie label CBM, says that within two hours of releasing music, that often costs thousands of dollars to produce, she has found it illegally downloaded on hundreds of websites. Once the music has been uploaded, it's a massive battle to get it taken down, one that most emerging artists cannot afford; a conservative estimate puts 10% of music royalties as lost to piracy.

⁵⁰ Please see response to Question 4 and discussion above.

⁵¹ See *Veoh Networks*, 586 F. Supp. 2d 1132; *Viacom II*, 676 F. 3d at 32-34.

⁵² Brief for Recording Indus. of America Assoc. et al. as Amici Curiae, p. 5, *Capitol Records, LLC v. Vimeo, LLC*, 972 F. Supp. 2d 500 (S.D.N.Y. 2013).

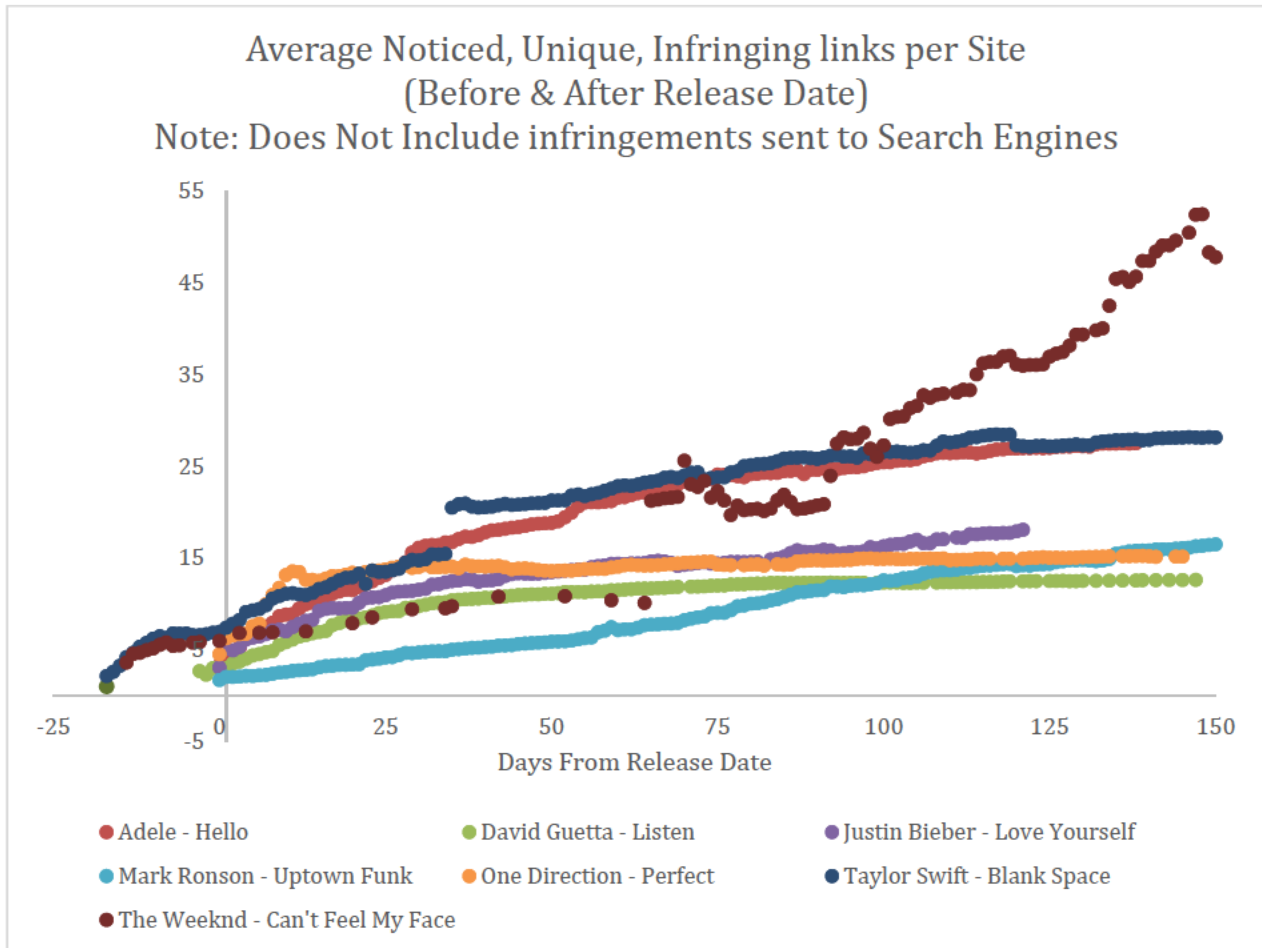
⁵³ This did not include notices for those links to search engines, and includes a period months after the commercial release of these songs.

⁵⁴ See Stephen Witt, *The Man Who Broke the Music Business*, THE NEW YORKER (Apr. 27, 2015), <http://www.newyorker.com/magazine/2015/04/27/the-man-who-broke-the-music-business> (describing some of the history of online infringement of pre-release music); see also Stephen Witt, *How Music Got Free: The End of an Industry, the Turn of the Century, and the Patent Zero of Piracy*, (Viking Pres, 2015); Andre Yoskowitz, *FBI Takes Down Pre-Release Music Piracy Site Share Beast*, NEWS BY AFTERDAWN (Sept. 16, 2015), <http://www.afterdawn.com/news/article.cfm/2015/09/16/fbi-takes-down-pre-release->

infringement is particularly damaging as it hits before the music has been released commercially to the public.

Chart 6.1 illustrates the ratio of infringing links per site noticed around the time of release for several recently released popular sound recordings.

Chart 6.1 – Average Noticed, Unique, Infringing Links per Site (Before & After Release Date)

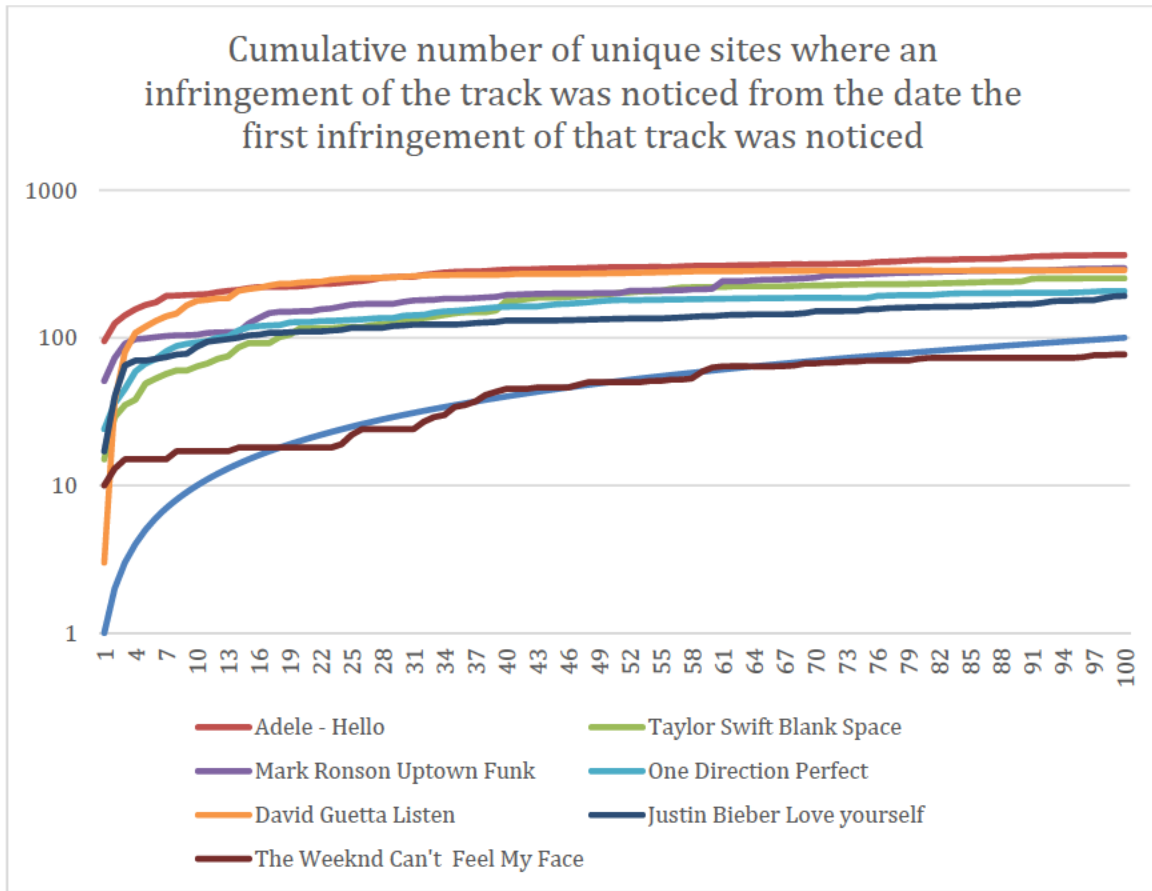


As shown, sometimes serial and viral infringement is found even before the release date of the track. Once the sound recordings were released, the scope of the infringement problem quickly escalated. For example, by the fifth day after commercial release, the number of infringements noticed per site had expanded to over five per site per day.

Chart 6.2 shows how quickly the infringements spread to different sites, based on what could be identified within the limited resources of existing content protection operations.

music-piracy-site-sharebeast (describing ShareBeast, a rogue cyberlocker shut down by the Department of Justice in 2015 that trafficked in pre-release music).

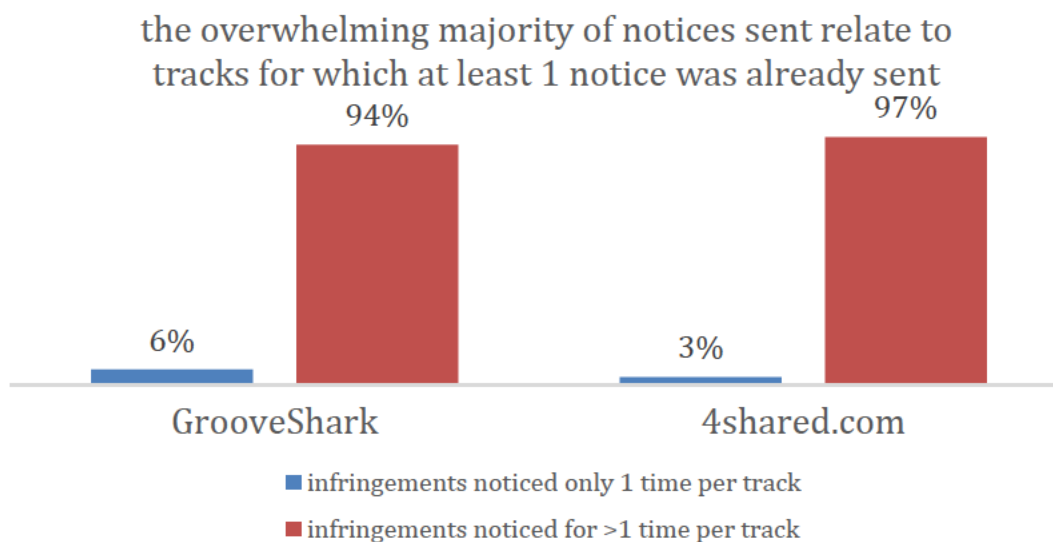
Chart 6.2 – Cumulative number of unique sites where an infringement of the track was noticed from the date of the first infringement of that track was noticed



Unauthorized copies of virtually all these works were found on at least 10 different sites within the first couple of days of release, with several being infringed on over 100 different sites by the end of the first week. This is despite right holder efforts to take down the infringements.

With that understanding of the scope of the problem, consider the ineffectiveness of the DMCA. In 2014, RIAA noticed over 278,000 instances of music infringement to just one site that claims to comply with the DMCA Section 512(c) safe harbors, 4shared.com, a cyberlocker and file sharing hub. Of those, 97% were for repeat infringements of a previously noticed sound recording. In the five months prior to Grooveshark being shut down for willful copyright infringement, RIAA sent the service nearly 300,000 infringement notices; 94% were for repeat infringements of a previously noticed track.

Chart 6.3 – the overwhelming majority of notices sent relate to tracks for which at least 1 notice was already sent



This problem with repeat infringement of the same track on the same site is not limited to a particular class of service provider. IFPI, an international music trade association, reported that infringements of One Direction’s “Drag Me Down” reappeared over 2,700 times on YouTube (an on-demand, audio-visual service) following the first notice, infringements of Mark Ronson’s “Uptown Funk” reappeared over 3,000 times on SoundCloud (an on-demand, music streaming service) following the first notice.⁵⁵

Copyright owners should not be required to engage in the endless game of sending repeat takedown notices to protect their works, simply because another or the same infringement of the initially noticed work appears at a marginally different URL than the first time. The current standard of “URL by URL” takedown does not make sense in a world where there is an infinite supply of URLs. As described in the response to Question 15, technologies exist to identify content that is reposted on a digital service after it is removed, services of all sizes have implemented them, and they should be deployed as a standard industry practice.

We see very similar inefficiencies with search engines, who claim safe harbor status, and the way they continue to index known, infringing sites. Consider the example of the Mp3Skull site, found at various domains in 2015, and the numbers of infringements continually indexed by Google to that infringer. This site jumped to a new domain every time Google demoted the old domain, and that switch to the new domain allowed them to reappear prominently in Google search results.

Chart 6.4 below lists the number of infringing links RIAA noticed to Google for Mp3Skull at some of its various domains through 2015.

⁵⁵ IFPI submission, *supra* n. 34.

Chart 6.4– Infringements Noticed just by RIAA to Google about one rogue service, Mp3Skull, at its various domain addresses⁵⁶

Domain Address for Mp3Skull	# infringements noticed
Mp3skull.com	1,759,947
Mp3skull.to	20,145
Mp3skull.cr	87,971
Mp3skull.is	67,274
Mp3skull.wtf	46,377
Mp3skull.la	70,225
<i>Total</i>	<i>2,051,939</i>

As noted in the response to Question 13, each of these domains pointed to the same underlying IP address,⁵⁷ and continued to redirect to its then current domain address. Despite all of this knowledge about rampant infringement on this rogue service, Google continued to regularly index and point users to it as it hopped domains.

In fact, RIAA provided notices to Google about continued infringements of at least 3,000 tracks on each of these Mp3Skull domains. These tracks included, among others, those set forth in Chart 6.5. Clearly there are inefficiencies at play when Google has received so many notices about the same track at on this service and yet it continued to index infringements for the same track on the same service.

⁵⁶ Most recently, the Mp3Skull site has moved from .la to .yoga, to .mn, and as of March 28, 2016, back to .is.

⁵⁷ As reported by CloudFlare to RIAA.

Chart 6.5 - # of infringements noticed for sample track on Mp3Skull at the domains noted

artist track	mp3skull.com	mp3skull.to	mp3skull.cr	mp3skull.is	mp3skull.wtf	mp3skull.la
big sean blessings	33	31	54	47	17	28
calvin harris under control	269	6	84	25	15	33
fifth harmony worth it	21	26	50	34	16	18
a great big world say something	323	2	67	32	25	11
santana smooth	531	12	47	40	19	6
zedd find you	819	9	46	28	11	27
eiffel 65 blue	341	10	36	18	39	18
calvin harris outside	150	10	32	28	30	19
years years king	18	28	42	22	4	19
ariana grande almost is never enough	227	18	50	29	11	7
schoolboy q studio	416	18	35	37	11	13
august alsina no love	226	15	37	30	16	14
mila j my main	99	7	36	20	37	8
austin mahone mmm yeah	266	15	29	31	16	13
little mix move	360	16	44	27	5	12
jennifer lopez booty	288	6	34	26	9	27

Another major inefficiency in the DMCA, as implemented in today’s environment, is the lack of clarity about what is meant by “expeditious” takedown⁵⁸, and the ability of services to game the system under the veneer of protecting their user base. “Expeditious” takedown must be interpreted to be commensurate with the speed at which infringing material can be uploaded, indexed and disseminated over the Internet.⁵⁹ Google touts that it removes noticed infringing URLs from its system within six hours, but fails to provide transparency about the speed by which it indexes those infringing sites. Six hours on its own is a meaningless statistic in thinking about what “expeditious” means without an understanding of Google’s capabilities and speed in indexing infringing services in the first place. This can be a particularly crucial window of time in the case of works that have not yet been commercially released. Another service recently announced, supposedly for the benefit of its users, that it would institute a 48-hour rule before taking down infringing content that has been the subject of a DMCA notice.⁶⁰ That guarantees for this service, and its users, the ability to continue to benefit from the

⁵⁸ 17 U.S.C. § 512(c)(1)(A)(iii) (“upon obtaining such knowledge or awareness, acts expeditiously to remove, or disable access to, the material”) and 17 U.S.C. § 512(d)(1)(C) (“upon obtaining such knowledge or awareness, acts expeditiously to remove, or disable access to, the material”).

⁵⁹ For example, as noted in response to Question 9, last year YouTube CEO Susan Wojcicki announced that over 400 hours of video were being uploaded onto YouTube per minute.

⁶⁰ See *A Fair DMCA Policy for Creators*, PATREONBLOG (Feb. 22, 2016), <http://blog.patreon.com/a-fair-dmca-policy-for-creators/>.

infringement during this period. If a service wants to institute such a policy to keep the alleged infringement up after notice for whatever reason, that is a business risk it can take, but it should not be permitted to continue to avail itself of the safe harbors for any activity on its service. The law must be clarified to reflect this.

For further inefficiencies in the DMCA process, please see responses to Questions 16 and 26 on the issues surrounding the current abuse of the counter-notice procedure by users.

In thinking about the problem of repeat infringements, prominent scholars have advocated that recalibration is necessary, and suggested that a return to more traditional tort principles would help solve this concern.⁶¹ This proposal should be seriously considered.

7. How efficient or burdensome is Section 512’s notice-and-takedown process for addressing online infringement? Is it a workable solution over the long run?

Section 512’s notice-and-takedown system is unduly inefficient and burdensome for a number of reasons, including the whack-a-mole nature of the problem and the lack of a serious “takedown-and-staydown” component, both discussed in response to Question 6, above.

As a general matter, the DMCA, as currently interpreted by some service providers, requires content owners to survey every link on the Internet, worldwide, twenty-four hours a day, seven days a week, three hundred and sixty-five days a year, while service providers take advantage of the DMCA to profit from the infringing activity. Even with large-scale content owners with a large back office and significant resources, these efforts are only minimally effective. Smaller copyright owners – like songwriters, indie artists, indie labels and publishers – cannot even engage in these minimally effective efforts and have no remedy at all.

As noted above, RIAA alone has sent notices of over 175 million infringements. And the music industry regularly has to send notices of repeat infringements of the same copyrighted content to or about the same digital services over and over again. In just the first two months of 2016, RIAA sent repeat notices of infringements on over 6,500 tracks to just one service claiming DMCA safe harbors.⁶²

The process has gotten so out of hand that at least one service provider that claims safe harbor protection has told RIAA that receiving a notice about one link to an infringing file it hosts will not lead to a takedown of any other links it provides to exactly the same file. That service provider reasons that while it can condense user uploads of

⁶¹ See Peter S. Menell and David Nimmer, *Legal Realism in Action: Indirect Copyright Liability’s Continuing Tort Framework and Sony’s DeFacto Demise*, 55 UCLA L. Rev. 1 (2007). See also Bruce Boyden, *The Failure of the DMCA Notice and Takedown System*, CENTER FOR THE PROTECTION OF INTELLECTUAL PROPERTY (Dec. 2013), available at <http://cpip.gmu.edu/wp-content/uploads/2013/08/Bruce-Boyden-The-Failure-of-the-DMCA-Notice-and-Takedown-System1.pdf> for a discussion of other solutions to address the repeat infringement problem.

⁶² Source: RIAA (based on notices sent for 4shared.com).

the same content into one file so that it can conserve server space, it is inappropriate for the site to be obligated to remove all links its service created to that file upon a DMCA notice that specifies only one of those links, because the other uploaders might have authorization to upload that file. This is contrary to the express provisions of the DMCA.

If the current trend continues, the burden will only become worse. Digital use of copyrighted content is increasing. Congress must take this into consideration as it looks at reforming the notice-and-takedown process. Implementing a system where a notice sent to a service provider will be valid beyond the initial identification of an infringement, and strengthening the use of “representative lists” of content provided to intermediaries, will go far in relieving the burden placed on the copyright owner under the present DMCA system.

8. In what ways does the process work differently for individuals, small-scale entities, and/or large scale entities that are sending and/or receiving takedown notices?

As noted throughout our comments, the notice-and-takedown system is challenging, cumbersome, and expensive for all copyright owners. Even for large entities it is a serious resource challenge. But for small-scale entities and individual creators, the challenge is almost impossible to meet. The process is so daunting that many have stopped sending takedown notices altogether, and some conclude that they literally have no remedy under the DMCA, and no real way to protect the value of their works from indiscriminate infringement.

For example, Maria Schneider, a three-time GRAMMY winning jazz and classical composer, bandleader and conductor, notes that her most recent album has been available, for free and without her authorization, on numerous file sharing websites, and proposes that in the case of unauthorized verbatim copies, which cannot possibly be fair use, content matching technologies should be used to *prevent* infringement *before* it occurs, rather than solely to identify infringement after it occurs.⁶³

Musician Eric Hilton, founder of ESL Music and Thievery Corporation, believes that even with the existence of viable content ID and filtering systems, the greatest challenge is to require the companies to use the technology. Most of these companies are conditioned and dedicated to ignoring the existence of the problem – essentially engaging in a form of willful blindness. Quite simply, without a strong legal deterrent mandating the use of such systems, service providers and other intermediaries will never engage in the effort. It is in their best interest for the status quo to continue.⁶⁴

⁶³ See House Judiciary Subcommittee Section 512 Hearing, 113th Cong. 57 (2014) (statement of Maria Schneider).

⁶⁴ See ESL Music Letter, Appendix E.

“This view is shared by small independent record labels. Notice-and-takedown is simply not a viable remedy for the rest of the world. Only a viable ‘notice-and-staydown’ program will work for copyright owners, particularly the smaller entities.”⁶⁵

9. Please address the role of both “human” and automated notice-and-takedown processes under Section 512, including their respective feasibility, benefits, and limitations.

In today’s environment, a combination of automated and human takedown processes are required to deal with user-uploaded and automated, un-curated, unscreened upload/indexing processes. Last July, YouTube CEO Susan Wojcicki announced that over 400 hours of video were being uploaded onto YouTube every minute.⁶⁶ That translates into over 1,000 days’ worth of content per hour, for just a single user-uploaded content service. The Music Community would be severely handicapped without the ability to use automated tools to match this unprecedented scale of uploading of content.

A thoughtful implementation of a combination of automated and human infringement identification and notice processes is often quite accurate. For example, RIAA’s procedures and infringement identification track record, based on automated and human processes, has been viewed as good by service providers.⁶⁷ Conversely, a human only process to identifying infringements and sending notices is clearly ineffective in today’s environment.⁶⁸ However diligent a creator or owner may be in trying to protect a single work, sufficient person-hours will never be available to them to deal with the scale of uploading that exists today.⁶⁹

At the end of the day, if service providers are permitted and encouraged to automatically post thousands of pieces of user-uploaded content without requirement to conduct any level of analysis whatsoever as to whether that content is likely to infringe a third party’s rights, then rights holders must have commensurate tools to address that infringement.

10. Does the notice-and-takedown process sufficiently address the reappearance of infringing material previously removed by a service provider in response to a notice? If not, what should be done to address this concern?

The notice-and-takedown process, as currently implemented by some providers, does not in any manner address the reappearance of infringing material previously removed by a provider in response to a notice. Please see the responses to Questions 6 and 7 above and Question 13 below, for various examples of the repeat infringement problem across various classes of digital services.

⁶⁵ A2IM.

⁶⁶ Mark R. Robertson, *500 Hours of Video Uploaded to YouTube Every Minute [Forecast]*, REELSE (Nov. 13, 2015), <http://www.reelseo.com/hours-minute-uploaded-youtube/>.

⁶⁷ For example, RIAA is part of Google’s trusted notice sender program.

⁶⁸ See the individual submissions by Universal Music Group, Warner Music Group and Sony Music.

⁶⁹ Please see response to Question 8 for some of the experiences owners and creators have had with using a human only review process.

In some cases, the repeat infringement is of the same file previously noted as being infringing. In other cases, it can be a repeat infringement of the same full length sound recording previously noticed, but may involve a file with a different hash. In yet other cases, the repeat infringements may involve variations of infringements of the previously noticed copyrighted work. In all these cases, even though the copyright owner has noticed the service that it has not authorized the use of its work on that service, the service permits further infringements of the copyrighted work to continue until the specific URL where that instance is located is identified in a DMCA notice.

As discussed in responses to Questions 14 and 19, this problem is exacerbated by judicial interpretations of “representative list” and “red flag” knowledge. These judicial interpretations embolden some service providers to take little or no action to address further infringements of the same copyrighted work on their service, if only one or a sample of fewer than all URLs for the infringements of that copyrighted work are noticed to the service.

This is simply not a system that Congress designed or ever would have designed. The statute must be revised to stop service providers and their users from gaming the system in this way.

11. Are there technologies or processes that would improve the efficiency and/or effectiveness of the notice-and-takedown process?

Technologies and processes exist today, and others can be readily adapted, to improve the efficacy of the notice-and-takedown process, at least with respect to sound recordings. These include, among others:

- Audio fingerprinting technologies to prohibit the redistribution or posting of unauthorized sound recordings that match previously noticed copyrighted sound recordings or musical works.
- Hash-matching technologies to prohibit the redistribution or posting of the exact instances of infringement previously noticed as infringing.
- Meta-data correlations by a service provider to identify potential infringements of previously noticed copyrighted works.
- Automatic removal and/or disabling of any links that point to a previously noticed infringement.

While several of these technologies and processes have challenges and limitations, they at least represent an improvement over the status quo. And several digital services, both large and small, use such technologies today.⁷⁰ Please see the

⁷⁰ See, e.g., *How Content ID Works*, YOUTUBE HELP, <https://support.google.com/youtube/answer/2797370?hl=en>, last accessed March 29, 2016; *An Update on Video Management on Facebook*, FACEBOOK MEDIA (Aug. 27, 2015), <http://media.fb.com/2015/08/27/an-update-on-video-management-on-facebook/>; *Customer Partners*, AUDIBLE MAGIC,

response to Question 15 for a further discussion of such technologies, and the impact they have had on the problem of repeat infringements.

Google often suggests that it cannot practically address the fact that it continuously indexes unauthorized copyrighted works on third party sites. It claims this even though it has received numerous notices of infringements of the same copyrighted work on the same third party site, even in cases where the new URL is only slightly changed (*e.g.*, www.roguesite.infringeadelehello-1 to www.roguesite.infringeadelehello-2), and even though Google apparently knows enough about the revised URL to serve it in the first page of search results when looking for a sound recording of the previously noticed track. If Google can develop programs to play and beat a master of the complex game Go,⁷¹ it can certainly develop programs to address this repeat infringement problem in its indexing function.

Some opponents of adopting technological processes to detect and deal with infringing content argue that content matching systems would result in an increase in false notices, and consequently, could disproportionately impose on user's free speech and expression rights. The data show that those claims are overblown and not consistent with the facts. For example, YouTube employs content identification technology. Nonetheless, as noted in responses to Questions 16 and 26, in one month, one music trade association noticed 98,753 infringements of sound recordings to YouTube. Only 653 counter-notices were filed on those notices by users claiming that the notices were improperly sent. Even assuming that free speech concerns underlay every one of these counter-notices, and even assuming all of them were valid, this is very thin evidence of disproportionate impact.⁷²

In addition, as discussed in response to Question 9, there are automated tools that can be and have been implemented thoughtfully by rights holders to scan for and identify

<http://audiblemagic.com>, *last accessed* March 29, 2016 (a list of companies using its audio fingerprinting solutions, which includes AOL, Facebook, MySpace, SoundCloud, Veoh and Vimeo, among others); Cloud Fender, *What happens when you share copyrighted stuff on DropBox*, MEDIUM (Nov. 19, 2014), <https://medium.com/productivity-in-the-cloud/what-happens-when-you-share-copyrighted-stuff-on-dropbox-5e7e0f44b3df#.nt5px8haj>; *see also* *What We Do*, VOBILE, <https://www.vobileinc.com/about>, *last accessed* March 29, 2016 (commercial solutions to protect audio-visual works).

⁷¹ Choe Sang-Hun and John Markoff, *Master of Go Board Game Is Walloped by Google Computer Program*, NEW YORK TIMES (March 9, 2016), <http://www.nytimes.com/2016/03/10/world/asia/google-alphago-lee-se-dol.html>.

⁷² When YouTube wants to ensure content is not available on its free service, it certainly knows how to effectively make that happen. For example, Indie artist Zoe Keating was told her content channel would be "blocked" if she did not sign YouTube's licensing agreement as it was presented. Furthermore, whether she signed or not, content uploaded by users would be added to YouTube's Music Key, regardless of whether she had authorized any such distribution of her content. Glenn Peoples, *Cellist Zoe Keating Opens Up on Her YouTube Battle: 'There's a Lot of Fear Out There'*, BILLBOARD (Jan. 28, 2015), <http://www.billboard.com/articles/business/6451152/qa-zoe-keating-youtube-battle-theres-a-lot-of-fear>. YouTube has also announced that YouTube is launching a new subscription service, YouTube Red, with exclusive and original content available ad-free and at no extra charge only to paying subscribers. Todd Spangler, *YouTube Set to Premier First Original Movies, PewDiePie Series*, VARIETY (Feb. 3, 2016), <http://variety.com/2016/digital/news/youtube-first-original-movies-pewdiepie-show-1201695813/>. It will be interesting to watch what efforts YouTube takes to ensure that content doesn't show up on its free service, and how those efforts compare to its efforts to deter infringements of third party content.

infringements, that are then sent to digital services for remedial action. Such automated tools help speed up the identification of infringing links, and, as noted above, can also improve the accuracy of such infringement identification. However, improving the efficiency of finding infringements and sending notices about them does not solve the underlying problem of repeat infringements, and the rapid proliferation of infringing works in the digital marketplace.

12. Does the notice-and-takedown process sufficiently protect against fraudulent, abusive, or unfounded notices? If not, what should be done to address this concern?

The protections that exist today not only protect against unfounded notices, but, as noted in responses to Questions 16-18 and 26, they can go too far in trying to protect the uploader and service provider. Section 512(c)(3) provides many necessary elements for an effective takedown notification, including a statement “that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law.” While everyone makes honest mistakes, the liability provided by Section 512(f) is a significant deterrent. Consider, as noted in responses to Questions 11, 18 and 26, on a sample of 98,753 infringements noticed to one site, only 0.7% received a counter-notice. However, of those counter-notices, over 80% seemed likely to be unfounded. While certainly there are anecdotes of fraudulent notices, as the data show, they are very few and far between.⁷³ Further changes to the DMCA to protect against fraudulent notices are unwarranted.

13. Has Section 512(d), which addresses “information location tools” been a useful mechanism to address infringement that occurs as a result of a service provider’s referring or linking to infringing content? If not, what should be done to address this concern?

Given the prominent role “information location tools” have taken on in today’s environment, Section 512(d) has been largely ineffective in addressing online infringement. A recent study shows that search engines are the number one source by which consumers find ways to acquire music for free from unlicensed sources.⁷⁴ Huge volumes of DMCA notices sent to leading search engines have not altered this basic fact.

Search engines take the position that once they are notified that copyrighted content on a particular digital service is infringing, they will remove only the particular URL identified, disregarding the ease with which an infringing service can and will create a new URL to the very same content that is the subject of the takedown notice. That new URL is then re-indexed by the search engine. In 2013, RIAA reported that it

⁷³ Of the retractions submitted by the trade association after reviewing the counter-notices (which accounted for 0.1% of the infringements noticed), we note that the overwhelming majority of them concerned express authorizations granted to use the copyrighted material, and not mistake in identifying the material or other defenses offered by the uploader.

⁷⁴ MusicWatch, *The Environment Around Unsanctioned Music Acquisition* (January 2016). Another study from Carnegie Mellon University, perhaps the most comprehensive study yet on the link between search engines and media piracy, confirmed what search engines have likely known all along: that more highly placed links do have an effect influencing consumer behavior. The study showed that even users looking for lawful content could be led astray by promoted links to pirated content. Sivan, *supra* n. 33.

sent notices to Google of repeat infringements of the same track on 4shared.com at a rate of 1.1 infringements per week.⁷⁵ For the same period in 2015, RIAA continued to have to send Google repeat notices about the same track on the same site. For example, 62% of the infringements noticed to Google during this period occurring on 4shared.com were for repeat infringements of the same track.⁷⁶ The trend was even worse for sites such as the Mp3skull.com family of sites. In 2012, RIAA was sending on average 4.4 notices per week per track to Google about infringements of popular tracks on Mp3skull.com. In the fall of 2015, RIAA sent a similar number of repeat notices per week per track for popular tracks to the then current address for Mp3Skull, Mp3skull.wtf.⁷⁷

In a world of an infinite supply of URLs and sophisticated search engines that can quickly index and categorize these URLs for search purposes, copyright owners should not be required to engage in the constant game of sending repeat takedown notices to search engines for the same sound recording on the same service simply because it appears at a slightly different URL than it originally did. The fact that Google receives and responds to large numbers of notices is not a reflection of the system working, but rather a symptom of the gross inefficiencies of the DMCA. Again, Google should develop programs to address this repeat infringement problem in its search index function.

Google argues that de-indexing an entire site, even though Google has received actual knowledge of millions of infringements on that site, would be “censorship”. It is unclear whose speech Google believes is being censored, but, in any event, when considering the First Amendment and intellectual property rights, a thoughtful weighing and balancing of the interests is required. At some point, when the evidence of infringement on a service is so rampant, and evidence of legitimate speech on the service is minimal, such speech should not benefit from heightened protection. The appropriate remedy in this case is to remove the site from the search engine index.

14. Have courts properly interpreted the meaning of “representative list” under Section 512(c)(3)(A)(ii)? If not, what should be done to address this concern?

Courts have not properly interpreted the meaning of “representative list” under Section 512(c)(3)(A)(ii).

The statute expressly allows copyright owners who learn of the presence of infringing material on a website to notify the service provider of a “representative list” of infringed works thereby requiring the service provider to remove not only the specific works set forth in the notice, but also other clearly infringing material that is not specified in the notice.⁷⁸ The statute specifically considered that this would apply to entire

⁷⁵ *Six Months Later – A Report Card on Google’s Demotion of Pirate Sites*, RIAA (Feb. 21, 2013), available at http://www.riaa.com/wp-content/uploads/2015/10/Google_ReportCard.pdf.

⁷⁶ Source: RIAA

⁷⁷ Source: RIAA

⁷⁸ 17 U.S.C. § 512(c)(3)(A)(ii) (“if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site”).

websites, not specific webpages.⁷⁹ As noted in one of the earlier cases interpreting the DMCA, the purpose of the representative list is to “reduce the burden of holders of multiple copyrights who face extensive infringement of their works.”⁸⁰ In that case, the court denied the defendant’s motion for summary judgment on the grounds that the notice was insufficient.⁸¹ In another early case, the court found that defendant’s policy requiring notices to contain the exact webpage of the infringing material was contrary to the DMCA.⁸²

However, subsequent court interpretations have effectively nullified the representative list provision by either finding such lists insufficient or, notwithstanding the plain language of the statute, requiring a specific URL for each instance of infringement, thus eviscerating the practical effect of a representative list.

- In *UMG Recordings v. Veoh*,⁸³ the district judge, and later the appellate judge, concluded that the DMCA’s liability limitations applied notwithstanding uncontroverted evidence that the service had been informed that any videos on Veoh by a list of recording artists were infringing, that the CEO had admitted knowledge of infringing material service, and other evidence of apparent infringement.
- In *Capitol Records, Inc. v. MP3Tunes, LLC*,⁸⁴ the court found that the representative list provided was insufficient because it did not include specific URLs for all of the locations, noting that while service providers must take down specific material identified in the notice, they are not required to search for or take down other material that may infringe the identified copyrighted work.
- And in *Viacom v. YouTube*,⁸⁵ the court ruled that there must be a specific URL address identified for each instance of an identified infringing work, essentially leaving the representative list provision devoid of any meaning. The court also misconstrued Section 512(m) to require no reactive action by a service provider regardless of the information provided to it about infringing activity via a representative list.⁸⁶

⁷⁹ *Id.*

⁸⁰ *ALS Scan*, 239 F.3d at 625.

⁸¹ *Id.*

⁸² *Perfect 10, Inc. v. Cybernet Ventures, Inc.*, 213 F. Supp. 2d 1146 (C.D. Cal. 2002).

⁸³ *UMG II*, 665 F. Supp. 2d 1099; *aff’d UMG Recordings, Inc. v. Shelter Capital Partners LLC*, 667 F.3d 1022 (9th Cir. 2011) (“*UMG III*”); *UMG IV*, 718 F.3d at 1014.

⁸⁴ 821 F. Supp. 2d 627 (S.D.N.Y. 2011).

⁸⁵ *Viacom*, 718 F. Supp. 2d 514.

⁸⁶ See also Jeremy A. Schachter, *Note and Recent Development: Substantially Perfect: The Southern District of New York’s Problematic Rewrite of the DMCA’s Elements of Notification*, 29 *Cardozo Arts & Ent. LJ* 495 (2011) (criticizing case law on the representative list provision); Philip Mazoki, *CASE NOTE AND COMMENT: Viacom International Inc. v. YouTube Inc. and the Failings of the Southern District Court of New York*, 30 *Temp. J. Sci. Tech. & Env’tl. L.* 275 (2011); Lior Katz, *Note & Comment: Viacom v.*

The scope of infringements in today’s environment makes the “representative lists” provision of DMCA more necessary than ever. As the statute is reformed, the term should be more clearly defined to allow copyright owners to use this and other more technologically feasible methods to put services on notice of widespread and actionable infringement.

15. Please describe, and assess the effectiveness or ineffectiveness of, voluntary measures and best practices – including financial measures, content “filtering” and takedown procedures – that have been undertaken by interested parties to supplement or improve the efficacy of Section 512’s notice-and-takedown process.

Voluntary measures are a useful tool to address infringement when both parties are willing to take practical steps to address the problem. They do not, however, represent a silver bullet that solves the inequities that exist in today’s digital environment. To work effectively, voluntary measures must take place against the backdrop of practical, effective, and balanced laws that create an environment where all stakeholders see value in pursuing such measures. The DMCA, as currently interpreted, does not encourage this approach.

Currently, the interests of content and some tech companies do not often align on certain aspects surrounding the DMCA and a notice-and-takedown regime. Consider, for example, the recent exercise on notice-and-takedown best practices facilitated by the Commerce department.⁸⁷ Rights holders, individual creators, service providers of different sizes, and consumer and public interest representatives, including several representatives from the Music Community, participated in this process. Meetings took place every six weeks through the end of the year, but the result, while useful, only addressed limited efficiencies in the DMCA, despite calls for discussions to address efforts to increase the effectiveness of the notice-and-takedown regime. The misalignment of interests prevented such discussions from meaningfully taking place. This lack of cohesion and misalignment of present interests underscore the need for legislative reform in defining and establishing standard technical measures (“STMs”).

For a detailed description of various voluntary measures that have been considered and the challenges faced with effectively negotiating and implementing them, please see the October 2015 comments to the Intellectual Property Enforcement Coordinator, attached hereto as Appendix C.⁸⁸

To supplement those comments, we note the following additional observations.

YouTube: An Erroneous Ruling Based on the Outmoded DMCA, 31 Loy. L.A. Ent. L. Rev. 101 (2010-11); and 4 Melville B. Nimmer & David Nimmer, *Nimmer on Copyright* § 12B.04.

⁸⁷ Department of Commerce, *DMCA Notice-and-Takedown Processes: List of Good, Bad, and Situational Practices*, DMCA MULTISTAKEHOLDER FORUM, available at http://www.uspto.gov/sites/default/files/documents/DMCA_Good_Bad_and_Situational_Practices_Document-FINAL.pdf, last accessed March 29, 2016.

⁸⁸ See also RIAA Comments, USPTO’s Request for Comments in its Voluntary Best Practices Study (Aug. 19, 2013), <http://www.uspto.gov/ip/officechiefecon/PTO-C-2013-0036.pdf#page=15>.

Financial Measures. In the past few years, there has been a more concerted effort on the part of payment processors, ad networks, and advertisers to stop the flow of funds from these intermediaries to services engaged in rampant widespread copyright infringement. We believe these measures have made a positive impact in that they have limited the sources of funding for these infringing services and also caused the sites to look illegitimate, discouraging some visitors. For example, in the summer of 2015, a major payment processor stopped providing payment services to a rogue infringing cyberlocker, and in response, at least one of the cyberlocker's uploaders claimed it would no longer source third party content to the cyberlocker because it could no longer receive payment from that cyberlocker.⁸⁹ Also, on February 11, 2016, the Trustworthy Accountability Group ("TAG", at tagtoday.net) announced it was moving its program to deter the flow of advertising dollars to criminals engaged in piracy from the design phase to the execution phase. We look forward to seeing how this program progresses.

Content Matching Technologies. While there is no multi-industry initiative on the use of content matching technologies, several digital services, including YouTube, Tumblr, SoundCloud, 4shared, and others, have unilaterally implemented some form of content matching and have taken action based on that matching to deter further infringement. Content matching solutions include proprietary systems, hash-based file identification, and/or various implementations of third party fingerprinting solutions, such as Audible Magic.

The type of technology used and its implementation significantly affect the scope of the content identified, the action taken after such content is identified, and its overall effectiveness. For example, for a service that implemented hash-based content identification, the number of notices of repeat infringement that were sent by RIAA declined only slightly, from 99% repeat infringements to 97% the following year. On the other hand, when a service used a more robust Audible Magic implementation designed to address master sound recordings, RIAA found that, after such implementation, no meaningful infringements of full commercially released sound recordings were hosted on that service. This meant RIAA could focus its efforts on this service to detecting and dealing with on pre-release leaks, for which content matching was not yet available.⁹⁰

⁸⁹ See comments by user tomlav2634 left on discussion on wjunction.com, visited on July 20, 2015.

⁹⁰ We also note that while courts have not gone so far as requiring service providers to utilize content identification technologies to prevent infringement, one case found that LiveJournal's "anti-spam" system, which it employed voluntarily to block posts with keywords related to notices it had received, would be a type of "technological measure" that could be required by an injunction issued under § 512(j)(1)(A)(iii). See *Mavrix Photographs LLC v. LiveJournal, Inc.*, No. SACV 13-00517-CJC(JPRx), 2014 U.S. Dist. LEXIS 160324, *27-28 (C.D. Cal. Sept. 19, 2014). For services where infringement is occurring on a large scale, forward-looking injunctions requiring screening of uploads based on artists' names and titles, for example, would shift the burden to services to screen, review, and then post harmless content. Many sharing sites, like YouTube and Facebook, already employ large back offices offshore for screening for offensive content. See, e.g., Adrian Chen, *The Laborers Who Keep Dick Pics and Beheadings Out of Your Facebook Feed*, WIRED (Oct. 23, 2014), <http://www.wired.com/2014/10/content-moderation/>; and Adrian Chen, *Inside Facebook's Outsourced Anti-Porn and Gore Brigade, Where 'Camel Toes' are More Offensive Than 'Crushed Heads'*, GAWKER (Feb. 16, 2012), <http://gawker.com/5885714/inside-facebooks-outsourced-anti-porn-and-gore-brigade-where-camel-toes->

The implementation of such technology is certainly appreciated by the Music Community but should not be seen as a panacea, particularly when, despite the availability and increased use of content matching technologies, to date services have been unwilling to address these issues on an industry-wide basis.

Search Engine Demotion. In October, 2014, Google introduced an enhanced “demotion” signal to deprioritize sites for which it had received high numbers of notices. However, Google has provided no transparency into how this demotion signal works in practice. Worse, it appears that Google does not take into account previous notices sent about a service when it merely “hops” to a different domain. This apparently allows an infringing service to wipe the slate clean and avoid demotion simply because it changed the location of its domain on the Internet.

As demonstrated in the following charts, while Google’s demotion signal appears to impact traffic to a particular domain, the clock apparently starts over if the service merely switches its domain address. Chart 15.1 shows the number of infringements noticed to Google (from all sources) about Mp3Skull at its various domain locations in 2015. Chart 15.2 shows the frequency with which the various Mp3Skull domains appeared in the top 10 search results for searches for the top 50 Billboard tracks. Each of these domains at some point in 2015 included a “301 redirect” to automatically direct visitors to the subsequent domain, and each of these domains points to the same underlying IP address for the site. In essence, the service hasn’t changed its true address or underlying function – it merely changed the pointer to it. Nonetheless, even though Google had received notices of over 500,000 infringements on Mp3skull.to and demoted that domain, upon redirection of the service to Mp3skull.cr, Mp3skull.cr immediately gained popularity in search results. And the same trend continued as Mp3Skull hopped to various other domains.

are-more-offensive-than-crushed-heads. Therefore, these companies already have the workforce and infrastructure for screening and blocking.

Chart 15.1 – Infringements Noticed To Google about Mp3Skull⁹¹

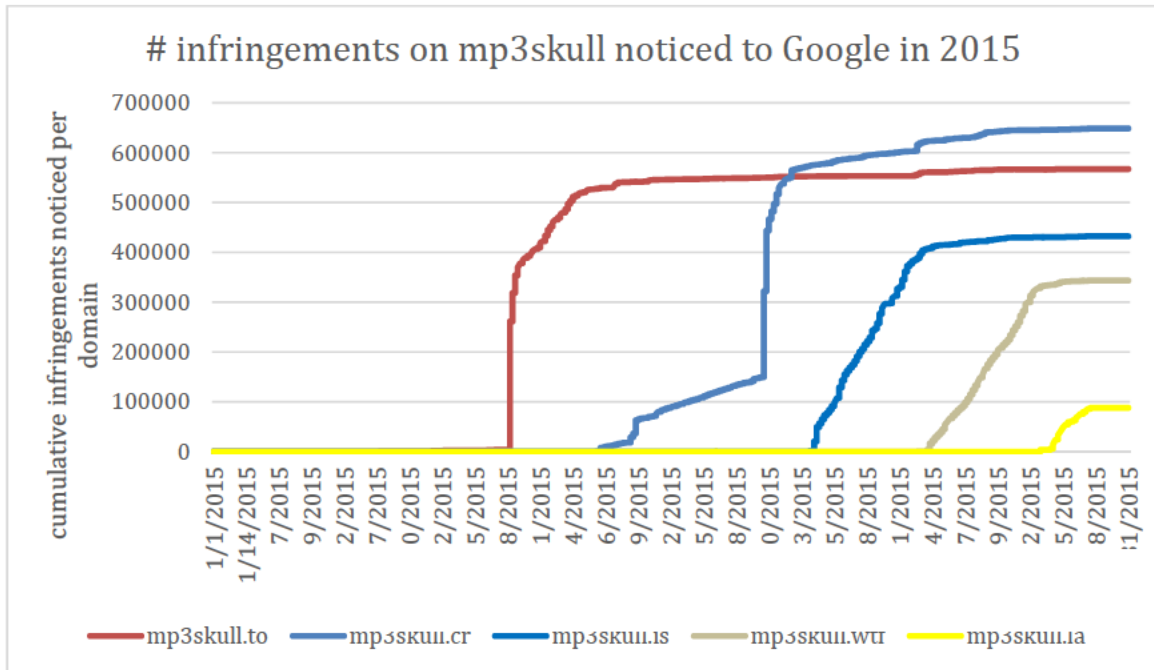
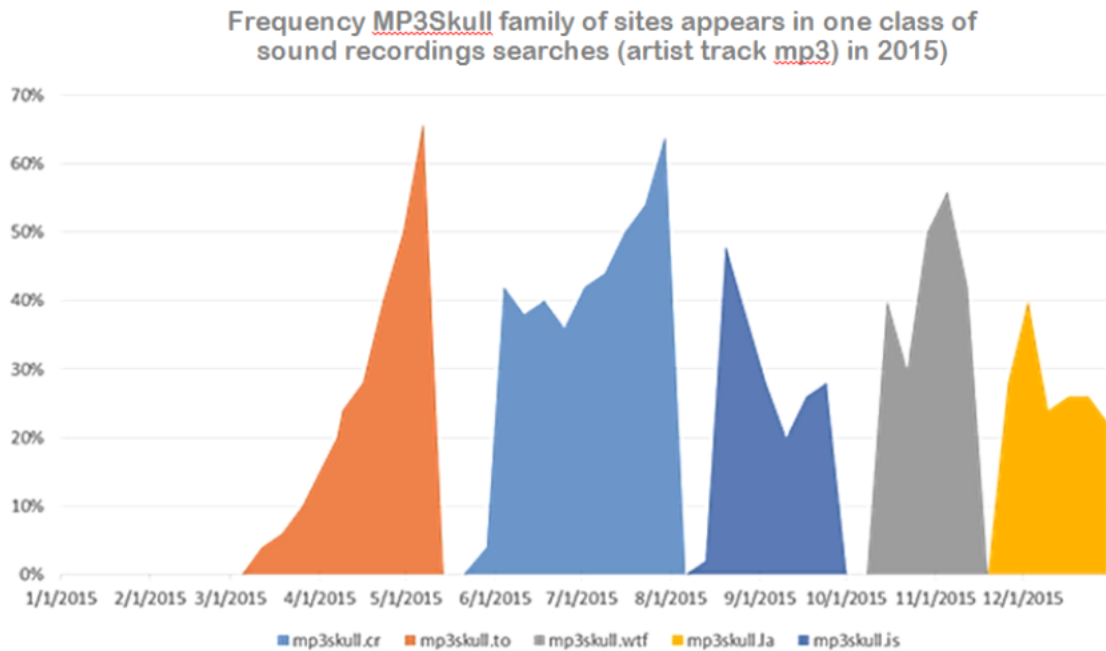


Chart 15.2 – Frequency Mp3Skull family of domains appears in one class of sound recording searches in 2015⁹²

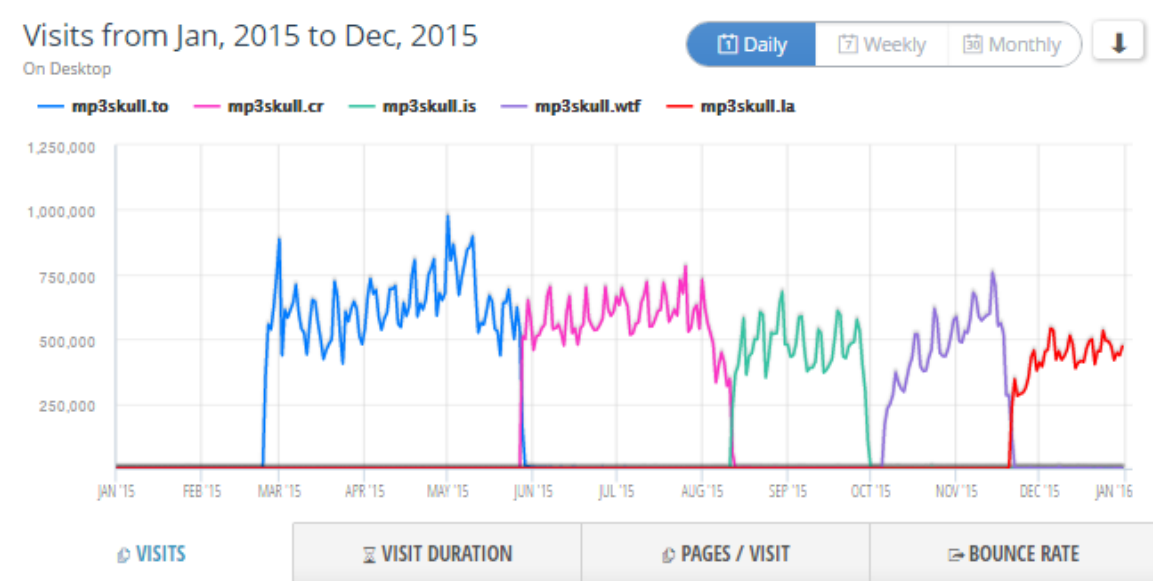


⁹¹ Source: RIAA analysis. This excludes the millions of infringements previously noticed to Google about Mp3skull.com.

⁹² Source: RIAA analysis.

As shown in Chart 15.3, this situation resulted in Mp3Skull not suffering any significant decrease in traffic for 2015.⁹³

Chart 15.3 – Traffic to Mp3Skull family of domains⁹⁴

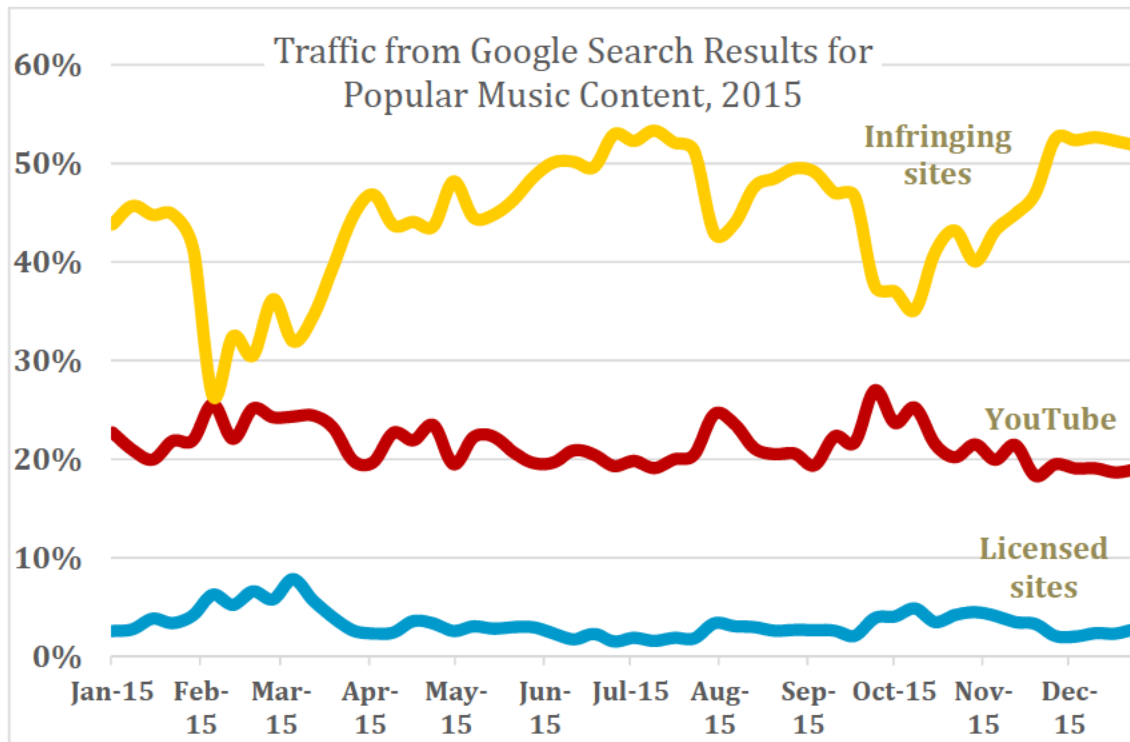


More importantly, while the demotion signal impacts traffic to a particular domain, it does not negatively impact the overall trend of infringing services promoted in Google search results for searches for popular music. In fact, as shown in Chart 15.4 below, estimated traffic to infringing services from Google search results for popular music in 2015 continued to rise, while traffic to licensed services and to YouTube remained flat.

⁹³ Per Similarweb, in January 2016, Mp3Skull received over 50% of its traffic from search, and over 75% of that from Google.

⁹⁴ Source: Similarweb.

Chart 15.4 – Traffic from Google Search Results for Popular Music Content 2015⁹⁵



In sum, search engines continue to provide a critical link between digital services that infringe copyrights and the audiences they seek to serve, including U.S. consumers. While demotion efforts have made some difference, without greater cooperation by the major search engines, pirate services will continue to benefit from the substantial traffic sent to them by search engines. Unfortunately, efforts to encourage these critical players in the e-commerce environment to work cooperatively toward a sensible framework for this problem have failed to gain traction. Notices to search engines about repeat infringement on the same service need to have a meaningful impact, or there must be a tipping point where whole site removal from the search engine index is warranted.

Accordingly, while voluntary measures should be encouraged and services should be incentivized to implement them, the effect of such measures will not be adequate to combat copyright infringement, as long as such voluntary measures exist in a legal environment that does not more closely align the interests of service providers and rights holders.

⁹⁵ Source: IFPI Analysis. This is based on estimated traffic from weekly search results for searches for the then current top 50 Billboard tracks and mp3s and downloads of those tracks. For purposes of this analysis, an infringing site is one where the majority of the content on the homepage of the site infringes copyright (or, if the homepage has no content like TPB or Kickass, then a general assessment of the site indicates that the majority of the content available infringes copyright), and licensed sites are those listed on the Pro Music site, <http://pro-music.org/>.

V. COUNTER-NOTIFICATIONS

16. How effective is the counter-notification process for addressing false and mistaken assertions of infringement?

In our experience, the counter-notification process results in too many false-positive counter-notices. For example, IFPI received counter-notices on 653 infringements, based on a sample of 98,753 infringements noticed to YouTube.⁹⁶ After reviewing these counter-notices, it appeared that over 80% of the counter-notices had no good faith basis for claiming “mistake or misidentification,” the only valid statutory grounds for a counter-notification⁹⁷ Yet, based on this sample, the association representing the rights holders would be required to institute over 500 lawsuits in order to enforce their rights.⁹⁸ This is an unmanageable burden. These statistics further demonstrate that the deck is unfairly stacked against rights holders. Unfortunately, uploaders of third party content are often either misinformed or encouraged to file counter-notices without a basic understanding of their rights and obligations concerning their use of third party content.⁹⁹

Clearly, the system needs to be rebalanced or reconsidered in its entirety.

17. How efficient or burdensome is the counter-notification process for users and service providers? Is it a workable solution over the long run?

Further to the response to Question 16 above, it appears to us that the counter-notice process is much too easy for uploaders, and results in far too many counter-notices that lack any good faith belief of mistake or misidentification. This is not a workable solution over the long run because it leads to misconceptions about the law, and copyright owners must either engage in expensive litigation or have no recourse. In practice, there is no meaningful difference between a proper counter-notification and a legally sanctioned “putback” of material, even if clearly infringing.

18. In what way does the process work differently for individuals, small-scale entities, and/or large scale entities that are sending and/or receiving counter notifications?

For rights holders, whether small or large, properly addressing counter-notices in today’s environment is an insurmountable task. As noted above, uploaders are encouraged to file counter-notices often without understanding their rights and obligations. Further, there is a mounting perception that there is no financial risk or other down-side to filing counter-notices. This results in significant numbers of counter-notices that are false, leaving copyright holders with the significant burden of either filing

⁹⁶ Source: IFPI.

⁹⁷ Source: IFPI analysis. See 17 U.S.C. § 512 (i)(1)(A).

⁹⁸ See also the individual submissions by Universal Music Group, Warner Music Group and Sony Music on their experiences with the counter-notice system.

⁹⁹ See *DMCA Notice-and-Takedown Processes: List of Good, Bad, and Situational Practices*, supra n. 87; see also, e.g., “What Is Fair Use?”, YOUTUBE, <https://www.youtube.com/yt/copyright/fair-use.html>, last accessed March 29, 2016.

expensive and lengthy litigation in a very short time frame, or being left with no remedy at all.

Most artists simply do not have the resources to engage in such a costly, and time compressed litigation. Don Henley is the only artist we know of to date who has actually sued under the counter-notification provision.¹⁰⁰ Clearly the cost of such a lawsuit, and the short turnaround time, has effectively pre-empted other artists with fewer resources from engaging in such an exercise.

VI. LEGAL STANDARDS

19. Assess courts' interpretations of the "actual" and "red flag" knowledge standards under the Section 512 safe harbors, including the role of "willful blindness" and Section 512(m)(1) (limiting the duty of a service provider to monitor for infringing activity) in such analyses. How are judicial interpretations impacting the effectiveness of Section 512?

Certain judicial interpretations of "red flag" knowledge, and "willful blindness" under the DMCA have significantly undermined the effectiveness of Section 512.¹⁰¹ These decisions have given rise to a perverse universe where services are incentivized to take efforts to blind themselves to what is occurring over their services, and to take no action to prevent it. This is precisely the opposite of Congressional intent to "preserve the strong incentives for service providers and copyright owners to detect and deal with copyright infringements that take place in the digital networked environment."¹⁰²

Congress intended that the safe harbors only be used by passive, neutral actors. The red flag provision was designed to ensure that result. Thus, a "copyright owner could show that the provider was aware of facts from which infringing activity was apparent if the copyright owner could prove that the location was clearly, at the time the directory provider viewed it, a 'pirate' site . . . where sound recordings, software, movies or books were available for unauthorized downloading, public performance or public display."¹⁰³ As such, the statute makes clear that the limitation is conditioned upon,

¹⁰⁰ See, e.g., *Henley v. Devore*, 733 F. Supp. 2d 114 (C.D. Cal. 2010); see also Daniel Kreps, *Don Henley Settles Suit Against California Rep. Chuck DeVore*, ROLLING STONE (Aug. 5, 2010), <http://www.rollingstone.com/music/news/don-henley-settles-suit-against-california-rep-chuck-devore-20100805#ixzz44Jn8C0EB>.

¹⁰¹ See, e.g., *UMG II*, 665 F. Supp. 2d 1099, *aff'd*, *UMG IV*, 667 F.3d 1022; *Viacom III*, 940 F. Supp. 2d at 115; *Capitol Records, LLC v. Vimeo, LLC*, 972 F. Supp. 2d 500 (S.D.N.Y. 2013), *reconsideration granted in part, reconsideration denied in part*, 972 F. Supp. 2d 537 (S.D.N.Y. 2013).

¹⁰² Report of House Commerce Committee on H.R. 2281, the Digital Millennium Copyright Act, H.R. Rep. No. 105-551, pt. 2, 49 (1998).

¹⁰³ Staff of House Committee on the Judiciary, 105th Cong., Section-By-Section Analysis of H.R. 2281 as Passed by the United States House of Representatives on August 4, 1998, at 33 (Comm. Print 1998), *reprinted in* 46 J. Copyright Soc'y U.S.A. 635 (1999) ("Manager's Rep.").

among other things, taking certain action expeditiously upon “becoming aware of facts or circumstances from which infringing activity is apparent.”¹⁰⁴

Red Flag Knowledge. Commentators have stated that it is reasonable to construe the red flag prong as referring to general infringing activity.¹⁰⁵ Further legislative history clarifies awareness of the facts or circumstances in question should be determined on a subjective standard, but that an objective standard should be used to determine whether “infringing activity is apparent” based on those facts or circumstances.¹⁰⁶ Moreover, “apparent” under Section 512(c)(1)(A)(ii) “does not mean ‘in fact illegal,’ nor does it mean ‘conclusively exists.’”¹⁰⁷

Despite this, the courts in *Veoh* and *Viacom* misapplied the statute to virtually read the red flag prong out of the law. As noted in response to Question 14 above, in *Veoh*, the plaintiff cited several aspects from which a jury could reasonably find that infringing activity was apparent, including various articles that noted Veoh was a haven for pirated content and that the CEO of Veoh was aware that Veoh hosted unauthorized content.¹⁰⁸ Nonetheless, the court granted summary judgment to the defendant by misconstruing the plain meaning of the statute and the relevant legislative history.¹⁰⁹

While the *Viacom* court acknowledged that the jury “could find that the defendants . . . welcomed copyright-infringing material being placed on their website,” it nonetheless decided that the red flag provision requires “knowledge of specific and identifiable infringements of particular items”.¹¹⁰ This result simply does not square with legislative intent nor a proper construction of the difference between actual, specific knowledge of “the infringing activity” versus awareness that general “infringing activity” is present.¹¹¹ Furthermore, as discussed above, it reads out of the statute any meaningful way to provide knowledge of infringement through a “representative list”.

Critics argue that any requirement under the red flag prong to require action absent express URL-by-URL identification of the infringement is inconsistent with Section 512(m)(i). This is incorrect, and ignores the other provisions of the statute. While Section 512(m)(i) does not obligate a service provider to generally monitor its service or affirmatively seek facts indicating infringing activity, this does not mean that providers can avoid taking expeditious action once they have awareness of infringing activity or have received a representative list of infringement. As noted in legislative history, the “no monitoring” provision was “designed to protect the privacy of Internet

¹⁰⁴ *Nimmer*, § 12:B.04, *supra* n. 86 (“In short, the ‘actual knowledge’ prong is reasonably construed to refer to specifics, whereas the ‘red flag’ prong deals with generalities.”).

¹⁰⁵ *Id.*

¹⁰⁶ House Judiciary Committee Report, H.R. Rep. No. 105-551, at 53; Senate Judiciary Committee Report, S. Rep. No. 105-190, at 44.

¹⁰⁷ Jane C. Ginsburg, *Separating the Sony Sheep from the Grokster Goats*, 50 ARIZ. L. REV. 577, 598 (2008).

¹⁰⁸ *UMG II*, 665 F. Supp. 2d 1099; *aff’d UMG III*, 667 F.3d 1022; *UMG IV*, 718 F.3d at 1014.

¹⁰⁹ *UMG II*, 665 F. Supp. 2d 1099.

¹¹⁰ *Viacom*, 718 F. Supp. 2d at 523.

¹¹¹ *See Nimmer*, *supra* n. 86.

users.”¹¹² It was not intended to discourage the service provider from monitoring its service for infringing material, and certainly it was never intended to permit providers to continue to operate with impunity despite knowledge of wide- ranging infringing activity over their services.

These misinterpretations of “red flag” knowledge further widen the schism between what Congress intended – incentives for service providers and content owners to cooperate to detect and deal with infringement – and actual practice in today’s market place.

Willful Blindness. With respect to “willful blindness”, even the *Viacom* court recognized that, if a service provider is aware of a high probability of infringement on its system but then successfully turns a blind eye to avoid confirming that fact, there will rarely, if ever, be evidence of the provider’s awareness of “particular infringing transactions.”¹¹³ That is why the willful blindness doctrine, to prevent an actor from benefiting from its misconduct, serves as a substitute “to demonstrate” the required knowledge or awareness.¹¹⁴ To rule otherwise, as the *Vimeo* district court erroneously did,¹¹⁵ rewards willful blindness and “essentially empties any significance from the willful blindness inquiry.”¹¹⁶

As a consequence of these judicial decisions, rather than providing incentives for cooperation, the DMCA has provided incentives for service providers to turn a blind eye to infringement, or even to build willful blindness into their business models, contrary to the diligence expected in nearly any other business environment.¹¹⁷ This has resulted not only in increased inefficiencies in the DMCA regime,¹¹⁸ and market distortions in the value of music,¹¹⁹ but also in various rogue sites claiming DMCA protection when in fact, they are intentionally gaming the system. This is the exact opposite of Congressional intent.

¹¹² House Judiciary Committee Report, H.R. Rep. No. 105-551, at 64-65; Senate Judiciary Committee Report, S. Rep. No. 105-190, at 55.

¹¹³ *Viacom II*, 676 F. 3d at 35.

¹¹⁴ *Id.*

¹¹⁵ *Capitol Records, LLC v. Vimeo, LLC*, 972 F. Supp. 2d 500 (S.D.N.Y. 2013).

¹¹⁶ *Nimmer* § 12B.04[A][1][b][iii], *supra* n. 86.

¹¹⁷ See Terry Hart, *Grooveshark is Done*, COPYHYPE (Oct. 1, 2014),

<http://www.copenhype.com/2014/10/grooveshark-is-done/> (Grooveshark instructed its employees to create user accounts and to upload infringing files to the site, knowing that the business “depended on the use of infringing content”); see also William Hensley, *Copyright Infringement Pushin’: Google, YouTube, and Viacom Fight for Supremacy in the Neighborhood that may be Controlled by the DMCA’s Safe Harbor Provision*, 51 IDEA 607, 626 (2011) (“YouTube’s business model was designed to maximize the number of site viewers in order to increase advertising revenue to attract a buyer. To increase the number of viewers, they needed infringing material.”). The DMCA’s current provision providing that monitoring is not required was intended to apply to passive ISPs who otherwise meet the statutory eligibility tests for the safe harbors – not to shield ISPs operating with full awareness of the widespread presence of infringing content and indeed active inducement of posting of such content.

¹¹⁸ Please see responses to Questions 6, 16 and 26.

¹¹⁹ Please see response to Question 4.

20. Assess courts’ interpretations of the “financial benefit” and “right and ability to control” standards under the Section 512 safe harbors. How are judicial interpretations impacting the effectiveness of Section 512?

Certain judicial interpretations of the “financial benefit” and “right and ability to control” standards under the Section 512 safe harbors have similarly upset the balance Section 512 was intended to strike.

In discussing this condition, Congress recommended that “courts should take a common-sense, fact-based approach, not a formalistic one” to determining if there is a financial benefit.¹²⁰ For example, Congress stated that a service provider would be ineligible for the safe harbor under this prong where “the value of the service lies in providing access to infringing material.”¹²¹ Congress further noted that the “right and ability to control” provision was intended to preserve existing case law that examines all relevant aspects of the relationship between the primary and secondary infringer.¹²²

In considering the “financial benefit” prong, courts previously stated they should apply the same standard used for vicarious copyright infringement.¹²³ Taking that to heart, courts should look to the Ninth Circuit’s decision in *Fonovisa*¹²⁴ for a practical model.¹²⁵ In *Fonovisa*, vicarious liability was imposed because the availability and sale of infringing goods enhanced the attractiveness of the venue to potential customers and the provider, Cherry Auction, had the right and ability to terminate the vendors for any reason and/or control their activities. Cherry Auction’s provision of the site and facilities for known infringing activity was sufficient to establish contributory liability as well.

Yet under existing DMCA case law, very few defendants have been found ineligible for the safe harbor due to the financial benefit prong.¹²⁶ For example, defendants more closely resembling digital versions of Cherry Auction were able to claim the safe harbor, with courts deciding that “something more” is now required to show ineligibility under the financial benefit prong.¹²⁷ Because of this, at least one court suggested that only a very high standard of actual control would satisfy the “right and ability to control prong”.¹²⁸

¹²⁰ House Commerce Committee Report, H.R. Rep. No. 105-551, at 54 (1998).

¹²¹ House Judiciary Committee Report, H.R. Rep. No. 105-551, at 54; Senate Judiciary Committee Report, S. Rep. No. 105-190, at 44-45.

¹²² House Commerce Committee Report, H.R. Rep. No. 105-551, at 25 (1998).

¹²³ *CCBill*, 488 F.2d at 1117.

¹²⁴ 76 F.3d 259 (9th Cir. 1996).

¹²⁵ *Id.*

¹²⁶ To be sure, in a few egregious cases, such as *Columbia Pictures Indus. v. Gary Fung*, defendants have been found to have such financial benefit and right and ability to control. 710 F.3d 1020 (9th Cir. 2013).

¹²⁷ *Hendrickson v. eBay, Inc.*, *supra* n. 23; *see also*, *Viacom*, 718 F. Supp. 2d 514.

¹²⁸ The court implied that only the following type of evidence would be sufficient to show the right and ability to control prong: “evidence that YouTube induced its users to submit infringing videos, provided users with detailed instructions about what content to upload or edited their content, prescreened submissions for quality, steered users to infringing videos, or otherwise interacted with infringing users to a point where it might be said to have participated in their infringing activity.” *Viacom III*, 940 F. Supp. 2d at 121. The *Veoh* case went further, suggesting erroneously that in order to meet a standard intended to

Additionally, in another troubling decision (now on appeal), a federal court in California rewrote from whole cloth a well-established aspect of the financial benefit prong of vicarious infringement. It is black letter law that the financial benefit requirement can be met by, among other things, showing that “the availability of infringing material ‘acts as a ‘draw’ for customers.’”¹²⁹ However, in *Perfect 10, Inc. v. Giganews, Inc.*,¹³⁰ the district court, citing no authority, held that a plaintiff must also demonstrate that its own works, or its category of works, acted as a specific draw to an infringing service.¹³¹ The court so held notwithstanding its recognition that the defendant service in that case was “awash in copyrighted material,” including, “staggering amounts of copyrighted works owned by movie producers and television networks.”¹³²

These judicial interpretations further weaken the statutory conditions that were intended to ensure the safe harbor was only available for passive actors. Instead, the bar has been set so high, services feel they can profit from infringing content with near impunity. This is not what Congress intended, and the law must be rebalanced.

21. Describe any other judicial interpretations of Section 512 that impact its effectiveness, and why.

We take this opportunity to highlight one case in particular, *Lenz v. Universal Music Corp.*¹³³ In that case, contrary to Congressional intent and the weight of authority concerning who has the burden of claiming and proving fair use, the court held that a copyright holder must subjectively consider fair use before submitting a DMCA notice. This unique decision, and the fanfare that has followed it, is quite remarkable considering that other courts have expressly rejected that view,¹³⁴ and that the Supreme Court has

comport with general vicarious liability standards, the defendant’s conduct would need to rise to the level of inducement. *Veoh Networks*, 586 F. Supp. 2d at 1150.

¹²⁹ *A&M Records, Inc. v. Napster, Inc.*, 239 F.3d at 1023 (quoting *Fonovisa, Inc. v. Cherry Auction, Inc.*, 76 F.3d 259, 263- 64 (9th Cir. 1996)); *see also Ellison v. Robertson*, 357 F.3d 1072, 1079 (9th Cir. 2004) (“regardless of how substantial the benefit is in proportion to a defendant’s overall profits”) (emphasis omitted).

¹³⁰ 2014 WL 8628034 (C.D. Cal. Nov. 14, 2014) (“*Giganews*”).

¹³¹ *Id.* at *3-4.

¹³² *Id.* at *4.

¹³³ 572 F. Supp. 2d 1150, 1154-55 (N.D. Cal. 2008) (“*Lenz I*”) (denying motion to dismiss); 2008 U.S. Dist. LEXIS 91890 (N.D. Cal. Oct. 28, 2008) (“*Lenz II*”) (denying motion for interlocutory appeal); 2010 U.S. Dist. LEXIS 16899 (N.D. Cal. Feb. 25, 2010) (“*Lenz III*”) (granting plaintiff’s motion for partial summary judgment on affirmative defenses); 2013 U.S. Dist. LEXIS 9799 (N.D. Cal. Jan. 24, 2013) (“*Lenz IV*”) (denying motions for summary judgment).

¹³⁴ *See Tuteur v. Crosley-Corcoran*, 961 F. Supp. 2d 333, 344 (D. Mass. 2013) (rejected view that fair use had to be considered prior to sending a DMCA notice, noting that “To have required [that] would have put the takedown procedure at odds with Congress’s express intent of creating an ‘expeditious[,]’ ‘rapid response’ to ‘potential infringement’ on the Internet” and that “It is also reasonable to assume that Congress was aware well prior to the passage of the DMCA that the Supreme Court had made clear that the burden of proof for a fair use defense rests on the accused infringer.”); *see also Ouellette v. Viacom*, 2011 U.S. Dist. Lexis 52570, at *15 (D. Mont. 2011) (noting that in establishing the DMCA, “Congress chose not to rewrite or modify the existing doctrines that impose liability for copyright infringement as those doctrines apply to the online world.”).

routinely held that the burden of proof for a fair use defense rests on the accused infringer.¹³⁵

The same court recently amended its ruling by omitting certain provisions that helped content owners satisfy the new and unprecedented requirement placed on the content owners by the court to consider fair use before sending the DMCA notice.¹³⁶

It remains to be seen what impact, if any, this decision, and its recent revision, has on the effectiveness of the DMCA. But at a minimum, it is a clear example of why congressional reform of the DMCA is necessary.

22. Describe and address the effectiveness of repeat infringer policies as referenced in Section 512(i)(A).

Too often, it appears that repeat infringer policies are only paid lip service, or not implemented with any rigor, effectively reducing, if not eliminating, their utility to deter infringement.¹³⁷ Overall, repeat infringer policies are meaningless in a world of anonymous uploading. Some services allow uploads without any registration, and some that require registration ask for nothing more than an email account. RIAA Executive Vice President Brad Buckles observes, “In a world of free anonymous uploading... [to platforms such as] lockers, repeat infringer policies are completely meaningless. The DMCA assumed the service provider was providing a service to the user, but in today’s world the user by uploading content is providing a service/value to the service provider.”

Congress included the repeat infringer condition to ensure that “those who repeatedly or flagrantly abuse their access to the Internet through disrespect for the intellectual property rights of others should know that there is a realistic threat of losing that access.”¹³⁸ Significantly, it made this condition a prerequisite to any claim of entitlement to safe harbor protection.¹³⁹ Thus, it should be a linchpin to ensure that infringement on any particular service does not get out of control.

In practice, however, there is little to no transparency into the repeat infringer policies of particular companies or organizations. In today’s environment, it appears that one achieves such transparency only through burdensome litigation. Even once suit is brought, establishing whether or not a service’s repeat infringer policy is compliant usually requires sifting through massive volumes of discovery, building expert reports and soliciting testimony to deconstruct just that one service’s repeat infringer policy. The entire cost and risk of such an endeavor falls on copyright owners even though the result may be obvious (*i.e.*, whatever the service’s repeat infringer policy may be, it is not being “reasonably implemented” when the content owner’s works reappear incessantly from the

¹³⁵ *Harper & Row, Publishers, Inc. v. National Enters.*, 471 U.S. 539, 561 (1985) (“The drafters [of sec. 107] resisted pressures from special interest groups to create presumptive categories of fair use, but structured the provision as an affirmative defense.”).

¹³⁶ *Lenz v. Universal Music Corp.*, 2016 U.S. App. LEXIS 5026 (9th Cir. Mar. 17, 2016).

¹³⁷ Please see responses to Questions 6 and 7 for a discussion of problems with repeat infringement.

¹³⁸ Senate Judiciary Committee Report, S. Rep. No. 105-190, at 52 (1998).

¹³⁹ 17 USC 512 (i)(1)(A).

same source). And because of the complex and lengthy litigation process, companies that want to take advantage of this lack of transparency can continue to profit from infringement of the Music Community's protected content for years.¹⁴⁰

Additionally, some providers encourage their users to seek "retractions" or make up excuses to avoid consistently implementing their repeat infringer policies,¹⁴¹ or appear to have weak or ineffective methods of tracking infringement attributable to one of their customer's accounts.¹⁴² This further dilutes the intended impact of the repeat infringer condition.

In any event, there are high percentages of repeat notices sent to the same services, and their underlying providers.¹⁴³ Change is needed to correct this inequity.

23. Is there sufficient clarity in the law as to what constitutes a repeat infringer policy for purposes of Section 512's safe harbors? If not, what should be done to address this concern?

Though Congress's intent was clear, inconsistency among judicial interpretations of the law have led to confusion and uncertainty regarding the repeat infringer standard.

Where the actions of the defendant are clearly egregious or intentional, some courts have been inclined to find that the defendant failed to implement a repeat infringer policy:

- In *Grooveshark*, the court found that the service failed to meet the requirement of reasonably implementing a repeat infringer policy, because it purposely made it nearly impossible for copyright owners to issue meaningful takedown notices, and purposely failed to keep adequate records of repeat infringement or to strip users of uploading privileges.¹⁴⁴
- In *Disney v. Hotfile*, the court ruled that the defendant was ineligible for the Section 512 safe harbors, noting that the defendant not only failed to comply with its policy of terminating users after two strikes, but also failed to tie infringement notices to user's accounts, "despite receiving

¹⁴⁰ Please see responses to Questions 3 and 4 for a discussion of how Grooveshark continued to profit from its unauthorized exploitation of infringing material while in litigation.

¹⁴¹ See *BMG Rights Mgmt. (US) LLC v. Cox Communs., Inc.*, 2015 U.S. Dist. LEXIS 161091, *56 (E.D. Va. Dec. 1, 2015).

¹⁴² As discussed in response to Question 6 above, RIAA has sent CloudFlare notices of nearly 300,000 infringements in connection with Mp3Skull entities on various Mp3Skull domains following the move from Mp3skull.com. CloudFlare has told us that each of those domains points to the same IP address, yet CloudFlare continues to provide service to Mp3Skull.

¹⁴³ Please see responses to Questions 6 and 13 for a discussion of the number of times infringements were noticed to the same site, service or family of sites, particularly in the case of Mp3Skull, as well as the disturbing lack of change in traffic to rogue site, Mp3Skull, as even after the hosting provider for Mp3Skull was noticed, Mp3Skull simply moved its operations to another hosting provider.

¹⁴⁴ *Grooveshark*, at *102-103 (S.D.N.Y. May 28, 2014), *adopted* 2015 U.S. Dist. LEXIS 38007, *18-19, 30-32 (S.D.N.Y. Mar. 25, 2015).

over eight million notices for five million users,” including “more than 300 notices each” for dozens of users who were not terminated.¹⁴⁵

- In *BMG v. Cox*, the court found the defendant failed to implement a repeat infringer policy where internal documents revealed that the defendant had a clear policy to intentionally circumvent the DMCA.¹⁴⁶

In other cases, however, it appears that the courts have strained to find the defendant had a compliant repeat infringer policy, even though the facts made the determination suspect.

- In *Perfect 10 v. Giganews*,¹⁴⁷ the court found that the defendant had reasonably implemented a repeat infringer policy, despite evidence that only 46 accounts had been deleted in a year with over 531 million infringing messages.

In some cases, courts have in effect read the repeat infringer policy condition out of the statute altogether.

- In *CCBill*, the court held that a service provider implements a repeat infringer policy if it has a working notification system, a procedure for dealing with DMCA notifications, and it does not actively prevent copyright owners from collecting information needed to issue such notifications.¹⁴⁸ This approach conflates the repeat infringer requirement with the notice-and-takedown process itself, while Congress clearly intended the former as a condition for reliance on the latter to qualify for safe harbor protection.

The DMCA safe harbors were intended to apply only to passive, innocent actors. Too often, courts have instead ruled that unless evidence of deliberate intent to circumvent the DMCA can be established, a clearly ineffective repeat infringer policy will nonetheless be found to be compliant. In order to correct this, Congress must reform the DMCA to provide greater clarity regarding what qualifies as an acceptable repeat infringer policy and what constitutes reasonable implementation of such a policy.

¹⁴⁵ *Disney Enters. v. Hotfile Corp.*, 2013 U.S. Dist. LEXIS 172339, *68-70 (S.D. Fla. Aug. 28, 2013).

¹⁴⁶ *Cox*, *supra* n. 141 (Defendant purported to have a repeat infringer policy, but internal documents revealed that the provider’s true intention was to “hold onto every subscriber we can.” Thus it told its employees to reactivate the accounts of users who had been terminated due to DMCA notices, and to then treat complaints against them as new complaints. Internally, Cox took the position that they would be in compliance with the DMCA provided they “terminate” the user, even if they quickly reactivated the account and restarted the “DMCA ‘counter.’”).

¹⁴⁷ *See, e.g., Giganews*, at 1196 (C.D. Cal. 2014).

¹⁴⁸ *CCBill*, 488 F.3d at 1109-10.

VII. STANDARD TECHNICAL MEASURES

24. Does Section 512(i) concerning service providers’ accommodation of “standard technical measures” (including the definition of such measures set forth in Section 512(i)(2)) encourage or discourage the use of technologies to address online infringement?

Section 512(i) concerning service providers’ accommodation of STMs has ironically had the negative impact of discouraging the use of technologies to address digital infringement. Because Section 512(i) acts to limit safe harbor protection, service providers have a perverse disincentive to participate in the development of any STMs, even though Congress expressly encouraged the use of STMs.¹⁴⁹

Consider, for example, the USPTO DMCA Best Practices multi-stakeholder forum discussed above in response to Question 15. Despite calls in that forum to discuss improvements to the effectiveness of the DMCA, including through the use of STMs, the misalignment of interests at the forum prevented those discussions from taking place in a meaningful way. This underscores the need for legislative reform to promote the use of STMs.

Currently, a number of reasonably priced, commercially available technical measures exist to identify and protect copyrighted works.¹⁵⁰ As noted in response to Question 15, some of these measures have shown a significant impact in reducing the number of infringements noticed on certain services, and several services have adopted them.

However, while some service providers have implemented such measures, many others feel no obligation to do so because they were developed organically in the market, and not, they argue, through the consensus process set forth in the DMCA for an STM. And, as noted above, service providers currently have no incentive to participate in such a process.

In addition, some have raised concerns that Section 512(i) creates a one size fits all approach to adopting an STM. In today’s environment, this may not make sense, as different tools are available to identify and protect different types of copyrighted works, offered at different price points, and that work in different service provider environments. Allowing more flexibility in how those technical measures can be adopted and when they need to be implemented may help create an environment where appropriate STMs can be adopted by particular kinds of service providers to which they best apply.

25. Are there any existing or emerging “standard technical measures” that could or should apply to obtain the benefits of Section 512’s safe harbors?

There are practices that are used by several in the industry that should be considered, or used as a model for, STMs. For example, see the response to Question 15

¹⁴⁹ House Judiciary Committee Report, H.R. Rep. No. 105-551.

¹⁵⁰ See, e.g., audiblemagic.com.

for a description of fingerprinting technologies to identify sound recordings and musical works. If other services that allow user-uploaded content involving music adopted robust implementations of these tools, it would help reduce the legal inefficiencies that currently characterize the DMCA notice-and-takedown regime.

Other options that should be explored include efforts to identify and deter dissemination of unauthorized sound recordings through the use of metadata¹⁵¹ as well as implementation of systems that allow rights holders to more easily send takedown notices with bulk URLs.

VIII. REMEDIES

26. Is Section 512(g)(2)(C), which requires a copyright owner to bring a federal lawsuit within ten business days to keep allegedly infringing content offline – and a counter-notifying party to defend any such lawsuit—a reasonable and effective provision? If not, how might it be improved?

As discussed above, Section 512(g)(2)(C), is not a reasonable provision, and is ineffective for the purposes intended.

Consider the statistics offered in response to Question 12 above. Based on that study on one month of data, even though the number of counter-notices received was tiny compared to the number of notices sent, the percentage of those counter-notices that appeared erroneous was over 80%. In that study, under Section 512(g)(2)(C), the rights holder would be obligated to bring over 500 lawsuits in order to protect its intellectual property. And that is based on observations of only a single service during a single month.

The problem is that any currently available solutions are highly un-scalable in the current environment, where technology and data transfer speeds permit millions of users to upload to countless services on a daily basis, and service providers' pecuniary interests make them inclined to favor their users over rights holders. Most artists simply do not have the resources to engage in such a costly, and time compressed litigation.¹⁵² The environment is ripe for abuse by uploaders, and the 10-day rule, among the other statutory provisions discussed in these comments, makes it virtually impossible for rights holders to obtain recourse.

27. Is the limited injunctive relief available under Section 512(j) a sufficient and effective remedy to address the posting of infringing material?

Section 512(j) has proven to be an illusory remedy that has rarely, if ever, been invoked in any meaningful respect. While reasonable, targeted injunctions applied to

¹⁵¹ *Gardner v. Cafepress Inc.*, No. 3:13-cv-1108-GPC-JMA, 2014 US Dist LEXIS 25405 (S.D. Cal. Feb. 26, 2014).

¹⁵² Please see response to Question 18 for a discussion of the cost of litigation and the dearth of artists who have actually sued under the counter-notification provision; *see also*, *Henley*, 735 F. Supp. 2d 114.

Internet intermediaries should be helpful in deterring infringement, particularly repeat infringement, and developing a balanced and healthy marketplace for music, experience up to this point indicates that such injunctions will practically never be meaningfully issued under the DMCA as currently drafted.

The few cases that have addressed Section 512(j) have found the issue of injunctive relief to be moot because the service provider had already removed the infringing material and/or terminated the accounts of the infringers by the time the case was heard.¹⁵³ Further, even if Section 512(j) were applied more commonly, it would not offer much more relief from the whack-a-mole problem than notice-and-takedown measures do. This is particularly true under Section 512(j)(B)(ii), which provides that a court may issue an injunction preventing a Section 512(a) service from providing access to a “specific, identified, online location outside the United States”. While this provision should be read to mean an injunction can be applied to deter infringement from rogue sites, recent court decisions suggest that any proposed injunction broader than a specific URL by URL injunction, even if it included a representative list of the copyrighted works at issue, would be difficult to obtain.

The presence of offshore digital services that make infringing material available to the U.S. market was mainly a theoretical concern in 1998. In 2016, it is a pervasive and intractable reality.¹⁵⁴ Where such sites are hosted or based in one country but target consumers in another — or worldwide — the failure of the host country to take effective action against them imposes costs on and pollutes the markets of its neighbors and trading partners. Increasingly, responsible governments are pushing back against this “offshoring” of enforcement responsibility, by developing means and processes for restricting or blocking access from within their borders to these overseas pirate sites. In due course, the U.S. must join the growing number of its trading partners by stepping up to this problem and providing an effective and reasonable solution, whether or not within the DMCA context. The current provision in Section 512(j) is clearly insufficient.

28. Are the remedies for misrepresentation set forth in Section 512(f) sufficient to deter and address fraudulent or abusive notices and counter notifications?

As discussed in responses to Questions 12 and 26, one study found that only 0.7% of notices were counter-noticed, which suggests that Section 512(f) does deter fraudulent notices by at least some rights-holders. However, the same study found that over 80% of the counter-notices were erroneous, which suggests that Section 512(f) has a much lesser impact on abusive counter-notices.

¹⁵³ See, e.g., *Veoh Networks*, 586 F. Supp. 2d at 1154-1155 (injunction moot because infringing content already removed); *Wolk v. Kodak Imaging Network, Inc.*, 2011 U.S. Dist. LEXIS 27541, *19-21 (S.D.N.Y. Mar. 17, 2011) (defendant already removing material in response to compliant notice, which is essentially what injunction sought).

¹⁵⁴ For a description of dozens of such sites, hosted in numerous foreign jurisdictions, see USTR, *2015 Out-of-Cycle Review of Notorious Markets* (Dec. 2015), available at <https://ustr.gov/sites/default/files/USTR-2015-Out-of-Cycle-Review-Notorious-Markets-Final.pdf>. The sites listed are only a fraction of those nominated by RIAA and other copyright industry organizations as “notorious online marketplaces” engaged in or dedicated to facilitating copyright infringement.

IX. OTHER ISSUES

29. Please provide any statistical or economic reports or studies that demonstrate the effectiveness, ineffectiveness, and/or impact of Section 512's safe harbors.

In addition to the studies and reports cited throughout this submission, please see Appendix D for a list of reports and studies that help address these issues.

30. Please identify and describe any pertinent issues not referenced above that the Copyright Office should consider in conducting its study.

For now, the Music Community omits any response to this question.

X. CONCLUSION

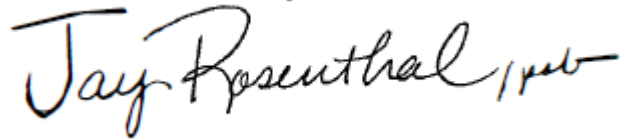
In 1998, the Music Community worked with service providers and Congress to draft and pass the DMCA – a balanced compromise that most believed would address the legitimate concerns of both constituencies. The Music Community believed the DMCA provided their community with reasonable, yet effective means to protect their works against infringing activity on the Internet. The passive intermediaries believed they would be protected from liability that was not facilitated by their services, and the law would provide them with a road to expand their business and the overall vitality of the digital marketplace.

Almost 20 years later, the reality on the ground bears little resemblance to the expectations of the Music Community when the DMCA was passed. The DMCA is arguably the first comprehensive law designed to regulate activity of content owners, passive intermediaries, and users of digital services. However, instead of the carefully balanced law passed by Congress, the DMCA has now become a dysfunctional relic, not suited to the realities of the 21st Century. This is not what Congress or those stakeholders involved in passing the DMCA intended.

Relying on the courts to resolve the problems of the DMCA at this point is unrealistic. Congress must get involved. The Music Community calls on Congress to re-examine the DMCA and to promote reasonable, sensible DMCA reform. The Copyright Office should assist Congress in this process by studying the problematic sections of the law, determining how these provisions have negatively impacted the Music Community, and ultimately advise Congress on how to reform the law in ways that restore the balance between the creative and technology communities that Congress intended to underlie the law from its inception.

The Music Community commits to working with the Copyright Office, Congress and other stakeholders in this legislative process.

Respectfully submitted on behalf of the
Music Community

A handwritten signature in black ink that reads "Jay Rosenthal" followed by a stylized flourish.

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Appendix A

Music Community Members

A2IM

A2IM is a 501(c)(6) not-for-profit trade organization headquartered in New York City representing a broad coalition of 391 Independently-owned American music labels. The organization represents these independently owned small and medium-sized enterprises' (SMEs) interests in the marketplace, in the media, on Capitol Hill, and as part of the global music community. In doing so it supports a key segment of America's creative class that represents America's diverse musical cultural heritage. Billboard Magazine, using Nielsen SoundScan data, identified the Independent music label sector as 34.4 percent of the music industry's U.S. recorded music sales market in 2015 based on copyright ownership, making Independent labels collectively the largest music industry segment.

American Society of Composers, Authors and Publishers

The American Society of Composers, Authors and Publishers (ASCAP) is a membership association of more than 565,000 US composers, songwriters, lyricists and music publishers of every kind of music. Through agreements with affiliated international societies, ASCAP also represent hundreds of thousands of music creators worldwide. ASCAP is the only US performing rights organization created and controlled by composers, songwriters and music publishers, with a Board of Directors elected by and from its membership.

ASCAP protects the rights of ASCAP members by licensing and distributing royalties for the non-dramatic public performances of their copyrighted works. ASCAP's licensees encompass all who want to perform copyrighted music publicly.

Americana Music Association

The Americana Music Association is a professional non-profit trade organization whose mission is to advocate for the authentic voice of American Roots Music around the world. The Association curates events throughout the year including the annual Americana Music Festival and Conference in Nashville, the acclaimed Americana Honors & Awards program (and PBS special) and "Americana NYC" in partnership with Lincoln Center, New York City.

Broadcast Music, Inc.

BMI was founded in 1939 by forward-thinkers who wanted to represent songwriters in emerging genres, like jazz, blues and country, and protect the public performances of their music. Operating on a non-profit-making basis, BMI is now the largest music rights organization in the U.S. and is still nurturing new talent and new music.

BMI is the bridge between songwriters and the businesses and organizations that want to play their music publicly. As a global leader in music rights management, BMI serves as an advocate for the value of music, representing more than 10.5 million musical works created and owned by more than 700,000 songwriters, composers and music publishers.

Christian Music Trade Association

Established in 1993, the Christian Music Trade Association is a non-profit organization that exists to build community and cooperation among Christian & Gospel music industry leadership in order to address mutual issues and to maximize Christian/Gospel music's impact on culture. The CMTA supports and promotes all styles of gospel music including pop, black gospel, hip hop, rock, country, southern gospel and more.

Church Music Publishers Association

The Church Music Publishers Association (CMPA), Nashville, TN, is an organization of North American and international publishers of Christian and other religious music that promotes worldwide copyright information, education, and protection. Founded in 1926, CMPA represents 56 member publishers.

Global Music Rights

Global Music Rights was founded in 2013 by Irving Azoff and represents music rights holders for the licensing of their public performances. Former Performing Rights Organization (PRO) executives Randy Grimmett and Sean O'Malley run operations and bring with them more than 30 years of collective experience in music publishing. Global Music Rights offers licensing, distribution and collection services for the exclusive rights granted to music creators and owners by copyright law.

The Latin Academy of Recording Arts & Sciences, Inc.

The Latin Recording Academy is a non-profit international membership based U.S. organization comprised of thousands of recording artists, musicians, songwriters, producers and other creative and technical professionals. The organization is dedicated to improving the quality of life and cultural condition for Latin music and its makers. In addition to producing the Latin GRAMMY Awards honoring excellence in the recorded arts and sciences, The Latin Recording Academy provides educational and outreach programs for the Latin music community.

Music Managers Forum – United States

The Music Managers Forum (MMF-US) provides a platform to connect, enhance, and reinforce the expertise and professionalism of music managers. Our goal is to further the interests of managers and their artists in all fields of the music industry, including live performance, recording and music publishing matters.

While many up and coming managers cannot easily have their voices heard or their views recognized, the MMF-US has a vital role to play in ensuring that the industry evolves fairly and profitably for all who work in the management industry and their clients. It is the goal of the MMF-US to make sure managers voices are heard. As the industry continues to evolve, the MMF-US endeavors to help its members to stay ahead of the curve.

Music Publishers Association

Founded in 1895, the Music Publishers Association is the oldest music trade organization in the United States, fostering communication among publishers, dealers, music educators, and all ultimate users of music. This non-profit association addresses itself to issues pertaining to every area of music publishing with an emphasis on the issues relevant to the publishers of print music for concert and educational purposes.

Nashville Songwriters Association International

The Nashville Songwriters Association International (NSAI) is the world's largest not-for-profit songwriters trade association. Established in 1967, the membership of more than 5,000 active and professional members spans the United States and seven other countries. NSAI is dedicated to protecting the rights of and serving aspiring and professional songwriters in all genres of music.

National Academy of Recording Arts and Sciences

Established in 1957, The Recording Academy is an organization of musicians, songwriters, producers, engineers and recording professionals that is dedicated to improving the cultural condition and quality of life for music and its makers. Internationally known for the GRAMMY Awards® — the preeminent peer-recognized award for musical excellence and the most credible brand in music — The Recording Academy is responsible for groundbreaking professional development, cultural enrichment, advocacy, education and human services programs. The Academy continues to focus on its mission of recognizing musical excellence, advocating for the well-being of music makers and ensuring music remains an indelible part of our culture.

National Music Publishers' Association

Founded in 1917, the National Music Publishers' Association (NMPA) is the largest music publishing trade association in the United States and the voice of music publishers and their songwriter partners. Its mission is to protect, promote, and advance the interests of music's creators on the legislative, judicial, and regulatory fronts.

Recording Industry Association of America

The Recording Industry Association of America (RIAA) is the trade organization that supports and promotes the creative and financial vitality of the major music companies. Its members are the music labels that comprise the most vibrant record industry in the world. RIAA members create, manufacture and/or distribute

approximately 85% of all legitimate recorded music produced and sold in the United States.

Rhythm and Blues Foundation

The Rhythm & Blues Foundation is the pre-eminent non-profit organization dedicated to the historical and cultural preservation of Rhythm & Blues music. It provides financial and medical assistance, educational outreach, performance opportunities and archival activities to Rhythm & Blues artists and their fans.

Screen Actors Guild – American Federation of Television and Radio Artists

Screen Actors Guild – American Federation of Television and Radio Artists (SAG-AFTRA) represents more than 160,000 actors, announcers, broadcast journalists, dancers, DJs, news writers, news editors, program hosts, puppeteers, recording artists, singers, stunt performers, voiceover artists and other media professionals. SAG-AFTRA members are the faces and voices that entertain and inform America and the world. With national offices in Los Angeles and New York, and local offices nationwide, SAG-AFTRA members work together to secure the strongest protections for media artists into the 21st century and beyond.

SESAC Holdings, Inc.

SESAC is a music rights organization that administers public performance, mechanical, synchronization and other rights. The combination of SESAC's performing rights business with The Harry Fox Agency's recently acquired mechanical rights business and SESAC's micro-licensing and network monetization affiliate, Rumblefish, allows SESAC to make licensing simpler, more efficient and more transparent. As SESAC undertakes this transformation, SESAC's performing rights business will continue to represent a renowned roster of affiliates including Bob Dylan, Mumford & Sons, Neil Diamond, Green Day, Mariah Carey, Lady Antebellum, Alt-J among many others.

Songwriters Guild of America, Inc.

The Songwriters Guild of America, Inc., founded in 1931, is the nation's longest established and largest music creator organization run exclusively by and for songwriters and composers. SGA actively serves its approximately 5,000 professional music creator members on legislative, legal and administrative matters, and provides copyright administration services upon request.

SoundExchange

SoundExchange is the independent non-profit collective management organization representing the entire recorded music industry. The organization collects statutory royalties on behalf of over 110,000 recording artists and master rights owners accounts for the use of their content on satellite radio, Internet radio, cable TV music channels and other services that perform sound recordings over noninteractive digital

music services. The Copyright Royalty Board, created by Congress, has entrusted SoundExchange as the sole entity in the United States to collect and distribute statutory digital performance royalties from more than 2,500 services. Since 2003, SoundExchange has paid out over \$3 billion in royalties.

Appendix B

The Law and Policy Landscape Pre-DMCA

A. The White Paper

In February 1993, President Clinton formed the Information Infrastructure Task Force (“IITF”), chaired by Commerce Secretary Ron Brown, and assigned it the task of articulating Administration policy related to the emergence of the Internet as a commercial and cultural force. A National Advisory Council was established within the Commerce Department to advise the Secretary on relevant issues, including intellectual property rights. Bruce Lehman, Assistant Secretary of Commerce, chaired the Working Group on Intellectual Property Rights (the “Working Group”).

The Working Group issued a Federal Register Notice requesting comments in October 1993 and held hearings in November 1993. Following the hearings, the Working Group published in July 1994 a draft report on policy proposals, commonly referred to as “the Green Paper.” More public comments were received and then more hearings took place in September 1994. One year later, in September 1995, the Working Group published “Intellectual Property and the National Information Infrastructure,” which is commonly referred to as “the White Paper.”¹

During this two-and-one-half-year period, lawsuits involving placement of infringing copies of works on publicly accessible electronic bulletin-board systems (“BBS”) began to move through the courts.² The first two cases to result in published opinions alarmed technology companies who provided access to the Internet and various BBS services. These cases held that an Internet service provider could be strictly liable for direct infringement, even where a provider’s subscriber, rather than the provider itself, uploaded the infringing copies.³

In the White Paper, the Working Group noted these cases, as well as two pending cases,⁴ and considered their implications. The report explained the views expressed by Internet service providers:

¹ “Intellectual Property and the National Information Infrastructure: The Report of the Working Group on Intellectual Property Rights,” Information Infrastructure Task Force (Sept. 1995), <http://www.uspto.gov/web/offices/com/doc/ipnii/ipnii.pdf> (“The White Paper”).

² Also during this time, a criminal case involving placement of unauthorized copies of software programs on a BBS resulted in an acquittal based on a judicial interpretation of a statutory requirement that only infringement for commercial advantage or private financial gain attracted criminal liability. *See United States v. LaMachia*, 871 F. Supp. 535 (D. Mass. 1994). Congress reacted by amending the Copyright Act to allow for criminal penalties where Internet dissemination results in significant harm to a copyright owner, even if the infringer did not profit. *See The No Electronic Theft Act*, Pub. L. No. 105–147 (1997).

³ *See Playboy Enterprises, Inc. v. Frena*, 839 F. Supp. 1552, 1554 (M.D. Fla. 1993); *Sega Enterprises Ltd. v. MAPHIA*, 857 F. Supp. 679, 683 (N.D. Cal. 1994). A third case, which went unmentioned in the White Paper, also held a BBS operator directly liable. *See Central Point Software, Inc. v. Nugent*, 903 F. Supp. 1057 (E.D. Tex. 1995).

⁴ *See Frank Music Corp. v. CompuServe Inc.*, No. 93 Civ. 8153 (S.D.N.Y. filed Nov. 29, 1993) (settled Nov. 8, 1995); *Netcom*, 907 F. Supp. 1361. For an academic discussion of the cases from that time period,

Some have a view that on-line service providers, such as bulletin board operators, should be exempt from liability or given a higher standard for liability, such as imposing liability only in those cases where infringement was willful and repeated or where it was proven that the service provider had both “actual knowledge” of the infringing activity and the “ability and authority” to terminate such activity. The latter proposed standard would combine the contributory infringement standard with the requirements for vicarious liability and apply it to all infringements (including direct infringements) of the service provider.⁵

However, the Working Group declined to recommend the changes to the law proffered by the large Internet service providers:

It would be unfair – and set a dangerous precedent – to allow one class of distributors to self-determine their liability by refusing to take responsibility. This would encourage intentional and willful ignorance. Whether or not they choose to reserve the right to control activities on their systems, they have the right. Service providers expect compensation for the use of their facilities – and the works thereon – and have the ability to disconnect subscribers who take their services without payment. They have the same ability with respect to subscribers who break the law. Exempting or reducing the liability of service providers prematurely would choke development of marketplace tools that could be used to lessen the risk of liability and the risk to copyright owners, including ... educating their subscribers about infringement and using technological protections, such as tracking mechanisms.⁶

In support of its conclusion, the Working Group also offered the following prescient reasoning.

Circumstances also vary greatly among service providers. ... There are those that try to prevent and react when notified and those that encourage infringing activity. Different service providers play different roles – and those are changing and being created virtually every day. At this time in the development and change in the players and roles, it is not feasible to identify *a priori* those circumstances or situations under which service providers should have reduced liability.⁷

The White Paper included proposed, draft legislation, which was introduced almost immediately as the National Information Infrastructure Copyright Protection Act of 1995.⁸ However, the legislation, which lacked any liability limitations for Internet

see I. Trotter Hardy, *The Proper Legal Regime For Cyberspace*, 55 U. PITT. L. REV. 993 (1994); Niva Elkin-Koren, *Copyright Law and Social Dialogue on the Information Superhighway: The Case Against Copyright Liability of Bulletin Board Services*, 13 CARDOZO ARTS & ENT. L.J. 345 (1993).

⁵ The White Paper at 114. See also *Public Hearings Explore IP and Fair Use on Information Highway*, 48 PAT. TRADEMARK & COPYRIGHT J. (BNA) 567 (Sept. 29, 1994) (describing testimony of Ellen Kirsh of America Online).

⁶ The White Paper at 123.

⁷ *Id.* at

⁸ See H.R. 2441, and S. 1284.

service providers, failed to become law. This failure was due, in part, to opposition from large Internet service providers, who wanted the immunity that the Working Group viewed as counter-productive.⁹

B. Developing Case Law

Meanwhile, several cases were decided that altered the landscape significantly. The first and the most important was *Religious Tech. Center v. Netcom On-Line Communications*,¹⁰ in the Northern District of California. In this decision, the court concluded that the Copyright Act did not impose direct liability on a person who did not engage in a volitional act that violated one of the exclusive rights provided to copyright owners in 17 U.S.C. § 106.¹¹ In so doing, the court expressly disagreed with *Playboy Enterprises v. Frena*¹² and *Sega v. MAPHIA*¹³ on this point of law. The court stated: “Where the infringing subscriber is clearly directly liable for the same act, it does not make sense to adopt a rule that could lead to the liability of countless parties whose role in the infringement is nothing more than setting up and operating a system that is necessary for the functioning of the Internet.”¹⁴

However, the *Netcom* court did not absolve Internet service providers of all liability in connection with their subscribers’ conduct. Instead, the court carefully parsed theories of secondary liability. The court concluded that summary judgment could not be granted in favor of Netcom because Netcom continued to provide access to the direct infringer at issue after receiving a complaint letter from the plaintiff.¹⁵ Concluding that “[a]lthough a mere unsupported allegation of infringement by a copyright owner may not automatically put a defendant on notice of infringing activity, Netcom’s position that liability must be unequivocal is unsupportable,” the court also said that the notice provided by the copyright owner should “have triggered an investigation into whether there was infringement.”¹⁶

With respect to vicarious liability, the court concluded an issue of fact existed regarding Netcom’s right and ability to control infringing conduct because the evidence indicated that “with an easy software modification Netcom could identify postings that contain particular words or come from particular individuals” and that Netcom had “acted to suspend subscribers’ accounts on over one thousand occasions ... for commercial advertising, posting obscene materials, and off-topic postings.”¹⁷ However, the court concluded that the plaintiff’s vicarious claim failed because the plaintiff introduced no evidence to show that Netcom profited from the infringement in any manner other than receiving a fixed fee for access provision, which the court compared to a landlord

⁹ See Robert Levine, *FREE RIDE*, 15-31 (Double Day, 1st. ed. 2011) (describing negotiations related to bills).

¹⁰ *Netcom*, 907 F. Supp. 1361.

¹¹ *Id.*

¹² *Frena*, 839 F. Supp. at 1554.

¹³ *MAPHIA*, 857 F. Supp. at 683.

¹⁴ *Netcom*, 907 F. Supp. 1361. at 1372

¹⁵ *Id.* at 1374.

¹⁶ *Id.*

¹⁷ *Id.* at 1376.

receiving rent payments (a circumstance that traditionally did not result in vicarious liability).¹⁸ The court found that the plaintiff failed to show that Netcom attracted subscribers by advertising lax copyright standards because the evidence introduced did not adequately support that such a strategy was implemented.¹⁹

In sum, *Netcom*'s holdings may be stated as follows:

- An Internet service provider does not commit direct infringement by routing transmissions or temporarily storing content at the direction of a user because no volition is involved in such conduct.
- Contributory liability may be imposed where an Internet service provider is provided with notice of infringement on its system but fails to properly investigate and put a stop to infringement of the relevant works or by the user at issue.
- Vicarious liability may be imposed where an Internet service provider is capable of implementing technological methods of identifying infringing conduct and terminating the access and use privileges of specific users but fails to do so while financially benefitting either from payments directly related to accessing or posting specific infringing content or by using infringing content to attract users.

Immediately following *Netcom*, courts considering BBS cases almost unanimously elected to adopt its approach to direct liability, rather than the approach of *Frena* and *MAPHIA*.²⁰ Nevertheless, some cases, distinguished their facts from *Netcom*, found direct infringement occurred due to the extensive involvement of defendants in the conduct at issue.²¹ Where defendants purposefully sought to create Internet destinations where users could access infringing material for a price, and the defendants actively participated in the collection of content for that purpose, they were found directly liable.²²

For example, in *Playboy Enterprises v. Webworld*, the defendants selected specific adult-oriented news groups to copy and then used software to crawl the content, strip out the text, and create thumbnail and full-size copies of images. The defendants then offered users access to these images at subscription prices. Many of the images were infringing copies owned by Playboy. The defendants attempted to compare themselves to *Netcom*, but the court disagreed. "Webworld did not sell access; it sold adult images. ... Webworld did not function as a passive conduit of unaltered

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ See, e.g., *Marobie-FL, Inc. v. National Ass'n of Fire Equip. Distributors and Northwest Nexus, Inc.*, 983 F. Supp. 1167 (D. Ill. 1997); *Sega Enterprises Ltd. v. Sabella*, No. C 93-04260 CW, 1996 U.S. Dist. LEXIS 20470 (N.D. Cal. Dec. 18, 1996); *Playboy Enterprises, Inc. v. Webworld, Inc.*, 991 F. Supp. 543 (N.D. Tex. 1997), *aff'd* 168 F.3d 486 (5th Cir. 1999); *Playboy Enterprises, Inc. v. Russ Hardenburgh, Inc.*, 982 F. Supp. 503 (N.D. Oh. 1997). In fact, in an opinion on summary judgment, the *MAPHIA* court itself agreed with *Netcom*, despite its earlier decision on a preliminary injunction motion. *MAPHIA*, 948 F. Supp. 923.

²¹ See, e.g., *Russ Hardenburgh, Inc.*, 982 F. Supp. 503; *Webworld, Inc.*, 991 F. Supp. 54, *aff'd* 168 F.3d 486.

²² *Id.*

information. Instead, Webworld functioned primarily as a store, a commercial destination within the Internet.”²³

The court also rejected the defendants’ attempt to claim ignorance of the copyrighted nature of the content at issue. “Clearly, a newsgroup named, for example, “alt.sex.playboy” or “alt.mag.playboy” might instantly be perceived as problematic from the standpoint of federal copyright law. Alternatively, Webworld might simply have refrained from conducting business until it had developed software or a manual system of oversight to prevent, or at least to minimize the possibility of, copyright infringement.”²⁴

In *Playboy Enterprises v. Russ Hardenburgh*, the defendants were also actively involved in infringement. They actively encouraged users to upload infringing images by offering users free downloads in exchange for uploads. The defendants also screened images prior to electing to post them and charged a subscription price to access certain images that were not otherwise publicly accessible. The court found these factors justified a finding of direct infringement, concluding that “[i]t is inconsistent to argue that one may actively encourage and control the uploading and dissemination of adult files, but cannot be held liable for copyright violations because it is too difficult to determine which files infringe upon someone else’s copyrights.”²⁵

Post-*Netcom* BBS cases also applied approaches to secondary liability in a manner similar to *Netcom*. For example, in *Marobie v. National Association of Fire Equipment Distributors*,²⁶ the court acknowledged that hosting a website could lead to contributory liability. The court declined to grant summary judgment for the defendant because, based on the evidence presented, it was unclear whether Northwest knew that any material on the website was copyrighted and, “if it did know, when it knew.”²⁷

In *Sega v. Sabella*,²⁸ the court held the defendant contributorily liable because the plaintiff proved the defendant had knowledge of the infringement in the following manners:

Here, Sega has established the following: Sabella was the system operator of her BBS; files on Sabella’s BBS were labeled as Sega Genesis games; and Sabella had the ability to track user uploads and downloads of these files. Additionally, postings on her BBS indicated that downloadable files were playable and warned that she and the co-sysop “read the user log several times a day.”²⁹ These facts establish the inference that Sabella had reason to know of her users’ infringing activity.³⁰

In *Playboy Enters. v. Russ Hardenburgh*, the court also found the defendant contributorily liable. The court found knowledge and material contribution to

²³ 991 F. Supp. 543 at 552.

²⁴ *Id.* at 553.

²⁵ 982 F. Supp. 503 at 513.

²⁶ 983 F. Supp. 1167.

²⁷ *Id.* at 1178.

²⁸ 1996 U.S. Dist. LEXIS 20470.

²⁹ *Id.* at *23-24.

³⁰ *Id.* at 24.

infringement based on the following facts (which appear to mix and match things relevant to both contributory and vicarious liability):

Defendants clearly induced, caused, and materially contributed to any infringing activity which took place on their BBS. Defendants admit that they encouraged subscribers to upload information including adult files. Defendants admit that they benefitted from having more files available to their customers. Also, Defendants had at least constructive knowledge that infringing activity was likely to be occurring on their BBS. Defendants were aware that PEI was enforcing its copyrights against BBS owners. Moreover, Playboy Magazine is one of the most famous and widely distributed adult publications in the world. It seems disingenuous for Defendants to assert that they were unaware that copies of photographs from Playboy Magazine were likely to find their way onto the BBS. Defendants are liable for contributory copyright infringement.³¹

i. The Technology Landscape

The DMCA was written to address a technological landscape that differs markedly from what prevails today. This was true both with respect to the scope and volume of infringement, and the strength and robustness of the technical tools available to combat it.

The online environment of 1998 was certainly replete with infringing material, especially for relatively small files of text, small software programs, and audio recordings, which the existing infrastructure for data storage and transmission could readily accommodate. But the volume of infringing materials was, by today's standards, relatively minimal. The BBS systems described in the cases decided prior to 1998 stored and made available dozens or hundreds of works, but not the millions or tens of millions now featured on numerous user-generated content sites. Similarly, this was an environment in which the process for gathering, storing and disseminating infringing copies was more of a craft than an industry, and automation of the process was comparatively limited. A pirate BBS could depend upon the manual, copy-by-copy stripping of copyright notices from individual images.

Although the Internet was beginning to attract millions of users by the late 1990s, it was very different from the omnipresent commercial and cultural powerhouse we know today. Probably the most significant differences relate to speed and storage space. In the late 1990s, dial-up access was the standard. It took multiple seconds just to move from webpage to webpage, and streaming or downloading video was practically impossible. In addition, accounts (such as email) were limited in the amount of storage provided – no one could, for free, store terabytes of data in the cloud as they can today.

In addition, locating material took time and effort. The search engines available today have progressed by leaps and bounds over what was available then. In the late 1990s, companies that provided world wide web “directories” actually reviewed material

³¹ 982 F. Supp. 503 at 514.

as they catalogued it, rather than sending automated “robots” to crawl everything online with blazing speed.³²

On the other side of the coin, copyright owners had relatively few automated tools at their disposal to detect infringements. Specialized vendors to crawl the Web and flag infringing files were beginning to emerge, but their methods were relatively primitive.

Attracting advertising to a website or service also required greater effort. Whereas now ad servers like Google run targeted ads on millions of websites through embedded links, in the late 1990s, a website who wanted to generate funds from infringing conduct had to charge subscription prices or actually solicit advertisers. Similarly, a user who wanted to find infringing content would not see ads for such content displayed alongside search results after Googling for a recording artist by name. Today, according to our research, users are connected to infringing content through search engines more so than through any other means.³³

Peer-to-peer file sharing did not yet exist, at least in a manner accessible to most people. In fact, many of the services that possess large market share online now, were in their infancy or did not yet exist at the time the DMCA was enacted. For example, Facebook, Instagram, Twitter, iTunes, Spotify, YouTube, PayPal and Skype did not exist. eBay, Amazon, Google, and Yahoo! were all less than 5 years old.

ii. Legislative History of the DMCA

While the cases discussed above were reaching resolution, the United States signed the World Intellectual Property Organization Copyright Treaty and Performances and Phonograms Treaty. These treaties required certain changes to U.S. law, including protection for technological protection measures used to prevent misuse of copyrighted works and copyright management information used to identify right holders. Although the treaties did not require any liability limitations for Internet service providers, it became a political reality that legislation to implement the treaties could not be passed without accommodating demands made by large providers such as America Online, Yahoo!, CompuServe and Verizon.³⁴

³² See Senate Judiciary Committee Report, S. Rep. No. 105-190, at 49 (1998) (“The Yahoo! directory, for example, currently categorizes over 800,000 online locations and serves as a “card catalogue” to the World Wide Web, which over 35,000,000 different users visit each month. Directories such as Yahoo!’s usually are created by people visiting sites to categorize them. It is precisely the human judgment and editorial discretion exercised by these cataloguers which makes directories valuable.”).

³³ In a survey of digital music listeners by consumer research firm MusicWatch, search engines were found to be one of the leading way to discover pirated music. Crupnick, *supra* n. 8. Another study from Carnegie Mellon University, perhaps the most comprehensive study yet on the link between search engines and media piracy, confirmed what search engines have likely known all along: that more highly placed links do have an effect influencing consumer behavior. The study showed that even users looking for lawful content could be led astray by promoted links to pirated content. Liron Sivan, Michael D. Smith, and Rahul Telang, *Do Search Engines Influence Media Piracy?: Evidence from a Randomized Field Study*, SCHOOL OF INFORMATION SYSTEMS AND MANAGEMENT, HEINZ COLLEGE, CARNEGIE MELLON UNIVERSITY (Sept. 12, 2014), <http://ssrn.com/abstract=2495591>.

³⁴ See Levine, *supra* n. 9.

In the House of Representatives, the implementing legislation (called the “WIPO Copyright Treaties Implementation and Online Copyright Infringement Liability Limitation Act”) contained language intended to “codify the core of current case law dealing with liability of online service providers.”³⁵ Under this bill, direct infringement could not be “based solely on the intermediate storage and transmission of material through a system or network” so long as specific circumstances existed. The legislation also included liability limitations for contributory and vicarious infringement for the actions described above as well as for otherwise “transmitting or providing access to material over the provider’s system or network,” so long as the provider lacked actual knowledge that material was infringing or awareness of facts and circumstances from which infringement was apparent and the provider did not receive a financial benefit directly attributable to the infringement where the provider had a right and ability to control the infringement.³⁶ The Report of the Judiciary Committee that accompanied the bill³⁷ explained the purpose of the provisions as follows:

As to direct infringement, liability is ruled out for passive, automatic acts engaged in through a technological process initiated by another. Thus, the bill essentially codifies the result in the leading and most thoughtful judicial decision to date: *Religious Technology Center v. Netcom On-line Communications Services, Inc.*, 907 F. Supp. 1361 (N.D. Cal. 1995). In doing so, it overrules those aspects of *Playboy Enterprises, Inc. v. Frena*, 839 F. Supp. 1552 (M.D. Fla. 1993), insofar as that case suggests that such acts by service providers could constitute direct infringement, and provides certainty that *Netcom* and its progeny, so far only a few district court cases, will be the law of the land. As to secondary liability, the bill changes existing law in two primary respects: (1) no monetary relief can be assessed for the passive, automatic acts identified in *Religious Technology Center v. Netcom On-line Communications Services, Inc.*; and (2) the current criteria for finding contributory infringement or vicarious liability are made clearer and somewhat more difficult to satisfy.³⁸

The House bill was also the source of the “red flag” test found in the enacted legislation, as part of an overall effort to “[m]odif[y] and clarify[y] the knowledge element of contributory infringement and the financial benefit element of vicarious liability. . . . The knowledge standard in subparagraph (A), in addition to actual knowledge, includes ‘facts or circumstances from which infringing activity is apparent.’ This would include a notice or any other ‘red flag’—information of any kind that a reasonable person would rely upon. It may, in appropriate circumstances include the absence of customary indicia of ownership or authorization, such as a standard and accepted digital watermark or other copyright management information. As subsection (b) makes clear, the bill imposes no obligation on a provider to seek out such red flags.

³⁵ H.R. Rep. No. 105-551.

³⁶ See Irina Y. Dmitrieva, *I Know It When I See It*, 16 SANTA CLARA COMPUTER & HIGH TECH. L.J. 233 (2000) (chronicling development of legislation); *House Judiciary Approves Copyright Reform For Digital Environment*, 55 Pat. Trademark & Copyright J. (BNA) 519 (Apr. 2, 1998); *Industry Groups Reach Accord on Online Copyright Liability Limitation*, 55 Pat. Trademark & Copyright J. (BNA) 557 (Apr. 9, 1998).

³⁷ House Judiciary Committee Report, H.R. Rep. No. 105-551.

³⁸ *Id.*

Once a provider becomes aware of a red flag, however, it ceases to qualify for the exemption. This standard differs from existing law, under which a defendant may be liable for contributory infringement if it knows or should have known that material was infringing.”³⁹

Ultimately, Congress did not follow the approach of directly codifying the Netcom liability standards. Instead, beginning with the Senate bill, the legislation created “safe harbors” within which service providers who were liable for direct or secondary infringement “by reason of” engaging in four specified categories of activity were immunized against all monetary liability and much injunctive relief, if they met certain conditions.⁴⁰ The Report explained the overall purpose and scope of the liability limitations as follows:

Although the copyright infringement liability of on-line and Internet service providers (OSPs and ISPs) is not expressly addressed in the actual provisions of the WIPO treaties, the Committee is sympathetic to the desire of such service providers to see the law clarified in this area. There have been several cases relevant to service provider liability for copyright infringement. Most have approached the issue from the standpoint of contributory and vicarious liability. Rather than embarking upon a wholesale clarification of these doctrines, the Committee decided to *leave current law in its evolving state* and, instead, to create a series of ‘safe harbors,’ for certain common activities of service providers. A service provider which qualifies for a safe harbor, receives the benefit of limited liability. ... Title II preserves strong incentives for service providers and copyright owners to *cooperate to detect and deal with copyright infringements that take place in the digital networked environment*. At the same time, it provides greater certainty to service providers concerning their legal exposure for infringements that may occur in the course of their activities.⁴¹

The “common activities of service providers” eligible for safe harbor treatment were: (1) “transmitting, routing, or providing connections for, material through a system or network controlled or operated by or for the service provider, or the intermediate and transient storage of such material in the course of such transmitting, routing or providing connections”; (2) “intermediate and temporary storage of material on the system or network controlled or operated by for the service provider [where another person initiates the presence of the material and] ... where the storage is carried out through an automatic technical process for the purpose of making such material available to users of such system or network...”; (3) storage at the direct of a user of material that resides on a system or network controlled or operated by of for the service provider”; and (4) “referring or linking users to an online location containing infringing material or activity by using information location tools, including a directory, index, reference,

³⁹ *Id.*

⁴⁰ An earlier bill introduced by Senator Ashcroft contained broader immunity for service providers. *See Liability Bill for Online Service Providers Focuses on Notice and Take Down, Fair Use, 54 Pat. Trademark & Copyright J. (BNA) 384 (Sept. 11, 1997).*

⁴¹ Senate Judiciary Committee Report, S. Rep. No. 105-190.

pointer or hypertext link”.⁴² Limitations (2) through (4) were limited to circumstances where the provider responded “expeditiously” to “notifications of claimed infringement” from copyright owners (a so-called “notice-and-takedown process”), and, similar to the House bill, lacked actual knowledge that material was infringing or awareness of facts and circumstances from which the infringement was apparent, and did not receive a direct financial benefit directly attributable to infringing activity that the service provider had a right and ability to control.⁴³

With respect to the knowledge related limitations on the liability limitations, the Senate Judiciary Committee Report that accompanied the legislation⁴⁴ clarified that the “intended objective” of the “red flag” knowledge standard referred to by the House Judiciary Report was “to exclude sophisticated ‘pirate’ directories—which refer Internet users to other selected Internet sites where pirate software, books, movies, and music can be downloaded or transmitted—from the safe harbor.”⁴⁵ Such pirate directories refer Internet users to sites that are obviously infringing because they typically use words such as ‘pirate,’ ‘bootleg,’ or slang terms in their uniform resource locator (URL) and header information to make their illegal purpose obvious to the pirate directories and other Internet users.”⁴⁶ The Report also provided this example: “For instance, the copyright owner could show that the provider was aware of facts from which infringing activity was apparent if the copyright owner could prove that the location was clearly, at the time the directory provider viewed it, a ‘pirate’ site of the type described below, where sound recordings, software, movies or books were available for unauthorized downloading, public performance or public display.”⁴⁷ The Report also states: “The ‘red flag’ test has both a subjective and an objective element. In determining whether the service provider was aware of a ‘red flag,’ the subjective awareness of the service provider of the facts or circumstances in question must be determined. However, in deciding whether those facts or circumstances constitute a ‘red flag’ – in other words, whether infringing activity would have been apparent to a reasonable person operating under the same or similar circumstances – an objective standard should be used.”⁴⁸

Regarding the financial benefit limitation on the liability limitations, the Report stated:

In determining whether the financial benefit criterion is satisfied, courts should take a common-sense, fact-based approach, not a formalistic one. In general, a service provider conducting a legitimate business would not be considered to receive a “financial benefit directly attributable to the infringing activity” where the infringer makes the same kind of payment as non-infringing users of

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

the provider's service. Thus, receiving a one-time set-up fee and flat periodic payments for service from a person engaging in infringing activities would not constitute receiving a "financial benefit directly attributable to the infringing activity." Nor is subparagraph (B) intended to cover fees based on the length of the message (per number of bytes, for example) or by connect time. It would however, include any such fees where the value of the service lies in providing access to infringing material.⁴⁹

The Report also clearly stated that "Section 512 does not require use of the notice-and-takedown procedure. A service provider wishing to benefit from the limitation on liability under subsection (c) must 'take down' or disable access to infringing material residing on its system or network of which it has actual knowledge or that meets the 'red flag' test, even if the copyright owner or its agent does not notify it of a claimed infringement. For their part, copyright owners are not obligated to give notification of claimed infringement in order to enforce their rights."⁵⁰

The Senate bill also included two additional prerequisite for safe harbor status, neither of which were contained in the House bill. The bill required a service provider to adopt and reasonably implement "a policy for the termination of subscribers of the service who are repeat infringers" and to accommodate and not interfere with "standard technical measures ... used by copyright owners to identify or protect copyrighted works [] that have been developed pursuant to a broad consensus of copyright owners and service providers..."⁵¹

The Senate Judiciary Committee Report said the following about these requirements:

First, the service provider is expected to adopt and reasonably implement a policy for the termination in appropriate circumstances of the accounts of subscribers of the provider's service who are repeat online infringers of copyright. The Committee recognizes that there are different degrees of online copyright infringement, from the inadvertent to the noncommercial, to the willful and commercial. In addition, the Committee does not intend this provision to undermine the principles of subsection (l) or the knowledge standard of subsection (c) by suggesting that a provider must investigate possible infringements, monitor its service, or make difficult judgments as to whether conduct is or is not infringing. However, those who repeatedly or flagrantly abuse their access to the

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ 17 U.S.C. §§ 512(i).

Internet through disrespect for the intellectual property rights of others should know that there is a realistic threat of losing that access. Second, a provider's system must accommodate, and not interfere with, standard technical measures used to identify or protect copyrighted works. The Committee believes that technology is likely to be the solution to many of the issues facing copyright owners and service providers in this digital age. For that reason, we have included subsection (h)(1)(B), which is intended to encourage appropriate technological solutions to protect copyrighted works. The Committee strongly urges all of the affected parties expeditiously to commence voluntary, interindustry discussions to agree upon and implement the best technological solutions available to achieve these goals. Subsection (h)(1)(B) is explicitly limited to "standard technical measures" that have been developed pursuant to a broad consensus of both copyright owners and service providers in an open, fair, voluntary, multi-industry standards process. The Committee anticipates that these provisions could be developed both in recognized open standards bodies or in ad hoc groups, as long as the process used is open, fair, voluntary, and multi-industry and the measures developed otherwise conform to the requirements of the definition of standard technical measures set forth in paragraph (h)(2). A number of recognized open standards bodies have substantial experience with Internet issues. The Committee also notes that an ad hoc approach has been successful in developing standards in other contexts, such as the process that has developed copy protection technology for use in connection with DVD.⁵²

Similar to the House bill, the Senate bill also contained a provision that stated that nothing in the legislation "should be construed to condition the applicability" of the liability limitations "on a service provider monitoring its service or affirmatively seeking facts indicating infringing activity."⁵³ However, the Senate bill qualified this provision to account for the expected development of the standard technical measures discussed above, which could require monitoring by service providers.⁵⁴ The Report explained the "no monitoring" provision was "designed to protect the privacy of Internet users."⁵⁵

Once the House Commerce Committee amended the House bill to include the liability limitations of the Senate bill, the Commerce Committee issued another Report on

⁵² Senate Judiciary Committee Report, S. Rep. No. 105-190.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

the legislation.⁵⁶ This Report largely parrots the language quoted above from the Senate Judiciary Report. The final Conference Report issued by the House and Senate said very little about the liability limitations.⁵⁷ However, both of these later reports emphasized that the legislation was intended to protect copyright owners in the Internet environment. Both Reports state: “Title II preserves strong incentives for service providers and copyright owners to cooperate to detect and deal with copyright infringements that take place in the digital networked environment. At the same time, it provides greater certainty to service providers concerning their legal exposure for infringements that may occur in the course of their activities.”⁵⁸ The Conference Report also states that “this legislation is not intended to discourage the service provider from monitoring its service for infringing material.”⁵⁹

⁵⁶ House Commerce Committee Report, H.R. Rep. No. 105-551, pt. 2 (1998).

⁵⁷ Conference Report on H.R. 2281, the Digital Millennium Copyright Act, H.R. Rep. No. 105-796 (1998).

⁵⁸ *Id.*

⁵⁹ *Id.*

Appendix C

Music Community October 2015 IPEC Submission

Music Community Written Submission
October 16, 2015

Regarding Development of the Joint Strategic Plan on Intellectual Property Enforcement, in response to Request of the U.S. Intellectual Property Enforcement Coordinator for Public Comments, 80 Fed. Reg. 52800 (September 1, 2015)

The submitting parties (the “Music Community”), described in Appendix A hereto, are associations and organizations whose members create and disseminate a wide variety of copyrighted musical compositions and sound recordings. The Music Community has fully embraced the Internet marketplace as the primary avenue for delivering high-quality content to fans of music through a variety of exciting platforms. Collectively, the Music Community represents hundreds of thousands of songwriters, composers, music publishers, recording artists, record labels, studio professionals, and others, who rely on copyright protection for their livelihoods.

I. Introduction

The Music Community sees itself as a key contributor and participant in the digital marketplace. Music can be experienced in a rapidly increasing variety of ways through an ever-evolving choice of innovative platforms that are in high demand. As a result, musicians, songwriters, music publishers, record labels, consumers, device manufacturers, online music distributors, website providers, app developers and Internet access providers are all benefitting.

However, significant challenges remain. Copyright theft continues to proliferate online, despite the widespread availability of affordable, lawful content. Thus, the Music Community strongly believes that it is crucial for the Office of the IPEC to continue to play a positive role in strengthening and ensuring the appropriate balance for our copyright system for the digital age. This can be achieved in a variety of ways, including via government involvement in coordinating voluntary best practices initiatives, as well as legislative reform and regulatory actions.

For example, the enforcement mechanism and eligibility tests for the safe harbors in the Digital Millennium Copyright Act (“DMCA”) must be improved. Since passage of the DMCA, the digital landscape and the music industry have dramatically changed. Initially the DMCA was primarily designed to prevent isolated infringement by third parties on specific online sites when connection speeds were slower than today and storage space was limited. In that environment, these third parties were not able to infringe on the massive scale that they do today, and the “takedown notice” provisions were thought to provide an alternative to lengthy and expensive legal proceedings. The qualification standards for the safe harbor eligibility were thought to be available only to innocently infringing ISPs with no connection to the third party content they hosted, linked to or otherwise transmitted. The notice and take down process was intended as a safeguard to provide a mechanism for copyright owners to prevent infringement by even innocent ISPs.

But in the transformed Internet environment of today, as online speeds have dramatically increased while the cost of storage space has dramatically decreased, the DMCA’s failure to

scale has rendered it increasingly obsolete and futile from an enforcement standpoint. Large, sophisticated entertainment-oriented websites have developed, and they premise their business models on being shielded from responsibility by the safe harbors. Instead of sending a relatively small number of “take-down” notices to prevent isolated infringement in a manner that ensures the material doesn’t reappear, the Music Community is instead faced with the unprecedented burden of attempting to “take-down” literally billions of infringing copies of music and associated links from thousands of unauthorized sources in an environment where infringers feel free to simply continuously repost links to the infringing content. This mismatch between the amount of infringement and the burden of enforcement has increasingly led to the devaluation of music and the perception that there is no effective remedy against unauthorized infringement. Once a song is available, authorized or not, the law provides no means to effectively protect the Music Community’s property. Adding insult to injury, some ISPs have complained about “abusive DMCA notices” – they seek to curtail one of the only remedies left for copyright owners.

In sum, after 15 years of case law and changes in the marketplace noted above, the safe harbors can no longer be said to balance the burdens of policing copyright infringement between the ISPs and the owners. Consider that since the creative community’s last submission to the Intellectual Property Enforcement Coordinator (IPEC) in August, 2012 (the 2012 IPEC Submission),¹ the Recording Industry Association of America (RIAA) has sent over 128 million infringement notices in the aggregate to web site operators, their underlying hosting providers, and search engines. Unfortunately, all too often, when a work is “taken-down” on a particular site or in a search engine index, it immediately re-appears someplace else on that site, or on mirror sites. Congress never intended for things to work in this way. The extent of this “whack-a-mole” problem was not anticipated and, unfortunately, this DMCA loophole has been embraced as a way to continually use and profit from unauthorized use of music, and still arguably maintain the “safe-harbor” protections built into the DMCA, at least until a costly and time consuming lawsuit is filed and won.²

The Music Community stands willing to monitor for infringement and to do its best to cooperate to limit its impact. Self-help against pirate sites is certainly an action available to copyright owners, but without cooperative partners it has limited utility. And, generally, the

¹ Joint Submission of MPAA, NMPA, and RIAA to Office of the Intellectual Property Enforcement Coordinator 7-13 (Aug. 10, 2012), <http://www.regulations.gov/#!documentDetail;D=OMB-2012-0004-0248> [hereinafter 2012 IPEC Submission].

² It must be noted that what is expensive and difficult for large copyright owners is an impossible challenge for small copyright owners seeking to protect the value of their works from indiscriminate sharing online. As Maria Schneider, a three-time GRAMMY winning jazz and classical composer, bandleader and conductor noted in describing the frustration with the DMCA, “[t]he DMCA makes it my responsibility to police the entire Internet on a daily basis. As fast as I take my music down, it reappears again on the same site—an endless whack-a-mole game.” See *Section 512 of Title 17: Hearing Before the Subcomm. on Courts, Intell. Prop. and the Internet of the H. Comm on the Judiciary*, 113th Cong. 57 (2014) (statement of Maria Schneider).

courts have not been helpful in this regard. Recent judicial decisions have interpreted the DMCA in a way that puts an unfair burden on the copyright owner, while allowing the online services to use the “safe harbor” provisions in the law more as a sword than as a shield. Moreover, litigation against sites that provide pirated content has proven a long and costly process.³ And it simply doesn’t scale when there are thousands of sites that are dedicated to music theft.

This also places an undue burden on the literally hundreds of licensed sites in the United States. These services have acknowledged the moral and legal responsibility to pay for music yet they, like the copyright owners, are forced to compete with illicit businesses offering stolen versions for “free.”

The submitting parties, representing a vast cross-section of authors and owners of music, believe the IPEC can play a positive role in promoting reform of the enforcement mechanism of the DMCA and other aspects of the Copyright Act. It can also do much to advance the proposition that reducing the availability of infringing content online should be the shared goal of all legitimate businesses that operate online, as well as of consumers and the U.S. government. Whether by facilitating legislative reform, or helping to develop voluntary industry-wide best practices, the IPEC can help restore the rights of those who have been profoundly harmed as the scope and volume of the online infringement problem has rushed far beyond the ability of the DMCA framework to scale.

II. Current Trends in the Music Industry

A. Strong Public Demand for Music Fuels the Success of the Internet and the Consumer Electronics Industry

Demand for music online is higher than ever, with many sites directly dependent upon professionally produced, copyrighted music for their success. Over 65% of Americans ages 13+ agree that music is important to their lifestyle.⁴ American consumers spend, on average, more than 24 hours per week listening to music and, in a typical week, 75% of U.S. consumers listen to music online.⁵ Twelve of the top 20 most followed people on Twitter are from the Music Community.⁶ Fifteen of the top 20 celebrities on Facebook are musicians.⁷

³ For example, it took over five years of litigation for the record labels to prevail in their litigation against LimeWire, which had spent the better part of a decade inducing – and profiting from – peer-to-peer pirating of sound recordings. *See* Arista Records, LLC et al. v. Lime Group LLC, et al., 784 F. Supp. 2d 398 (S.D.N.Y. 2011).

⁴ Source: MusicWatch Inc., 2014 Annual Music Study.

⁵ *Music is Still the Soundtrack to our Lives*, Nielsen (Sept. 14, 2015), <http://www.nielsen.com/us/en/insights/news/2015/music-is-still-the-soundtrack-to-our-lives.html>.

⁶ Twitter Top 100 Most Followers, Twitter Counter, <http://twittercounter.com/pages/100> (last visited Oct. 2, 2015).

Since the last IPEC Joint Strategic Plan on Intellectual Property Enforcement, legitimate online services that enable people to listen to and interact with music have continued to proliferate and become more viable business models.⁸ Consumers have never had so many choices for experiencing music legitimately and instantaneously. However, for these services to have continued success, strong protection of copyright is required, as many unauthorized disseminators of music undermine the value of the legitimate sites.

In addition to physical formats for music, some of the exciting services available today include the following, with most offered on both wireline and mobile platforms:⁹

- Music is available for download through services like iTunes, AmazonMP3, eMusic, GhostTunes, 7digital, Google Play and several others, including in formats that allow consumers access across multiple devices for personal use without interoperability problems.
- Higher resolution music downloads, for greater fidelity, are available from services such as Pono, HD Tracks, Presto Classical and Pro Studio Masters.
- Interactive, on-demand music streaming services such as Rhapsody, Apple Music, Spotify, Deezer and Rdio offer unlimited listening – on computers or smart phones – for modest monthly fees. They also offer to subscribers the ability to listen off-line.
- Free ad-supported, audio-visual streaming sites, such as YouTube and Vevo, offer free streaming of music videos.
- Digital radio services, such as iHeartRadio, iTunes radio, and Sirius/XM, are available for free with limited advertising support or, in some cases, on a subscription basis.
- Over 750 different AM/FM stations are available as digital radio simulcasts.
- Licensed lyrics sites enable music lovers to access the lyrics to their favorite songs with the click of a mouse and to comment on those lyrics and learn about the songwriters and recording artists.
- Licensed apps like Flipagram enable consumers to interact with music like never before by creating photo and video stories set to music.

Due to all of this innovation, in the first half of 2015, digital dissemination accounted for 76% of the overall recorded music market by value, compared with 59% for 2012.¹⁰ In the U.S.,

⁷ Top Celebrities on Facebook, Fan Page List, <http://fanpagelist.com/category/celebrities/> (last visited Oct. 11, 2015). See also *Music Fuels the Internet*, an RIAA site that notes the top accounts on social media on a daily basis: <http://www.musicfuels.com/>.

⁸ See Cary Sherman, *Valuing Music in A Digital World*, Forbes (Sept. 23, 2015), <http://www.forbes.com/sites/realspin/2015/09/23/how-government-set-licensing-killed-the-music-industry/>.

⁹ See www.whymusicmatters.com for a variety of other licensed music services available in the United States, and www.pro-music.org for a worldwide listing.

digital subscription revenues increased in 2014, as sales of smartphones and tablets that promote use of streaming services increased streaming revenues sharply (in some cases, substituting for downloads).¹¹ In the first half of 2015, U.S. revenues from digital paid subscriptions were \$478 million, up 25% from the previous year.¹²

B. There is an Unacceptable Value Gap between the Demand for Music and the Revenue Returned to the Authors and Owners of that Music

Despite music being more popular than ever today, music industry revenues have been nearly flat since 2010, and are less than half what they were in 2000 (adjusted for inflation). Why is that?

The fact is that while the technology industry is benefitting from the increased availability of online music, and profiting from the unprecedented consumption and interest in music, the Music Community is facing a value gap. “When vinyl records, which peaked in the 1960s and ’70s, generate more revenue for the industry in 2014 than the billions of ad-supported on-demand streams on YouTube and similar services, something is fundamentally wrong with the market.”¹³ In short, music adds significant value to technologies and network access, but the Music Community is not receiving a fair share of the revenue.¹⁴

The broken state of the law, particularly the DMCA (discussed in more detail below), is playing a significant role in perpetuating this unfairness.¹⁵ The laws that “were designed to exempt passive intermediaries from liability,” the so-called safe-harbors, should never have been allowed to “exempt active digital music services from having to fairly negotiate” licenses with rights holders.¹⁶ Not only do certain actors take advantage of these safe harbors to profit from music without compensation to the authors and owners of that music, this situation unfairly

¹⁰ See Joshua P. Friedlander, *News and Notes on 2015 Mid-Year RIAA Shipment and Revenue Statistics 1* (Sept. 22, 2015), <http://riaa.com/media/238E8AC7-3810-A95C-44DC-B6DEB46A3C6E.pdf> [hereinafter *RIAA Shipment and Revenue Statistics*].

¹¹ IFPI Digital Music Report 2015, 7-8, <http://www.ifpi.org/downloads/Digital-Music-Report-2015.pdf>.

¹² See *RIAA Shipment and Revenue Statistics*, *supra* n. 10, at 2.

¹³ See Sherman, *supra* n. 8.

¹⁴ See David Israelite, *NMPA Head Says “Free” May Work For Pandora But is Devastating to Songwriters: Op-Ed*, *Billboard* (Sept. 24, 2015), <http://www.billboard.com/articles/business/6707834/nmpa-david-israelite-oped-pandora-songwriter-payments>.

¹⁵ See Sherman, *supra* n. 8. The flawed U.S. music licensing regime also plays a factor in this value gap. See Israelite, *supra* n. 14.

¹⁶ See Frances Moore, *Artist and Record Companies need a Fair Digital Marketplace* (July 29, 2015), <http://www.ifpi.org/news/Artists-and-Record-Companies-Need-A-Fair-Digital-Marketplace>.

distorts the market value for music, creating below-market discounted rates that harm the entire music industry. It cannot be right, for example, that, by some accounts, YouTube has 40% of the music listening but only provides 4% of the revenue to the record labels.¹⁷ As the CEO of RIAA noted, the Music Community is faced with a “Hobson’s choice: Accept below-market deals or play that game of whack-a-mole. The notice and takedown system—intended as a reasonable enforcement mechanism—has instead been subverted into a discount licensing system where copyright owners and artists are paid far less than their creativity is worth.”¹⁸

To turn the digital transformation of the music industry into sustainable long-term growth, this value gap must be addressed. A successful Music Community that invests in music and rewards creators needs a balanced digital marketplace in which to negotiate terms for the use of its music. And, as further discussed below, it needs a balanced and fair legal enforcement system in which to operate to do so.

III. Online Theft Persists Via an Ever-Evolving Variety of Platforms

A. Music Theft Online Continues to Persist and Harm the Music Community and the U.S. Economy

Though there are more legitimate options than ever for downloading, streaming and interacting with music, online piracy remains a large threat to the Music Community. Since the last IPEC submission, RIAA has monitored 2,159 sites, and noticed 48,391,597 infringements directly to sites. This is in addition to millions of notices sent to ISPs hosting those sites and the search engines indexing and directing traffic to those sites.

This piracy affects the U.S. labor market, and has led to a decline in the number of people employed by the music industry. “The music industry, while enormous in its economic, cultural and personal impact, is by business standards relatively small. So theft on this scale has a noticeable and devastating impact: employment at the major U.S. music companies has declined by thousands of workers, and artist rosters have been significantly cut back. The successful partnership between a music label and a global superstar – and the revenue generated – finances the investment in discovering, developing and promoting the next new artist. Without that revolving door of investment and revenue, the ability to bring the next generation of artists to the marketplace is diminished – as is the incentive for the aspiring artist to make music a full time professional career.”¹⁹ Such piracy hurts not only the large music companies or employees of

¹⁷ See video, *HBOs Richard Plepler and Jimmy Iovine on Dreaming and Streaming from the Vanity Fair Summit*, Vanity Fair (Oct. 8, 2015), <https://www.youtube.com/watch?v=HoODO8HkvoI>; Kia Makarechi, Twitter Posting (Oct. 7, 2015, 1:25pm), https://twitter.com/kia_mak/status/651855850840195078?refsrc=email&s=11.

¹⁸ See Sherman, *supra* n. 9.

¹⁹ See *Piracy Online: Scope of the Problem*, RIAA, https://www.riaa.com/physicalpiracy.php?content_selector=piracy-online-scope-of-the-problem, (last visited Oct. 9, 2015) [hereinafter *Scope of the Problem*].

those companies – independent creators are harmed as well. The Nashville Songwriters Association International reports that, since 2000 (essentially, in the post-Napster era), the number of full-time songwriters in Nashville has declined by 80%.²⁰ In the end, consumers and legitimate technology companies also suffer, because incentives for music production decline, lawful services are forced to square off against unfair competition, and the drivers of the Internet’s success are threatened.

B. Current Forms of Music Theft Online

Three years ago, the creative industries highlighted in the 2012 IPEC Submission that online theft continued unabated. Although much has changed in the last three years, much has stayed the same. The same forms of piracy that existed three years ago, from unauthorized streaming and download sites, to cyberlockers, peer-to-peer networks, and mobile apps, continue to proliferate at unacceptable levels today.²¹ Others, such as stream-ripping, which existed three years ago, have gained increased popularity in the past year, as more and more users turn to this form of piracy to download music to their devices. In the last three years we have also seen escalating damage from the unauthorized dissemination of pre-release music, *i.e.*, albums slated for commercial release that have not yet been commercially released to the public.²²

Some of the piracy problems the Music Community is encountering include:

- **Mobile Applications:** Infringing mobile applications provide unauthorized streaming, downloading, stream-ripping, syncing to other videos or photographs, and/or distribution of music. Despite the industry’s efforts to have these infringing apps taken down from the leading mobile app storefronts,²³ they nonetheless continue to proliferate. For example, in 2014, “the most popular of these Android apps, Music Maniac, ha[d] been downloaded more than 10 million times – and afford[ed] free access to all 10 of the top songs listed on the current Billboard’s Hot 100 list.”²⁴ In addition, live video streaming

²⁰ See Nate Rau, *Nashville’s Musical Middle Class Collapses* (Jan. 28, 2015), <http://www.tennessean.com/story/entertainment/music/2015/01/04/nashville-musical-middle-class-collapses-new-dylans/21236245/>.

²¹ For a detailed overview of various forms of piracy, see 2012 IPEC Submission, *supra* n. 1. Websites for the sale of physical counterfeits also remain a problem.

²² For example, ShareBeast, a cyberlocker that caused significant damage to the industry, trafficked in pre-release music, and boasted millions of users, was recently shut down by the Department of Justice. Andre Yoskowitz, *FBI Takes Down Pre-Release Music Piracy Site Share Beast*, News By AfterDawn, (Sept. 16, 2015), <http://www.afterdawn.com/news/article.cfm/2015/09/16/fbi-takes-down-pre-release-music-piracy-site-sharebeast>.

²³ To date, RIAA has noticed over 5,700 mobile apps to the major mobile app storefronts.

²⁴ Dawn Chmielewski, *Music Piracy Goes Mobile*, Re/Code, Mar. 24, 2014, <http://recode.net/2014/03/24/music-piracy-goes-mobile/>. Though Music Maniac is no longer available through Google Play, it remains available through other websites.

apps owned by Twitter and Facebook have led to unauthorized streaming of concerts by new and leading artists. Unfortunately, even when the Music Community has some success in inhibiting the reach of an unlicensed, infringing app, a new one takes its place, or the app developers find new avenues to distribute the app. For example, in December 2014, Google removed from its Play Store several clearly infringing applications associated with the notorious Pirate Bay website.²⁵ However, the apps remain available elsewhere and usable with Android devices. Moreover, all the apps downloaded prior to the takedown of the app from the storefront continue to function.²⁶

- Unauthorized Streaming and Download Services, Including Sites that Cater to Pre-release Music: This class of digital sites and apps directly or indirectly offers unauthorized on-demand streaming and/or downloading of our members' music, including their most popular and valuable content. They often provide not just one link to a particular track, but instead several pages of links to the same track, and/or have several more "URLs" with the same track "at the ready" to post to their site when another URL to the same track is noticed.²⁷ Several of these sites go further, providing unauthorized downloading of pre-release music.²⁸ Some are so brazen as to publicly tout their infringing activity and seek crowd sourcing to fund their illegal efforts.²⁹ Such infringing activity clearly

²⁵ Angela Moscaritolo, *Pirate Bay Apps Yanked from Google Play*, PC Magazine (Dec. 8, 2014) <http://www.pcmag.com/article2/0,2817,2473253,00.asp>.

²⁶ For example, while the Pirate Bay Browser App was removed from the Google Play store in June 2013, nearly a year later, in May 2014, there were an estimated 500,000+ monthly U.S. users of the app. *Source*: RIAA analysis of Mobidia data.

²⁷ See *Capitol Records, LLC v. Escape Media Group, Inc.*, 2015 U.S. Dist. LEXIS 38007, *18-19 (S.D.N.Y. Mar. 25, 2015) (characterizing the infringing service Grooveshark as a "technological Pez dispenser" that required copyright owners to send "successive takedown notices" in order to remove a single song from the service).

²⁸ Leaks of pre-release music have long plagued the Music Community. See Stephen Witt, *The Man Who Broke the Music Business* (Apr. 27, 2015), <http://www.newyorker.com/magazine/2015/04/27/the-man-who-broke-the-music-business>. But with so many devices and unauthorized services at consumers' fingertips, unlawful releases of albums before they hit the legitimate marketplace can be devastating.

²⁹ A particularly egregious example is the new service Aurous, which allows users to search for, stream, and download pirated copies of popular music, and which is designed specifically to search for and retrieve copies from online sources notorious for offering pirated music. Aurous has promoted itself by linking to articles that call it "BitTorrent Music for Your Dad," and "Popcorn Time for Music"; in other words, as a site that makes it incredibly easy to find and stream or download pirated music. Aurous brazenly began a crowdfunding campaign for its mobile app, which it has since shut down. See Aurous, Twitter Posting (Sept. 17, 2015, 11:55am), <https://twitter.com/aurousapp/status/644585368440938496?lang=en> ("We need your help to bring Aurous to Iphone, Android and Windows phone! Please consider donating to our Indiegogo..."); Aurous, Twitter Posting (Sept. 19, 2015, 1:00pm), <https://twitter.com/aurousapp/status/645326516600086528?lang=en>. The RIAA, on behalf of its members, has brought suit against Aurous, seeking injunctive relief against this blatant infringer,

harms U.S. artists, songwriters, record labels and music publishers by disseminating their work without authorization and severely diminishing the commercial value of those works.

- Cyberlockers: While significant efforts have been invested in shutting down some of the worst actors in this space, such as Megaupload, ShareBeast, and RockDizFile, numerous websites still exist that are designed to encourage their users to post and disseminate infringing copies of music.³⁰ These sites become repositories for free access to professionally produced, copyrighted content.
- Peer-to-peer Networks: While 8.1 million people pay for streaming subscriptions in the United States, more than twice that many are still using peer-to-peer piracy sites for illegal downloads.³¹ And while use of peer-to-peer sites may not be rising as quickly during recent years as it once did, the harm that the availability of infringing copies on those networks presents remains devastating.
- Unauthorized Lyrics Sites: Sites that provide unauthorized access to reproduced song lyrics also present a real problem for music publishers and songwriters. There are so many of these websites, with associated applications, that National Music Publishers' Association (NMPA) was forced to initiate a litigation campaign to compel those sites that wanted to avoid injunctions and liability to obtain licenses.³² Although this approach had some success, myriad infringing sites and apps remain available, supported by advertising.
- Stream Ripping: Finally, some companies are profiting from enabling consumers to exceed their authorized access to lawful products, such as YouTube and audio-only streaming services, by creating "ripped" illegal copies of streams. This is particularly damaging because it prevents copyright owners from obtaining full value from licensors who offer purchases of permanent copies of works.

and the court granted a temporary restraining order against Aurous on October 15, 2015. *See* Atlantic Recording Corporation et al. v. Andrew Sampson, Case No. 1:15-cv-23810 (S.D. Fla., filed Oct. 13, 2015); Temporary Restraining Order, *id.* (Oct. 15, 2015).

³⁰ For examples of such cyberlockers, see the RIAA Notorious Market Submission Report (Oct. 5, 2015), <http://riaa.com/media/9F859538-E1E1-CC7E-A701-84F9FB3851BF.pdf> [*hereinafter* RIAA NMR Submission].

³¹ Ryan Faughnder, *Music Piracy is Down But Still Very Much in Play*, Los Angeles Times (June 28, 2015), <http://www.latimes.com/business/la-et-ct-state-of-stealing-music-20150620-story.html>.

³² *See* Ed Christman, *NMPA Launches Suits Against Infringing Lyric Sites*, Billboardbiz (May 21, 2014), <http://www.billboard.com/biz/articles/news/publishing/6092270/nmpa-launches-suits-against-infringing-lyric-sites>; Ben Sisario, *In Music Piracy Battles, Lyrics Demand Respect Too*, New York Times (Nov. 11, 2013), http://www.nytimes.com/2013/11/12/business/media/in-music-piracy-battles-lyrics-demand-respect-too.html?_r=0.

A significant change from three years ago is the ability of rogue actors to engage in piratical activity across a variety of digital platforms, whether via computer software applications, web sites, plug-ins for Internet browsers, widgets for smart televisions, or mobile applications. Consider, for example, that before the infringing service GrooveShark was shuttered in light of a court order finding it liable for willful infringement, GrooveShark offered access to its service via a website, a mobile application, a browser plug-in, and was negotiating deals to have GrooveShark widgets on certain smart TVs.³³

In addition, it is now easier than ever for rogue operators to jump physical jurisdictions and digital domains, while obfuscating their path while they do so. The increasing ubiquity of high-bandwidth connectivity and technologically sophisticated hosting services in a growing number of offshore jurisdictions will make it increasingly easy for thieves to fully exploit the U.S. market while minimizing, for practical purposes, their exposure to U.S. copyright or criminal law. Another factor that will accelerate this disturbing trend in future years involves the domain name system. Beyond the existing framework of country code Top Level Domains (ccTLDs), the ongoing rollout of new generic Top Level Domain (gTLD) registries includes some based in jurisdictions more tolerant or even encouraging of theft of U.S. intellectual property. This gives pirates a wider range of havens to seek.

Consider that in 2014, rogue site Mp3Skull was at domain mp3skull.com, and hosted at a U.S. hosting company. Since then, Mp3Skull had moved to five different top level domains, with two changes in the last two weeks. As of October 11, 2015, Mp3Skull was located at mp3skull.wtf, and had moved its servers outside of the U.S.³⁴ It obfuscates its operators and location by using a privacy/proxy service to hide the operator and Cloudflare to hide its IP address.³⁵

This domain hopping, along with the steps such pirate sites take to obfuscate its identity and physical location, provide further obstacles to effective enforcement.

This highlights that as the landscape continues to shift under our feet at rapid speeds, it has become even harder to pin down where and how the next form of infringement will emerge, and what combination of jurisdictions – digital or physical – will be implicated.

³³ Consider also that rogue cyberlocker 4shared.com offers its service both via a website and a mobile application. See www.4shared.com, last visited October 11, 2015. Rogue stream-ripper FLVTO offers its infringing activity via a website and a computer application. See www.flvto.biz, last visited October 11, 2015.

³⁴ Another example, noted in the RIAA NMR Submission, is rogue site Viperial. Viperial, which was originally at viperial.com, then redirected to viperial.co, and now redirects to viperial.me. See also footnote 59 and Appendix B for further examples.

³⁵ See IP Tracker Lookup, “mp3skull.com”, <http://www.ip-tracker.org/locator/ip-lookup.php?ip=mp3skull.com>, last visited Oct. 12, 2015.

C. The Role of Third Parties in Supporting, Promoting, or Profiting from Copyright Theft

Numerous third parties, both legitimate actors and illegitimate, including some of those noted above, help to facilitate access to the infringing services discussed above, including domain name registrars and registries, search engines, app stores, hosting companies and content delivery networks (CDNs), advertisers, and payment processors. Regardless of whether the activities engaged in by such companies rise to the level of incurring liability under existing copyright laws, far more could and should be done by such third parties to help prevent and limit infringement.

Below is a brief description of the role some of these third parties play, and what efforts, if any, have been taken to curb infringement occurring or facilitated via their services.

- Registrars, Registries, and Privacy/Proxy Services: A domain name is often a key resource that enables sites dedicated to digital theft to be accessed by their customer base; and even though registrar, registry and privacy/proxy terms of service almost uniformly prohibit the use of domain name registrations for such activities, these provisions are rarely enforced. Cooperation of registrars, registries and privacy/proxy service providers with right holders often leaves much to be desired. This refusal to take action despite verifiable evidence of infringement, coupled with the unfettered expansion of new internet real estate for the infringers to use, further exacerbates the music infringement problem.
- Search Engines: Search engines continue to be a key driver for music discovery and a significant tool that leads traffic to infringing sites.³⁶ While recent efforts by search engines to demote sites for which they have received high volumes of infringement notices have made an impact,³⁷ over time these efforts are being shown to have limited

³⁶ In a survey of digital music listeners by consumer research firm MusicWatch, search engines were found to be one of the most common ways users discover sites to download music without paying. See Joshua P. Friedlander, *More Evidence Is In – Intermediaries Matter*, RIAA Music Notes Blog (Sept. 15, 2014), http://www.riaa.com/blog.php?content_selector=riaa-news-blog&blog_selector=Intermediaries-Matter&news_month_filter=9&news_year_filter=2014. Another study from Carnegie Mellon University, perhaps the most comprehensive study yet on the link between search engines and media piracy, confirmed what search engines have likely known all along: that more highly placed links do have an effect influencing consumer behavior. The study showed that even users looking for lawful content could be led astray by promoted links to pirated content. Liron Sivan, Michael D. Smith, and Rahul Telang, School of Information Systems and Management, Heinz College, Carnegie Mellon University, *Do Search Engines Influence Media Piracy?: Evidence from a Randomized Field Study* (Sept. 12, 2014), available at <http://ssrn.com/abstract=2495591>.

³⁷ See, e.g., Katherine Oyama, *Continued Progress on Fighting Piracy*, Google Public Policy Blog (Oct. 17, 2014), <http://googlepublicpolicy.blogspot.com/2014/10/continued-progress-on-fighting-piracy.html>.

utility. First, far too often search engine operators are slow to act, electing to allow infringement to continue unabated for too long before down-ranking a site. Second, as shown in Appendix B, sites that engage in domain hopping after being demoted quickly rise again in search results. Clearly, the system is broken when Google estimates it will receive around 350 million takedown notices this year,³⁸ including tens of millions from the Music Community, and the piracy problem continues to exist at its current levels. More effective tools are required to reduce the amount of traffic search engines send to known rogue operators.

- Hosting Companies, CDNs, and their ilk: Hosting Companies, CDNs, and companies that provide similar services vary in the levels of cooperation or obstacles they place in the face of evidence of infringement occurring on or via their systems. Some, like Cloudflare or WebZilla, refuse to terminate service with their customer despite receiving thousands of notices of infringement attributable to one of their subscribers' accounts. Other hosting companies appear to terminate service with their rogue customer after receiving repeated notices of infringement associated with that customer, but there is no consistency in the response to the rights holder or in the level of knowledge of repeat infringement that leads to termination or suspension of service.
- Advertisers and Ad Networks: Following pledges made in 2012,³⁹ many U.S. advertisers, ad agencies and ad networks have taken proactive steps to deter placing ads on sites that engage in copyright infringement. Many will also take action when notified that their ads or services were used to place ads on infringing sites. In addition, over the past several months, portions of this industry have created and adopted further programs to help improve the digital ecosystem, including the Trustworthy Accountability Group's Brand Integrity Program Against Piracy.⁴⁰ However, several other ad networks, both in the U.S. and abroad, continue to funnel ad dollars to infringing sites. Other advertisers, particularly those that advertise using pay-per-install potentially unwanted programs (PUPs), continue to prominently interact with infringing sites. Moreover, the rogue operators are getting more sophisticated, engaging in various forms of ad fraud, such as

³⁸ See Chris Castle, *What Is the Intention of Justice? Notice and Stay Down Is the Government's Responsibility*, Huffington Post (Oct. 1, 2015), http://www.huffingtonpost.com/chris-castle/what-is-the-intention-of-b_8208768.html.

³⁹ See ANA, 4A's Release Statement of Best Practices Addressing Online Piracy and Counterfeiting, Association of National Advertisers (May 3, 2012), <https://www.ana.net/content/show/id/23408>.

⁴⁰ See *Advertising Industry Launches Initiative to Protect Brands Against Piracy Websites*, TAG (Feb. 10, 2015), <https://www.tagtoday.net/advertising-industry-launches-initiative-to-protect-brands-against-piracy-websites/>. Indeed, Group M, a leading global media investment management group, has announced that it will require all of its partners to be DAAP validated in 2016. *GroupM Requires Partners to use TAG-Certified Anti-Piracy Services*, TAG (Sept. 23, 2015), <https://www.tagtoday.net/groupm-requires-partners-to-use-tag-certified-anti-piracy-services/>.

pop-unders or re-directs to phony webpages, to channel advertising dollars their way. More needs to be done to address this fraudulent behavior.

- Payment Processors: In 2011, after significant assistance from the Office of the IPEC, payment processors and credit card companies implemented a set of best practices to investigate complaints and stop processing transactions for sites that distribute counterfeit and pirated goods. As implemented, these best practices have led to a significant reduction in the use of premier credit card services for not only sites that directly charge for unauthorized music downloads or streams, but also those that attempt to hide their efforts by charging indirectly for unauthorized access to music.⁴¹ While rogue sites continue to find alternative payment methods to profit from their illegal enterprises, the adoption and implementation of these best practices is an example of what is possible when industries agree to adopt reasonable approaches to exercise their responsibility to help ensure that Internet-based transactions are lawful.
- App Stores: Recently, some leading digital storefronts, such as iTunes and Google Play, have made increased efforts to address and remove from their digital storefronts apps that facilitate music infringement. Nonetheless, too often, digital storefronts, whether for mobile applications, browser plug-ins, or more traditional software applications, continue to offer applications that obviously facilitate piracy. This includes apps that clearly advertise the availability of unlicensed music. These platforms should do more to help lawful applications succeed by limiting piracy before the infringing apps ever make it on their storefront.

All of these third parties gain some financial benefit from their interactions with the rogue operators, whether in the form of information or dollars, and each has an ability to deter the use of its services for such illegal activity. As noted in the 2012 IPEC Submission, where commercially reasonable measures can be taken to address predictable and identifiable harms enabled by the services these businesses offer, those measures should be made. This not only helps address the infringement problem, it also helps create a safer, more robust digital ecosystem.⁴²

⁴¹ RogueBlock, the initiative that grew out of an agreement of the leading credit card companies and payment processors to develop best practices to deny sites that engage in copyright theft or counterfeiting the economically essential services they provide, has terminated over 5,000 individual counterfeiter's merchant accounts, impacting over 200,000 websites. *See RogueBlock*, IACC, <http://www.iacc.org/online-initiatives/rogueblock> (last visited Oct. 10, 2015).

⁴² *See, e.g.*, RIAA Comments to NTIA in Response to the Request for Public Comment on Stakeholder Engagement on Cybersecurity in the Digital Ecosystem (May 27, 2015), http://www.ntia.doc.gov/files/ntia/riia_5-27-15.pdf (noting the correlation between malware and other cybersecurity threats with online infringement).

IV. The Law is Inadequate to Address these Problems

As was noted in the 2012 IPEC Submission, the overarching challenge for copyright owners is to find meaningful ways to enforce their rights. Today, as then, there is not enough money in the world to fund litigation against every significant pirate, even if copyright owners could find courts that could exercise jurisdiction over all of them. And the statute that the U.S. enacted in 1998 to facilitate inter-industry cooperation in enforcement against infringement in the digital environment, the Digital Millennium Copyright Act (DMCA), has failed to achieve its purpose.

When the notice and takedown provisions of the DMCA were enacted, Congress intended to “preserve the strong incentives for service providers and copyright owners to detect and deal with copyright infringements that take place in the digital networked environment.”⁴³ The legislation was not “intended to discourage the service provider from monitoring its service for infringing material.”⁴⁴ However, given the increased availability of higher broadband speeds and low-cost server space, coupled with the continued misinterpretation of the DMCA by the courts and those that want to take advantage of its safe harbors,⁴⁵ the DMCA regime fails to accomplish the balance sought by Congress.

As a consequence of these judicial decisions, rather than providing incentives for cooperation, the DMCA has provided incentives for Internet businesses to turn a blind eye to infringement, or even to build willful blindness into their business models.⁴⁶ In fact, the DMCA,

⁴³ Report of House Commerce Committee on H.R. 2281, the Digital Millennium Copyright Act, H.R. Rep. No. 105-51, pt. 2, 49 (1998).

⁴⁴ Conference Report on H.R. 2281, the Digital Millennium Copyright Act, H.R. Rep. No. 105-796, 73 (1998).

⁴⁵ See, e.g., *UMG Recordings, Inc. v. Veoh Networks Inc.*, 665 F. Supp. 2d 1099 (C.D. Cal. 2009), *aff'd*, *UMG Recordings, Inc. v. Shelter Capital Partners LLC*, 667 F.3d 1022 (9th Cir. 2011); *Viacom Int’l, Inc. v. Youtube, Inc.*, 940 F. Supp. 2d 110, 115 (S.D.N.Y. 2013); *Capitol Records, LLC v. Vimeo, LLC*, 972 F. Supp. 2d 500 (S.D.N.Y. 2013), *reconsideration granted in part, reconsideration denied in part*, 972 F. Supp. 2d 537 (S.D.N.Y. 2013); *Lenz v. Universal Music Corp.*, No. 13-16106, 2015 U.S. App. LEXIS 16308 (9th Cir. Sept. 14, 2015).

⁴⁶ See Terry Hart, *Grooveshark is Done*, Copyhype (Oct. 1, 2014), <http://www.copyhype.com/2014/10/grooveshark-is-done/>. (Grooveshark instructed its employees to create user accounts and to upload infringing files to the site, knowing that the business “depended on the use of infringing content); see also William Hensley, *Copyright Infringement Pushin’: Google, YouTube, and Viacom Fight for Supremacy in the Neighborhood that may be Controlled by the DMCA’s Safe Harbor Provision*, 51 IDEA 607, 626 (2011) (“YouTube’s business model was designed to maximize the number of site viewers in order to increase advertising revenue to attract a buyer. To increase the number of viewers, they needed infringing material.”). The DMCA’s current provision providing that monitoring is not required was intended to apply to innocent ISPs who otherwise meet the statutory eligibility tests for the safe harbors – not to shield ISPs operating with full awareness of the widespread presence of infringing content and indeed active inducement of posting of such content.

as interpreted by some, creates a perverse incentive for Internet business to take actions to deter the appearance of monitoring, contrary to the diligence expected in nearly any other business environment.

Even while removing individual infringing links identified in takedown notices, services based on infringement can thrive financially and expect to enjoy near-complete immunity from liability. More and more rogue operators appear to specifically design and engineer their systems and processes to make the DMCA, as they interpret it, irrelevant and ineffective to their ongoing infringement. Essentially, these rogue operators have learned the weaknesses of the DMCA as it has been interpreted and implement their services to exploit those weaknesses. In short, the problems with the DMCA identified in the 2012 IPEC Submission continue unbounded. The time is now for action to address this continued inequity.

V. Recommendations

Much can be done to curb the problems identified above so that legitimate music offerings succeed, more new music is produced than ever before, and the Internet marketplace delivers to consumers the types of exciting new services they are flocking to in large numbers. Improvements can be made through voluntary initiatives, legislatively, and through continued enforcement efforts.

A. Voluntary Best Practices

In addition to legislative, enforcement, and regulatory approaches to address intellectual property enforcement (discussed below), the Office of the IPEC and the government should continue to encourage the development and implementation of voluntary best practices to help move toward a piracy-free, robust and innovative online ecosystem.

It is important that online intermediaries, not just right holders, fully engage in the fight against digital theft, because often the service providers possess information that rights holders cannot obtain or have difficulty locating. For example, YouTube's Content ID system now enables rights holders to limit infringing files, which are technologically matched via fingerprint-based content recognition technology, from being made available via YouTube.⁴⁷ Facebook also will be testing a matching technology that will allow creators to identify matches of their videos on Facebook across the site, allowing for easier removal of unauthorized repeat content.⁴⁸ These systems rely on information collected from right holders to allow the services to identify and block infringing files before the public gains access to them. Only the sites themselves can enable such preventative measures, because only they have instantaneous access to information regarding what is being uploaded to their services. If other services that allow user-posted content (such as distribution hub sites) adopted similarly robust tools, a large amount of unauthorized content could be automatically removed or blocked from the web.

⁴⁷ See *How Content ID Works*, YouTube Help, <https://support.google.com/youtube/answer/2797370?hl=en>, last visited Oct. 14, 2015.

⁴⁸ See *An Update on Video Management on Facebook*, Facebook Media (Aug. 27, 2015), <https://media.fb.com/2015/08/27/an-update-on-video-management-on-facebook/>.

Effective private-sector action is not only possible, it is in the best interest of all legitimate businesses and consumers. The Music Community firmly believes that reducing the availability of infringing content online should be the shared goal of all legitimate businesses that operate online, as well as of consumers and the U.S. government. If the U.S.-based Music Community is thriving and producing compelling content, Internet usage will increase, consumers will eagerly embrace new services, more advertisements will be viewed, more searches will be conducted, more consumers will have the opportunity to enjoy their favorite content at affordable prices, and more good-paying jobs will be created and preserved. As discussed above, many of today's most popular and profitable Internet services and consumer electronics devices are tied to the availability of professionally-produced music. If the Music Community continues to lose revenue to piracy, the cultural products that keep consumers interested in going online may decrease in number and quality. Thus, legitimate service providers throughout the Internet ecosystem should be self-interested in decreasing infringement.

The Music Community commends the IPEC for encouraging industry players involved in e-commerce to work together, both within their sector and across sectoral lines, to craft and implement "best practices" that will assist in the fight against online copyright theft. As noted in RIAA's comments in response to the USPTO's Request for Comments in its Voluntary Best Practices Study, voluntary initiatives promote a growing recognition among all responsible stakeholders in the Internet ecosystem that they have an important role in promoting a legitimate online environment.⁴⁹ And, as previously discussed, several such initiatives have been implemented to date with positive results.

In addition, several foreign countries have also promoted voluntary best practices, which may provide significant guidance for possibilities within the U.S. For example, the Government of France in May 2014 published *Operational Tools to Prevent and Combat Online Infringement*,⁵⁰ which highlighted and recommended important voluntary initiatives for reducing online piracy, including (1) the signature of sector charters involving the stakeholders in advertising and on-line payment (Visa, MasterCard, PayPal); (2) creation by a public authority of a list of massively infringing sites, which would be used to inform all the technical and financial intermediaries of the sites at issue; (3) the creation of an order for prolonged removal, targeting specific counterfeit content; and (4) creating monitoring arrangements of legal decisions regarding massively infringing websites to combat the reappearance of pirated content and to make sure that legal decisions were not circumvented.

Going forward, there are challenges in two areas: first, to meaningfully and constructively implement the commitments and undertakings embodied in these important initiatives; and second, to expand this trend into other areas where clear statements of industry best practices, and inter-industry cooperation to fight online copyright theft, are sorely needed. The first dimension will require follow-up and monitoring of the agreements already reached, to

⁴⁹ Comments of RIAA, USPTO's Request for Comments in its Voluntary Best Practices Study (Aug. 19, 2013), <http://www.uspto.gov/ip/officechiefecon/PTO-C-2013-0036.pdf#page=15>.

⁵⁰ *Outils opérationnels de prévention et de lutte contre la contrefaçon en ligne, Rapport à la ministre de la culture et de la communication*, May 12, 2014, English Language summary available at <http://merlin.obs.coe.int/iris/2014/6/article18.en.html>.

ensure that they produce concrete results that do, in fact, help to cut off the revenue streams now flowing to online pirates. The IPEC is well situated to conduct this follow-up; to coordinate the activities of other federal agencies that have a role to play; to report on the results, as appropriate; and to encourage the parties involved to move forward on the constructive paths on which they have embarked.

Some areas where new or more refined voluntary best practices are needed include the following:

- Registrars/Registries: The Internet Corporation for Assigned Names and Numbers (“ICANN”) must play a central role to encourage increased cooperation among copyright and trademark holders and domain name registration businesses, in order to have an impact on limiting infringement. In the current transition context, ICANN needs to demonstrate publicly its stated commitment to accountability and the rule of law. Beyond encouraging voluntary initiatives and discussions, there should be explicit statements that confirm as part of ICANN’s core mission its authority to negotiate and enforce its contracts with registrars and registries – including contractual provisions targeting abusive uses of domain names. In 2013, revision of the Registrar Accreditation Agreement (“RAA”) resulted in domain name registrars taking on important new obligations to respond to complaints that domain names they sponsor are being used for copyright or trademark infringement, or other illegal activities. But registrars are not properly responding, and to date ICANN is not taking action to clarify and enforce these RAA provisions. We anticipate the same may be true in connection with rogue sites on new gTLDs. In addition, the 2013 RAA also set in motion long-overdue steps toward developing standards for the widespread phenomenon of proxy registration services. Further progress will be critical if the role of the Whois database in advancing online accountability and transparency is to be saved.

The Music Community urges the Office of the IPEC to stay actively involved in convincing ICANN, registries, registrars and privacy/proxy services that protecting copyrights and trademarks is in the best interest of the entire Internet ecosystem.

- Hosting and CDN Companies: Companies that provide such services should come to the table to discuss ways to continue delivering quality products while also respecting the property of others. We need greater certainty in the responses in the face of notices of widespread infringement, and additional efforts to ensure that a takedown notice is effective. We also need to develop a common sense approach to implementing a repeat infringer policy.
- App Stores: Far more could be done by the providers of digital storefronts where consumers locate and obtain/purchase applications for mobile devices, browser plug-ins, or software applications. Given that real world stores have to avoid distributing infringing content, there is no reason why digital storefronts cannot do more as well. While we appreciate that notice programs have been developed to address infringing apps that are available on some mobile app storefronts, we need to address how to increase the diligence so that infringing apps are more likely to be rejected before making it into the

storefront in the first place, and better tools to avoid repeat infringing apps, whether by the same developer under a different name, or a copycat app that provides substantially the same infringing service under a substantially similar name.

- Search Engines: Search engines continue to provide a critical link between online copyright theft sites and the audiences they seek to serve, including U.S. consumers. While demotion efforts have made a difference, without greater cooperation by the major search engines with right holders, online theft sites will continue to benefit from the substantial traffic sent to them by the search engines. These critical players in the e-commerce environment must be encouraged to work toward an agreed-upon framework for delisting from search results those sites that are clearly dedicated to, and predominantly used for, infringement. They also should refine their “suggested searches” functionality, so as not to drive innocent users to infringing versions of content. A strong and comprehensive set of best practices in the search engine area, similar to the principles adopted by a number of user-generated content services,⁵¹ could deliver enormous benefits to all Internet players whose interests are undermined by the prevalence of online theft, and could reduce pressure for legislative or regulatory initiatives that seek the same goal.
- Making the Standard Technical Measures Condition to the DMCA Meaningful: Reasonably priced, commercially available technologies exist today to identify and protect copyrighted works. While some service providers have implemented such measures, many others feel no compulsion to do so. The IPEC should call together service providers and copyright owners to discuss these technologies and develop “standard technical measures” around them as contemplated in 17 USC § 512(i).

B. Legislative Recommendations

The Music Community urges the IPEC to consider supporting several legislative reforms of the Copyright Act and laws impacting enforcement of the copyright laws. The areas that require the most immediate attention include: (i) the “notice and takedown” provisions of 17 U.S.C. § 512; and (ii) resolving issues related to websites located outside of the U.S.

1. Fix the DMCA

The Music Community recommends that the IPEC support revision of the notice and takedown system to update it to address the current technological environment.

- (a) Clarify that Inducers and Willfully Blind Operators have Red Flag Knowledge

The statute strips service providers who have “red flag” knowledge of infringement on their websites of safe harbor protection unless they take action to prevent or limit the

⁵¹ See Principles for User Generated Content Services, <http://www.ugcprinciples.com/>, last visited Oct. 12, 2015.

infringement. 17 U.S.C. § 512(c)(1)(A)(ii); Report of the Senate Committee on the Judiciary on S. 2037, the Digital Millennium Copyright Act, S. Rep. No. 105-190 (1998) (the “intended objective” of the “red flag” knowledge standard was “to exclude sophisticated ‘pirate’ directories—which refer Internet users to other selected Internet sites where pirate software, books, movies, and music can be downloaded or transmitted—from the safe harbor”). The statute also allows copyright owners who learn of the presence of infringing material on a website to notify the service provider of a “representative list” of infringed works and thereby cause the service provider to remove other clearly infringing material. 17 U.S.C. § 512(c)(3)(A)(ii). However, current case law has been read to allow service providers to willfully blind themselves to infringing activity while intentionally raking in profits attributable to it. Thus, many service providers refuse to respond to representative lists and ignore all infringing content until they receive particularized notices of each individual infringement from copyright owners. Even after receipt of such notices, they refuse to be proactive in any way – instead, they only remove one link to an infringed work while others remain, and allow new links to the exact same content to be added minutes later. Some social media sites invoke the safe harbors while enabling their users to shield their content from public searching – further impeding the enforcement of copyright rights. This is simply not a system that Congress ever would have designed.

Given that the statute was intended to encourage “innocent” Internet service providers to prevent or limit infringement that may arise unintentionally from their normal activities,⁵² the liability limitations should be expressly unavailable to any service provider who intentionally induces or encourages infringement, or is willfully blind to it – even if they are not aware of specific individual instances of infringement through notices from rights holders. It should clarify that red flag knowledge does not require notices of particular infringing URLs when other indicators of that infringement are apparent. Moreover, the statute should define the term “representative list,” and clarify that copyright owners can put service providers on notice of widespread and actionable infringement on their sites, thereby shifting the burden to the service providers to properly safeguard their properties.

(b) Address Repeat Infringements, Not Just Repeat Infringers

The DMCA conditions the liability limitations on the adoption and reasonable implementation of a policy to terminate the access of “repeat infringers” in “appropriate circumstances.” 17 U.S.C. § 512(i)(1)(A). However, as important as addressing repeat infringers is to address *repeat infringement*. Copyright owners should not be required to engage in the constant game of sending repeat takedown notices for the same song (or other work), simply because it appears at a marginally different URL than the first time. The current standard of “URL by URL” takedown doesn’t make sense in a world where there is an infinite supply of URLs. Technologies exist to identify content that is reposted after it is removed and they should be deployed as a standard industry practice.

⁵² *ALS Scan, Inc. v. RemarQ Communities, Inc.* 239 F. 3d 619 (4th Cir. 2001).

2. Consider an Alternative or Additional “Duty of Care” Standard

As implemented, many believe that currently, the DMCA places the burden exclusively on creators alone to police for infringing activity. Given the marketplace changes that have taken place since the DMCA was enacted, reasonable reform should attempt to balance the burden so that services seeking safe harbor protection have a heightened duty of care to establish reasonable measures to prevent infringing activity from appearing on their sites *ex ante* when it is reasonably foreseeable that such infringing activity would occur or is occurring. This could work as an alternative scheme to the DMCA or in conjunction with an improved notice and takedown (and stay down) system. Prominent scholars have advocated this recalibrated approach, which represents a return to more traditional tort principles.⁵³

3. Legislative Reform to Address Ex-U.S. Sites

The difficulty and complexity of pursuing services and sites dedicated to online theft increases when those services are hosted outside the U.S., operated by individuals or entities located outside the U.S., and/or when they rely upon domain names registered in ccTLD registries overseas or new gTLDs operated outside of the U.S. These problems can be expected to intensify. As noted above, online copyright thieves have become increasingly peripatetic and can shift their bases with increasing velocity. They are adept at jumping across borders and assuming alternate identities to evade the long arm of the law.⁵⁴

As the Obama Administration has forthrightly stated, “online piracy is a real problem that harms the American economy, threatens jobs for significant numbers of middle class workers and hurts some of our nation’s most creative and innovative companies and entrepreneurs,” and “online piracy by foreign websites is a serious problem that requires a serious legislative response.”⁵⁵ Further concerns raised with other proposed options to address this serious problem

⁵³ See Peter S. Menell and David Nimmer, *Legal Realism in Action: Indirect Copyright Liability’s Continuing Tort Framework and Sony’s DeFacto Demise*, 55 UCLA L. Rev. 1 (2007).

⁵⁴ The Pirate Bay remains a classic example. Its operators initially set it up in Sweden. After criminal and civil decisions against the operators, the Pirate Bay began changing ISPs and temporarily moved its services to the Netherlands and Germany before returning to Sweden. The Pirate Bay also registered the domain names depiraatbaai.be and baiedespirates.be, allowing Belgian users to access the site again, without using alternative DNS providers. Moreover, The Pirate Bay now has dozens of active proxies, mirrors, and clones, *e.g.*, thepiratebay.tn; thepiratebay.lv; mythepiratebay.org. See *All Pirate Bay Mirrors*, Tech Toy (Jan. 16, 2014), <http://techttoy.co.uk/pirate-bay-mirrors/>. This multiplies the number of takedown notices required to remove a single work that previously would have been hosted at only one URL.

⁵⁵ Victoria Espinel, Aneesh Chopra, and Howard Schmidt, *Combatting Online Piracy While Protecting an Open and Innovative Internet*, Jan. 14, 2012, <http://www.whitehouse.gov/blog/2012/01/14/obama-administration-responds-we-people-petitions-sopa-and-online-piracy>.

have proved to be unfounded.⁵⁶ Any updated IPEC strategy should include a review of the approaches taken by other countries to address this issue in considering how best to address this evolving problem.

C. Enforcement Recommendations

The Music Community commends federal law enforcement agencies for their vigorous and persistent efforts to use available legal tools to crack down on online copyright theft, including their recent enforcement activities in connection with the criminally infringing sites RockDizFile and ShareBeast.

However, more funding is required to sustain and enhance such efforts. Further, brazen copyright infringement must remain an enforcement priority. The economic harm, loss of livelihoods, and damage to our creative culture from these activities must not be underappreciated. We urge federal law enforcement agencies to redouble their efforts towards cracking down on online infringement, and increase cooperation with their overseas law enforcement counterparts in other countries. The increasingly trans-national character of the organized enterprises that dominate the world of online copyright theft requires this.

D. Regulatory Guidance

The Music Community urges the IPEC to consider incorporating the Copyright Office's views on the problems with the DMCA and, as applicable, requesting further guidance from the Copyright Office on the proper statutory construction of the DMCA.⁵⁷

The IPEC should also consider requesting the Federal Trade Commission to investigate and issue a report on the evolving relationship between sites/services that engage in infringement, those that support or profit from such sites/services, and cybersecurity threats posed by such sites/services.⁵⁸

IV. Conclusion

Pirates do not make copyrighted music available for free online as a public service. They make money from it: lots of money relative to the level of effort involved to engage in this behavior. They sell advertising on their services, and rake in huge profits from their illicit activity. Yet, it causes exponentially more harm to the Music Community. Unlike legitimate companies, these services have no interest in actually removing infringing files or links; their

⁵⁶ See Daniel Castro, *Oops. DNS Blocking Did Not Break the Internet* (October 12, 2015) <http://thehill.com/blogs/pundits-blog/technology/256635-oops-dns-blocking-did-not-break-the-internet>.

⁵⁷ See, e.g., *The Register's View on Copyright Review: Hearing Before the H. Comm. on the Judiciary*, 114th Cong. 1 (2015) (statement of Maria A. Pallante, Register of Copyrights and Dir., U.S. Copyright Office), http://judiciary.house.gov/_cache/files/9855f607-e28b-4ff9-b2f6-7a1106d4ce48/114-22-94408.pdf.

⁵⁸ See *supra* n. 42 for literature noting the ties between sites that engage in infringing activity and the creation of other cybersecurity risks, including malware and identity theft.

incentive is exactly the opposite – to ensure that users can access as much illegal content as possible, so that advertising revenues can continue to flow.

The important takeaway is that these services are not responsible entities who, when given notice of infringement, actually try to do something about it. These pirate services have an economic interest in ensuring that access to pirate copies remains uninterrupted, and they use technology to make that happen, regardless of how many takedown notices they get. The underlying assumption of the DMCA takedown process – that responsible entities will do the right thing and remove or disable infringing files and will not control or profit from the infringing activity – is simply not accurate with respect to these pirate operators. And the cost, complexity, broken legal framework, and resources involved with civil or criminal litigation against such operators limit the utility of those tools.

Thus, we must also look to those service providers who do represent the responsible parties envisioned by the DMCA and who provide visibility and viability to these bad online actors. And changes in the law are required to further incentivize these companies to fully engage in fighting online theft, and to discourage rogue entities from attempting to use our antiquated laws as a sword to continue their illegal activities. Although much is being done, it is far too little and is often done far too slowly. Because the success of creative industries, like the Music Community, is vital to making the Internet marketplace as successful as possible and ensuring that the rising digital tide actually lifts all boats, we ask the IPEC to consider the proposals made herein for legislative and regulatory action as well as for instigation of private cooperative efforts.

APPENDIX A

DESCRIPTIONS OF MUSIC COMMUNITY ORGANIZATIONS

American Federation of Musicians

American Federation of Musicians (AFM) is the largest organization in the world representing the interests of professional musicians. Whether negotiating fair agreements, protecting ownership of recorded music, securing benefits such as health care and pension, or lobbying our legislators, the AFM is committed to raising industry standards and placing the professional musician in the foreground of the cultural landscape.

Americana Music Association

The Americana Music Association is a professional non-profit trade organization whose mission is to advocate for the authentic voice of American Roots Music around the world. The Association curates events throughout the year including the annual Americana Music Festival and Conference in Nashville, the acclaimed Americana Honors & Awards program (and PBS special) and “Americana NYC” in partnership with Lincoln Center, New York City.

Church Music Publishers Association

The Church Music Publishers Association (CMPA), Nashville, TN, is an organization of North American and international publishers of Christian and other religious music that promotes worldwide copyright information, education, and protection. Founded in 1926, CMPA represents 56 member publishers.

Gospel Music Association

Founded in 1964, the Gospel Music Association’s purpose is to foster interest among the general public in gospel and Christian music, to build community and cooperation among industry leadership in order to address mutual business issues to maximize sales of Christian music and to promote public awareness of Christian music in our culture.

Music Managers Forum – United States

The Music Managers Forum (MMF-UF) provides a platform to connect, enhance, and reinforce the expertise and professionalism of music managers. Our goal is to further the interests of managers and their artists in all fields of the music industry, including live performance, recording and music publishing matters.

While many up and coming managers cannot easily have their voices heard or their views recognized, the MMF-US has a vital role to play in ensuring that the industry evolves fairly and profitably for all who work in the management industry and their clients. It is the goal of the MMF-US to make sure managers voices are heard. As the industry continues to evolve, the MMF-US endeavors to help its members to stay ahead of the curve.

National Music Publishers' Association

Founded in 1917, the National Music Publishers' Association (NMPA) is the largest music publishing trade association in the United States and the voice of music publishers and their songwriter partners. Its mission is to protect, promote, and advance the interests of music's creators on the legislative, judicial, and regulatory fronts.

Nashville Songwriters Association International

The Nashville Songwriters Association International (NSAI) is the world's largest not-for-profit songwriters trade association. Established in 1967, the membership of more than 5,000 active and professional members spans the United States and seven other countries. NSAI is dedicated to protecting the rights of and serving aspiring and professional songwriters in all genres of music.

Performing Rights Organizations (BMI, ASCAP, and SESAC)

BMI, ASCAP, and SESAC are the three U.S. music performing rights licensing organizations ("PROs") that collectively represent hundreds of thousands of songwriter, composer, and publisher members and combined repertoires consisting of millions of copyrighted musical works. The PROs each license the non-dramatic public performance rights in musical works to their respective repertoires on a non-exclusive basis to a wide range of users, including diverse digital broadcasting entities such as radio, television, cable, satellite and Internet services. BMI and ASCAP operate as not-for-profit businesses and return all license fees collected, less operating expenses, as royalties to their respective affiliated members whose works are publicly performed. The vast majority of BMI, ASCAP, and SESAC member songwriters and music publishers are small business men and women who depend on the PROs for collecting performing right royalties on their behalf, which constitute a major portion of their income.

Recording Industry Association of America

The Recording Industry Association of America (RIAA) is the trade organization that supports and promotes the creative and financial vitality of the major music companies. Its members are the music labels that comprise the most vibrant record industry in the world. RIAA members create, manufacture and/or distribute approximately 85% of all legitimate recorded music produced and sold in the United States.

Rhythm & Blues Foundation

The Rhythm & Blues Foundation is the pre-eminent non-profit organization dedicated to the historical and cultural preservation of Rhythm & Blues music. It provides financial and medical assistance, educational outreach, performance opportunities and archival activities to Rhythm & Blues artists and their fans.

Screen Actors Guild – American Federation of Television and Radio Artists

Screen Actors Guild – American Federation of Television and Radio Artists (SAG-AFTRA) represents approximately 160,000 actors, announcers, broadcast journalists, dancers, DJs, news writers, news editors, program hosts, puppeteers, recording artists, singers, stunt performers, voiceover artists and other media professionals. SAG-AFTRA members are the faces and voices that entertain and inform America and the world. With national offices in Los Angeles and New York, and local offices nationwide, SAG-AFTRA members work together to secure the strongest protections for media artists into the 21st century and beyond.

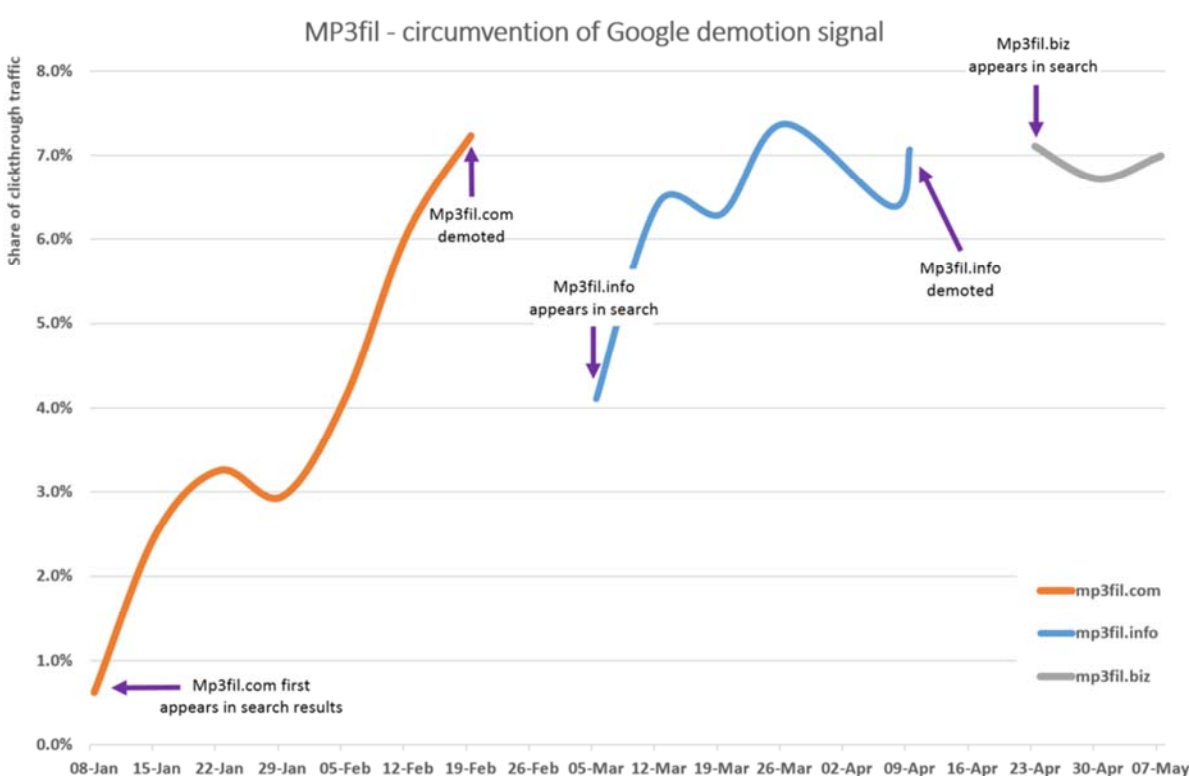
The Recording Academy

Established in 1957, The Recording Academy is an organization of musicians, songwriters, producers, engineers and recording professionals that is dedicated to improving the cultural condition and quality of life for music and its makers. Internationally known for the GRAMMY Awards® — the preeminent peer-recognized award for musical excellence and the most credible brand in music — The Recording Academy is responsible for groundbreaking professional development, cultural enrichment, advocacy, education and human services programs. The Academy continues to focus on its mission of recognizing musical excellence, advocating for the well-being of music makers and ensuring music remains an indelible part of our culture.

APPENDIX B

Apparent Impact of Domain Hopping on Search Results

The chart below shows the progress in search results of the infringing site MP3fil. This site first featured in searches for music content in January 2015 on the domain **mp3fil.com**. Over time, search results featured the site on more occasions and by 19th February 2015, the domain was listed on the first page of search results for 100 common music queries and as the first result for 12 queries. Using data that calculates typical clickthrough rates produced an estimate that 4.8% of traffic from Google searches for music content led to the Mp3fil.com domain.



During the weeks that this domain had been featured in search, the music industry had sent over 120,000 delist requests to Google for the mp3fil.com domain and a few days after 19th February, the mp3fil.com domain was demoted. However, by 5th March the site had moved to the domain **mp3fil.info** – showing exactly the same appearance and structure and with the mp3fil.com domain redirecting to the new domain. By 26th March, this domain was listed on the first page of search results for 52 out of 100 music related search queries and as the first result for 10 queries. A few weeks later, after 115,000 delist requests had been received by Google for the domain, the site was again demoted. Yet the pattern repeated once more, with the site

reappearing in search results two weeks later on 26th April on the domain **mp3fil.biz**, with the same look and feel and with both previous domains redirecting to the new destination.⁵⁹

⁵⁹ The same circumvention behavior has been observed in other sites as well. Source: Analysis by IFPI.

Appendix D

Reports Referenced in Question 29

Bruce Boyden, *The Failure of the DMCA Notice and Takedown System: A Twentieth Century Solution to a Twenty-First Century Problem*, CENTER FOR THE PROTECTION OF INTELLECTUAL PROPERTY GEORGE MASON UNIVERSITY SCHOOL OF LAW (Dec. 2013).

Liron Sivan, Michael D. Smith, Rahul Telang, *Do Search Engines Influence Media Piracy? Evidence from a Randomized Field Study*, HEINZ COLLEGE RESEARCH (Feb. 2014).

Stan J. Liebowitz, *How much of the decline in sound recording sales is due to file-sharing?*, JOURNAL OF CULTURAL ECONOMICS (Sept. 28, 2014).

“Copyright Enforcement in the Digital Age: Empirical Economic Evidence and Conclusions”, WORLD INTELLECTUAL PROPERTY ORGANIZATION ADVISORY COMMITTEE ON ENFORCEMENT, TENTH SESSION, Geneva, Nov. 23 to 25, 2015.

Appendix E
ESL Music Letter

March 28, 2016

Maria Pallante
Register of Copyright
Copyright Office
101 Independence Ave. S.E.
Washington, D.C. 20559-6000

Re: Copyright Office Study of Sec. 512 (DMCA)

Dear Register Pallante:

We are the founders and owners of the band Thievery Corporation, and the record label and music publisher ESL Music. We founded Thievery Corporation, a group specializing in a unique brand of eclectic electronic music over 20 years ago in Washington, D.C. In addition to releasing Thievery Corporation product, we also signed well over a dozen artists to our label ESL Music.

While we distributed physical product, we also sold and streamed Thievery and ESL Artist releases online, and licensed our music for worldwide advertising campaigns and for use in movies and television shows. We also achieved a good level of success touring, having performed in some of the most prestigious venues in the world, including The Hollywood Bowl, Red Rocks, and the 9:30 Club.

Unlike other artists and labels, much of our success was due to focusing on Internet distribution and promotion, working closely with our Internet aggregator/distributor INgrooves. And we did this without major radio airplay. Instead, the Internet was our primary delivery and promotional platform of choice. And we not only used the Internet to distribute our music, we used it as a means of communicating with our incredibly strong and faithful fan base.

About 12 or so years ago we started to recognize that sales were decreasing and piracy was on the rise, even as our fan base continued to increase. We knew about the increase in piracy because at times our fans actually notified us about websites offering our music for free or selling our music for almost nothing. Our fans thought this was awful and so did we. We then learned about a law that provided us with a means to stop the unauthorized use of our music. It was called the Digital Millennium Copyright Act. Essentially, all we had to do was to send “takedown notices” and the offending parties would stop. Or at least that was the promise. What actually happened was totally different.

We worked with our attorney to learn how to send takedown notices and we used our own employees to send the notices. We knew where to send many of the takedown notices because our employees were technologically savvy.

We had high hopes of stopping this unconscionable theft of our music and the music of ESL artists. But instead of stopping the piracy and unauthorized use of our music, we were met with

a different reality. Most of the takedown notices were ignored. And if our music was taken down, it would almost immediately return on another site or even the same site. We were spending more and more resources on the takedown notices, and we were consistently getting less and less in return. Eventually, we decided to stop sending the notices altogether. It was simply an exercise of throwing good money after bad.

So time and again, we released product realizing more and more that we had no real way to stop its unauthorized use and the erosion of its commercial viability. One day we recognized an awful truth. We had no real legal remedy to stop the theft of our property - period. When we release music, our control is gone. Any sales and use of our music is essentially an act of charity. If our fans or some companies want to pay, they will. But if they don't want to pay, they don't. And there is nothing we can do about it.

And for those companies wanting to pay, we now realize they will pay less and less, rationalizing the payment of low royalties by claiming getting paid micro-pennies is better than not getting paid at all. We have been told that the DMCA was supposed to place some responsibility on behalf of these companies to help address piracy, and yet we find out that the Courts have essentially interpreted the DMCA in a way that places no responsibility on those services like Google to proactively enforce our rights. With these types of laws, why would they pay us anything but micro-pennies, if that?

Even more infuriating, we were told that the ISPs had filtering technology that could be used to identify those using our music without authority. But because they are conditioned to ignore the existence of the problem, and the Courts placed no responsibility on them to pro-actively engage in anti-piracy efforts, they refused to use the technology unless you signed a deal with them. Without a strong legal deterrent mandating the use of filtering, the ISPs have no incentive to change the status quo.

Quite simply, the DMCA has failed us. And not only can we not protect our music, we cannot protect the fantastic music of other ESL artists like Federico Aubele, Natalia Clavier, Thunderball, and Nickodemus. Essentially, when we signed those artists we became the caretakers of their copyrights. And now we realize we do not have the tools to do that anymore. Partly because of this, we are releasing our artists from our label. While there are other economic and business reasons for this decision, a major one is the failure of the DMCA to provide us with a means to protect their property and to pay them what they deserve for the use of their music. Thievery Corporation will continue – and we hope to thrive – but ESL Music for other artists is no more.

We understand the Copyright Office has started a study of the DMCA and we believe it is very important for your office to understand our experience. It is gut wrenching to us that the DMCA does not provide in fact, what it promised, and you need to help Congress reform the law so that other songwriters, artists and indie labels coming after us have the proper tools to protect their music.

What most people don't understand is that this is not only a legal problem – it is a cultural catastrophe. Without properly protecting the rights of songwriters and artists, we will have less quality art and fewer quality artists. The Internet, using technology we love, should be the friend of the artist, not its enemy. The Internet is not going anywhere, but the DMCA can be changed for the better. If it is not, the Internet will not be the fantastic distribution system that everyone wants it to be. It will be nothing less than a digital tip jar. If you want to pay you can – but if you don't want to, you don't have to. What kind of copyright law allows that? The DMCA must be reformed.

Sincerely,

Eric Hilton and Rob Garza
ESL MUSIC, INC.

Exhibit DIDP A66



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Library of Congress
U.S. Copyright Office
101 Independence Ave., SE.
Washington, D.C. 20559-6000
Attn: Maria Pallante, Register of Copyrights
Jacqueline Charlesworth, General Counsel and Associate Register of Copyrights

RE: Section 512 Study: Notice and Request for Public Comment

Thank you for this opportunity to submit my comments regarding the United States Copyright Office's evaluation of the impact and effectiveness of the Digital Millennium Copyright Act ("DMCA") safe harbor provisions contained in 17 U.S.C. 512 (the "Safe Harbor Provisions"). I am writing this paper to urge that, as the Copyright Office considers revisions to the Safe Harbor Provisions, it keeps the goal of providing fair and effective copyright protection for music creators at the forefront of its mind.

I. Introduction

My name is Dina LaPolt and I am the owner of LaPolt Law, P.C., a boutique transactional entertainment law firm that specializes in representing music creators, including songwriters, recording artists, producers, and musicians. Over the past several years, I have actively participated in legislative reform efforts relating to copyright and licensing laws in Washington, D.C. on behalf of my clients and the broader music creator community. In 2014, I submitted two comment papers to your office in connection with your music licensing study and participated in the Los Angeles roundtable discussions in connection with same. I am well qualified to discuss the DMCA Safe Harbor Provisions since our office frequently submits takedown notices on behalf of our clients.

I am submitting this paper to represent the music creator's perspective on this topic. Music creators are the driving force behind the music industry and their interests must be taken into consideration when evaluating the efficiency of the current Safe Harbor Provisions.

Due to the increasing amount of content online, the Safe Harbor Provisions have become increasingly burdensome for music creators. Accordingly, Section 512 of the DMCA is in dire need of revision in order to properly address the proliferation of online infringement.

II. The Section 512 Safe Harbors Do Not Effectively Address the Concerns of Content Creators and Must Be Modified to Reflect the Modern Digital Age

When the Safe Harbor Provisions were enacted as part of the DMCA in 1998, the landscape of the digital world was completely different.¹ Thanks to technological innovations since then, music creators' content can now be accessed and experienced through an ever-evolving array of platforms and services. Ongoing technological innovation has drastically changed the music industry to a point where content has never been more accessible and easier to share. Digital technology has made it simple and inexpensive to copy and distribute content to millions.

However, the result of this has not be completely positive for music creators. Despite the widespread availability and distribution of affordable lawful content, music creators are still left with significant challenges in regard to online piracy. Due to the sheer volume of infringing content on the Internet, changes need to be made to the Copyright Act to help curtail the prevalence of online piracy. Section 512 has provided Internet Service Providers ("ISPs") with unintended loopholes, which have essentially left music creators without an effective recourse to shut down known instances of infringing activity. The Safe Harbor Provisions must be revised in order to ensure our copyright system is appropriately handling the proliferation of content online.

A. The Section 512 Safe Harbors Are Not Working as Congress Intended

In enacting the DMCA, Congress highlighted "two important priorities: the continued growth and development of electronic commerce; and protecting intellectual property rights."² Even in 1998, Congress recognized that that a thriving online marketplace would provide endless opportunities for creators to have their works distributed online.³ These same technological advances would, however, also facilitate the prevalence of online piracy. Congress never

¹ See *Internet Users*, Internet Live Stats, December 1, 2015, <http://www.internetlvestats.com/internet-users/#trend> (In 1998 there were only 188 million internet users; there are over 3.25 billion internet users today).

² Report of the House Commerce Committee on H.R. 2281, the Digital Millennium Copyright Act, H.R. Rep No. 105-51, pt 2., 23 (1998), <https://www.congress.gov/105/crpt/hrpt551/CRPT-105hrpt551-pt2.pdf>.

³ *Id.*

proposed to dissuade ISPs from monitoring their services for infringing activity.⁴ Instead, this legislation was intended to promote the cooperation between ISPs and copyright owners “to detect and deal with copyright infringements that take place in the digital networked environment.”⁵

Although Congress clearly understood the importance of addressing online infringement as technology continued to advance, it never could have anticipated the online marketplace as we know it today. Each day millions of unauthorized copyrighted works are uploaded by Internet users. The Safe Harbor Provisions were written to prevent isolated infringement by third parties through the use of ISPs and the notice-and-takedown provisions would have alone been an efficient alternative to legal proceedings if the Internet landscape had remained relatively same as it was in 1998.

However, today, music creators are faced with the overwhelming burden of detecting these instances of infringement and notifying the service provider every single time a user posts and re-posts the work. Unfortunately, changes in the marketplace have presented the music community with the insurmountable burden of notifying ISPs for millions of instances of infringements which occur by the posting of links on thousands of unauthorized sources. After 18 years of changes in the marketplace, the balance of burdens placed on ISPs and creators to monitor for copyright infringement has greatly tipped in favor of the service providers.

The language of the Safe Harbor Provisions is outdated and must be adapted to meet music creators’ needs in the digital distribution era. The music industry has always done its best to monitor for infringing activity and prevent the availability of unauthorized works online. However, ISPs, which are able to use the Safe Harbor Provisions as a defense, must bear more responsibility when infringing material of which they have already been notified reappears online. This would coincide with Congress’s initial intent to foster cooperation between copyright owners and ISPs. If the Safe Harbor Provisions remain unchanged, they will ultimately serve as an impediment to copyright enforcement and the music community will continue to be harmed by the infringing activity the DMCA was created to prevent.

B. The Limitations on Liability Afforded to Internet Service Providers under Section 512 Do Not Adequately Protect the Rights of Copyright Owners

The Safe Harbor Provisions were enacted because Congress was concerned about the liability imposed on ISPs from the infringing activities of third parties on their services.⁶ Congress never

⁴ See Conference Report on H.R. 2281, the Digital Millennium Copyright Act, H.R. Rep. No 105-796,73 (1998), <https://www.congress.gov/105/crpt/hrpt796/CRPT-105hrpt796.pdf>.

⁵ See H.R. Rep No. 105-51, pt 2. at 49-50.

⁶ See S. Rep. No. 105-190, 19 (1998).

anticipated the creation of online services which were created solely or primarily for the distribution of infringing content. Therefore, while these services end up profiting from the advertising revenue which increases as the unprecedented amount of free illegal content available online material grows, the music creators are left with an insurmountable value gap for their works.

Although music adds value to all types of online services, even when the music is properly licensed, music creators are not receiving their fair share for their works because legitimate services realize they have the leverage to create discounted licensing systems. Legitimate online services, who pay for music licenses, must also compete with services which are offering all of their content, stolen or not, for free. Services such as SoundCloud and YouTube, which distribute and monetize music uploaded by their users, are taking advantage of the liability limitations that the Safe Harbor Provisions afford them.⁷ The Safe Harbor Provisions, which were enacted to limit the liability of passive intermediaries should not an exemption for active digital music services from having to fairly negotiate licenses with rights holders.⁸ Online music distributors further exploit this situation by offering music creators lower royalty rates, which music creators are left to accept if they want their music to be available to consumers online legally.

The Safe Harbor Provisions end up imposing an unfair burden on music creators while simultaneously providing a means for services such as YouTube to host infringing content under the guise of DMCA compliance. Although music creators can notify these services when their content is illegally posted, users often repost the same content almost instantly, making it impossible for creators to prevent the unauthorized distribution of their work. Creators are stuck using their own resources to police these numerous and repeated postings instead of using the time to work on their craft and business. Then, despite even their best efforts, music creators are ultimately unable to control whether or not the infringing content gets removed (many sites do not even acknowledge or process DMCA takedown requests), and they are left bearing the costs of litigation if the service does not comply. To make matters worse, even if music creators are able to secure a judgment against rogue sites like MP3Skull, the infringing actor responsible for hosting the site may be impossible to locate, which again leaves the music creator without any remedy.⁹

The Safe Harbor Provisions have essentially left music creators without an effective way to permanently remove their works from services which consistently host infringing content. This

⁷ Frances Moore, *Artists and Record Companies Need A Fair Digital Marketplace*, IFPI, July 29, 2015, <http://www.ifpi.org/news/Artists-and-Record-Companies-Need-A-Fair-Digital-Marketplace>.

⁸ *See Id.*

⁹ Bruce Houghton, *RIAA Wins \$22 Million MP3Skull Judgment, But They'll Never See A Dime And The Site Is Still Online*, Hypebot.com, February 27, 2016, <http://www.hypebot.com/hypebot/2016/02/riaa-wins-22-million-mp3skull-judgement-but-theyll-never-see-a-dime-and-the-site-is-still-online.html>.

has caused a distortion in the market where streaming services are not paying the rates they should be because they know music creators are limited in ways they can now monetize their music. As such, revisions must be made to the Safe Harbor Provisions in order to curtail the negative impact these services will continue to have on the future earnings of music creators.

III. The Notice-And-Takedown Process Must Be Modified

The notice-and-takedown process was supposed to be used as a mechanism for copyright owners to prevent known infringing activity which was taking place through the use of innocent ISPs. As technology continues to advance and online activity continues to increase, the Safe Harbor Provision must scale to fit the current marketplace. The notice-and-takedown process, as is, provides an unreasonable enforcement mechanism for music creators while simultaneously creating a discounted licensing system for music streaming services. In order to keep music industry growing and maintain the balance intended by Congress, this Safe Harbor Provision must be changed to a notice-and-*staydown* policy.

A. Section 512's Notice-And-Takedown Process Does Not Sufficiently Address the Reappearance of Infringing Material

After a music creator notifies an ISP of infringing material, Sections 512(c) and (d) direct the ISP to “expeditiously” remove this content. Although allegedly infringing materials are routinely removed from websites after receipt of such notices, this prompt method for obtaining the removal of infringing material does not work when there are increased instances of infringing material being reposted by the same service that removed the initial link.

Rightsholders often equate the DMCA takedown system to “Whac-A-Mole”, the classic arcade game where, just as the player hits a motorized rodent with a mallet, identical rodents pop up elsewhere. For music creators, this Whac-a-Mole game has grown to be increasingly frustrating and demonstrates that the current notice-and-takedown provision is untenable. To present an idea of the scope of the daunting task at hand for music creators, a 2013 report revealed that *every month*, copyright holders were sending takedown notices for over 6.5 million infringing files, which were available on more than 30,000 websites.¹⁰ This Whac-a-Mole problem defies the central purpose of providing ISPs with a safe harbor. Many of these unauthorized postings occur on legitimate online platforms, which claim to want to be in compliance with the Safe Harbor Provisions but are no way obligated, under the current law, to improve this problem.

¹⁰ See Bruce Boyden, *The Failure of the DMCA Notice and Takedown System: A Twentieth Century Solution to a Twenty-First Century Problem*, Center For Protection of Intellectual Property, December 2013, <http://cpip.gmu.edu/wp-content/uploads/2013/08/Bruce-Boyden-The-Failure-of-the-DMCA-Notice-and-Takedown-System1.pdf>.

ISPs currently have an unreasonable economic advantage when it comes to exploiting the content of music creators—content which does not belong to them. They are not incentivized to prevent the reposting of infringing content which they have already been notified about because this content increases the service’s popularity, which in turn translates into more ad revenue. These services must be required to take proactive steps against repeated postings of the same unauthorized work.

Furthermore, ISPs are now being used by torrent and pirate websites as a tool to locate content which has already been taken down. Torrent sites have used Google’s own service to identify and “bring back to life” content which was taken down as a result of DMCA notices.¹¹ The advancement of technology has gotten to a point where services can manipulate publically available copyright notices to repost infringing content. This technology must be considered when revising the Safe Harbor Provisions.

Technological advances caused the implementation of the Safe Harbor Provisions and technology must therefore be used, and ISPs held accountable, for curtailing the infringement that has taken place since. The deterrence of rampant infringement is necessary to maintain a sustainable entertainment industry and the Safe Harbor Provisions must be revised so that the burdens are balanced *equally* between all parties who are benefitting from the online distribution of content.

B. The Notice-And-Takedown Policy for Addressing Online Infringement Is Not be a Workable Solution for Content Creators and Must Be Changed to a Notice-And-Staydown Policy

A “staydown” clause must be added to the Safe Harbor Provisions to effectively address the concerns of music creators. Switching to a notice-and-staydown policy would make this system more balanced and hold ISPs accountable for preventing already identified infringing content from resurfacing. Specifically, once a music creator identifies an infringing work and submits a DMCA notice, the notified service should then remove all other unauthorized links that contain the same identification information. Subsequently, it becomes the responsibility of the service to delete or block new postings matching the identification information already submitted by the music creator. Unless this sort of system is implemented, services will continue to host reposted infringing content without facing any legal ramifications.

Notice-and-staydown is a necessary step to put an end to the Whac-a-Mole problem and actually give music creators the ability to control the dissemination of their work online. The Safe Harbor Provisions should not be available to ISPs who choose to continue linking to an

¹¹ Andy, *Torrent Site Uses Google To Resurrect Taken Down Content*, Torrent Freak, October 28, 2014, <https://torrentfreak.com/torrent-site-uses-google-to-resurrect-taken-down-content-141028/>.

infringing work after being notified of its identity by the copyright owner. Once copyright owners have notified ISPs of a specific infringing work, the burden of monitoring the work should be shifted to the ISPs.

The key point to takeaway is that ISPs are able to hide behind the Safe Harbor Provisions after music creators notify them of infringing content. Even though Google and other ISPs have the means to keep their services mostly free of pirated content, the Safe Harbor Provisions allow these services to profit from increased tractions they receive when their services are used for the distribution of infringing content.¹²

It is readily apparent that the cost for copyright owners to defend their works, in terms of time and labor, is significant and reduces the amount of money and time music creators have available to create new content. Individual copyright owners and small companies do not have the resources available to send notices each time an unauthorized copy of their work appears online, let alone, enough to keep sending notices for re-postings of the same work. Music creators should be spending their time honing their craft instead of sending the same takedown notices to the same ISPs to protect the same work.

Further, the current DMCA notice and takedown system is highly inefficient and burdensome to music creators and their representatives. Music creators must currently submit their notices manually even though ISPs like Google have the resources to create systems which can efficiently respond to the increasing number of takedown notices they receive. Copyright owners, on the other hand, lack access to the third-party services and resources, which could help them monitor for infringing uses.

Recently, our client Joel Zimmerman, publicly known as “deadmau5”, brought a YouTube user to my attention who used the deadmau5 trademark in his or her username and posted nearly 400 videos containing deadmau5’s copyrighted material. We reached out to YouTube to request the removal of all the user’s videos or deletion of the user’s entire account since he or she was all but impersonating our client. YouTube responded that we must provide URLs for each individual infringing video, despite the fact that the user’s entire YouTube channel consisted of infringing videos. Thus, an attorney at my firm spent nearly four hours compiling a list of URLs, a task that could have easily been avoided if YouTube had a more efficient way to address large-scale infringement by a user.

Such a scenario puts a music creator in a lose-lose situation. A creator who wants to issue notices for a large number of infringing uses, even by a single infringer, must choose between

¹² See Cory Doctorow, *The pirates of YouTube*, The Guardian, December 12, 2011, <http://www.theguardian.com/technology/2011/dec/12/pirates-of-youtube-cory-doctorow> (“Rights holders upload copies of their copyrighted works to YouTube and identify themselves as the proprietors of those works, and YouTube scours its files for videos or audio that appear to be connected with those copyrights.”).

two undesirable options. First, the creator can solicit the help of an attorney, and potentially spend thousands of dollars for the attorney's services. This also impacts the creator, and the attorney's other clients, by taking up the attorney's time that could be best spent on more important tasks. Alternately, the creator can waste hours of his or her own time issuing notices through YouTube's cumbersome online form, distracting them from their music and their careers (not to mention, because creators are not usually educated in sophisticated copyright issues, they might issue incorrect notices, wasting YouTube's time and their own).

This impacts us all—when creators cannot devote their full attention to their craft, they cannot effectively produce their art for the benefit of our culture. Creators should not have to devote substantial time to enforcement procedures; we must improve the DMCA's efficiency so that creators can focus on what is important: making art. Ultimately, music creators are unable to make any real impact on Internet piracy without changes to the Safe Harbor Provisions, which rebalance the burden of policing infringing between creators and ISPs.

C. Internet Services Providers are Not Utilizing Existing Technology, Which Would Improve Both the Efficiency and Effectiveness of the Notice-and-Takedown Process

In order to qualify for safe harbor protection, ISPs should be using content identification technologies to block the unauthorized distribution of copyrighted works by third parties. Technology already exists which can identify and filter pirated material. This technology is available at a reasonable cost and the use of this technology must be considered when determining whether an ISP falls under the Safe Harbor Provisions.

Google and YouTube currently use "Content ID" technology, which uses metadata submitted by the copyright holder to identify and monetize matching videos that are uploaded onto YouTube. Currently YouTube users must "apply for Content ID" on the service's website.¹³ The Content ID technology utilizes "Digital Fingerprinting," which transforms audio and video files into its own unique code.¹⁴ In 2013 a digital fingerprinting company called Digimarc invented software that embedded a work's copyright identification information into "a unique ID."¹⁵ With this technology any user viewing the work can determine its copyright information regardless of where the work ends up online.¹⁶ Additionally, other content distributors like Facebook and

¹³ *How Content ID Works*, YouTube, https://support.google.com/youtube/answer/2797370?hl=en&ref_topic=2778544.

¹⁴ Steve Schlackman, *Google's Content ID Program Allows Infringements on YouTube*, Art Law Journal, October 24, 2014, <http://artlawjournal.com/googles-content-id-program-infringements-youtube/>.

¹⁵ Steve Schlackman, *An Invisible Watermark? So Cool*, Art Law Journal, June 23, 2013, <http://artlawjournal.com/invisible-watermark/>.

¹⁶ *Id.*

SoundCloud use technology by Audible Magic, which can recognize audio and video files across all streaming and broadcast platforms.

Clearly, antipiracy technology exists. This technology, however, must be made mandatory for all ISPs which they want to reap the benefits of the Safe Harbor Provision. ISPs must be using this technology on all of the platforms they use to distribute content, unlike Google who only uses this for its YouTube platform. Technology allowed for the explosion of the piracy market and therefore technology must be responsible for keeping piracy in check.

IV. The Repeat Infringer Policies in Section 512 (i)(A) Do Not Provide Sufficient Protection for Content Creators

Under the Safe Harbor Provisions, ISPs must “adopt and reasonably implement” procedures to terminate “repeat infringers” in appropriate circumstances.¹⁷ Since this language has not been more clearly defined by Congress, it has been left up to the interpretation of the courts. This provision must be revised to provide ISPs with more specific requirements to ensure they are using a repeat infringer procedure that is actually working. If ISPs are not obligated to be transparent about their repeat infringer policies and without more clarification in the law, copyright holders and ISPs will be unable to cooperate in reducing piracy as Congress intended.¹⁸

A. The Repeat Infringer Policies are Ineffective and Fail to Discourage or Prevent Infringement

The Safe Harbor Provisions already include limitations on the monitoring requirements for ISPs. Since ISPs bear no policing duty, an ISP that has never terminated a user’s access can still meet section 512(i)’s requirements if the copyright holder has not informed the service that such user is a repeat infringer. The burden is unreasonably on copyright holders even though ISPs are in a better position to detect infringement on their own networks.

Additionally, ISPs must be more transparent about the procedures they put in place to terminate repeat infringers. Under the current state of the law, ISPs attempt to undermine the Safe Harbor Provisions by placing roadblocks and loopholes which make it difficult for copyright owners to file a legitimate complaint.¹⁹ Without transparency, copyright holders who decide to pursue litigation have no idea of knowing how the service terminates its repeat infringers, which causes

¹⁷ 17 U.S.C. 512(i)(1)(A).

¹⁸ See H.R. Rep No. 105-51, pt 2. at 49-50.

¹⁹ See Stephen Carlisle, *14 Strikes and You’re Out! (Maybe): How Cox Communications Lost its DMCA Safe Harbor*, Nova Southeastern University, December 10, 2015, <http://copyright.nova.edu/cox-communications/> (Cox will review a user’s account and consider termination after the fourteenth notice it receives)

large delays in discovery and increases the cost for copyright holders. As section 512(i)(A) is written, even ISPs who are notorious for hosting infringing content are able to survive legal battles for years before ultimately being shut down because of mechanisms they use to actively prevent copyright holders from participating in the notice-and-takedown process.²⁰

Instead of providing an incentive for ISPs and copyright holders to cooperate, Section 512(i)(A) discourages ISPs from actively helping with policing for infringing activity. This places copyright holders in the unfair position of sending repeat takedown notices in an environment where there is an infinite supply of users and ISPs waiting to exploit their works the moment they appear on the Internet. Instead, the Safe Harbor Provisions' threshold requirements must encourage companies to adapt to the digital marketplace. ISPs benefit from keeping as much content as they can online while the costs and risks of pursuing legal protection falls on copyright owners. The only way to effectively mitigate the reappearance of infringing actors online is to revise Section 512(i)(A) and mandate the use of existing content identification technology to block repeat infringers.

B. Section 512(i)(A) Lacks Sufficient Clarity as to What Constitutes a Valid Repeat Infringer Policy for Safe Harbor Protection

Section 512(i)(A) lacks sufficient clarity as to what constitutes a sufficient repeat infringer policy. The Safe Harbor Provisions apply only where an ISP “upon notification of claimed infringement . . . responds expeditiously to remove . . . material that is claimed to be infringing.”²¹ The policy implemented by ISPs must terminate its users who are “repeat infringers” in “appropriate circumstances.”²² The ambiguities are endless. How fast must an ISP respond to a repeat infringer notification for it to qualify as expeditious? When do circumstances qualify as “appropriate”?

Due to the vague language of section 512(i)(A), its interpretation has been left to the court system, but courts have further been unable to specify the necessary steps ISPs must take to satisfy section 512(i). This has left a grey area where ISPs can take advantage of the Safe Harbor Provisions without actually removing any repeat infringers from its service. If a copyright holder is not able to successfully notify the ISP of users who are repeat infringers, an ISP can there still have “reasonably implemented” a section 512(i) procedure without ever terminating a repeat infringers access. Leaving the interpretation of this provision to the courts has proven to be an inefficient solution and the law must be changed in order to provide a

²⁰ Glenn Peoples, *Grooveshark Loses in Court Again, EMI Wins Summary Judgment in Copyright Case*, Billboard, April 2, 2015, <http://www.billboard.com/articles/business/6523936/grooveshark-loses-again-emi-summary-judgment-copyright-infringement>

²¹ 17 U.S.C. 512 (c)(1)(C).

²² 17 U.S.C. 512 (i)(1)(A).

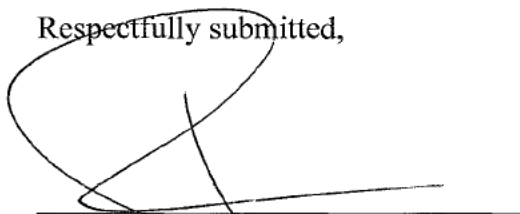
uniform standard that all ISPs are responsible for adhering to. It is beneficial to both ISPs and copyright holders that these laws be revised to expedite the process of removing repeat infringers and avoid costly litigation.

V. Conclusion

The Copyright Act was designed to encourage the creation of new works and ensure that creators' rights are protected. Accordingly, the DMCA must be revised in order for the law to continue to work effectively and provide meaningful protection against widespread online piracy. Although the Safe Harbor Provisions were created to protect innocent ISPs from liability, these protections should be afforded only to the extent the services utilize the technologies that are available and *cooperate with copyright owners* to combat Internet piracy.

Thank you for your time and consideration.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Dina LaPolt', is written over a horizontal line. The signature is somewhat stylized and loops back.

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Exhibit DIDP A67

**U.S. COPYRIGHT OFFICE
LIBRARY OF CONGRESS
SECTION 512 STUDY:
NOTICE AND REQUEST FOR PUBLIC COMMENT
DOCKET No. 2015-7**

Comments Provided by the Contents Creators Coalition

Submitted by Melvin Gibbs, President, and
Jeffrey Boxer, Executive Director & General Counsel

I. INTRODUCTION

This position statement is submitted by the Content Creators Coalition (the “c3”), an artist-run non-profit advocacy group representing music creators in the digital landscape. c3 represents musicians, songwriters, composers, recording artists, studio professionals, and others, all who rely in whole or part on copyright to make a living.

In no small measure attributable to the Digital Millennium Copyright Act (“DMCA”) at Section 512,¹ the economic benefits of the new music business is distorted by the digital marketplace. YouTube, Spotify, as well as a myriad of Internet service/access providers are well suited to exploit the weaknesses in Section 512, often to their great financial benefit.

Yet the people who make the “product” -- musicians, songwriters, composers, recording artists, and studio professionals (not to mention music publishers, record labels, and other creators and content owners), do not share in the gains. Section 512 has proved particularly problematic for music creators. Section 512 was outdated almost instantly upon its issuance, and it has failed in its Congressionally intended purpose of balancing the interests of music creators and digital distributors.

¹ Title II of the DMCA, the Online Copyright Infringement Liability Limitation Act, which amended Section 512 to Title 17, U.S. Code.

In 1998, the same year that DMCA passed through Congress, a new advertising company based on a search algorithm named Google was launched in Silicon Valley. It is hard to imagine a world where music wasn't "demonetized" by piracy, search and YouTube (a later Google acquisition, which advances this problem one step further by serving as the platform for music distribution and encourages rampant uploading of materials to sell advertising over) If the technological changes wrought by the digital distribution of music were not foreseen in 1998, nor could anyone have anticipated the breakdown in the American social contract between the people who make things for a living and the companies that bring it to the public.

Congress never intended in Section 512 to undermine musicians (or anyone any other person who relies on his or her creative talent, persistence and notoriety to make a living) from benefiting from their work because a third party appropriated it. Nor was it Congress' intent in Section 512 for music being sold for third party advertising and data scrapping. And that advertising revenue is worth a pittance of what was market value before Section 512 was exploited to provide digital music distributors immunity from their own ruinous business practices.

Likewise, many courts have been distracted if not bamboozled by the "gold-rush" level of excitement that the Internet created. But like so many gold rushes past, what is found after the rush is over is the ruins of what was there before. In this case, that is the legacy of American music and musicians whose careers have been trampled along with their rights and ability to make a living from their art. That was not what Congress set out to do, and the DMCA requires reformation to restore the balance that Congress intended.

c3 stands in support of the U.S. Copyright Office's review of DMCA, Section 512 as an integral part of a return to protecting the rights of music creators, but this time throughout the digital domain.

II. SUMMARY OF POSITIONS

THE PROBLEM ISN'T THE TECHNOLOGY - IT'S THE TECH BUSINESS PRACTICES

The Internet Service Providers and Online Service Providers (ISPs and OSPs) are now in unpaid or cut rate content business, something unforeseen by DMCA drafters.

Now the safe harbor insulates digital music distributors from claims against abuses to copyright claims that is caused by their business models and practices.

SECTION 512 IS OUTMODED AND NOTICE AND TAKEDOWN ARE IMPOSSIBLE WHEN INFRINGEMENTS ARE MEASURED IN MULTIMILLIONS

We have long transcended the pop and screech dial up Internet of prodigy and AOL that Section 512 was designed to regulate. No longer are the neutral digital providers running the Internet, and many of the worst offenders of copyright infringement are both in the business of content distribution and are OSPs and ISPs.

To be sure, this is the beginning of the problem: many service providers" that now distribute music, and often use music to drive their businesses, which profit from unprecedented data mining and advertising.

THE NOTICE AND TAKEDOWN SYSTEM HAS DEFEATED CONGRESS' OBJECTIVES

Although YouTube did not yet exist when the DMCA was put into place, the reality of YouTube demonstrates why the notice and takedown system has failed. YouTube uses the same euphemism of "User Generated Content" for uploaded content that is legitimately provided by a creator (or copyright holder) and purloined content (whether knowingly or unknowingly). YouTube refuses to differentiate between the lawful and unlawful at the point of upload, yet enjoys Safe Harbor protection, and sells advertisements over lawful and unlawful content alike.

The notice and takedown system requires creators and copyright holders to police millions of infringements. This year, Google believes they will receive over 1 billion takedown notices. Notice and takedown today barely staunches illegal content, and music removed is uploaded again immediately after it is taken down. This process foists huge costs on creators, yet with no effect in stopping infringement.

MUSIC CREATORS CANNOT POLICE THE INTERNET

The notice and takedown system places the entire burden on the creator or copyright owner to monitor the Internet for infringements and issue takedown notices.

The scope of this obligation given the behemoth size and growth of digital sales, advertising and piracy is simply impossible.

Many artists focus only top problem sites, or forego use of DMCA notices altogether, in many instances to avoid offending their fans in cases of "user generated content." Some ISPs or OSPs limit the number of takedown notices it will accept.

Sites delay their takedown of infringing uploads, and music often is infringed again immediately after it is taken down. Congress must take aggressive action to share the burden of policing the Internet.

MUSIC CREATORS OF LESSER MEANS ARE MOST IMPACTED BY NOTICE AND TAKEDOWN FLAWS

Many recording artists and songwriters, as well as independent record labels and music publishers, have stopped sending Takedown Notices because of the cost and the marginal prospects for success. This is the reality for the artist as small business owner. These are our members.

SAFE HARBOR HAS MADE INTERNET COMPANIES BILLIONS THAT SHOULD BE SHARED, IF NOT PASSED THROUGH, TO MUSIC CREATORS

Giant multi-billion-dollar global Internet companies that have built a business on content distribution misuse the DMCA to distort the free market and obtain lower rates for content.

As Zoe Keating found out - and c3 supported her in our "We Believe the Cellist" campaign -- YouTube has threatened music creators by telling them if they don't accept bargain basement rates to license their work, they will take refuge in the safe harbor and force the creator to use the broken notice and takedown system, with mass piracy or vastly undervalued licensing arrangements as the result.

THE SAFE HARBOR IS A DE FACTO GOVERNMENT SUBSIDY DISTORTING THE MARKET VALUE FOR MUSIC.

The Notice and Takedown system is now effectively a government subsidy to giant Internet companies, allowing them to distort the market and enrich themselves at the expense of creators.

Creators can license their content to corporations for much less than it's worth, or have it stolen, with the broken Notice and Takedown system as the only recourse. Hence the predictable arguments from the Internet leaders (such as Google and its YouTube) that support the DMCA, and the market leverage it provides them.

THE COUNTER-NOTICE SYSTEM IS BROKEN AND IS USED TO FURTHER ERODE MUSIC CREATOR RIGHTS

There is an incredibly small window to either ignore the notice (causing re-upload) or to file a lawsuit. They are unworkable with huge volume of notices and service-provider encouragement of counter-notices. Limited means musicians cannot participate effectively.

III. GENERAL EFFECTIVENESS OF THE NOTICE AND TAKEDOWN

1. ARE THE SECTION 512 SAFE HARBORS WORKING AS CONGRESS INTENDED?

The Section 512 safe harbors are not working as Congress intended, and in many instances incentivize digital distribution business models that are causing significant harm to musicians and other creators.

CONGRESS' INTENT, SAFE HARBOR & PROTECTING UNFAIR BUSINESS PRACTICES

The Section 512 Safe Harbor framework was Congress' attempt to encourage development of the internet at a time when it was new and uncertain technological advance for disseminating copyrighted works. Limiting the liability of Internet Service Providers (ISPs) for the conduct of internet users was seen as necessary to encouraging the internet's development. What Congress did not intend to allow or encourage was the action of ISPs and other types of digital distributors as purveyors of purloined creative works. Nor did Congress intend to incentivize the creation of digital distribution business models that depend upon displacing copyright creators' rights in their own work.

The result is that certain internet companies have disproportionately benefitted at the expense of America's creative communities. It is virtually inversely proportional: As Safe Harbor under Section 512 allowed infringement to grow without effective legal recourse, the bottom fell out of the earnings and copyright protection for musicians and others who depend upon copyright for their living.

Congress did not intend to relegate copyright owners to the notice and takedown process alone. Congress also foresaw industry discussion leading to the development of standard technical measures that would reduce infringement.

Congress qualified the right of an ISP provider to avoid such monitoring where standard technical measures were available to prevent or limit infringement.

Termination of access to internet locations was a reasonable method of deterring repeated copyright violations from persons who flagrantly refuse to follow the law. The importance of this remedy by requiring all service providers to implement such methods if they wished to benefit from any of the four statutory safe harbors.

Congress was wrong that service providers “know infringement when they see it.” Although Congress was aware of arguments, presented by litigants and by service providers who lobbied for liability limitations, positing that it is too difficult for service providers to determine whether content transmitted by users qualifies as infringing, Congress concluded that where internet users post copies of recognizable works with recognizable copyright owners or aggregate infringing material and label it as such (e.g., pirate.com) service providers have a responsibility to separate themselves from such conduct or risk liability.

The Internet of the late-1990s was different from the Internet of today, or even from the Internet of the 2000s. At the time of the passage of the DMCA, internet access was slow; online material was difficult to locate; consumers in many countries lacked widespread access to the internet; internet businesses (including access providers, hosts, and website operators) largely earned income from subscription or use-based pricing; and computing devices were expensive and stationary. Although music was available online (often via piracy),² video was not.

These circumstances led Congress to underestimate how rapidly the internet would spread; how dramatically access speeds would increase and the costs of electronic storage would decrease; how difficult it would be for

² See *UMG Recordings, Inc. v. MP3.com, Inc.*, 92 F. Supp. 2d 349 (S.D.N.Y. 2000) (discussing the “mymp3.com” service, which debuted in 1996); *Arista Records Inc. v. MP3Board, Inc.*, No. 00 CIV 4660, 2002 U.S. Dist. LEXIS 16165 (S.D.N.Y. Aug. 29, 2002) (describing a service that assisted users in locating unlawful music files online). One court stated the following: “Beginning in the early 1990s, copyright owners began suing individuals who unlawfully disseminated copyrighted music, photographs, and software. Such litigation targeted BBSs operated from home computers. Advances in technology, however, including the use of MP3 format (a compressed digital format) facilitated the piracy, and by 1998 approximately three million sound recordings were believed to be downloaded from the internet daily.” *In re Charter Communications, Inc.*, 393 F. 3d 771, 773 (8th Cir. 2005).

copyright owners to monitor for infringement; how easy it would become to earn revenue from advertising (which is often served to websites by third-party providers), as opposed to subscription or use-based fees; how often technologies would be designed to exploit legal loopholes; and how much money could be earned from inducing or turning a blind eye to infringement.

RELIGIOUS TECH. CENTER V. NETCOM ON-LINE COMM.

Congress did not intend to absolve internet service providers of all liability so long as they respond to notices from copyright owners that identify specific infringing items. Instead: (i) preserves direct liability for service providers who actively engage in volitional infringing conduct, such as selectively choosing which user uploads to repackage and make publicly available; (ii) preserves contributory liability for service providers who substantially contribute to infringement while possessing knowledge of facts from which a reasonable person would deduce that infringement is occurring unless the service provider takes steps to stop the infringement upon obtaining such knowledge; and (iii) preserves vicarious liability for service providers who use infringing content to attract or retain users to their websites or networks (*i.e.*, where the value of the product is derived from access to infringing content) or charge users specific fees associated with infringing content. The DMCA's approach also preserves secondary liability for service providers who intentionally induce their users to engage in infringement because it creates safe harbors only for "innocent" actors.³

Religious Tech. Center v. Netcom On-Line Communications,⁴ in the Northern District of California. In this decision, the court concluded that the Copyright Act did not impose direct liability on a person who did not engage in a volitional act that violated one of the exclusive rights provided to copyright owners in 17 U.S.C. § 106.

The court expressly disagreed with *Playboy Enterprises v. Frena*⁵ and *Sega v. MAPHIA*⁶ on this point of law. The court stated: "Where the infringing

³ *ALS Scan v. RemarQ Communities, Inc.*, 239 F. 3d 619 (4th Cir. 2001).

⁴ *Religious Tech. Center v. Netcom On-Line Comm.*, 907 F. Supp. 1361 (N.D. Cal. 1995).

⁵ *Playboy Enterprises, Inc. v. Frena*, 839 F. Supp. 1552, 1554 (M.D. Fla. 1993).

subscriber is clearly directly liable for the same act, it does not make sense to adopt a rule that could lead to the liability of countless parties whose role in the infringement is nothing more than setting up and operating a system that is necessary for the functioning of the Internet.”

In sum, *Netcom*’s holdings may be stated as follows: An internet service provider does not commit direct infringement by routing transmissions or temporarily storing content at the direction of a user because no volition is involved in such conduct.

Contributory liability may be imposed where an internet service provider is provided with notice of infringement on its system but fails to properly investigate and put a stop to infringement of the relevant works or by the user at issue.

Vicarious liability may be imposed where an internet service provider is capable of implementing technological methods of identifying infringing conduct and terminating the access and use privileges of specific users but fails to do so while financially benefitting either from payments directly related to accessing or posting specific infringing content or by using infringing content to attract users.

Post-*Netcom* BBS cases also applied approaches to secondary liability in a manner similar to *Netcom*. For example, in *Marobie v. National Association of Fire Equipment Distributors*,⁷ the court acknowledged that hosting a website could lead to contributory liability. The court declined to grant summary judgment for the defendant because, based on the evidence presented, it was unclear whether Northwest knew that any material on the website was copyrighted and, “if it did know, when it knew.”

⁶ *Sega Enterprises Ltd. v. MAPHIA*, 857 F. Supp. 679, 683 (N.D. Cal. 1994).

⁷ 983 F. Supp. 1167 (N.D. Ill. 1997). *Playboy Enterprises v. Webbworld*; *Playboy Enterprises v. Russ Hardenburgh*,

TECHNOLOGY

The DMCA was written to address a different technological landscape in the scope and volume of infringement.

Attracting advertising to a website or service also required greater effort. Now ad servers like Google run targeted ads on millions of websites through embedded links, in the late 1990's, a website who wanted to generate funds from infringing conduct had to charge subscription prices or actually solicit advertisers. Similarly, a user who wanted to find infringing content would not see ads for such content displayed alongside search results after Googling for a recording artist by name. Today, according to our research, users are connected to infringing content through search engines more so than through any other means.⁸

Peer-to-peer file sharing (which now accounts for roughly 10% of all internet traffic, down from a peak of roughly 30%) did not yet exist, at least in a manner accessible to most people. This is likely caused by two factors: (1) many people now understand that this is illegal; and (2) when presented with a "legal" alternative, people will use it.

In fact, many of the services that possess large market share online now, were in their infancy or did not yet exist at the time the DMCA was enacted. For example, Facebook, Instagram, Twitter, iTunes, Spotify, YouTube, PayPal and Skype did not exist. eBay, Amazon, Google, and Yahoo! were all less than 5 years old.

THE SAFE HARBORS HAVE FAILED TO KEEP UP WITH TECHNOLOGY OR THE ISPs BUSINESS PRACTICES ARE NOT WORKING AS CONGRESS INTENDED

The DMCA was primarily designed to prevent isolated infringement by third parties on specific online sites when connection speeds were slower than today and storage space was limited. In that environment, these third parties

⁸ Liron Sivan, Michael D. Smith, and Rahul Telang, School of Information Systems and Management, Heinz College, Carnegie Mellon University, Do Search Engines Influence Media Piracy?: Evidence from a Randomized Field Study (Sept. 12, 2014), available at <http://ssrn.com/abstract=2495591>.

were not able to infringe on the massive scale that they do today, and the “takedown notice” provisions were thought to provide an alternative to lengthy and expensive legal proceedings. However, it has had the exact opposite effect, leaving artists with little recourse if a legitimate takedown notice is denied. Legal representation is expensive and Section 512 does not allow for damages in all but the most egregious circumstances.

The qualification standards for the safe harbor eligibility were thought to be available only to innocently infringing ISPs with no connection to the third party content they hosted, linked to or otherwise transmitted. The notice and take down process was intended as a safeguard to provide a mechanism for copyright owners to prevent infringement by even innocent ISPs.

In the transformed Internet environment of today, as online speeds have dramatically increased while the cost of storage space has dramatically decreased, the DMCA’s failure to scale has rendered it increasingly obsolete and futile from an enforcement standpoint. Large, sophisticated entertainment-oriented websites have developed, and they premise their business models on being shielded from responsibility by the safe harbors.

Instead of sending a relatively small number of “take-down” notices to prevent isolated infringement in a manner that ensures the material doesn’t reappear, musicians are instead faced with the unprecedented burden of attempting to “take-down” literally billions of infringing copies of music and associated links from thousands of unauthorized sources in an environment where infringers feel free to simply continuously repost links to the infringing content. This mismatch between the amount of infringement and the burden of enforcement has increasingly led to the devaluation of music and the perception that there is no effective remedy against unauthorized infringement. Once a song is available, authorized or not, the law provides no means to effectively protect the musicians’ property.

Adding insult to injury, some ISPs have complained about “abusive DMCA notices” - they seek to curtail one of the only remedies left for copyright owners.

The safe harbors can no longer be said to balance the burdens of policing copyright infringement between the ISPs and the owners. Consider that since 2012, the Recording Industry Association of America (RIAA) has sent over 128 million infringement notices in the aggregate to web site operators, their underlying hosting providers, and search engines. Unfortunately, all too often, when a work is “taken-down” on a particular site or in a search engine index, it immediately re-appears someplace else on that site, or on mirror sites. Congress never intended for things to work in this way. The extent of this “whack-a-mole” problem was not anticipated and, unfortunately, this DMCA loophole has been embraced as a way to continually use and profit from unauthorized use of music, and still arguably maintain the “safe-harbor” protections built into the DMCA, at least until a costly and time-consuming lawsuit is filed and won.⁹

2. HAVE COURTS PROPERLY CONSTRUED THE ENTITIES AND ACTIVITIES COVERED BY THE 512 SAFE HARBORS

The courts have largely failed to properly construe the entities and activities covered by the Section 512 safe harbors.

Courts have construed the definition of “service provider” too broadly. Parties that are nothing like the passive, neutral service providers like AOL that Congress had in mind when drafting and enacting the DMCA now take advantage of the safe harbors unfairly. The safe harbors are now relied upon by companies that attract visitors by hosting content, that benefit from increased usership by mining data and selling advertisements, but who can “negotiate” with content providers for licensing fees at below market rates (if at all), because the content owners’ only other option is a notice and takedown regime that simply does not work to keep infringing content off any given service.

⁹ See *Section 512 of Title 17: Hearing Before the Subcomm. on Courts, Intell. Prop. and the Internet of the H. Comm on the Judiciary*, 113th Cong. 57 (2014) (statement of Maria Schneider).

Decisions are such that there is no daylight at this point between the safe harbors and clear cases of infringement, and hyper-technical readings of the statute have read out its clear meaning and congressional intent.¹⁰

These more recent decisions ignore how the technological tools available to service providers to prevent or limit systematic infringement have advanced. Companies that are in the content distribution business or use music to drive their online business model should be obligated to take meaningful steps to deter dissemination of unlicensed, copyrighted music, such as through the use of content matching and action technologies.

It is important that online intermediaries, not just right holders, fully engage in the fight against digital theft, because often the service providers possess information that rights holders cannot obtain or have difficulty locating.

For example, YouTube's Content ID system now enables rights holders to limit infringing files, which are technologically matched via fingerprint-based content recognition technology, from being made available via YouTube.¹¹ Facebook also will be testing a matching technology that will allow creators to identify matches of their videos on Facebook across the site, allowing for easier removal of unauthorized repeat content.¹²

These systems rely on information collected from right holders to allow the services to identify and block infringing files before the public gains access to them. Only the sites themselves can enable such preventative measures, because only they have instantaneous access to information regarding what is being uploaded to their services. If other services that allow user-posted

¹⁰ *A&M Records, Inc. v. Napster, Inc.*, 54 U.S.P.Q.2d 1746 (N.D. Cal. 1998); *A&M Records, Inc. v. Napster, Inc.*, 2000 U.S. Dist. LEXIS 6243 (N.D. Cal. 2000); *A&M Records, Inc. v. Napster, Inc.*, 114 F. Supp. 2d 896 (N.D. Cal. 2000); *A&M Records, Inc. v. Napster, Inc.*, 239 F. 3d 1004 (9th Cir. 2001).

¹¹ See *How Content ID Works*, YouTube Help, <https://support.google.com/youtube/answer/2797370?hl=en>, last visited Oct. 14, 2015.

¹² See *An Update on Video Management on Facebook*, Facebook Media (Aug. 27, 2015), <http://media.fb.com/2015/08/27/an-update-on-video-management-on-facebook/>.

content (such as distribution hub sites) adopted similarly robust tools, a large amount of unauthorized content could be automatically removed or blocked from the web.

In *Viacom Int'l, Inc. v. YouTube, Inc.*, 940 F. Supp. 2d 110, 120 (S.D.N.Y. 2013), the court found YouTube qualified for the § 512 safe harbors even though it had and used “digital fingerprinting software, which automatically blocks submissions matching ‘reference databases of fingerprints of copyrighted works’ prior to their becoming available for public view,” but used this software only to filter videos for those “content owners who had agreed to licensing and revenue sharing deals with YouTube.” There was no requirement that YouTube use this software to attempt to stop, for example, repeat postings of a video that has already been identified as infringing through a notice and takedown procedure.

3. HOW HAVE SECTION 512’S LIMITATIONS ON LIABILITY FOR ONLINE SERVICE PROVIDERS IMPACTED THE GROWTH AND DEVELOPMENT OF ONLINE SERVICES?

Section 512 limitations have incentivized and encouraged the growth of online service providers (OSPs) by shielding the OSPs from liability, even as the business practices of the OSPs, such as YouTube, required scrutiny. The tremendous market growth of OSPs has come at the expense of the music creators.

The laws that “were designed to exempt passive intermediaries from liability,” the so-called safe-harbors, should never have been allowed to “exempt active digital music services from having to fairly negotiate” licenses with rights holders.¹³

Not only do certain actors take advantage of these safe harbors to profit from music without compensation to the authors and owners of that music, this situation unfairly distorts the market value for music, creating below-market discounted rates that harm the entire music industry. It cannot be right, for

¹³ See Frances Moore, *Artist and Record Companies need a Fair Digital Marketplace* (July 29, 2015), <http://www.ifpi.org/news/Artists-and-Record-Companies-Need-A-Fair-Digital-Marketplace>.

example, that, by some accounts, YouTube has 40% of the online music listening market, but only provides 4% of the revenue to the record labels.¹⁴

Musicians are faced with a “Hobson’s choice: Accept below-market deals or play that game of whack-a-mole. The notice and takedown system—intended as a reasonable enforcement mechanism—has instead been subverted into a discount licensing system where copyright owners and artists are paid far less than their creativity is worth.”¹⁵

There is a growth of players that claim safe harbor when they are judgment-proof to gain audience and then after they have an audience they start seeking licenses--development of an environment in which services employ a “use first, ask permission later” modus operandi rather than encouraging a healthy marketplace for licensing content.¹⁶

When the notice and takedown provisions of the DMCA were enacted, Congress intended to “preserve the strong incentives for service providers and copyright owners to detect and deal with copyright infringements that take place in the digital networked environment.”¹⁷ The legislation was not “intended to discourage the service provider from monitoring its service for infringing material.”¹⁸

However, given the increased availability of higher broadband speeds and low-cost server space, coupled with the continued misinterpretation of the DMCA by the courts and those that want to take advantage of its safe harbors, the DMCA regime fails to accomplish the balance sought by Congress.

¹⁴ See video, *HBOs Richard Plepler and Jimmy Iovine on Dreaming and Streaming from the Vanity Fair Summit*, Vanity Fair (Oct. 8, 2015), <https://www.youtube.com/watch?v=HoODo8HkvoI>; Kia Makarechi, Twitter Posting (Oct. 7, 2015, 1:25pm), https://twitter.com/kia_mak/status/651855850840195078?refsrc=email&s=11.

¹⁵ See Sherman, *supra* n. 9.

¹⁶ See also <http://www.theguardian.com/technology/2015/may/11/spotify-financial-results-streaming-music-profitable>.

¹⁷ Report of House Commerce Committee on H.R. 2281, the Digital Millennium Copyright Act, H.R. Rep. No. 105-51, pt. 2, 49 (1998).

¹⁸ Conference Report on H.R. 2281, the Digital Millennium Copyright Act, H.R. Rep. No. 105-796, 73 (1998).

The DMCA has provided incentives for Internet businesses to turn a blind eye to infringement, or even to build willful blindness into their business models.

Even while removing individual infringing links identified in takedown notices, services based on infringement can thrive financially and expect to enjoy near-complete immunity from liability. More and more rogue operators appear to specifically design and engineer their systems and processes to make the DMCA, as they interpret it, irrelevant and ineffective to stopping their ongoing infringement. Essentially, these rogue operators have learned the weaknesses of the DMCA as it has been interpreted and implement their services to exploit those weaknesses.

4. HOW HAVE SECTION 512'S LIMITATIONS ON LIABILITY FOR ONLINE SERVICE PROVIDERS IMPACTED THE PROTECTION AND VALUE OF COPYRIGHTED WORKS, INCLUDING LICENSING MARKETS FOR SUCH WORKS?

Section 512's limitations on liability for online service providers have negatively impacted the protection and value of copyrighted works, including licensing markets for such works.

Despite music being more popular than ever today,¹⁹ music industry revenues have been nearly flat since 2010, and are less than half what they were in 2000 (adjusted for inflation).

While the technology industry is benefitting from the increased availability of online music, and profiting from the unprecedented consumption and interest in music, musicians are receiving less and less. Consumers have never had so many choices for experiencing music legitimately and instantaneously.

¹⁹ "Demand for music online is higher than ever, with many sites directly dependent upon professionally produced, copyrighted music for their success. Over 65% of Americans ages 13+ agree that music is important to their lifestyle.4 American consumers spend, on average, more than 24 hours per week listening to music and, in a typical week, 75% of U.S. consumers listen to music online. Twelve of the top 20 most followed people on Twitter are from the c3. Fifteen of the top 20 celebrities on Facebook are musicians." IPEC submission.

In the first half of 2015, digital dissemination accounted for 76% of the overall recorded music market by value, compared with 59% for 2012.²⁰ But “[w]hen vinyl records, which peaked in the 1960s and ‘70s, generate more revenue for the industry in 2014 than the billions of ad-supported on-demand streams on YouTube and similar services, something is fundamentally wrong with the market.”²¹

Music adds significant value to technologies and network access, but musicians are not receiving a fair share of this added value.²² As noted above, the broken state of the DMCA is playing a significant role in perpetuating this unfairness.

The problem with diminishing returns must be addressed. A successful artist that invests in music needs a balanced digital marketplace in which to negotiate terms for the use of its music. And, as further discussed below, it needs a balanced and fair legal enforcement system in which to operate to do so.

YouTube is perhaps the most popular “music service”. An Ipsos survey in January 2015 found that 79% of people who had used YouTube have done so to find music.²³ DMCA safe harbors have contributed a culture that devalues copyright works and a generation of young Americans who believe they have a right to access all music for free. Even as the streaming services try to grow and obtain the appropriate licenses they have hit a ceiling on how much they can charge due to the prevalence of free content online.

DMCA stacks the deck unfairly against content owners, suppressing the legitimate market for their copyrighted works. Rogue actors may host infringing content and claim DMCA compliance for years whether or not they actually follow the letter of the law. The burden falls on copyright owners, not

²⁰ IPEC submission

²¹ See Sherman, *supra* n. 8.

²² See David Israelite, *NMPA Head Says “Free” May Work for Pandora But is Devastating to Songwriters: Op-Ed*, *Billboard* (Sept. 24, 2015), <http://www.billboard.com/articles/business/6707834/nmpa-david-israelite-oped-pandora-songwriter-payments>.

²³ IFPI EU submission

only to police, but to diligently follow notice procedure, and if faced with noncompliance, bear the cost and inevitable uncertainty of litigation.

Overcoming a DMCA defense is but a first step; copyright owners must go the further length of showing both the ownership of copyrights at issue (a complex task in the case of older works) and their copying on an alleged infringing service, all the while such infringing service may stay in operation during the length of a litigation. Even if the copyright owner prevails, an infringing service may not have means or intent to satisfy a monetary judgment, placing burden on the copyright owner to bring suit under DMCA regime solely to protect market integrity, which, considering legal fees, is impracticable for many copyright owners.

Pirates. A significant recent development is the ability of rogue actors to engage in piratical activity across a variety of digital platforms, whether via computer software applications, web sites, plug-ins for Internet browsers, widgets for smart televisions, or mobile applications. Consider, for example, that before the infringing service GrooveShark was shuttered in light of a court order finding it liable for willful infringement, GrooveShark offered access to its service via a website, a mobile application, a browser plug-in, and was negotiating deals to have GrooveShark widgets on certain smart TVs.

More Pirates: In addition, it is now easier than ever for rogue operators to jump physical jurisdictions and digital domains, obfuscating their path while they do so. The increasing ubiquity of high-bandwidth connectivity and technologically sophisticated hosting services in a growing number of offshore jurisdictions make it increasingly easy for thieves to fully exploit the U.S. market while minimizing, for practical purposes, their exposure to U.S. copyright or criminal law. Another factor that will accelerate this disturbing trend in future years involves the domain name system. Beyond the existing framework of country code Top Level Domains (ccTLDs), the ongoing rollout of new generic Top Level Domain (gTLD) registries includes some based in jurisdictions more tolerant or even encouraging of theft of U.S. intellectual property. This gives pirates a wider range of havens to seek.

Certain service providers are emboldened by the safe harbors and are specifically designed to use the safe harbors to allow their infringing behavior.

5. DO THE SECTION 512 SAFE HARBORS STRIKE THE CORRECT BALANCE BETWEEN COPYRIGHT OWNERS AND ONLINE SERVICE PROVIDERS?

The DMCA Section 512 safe harbors do not strike the balance intended between copyright owners and online service providers. The DMCA, Section 512, is the product of a time where download and upload capacity was tiny compared to today. Any law intended to protect creators and copyright holders as part of its mandate must make significant inroads into stopping the use of misappropriated content on its current massive scale. Current technology makes it relatively easy to keep infringing content off OSPs sites, yet the largest sites have resisted such copyright protection practices.

Court decisions have wrongly interpreted the law and eliminated the “red flag” knowledge requirement. This has resulted in foisting the obligation on creators to identify infringement of their work. This is largely to liking of the enormous digital distributors, like YouTube. This is the playing field that must be leveled if American music is to return to financial health.

IV. NOTICE AND TAKEDOWN PROCESS

6. HOW EFFECTIVE IS SECTION 512'S NOTICE AND TAKEDOWN PROCESS FOR ADDRESSING ONLINE INFRINGEMENT?

Section 512's notice-and-takedown process defeats copyright protection. A widely used analogy for the notice and takedown process in the music community is “whack-a-mole.” In other words, as one infringing copy is taken down, myriad infringing copies appear. Yet no matter how diligent a creator is, the burden of policing the many digital distribution services falls to the creator, the person least likely to be able to police infringement.

The DMCA conditions the liability limitations on the adoption and reasonable implementation of a policy to terminate the access of “repeat infringers” in “appropriate circumstances.” 17 U.S.C. § 512(i)(1)(A). However, as important as addressing repeat infringers is to address *repeat infringement*. Copyright owners should not be required to engage in the constant game of sending repeat takedown notices for the same song (or other work), simply

because it appears at a marginally different URL than the first time. The current standard of “URL by URL” takedown doesn’t make sense in a world where there is an infinite supply of URLs. Technologies exist to identify content that is reposted after it is removed and they should be deployed as a standard industry practice.

As implemented, many believe that currently, the DMCA places the burden exclusively on creators alone to police for infringing activity.²⁴ The statute requires service providers relying on certain liability limitations to remove infringing content “expeditiously.” *E.g.*, 17 U.S.C. § 512(c)(1)(A)(ii). The term is undefined and many service providers delay action in a manner that intensifies the harm to copyright owners. The term should be defined to require removal within a specified time unless exceptional circumstances are present. Over the last three years we have also seen escalating damage from the unauthorized dissemination of pre-release music, *i.e.*, albums slated for commercial release that have not yet been commercially released to the public.^{25 26}

This on-demand class of digital sites and apps directly or indirectly offers unauthorized on-demand streaming and/or downloading of our members’ music, including their most popular and valuable content. They often provide not just one link to a particular track, but instead several pages of links to the same track, and/or have several more “URLs” with the same track “at the ready” to post to their site when another URL to the same track is noticed.²⁷ Some are

²⁴ See Peter S. Menell and David Nimmer, *Legal Realism in Action: Indirect Copyright Liability’s Continuing Tort Framework and Sony’s DeFacto Demise*, 55 UCLA L. Rev. 1 (2007).

²⁵ See Andre Yoskowitz, *FBI Takes Down Pre-Release Music Piracy Site Share Beast*, News By AfterDawn, (Sept. 16, 2015) <http://www.afterdawn.com/news/article.cfm/2015/09/16/fbi-takes-down-pre-release-music-piracy-site-sharebeast>.

²⁶ See Stephen Witt, *The Man Who Broke the Music Business* (Apr. 27, 2015), <http://www.newyorker.com/magazine/2015/04/27/the-man-who-broke-the-music-business>.

²⁷ See *Capitol Records, LLC v. Escape Media Group, Inc.*, 2015 U.S. Dist. LEXIS 38007, *18-19 (S.D.N.Y. Mar. 25, 2015)

so brazen as to publicly tout their infringing activity and seek crowd sourcing to fund their illegal efforts.²⁸

7. HOW EFFICIENT OR BURDENSOME IS SECTION 512'S NOTICE-AND-TAKEDOWN PROCESS FOR ADDRESSING ONLINE INFRINGEMENT? IS IT A WORKABLE SOLUTION OVER THE LONG RUN?

Section 512's notice and takedown system does not provide a workable solution in the present or long-term for addressing online infringement. The notice and takedown system is unduly burdensome because of the whack-a-mole nature of the problem (discussed above).

Individual creators and their representative cannot shoulder the burden to monitor the overwhelming amount of infringement on just YouTube, let alone all the other ISPs and OSPs.

Even large scale content owners with a large back office cannot effectively police in this way and, even if they could, it's unfair and contrary to law and order principles to require the owner, alone, to undertake the financial burden to do so. Between August 2012 and September 2012, the RIAA monitored 2,159 websites and recorded 48,391,597 instances of infringements directly on those sites, not even including the *millions* of notices the RIAA sent to ISPs hosting such sites and search engines trafficking to them. In 2015, IFPI issued 15,680,520 take down requests for unique URLs and over 800 million search engine delist requests.

Part of the problem is that there is only one (or a few) content owner(s) responsible for protecting each copyrighted work, as compared to millions of

²⁸ See Aurous, Twitter Posting (Sept. 17, 2015, 11:55am), <https://twitter.com/aurousapp/status/644585368440938496?lang=en> (“We need your help to bring Aurous to Iphone, Android and Windows phone! Please consider donating to our Indiegogo...”); Aurous, Twitter Posting (Sept. 19, 2015, 1:00pm), <https://twitter.com/aurousapp/status/645326516600086528?lang=en>. See Also *Atlantic Recording Corporation et al. v. Andrew Sampson*, Case No. 1:15-cv-23810 (S.D. Fla., filed Oct. 13, 2015); Temporary Restraining Order, *id.* (Oct. 15, 2015).

Internet users who can post, re-post, re-post, and re-post that work exponentially faster than the single content owner can monitor.

8. IN WHAT WAYS DOES THE PROCESS WORK DIFFERENTLY FOR INDIVIDUALS, SMALL-SCALE ENTITIES, AND/OR LARGE SCALE ENTITIES THAT ARE SENDING AND/OR RECEIVING TAKEDOWN NOTICES?

The process doesn't work for large-scale entities, and the problem is infinitely worse for small-scale entities and individual creators. For a larger-scale entity, consider the statistics set forth in response in 7(a) above. Now consider the problem for an individual artist, operating on their own.

What is expensive and difficult for large copyright owners is an impossible challenge for small copyright owners seeking to protect the value of their works from indiscriminate sharing online. As Maria Schneider, a three-time GRAMMY winning jazz and classical composer, bandleader and conductor noted in describing the frustration with the DMCA, "[t]he DMCA makes it my responsibility to police the entire Internet on a daily basis. As fast as I take my music down, it reappears again on the same site—an endless whack-a-mole game."²⁹ Schneider notes that her most recent album has been available, for free and without her authorization, on numerous file sharing websites, and proposes that in the case of unauthorized verbatim copies, which cannot possibly be fair use, content ID and filtering systems be used to *prevent* infringement *before* it occurs, rather than identify infringement after it occurs.

9. PLEASE ADDRESS THE ROLE OF BOTH "HUMAN" AND AUTOMATED NOTICE-AND-TAKEDOWN PROCESSES UNDER SECTION 512, INCLUDING THEIR RESPECTIVE FEASIBILITY, BENEFITS, AND LIMITATIONS.

In today's environment, automated takedown processes are vital to deal with crowd sourced and automated, un-curated, unscreened upload/indexing processes. The often abused notice and takedown structure of the DMCA

²⁹ See Section 512 of Title 17: Hearing Before the Subcomm. on Courts, Intell. Prop. and the Internet of the H. Comm on the Judiciary, 113th Cong. 57 (2014) (statement of Maria Schneider).

forces content holders to keep apace with new and constantly emerging digital business models, which content owners may not always be in the best position to do. Current structure of the DMCA has given rise to a market for third party intermediaries who may be better equipped than content owners themselves to gather often automated data and send takedown notices pertaining to large scale infringing activity. Such services have played a valuable role in policing copyrights and under the current framework the role for such third party intermediaries is arguably a necessity. Query, however, whether it was intent of DMCA to create and sustain a market for such third parties in the relationship between copyright owners and service providers.]

10. DOES THE NOTICE-AND-TAKEDOWN PROCESS SUFFICIENTLY ADDRESS THE REAPPEARANCE OF INFRINGING MATERIAL PREVIOUSLY REMOVED BY A SERVICE PROVIDER IN RESPONSE TO A NOTICE? IF NOT, WHAT SHOULD BE DONE TO ADDRESS THIS CONCERN?

The notice-and-takedown process does not sufficiently address the reappearance of infringing material previously removed by a service provider in response to a notice.

The statute allows copyright owners who learn of the presence of infringing material on a website to notify the service provider of a “representative list” of infringed works and thereby cause the service provider to remove other clearly infringing material. 17 U.S.C. § 512(c)(3)(A)(ii). However, current case law has been read to allow service providers to willfully blind themselves to infringing activity while intentionally raking in profits attributable to it.

The DMCA did not take into consideration the possibility of “mirroring” when it was enacted, and as a result when an infringing service provider is punished under Section 512 with an injunction, users of said service provider or even the service provider itself will often create clone/copy/replica websites simply by uploading the source code of the website under another Uniform Resource Locator (“URL” or “web address”), and often more than once, resulting in a Herculean-Hydra effect (cut off the head and thirty more spring

up in its place).³⁰ Mirroring was developed to create copies of websites so as to allow its users to more quickly download files from websites by placing copies on servers in various geographic locations, preserve historical content, and more recently it is used to duplicate data in the interest of freedom of information.³¹ A simple Google search results in hundreds of websites, software, and video with information on how to backup and re upload or Mirror websites, and as a result such legitimate and law-abiding technology has created a way for service providers to circumvent the system despite judicial sanctions.³²

11. ARE THERE TECHNOLOGIES OR PROCESSES THAT WOULD IMPROVE THE EFFICIENCY AND/OR EFFECTIVENESS OF THE NOTICE-AND-TAKEDOWN PROCESS?

Technologies exist today, and others can be readily adapted, to improve the efficacy of the notice and takedown process. Digital distributors of all types should be required to adopt a standard protocol for communicating about take down notices that can be automated and operated at scale. Furthermore, all should use content identification technologies to screen and take action to prohibit the unauthorized distribution/performance of third party copyrighted commercial works. The cost of such technologies is reasonable, and it has been implemented by both large and small entities.³³

It is important that online intermediaries, not just right holders, fully engage in the fight against digital theft, because often the service providers possess information that rights holders cannot obtain or have difficulty locating. For example, YouTube’s Content ID system now enables rights

³⁰ Vangie Beal, *TERM mirror site*, webopedia (last visited Mar. 20, 2016), http://www.webopedia.com/TERM/M/mirror_site.html.

³¹ *Definition and Explanation of Mirror Site*, Techopedia (last visited Mar. 20, 2016), <https://www.techopedia.com/definition/4894/mirror-site>.

³² Google search for “website mirroring”, Google (last visited. Mar. 20, 2016), <https://www.google.com/search?q=website+mirroring&ie=utf-8&oe=utf-8#q=website+mirroring&start=10>.

³³ New technologies are emerging. For example, Blockchain technology would allow for accurate accounting of who sent notice-and-takedown requests to which online service provider and for what reasons, and this would help prevent abuse as it creates a permanent and nearly un-hack-able ledger.

holders to limit infringing files, which are technologically matched via fingerprint-based content recognition technology, from being made available via YouTube.³⁴ Facebook also will be testing a matching technology that will allow creators to identify matches of their videos on Facebook across the site, allowing for easier removal of unauthorized repeat content.³⁵ These systems rely on information collected from right holders to allow the services to identify and block infringing files before the public gains access to them. Only the sites themselves can enable such preventative measures, because only they have instantaneous access to information regarding what is being uploaded to their services. If other services that allow user-posted content (such as distribution hub sites) adopted similarly robust tools, a large amount of unauthorized content could be automatically removed or blocked from the web.

12. DOES THE NOTICE-AND-TAKEDOWN PROCESS SUFFICIENTLY PROTECT AGAINST FRAUDULENT, ABUSIVE, OR UNFOUNDED NOTICES? IF NOT, WHAT SHOULD BE DONE TO ADDRESS THIS CONCERN?

The protections that exist today not only protect against unfounded notices, goes too far in trying to protect the up-loader.

Section 512 (c)(3) provides many necessary elements for an effective takedown notification, including a statement “that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law.” This limits the number of fraudulent or abusive notices sent, and importantly, there is little evidence that fraudulent notices are a significant problem. b. Counter notice procedures pursuant to Section 512(g) are readily available and many service providers provide their users with information on how to access such procedures-sometimes at the same time the user is notified that a takedown notice has been issued against a work the user posted. This is more than adequate to address any fears of misuse.

³⁴ See *How Content ID Works*, YouTube Help, <https://support.google.com/youtube/answer/2797370?hl=en>, last visited Oct. 14, 2015.

³⁵ See *An Update on Video Management on Facebook*, Facebook Media (Aug. 27, 2015), <http://media.fb.com/2015/08/27/an-update-on-video-management-on-facebook/>.

If anything, there is a strong disincentive for senders to submit fraudulent notices. Google has recently announced its creation of a team dedicating to “minimizing mistakes” and “improving the quality” of takedown and copyright policy. YouTube is also planning to “roll out some initiatives in the coming months that will help strengthen communications between creators and YouTube support.”

Ellen Seidler asks “why does Google make it so damn difficult to send a DMCA notice?” She provides a step by step guide on takedown notices, with all the pitfalls and roadblocks set up by Google [and writes] ‘Google has designed cutting edge online tech, but its DMCA procedures are something out of the Dark Ages. That’s no accident.’”

13. HAS SECTION 512(D), WHICH ADDRESSES “INFORMATION LOCATION TOOLS” BEEN A USEFUL MECHANISM TO ADDRESS INFRINGEMENT THAT OCCURS AS A RESULT OF A SERVICE PROVIDER’S REFERRING OR LINKING TO INFRINGING CONTENT? IF NOT, WHAT SHOULD BE DONE TO ADDRESS THIS CONCERN?

c3 will address this question, if necessary, in its response to comments submitted by other organizations or individuals.

14. HAVE COURTS PROPERLY INTERPRETED THE MEANING OF “REPRESENTATIVE LIST” UNDER SECTION 512(C)(3)(A)(II)? IF NOT, WHAT SHOULD BE DONE TO ADDRESS THIS CONCERN?

The courts have not properly interpreted the meaning of “representative list” under section 512(c)(3)(A)(ii).

The statute allows copyright owners who learn of the presence of infringing material on a website to notify the service provider of a “representative list” of infringed works and thereby cause the service provider to remove other clearly infringing material. 17 U.S.C. § 512(c)(3)(A)(ii).

However, current case law has been read to allow service providers to willfully blind themselves to infringing activity while intentionally raking in profits attributable to it. Thus, many service providers refuse to respond to representative lists and ignore all infringing content until they receive particularized notices of each individual infringement from copyright owners.

In *UMG Recordings v. Veoh*,³⁶ the district judge concluded that the liability limitations applied in the face of evidence that RIAA informed the service that any videos on Veoh by a list of musical artists were infringing, and that Veoh did nothing to remove infringing videos including those artists unless RIAA specifically identified the exact video to be removed. The *Veoh* decision was affirmed by the Ninth Circuit, and then, after reconsideration in light of the Second Circuit *YouTube* decision, affirmed yet again.³⁷

The scope of infringements in today's environment makes the "representative lists" provision of DMCA more necessary than ever. As the statute is reformed, the term should be more clearly defined, to allow copyright owners to use this method to put service providers effectively on notice of widespread and actionable infringement.

15. PLEASE DESCRIBE, AND ASSESS THE EFFECTIVENESS OR INEFFECTIVENESS OF, VOLUNTARY MEASURES AND BEST PRACTICES - INCLUDING FINANCIAL MEASURES, CONTENT "FILTERING" AND TAKEDOWN PROCEDURES - THAT HAVE BEEN UNDERTAKEN BY INTERESTED PARTIES TO SUPPLEMENT OR IMPROVE THE EFFICACY OF SECTION 512'S NOTICE-AND-TAKEDOWN PROCESS.

Voluntary measures are a useful tool to address infringement when both parties are willing to take practical steps to address the problem. They are not as effective as having practical, effective and balanced laws to protect copyright. Ultimately, voluntary compliance will not remedy the massive scale of infringement without an effective regime for enforcing ownership and licensing rights.

YouTube's Content ID system now enables rights holders to limit infringing files and Facebook will be testing equivalent technology. Only the sites themselves can enable such preventative measures, because only they have instantaneous access to information regarding what is being uploaded to their services. If other services that allow user-posted content (such as

³⁶ *UMG II*, 665 F. Supp. 2d 1099.

³⁷ *UMG Recordings, Inc. v. Shelter Capital Partners LLC*, 667 F.3d 1022 (9th Cir. 2011) (UMG III"); *UMG Recordings, Inc. v. Shelter Capital Partners LLC*, 718 F.3d 1006, 1014 (9th Cir. 2013) ("UMG IV").

distribution hub sites) adopted similarly robust tools, a large amount of unauthorized content could be automatically removed or blocked from the web.

Arguably, when dealing with a safe harbor there is no such thing as “voluntary,” because there is nothing compelling a service provider to comply with the law.³⁸ There is a consensus in the creator community that Section 512 does not achieve the goals the DMCA set out to achieve.³⁹ Paul Doda suggested to the House Judiciary Subcommittee on Courts, Intellectual Property, and the Internet, “that Congress ‘direct that there be a broadly inclusive, multi-stakeholder, standards-setting process to recommend voluntary technical measures that can reduce online infringements [...]’” The idea is that the significant tech companies (Google, Microsoft, Apple, Verizon, AT&T, plus all the major publishers and distributors of legitimate copyrightable works) should collaborate to create ways for service providers to continue being immune from damages by making section 512 easier to comply with, while also making creating new and innovative “voluntary” ways to stop copyright infringement that are not required by whatever replaces the current section 512.⁴⁰

Unsurprisingly, Google’s Senior Copyright Counsel Katherine Oyama believes the system is working just fine as it is.⁴¹ Oyama praises the DMCA as it has allowed companies like eBay, Amazon, YouTube, Facebook, Twitter, and Google to exist and prosper. The DMCA has indeed allowed for companies like Alphabet to exist and flourish, and as a result of section 512 Alphabet has a market cap of five hundred and thirteen point five billion dollars (\$513,480,000,000.00) and a price to earnings ratio of 31.92 (P.E ratio:

³⁸ See 17 U.S.C.A. § 512 (West. 2010).

³⁹ See Neil Fried, *HOUSE JUDICIARY SUBCOMMITTEE HEARING POINTS TO VOLUNTARY INITIATIVES AS IMPORTANT PIECE OF THE ANTI-PIRACY PUZZLE*, MPAA (Mar. 17, 2014), <http://www.mpa.org/house-judiciary-subcommittee-hearing-points-to-voluntary-initiatives-as-important-piece-of-the-anti-piracy-puzzle/#.VujYrBhBphE>.

⁴⁰ See *id.*

⁴¹ Katherine Oyama, *Why The Digital Millennium Copyright Act Is Working Just Fine...*, Digital Music News (Apr. 11, 2014), <https://www.digitalmusicnews.com/2014/04/10/dmcaworkingjustfine/>.

31.92).⁴² The technologies that service providers develop such as “Content ID” should and must be provided to all creators and companies as a form of open source software to combat online piracy and massive uploading infringement.

Following pledges made in 2012,⁴³ many U.S. advertisers, ad agencies and ad networks have taken proactive steps to deter placing ads on sites that engage in copyright infringement. Many will also take action when notified that their ads or services were used to place ads on infringing sites. In addition, over the past several months, portions of this industry have created and adopted further programs to help improve the digital ecosystem, including the Trustworthy Accountability Group’s Brand Integrity Program Against Piracy.⁴⁴

However, several other ad networks, both in the U.S. and abroad, continue to funnel ad dollars to infringing sites. Other advertisers, particularly those that advertise using pay-per-install potentially unwanted programs (PUPs), continue to prominently interact with infringing sites. Moreover, the rogue operators are getting more sophisticated, engaging in various forms of ad fraud, such as pop-unders or re-directs to phony webpages, to channel advertising dollars their way. More needs to be done to address this fraudulent behavior.

In 2011, after significant assistance from the Office of the IPEC, payment processors and credit card companies implemented a set of best practices to investigate complaints and stop processing transactions for sites that distribute counterfeit and pirated goods.

While rogue sites continue to find alternative payment methods to profit from their illegal enterprises, the adoption and implementation of these best

⁴² Google search for “Market Cap of Alphabet Inc.” (last viewed Mar. 15, 2016), <https://www.google.com/search?q=alphabet+market+cap&ie=utf-8&oe=utf-8>.

⁴³ See ANA, 4A’s Release Statement of Best Practices Addressing Online Piracy and Counterfeiting, Association of National Advertisers (May 3, 2012), <https://www.ana.net/content/show/id/23408>.

⁴⁴ See *Advertising Industry Launches Initiative to Protect Brands Against Piracy Websites*, TAG (Feb. 10, 2015), <https://www.tagtoday.net/advertising-industry-launches-initiative-to-protect-brands-against-piracy-websites/>.

practices is an example of what is possible when industries agree to adopt reasonable approaches to exercise their responsibility to help ensure that Internet-based transactions are lawful.

After the conclusion of its DMCA Multistakeholder Forum, the Department of Commerce published a list of bad notice and takedown practices it had learned were occurring, including service providers engaging in the following:

“1. Intentionally obfuscating the procedure for submitting DMCA notices or counter-notices, such as hiding contact information for submission of take down notices or counter-notices, or placing web forms or DMCA agent’s email address behind multiple click-through advertisements.

2. Requiring notice and counter-notice submitters to watch advertising, or provide anything of value as a pre-condition to submitting a notice or counter-notice.

3. Using stigmatizing or intimidating language in connection with any DMCA notice mechanism that is intended to chill submission of legitimate notices or counter-notices.

4. For service providers that host the file associated with a link identified to the service provider in a valid DMCA notice, creating multiple links to the file with the intent of frustrating the DMCA takedown process.”⁴⁵

While voluntary measures should be encouraged and service providers incentivized to implement them, as long as such measures are only voluntary and not mandated, the effects of such measures are suboptimal. To adequately protect content creators, a revision of the law is needed.

⁴⁵ Department of Commerce DMCA Multistakeholder Forum DMCA Notice-and-Takedown Processes: List of Good, Bad, and Situational Practices, http://www.uspto.gov/sites/default/files/documents/DMCA_Good_Bad_and_Situational_Practices_Document-FINAL.pdf, last visited February 29, 2016

V. COUNTER NOTIFICATIONS

16. HOW EFFECTIVE IS THE COUNTER-NOTIFICATION PROCESS FOR ADDRESSING FALSE AND MISTAKEN ASSERTIONS OF INFRINGEMENT?

17. HOW EFFICIENT OR BURDENSOME IS THE COUNTER-NOTIFICATION PROCESS FOR USERS AND SERVICE PROVIDERS? IS IT A WORKABLE SOLUTION OVER THE LONG RUN?

18. IN WHAT WAY DOES THE PROCESS WORK DIFFERENTLY FOR INDIVIDUALS, SMALL-SCALE ENTITIES, AND/OR LARGE SCALE ENTITIES THAT ARE SENDING AND/OR RECEIVING COUNTER NOTIFICATIONS?

Questions 16, 17 & 18 are answered together here. The Counter-Notification process has not worked for music creators to defend their copyrights in the digital domain.

Section 512(g)(2)(B) states in part “upon receipt of a counter notification described in paragraph (3), promptly provides the person who provided the notification under section (c)(1)(C) with a copy of the counter notification...”⁴⁶

The inherent problem with compliance towards Section 512(g) is that the counter-notification system need not be strictly complied with, and companies such as YouTube have entered into contractual agreements, which are used to automatically reject counter notifications sent by their users.⁴⁷ This policy runs

⁴⁶ (3) Contents of counter notification, -- To be effective under this subsection, a counter notification must be a written communication provided to the service provider’s designated agent that includes substantially the following: (A) A physical or electronic signature of the subscriber[;] (B) Identification of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or access to it was disabled[;] (C) A statement under penalty of perjury that the subscriber has a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled[;] D The subscriber’s name, address, and telephone number, and a statement that the subscriber consents to the jurisdiction of Federal District Court for the judicial district in which the address is located, or if the subscriber’s address is outside of the United States, for any judicial district in which the service provider may be found, and that the subscriber will accept service of process from the person who provided notification under section (c)(1)(C) or an agent of such person. 17 U.S.C.A. § 512(g)(3)(A), (B), (C) (West. 2010).

⁴⁷ Patrick McKay, *YouTube Refuses to Honor DMCA Counter-Notices*, Fair Use Tube (Apr. 4, 2013 at 1:24 PM), <http://fairusetube.org/articles/27-youtube-refuses-counter-notices>; *see*

counter to the intent of the DMCA which was to create a quick, efficient, and inexpensive notice and takedown procedure of copyrighted materials.⁴⁸ This policy is offensive and in direct circumvention of section 512(g), and due to its allowance, millions of copyright holders have zero recourse against YouTube's "contractual obligations" considering their inability to retain counsel to sue YouTube and the alleged copyright holder for violation of section 512.⁴⁹

The counter-notification process results in too many fraudulent or mistaken claims of false or mistaken assertions of infringement. It is a relic of an earlier age and doesn't fit today's world. There is an urgent need to innovate and consider new processes. Under Section 512(g)(2), the service provider is not liable for disabling access to the material(s) subject to notice and takedown procedures so long as it reasonably and promptly notifies the "allegedly infringing" subscriber of its Section 512(g)(3) counter notification procedure.⁵⁰ It is then the subscriber's duty to send a written counter notification to the service provider's designated agent, and the notification must substantially comply with: (1) A physical or electronic signature of the subscriber (e.g., /s/ Name), (2) identification of the material and location of said material subject of the takedown notice and the location of where to use it (e.g., name of file & the link to the file), (3) subscriber's name, address, phone number, consent to the jurisdiction of the subscriber's local Federal District Court, and if outside the United States, consent to the jurisdiction of the service provider's local Federal District Court, and acceptance of service of process from the person who sent the takedown notification.⁵¹

In *Automattic Inc. v. Steiner*, a student journalist/blogger in London maintained a site hosted by defendant/Automattic in San Francisco.⁵² The

YouTube Help, *Videos removed or blocked due to YouTube's contractual obligations* (last visited: Mar. 20, 2016), <https://support.google.com/youtube/answer/3045545?hl=en>.

⁴⁸ See H.R. Rep. No. 105-551, pt. 1, 2 (1998).

⁴⁹ Tanya Basu, *New Google Parent Company Drops 'Don't Be Evil' Motto*, TIME (Oct. 4, 2015), <http://time.com/4060575/alphabet-google-dont-be-evil/>.

⁵⁰ 17 U.S.C.A. § 512(g)(1), (2), (2)(A), (2)(B) (West. 2010).

⁵¹ 17 U.S.C.A. § 512(g)(3)(A) – (D) (West. 2010).

⁵² *Automattic Inc. v. Steiner*, 82 F.Supp.3d 1011, 1017 (N.D. Cal. 2015).

blogger interviewed the “Press Officer” of a LGBTI movement and posted the answer on his blog, and the interview negatively discussed the “straight pride” movement as hateful, then immediately following the posting, the “Straight Forward Project” (“SFP”) sent a takedown notice in response to the article.⁵³ Automattic then sent notice to the blogger and advised him of his counter notification / suit duties.⁵⁴ After receiving takedown notice, defendant posted another blog about the original article, and SFP followed with two more takedown notices for the new blog, to which Automattic replied that it both (1) is not an arbitrator of disputes, and (2) that the notices were incomplete and that they needed to be amended.⁵⁵

In *Lenz v. Universal Music Corp*, the Ninth Circuit held that the DMCA’s notice and takedown procedure requires copyright holders to consider fair use before sending a takedown notification, and that failure to do so raises a triable issue as to whether the copyright holder formed a subjective good faith belief that the use was not authorized by law.⁵⁶ This holding has significant and negative aspects for creators seeking to apply the notice and takedown regime, especially for the individual musician.

Lenz posted a 29 second video of two children dancing to a song by Prince on YouTube.⁵⁷ Universal Music was in charge of administration and enforcement of Prince’s copyrights, and it had an employee monitor YouTube for violations of its copyrights under general guidelines that pointed towards the “infringing” works making significant use of the Prince composition, “specifically if the song was recognizable, was in a significant portion of the video or was the focus of the video,” and to exclude works that exhibited nominal use/ or less than a second of a copyrighted song.⁵⁸⁵⁹

⁵³ *Id* at 1018.

⁵⁴ *Id*.

⁵⁵ *Id* at 1019.

⁵⁶ *Lenz v. Universal Music Corp.*, 801 F.3d 1126, 1129 (9th Cir. 2015).

⁵⁷ *Id* at 1129.

⁵⁸ *Id*.

⁵⁹ *Id* at 1130.

Taken together, the counter-notification process has further thwarted the ability of musicians and creators from using the notice and takedown system to protect their copyrights.

VI. REPEAT INFRINGERS

22. DESCRIBE AND ADDRESS THE EFFECTIVENESS OF REPEAT INFRINGER POLICIES AS REFERENCED IN SECTION 512(I)(A).

Too often, repeat infringer policies are only paid lip service, and not implemented with any rigor, effectively reducing their utility to deter infringement.

The repeat infringer policy condition is a lynchpin to ensuring piracy does not get out of control. The DMCA condition eligibility for all the safe harbors on the adoption and reasonable implementation of a policy to terminate the access of “repeat infringers” in “appropriate circumstances.” 17 U.S.C. § 512(i)(1)(A). If repeat infringer policies are implemented with rigor, they have the potential to significantly impact infringement. Too often, provider enforcement policies only offer acknowledgement of repeat infringement, and its significant cost to creators.

There is no transparency into individual companies or organizations repeat infringer policies. Prospectively, pre-litigation, content owners may have little understanding of how a service may or may not be implementing a repeat infringer policy. Even once suit is brought, establishing whether or not a service’s repeat infringer policy is complaint usually requires sifting through massive volumes of discovery, building expert reports and soliciting testimony to deconstruct just that one service's repeat infringer policy. The entire cost and risk of such an endeavor falls on copyright owners even though result may be obvious (i.e. the service’s repeat infringer policy is not being followed because the content owner’s works reappear incessantly from the same source).

Services claiming safe harbor protection actively undermine it by permitting users to supply weak or no user identification, or sometimes even purging data to avoid having to track repeat infringers.

The cases interpreting the requirement to reasonably implement a repeat infringer policy have too often required quite little from the service provider to “implement” a repeat infringer policy: a “working notification system,” a procedure for dealing with notifications, and the provider must “not actively prevent copyright owners from collecting information needed to issue such notifications.” This approach conflates the repeat infringer requirement with the notice and takedown process itself, while Congress clearly intended the former as a condition precedent on reliance on the latter for safe harbor protection.

23. IS THERE SUFFICIENT CLARITY IN THE LAW AS TO WHAT CONSTITUTES A REPEAT INFRINGER POLICY FOR PURPOSES OF SECTION 512’S SAFE HARBORS? IF NOT, WHAT SHOULD BE DONE TO ADDRESS THIS CONCERN?

Section 512 does not precisely define the term “repeat infringer.”⁶⁰ Sawicki attempted to define the term by describing a repeat infringer as an creator-infringer (someone who creates a derivative work from a copyrightable form of expression), distributor-infringer (someone who makes copies of copyrightable works and distributes them), and/or consumer-infringer (someone who purchases an unauthorized copy of an expressive work) who has been identified as an infringer at least twice.⁶¹ This we believe is the appropriate definition for repeat infringer, and it should be codified in the next revision of section 512.

⁶⁰ Sawicki, Andres, *Repeat Infringement in the Digital Millennium Copyright Act*, 73 U.CHI. L.REV. 1455 (2006), available at: <http://chicagounbound.uchicago.edu/uclrev/vol73/iss4/7>.

⁶¹ *Id* at 1479 – 1483.

VII. STANDARD TECHNICAL MEASURES

24. DOES SECTION 512(i) CONCERNING SERVICE PROVIDERS' ACCOMMODATION OF "STANDARD TECHNICAL MEASURES" (INCLUDING THE DEFINITION OF SUCH MEASURES SET FORTH IN SECTION 512(i)(2)) ENCOURAGE OR DISCOURAGE THE USE OF TECHNOLOGIES TO ADDRESS ONLINE INFRINGEMENT?

Section 512(i) concerning service providers' accommodation of "standard technical measures" has had the negative impact of discouraging the use of technologies to address online infringement. Because section 512(i) limits safe harbor protection, service providers have a perverse disincentive to participate.

The reason such STMs have failed is that they were never created. Section 512(i) of the DMCA calls for industry stakeholders – hosting platforms and copyright holders -- to come together to propagate Standard Technical Measures (STMs) by which the industry could bring technical capacities into alignment with the broad goals of the DMCA (to protect copyright in the digital domain).

The fact that hosting platforms are reaping huge profits from the sale of ads placed on infringing works while insulated from liability for such activities by safe harbor protections has provided a strong financial disincentive for these service providers to participate in the "open, fair, voluntary, multi-industry standards process" called for in section DMCA 512(i)(2)(A).

After almost two decades, such disincentives have thwarted the intentions of Congress as expressed in section 512(i). c3 seeks a process in which "a broad consensus of copyright owners and service providers" are requested to engage in "an open, fair, voluntary, multi-industry standards process..." for the purpose of developing "standard technical measures" to permit "copyright owners to identify or protect copyrighted works," and to oversee the process to successful completion on those STM's.

The statute conditions liability limitations on accommodation of "standard technical measures" used by copyright owners to identify or protect copyrighted works if such measures (i) are developed pursuant to a board

consensus of copyright owners and service providers, (ii) are available on reasonable and nondiscriminatory terms, and (iii) do not impose substantial costs or burdens on service providers.⁶² However, no such measures have ever been identified by a court. Other, more streamlined paths should be provided for identifying “best available technologies” that service providers would be encouraged to employ in order to buttress safe harbor status.

Service providers need more incentives to adopt standard technical measures. This can be achieved by allowing more flexibility in how those can be adopted and understanding that some STMs may work for some industries and service providers of some sizes and level of sophistication, but not others.

While courts have not gone so far as requiring service providers to utilize filtering to reduce infringement, *Mavrix Photographs LLC v. Livejournal, Inc.*,⁶³ implied that Livejournal’s “anti-spam” system,” which it employed voluntarily to block posts with the keyword of plaintiff’s website, would be a type of “technological measure” that could be required by an injunction issued under § 512(j)(1)(A)(iii). For websites where infringement is occurring on a large scale, it would be valuable to have forward looking injunctions requiring screening of uploads based on artists’ names and titles, for example. This could be difficult to obtain; service providers will surely complain that many files could reference artists and titles without being infringing. But it might be possible to shift the burden to service providers to screen, review and then post harmless content, rather than the other way around.

A qualifying service provider must accommodate “standard technical measures” that are “used by copyright owners to identify or protect copyrighted works.”⁶⁴

⁶² 17 U.S.C. § 512(i)(1)(B).

⁶³ 2014 U.S. Dist. LEXIS 160324, *27-28 (C.D. Cal. Sept. 19, 2014).

⁶⁴ “Standard technical measures” refers to technical measures that copyright owners use to identify or to protect copyrighted works and: (1) have been developed pursuant to a broad consensus of copyright owners and service providers in an open, fair, voluntary, multi-industry standards process; (2) are available to any person on reasonable and nondiscriminatory terms; and (3) do not impose substantial costs on service providers or substantial burdens on their systems or networks. 17 U.S.C.A. § 512(i)(1)(B), (i)(2) (West. 2010).

In *Viacom*, YouTube an online video streaming platform had copyrightable materials uploaded and available for viewing on its service without the owners' permissions, and it had its own "standard technical measures" in place to combat copyright infringement in compliance with section 512's safe-harbors.⁶⁵ The second circuit stated that, "the safe harbor expressly disclaims any affirmative monitoring requirement - except to the extent that such monitoring comprises a "standard technical measure" within the meaning of [section] 512(i). Refusing to accommodate or implement a "standard technical measure" exposes a service provider to liability; refusing to provide access to mechanisms by which a service provider affirmatively monitors its own network has no such result."⁶⁶ Further, in *Vimeo*, the district court said that privacy settings do not constitute interference with standard technical measures, further reaffirming that on demand access to the standard technical measures is not required by section 512(i).⁶⁷

Attorney Lauren G. Gallo believes that "standard technical measures" as it is defined in section 512 is nearly impossible to comply with due to its "'open, fair, voluntary' agreement between copyright owners and services providers to police infringement" description.⁶⁸ One such standard technical measure which is used everywhere is "fingerprinting technology," a process in which users, creators, and websites encode unique identifying data about the copyrighted works such as tempo, tone, pitch, and color (think DNA of a video or song) that can then be compared to every other video or song within a database full of other fingerprinted works.⁶⁹ Further, Gallo said that Web2.0 poses a problem as Congress, when it drafted the DMCA in 1998 only envisioned the internet of yore, when 56 kilobits per second modems were the norm, Peer 2 Peer file sharing services such as Napster, on-demand music and video streaming services such as YouTube, Netflix, or Spotify, Bit Torrent

⁶⁵ *Viacom Intern. Inc., v. YouTube Inc*, 676 F.3d 19, 41 (2nd Cir. 2012).

⁶⁶ *Id* at 26.

⁶⁷ 972 F.Supp.2d at 12.

⁶⁸ Lauren G. Gallo, *The (IM)possibility of "Standard Technical Measures" for UGC Websites*, 34 COLUM.J.L. & Arts 283 (2011), available at: <http://hdl.handle.net/10022/AC:P:13765>.

⁶⁹ Gallo, at 284-5.

websites like The Pirate Bay, and electronic sell through services such as iTunes or Amazon even existed.⁷⁰

Once created, the STMs called for in section 512(i) would provide a clear and effective encouragement for the use of technologies to address online infringement.

The need for such Standard Technical Measures is now greater than ever. In a digital environment in which a single artist's work may be subject to many thousands of repeated infringements, across multiple URLs, and multiple platforms, there can be no real discussion of a viable take-down process without "Technical Measures." Such technical measures must, as congress understood in creating section 512i, be adopted as STM's, and made standard within the industry in order to be effective.

25. ARE THERE ANY EXISTING OR EMERGING "STANDARD TECHNICAL MEASURES" THAT COULD OR SHOULD APPLY TO OBTAIN THE BENEFITS OF SECTION 512'S SAFE HARBORS?

Yes. technical means already exist, and are already in widespread use in the industry. YouTube makes Content ID Software is available to select users willing to grant certain licenses. Audible Magic type technology, is widely used on University systems to prevent exchange of infringing files on research P2P networks.

There are practices that are used by significant amounts of the industry that should be considered, or used as a model for developing, "standard technical measures."

In *Viacom Int'l, Inc. v. YouTube, Inc.*, 940 F. Supp. 2d 110, 120 (S.D.N.Y. 2013), the court found YouTube qualified for the § 512 safe harbors even though it had and used "digital fingerprinting software, which automatically blocks submissions matching 'reference databases of fingerprints of copyrighted works' prior to their becoming available for public view," but used this software only to filter videos for those "content owners who had agreed to licensing and revenue sharing deals with YouTube." There was no

⁷⁰ See Gallo, at 292-3.

requirement that YouTube use this software to attempt to stop, for example, repeat postings of a video that has already been identified as infringing through a notice and takedown procedure.

VIII. REMEDIES

26. IS SECTION 512(G)(2)(C), WHICH REQUIRES A COPYRIGHT OWNER TO BRING A FEDERAL LAWSUIT WITHIN TEN BUSINESS DAYS TO KEEP ALLEGEDLY INFRINGING CONTENT OFFLINE -- AND A COUNTER-NOTIFYING PARTY TO DEFEND ANY SUCH LAWSUIT--A REASONABLE AND EFFECTIVE PROVISION? IF NOT, HOW MIGHT IT BE IMPROVED?

The time limits within Section 512(g)(2)(C) are an unreasonable threshold for an individual musician or group to meet. Section 512(g)(2)(C) requires a copyright owner to file a federal lawsuit within ten business days. This alone is a threshold that prohibits any individual rights holder from relief. Furthermore, the impact of the counternotice allows the infringing conduct to continue, including revenue generating ads sold over the infringing upload.

In the case of YouTube, this reinforces their business model of not only make the content available again, they also reinstate any ads that had been running along with the content.. Thus, copyright infringers are able to continue exploiting the copyrighted work *and* collecting ad revenue tied to that exploitation.⁷¹

Consider the costs of a lawsuit for an individual musician. For example, in Central District of California, the filing fee alone is four hundred dollars (\$400.00) and upwards of two hundred dollars (\$200.00) to professionally serve a defendant.⁷² This is before paying an attorney to handle the claim. As

⁷¹ For a typical language from Google’s bulletin board concerning AdSense “Google can restore ad-serving to the affected URLs upon receipt of a proper counter notification pursuant to sections 512(g)(2) and 3) of the DMCA.”

“To expedite our ability to process your counter notice, please use our online form at https://www.google.com/adsense/support/bin/request.py?contact_type=dmca_counter. Submitting a notice online ensures the quickest handling and processing of your request.”

⁷² See *Schedule of Fees*, United States District Court Central District of California (last visited Mar. 10, 2016), <https://www.cacd.uscourts.gov/court-procedures/filing-procedures/schedule->

a majority of the cases are subject to section 512(j) injunctive relief, there is no incentive for an attorney to enter into a contingency fee arrangement with an artist in almost all cases. It is contrary to Congressional intent to functionally lock musicians out of protecting their creations under Section 512. A less expensive and burdensome method is required for addressing contested claims.

27. IS THE LIMITED INJUNCTIVE RELIEF AVAILABLE UNDER SECTION 512(J) A SUFFICIENT AND EFFECTIVE REMEDY TO ADDRESS THE POSTING OF INFRINGING MATERIAL?

The limited injunctive relief available under section 512(j) is not a sufficient and effective remedy to address the posting of infringing material.

There are four safe harbors in Section 512. (1) under section 512(a) for transitory communications; (2) under section 512(b) for system caches; (3) under section 512(c) storage of information on systems or networks controlled by service providers at the direction of users; and (4) under section 512(d) information location tools, and failure to qualify for one safe harbor has no effect on qualifying for another.⁷³ Service providers that qualify for protection under the safe harbors are immune to monetary relief, and probably even from injunctive relief under section 512(j)(1)(B).⁷⁴

Section 512(j) is not a sufficient remedy to address the posting of infringing material. Many of the most blatant and deliberate infringing service providers reside in countries outside of the United States, which despite law

fees; *Schedule of Fees*, Skipnservice (last visited Mar. 10, 2016), <http://www.skipnservice.com/work-order/>.

⁷³ § 512(a), (b), (c), (d).

⁷⁴ If the service provider qualifies for the limitation on remedies described in subsection (a), the court may only grant injunctive relief in one or both of the following forms: (1) [a]n order restraining the service provider from providing access to a subscriber or account holder of the service provider's system or network who is using the provider's service to engage in infringing activity and is identified in that order, by terminating the accounts of the subscriber or account holder that are specified in the order; and/or (2) [a]n order restraining the service provider from providing access, by taking reasonable steps specified in the order to block access, to a specific, identified, online location outside the United States. 17 U.S.C.A. § 512(j)(1)(B) (West. 2010).

suits, fees, injunctions, and jail sentencing, just will not go away; with the most infamous website being The Pirate Bay.⁷⁵ Since its inception in 2003 the website has been shut down several times by various governments,⁷⁶ its leaders have been sent to prison,⁷⁷ twice the offices were raided and the servers seized,⁷⁸ numerous injunctions have been upheld against the site,⁷⁹ the site has been hacked,⁸⁰ and the site has been subject to millions in fines. Despite all of that, the website now boasts over five million (5,000,000) active users, it leaks classified documents, it still shares copyrighted music, movies, television shows, documentaries, books, and more.

This provision was intended to provide additional remedies to address infringement online, both domestically and from sources abroad that target the US market.

There are very few cases applying the standards in 512(j), and those that do state that an injunction would be moot because the service provider had already removed the infringing material and/or terminated the accounts of the infringers.⁸¹ These cases seem to assume that subsections (i) and (ii) are coextensive with the requirements for safe harbor regarding takedown and removal of repeat infringers. The third subsection of section (j)(1)(A), which provides for "such other relief as the court may consider necessary," with

⁷⁵ See The Pirate Bay website (last visited Mar. 10, 2016), <https://thepiratebay.se/>.

⁷⁶ See Mike Harvey, *Internet piracy trial of the decade to begin*, The Times (Feb. 13, 2009 at 10:41 AM), <http://www.thetimes.co.uk/tto/technology/article1859307.ece>.

⁷⁷ Enigmax, *THE PIRATE BAY TRIAL: THE OFFICIAL VERDICT – GUILTY*, Torrent Freak (Apr. 17, 2009), <https://torrentfreak.com/the-pirate-bay-trial-the-verdict-090417/>.

⁷⁸ Kim Zetter, *PIRATE BAY HAS BEEN RAIDED AND TAKEN DOWN: HERE'S WHAT WE KNOW* (Dec. 9, 2014 at 4:55 PM), <http://www.wired.com/2014/12/pirate-bay-raided-taken-down/>.

⁷⁹ Loek Essers, *German Injunction Knows The Pirate Bay Offline Temporarily*, PCWorld (last visited Mar. 10, 2016), http://www.pcworld.com/article/196501/Pirate_Bay.html.

⁸⁰ bkp, *User data stolen but not unsecured*, The Pirate Bay Blog (May. 11, 2007), <https://thepiratebay.se/blog/68>

⁸¹ See, e.g., *Io Group, Inc. v. Veoh Networks, Inc.*, 586 F. Supp. 2d 1132, 1154-1155 (N.D. Cal. 2008) (injunction moot because infringing content already removed); *Wolk v. Kodak Imaging Network, Inc.*, 2011 U.S. Dist. LEXIS 27541, *19-21 (S.D.N.Y. Mar. 17, 2011).

further limitations, is a potential area for expansion, but as of yet does not appear to have been used to issue any injunctions.

28. ARE THE REMEDIES FOR MISREPRESENTATION SET FORTH IN SECTION 512(F) SUFFICIENT TO DETER AND ADDRESS FRAUDULENT OR ABUSIVE NOTICES AND COUNTER NOTIFICATIONS?

c3 will address this question, if necessary, in its response to comments submitted by other organizations or individuals.

IX. OTHER ISSUES

29. PLEASE PROVIDE ANY STATISTICAL OR ECONOMIC REPORTS OR STUDIES THAT DEMONSTRATE THE EFFECTIVENESS, INEFFECTIVENESS, AND/OR IMPACT OF SECTION 512'S SAFE HARBORS.

c3 will address this question, if necessary, in its response to comments submitted by other organizations or individuals.

30. PLEASE IDENTIFY AND DESCRIBE ANY PERTINENT ISSUES NOT REFERENCED ABOVE THAT THE COPYRIGHT OFFICE SHOULD CONSIDER IN CONDUCTING ITS STUDY.

c3 will address this question, if necessary, in its response to comments submitted by other organizations or individuals.

CONCLUSION

The Content Creators Coalition was created with projects like this USCO study on Section 512 in mind. Our members range from everyday performers and songwriters to featured artists that are household names. What they have in common is that no matter how well known they are, they struggle with the impediments within the notice-and-takedown system within Section 512 of the DMCA.

The safe harbor provisions of the DMCA have disproportionately disadvantaged music creators. As argued throughout our submission, it is unfortunate that the DMCA Section 512 has provided sanctuary from liability

for the same entities within the technology and Internet industries that now treat music as a loss leader for selling advertisements and further opportunities to scrape data from an unsuspecting public. These companies, such as YouTube, are not really in the music business, they are in the data scraping and advertising business. Under normal conditions, this itself would be an affront to the great tradition of American music. Due to the perverse incentives under safe harbor, and the failure of notice-and -takedown, it is instead an existential threat to the creation of music.

It is our sincere hope that the result of this study is that Congressional action is taken to remedy the many wrongs of the DMCA, and act affirmatively to rebalance American copyright law for the purpose of allowing American musicians to fairly benefit from their amazing creations.

Exhibit DIDP A68



copyright alliance

Connecting creators · Protecting creative work

**BEFORE THE
U.S. COPYRIGHT OFFICE**

Section 512 Study

Docket No. 2015-7

COMMENTS OF THE COPYRIGHT ALLIANCE

Introduction

The Copyright Alliance appreciates the opportunity to respond to the Notice of Inquiry that seeks input on the Section 512 study.

The Copyright Alliance is the unified voice of the copyright community, representing the interests of thousands of individuals and organizations across the spectrum of copyright disciplines.¹ The Copyright Alliance is dedicated to advocating policies that promote and preserve the value of copyright, and to protecting the rights of creators and innovators. The individual creators and organizations that we represent rely on copyright law to protect their creativity, efforts, and investments in the creation and distribution of new copyrighted works for the public to enjoy.

The Digital Millennium Copyright Act (DMCA) was enacted at a time when the Internet

¹ The Copyright Alliance is a non-profit, public interest and educational organization that counts as its members over 15,000 individual creators and organizations across the spectrum of copyright disciplines. The Copyright Alliance represents the interests of authors, photographers, performers, artists, software developers, musicians, journalists, directors, songwriters, game designers and many other individual creators. The Copyright Alliance also represents the interests of book publishers, motion picture studios, software companies, music publishers, sound recording companies, sports leagues, broadcasters, guilds, unions, newspaper and magazine publishers, and many more organizations.

was in its infancy. In passing the notice and takedown provisions in Section 512 of the Act, Congress intended to encourage copyright owners and online service providers (OSPs) to work together to combat existing and future forms of online infringement.² This approach was designed to remedy hardships faced not only by large copyright owners and OSPs, but also individual creators who undeniably lack meaningful tools to fight online infringement. At the outset, Section 512 seemed to have achieved Congress's purpose; but court rulings and other unanticipated changes in the online environment have rendered these provisions less effective, creating an ecosystem where mass copyright infringements are an unfortunate and regular occurrence. While Section 512 remains a workable legal framework, it is evident that the statute is under strain and that additional stakeholder collaboration is needed in order for the statute to live up to its potential as imagined by Congress.

Eighteen years have now passed since the DMCA was enacted, and the interconnectivity provided by the Internet has fundamentally changed commerce, communication, and the way the public experiences copyrighted works. Consumers can access and enjoy all sorts of copyrighted works where and when they want, and creators benefit from new platforms that reach new audiences. But at the same time, online infringement is now rampant, causing widespread harm to the economic and creative vibrancy of the copyright community. Lisa Hammer is a musician and filmmaker who had to abandon her music career because of piracy, and now her film career is approaching a similar fate. She made only about \$100 off of her latest feature film, because free illegal copies of the work are so widely available on the Internet. "I used to make money through distribution on tapes and DVDs, and even a few VOD," she said.³ "But now, as soon as I release a film through an online distributor, or submit it to a film festival, I see [illegal] links to the film." A most unfortunate result for a creator who spent "thousands of hours and dollars studying filmmaking, music, and acting."

Congress struck a balance with the DMCA. In exchange for taking down infringing

² See H.R. Rep. No. 105-796, at 72 (1998).

³ Lisa Hammer, *Stand Creative Series*, CREATIVEFUTURE (Feb. 22, 2016).

content, an OSP who is not responsible for the infringement receives a safe harbor from monetary liability—but only if they comply with additional obligations, including: implementing a repeat infringer policy; registering an agent with the Copyright Office; and responding to infringements “expeditiously” once they have actual or apparent knowledge of them. Without these additional obligations, copyright owners (especially individual creators) stand little chance against advanced online infringement.

The voluntary adoption of technologies have helped address many of the logistical hurdles of locating infringements, and sending and processing hundreds of millions of takedown notices per year; however, it is essential that these technologies continue to be improved in order to keep pace with new technologies and new types of online infringement. In addition, more needs to be done to ensure that individual creators, who are the lifeblood of the creative community, are not left behind in a world where human review alone is no longer practical. Finally, the courts need to ensure that bad actor OSPs do not continue to operate under the protection of the Section 512 safe harbors. The courts should also ensure that the underlying goals of the DMCA and the intent of Congress are effectuated by, for instance, enforcing Section 512’s statutorily-required repeat infringer policies; properly applying the red flag knowledge standard; and recognizing the flexibility provided in the “representative list” language.

The copyright community stands ready to work with the Copyright Office, the Administration, and other stakeholders to ensure that Section 512 is an effective and meaningful statutory scheme to combat online infringement in the digital world. We seek to revitalize the spirit of cooperation between the copyright community and OSPs that Congress intended when it drafted and passed the DMCA. Congress recognized that cooperation would lead to the most beneficial, effective enforcement of the law. It is time for stakeholders to take voluntary action, and for the courts to effectuate Congress’s intention that copyright affords “effective—not merely symbolic—protection.”⁴

⁴ Sony Corp. of America v. University City Studios, 464 U.S. 417, 442 (1984).

We thank the Copyright Office for initiating this study to address the concerns of copyright owners and users.

I. General Effectiveness of Safe Harbors (NOI Questions 1–5)

1. The Problem of Repeat Infringers

The number of takedown notices sent is staggering, and this number is steadily increasing.⁵ As observed by Professor Bruce Boyden,⁶

Even for the largest media companies with the most resources at their disposal, attempting to purge a site of even a fraction of the highest-value content is like trying to bail out an oil tanker with a thimble. . . . The expenses of locating, identifying, and then sending a notice for that many files is so significant that even large companies must limit their efforts.⁷

No one in the notice and takedown ecosystem likes spending time and money to process and respond to millions of takedown notices, when they could be innovating and creating instead. Congress clearly did not intend such outcomes when it passed the DMCA—Section 512 was designed to protect copyrights, to protect non-culpable OSPs from liability when users uploaded infringing files, and to maintain many of the traditional contours of secondary liability in the digital environment.⁸ Congress understood that Internet enforcement

⁵ RIAA alone has noticed 55+ million instances of infringements to websites and 71+ million instances of infringements to search engines. RIAA, *THE DMCA IN 2016: IS IT WORKING?* (2016).

⁶ Professor Bruce Boyden is a Professor at Marquette University Law School and a member of the Copyright Alliance Academic Advisory Board.

⁷ For data on the quantity of notices sent by the Motion Picture Association of America, see Bruce Boyden, *The Failure of the DMCA Notice and Takedown System: A Twentieth Century Solution for a Twenty-First Century Problem*, CENTER FOR PROTECTION OF INTELL. PROP. (Dec. 5, 2013).

⁸ *Columbia Pictures Indus. v. Fung*, 710 F.3d 1020, 1039–40 (9th Cir. 2013) (noting that “the DMCA’s legislative history confirms that Congress intended to provide protection for at least some vicarious and contributory infringement,” and explaining that inquiries into contributory copyright infringement and the prerequisites for one or more of the DMCA safe harbors should be conducted independently); *Playboy Enters., Inc. v. Frena*, 839 F. Supp. 1552 (M.D. Fla. 1993); S. Rep. No. 105-190 at 19, 20 (1998); Boyden, *supra* note 7.

could not be solved unilaterally through government regulations. As noted by Professor Boyden, Congress hoped the law would bring together OSPs and copyright owners to “cooperate to detect and deal with’ infringing sites before content was distributed too widely.”⁹

The safe harbor that Section 512 provides was meant to be a limitation on monetary liability, not an exception to copyright infringement.¹⁰ OSPs were concerned about being party to lawsuits over isolated acts of infringement by their users, even if they were otherwise cooperative in remedying the infringement as soon as they were put on notice.¹¹ In exchange for OSPs’ cooperation, Congress created “safe harbors” to minimize the possibility that fear of liability would inhibit technological innovation. The bill sought to protect OSPs who work with the copyright community to mitigate and combat online infringement. The inclusion of these safe harbors, along with the other provisions in the bill, allowed the DMCA to “provide greater certainty to service providers concerning their legal exposure for infringements that may occur in the course of their activities.”¹² Indeed, a review of the legislative history reveals that the intent of the safe harbors was to afford reasonable immunity to reasonable actors; not to create a mechanism by which OSPs could disregard copyright law.¹³

⁹ Boyden, *supra* note 7, at 2.

¹⁰ See *Ellison v. Robertson*, 357 F.3d 1072 (9th Cir. 2004) *citing* S. Rep. 105–190, at 19 (“Congress provided that ‘limitations of liability apply if the provider is found to be liable under existing principles of law.’”); S. Rep. 105–190 (“The [safe harbor] limitations ... protect qualifying service providers from liability for all *monetary* relief for direct, vicarious and contributory infringement. Monetary relief is defined in subsection [(k)(2)] as encompassing damages, costs, attorneys’ fees, and any other form of monetary payment. These subsections also limit injunctive relief against qualifying service providers to the extent specified in subsection (j).”).

¹¹ See S. Rep. No. 105-190.

¹² S. Rep. No. 105-190, at 20; H.R. Rep. No. 105-551, pt. 2, at 49-50.

¹³ See H.R. Rep. No. 105-551.

Today not only are stakeholders grappling with tens of millions of notices a year,¹⁴ but even worse, the business models employed by certain bad actors actually take advantage of judicial interpretations of this statutory scheme. As a result, uploaders repost infringing content within seconds, and these bad actors profit from having millions of infringing content shuffle off and on of their website. After all, an OSP can obtain revenues even when copyrighted content stays up only for a brief time. If copyrighted content receives just one viewing or download before being taken down, in the aggregate of millions of works, that adds up to millions of ad revenue-producing views for the OSP.¹⁵ Congress did not envision this type of abuse when it enacted the DMCA; such abuse needs to be addressed.

2. New Technologies

In 1998, the intent of the notice and takedown process was to give copyright owners a faster alternative to filing for a temporary restraining order in court, mostly so they could keep prevent copies distributed legally on physical goods (DVDs, CDs) from being illegally distributed on the Internet for people to download. Today vastly increased download speeds and instant streaming capabilities have left copyright owners virtually no opportunity to prevent mass unauthorized copying, distribution and performance. Accordingly, automated technologies have become more critical than ever.

Automated technologies can intervene during the upload process, and can simplify the takedown process to effectively shorten the time that infringing content remains available for consumption. While these automated technologies may not work for all service providers, we remain optimistic that investment in new technologies and collaborative agreements are essential to a healthy online ecosystem. Proper interpretation of all of the Section 512 provisions will also incentivize OSPs to invest in automated technologies for copyright owners and their users.

¹⁴ Boyden, *supra* note 7.

¹⁵ David Newhoff, THE ILLUSION OF MORE, *Copyright Office to Review Safe Harbor in DMCA* (Jan. 6, 2016), <http://illusionofmore.com/copyright-office-to-review-safe-harbor-in-dmca/>.

3. Judicial Interpretation of Section 512

The statutory scheme established by Section 512 goes well beyond the notice and takedown provisions. Courts need to better ensure the requirements set forth in the statute are met: requiring that OSPs have repeat infringer policies; rejecting safe harbor protection for OSPs who directly infringe, or actively encourage or benefit from infringement; and disqualifying OSPs from the safe-harbor immunities when they willfully ignore known infringing content on their websites. OSPs differ greatly in the degree of care they extend to the safe harbor requirements—certain torrent sites, for example, do the bare minimum or disregard the DMCA altogether.

As the Fourth Circuit observed in *ALS Scan. v. RemarQ Comm.*, “[t]he DMCA was enacted both to preserve copyright enforcement on the Internet and to provide immunity to service providers from copyright infringement liability for ‘passive,’ ‘automatic’ actions in which a service provider’s system engaged through a technological process initiated by another without the knowledge of the service provider.”¹⁶ On the other hand, where an OSP has knowledge of, benefits from, or engages in infringement, the safe harbor is not and should not be available; because their involvement is no longer passive and automatic.

We need to ensure copyright owners—not bad faith OSPs and infringers—are rewarded for their labors and continue to create and disseminate works to the benefit of the public. As such Section 512 requires much more cooperation from OSPs than simply responding to takedown notices.

II. Notice and Takedown Process (NOI Questions 6-14)

The DMCA notice and takedown process provides a workable legal framework for OSPs and copyright owners to protect against infringement of copyrighted content on the Internet;

¹⁶ 239 F.3d 619 (4th Cir. 2001) *citing* H.R. Conf. Rep. No. 105–796, at 72 (1998), *reprinted in* 1998 U.S.C.C.A.N. 649 (“The DMCA’s protection of an innocent service provider disappears at the moment the service provider loses its innocence, i.e. at the moment it becomes aware that a third party is using its system to infringe.”).

however, implementation of the process needs to be improved to better respond to highly advanced online infringement tactics and the limited resources of smaller creators and OSPs. Because of the explosion of infringing content online, such improvements should, to the extent reasonable, include the use of automated technologies, even though the occasional so-called “bad notice” may slip through. The vast majority of notices issued by reputable rights owners are legitimate, and the benefits of automated services far outweigh the rare cases of “bad notices.” Also, many larger entities already integrate human review into their automated takedown procedures. But as already articulated, individual creators (who typically have been provided little information and lack meaningful resources) are left to rely on manual web searches, reverse image searches, Google alerts, or word of mouth to discover infringements of their work.

1. Individual Creators

We reached out to our individual creator membership to hear their experiences with Section 512’s notice and takedown process. We received 219 responses from creators working in a variety of disciplines.¹⁷ The responses show that (1) many creators do not know how to file a takedown notice or even what the notice and takedown process is; and (2) even if they have participated in the process, they lack access to the technologies necessary to actually keep infringing content from reappearing.¹⁸

Sixty-eight percent of the creators we surveyed have never filed a takedown notice before because (1) they have either never heard of it; (2) it would take too much effort; (3) the process is too difficult to navigate; or (4) they are skeptical it would do anything to stop online infringement.¹⁹ These are valid concerns, and illustrate a need for easily accessible educational

¹⁷ See *infra* Appendix.

¹⁸ *Id.*

¹⁹ *Id.*

resources to help creators better understand and avail themselves of the notice and takedown process. These educational offerings will also serve OSPs; better informed copyright owners will ultimately cut down on the number of inappropriate or incomplete notices filed.

Individual creators who file notices lack the resources of larger copyright owners to make a meaningful impact. Eighty-five percent of those we surveyed said they issue takedown notices all by themselves, taking time away from their creative pursuits, which pushes many to give up enforcement efforts all together. These creators are defenseless against the volume and reach of online infringement, especially in light of how easy it is to re-post something nowadays. For example, Keith, a writer from Austin, has never personally posted his work on social media sites, but still spent four hours on Tumblr trying to locate 50 of the 2000+ URLs that contained re-postings of his work: “I can’t afford the time to find the full 2000 [that Tumblr asked for],” he said. He has also found his work on Twitter, Imgur, Reddit, Facebook, Instagram, Pikore, MySpace, Xanga, Nexopia, and more.²⁰

And online infringement does not just stop at loss of compensation or control; it also can damage the professional integrity of creators. For example, Melissa, a photographer from California, was horrified to learn that her Victoria Secret style bridal photos were stolen and used on porn sites. “This has been horrible!” she said. “I’ve been in business for 32 years. Married for 35 years and would never create anything for porn!”²¹

Individual creators would benefit from greater access to automated technologies to ease the burden of filing takedown notices. The biggest hurdle is cost: many automated technologies are not yet affordable for the average individual creator, but further discussions of the interested parties could reveal at least some solutions to the problem. Sixty-seven percent of those surveyed still use basic web searching to find instances of infringement and 36% rely, at least partially, on

²⁰ *Id.*

²¹ *Id.*

word of mouth. Our survey revealed that the only advanced automated technologies at these creators' disposal are reverse image or text searching tools and Google Alerts. More over, the courts can alleviate some of the burden felt by individual creators by properly adhering to the knowledge standards and repeat infringer policies laid out in Section 512. Generally, OSPs (at least the larger entities) are better equipped to implement and extend access to automated technologies than individual creators. Further, as we are already seeing, there is a real incentive to voluntarily provide these tools since doing so simplifies the OSP's existing obligations.

The consensus from our individual creator membership is that online infringement has reached a point where content can be posted on hundreds of online infringement sites within days, and where individual creators—without access to effective tools—are unable to make any real impact in protecting their work. Online infringement has become so commonplace that it destroys once legitimate markets for creators' works. For example, Susan, an audio producer from California, was told by a radio station that they saw no point in paying her for her work because they could “get it for free.”²²

The impact of online infringement on a creator's livelihood has been thoroughly documented in testimony, news articles, and blog posts over the past few years. Here are just a few of the many stories told by creators:

- Maria Schneider, a Grammy award winning composer, testified before the House Judiciary Committee that she invested \$200,000 of her own money into a new album to only discover her song had quickly been pirated all over the Internet.²³ “The resulting loss of income, combined with the cost of monitoring the Internet and sending takedown notices, threatens her ability to continue creating her award-winning music.”²⁴

²² *Id.*

²³ *Section 512 of Title 17: Hearing Before the Subcomm. of Courts, Intell. Prop., and the Internet of the Comm. on the Judiciary* (2014) (statement of Maria Schneider).

²⁴ *Id.*

- Kathy Wolfe, the owner of the independent film company Wolfe Video, lost \$3 million in revenue in 2012 from the excessive pirating of her top 15 film titles.²⁵ She “found more than 903,000 links to unauthorized versions of her film” in a single year, spending “over \$30,000 a year—about half of her profits— just to send out takedown notices.”²⁶ With losses this large, she has been forced to cut her marketing budget in half, cut employees’ pay, and discontinue her own salary.²⁷ Making art is often expensive, and most artists already sacrifice paying themselves to keep the art going; this should not be exacerbated by online infringement.
- Tor Hanson, co-founder of YepRoc Records/Redeye Distribution, testified in 2013 at the House Judiciary Committee hearing on *Innovation in America: The Role of Copyrights* on this very point: “[We] have limited budgets and whatever revenue and profits [we] can eke out are directed toward [our] primary goals, music creation by [our] music label’s artists and then the marketing and promotion of this music to the American public so they are able to continue this creative process.”²⁸

2. New technologies and voluntary measures

OSPs and copyright owners alike have voluntarily introduced new technologies that address some of the volume and logistical concerns arising from the notice and takedown process. The documented success of these automated technologies suggest that continued cooperation amongst stakeholders will likely solve many of the other, more complicated problems with administering the law.²⁹ Partnerships in the technology and copyright sectors will

²⁵ Christopher S. Stewart, *As Pirates Run Rampant, TV Studios Dial Up*, WALL STREET JOURNAL, Mar. 3, 2013.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Innovation in America: The Role of Copyrights: Hearing Before the Subcomm. on Intellectual Property, Competition, and the Internet of the H. Comm. on the Judiciary*, 113th Cong., 6 (2013) (statement of Tor Hansen, Co-President/Co-Founder YepRoc Records/Redeye Distribution).

²⁹ *Section 512 of Title 17: Hearing Before the Subcomm. of Courts, Intell. Prop., and the Internet of the Comm. on the Judiciary* 75 (2014) (testimony of Katherine Oyama, Sr. Copyright Policy Counsel, Google, Inc.)

lead to smarter, faster, and more efficient automated tools to better identify infringing material without sacrificing user privacy and legitimate fair uses. These partnerships are not only desired, they are critical.

Partnerships will also assist in making automated technologies more accessible. As noted by the composer Maria Schneider, the major concern with these technologies is one of access:

[E]very artist should be entitled to [these] services, to register their music once and for all. Just like the successful ‘do not call list,’ creators should be able to say ‘do not upload.’ If filtering technology can be used to monetize content, it can also be used to protect it ... if you didn’t have Content ID [or similar technologies] for those big companies, I can’t even imagine how big ... takedown numbers would be. They would be insane. So imagine if [automated technologies] worked for everybody.”³⁰

This technology may also be useful in identifying works that have previously been taken down to prevent repeat infringements.³¹

a. Content Matching Technologies

The Google Content ID program, for example, offers qualifying³² copyright owners access to a fingerprinting program that actively notifies owners of user uploads that contain their material. Google requires a copy of the content in order to place it inside of a database that

(“[I]ncentivizing [these] kinds of business partnerships and collaborations so that everyone can kind of grow this pie together and get more content out there with users is the right way to go.”).

³⁰ *Section 512 of Title 17: Hearing Before the Subcomm. of Courts, Intell. Prop., and the Internet of the Comm. on the Judiciary* 54, 108 (2014) (testimony of Maria Schneider).

³¹ Steven Tjoe, *Taking a Whack at the DMCA: The Problem of Continuous Re-Posting*, CENTER FOR PROTECTION OF INTELLECTUAL PROPERTY (Mar. 14, 2014), <http://cpip.gmu.edu/2014/03/14/taking-a-whack-at-the-dmca-the-problem-of-continuous-re-postings/>.

³² *See generally* YOUTUBE, Qualifying for Content ID, <https://support.google.com/youtube/answer/1311402> (last visited Feb. 9, 2016).

generates a unique fingerprint. Once the fingerprint has been generated, every time a new video is uploaded to YouTube, it will be compared against all the 15 million+³³ fingerprints in its database.³⁴ Some content owners have chosen to block infringing content, while others have chosen to monetize the content in favor of the copyright owner. The technology underlying the Content ID program is able to identify whether the new upload is an exact or partial copy, and whether the new upload is of lower quality than the original copy (suggesting online infringement).³⁵ Before participating in the program, copyright owners must prove that they are the lawful and *exclusive* owner of the reference material. Once ownership is established, copyright owners are able to respond to infringing content by either having the content tracked, monetized,³⁶ muted, or removed. 8,000+ groups have already signed on to the Content ID program, and have claimed over 400 million videos.³⁷

Google has also established the Content Verification Program for larger content holders who establish an “ongoing need to have content removed from YouTube” to have advanced searching capabilities.³⁸ Tools like this are vital to copyright owners who are responsible for large catalogs of works or high-value individual works.

³³ *Section 512 of Title 17: Hearing Before the Subcomm. of Courts, Intell. Prop., and the Internet of the Comm. on the Judiciary* 98 (2014) (testimony of Katherine Oyama, Sr. Copyright Policy Counsel, Google, Inc.).

³⁴ YOUTUBE, How Content ID works, https://support.google.com/youtube/answer/2797370?hl=en&ref_topic=2778544 (last visited Feb. 9, 2016).

³⁵ *Id.*

³⁶ *Section 512 of Title 17: Hearing Before the Subcomm. of Courts, Intell. Prop., and the Internet of the Comm. on the Judiciary* 42 (2014) (testimony of Katherine Oyama, Sr. Copyright Policy Counsel, Google, Inc.) (“ . . . most of our partners are choosing to monetize their content rather than having it all come down.”).

³⁷ Press Release, YouTube, *Statistics*, <https://www.youtube.com/yt/press/statistics.html>. Part of expanding access to creators is also not excluding those creators who choose to participate in YouTube’s new streaming service from still participating in the Content ID program. See Sandra Aistars, Op-ed: *Why are artists disappearing from the Internet* COPYRIGHT ALLIANCE (June 24, 2014), http://copyrightalliance.org/2014/06/why_are_artists_disappearing_internet#.VrpdeMe9a-8.

³⁸ YOUTUBE, Content Verification Program Application, https://www.youtube.com/cvp_app (last visited Feb. 9, 2016).

b. AudibleMagic

Similar to Content ID, Audible Magic's automatic content recognition technology compares registered content with any attempted video and audio uploads.³⁹ Embedded into the registered content is the owner's information and any express wishes for how content is to be used.⁴⁰ Platforms can then apply this information in conjunction with their own content policies in order to make a timely decision on whether to post the content.⁴¹ At times, the service also leads to direct licensing agreements between copyright owners and platforms.⁴² Each month, 250,000 new copyrighted titles are added to the voluminous database of registered content.⁴³

c. Dropbox Hashtags

Cloud storage provider Dropbox has developed hashtag technologies (attaching a unique identifier to content) to permit the company to de-duplicate files. According to an article published by TechCrunch, Dropbox stores just one copy of a specific file that can be accessed by any user who has uploaded a copy of that file, saving significant space on Dropbox's server.⁴⁴ This same technology is used to save copyright owners the undue burden of having to submit numerous DMCA takedown notices when other parties try to make public the exact same infringing file.

³⁹ AUDIBLE MAGIC, Copyright Compliance Service, <https://www.audiblemagic.com/compliance-service/#how-it-works>.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Greg Kumparak, *How Dropbox Knows When You're Sharing Copyrighted Stuff Without Actually Looking at Your Stuff*, TECHCRUNCH (Mar. 30, 2014), <http://techcrunch.com/2014/03/30/how-dropbox-knows-when-youre-sharing-copyrighted-stuff-without-actually-looking-at-your-stuff/>.

d. NexGuard Watermarking

AMC Networks, along with other video content owners, has adopted Civolution's NexGuard watermarking technology to deter online infringement of popular TV shows, such as *The Walking Dead*. NexGuard uses session-based watermarking technologies to elevate traditional digital rights management to become more relevant and useful in an international, online environment.⁴⁵ A digital watermark is attached to video files, allowing copyright owners to know if any distribution partners leak content before a critical release date.⁴⁶ Individual studios have been successful with watermarking to even track individual infringers (by way of set-top boxes), but this technology is largely inaccessible to cable companies, because they would need to "deploy watermark-embedding systems with each pay-TV provider affiliate."⁴⁷ Other services providing watermarking technologies for these purposes include Friend MTS and MarkAny.

e. Private Sector Voluntary Agreements

In addition to developing new technologies, stakeholders from the Internet ecosystem have developed voluntary agreements to further mutual objectives. Some examples include:

- The TAG initiative, launched in February 2015 validates tools and services that take measures to prevent advertisements from running on pirate sites.⁴⁸ According to the Digital Citizens Alliance, ad-

⁴⁵ *Intertrust Partners with Civolution to Bring NexGuard Watermarking to its ExpressPlay DRM System*, BUSINESS WIRE, <http://www.businesswire.com/news/home/20160217005499/en/Intertrust-Partners-Civolution-Bring-NexGuard-Session-Based-Watermarking>.

⁴⁶ Todd Spangler, *Programmer Deploys Civolution's NexGuard watermarks to track source of illegal copies*, VARIETY (Feb. 22, 2016), <http://variety.com/2016/digital/news/amc-piracy-walking-dead-watermarking-1201711621/>.

⁴⁷ *Id.*

⁴⁸ The Trustworthy Accountability Group (TAG), a coalition of online advertising stakeholders, including advertising agencies, ad placement networks, media companies, and consumer protection organizations. Press Release, Advertising Industry Launches Initiative to Protect Brands Against Piracy Websites, Trustworthy

supported pirate sites can be extraordinarily profitable, with many displaying ads from “blue chip premium brands.”⁴⁹

- The Center for Copyright Information’s (CCI) Copyright Alert System, launched in February 2013, is a partnership between motion picture studios and record labels and five major ISPs to implement a graduated response scheme that uses both educational messaging and mitigating measures to change consumer behavior on transferring illegal files. In the first ten months of operation, 1.3 million alerts were sent, and a CCI study found that 57% of users would stop infringing immediately if they received an alert.⁵⁰
- In 2007, various stakeholders agreed upon the Principles for User Generated Content to eliminate infringing content, while still taking into account fair use considerations. This informal understanding at least illustrates a willingness of OSPs and copyright owners to agree on a middle ground.⁵¹
- And finally, collaboration between copyright owners and payment processors like Visa, Mastercard, and Paypal—encouraged by the Intellectual Property Enforcement Coordinator—has led to a process that prevents known infringing sites from access to payment networks. This helps cut off the revenues that such sites rely on to operate.

Private-sector voluntary agreements are a critical tool for addressing online infringement.

Accountability Group (February 10, 2015), <https://www.tagtoday.net/advertising-industry-launches-initiative-to-protect-brands-against-piracy-websites/>.

⁴⁹ DIGITAL CITIZENS ALLIANCE, GOOD MONEY GONE BAD: DIGITAL THIEVES AND THE HIJACKING OF THE ONLINE AD BUSINESS (Infograph) (2014), available at <http://www.digitalcitizensalliance.org/cac/alliance/resources.aspx>.

⁵⁰ CENTER FOR COPYRIGHT INFORMATION, COPYRIGHT ALERT SYSTEM: PHASE ONE AND BEYOND 1 (2014).

⁵¹ The agreement was made by CBS, Disney, YouTube, and other copyright owners and OSP entities.

3. DMCA Provisions Interpreted Contrary to Congressional Intent

a. Registered Agent Requirement

A basic requirement of an OSP receiving the Section 512(c) safe harbor is designating an agent with the U.S. Copyright Office to receive notifications of infringement. This requirement also mandates that an OSP list the agent's contact information on their website, and that they set up email forwarding to ensure notifications are not being sent to outdated email addresses.⁵² The importance of this requirement was evident in the Ninth Circuit decision *Ellison v. Roberts*, in which the court denied AOL the benefits of the Section 512(a) safe harbor after it failed to direct communications to a proper registered agent. AOL did not forward emails from its old email address to its new one.⁵³ This essentially created a "vacuum" for notices of infringement to fall into and be ignored.

Our membership has experienced numerous instances of absent or inaccurate information regarding an OSP's designated agent, making enforcement difficult or impossible to follow through on. For these reasons, OSPs seeking the safe harbors must keep accurate their registered agent information. This problem could be rectified in part with a modernized Copyright Office. For example, an improved IT system might allow the Office to test the accuracy of the contact information listed in its designated agent directory, and to put in place a simpler system for OSPs to update their contact information.

b. Representative List

The DMCA notice and takedown process, as often interpreted by the courts, has largely placed the burden on copyright owners to list every instances of infringement on an OSP's

⁵² 17 U.S.C § 512(c)(3) (2012).

⁵³ 357 F.3d at 1080 (9th Cir. 2004) (noting that while AOL did update its address with the Copyright Office, its failure to forward emails left some takedown notices fully ignored).

website. The “representative list” requirement in provision 512(c)(3)(A)(ii) specifies that a takedown notice must identify the “copyrighted work claimed to be infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a *representative list* of such works at that site.” This is paramount, given the volume of online infringement, because creators too often lack the time, money, and resources to list with specificity every single URL containing infringing copies of their work. Notwithstanding this language, the courts have recently begun placing the sole burden of tracking, identifying, and “adequately documenting” infringements squarely on the copyright owner, which makes little sense in practice and discourages individual creators from enforcing their rights.⁵⁴

Congress did not intend this high degree of specificity for notices. As noted in the legislative history, the “representative list” requirement is satisfied,

[f]or example, where a party is operating an unauthorized Internet jukebox from a particular site, it is not necessary that the notification list every musical composition or sound recording that has been, may have been, or could be infringed at that site. Instead it is sufficient for the copyright owner to provide the service provider with a *representative list* of those compositions or recordings in order that the service provider can understand the nature and scope of the infringement being claimed.⁵⁵

c. Information Location Tools

This NOI asks whether Section 512(d), covering “information location tools” such as search engines, appropriately addresses OSPs that link or refer to infringing content. When the DMCA was drafted, search engines already played a significant role in the Internet ecosystem. In the years following its enactment, that role grew exponentially. Today when someone is looking for something on the Internet, the first place they go to is a search engine. While search engines

⁵⁴ See *Perfect 10 v. CCBill*, 488 F.3d 1102, 1113 (2007); *Viacom Int’l v. YouTube, Inc.*, 940 F.Supp. 2d 110, 115 (S.D.N.Y. 2013).

⁵⁵ H.R. Report No. 105–551 (emphasis added).

often direct people to lawful sources of content, too often they also direct users to illegal content. It is imperative that OSPs who provide information location tools and copyright owners find ways to work together to effectively address these infringement problems.

While the copyright community appreciates many of the additional steps these OSPs have taken, it is important that the steps be effective and not just symbolic. For example, Google has implemented a policy whereby it demotes sites based on the number of takedown notices that Google receives in conjunction with other factors. Unfortunately, the demotion policies, and other policies, have largely been ineffective because infringing content still shows up near the top of search results. One solution would be for search engines to place less weight on the infringing site's traffic and more weight on the number of takedown notices the site receives. Another solution would be for OSPs and copyright owners to jointly enlist the support of independent third parties to evaluate the effectiveness of particular measures, develop ways to improve their efficiency and effectiveness, and to highlight best practices.

4. Human Review and Bad Faith Notices

The vast majority of notices are sent in good faith. In the rare circumstance where a copyright owner sends a notice in "bad faith," the counter notification procedure offers an adequate remedy.⁵⁶ Additionally, as stated by Professor Sean O'Connor, even many of the notices sent are simply repeats of previously taken down content:

The highest volume of notices seem to be for reposted works, i.e., ones that have already been taken down on notice, yet reappear within hours often on the same site. Further, many of these do not even purport to be transformative or non-infringing. They are not mash-ups, remixes, covers, etc. They are simply the original work reposted repeatedly by an unauthorized person. That the posters do not seem to believe they have any real rights to the works seems

⁵⁶ See 17 U.S.C. § 512(g) (2012).

supported by the surprisingly low number of counter notices submitted (relative to the enormous number of takedown notices).⁵⁷

Our members are ardent supporters of fair use. As creators, our members often rely on fair use in their own work. The automated tools mentioned previously typically only remove infringing content that is between a 90–100% match of the reference file submitted by the copyright owner.⁵⁸ As one observer noted, “Targeting these egregious cases makes sense given that the continuous re-posting of blatantly (really, inarguably) infringing wholesale copies accounts for the vast majority of takedown notices.”⁵⁹ Creators are overwhelmed by how much clearly infringing content is available on the Internet. Generally creators tend to only issue takedown notices for the most egregious cases. It is unlikely that a takedown notice would be issued for a use that may be reasonably construed as fair.

III. Counter Notices (NOI Questions 15-18)

The counter notification process ensures that users uploading content have a mechanism for responding to notices sent by mistake or in bad faith. The challenge, however, lies in the range of options available to a copyright owner in those circumstances where a counter notice is filed improperly. The Act provides that the copyright owner has only ten days to bring suit against the alleged infringer, otherwise the infringing material or link is re-posted.⁶⁰ Bringing a federal lawsuit is a significant burden, especially for individual creators; and the ten-day requirement is, as a practical matter, virtually impossible to satisfy for even the larger, more

⁵⁷ *Section 512 of Title 17 Hearing Before the Subcomm. Of Courts, Intell. Prop., and the Internet of the Comm. on the Judiciary* 14 (2014) (testimony of Sean O’Connor).

⁵⁸ Even Electronic Frontier Foundation has supported certain automated technologies. *Fair Use Principles for User Generated Video Content*, ELECTRONIC FRONTIER FOUNDATION (“[f]iltering mechanism is able to verify that the content has previously been removed pursuant to an undisputed DMCA takedown notice or that there are ‘three strikes’ against it ... [including] nearly the entirety (e.g. 90% or more) of the challenged content is comprised of a single copyrighted work.”).

⁵⁹ Tjoe, *supra* note 31.

⁶⁰ 17 U.S.C. § 512(g)(2)(C).

sophisticated copyright owners. Making matters worse, in some circuits a copyright owner must first receive a copyright registration certificate (as opposed to simply registering their work) in order to bring an infringement case; this adds to the burden on smaller copyright owners.⁶¹ If the copyright owner has not registered the work before sending the takedown notice, there is no way they could meet the ten-day requirement—even if they apply for expedited registration.⁶²

Although many OSPs have attempted to educate their users about the counter notification process, very few counter notices are ever filed; the content targeted by most takedown requests is almost always clearly infringing, or is posted by users who do not wish to reveal their identity or location. A number of OSPs have developed educational material to make the counter notice process easier for their users to understand.

IV. Legal Standards (NOI Questions 19–21)

In a world where online infringement is so routine and pervasive, the courts must stop condoning improper OSP takedown policies.

1. The Red Flag Standard

An OSP will lose safe harbor protection by failing to act when confronted with actual or apparent knowledge. Copyright owners can provide the OSP with actual knowledge by sending a notice, or they can prove the OSP has apparent knowledge⁶³ of infringement under the “red flag

⁶¹ See, e.g., *La Resolana Architects, PA v. Clay Realtors Angel Fire*, 416 F.3d 1195, 1202-07 (10th Cir. 2005), *abrogated on other grounds by Reed Elsevier v. Muchnick*, 559 U.S. 154 (2010); *M.G.B. Homes, Inc. v. Ameron Homes, Inc.*, 903 F.2d 1486, 1488-89 (11th Cir. 1990), *abrogated on other grounds by Reed Elsevier*, 559 U.S. 154 (2010).

⁶² Due to staffing and other resource challenges, the Office’s current pendency times for applications now exceed a year for certain registrations. See *F.A.Q.*, COPYRIGHT OFFICE, <http://copyright.gov/help/faq/faq-what.html#certificate> (noting that paper applications can take up to 13 months; electronic applications up to eight).

⁶³ 17 U.S.C. § 512(c)(1)(A)(ii) (“red flag knowledge”).

knowledge” standard.⁶⁴ Once aware, the OSP is required to “act expeditiously to remove, or disable access to, the material” to remain safe harbor protections.⁶⁵

Under the red flag knowledge standard, a copyright owner can prove an OSP has knowledge by showing it was aware of facts or circumstances that make infringement apparent. The court asks whether (1) the OSP was aware of the circumstances of infringement (the so-called “subjective prong”); and (2) the “infringing activity would have been apparent to a reasonable person operating under the same or similar circumstances” (the so-called “objective prong”).⁶⁶ However, the Second Circuit in *Viacom v. YouTube*⁶⁷ and the Ninth Circuit in *UMG Recordings v. Shelter Capital Partners*⁶⁸ arguably made the OSPs only responsible for responding to the infringement explicitly identified in takedown notices.⁶⁹ These courts’ interpretation of the red flag standard is so restrictive that it has basically eliminated the carefully balanced burden allocation that Congress intended. It would be helpful if the Copyright Office would offer guidance to courts to help them more accurately interpret the provision going forward.

2. Willful Blindness

Additionally, some courts have incorrectly applied the concept of willful blindness in the safe harbor context. Knowledge of infringing activity will be imputed to an OSP who has consciously avoided obtaining actual knowledge under a theory of willful blindness.⁷⁰ In *Viacom*

⁶⁴ H.R. Rep. No. 105–551 (II), pt. 2, at 58 (1998).

⁶⁵ 17 U.S.C. 512(e)(1)(A)(iii).

⁶⁶ H.R. Rep. 105–551, pt. 2, 61 (1998).

⁶⁷ 676 F.3d 19 (2d Cir. 2012).

⁶⁸ 106 U.S.P.Q.2d 1253 (9th Cir. 2013).

⁶⁹ See Boyden, *supra* note 7.

⁷⁰ *Viacom*, 676 F.3d at 35 (quoting *Tiffany (NJ) Inc. v. eBay Inc.*, 600 F.3d 93, 109 (2d Cir. 2010)).

v. YouTube, the Second Circuit correctly articulated that willful blindness is triggered when the OSP is “aware of a high probability of the fact [of infringement] and consciously avoid[s] confirming that fact.”⁷¹ The willful blindness doctrine provides courts with additional guidance and effectuates Congress's intent to “discourage today’s common ‘do not look’ policy,”⁷² and to encourage the sorts of advanced “trust and safety” departments that are implemented by groups like eBay.⁷³ But in *Capitol Records v. Vimeo*, the court shielded the OSP from liability despite a record that showed the OSP and its employees turned a blind eye to infringement. The court determined that any conscious avoidance by the OSP needs to be “tailored” to the “specific infringing content at issue in the litigation,” and that the knowledge demonstrated in the record “did not relate to the Videos-in-Suit.”⁷⁴ However, the hallmark of a willfully blind defendant is that the defendant has affirmatively avoided acquiring specific knowledge about infringing material or activity on its system. By definition, then, a service provider that is willfully blind to infringing activity on its system has ensured that it will not have knowledge that is “tailored to” the “specific infringing content at issue,” because that is the very knowledge the service provider has consciously avoided.

As a practical matter, if improper lower court decisions like these continue to proliferate, OSPs will effectively have no affirmative obligations. Congress envisioned the DMCA as creating a regime of joint responsibility, in which OSPs would act reasonably and proactively in the face of actual or apparent knowledge. Coupled with the existing practical limitations of the notice and takedown process, copyright owners would have little meaningful protection against

⁷¹ 676 F.3d 19 (2d Cir. 2012).

⁷² Tjoe, *supra* note 31.

⁷³ eBay voluntarily spent as much \$20 million per year to promote trust and safety on its website; set up a “trust and safety” department with 4000 employees, over 200 of which were dedicated solely to deterring infringement; implemented a “fraud engine” as early as 2002 in order to ferret out illegal listings; and canceled certain transactions. *Tiffany Inc.*, 600 F.3d 93.

⁷⁴ *Vimeo*, 972 F. Supp. 2d at 524–25.

online infringement. When there is no meaningful “red flag” knowledge requirement, the result is a toothless statute. The Copyright Office should articulate to the courts that many of these decisions are misinterpreting the knowledge standards, and by doing so, are disregarding the legislative intent behind drafting them in the first place.

V. Repeat Infringers (NOI Questions 22–23)

To be eligible for the safe harbor, an OSP must design and implement a sufficient repeat infringer policy. OSPs are not required to police their sites for infringements, so long as they have reasonably⁷⁵ implemented a repeat infringer policy; however, the courts will decline to protect an OSP under the safe harbor provisions when they have actual knowledge of a user’s “blatant, repeat infringement of a willful and commercial nature.”⁷⁶ Congress wanted to ensure that infringers “who repeatedly or flagrantly abuse their access to the Internet through disrespect for the intellectual property rights of others should know that there is a realistic threat of losing that access.”⁷⁷

We want to be clear that repeat infringer policies are “fundamental safeguard[s] for copyright owners ... essential to maintain[ing] the strong incentives for [OSP]s to prevent their services from becoming safe havens or conduits for known repeat copyright infringers.”⁷⁸

⁷⁵ *BMG Rights Mgmt, LLC v. Cox Communication*, 2015 U.S. Dist. LEXIS 161091 (V.E.D.C. 2015) (citing *CCBill LLC*, 488 F.3d at 1109); *Capital Records, LLC v. Escape Media Grp., Inc.*, No. 12-cv-6646, 2015 U.S. Dist. LEXIS 38007, 2015 WL 1402049, at *9 (S.D.N.Y. March 25, 2015) (“For example, a service provider must have a ‘working notification system’ and a ‘a procedure for dealing with DMCA-compliant notifications,’ and the provider must ‘not actively prevent copyright owners from collecting information needed to issue such notifications’... Additionally, the penalty imposed for repeat infringers (when appropriate circumstances exist) must be termination and not some lesser consequence.”).

⁷⁶ *Corbis v. Amazon*, 351 F. Supp.2d at 1104; *CCBill*, 488 F.3d at 1102.

⁷⁷ H.R. Rep. 105–551, pt. 2, 61 (1998).

⁷⁸ *Capitol Records, Inc v. MP3Tunes, LLC*, 821 F.Supp.2d 627, 637 (S.D.N.Y. 2011).

The problem is not in the legal framework drafted by Congress, but instead in how OSPs choose to implement policies. As illustrated in *Capitol Records v. Escape*, some OSPs are fully capable of identifying works and tracking repeat infringers, but instead choose to craft a repeat infringer policy in a way that makes enforcement nonexistent.⁷⁹ As the court found, the online music service provider Grooveshark, owned by Escape, had two policies for removing content: One Strike and DMCA Lite.⁸⁰ Under the One Strike policy, content would be removed and the user would be banned from re-posting content.⁸¹ On the other hand, under the DMCA Lite policy—which made up 94% of all Grooveshark takedowns—any takedown notice that Grooveshark decided did not perfectly comply with the DMCA’s requirements would only result in the content being removed, the user’s account would remain active.⁸² In denying Grooveshark immunity under the safe harbor, the court noted that “[a]dopting a repeat infringer policy and then purposely eviscerating any hope that such a policy could ever be carried out is not an ‘implementation’ as required by § 512(i).”⁸³ Yet because Grooveshark publicly claimed it complied with the DMCA (even though it did not) it was able to operate for 8 years.⁸⁴ For nearly a decade, Grooveshark profited from massive copyright infringement, misled users into thinking that they were a legitimate music service, and competed unfairly with other legitimate and licensed music services.

⁷⁹ Copy L. Rep. (CCH) P30, 744 (S.D.N.Y. 2015).

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ Letter from Paul Geller, Grooveshark’s Executive Vice President (“There does appear to be some confusion about whether Grooveshark is a legal service. So let’s set the record straight: there is nothing illegal about what Grooveshark offers to consumers. . . . First, there is a distinction between legal and licensed. Laws from Congress. Licenses come from businesses. Grooveshark is completely legal because we comply with the laws passed by Congress, but we are not licensed by every label (yet). We are a technology company, and we operate within the boundaries of the Digital Millennium Copyright Act of 1998.”) Digital Music News has since removed the open letter from their website.

Through cooperation, OSP should be able to adopt more acceptable repeat infringer policies. Some progress has already been made in this regard by multi-stakeholder groups such as the Center for Copyright Information with its Copyright Alert System program. The Department of Commerce’s Internet Policy Task Force has voiced support for this graduated alert system; which tracks a subscriber’s frequency of infringing activity, and imposes elevating consequences for continued activity.⁸⁵ Such efforts should be expanded to include other stakeholders and additional categories of creative works.

VI. Standard Technical Measures (NOI Questions 24–25)

As new automated technologies advance and receive the approval of relevant stakeholders, these groups should work together to ensure these technologies meet the requirements of “standard technical measures” (STMs) under provision 512(i). This is a statutory device made even more important in light of provision 512(m), which states that an OSP has no duty to monitor for infringements “except to the extent consistent with a standard technical measure complying with the provisions of subsection (i).”⁸⁶ So, failing to accommodate an STM would disqualify an OSP for the safe harbor, thereby subjecting them to liability.⁸⁷

Utilizing this entirely un-utilized statutory device would permit parties to enter into voluntary agreements without need for new enforcement provisions in the Act itself. After all, Congress strongly “urge[d] all of the affected parties expeditiously to commence voluntary, inter-industry discussions to agree upon and implement the best technological solutions available to achieve these goals.”⁸⁸

⁸⁵ INTERNET POLICY TASK FORCE, COPYRIGHT POLICY, CREATIVITY, AND INNOVATION IN THE DIGITAL ECONOMY 2 (2010).

⁸⁶ 17 U.S.C. § 512(m)(1).

⁸⁷ *Viacom*, 676 F.3d at 41.

As written, there is enormous potential for the STM provision to incentivize new technologies and encourage stakeholder collaboration. However, to satisfy the requirements of the statute, stakeholders would need to come together “in an open, fair, voluntary, multi-industry standards process.”⁸⁹ Further, any agreements should make applicable STMs also available to individual creators, and in a way that does not overly burden OSPs. It seems whatever obstacles may exist do not relate to finding entities willing to voluntarily create automated technologies—that is already happening—but rather, the extent to which stakeholders can come together in a timely process to make those tools publicly available. The Administration’s Intellectual Property Enforcement Coordinator and the Copyright Office could look at the experience of the Department of Commerce’s Internet Policy Task Force’s DMCA multi-stakeholder process to inform its own approach to these issues.

VII. Remedies (NOI Questions 26–28)

1. Misrepresentation

Provision 512(f) applies misrepresentation claims under a subjective standard, placing the burden on the alleged infringer to show that the copyright holder believed that the content subject to its takedown notice was non-infringing. In *Rossi v. Motion Picture Ass’n of America*, the Ninth Circuit articulated,

[w]hen enacting the DMCA, Congress could have easily incorporated an objective standard of reasonableness. The fact that it did not do so indicates an intent to adhere to the subjective standard traditionally associated with a good faith requirement ... Congress included an expressly limited cause of action for improper infringement notifications, imposing liability only if the copyright owner’s notification is a “knowing misrepresentation. A copyright owner cannot be liable simply because an unknowing mistake is made, even if the copyright owner acted unreasonably in making the mistake. Rather, there must be a demonstration of some

⁸⁹ 17 U.S.C. § 512(i)(2)(A).

actual knowledge of misrepresentation on the part of the copyright owner.⁹⁰

Copyright owners already bear the burden for enforcing their copyrights on the Internet, so if there were legislative changes to expand 512(f), it would potentially open these owners up to “limitless lawsuits just [for] policing [their] copyrighted material on the Internet.”⁹¹ The Copyright Office should confirm that misrepresentation claims should be analyzed under the subjective good faith standard. As discussed previously, the overwhelming majority of takedown notices are legitimate; lowering the threshold for what is considered an illegitimate notice, or increasing penalties would severely undermine the statutory scheme with little positive benefit. To the extent that provision 512(f) does not do enough to address abusive takedown notices, voluntary best practices are the most appropriate vehicle for improvement.

Conclusion

The Copyright Alliance and its members embrace technologies that give creators new platforms to disseminate their work; however, these users of these technologies should also respect creators’ exclusive rights. The notice and takedown process was meant to provide an efficient mechanism for addressing online infringement, but it can only be effective if the other interrelated requirements of Section 512 remain meaningful and effective. Stakeholders must come together, as Congress intended, to sculpt lasting principles that establish boundaries that creators, innovators, and OSPs should all respect.

⁹⁰ 391 F.3d 1000, 1004–05 (9th Cir. 2004), *cert denied*, 544 U.S. 1018 (2005).

⁹¹ *Ouellette v. Viacom Int’l, Inc.*, No. CV-10-133-M-DWM-JCL, slip op. (D. Mon. Mar. 13, 2012).

If you have any questions or would like any additional information regarding our views in this submission, please contact Sarah A. Howes at showes@copyrightalliance.org.

Respectfully submitted,

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Appendix

The Copyright Alliance Survey

Individual Creators Thoughts on the DMCA Notice and Takedown Process

- The DMCA takedown process affects all kinds of creators, but most of our feedback came from visual artists; such as photographers and illustrators.

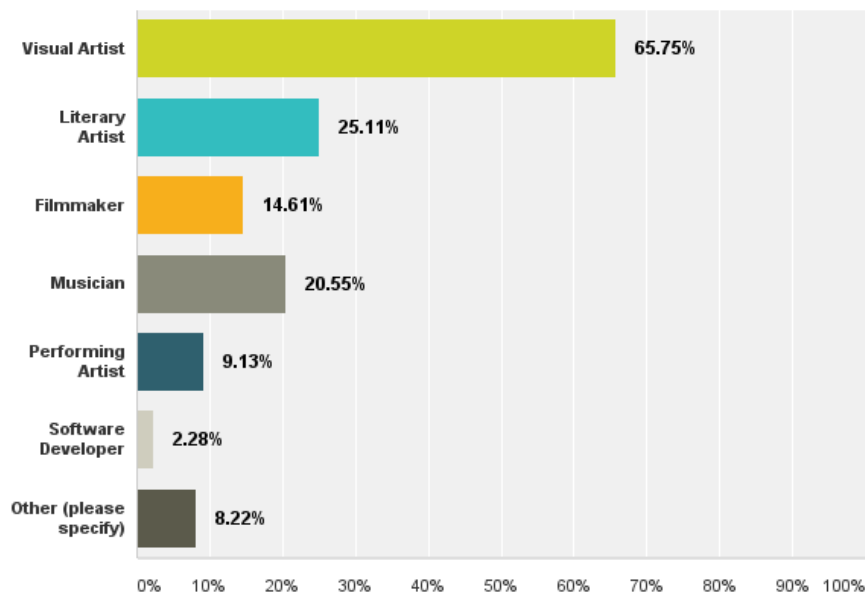


Figure 1 Who Participated in Our Survey

- 126 (59%) of the 213 participants have been directly harmed by online piracy, and many offered concrete examples of how piracy has cost them money, time, and business:
 - “Piracy has ruined the music industry and everyone’s career who has anything to do with it. In addition to losing work, I can’t get a proper recording contract, because labels no longer have development capital for unknown artists.” – John, Musician, San Francisco, CA
 - “People scan my photos from old books & magazines and post them online. There is a huge amount of time involved in fighting this piracy.” – Charlyn, Photographer, New York City, NY

- “About 10% of my content has been stolen, repackaged, and re-sold by third parties on the Internet” – James, Filmmaker, Carlsbad, CA
- “I have lost tens of thousands of dollars to online piracy” – Romeo, Filmmaker, South Pasadena, CA
- “A stolen image is later stolen by another website, and another, creating a long steam of infringements. Each usage should have a fair fee. Issuing a takedown notice would be fine, but it’s at a volume for photographers that it would take not only days but weeks. None of the infringements I’ve experienced would have merited a formal lawsuit, as the groups taking my work are small-scale entities. I do not want a lawsuit, I do want fair payment for each use.” – Hillary, Photographer, Oshkosh, WI
- “I am a freelancer and I rely on selling each story to make money. A local radio station takes my stories out of a statewide show and uses it as though I did the story for them. They refuse to take freelance stories from me, because they say they can “get it for free.” – Susan, Audio Producer/Reporter, Lomita, CA
- “My last film was pirated almost immediately after it’s digital release, and within days was available on over 100 piracy sites.” – Tom, Filmmaker, Oak Park, CA
- “I have no way of knowing how many pirated copies of my books have been downloaded. I used to spend hours sending DMCA notices, but after I noticed that oftentimes the books were re-loaded, I gave up. It’s not possible to estimate what I’ve lost.” – Carol, Writer, Wellesley, MA
- “My work has been pirated numerous times, and DMCA’s are not always effective. Even if the sites take the content down, usually it’s back up again in a few days. Some sites make it so difficult to find the way to contact them to send a DMCA in the first place that it’s next to impossible. Some require so much personal information, which is then used to harass the content creator, that it’s safer to not contact them at all.” My sales are very low anyway, and it hurts knowing that my work is out there for free, with little recourse to do anything about it.” – Michele, Writer, Olympia, WA

- “I sent Tumblr a takedown notice with a URL and some text, and asked them to take down the URL and all the 2000+ re-blogs that accompanied that post. After 4 hours, I had URLs for 50 of them. I can’t afford the time to find the full 2000. I have never posted on any social media site, but my work has been posted unlawfully on Twitter, Tumblr, Imgur, Reddit, Facebook, Instagram, Pikore, MySpace, Xanga, Nexopia, and many more.” – Keith, Writer, Austin, TX
 - “We used to be able to make a living from music production and album sales. This has almost completely disappeared. The day our latest album was released it was immediately available on various pirate sites. Google searches ranked those pirate download links first, at the top of the first page of search results, above our own web site and legitimate stores.” – Zenon, Musician, New York
 - “Someone stole photos from a private link to a client and posted them on a porn site. This is an ongoing problem now. I had taken glamor/bridal boudoir photos of my bride to give her new husband as a gift. The photos were Victoria Secret type. Not X rated. However, it came to my knowledge that the link to the photos was shared by the hacker. This has been horrible! I’ve been in business for 32 years. Married for 35 years and would never create anything for porn! Not to mention my client’s privacy being breached.” – Melissa, Photographer, Santa Barbara, CA
- When asked, 68% (a significant majority) of creators surveyed said they have never filed a DMCA takedown notice.

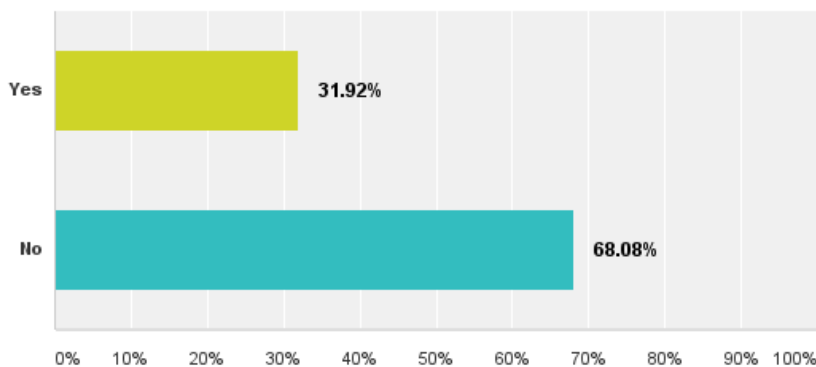
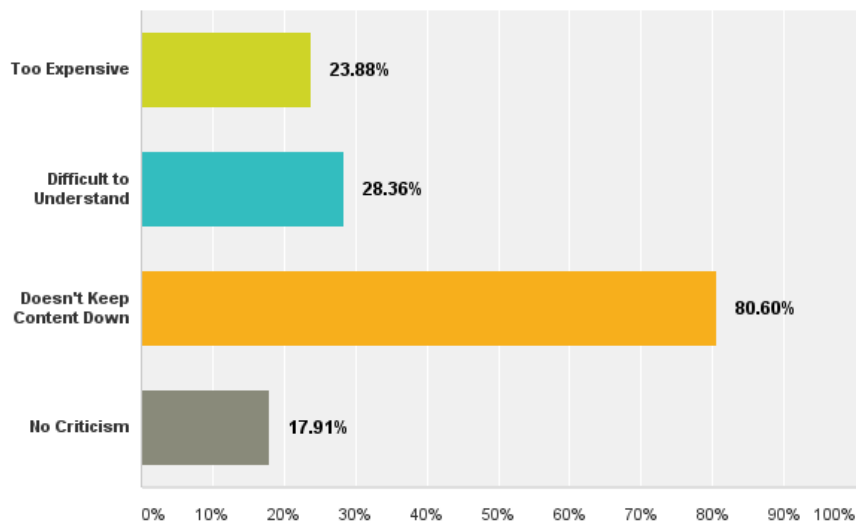


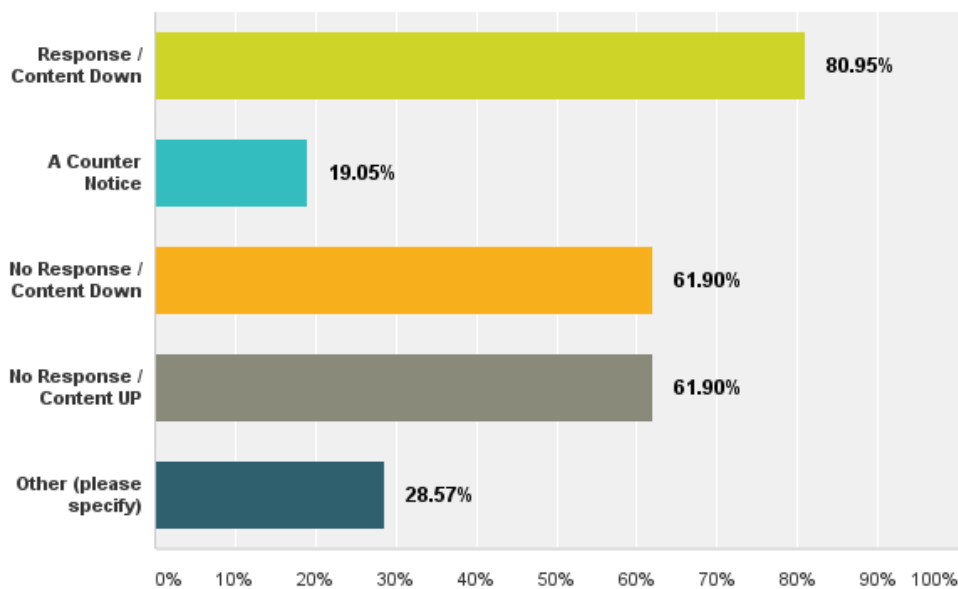
Figure 2 Do Creators File DMCA Takedown Notices?

- Of those who have never filed a DMCA takedown notice:
 - **42%** said they've never heard of the process before;
 - **14%** said it was too much effort to try to understand;
 - **12%** said the process was too difficult to navigate;
 - **20%** they were too skeptical a notice would do anything; and
 - **22%** of those surveyed said they've never had their work infringed on the Internet.
- For those creators who have filed a DMCA takedown notice, they found the notice and takedown process ineffective, because it:



- When asked who files notices on the creator's behalf, **85%** responded that they file the notice themselves, without the help of staff, an attorney, a third-party service.
- When asked what tools or methods do creators use to discover infringing content on the Internet:
 - **67%** said they conduct manual web searches;
 - **36%** said they find out from word of mouth;
 - **31.75%** said they use reverse image services like TinEye or Pixsy; and
 - **11.12%** said they use at least one of the following methods: name, title or text tracking, watermarking, or the Google Alert service

- As evidenced by our survey responses, not every notice sent resulted in a response from the OSP that the content had been taken down. Creators were free to select as many answers that applied to their experiences. **61.9%** of creators who answered this question said they had at least one instance of not receiving a response from the OSP and the content itself just staying up. This question does not even touch on the fact that even if content is initially taken down, it often goes right back up again.



- For those **28.5%** creators who choose “other,” the stories were most unfortunate. Creators received:
 - Hostile comments or online bullying;
 - Threatening messages that argued the OSP was legally justified in keeping content up;
 - Runarounds where the OSP claimed the notice was not specific enough, or that the creator had to prove their identity; or
 - Bounce emails or error messages that the notice did not process.

Exhibit DIDP A69

Before the
UNITED STATES COPYRIGHT OFFICE
Library of Congress

Notice of Inquiry

Section 512 Study: Notice and Request for
Public Comment

Docket No. 2015-7

COMMENTS OF UNIVERSAL MUSIC GROUP

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Universal Music Group (“UMG”) respectfully submits these comments in response to the Copyright Office’s Notice of Inquiry (“NOI”) respecting the safe harbors contained in Section 512 of the Copyright Act, 17 U.S.C. § 512. *See* Section 512 Study: Notice and Request for Public Comment, 80 Fed. Reg. 81862 (Dec. 31, 2015).

UMG is the world’s leading music company. Among its record labels are such iconic names as Blue Note, Capitol, Def Jam, Deutsche Grammophon, Interscope, Island, Motown, Republic, UMG Nashville, Universal Music Latin Entertainment, and Virgin; indeed, UMG owns the most extensive catalog of recordings in the industry, covering the last hundred years of many of the world’s most popular artists. UMG’s businesses also include Universal Music Publishing Group (“UMPG”), one of the industry’s premier music publishing operations.

As the owner of a vast array of copyrighted content, and as a company that is committed to providing its artists and songwriters with rightful value for the content they create, the interpretation, application, and impact of the Section 512 safe harbors is an issue of critical importance to UMG. While UMG recognizes and embraces the need for a dynamic online marketplace – including for purposes of the distribution of music – the reality is that the balance that Congress attempted to strike in drafting Section 512 has not been realized. Instead, the protections of Section 512, as interpreted by the courts, have overwhelmingly favored online service providers, imposed enormous burdens on copyright owners such as UMG, and fundamentally skewed the marketplace for music content.

UMG appreciates the efforts of the Copyright Office in studying the impact and effectiveness of Section 512. UMG hopes that its comments will aid the Copyright Office in understanding how the application of Section 512, as written and as interpreted by the courts, has affected the stakeholders that are subject to its provisions.

General Effectiveness of Safe Harbors

1. Are the section 512 safe harbors working as Congress intended?

The answer is “no.” When Congress passed the Digital Millennium Copyright Act (“DMCA”) in 1998, it intended to strike a balance between two interests:

- (1) protecting intellectual property rights in an increasingly digital environment; and
- (2) promoting the continued growth and development of online technology and commerce.

See, e.g., H.R. Rep. No. 105-551, pt. 2, at 23 (1998) (“A thriving electronic marketplace provides new and powerful ways for the creators of intellectual property to make their works available to legitimate consumers in the digital environment. And a plentiful supply of intellectual property -- whether in the form of software, music, movies, literature, or other works -- drives the demand for a more flexible and efficient electronic marketplace.”); S. Rep. No. 105-190, at 8 (1998) (“Due to the ease with which digital works can be copied and distributed worldwide virtually instantaneously, copyright owners will hesitate to make their works readily available on the Internet without reasonable assurance that they will be protected against massive piracy.”).

Congress also expected that copyright owners and service providers would work together to share the burden of identifying and preventing infringement. H.R. Rep. No. 105-551, pt. 2, at 49 (1998) (noting that the Act “preserves strong incentives for service providers and copyright owners to cooperate to detect and deal with copyright infringements that take place in the digital networked environment”).

However, this balance between copyright owners and service providers has not occurred. To be sure, online technology and commerce has developed – indeed, it has developed far beyond anything Congress likely imagined in 1998. Internet speeds have increased by a factor of 200 or more. Video files that took an hour to upload in 1998 now take mere seconds to upload.

In 1998 there were a few hundred thousand websites on the Internet; now there are over *one billion*. Cyberlockers, peer-to-peer networks, and sites populated with unlicensed, user-uploaded videos did not yet exist. And recorded music, which in 1998 was distributed almost exclusively in physical format, is now widely available in digital form online.

Protection for intellectual property rights, on the other hand, has not remotely kept up with these breakneck advances in technology. Instead, online infringement has proliferated, and the burden to police and address it has fallen almost exclusively on copyright owners. This fact is largely due to the manner in which courts have interpreted and applied the safe harbors of Section 512, in the face of technology companies that have welcomed, and even encouraged, infringement. Although the legislative history of Section 512 makes clear that Congress never intended the safe harbors to apply to sites “where sound recordings, software, movies or books were available for unauthorized downloading, public performance or public display,” S. Rep. No. 105-190, at 48 (1998), that is precisely what has happened.

Companies whose businesses are based entirely on the intellectual property of others – *i.e.*, “where sound recordings...[are] available for unauthorized downloading, public performance or public display” – have routinely been granted the protection of Section 512’s safe harbors. *See, e.g., UMG Recordings, Inc. v. Veoh Networks Inc.*, 665 F. Supp. 2d 1099, 1111 (C.D. Cal. 2009) (“*Veoh I*”) (rejecting argument that service provider was ineligible for safe harbor even if “its founders, employees, and investors knew that widespread infringement was occurring on the Veoh system”), *aff’d sub nom UMG Recordings, Inc. v. Shelter Capital Partners LLC*, 718 F.3d 1006 (9th Cir. 2013) (“*Veoh II*”); *Capitol Records, LLC v. Vimeo, LLC*, 972 F. Supp. 2d 500, 524 (S.D.N.Y. 2013) (notwithstanding “disconcerting” evidence that service provider’s executives and employees were aware of widespread infringement on the

service, service provider was generally entitled to safe harbor where evidence did not demonstrate awareness of “specific instances of infringement” of videos-in-suit); *see also* *Viacom Int’l, Inc. v. YouTube, Inc.*, 676 F.3d 19, 33 (2d Cir. 2012) (“*Viacom II*”) (holding that evidence that “YouTube employees conducted website surveys and estimated that 75-80% of all YouTube streams contained copyrighted material” was insufficient to deprive YouTube of Section 512’s safe harbor).

Perversely, the impact of these decisions has been to shift an insurmountable burden for preventing and addressing online infringement from the technology companies exploiting this infringing content for their own profit onto the shoulders of aggrieved copyright owners whose intellectual property rights are being violated. Like many other copyright owners, UMG has been compelled to devote extraordinary resources in an effort to address this burden. It employs dozens of people and has incurred costs of millions of dollars – including personnel expense, investments in computer hardware and software, third-party vendor expenses, and substantial contributions to trade associations – specifically and solely to protect its interests, and those of its recording artists and songwriters, against online infringement. However, notwithstanding this investment and dedication by UMG, the extent of online infringement and the rate at which it is continuing to grow, coupled with the imbalance of burdens between copyright owners and service providers under the current legal system, have rendered it impossible to fully address the massive violations of UMG’s intellectual property rights.

UMG is the home to hundreds of active recording artists (and thousands more who are no longer recording), and hundreds of active songwriters. It owns or controls the copyright for millions of recordings and several million more compositions, and released more than one thousand new albums in 2015. Under the current legal regime, and the burdens it has imposed,

UMG is simply unable to protect its entire catalog and the wealth of intellectual property that it represents.

UMG knows this because of its experience devoting extraordinary effort and resources to protect its artists' content. For purposes of illustration, we describe here one recent effort to *partially* protect just one album, from just one artist, for just a short period of time. UMG is the distributor of the Taylor Swift album "1989," which was released by her label, Big Machine Records. Prior to the release of the album in October 2014, Ms. Swift raised concerns respecting compensation paid to artists by advertising-supported online streaming services. In light of Ms. Swift's position, UMG and Big Machine Records dedicated additional resources to addressing online infringement of the album.

Like Big Machine Records, UMG was already engaged in substantial efforts to prevent such infringement, including sending takedown notices to cyberlockers, pirate sites, and search engines (both directly and working through the Recording Industry Association of America ("RIAA") and IFPI, an international recording industry trade association); however, the magnitude of the online infringement of "1989" was massive and required significant additional steps. First, UMG adopted a policy of actively searching for and blocking the album and all but one of its tracks on YouTube, rather than monetizing that content on the YouTube platform.¹ And second, UMG devoted additional efforts to taking the recordings down from two other sites – SoundCloud and Tumblr – which paid no royalty at all at the time, and which responded relatively quickly to takedown notices.

¹ The exception was "Shake It Off," which had been released as a single months earlier and was already widely available on YouTube, and which UMG continued to monetize. The response to No. 15 below provides a further description of the options available to UMG with respect to UMG content that is available on YouTube.

These efforts came at a considerable cost to both UMG and Big Machine Records. A staff of UMG employees devoted essentially 100% of their time between November 2014 and February 2015 to manually search for infringements of “1989” and its tracks on YouTube and other sites, so that these unlawful uses could be blocked or taken down. These efforts were supplemented by approximately a dozen employees working for IFPI who devoted a significant portion of their work days to the same task.

Since the release of the album and through March 11, 2016, UMG or its agents have had to send over *66,000* DMCA takedown notices to online sites hosting copies of “1989” or its tracks. This is in addition to nearly *114,000* blocks that were automatically put in place through YouTube’s Content ID system (described in response to No. 15 below), and nearly *30,000* additional blocks or takedowns that UMG or its agents manually placed through online interfaces that YouTube and SoundCloud make available to copyright owners. In addition, trade associations working on UMG’s behalf, including RIAA and IFPI, identified over *half a million* URLs that link to infringements of “1989” since the album was released, and requested that search engines delist those URLs. *See* 17 U.S.C. § 512(d).

On the positive side, these massive efforts bore some fruit. Almost immediately, UMG and Big Machine Records began seeing evidence that consumers looking for unlicensed online copies of “1989” were unable to find them, and were thus being driven to purchase the album. Tweets from the time reflect the success of UMG’s and Big Machine’s efforts:

I’m addicted to half the songs from Taylor Swifts 198[9] album. #FML I can’t find any of her songs on youtube. Guess I’ll have to get the cd. (@ShaelynnR, December 14, 2014)

all i want to do right now is illegally download taylor swift’s album but i can’t find it anywhere.. life (@oklindsay, December 17, 2014)

Ok @taylorswift13 you win I had to buy ‘wildest dreams’ bc I can’t listen to it free ANYWHERE (@ginaxgaga, December 20, 2014)

Taylor swift has done an incredible job of preventing her album leaking like srsly I can't even find a download link so imma have to buy it (@50shadesofconor, December 24, 2014)

it's easier to get Ebola then to download Taylor Swifts new album haha (@samvwilkinson, December 26, 2014)

Can't illegally download 1989 anywhere...ugh. TSwift is really about to make me buy this damn album...well played T...well played (@aREAL_GEM, December 29, 2014)

Finally caved and bought @taylorswift13 #1989 as I can't find it anywhere else. Fair play Taylor, if you're gonna do copyright do it well (@inunrelatednews, January 9, 2015)

why the hell can't my mp3 downloader download 1989 i've been dying to listen to bad blood f! (@bmbstmntx, January 21, 2015)

you win, taylor swift. officially had to buy your album so i could actually listen to it (@paigecwilliams, January 22, 2015)

update: i had to buy taylor swift music from itunes since i couldn't find it anywhere else ☹ (@amandawiss3, February 1, 2015)

On the other hand, UMG was not able to eliminate all infringement of “1989” online – far from it. For example, data available to UMG reflects that the “1989” album was illegally downloaded nearly *1.4 million* times from bittorrent sites. Accordingly, notwithstanding UMG’s and Big Machine’s considerable efforts, infringement was still accomplished on a massive scale.

More fundamentally, it would be impossible for UMG or Big Machine (or any other music company) to replicate this approach more broadly. While not every album attracts the same attention as “1989,” the effort to locate online infringements of recordings of UMG’s many hundreds of active artists would be several orders of magnitude above the substantial effort reflected above, and all but impossible as a practical matter.

However, that is precisely the burden that courts interpreting Section 512 and service providers that have taken advantage of those rulings have placed on copyright owners – namely, to monitor the entire Internet to find infringing content, and then to affirmatively identify and

take down that content. Whatever its original intent, Congress simply could not have contemplated either the massive scope or the diverse methods of online infringement when it passed Section 512 in 1998, much less the disproportionate impact such infringement would have on copyright owners. To be sure, the availability and use of content identification processes by some service providers, such as YouTube’s Content ID system, helps to address a fraction of these issues. But the vast majority of service providers – including companies that were built on making infringing content available to users – do not use such technology. It is for these reasons that reform of Section 512 is desperately needed.

2. Have courts properly construed the entities and activities covered by the section 512 safe harbors?

The answer here is also “no.” As discussed in response to No. 1 above, courts have construed the *entities* covered by the Section 512 safe harbors far too broadly, encompassing not only neutral conduits for Internet traffic and passive repositories of content, but websites that were specifically designed and promoted for the sharing and distribution of infringing content.

For example, in *Viacom Int’l Inc. v. YouTube, Inc.*, 718 F. Supp. 2d 514 (S.D.N.Y. 2010)

(“*Viacom I*”), *aff’d in part and remanded*, 676 F.3d 19 (2d Cir. 2012), the court noted that

a jury could find that the defendants not only were generally aware of, but welcomed, copyright-infringing material being placed on their website. Such material was attractive to users, whose increased usage enhanced defendants’ income from advertisements displayed on certain pages of the website, with no discrimination between infringing and non-infringing content.

Id. at 518. The court nonetheless ultimately concluded – as a matter of law – that defendants were entitled to the safe harbors of Section 512. *Viacom Int’l Inc. v. YouTube, Inc.*, 940 F. Supp. 2d 110 (S.D.N.Y. 2013) (“*Viacom III*”).

The courts have also construed the *activities* covered by the Section 512 safe harbors beyond what is appropriate. For example, in *Veoh I* and *Veoh II*, the courts held that a service

provider's safe harbor from infringement "by reason of the storage at the direction of a user of material," 17 U.S.C. § 512(c)(1), applied not only to the *storage* of content, but to *all* "access-facilitating processes that automatically occur when a user" uploads, streams or downloads infringing material. *Veoh II*, 718 F.3d at 1016. As a result, not only was Veoh's *storage* of infringing content insulated from liability, so too were its functionalities that made multiple copies of each uploaded video, and then allowed users to *share*, *stream*, and *download* that infringing content. Indeed, Veoh allowed *any* user to watch *any* video on its site (*i.e.*, users could watch a video uploaded by another user), and then to download that video for free through use of a "download" button. *See id.* at 1011 (noting that "Veoh allows people to share video content over the Internet"); *see also Vimeo*, 972 F. Supp. 2d at 519 (although acknowledging the "challenges that copyright holders face in the digital age in which their works may be downloaded with ease to users' devices," concluding that "storage" in Section 512(c) included technology that permitted any user to download content saved on the service provider's site). Interpretations such as this are eviscerating the effectiveness of the DMCA.

3. How have section 512's limitations on liability for online service providers impacted the growth and development of online services?

Section 512's limitations on liability have had at least two significant impacts on the growth and development of online services. First, contrary to the law's original intent, by facilitating the provision of copyright content to consumers without consent from, or compensation to, copyright owners, Section 512's limitations have actually *adversely* impacted the growth and development of legitimate, licensed online music services. Those services have been forced to develop business models where users either do not pay anything for use of the music (*e.g.*, ad-supported services), or where users pay very low prices because the services are competing with free, unlicensed services.

Second, Section 512's limitations on liability have *facilitated* the formation and growth of *multi-billion dollar* corporations that are based almost entirely on the intellectual property of others, and yet the compensation those companies have paid – if any – to the owners of that intellectual property pales in comparison to the established value of the intellectual property. Astonishingly, in 2015, sales of *vinyl* record albums generated more revenues for copyright owners than the billions upon billions of free on-demand streams offered by services that rely upon Section 512 safe harbors.

Both of these outcomes are possible only because courts have interpreted Section 512 in a manner that effectively insulates companies whose founders, employees, and investors know that widespread infringement is occurring on their platforms, so long as they remain ignorant of specific instances of infringement. And in both instances, the copyright owners – including, but not limited to, artists and songwriters – lose. As discussed further in response to No. 4 below, copyright owners lose with respect to the service providers that are protected by Section 512, because they are either uncompensated for their content or compensated at heavily depressed levels, and they lose with respect to licensed music services because the market rate for music royalties is pulled down by the availability of music through the Section 512 service providers. This cannot be the outcome that Congress intended.

4. How have section 512's limitations on liability for online service providers impacted the protection and value of copyrighted works, including licensing markets for such works?

Section 512's limitations on liability have dramatically affected the ability of copyright owners to protect their works. As discussed throughout these comments, the imbalance between service providers and copyright owners resulting from the interpretation and application of Section 512, and the practical inability of copyright owners to shoulder the enormous burden that

courts have placed almost exclusively upon them, means that most copyrighted works go unprotected online.

This reality has also had a direct financial impact on copyright owners and artists. Before the advent of YouTube, when legitimate online music services were in their infancy, those services would typically pay approximately 1¢ for each play of a sound recording online. That figure has dropped dramatically. YouTube, which is the world's largest online music platform (albeit built on the back of copyright owners, through the unauthorized uploading and posting of copyrighted content), has almost single-handedly driven the per-play rate down by as much as 90%. In negotiations with copyright owners, YouTube (like other online music services) is able to point to the vast quantity of unlicensed music that remains available for free online – and which copyright owners have been powerless to stop given the application of the DMCA – as justification for ever-lower compensation rates to copyright owners. And YouTube also has the leverage that it could stop paying entirely, decline to renew a cooperative agreement with copyright owners, and then claim that it can rely on the DMCA to insulate itself from any liability. While UMG would vigorously dispute such a claim, the risk is manifest. As a result, as long as Section 512 (and courts' interpretations of it, and service providers' misuse of it) remains unchanged, copyright owners like UMG are faced with a Hobson's choice in dealing with companies that claim its protections: either agree to bottom-of-the-barrel rates, or refuse and face the prospect of protracted litigation with Internet giants, while single-handedly patrolling billions of hours of content for infringements and sending out millions of takedown notices to users.

Nor is the impact on rates limited to YouTube. Literally every licensed online music service invokes YouTube's below-market rates when negotiating with UMG, as a justification for reducing the royalty rate the service pays. It is therefore unsurprising, if disheartening, that

although music is more popular and accessible than ever – with consumption literally at an all-time high – music industry revenues are only half the size they were in 2000.

In addition, the misalignment of burdens toward copyright owners in the interpretation of Section 512 has forced UMG to shift significant resources that could otherwise be used to invest in the creation of new content (including the discovery and development of artists) toward the protection of existing content. In this way, the effect of Section 512 is fundamentally at odds with the incentive structure of the Copyright Clause in the Constitution: at some point, a rational economic actor could decide to retrench and focus most or all of its efforts on protecting its existing catalog with proven sales viability, rather than risk substantial additional capital on unknown content that may simply be consumed without any compensation.

In short, Section 512's limitations on liability have fundamentally skewed the marketplace, enabling billion-dollar corporations to profit at the expense of copyright owners. Instead, in order to foster an environment that rewards the creation of and investment in music, it is critical that the legal structure governing that environment operate in a reasonable and balanced manner. Only then will a rational marketplace exist in which copyright owners can negotiate a fair return for the use of their music.

5. Do the section 512 safe harbors strike the correct balance between copyright owners and online service providers?

As described throughout these responses, the Section 512 safe harbors, as interpreted and applied by the courts, do not strike the correct balance between copyright owners and online service providers. Copyright owners currently shoulder virtually the entire burden of policing the Internet for infringements of their works, while service providers have been incentivized to turn a blind eye to rampant infringement occurring on their sites. These issues, and possible

solutions to at least some of them, are discussed in greater detail in the remainder of these responses.

Notice-and-Takedown Process

6. How effective is section 512's notice-and-takedown process for addressing online infringement?

Section 512's notice-and-takedown process is extraordinarily ineffective. It suffers from multiple problems and limitations, including the following:

(a) It is a system that cannot handle, and was not designed to handle, the sheer volume of online activity and infringement that occurs in today's digital environment. *See* the response to Nos. 1, 9, 10, 15, 16, and 22.

(b) It does nothing to address the so-called "whack-a-mole" problem, in which content that is taken down in response to Section 512 takedown notice is almost immediately reposted on the same site. *See* the response to No. 10.

(c) It fails to impose clear or strict limits on how quickly a service provider must act in response to a takedown notice, resulting in lengthy and prejudicial delays in removing infringing content. Section 512(c)(1)(A)(iii) requires a service provider to "act[] *expeditiously* to remove, or disable access to, the material" upon obtaining knowledge or awareness of infringement. 17 U.S.C. § 512(c)(1)(A)(iii) (emphasis added). In UMG's experience, some online providers take twenty-four hours or longer to actually take down content upon receipt of a notice (for example, some providers appear not to process notices over the weekend).

Given the speed at which files can be downloaded, streamed, shared, or transferred, such delayed action in responding to takedown notices results in dramatically increased infringement of copyrighted works. Even if UMG immediately identifies infringing content and sends a takedown notice, a delay of minutes – let alone hours or days – before content is taken

down can result in hundreds or thousands or millions of unauthorized streams or copies of that content. Each of these unauthorized streams or copies represents a loss of potential revenue to UMG – typically to the detriment of artists and songwriters – and an unjustified windfall to the service provider, which benefits from the widespread existence of copyrighted material on its site.

These delays present a particularly acute problem with respect to pre-releases and newly-released albums. Given the number of hands that touch physical product before a new CD reaches store shelves, it is very difficult to prevent leaks. When unauthorized copies of those recordings are uploaded to online sites before they are commercially available, or even simultaneously with their authorized release, UMG effectively loses control of the content, and loses the benefit of its intellectual property, at the time that it is at its most valuable.

The problems described above exist largely because Section 512 provides no guidance as to what is meant by “expeditiously.” However, there is no reason that the time to take *down* infringing content should materially exceed the time it requires to *upload* infringing content (*i.e.*, nearly instantaneously). One reasonable approach would be to require service providers to provide an online interface that permits a copyright owner to submit takedown notices, and that processes those notices in an automated fashion. As long as the notice is completed through the electronic interface, and as long as the copyright owner specifies the location of the infringing content on the service provider’s site, the content should come down immediately. Certain service providers, such as YouTube and SoundCloud, already make such automated systems available, and there is no reason that such systems should not likewise be mandatory on all service provider sites. At a minimum, however, Section 512 should be amended to provide a

maximum time – and an extremely short time – within which content must be taken down for a service provider to get the benefit of a safe harbor.

(d) Section 512 also provides little or no guidance as to the proper interpretation of many of its other terms and provisions. As a result, courts are effectively left to “legislate” in this area, and the courts have routinely “interpreted” the language of Section 512’s notice-and-takedown procedures in a manner that advantages service providers to the detriment of copyright owners. This includes Section 512’s provisions respecting a “representative list” of infringed works (*see* the response to No. 14) and “repeat infringer” policies (*see* the response to Nos. 22 and 23).

(e) There is no transparency regarding most service providers’ experience under the DMCA; in many cases, it is only through time-consuming and costly litigation that copyright owners (or the public) can obtain any access into the full extent of infringement on a service provider’s site and the nature, frequency, and treatment of takedown notices that the service provider receives. One possible remedy of this lack of transparency is to require each party claiming the benefit of a Section 512 safe harbor to periodically (*e.g.*, quarterly or annually) publicly disclose the number of takedown notices it has received from copyright owners, and the number of counternotices that it has received in response to those takedown notices. Failure to provide such public disclosure should preclude the service provider from relying on Section 512.

(f) To the extent that courts conclude that manual, human review of each infringement is required prior to sending a takedown notice (*e.g.*, to evaluate a potential fair use defense), such a determination would be devastating to operation of a system that is already highly dysfunctional. *See* the response to No. 9 below.

7. How efficient or burdensome is section 512's notice-and-takedown process for addressing online infringement? Is it a workable solution over the long run?

As described throughout these responses, Section 512's notice-and-takedown process is not a workable solution over the long run. It places too much burden on copyright owners, largely absolves service providers of any responsibility, and is woefully inadequate to address the massive scale of online copyright infringement. Moreover, the problem is only likely to get worse – Internet availability, use, content, and speed are increasing at an exponential rate. These facts make reform of Section 512 especially critical; without meaningful reform, copyright owners will suffer ever-increasing online infringement of their works that they are effectively powerless to stop or contain. For further discussion, see the responses to Nos. 1, 6, 9, 10, 15, 16, and 22.

8. In what ways does the process work differently for individuals, small-scale entities, and/or large-scale entities that are sending and/or receiving takedown notices?

As illustrated throughout these responses, endeavoring to address the massive scale of online infringement is critical to protect the value of music, but it is at best a Sisyphean task for entities of all sizes.

UMG is a large-scale entity. Because it believes in the value of its content and because its efforts are a competitive benefit that it can provide to its artists and songwriters, UMG devotes extraordinary sums of money and employee time to attempt to protect that content. It has approximately two dozen dedicated employees in its content protection department alone, and will soon substantially increase that number. These employees are aided by countless others throughout the company who perform related tasks, including review and claiming of content on YouTube.

Although individuals and small-scale entities may have fewer copyrights to police, the universe of potential infringements they face is no smaller than the one that confronts UMG. At

the same time, these entities may not have the wherewithal to devote substantial resources to content protection, including the identification and remediation of online infringement.

Modifications and recalibrations of Section 512 must therefore work equally for all copyright owners, from the smallest to the largest. UMG's proposals in these responses are designed with that goal in mind.

9. Please address the role of both “human” and automated notice-and-takedown processes under section 512, including their respective feasibility, benefits, and limitations.

Given the volume of infringements that copyright owners encounter on a daily basis, automated notice-and-takedown processes are essential. No company would be able to identify and address even a fraction of the infringements that UMG currently handles (which in turn are only a fraction of the infringements in the marketplace) without utilizing automated processes. Such processes also benefit the service providers by reducing the manpower required to address infringement claims; moreover, as described above in response to No. 6, they can also facilitate service providers' efforts to meet the statutory requirement that they “expeditiously” take down infringing content.

In contrast, interpreting Section 512 to affirmatively *require* use of “human” involvement – at least at the initial notice-and-takedown phase – would eviscerate these benefits. However, one recent decision threatens to do just that. In *Lenz v. Universal Music Corp.*, -- F.3d --, Case No. 13-16106, 2016 WL 1056082 (9th Cir. Mar. 17, 2016) (“*Lenz II*”), the Ninth Circuit held that a copyright owner must consider fair use *before* sending a takedown notice. *Id.* at *6. Taken at face value, that statement could be interpreted (albeit wrongly) to require individualized, human evaluation of *every potential takedown*. Such a burden, if it were imposed, would be simply impossible to discharge. As discussed further in response to No. 15, it is estimated that users upload 500 hours of video content to YouTube *every minute*, containing

approximately 100,000 individual uses of UMG’s copyrighted content *every day*. And that is the volume on just one service provider. Any proposition that UMG (or any other copyright owner) must manually review every one of those uses prior to initiating a Section 512 takedown process would render the takedown process illusory – no copyright owner could comply with such a requirement.²

A prior version of the opinion offered a glimmer of hope. The court’s original opinion noted that the court was “mindful of the pressing crush of voluminous infringing content that copyright holders face in a digital age,” and that “the implementation of computer algorithms appears to be a valid and good faith middle ground for processing a plethora of content while still meeting the DMCA’s requirement to somehow consider fair use.” *Lenz v. Universal Music Corp.*, 801 F.3d 1126, 1135 (9th Cir. 2015) (“*Lenz I*”).

Admittedly, this glimmer of hope was a faint one at best. The court suggested that an algorithm could properly

automatically identify for takedown notifications content where: (1) the video track matches the video track of a copyrighted work submitted by a content owner; (2) the audio track matches the audio track of that same copyrighted work; and (3) nearly the entirety is comprised of a single copyrighted work.

Id. (internal quotations, ellipses, and citation omitted). But this statement assumes that the copyright owner always has a *video* that is infringed, as opposed to simply an audio track.

Because that is frequently not the case for record companies such as UMG (and appears to ignore

² As is also discussed in response to No. 15, YouTube offers a voluntary alternative to a formal Section 512 takedown notice; that alternative relies heavily on an automated process that was developed and implemented by YouTube to allow copyright owners to identify and make claims based on use of their works on YouTube. UMG does not understand the *Lenz II* decision to apply to that process, as it is not subject to the requirements of Section 512. However, most other service providers – which account for millions of additional uploads every day – do not offer such alternative approaches, leaving a Section 512 takedown notice the only remedy. And YouTube’s provision of its voluntary alternative is just that – voluntary. It has taken the position that it is not required to make this alternative available and can instead simply rely upon the provisions of Section 512. *See, e.g., Viacom III*, 940 F. Supp. 2d at 120.

completely music publishers such as UMPG, whose interest is in the composition, not just a particular recording of the composition), this example provided little comfort. More problematically, the court then assumed that such a computer algorithm would “cull” all but “minimal remaining content.” *Id.* The number of videos on YouTube alone that (1) infringe an audio track owned by UMG where UMG has not released an accompanying video; (2) infringe an audio track owned by UMG where the uploader does not actually show a video (*e.g.*, where the uploader simply displays something like a picture of the track’s artist while the audio track plays); (3) prominently feature an audio track owned by UMG over a different video than the official UMG video; (4) incorporate *multiple* copyrighted works (*e.g.*, an artist’s entire album); or (5) infringe compositions owned by UMPG (*e.g.*, “cover” versions of songs) is literally uncountable. The notion that an algorithm applying the criteria quoted above would “cull” most content and leave only “minimal...content” for human review is naïve, to say the least.

However, in *Lenz II*, the panel struck, without explanation, the entirety of the above discussion. *Compare Lenz II*, 2016 WL 1056082, at *7, *with Lenz I*, 801 F.3d at 1135-36. This is presumably because the panel recognized that the statements in the earlier version of its opinion were dicta, and chose to leave for another day the question of the extent to which such automated processes can be used to determine fair use. Regardless of this change, the court’s decision respecting fair use has had a chilling effect on UMG’s ability to protect its copyrights.

The better solution is to treat the fair use determination as an affirmative defense, and relegate its consideration to where it belongs – in connection with a counternotice. Although the Ninth Circuit reached its conclusion respecting *pre*-notice consideration of fair use based on its reading of the Copyright Act, for present purposes it does not matter whether that interpretation of the existing statute is right or wrong. Section 512 should be amended to specify that, for

purposes of the notice-and-takedown procedures, as long as the copyright owner’s work is being used, then the question of whether that use is “fair” need not be considered except to the extent raised in good faith in a valid counternotice. Such an approach would save literally thousands of human hours unnecessarily reviewing masses of content, and shift the timing and focus of the fair use analysis to a smaller, and more suitable, population of online content.

10. Does the notice-and-takedown process sufficiently address the reappearance of infringing material previously removed by a service provider in response to a notice? If not, what should be done to address this concern?

The answer is clearly “no.” UMG’s experience with Taylor Swift’s “1989” album is again illustrative. As noted above, UMG and its agents have sent in excess of 66,000 Section 512 takedown notices in connection with infringements of “1989” since the album was released. But these were not all sent in a single day, or single week, or single month, or even single year. Instead, this is the total number of notices sent over a sixteen-plus month period. If the notice-and-takedown process were sufficient to address the reappearance of infringing material that was previously removed by the service provider, then this volume would not be necessary. But UMG was still sending *hundreds* of takedown notices every week as recently as March 2016, and all to sites that had previously received notices to take down the same infringing material. The following list reflects the number of takedown notices for “1989” that UMG or its agents have sent, from the album’s release through March 11, 2016, to just a few of the many sites that hosted infringing content:

<u>Site</u>	<u>Number of Takedown Notices</u>
4shared.com	4396
tumblr.com	4260
uploaded.net	2308
vibeclouds.net	1467

itemvn.com	1426
searchmusic.me	1324

Such a system is nonsensical – a site should not have to be told *thousands* of times that it must take down infringing works utilizing the *same* tracks from the *same* album.³ And yet that is how the current system operates, based upon the manner in which courts have interpreted Section 512.

One answer to “what should be done” is that, upon receipt of a notice-and-takedown notice with respect to a given work, a service provider should *at least* be required to implement reasonable content identification processes to prevent the uploading of that work again in the future. As discussed further in response to No. 11 below, a requirement that a service provider adopt and use effective content identification technologies – before the service provider is granted a safe harbor from liability for infringement – is a minimum and reasonable step that would aid in establishing an appropriate balance between service providers and copyright owners.

11. Are there technologies or processes that would improve the efficiency and/or effectiveness of the notice-and-takedown process?

Yes, absolutely. There are various technologies and processes that would improve both the efficiency and the effectiveness of the notice-and-takedown process.

First, as described in response to No. 6, some service providers have adopted an online interface that permits a copyright owner to submit takedown notices electronically, and that processes those notices in an automated fashion. Such automated processes should be *de rigueur* – there is no reason that service providers who have developed and built sophisticated online

³ Nor is UMG’s experience in this instance unique. Data collected by IFPI reflects that 94.4% of the takedown notices it sent on behalf of UMG and others were for previously-identified content on the same site.

portals for the storage and distribution of massive quantities of data cannot likewise develop and implement a simple interface for the receipt and processing of takedown notices.

Second, and significantly, are content identification technologies, or “filters,” that can identify and block copyrighted content before it is even uploaded to a service provider’s servers; they can also be used to identify infringing content that is already located on a service provider’s website. Many such technologies are already in existence. Some are proprietary to service providers, such as Content ID, a system developed and implemented by YouTube. *See How Content ID Works*, YouTube Help (available at <https://support.google.com/youtube/answer/2797370?hl=en>). Others technologies are commercially available for license from third-party vendors such as Audible Magic (www.audiblemagic.com) and Gracenote (www.gracenote.com), among several others. For example, Audible Magic licenses its content recognition technology to numerous service providers, including SoundCloud, Dailymotion, and Tunecore. *See Customers & Partners*, Audible Magic (available at <https://www.audiblemagic.com/customers/>). But regardless of the source, active use of dynamic filters can materially diminish the unauthorized reproduction, distribution, and performance of copyrighted works.⁴

Unfortunately, many service providers have refused to incorporate the use of filters, apparently concerned that use of a filter would provide them with actual or “red flag” knowledge of infringing material, thus requiring the service provider to expeditiously remove or disable access to such material. *See* 17 U.S.C. § 512(c)(1)(A). But that is precisely what should occur.

⁴ Another type of viable filtering technology involves key word searching, which can be utilized as a supplemental means for a service provider to identify likely infringing content. Use of an artist’s name in conjunction with a full song title in the description or file name of a user-uploaded video or audio file is a strong indication that the file includes the song; similarly, when a description or title includes an artist and/or album name with the key words “full album,” then UMG’s experience is that the upload consists of a full album recording. Key word searching is a particularly important and valuable mechanism for live recordings, cover recordings, and new releases for which an audio fingerprint (used by content identification technologies such as Content ID) may not be readily available.

That is, use of content identification technologies *should* give a service provider knowledge of infringing activity, which knowledge *should* then require the service provider to take action.

Because these technologies are automated, the burden on the service provider is minimal, and far outweighed by the benefits of increased protection of copyrighted works.

Service providers have also relied on the language of Section 512(m) in defending their refusal to utilize filtering technology. That section provides in relevant part that the availability of Section 512's safe harbors is not conditioned on "a service provider monitoring its service or affirmatively seeking facts indicating infringing activity." 17 U.S.C. § 512(m)(1). Reliance on Section 512(m) has permitted service providers to remain willfully blind to rampant infringement on their websites, and has led courts to incorrectly conclude that such willful blindness is effectively insulated from liability under the DMCA. *See, e.g., Vimeo*, 972 F. Supp. 2d at 525 (relying on Section 512(m) in excusing service provider's refusal to use its own technology to identify and block infringing music content, even in the face of service provider's awareness of extensive infringement on its site).

UMG respectfully submits that a service provider wishing to take advantage of the Section 512 safe harbors must, at a minimum, implement effective content identification technologies – applied *before* any user content can be uploaded to the service provider's servers, as well as to *existing* content available on or through the service provider's website – to identify and block (or, at the option of the copyright owner, monetize) infringing content. Adopting such a requirement would dramatically improve the efficacy of the notice-and-takedown process,

because it would substantially reduce the number of infringements that occur in the first instance.⁵

12. Does the notice-and-takedown process sufficiently protect against fraudulent, abusive or unfounded notices? If not, what should be done to address this concern?

The provisions of Section 512 that are intended to “protect” against fraudulent, abusive, or unfounded notices are likewise in need of reform, as they go *too* far in attempting to protect uploaders. Section 512(f) provides that a person who “knowingly materially misrepresents...that material or activity is infringing...shall be liable for any damages, including costs and attorneys’ fees, incurred by the alleged infringer...who is injured by such misrepresentation.” 17 U.S.C. § 512(f). In the *Lenz* case referenced in response to No. 9 above, the court held that *nominal* damages are sufficient to state a claim under Section 512(f), *i.e.*, that a plaintiff may maintain a claim even in the absence of any monetary loss or other tangible harm. *Lenz II*, 2016 WL 1056082, at *8. Notably, in the *Lenz* case, the plaintiff suffered no such loss or harm: following UMG’s takedown notice, a video of plaintiff’s children dancing was taken down from YouTube for a period of less than two months; it was then reinstated after she sent a counternotice and UMG did not file suit. *Id.* at *1-*2.

The result in *Lenz* is nonsensical. There is simply no reason to burden the courts with a lawsuit to redress an issue that has already been fully redressed (*i.e.*, through the reposting of the

⁵ Having said that, filtering technologies are not a panacea for all that ails the notice-and-takedown process of Section 512. For starters, they are not perfect. UMPG estimates that Content ID fails to identify upwards of 40% of the use of UMPG’s compositions on YouTube. Third party solutions are likewise fallible. *See, e.g., UMG Recordings, Inc. v. Veoh Networks Inc.*, 665 F. Supp. 2d 1099, 1104 (C.D. Cal. 2009) (noting that “the Audible Magic filter had failed to identify as infringing hundreds of...allegedly infringing videos”). Moreover, they can be susceptible to user manipulation of the content that is often designed to circumvent the technology (*e.g.*, speeding up or slowing down the track, thereby affecting the pitch, or cutting out discrete portions of the track that are needed to identify it). Accordingly, such technologies cannot exist in a vacuum. Supplemental processes (*e.g.*, also searching for song titles plus artists’ names) are necessary to identify additional unauthorized uses, and the burden of developing, implementing, and maintaining those processes can and should be shared by online service providers.

content). Reform of this aspect of Section 512 is therefore needed as well; one possible solution is set forth in response to No. 17 below.

13. Has section 512(d), which addresses “information location tools,” been a useful mechanism to address infringement that occurs as a result of a service provider’s referring or linking to infringing content? If not, what should be done to address this concern?

Search engines play a critical role in linking users to infringing copies of music online. Unfortunately, Section 512(d) has been largely ineffective in addressing the resulting infringement, for at least two reasons. First, search engines receiving notices under Section 512(d) generally take down only the specifically-referenced URL. Given the ease with which new URLs pointing to the same infringing content are created, taking down only a single URL that directs a user to infringing content is effectively meaningless. Given this approach, copyright owners have been forced to serve countless “delist” notices relating to search results for the same content (for example, over half a million delist notices have been sent on UMG’s behalf with respect to the “1989” album). Given the technological capability – and the very purpose – of search engines, it is not unreasonable to expect and demand that they should do more to aid in the proactive removal of search engine results that link to infringing content.

Second, after receiving some non-trivial number of delist notices with respect to any given website, search engines should be required to de-index the website, or at least “demote” the website so it appears significantly lower in search results. There is no legitimate reason for the promotion of sites that engage in the widespread infringement of intellectual property; that concept should be integrated into the safe harbor provided by Section 512(d).

For further information and analysis respecting these issues, UMG refers to the comments to the NOI provided by the Music Community.

14. Have courts properly interpreted the meaning of “representative list” under section 512(c)(3)(A)(ii)? If not, what should be done to address this concern?

The answer to the first question is no. On the contrary, courts have effectively “interpreted” the term “representative list” out of Section 512. For example, in *Veoh*, UMG’s agent sent DMCA notices to Veoh that identified several links to infringing content on Veoh’s site, and additionally stated as follows:

We believe your service is hosting the above-referenced files on its network. These files are offering video recordings...by the artists known as AFI, Rihanna, Black Eyed Peas [and others listed by name].... [W]e request that you remove the infringing files from the system or that you disable access to the infringing files.

Veoh I, 665 F. Supp. 2d at 1109-10. This notification was consistent with Section 512(c), which provides that if “multiple copyrighted works at a single online site are covered by a single notification,” a copyright owner’s takedown notice may provide “a representative list of such works at that site.” 17 U.S.C. § 512(c)(3)(A)(ii). The court in *Veoh* nonetheless found the above notices inadequate as to any infringing content other than the videos located at the specific links identified in the notice. *Veoh I*, 665 F. Supp. 2d at 1110. It reasoned that the “names of artists...[and] a representative list of works – are not quite the same.” *Id.* (emphasis in original). But that is beside the point: UMG’s agent did not provide a representative list of artists, it provided a representative list of works by those artists, and then asked that Veoh take down all works by those same artists. It is not clear what else the language of Section 512(c)(3)(A)(ii) could have intended.

The court also relied on the language of Section 512(c)(3)(A)(iii), which requires that the notice include “information reasonably sufficient to permit the service provider to locate the [infringing] material.” 17 U.S.C. § 512(c)(3)(A)(iii). Based on this language, the court effectively concluded a notice must specifically identify each instance of infringement before a

service provider is under any obligation to take down content, and the obligation then extends only to the specifically-identified instance of infringement. *Veoh I*, 665 F. Supp. 2d at 1110 (“An artist’s name is not ‘information reasonably sufficient to permit the service provider to locate [such] material.’”); *see also Capitol Records, Inc. v. mp3tunes, LLC*, 821 F. Supp. 2d 627, 643 (S.D.N.Y. 2011) (“Even assuming the representative lists properly identified EMI’s copyrighted works, EMI had to provide sufficient information – namely, additional web addresses – for MP3tunes to locate other infringing material.”). But limiting the takedown obligation to only specifically-identified infringements renders the “representative list” provision of the preceding statutory section a dead letter; if a copyright owner can provide a “representative” (*e.g.*, non-exhaustive) list of works, but the service provider is required only to take down specifically-identified works at specifically-identified locations on the website, then the “representative list” provision is meaningless.

At a minimum, Section 512 should be amended to provide further guidance as to the meaning and proper application of the “representative list” language. For example, if a copyright owner specifically identifies ten (or fifty, or one hundred) infringements of a given recording by a particular artist on a given site, then it is not unreasonable to shift the burden to the service provider to affirmatively search for, identify, and take down other infringements of that same recording on the site. There is no reason to believe that the copyright owner could do so any more readily than the service provider, and that should be the standard: provide sufficient information to permit the service provider to locate and identify infringing files as readily as the copyright owner could. *Cf.* Fed. R. Civ. P. 33(d) (where a response to interrogatories can be determined by examining business records, permitting a responding party to identify the relevant records “in sufficient detail to enable the interrogating party to locate and identify them as

readily as the responding party could”). This is particularly true where, as is often the case, the sites themselves already index the music that is available on the site by artist name and/or track title.

Similarly, if a copyright owner specifically identifies infringements of two (or five, or ten) different recordings by a particular artist or from a particular album on a given site, and represents that it owns or controls the rights to all recordings by that artist or on that album, then it is not unreasonable to shift the burden to the service provider to affirmatively search for, identify, and take down other infringements of that same artist’s recordings, or infringements of all other recordings from that same album.

Such a requirement is particularly apt where the content is simply the entire track of an album – or worse, an entire album – divorced from any other content. Although many user-uploaded videos incorporate UMG’s music as “background” to home videos or other user-generated content (and UMG can and properly should expect to be compensated for such uses), the more pernicious uses that permeate YouTube and other online services are wholesale copies of UMG’s recordings, played against nothing more than an image of the artist (if even that), or wholesale copies of UMG’s music videos. There is no argument that these substitutional uses (*i.e.*, uses that displace demand for authorized, licensed content) could qualify as “fair,” and no reason that service providers who are given notice that such uses are prevalent on their services should be excused from assisting in the process of taking them down. Only through measures such as this can a reasonable balance of the burden between service providers and copyright owners be restored.

15. Please describe, and assess the effectiveness or ineffectiveness of, voluntary measures and best practices — including financial measures, content “filtering” and takedown procedures — that have been undertaken by interested parties to supplement or improve the efficacy of section 512’s notice-and-takedown process.

Certain service providers have adopted voluntary measures that supplement Section 512’s notice-and-takedown process. To some extent, these measures improve the efficacy of that process, in that they reduce the number of infringements that would otherwise be subject to the process. However, UMG’s experience with these voluntary measures also demonstrates the breadth of the problem that copyright owners face and the corresponding inadequacy of the Section 512 notice-and-takedown process where these measures are not available (*i.e.*, where a service provider has not or will not adopt such approaches).

The most substantial example of a service provider that has supplemented the Section 512 notice-and-takedown process with a voluntary process that sits outside the DMCA is YouTube. This is perhaps unsurprising: YouTube is the largest music streaming service in the world, and unlike other music streaming platforms such as Spotify and Pandora, it is populated with *user*-uploaded content that is more likely to expose YouTube to liability for copyright infringement. *See YouTube – Not Spotify, Pandora or Apple Music – Is the Number One Music Streaming Service Worldwide: Here’s Why*, Tech Times (Jul. 8, 2015) (available at <http://www.techtimes.com/articles/66603/20150708/youtube-not-spotify-pandora-or-apple-music-is-the-number-one-music-streaming-service-worldwide-here-s-why.htm>). While YouTube apparently contends that it could rely exclusively on the Section 512 notice-and-takedown process, it has developed an alternative mechanism, apart from the DMCA process, called “Content ID,” which YouTube describes as an “automated, scalable system that enables copyright owners to identify YouTube videos that include content they own.” *See Using Content*

ID, YouTube Help (available at

https://support.google.com/youtube/answer/3244015?hl=en&ref_topic=4515467).

Using Content ID, a copyright owner is able to provide its content to YouTube, and Content ID matches that content against new uploads before they are published on YouTube. *Id.*⁶ The copyright owner can then set a policy of how YouTube is to handle uploads that match the copyright owner's content: mute the audio, block the entire video, monetize the video by running ads with it, or track a video's viewership statistics. *See How Content ID Works*, YouTube Help (available at <https://support.google.com/youtube/answer/2797370?hl=en>). The user who uploads the video is notified of the claim, and of the policy that the copyright owner has set with respect to its content. In addition to the automated process, YouTube permits copyright owners to manually claim content that is used in YouTube videos, in a manner consistent with the Content ID scheme.

YouTube has also adopted a dispute process in connection with Content ID claims. *See What Is A Content ID Claim?*, YouTube Help (available at <https://support.google.com/youtube/answer/6013276>). A user can choose to dispute a Content ID claim by filling out a simple online form, at which point the copyright owner has thirty days to take action on the claim (during which time the video is not muted, blocked, monetized, or otherwise affected by the copyright owner's claim). The copyright owner can opt to release the claim or uphold the claim (which the user can appeal); the copyright owner can also issue a DMCA takedown notice at that point, thereby activating the processes of Section 512. *See Dispute A Content ID Claim*, YouTube Help (available at

⁶ Content ID can also perform a "legacy scan" of YouTube videos that are already on the site at the time a copyright owner's content is loaded, although such a scan can take as long as six months. *Id.*

<https://support.google.com/youtube/answer/2797454>).⁷ If the copyright owner upholds the claim and the user appeals, the copyright owner again has a thirty-day window in which to act. The copyright owner may release the claim or let it expire; alternatively, the copyright owner must issue a DMCA takedown notice, although it can elect to delay that notice for seven days to permit the user to voluntarily withdraw the appeal. *Id.*⁸

UMG tracked its dispute and appeals experience for its recorded music business over an eight-day period in March 2016, for purposes of illustrating the strengths and the limitations of the Content ID process, as well as the broader challenges that UMG (and any copyright owner) faces in attempting to curb the massive infringement that is occurring online. While this is a non-scientific sample, it is nonetheless reasonably reflective of UMG's typical experience in the Content ID claims process.

Between March 5 and March 12, 2016, inclusive,⁷ the data currently available to UMG reflects that YouTube users disputed a total of 7,068 of UMG's claims, ranging from a low of 840 claims on March 8 to a high of 1,112 on March 6. As of March 5, 2016, UMG already had 13,741 disputes in its queue, resulting in a total of 21,349 active disputes during this eight-day period.

UMG's recorded music business employs approximately a half-dozen persons in the United States and the U.K. solely to address YouTube disputes; they are assisted by employees from UMG's data protection division and additional personnel from other departments as

⁷ If no action is taken within thirty days, the claim expires and the copyright owner is precluded from asserting a claim as to that video in the future.

⁸ YouTube makes this seven-day-delay alternative available so that its users can avoid getting a "copyright strike." Users whose content is claimed through the Content ID system are not treated as infringers for purposes of the "repeat infringers" provision of Section 512(i)(1)(A). In contrast, users whose content is subject to a DMCA takedown notice receive a "copyright strike" from YouTube; according to YouTube's policy, the accounts of users who receive three copyright strikes are terminated. See *Copyright Strike Basics*, YouTube Help (available at <https://support.google.com/youtube/answer/2814000>).

needed. This team was able to process 10,335, or a little less than half, of the existing claims during the same eight-day period. This effort required manual review of the dispute notice and the video for each disputed claim, and resulted in the claim being upheld in 10,168 instances, or approximately 98% of the time. Many of the dispute notices clearly established the absence of any legitimate claim of noninfringement; actual examples of user explanations from this period include the following:

how do i use allow music in my vids

I gave credit in the description of the video by stating...“Audio from Elton John”.

I’m Purchase from iTunes.

I gave credit to the song owners

I am not selling this video or making any money from it at all. I am not claiming this music as my own. I simply enjoyed the music and would like to use it in my video.

I Bought it online!

Music is used for entertainment only we do not claim the song to be ours and have given credit in the about section.

I am not monetizing my video I got the song from public domain, and I just want to introduce the song to my Indonesian friends

The songs are credited in the infobar located in the information section of the video

I have bought the music and had the videoed myself.

I give credit to the song and artist in the video description

i bought the song LEGAL on iTunes. i bought it with my own money, i didn’t steal it. i used the song that i bought.

Many others include a claim of “fair use” and a rote statement to the following effect, with no further elaboration: “This video uses copyright material in a manner that does not require approval of the copyright holder. It is fair use under copyright law.”

In all events, in each instance, UMG carefully reviewed the dispute and the video and upheld its claim where appropriate. However, that effort required a substantial investment of time and money, and it is a never-ending battle. Although the work during this period brought the number of pending disputes down to about 11,000, the queue is continually repopulating. As a result, the number of pending disputes never gets down to zero, and historically has been as high as 20,000 or more.

The experience described above illustrates both a virtue of the YouTube Content ID system and a weakness in the current legal scheme. On the positive side, of the 10,168 disputes that UMG upheld during this period, only 69 resulted in appealed claims, and nineteen of those were withdrawn after UMG indicated its intention to send a formal DMCA takedown notice. Accordingly, this relatively streamlined process dramatically reduced the number of DMCA takedown notices that would otherwise be required (which in turn likely reduced the number of counternotices and potential lawsuits that would follow under the Section 512 structure).

On the other hand, it also illustrates the massive problem that UMG and other copyright owners face, with just one service provider (albeit the largest one). UMG's investment in human capital to contend with just infringement of its content on YouTube is substantial, and as YouTube continues to add content, is only likely to increase. Notably, in December 2014, YouTube claimed that its users uploaded *300 hours* of content *every minute*; just seven months later, in July 2015, that number had increased to *400 hours* of content every minute. *See YouTube Now Gets Over 400 Hours of Content Uploaded Every Minute*, tubefilter.com (July 26, 2015) (available at <http://www.tubefilter.com/2015/07/26/youtube-400-hours-content-every-minute/>). At that rate, YouTube is likely now receiving over *500 hours* of new content every minute. *See 500 Hours of Video Uploaded to YouTube Every Minute [Forecast]*, reelseo.com

(Nov. 13, 2015) (available at <http://www.reelseo.com/hours-minute-uploaded-youtube/>). That new content in turn is typically generating an average of approximately *100,000 new claims* (both automated and manual) by UMG's recorded music business, and nearly *1000* new disputes from YouTube users, *every day of the year*.

UMG has also hired a third-party vendor that charges UMG a percentage of the revenue generated from videos on YouTube that use UMG recordings but which were not identified by Content ID. UMG pays the vendor hundreds of thousands of dollars per year just to find and claim UMG's own content that has been used without authorization on YouTube. YouTube bears none of this expense, but benefits from the advertising revenue generated in connection with its use and display of UMG's copyrighted content.

UMPG is similarly burdened. It owns or controls *millions* of copyrights. UMPG has about a half-dozen full-time employees focused solely on manually claiming UMPG content on YouTube and addressing claim disputes and appeals filed by YouTube users. Given the volume of content on YouTube, this task is massive, and UMPG is forced to focus on target lists of compositions, including compositions on the Billboard charts and other frequently-used content. At any given time, this target list is limited to approximately 500 compositions (out of the millions owned by UMPG), and even with that relatively small number of compositions, UMPG employees identify and review between fifty and sixty thousand potentially infringing YouTube videos *every month*.

Indeed, the volume of content on YouTube alone is so substantial that UMPG has limited capacity, at best, to identify and pursue infringements on other sites. Other factors also influenced this YouTube-focused strategy: the "whack-a-mole" problem that plagues the current system (*see, e.g.,* response to No. 10 above) makes it virtually impossible to meaningfully move

the needle on infringement elsewhere; and the potential liability for improper takedowns on sites where the only alternative is a Section 512 notice, particularly in light of *Lenz*, simply presents too great a risk, given the volume of infringing material at issue.

Counter Notifications

16. How effective is the counternotification process for addressing false and mistaken assertions of infringement?

The counternotification process is flawed. Under Section 512(g)(2), the only option available to a copyright owner that receives a counternotice from a user, and who nonetheless believes the user's content is infringing, is to file a federal court action within ten days "seeking a court order to restrain the subscriber from engaging in infringing activity relating to the material on the service provider's system or network." 17 U.S.C. § 512(g)(2)(C). If such an action is not filed, and barring some other resolution between the copyright owner and the service provider and/or subscriber, the offending content is reposted. *Id.*

Like the YouTube claim disputes that UMG receives, the counternotices that users send to UMG are frequently baseless. For example, over a seventeen-month period between September 2014 and February 2016, UMG's recorded music business reviewed 710 counternotices from YouTube subscribers. Although UMG either released or allowed its claim as to 126 counternotices to expire, and resolved the dispute directly with the subscriber in connection with another three, UMG concluded in 581 cases – or nearly 82% of the time – that the counternotice was without merit.⁹ And not infrequently, the counternotices taunt UMG, as in this example: "You wile-e-coyotes are wasting your time and money with dwarf roadrunners like me. I dare you to sue someone like me."

⁹ Even with respect to those that UMG released or allowed to expire, the counternotice was not necessarily meritorious; instead, UMG simply made the determination that even if there was a credible claim of infringement, the circumstances did not warrant further action on UMG's part.

A contractual arrangement between UMG and YouTube allows UMG to request that these videos remain down, without the necessity of a lawsuit, based on UMG's good faith review and determination of the meritless nature of the counternotice. However, such an agreement is the exception, rather than the norm, and barring such an agreement, the only option available to UMG and other copyright owners is to file a lawsuit to prevent the continued infringement. This drastic alternative – federal litigation over every baseless counternotice – reflects a fundamental problem with the current statutory scheme: forgo enforcement of valuable intellectual property or file *581 new lawsuits*. And UMG, though a significant copyright owner, is merely one among thousands (or millions) whose rights are routinely being violated on a massive scale.

The potentially significant cost of federal court litigation over any given single posting is a powerful (but unjust) deterrent to enforcement of UMG's intellectual property rights. But the alternative is likewise unattractive: burdening the federal court system with thousands of additional lawsuits. Neither outcome appears to be what Congress intended in enacting Section 512. Congress clearly indicated its commitment to *protecting* intellectual property rights, S. Rep. No. 105-190, at 8 (1998), and there is no indication that Congress anticipated that the DMCA would impose a massive additional burden on an already overburdened court system. The counternotice system, with litigation as the only statutory remedy for baseless or fraudulent counternotices, is simply unworkable in its present form.

17. How efficient or burdensome is the counter-notification process for users and service providers? Is it a workable solution over the long run?

For the reasons described above in response to No. 16, the counter-notification process is neither efficient nor workable. There are alternative schemes, including the example set forth below, that can meaningfully address the burden that the current statutory scheme imposes on copyright owners and the absence of any meaningful remedy to an aggrieved copyright owner

under the current system. But whatever alternative approach is adopted, the goal should be a more balanced system, where online users are not unduly restricted in using the Internet as a place for free expression of ideas, but where the interests of copyright owners are meaningfully protected.

First, as noted in response to No. 9 above, Section 512 should be amended to make clear that the appropriate stage for a copyright owner's consideration of affirmative defenses, such as fair use, is in connection with a valid counternotice raising such defenses.

Second, to permit the copyright owner sufficient time to thoughtfully evaluate the counternotice, and to give the parties sufficient time to attempt resolve the dispute between them, the time for taking action should be extended from ten days to sixty days before the content is reposted, subject to the provisions below.

Third, in the event the copyright owner determines to reject the counternotice, the obligation to file a federal lawsuit should be eliminated. For the benefit of all parties, and for the court system, a highly streamlined dispute resolution proceeding should be established so that such disputes can be resolved quickly and inexpensively, during which process the content remains down. One possible approach is a simplified and shortened version of a proceeding comparable to those conducted under the Uniform Domain-Name Dispute Resolution Policy. *See* Uniform Domain Name Dispute Resolution Policy (available at <https://www.icann.org/resources/pages/policy-2012-02-25-en>). But whatever approach is adopted, it must be (a) inexpensive so that it can be utilized by users and copyright owners of all sizes and means, and (b) rapid so that neither party's rights is unduly burdened.

Fourth, if the copyright owner does not initiate such a proceeding within the sixty-day period set forth above, then the content is automatically reposted. Alternatively, the user may

initiate the proceeding at any time starting ten days after serving the counternotice, in order to obtain a more expeditious resolution of the dispute and potential re-posting of the user's content.

And finally, the sole relief available to the user in such a streamlined proceeding, whether initiated by the user or the copyright owner, should be the reposting of the challenged content.¹⁰

The foregoing represents one possible solution to the problems plaguing the existing counternotice system. It would also remedy the problem addressed in response to No. 12 above, namely, the potential for abuse and misapplication of the provisions of Section 512(f), which can expose copyright owners to the prospect of costly and time-consuming litigation in the event of an erroneous Section 512 notice, even where the user suffered no harm. There are doubtless other reasonable approaches as well, but whatever the solution, it is clear that reform of the existing structure is necessary to provide a functional solution to users, service providers, and copyright owners.

18. In what ways does the process work differently for individuals, smallscale entities, and/or large-scale entities that are sending and/or receiving counter notifications?

As noted in response to No. 8, UMG has devoted substantial resources to addressing the entirety of the Section 512 process, including the receipt and consideration of counternotices. It has done so in an effort to be responsive to and respectful of online users and service providers, and to provide a needed and valuable service to its recording artists and songwriters. UMG anticipates that the burden of the Section 512 process weighs at least as heavily on individual and small-scale entities, which likely have fewer resources to redress the overwhelming volume of infringement online.

¹⁰ Alternatively, if the tribunal determines that the copyright owner did not act in good faith in rejecting the counternotice, it may have the power to award the user some modest, statutory monetary award against the copyright owner.

Legal Standards

19. Assess courts' interpretations of the "actual" and "red flag" knowledge standards under the section 512 safe harbors, including the role of "willful blindness" and section 512(m)(1) (limiting the duty of a service provider to monitor for infringing activity) in such analyses. How are judicial interpretations impacting the effectiveness of section 512?

As discussed throughout these responses, judicial interpretations of these provisions have substantially undermined the effectiveness of Section 512. These decisions have incentivized service providers to strenuously avoid learning about or acknowledging infringement, much less taking action to address it. Particularly where service providers have the means – whether already in place, or readily available from a third-party vendor – to identify and filter out large volumes of infringing content, there is no rational basis for this approach to the law.

For further information and analysis respecting these issues, UMG refers to the comments to the NOI provided by the Music Community.

20. Assess courts' interpretations of the "financial benefit" and "right and ability to control" standards under the section 512 safe harbors. How are judicial interpretations impacting the effectiveness of section 512?

Court decisions regarding these provisions have dramatically narrowed the circumstances in which they apply. The result has been to allow services that were founded and built on the widespread availability of unauthorized copyrighted content, and which can readily control access to any and all of that content, to nonetheless take advantage of Section 512's safe harbors. In short, these interpretations have likewise undermined the effectiveness of Section 512 and contributed to the imbalance between service providers and copyright owners.

For further information and analysis respecting these issues, UMG refers to the comments to the NOI provided by the Music Community.

Repeat Infringers

22. Describe and address the effectiveness of repeat infringer policies as referenced in section 512(i)(1)(A).

There are multiple problems with the effectiveness of “repeat infringer” policies as referenced in Section 512(i)(1)(A). First, the statute provides no guidance as to what constitutes a “repeat infringer.” This vacuum has led service providers to adopt policies that make a mockery of the phrase. In *BMG Rights Mgmt. (US) LLC v. Cox Comm’ns, Inc.*, Case No. 1:14-cv-1611, 2015 WL 7756130 (E.D. Va. Dec. 1, 2015), for example, Cox’s “policy” allowed a subscriber to be the subject of *fourteen* takedown notices in every six month period before Cox would even *consider* terminating him or her as a “repeat infringer.” *Id.* at *2-*3. The proposition that infringing copyrights on fourteen occasions in six months renders a person a “repeat infringer,” but not infringing thirteen, or twelve, or even two, in the same period, is so ungrounded and arbitrary as to be ludicrous. Section 512 should be amended to clarify what is meant by an “infringer” (*e.g.*, a user whose content is subject to an uncontested takedown notice, or whose counternotice is rejected as meritless), and what is meant by a “repeat infringer” (*e.g.*, three infringements in a twelve-month period).

Second, and relatedly, service providers have been able to get away with “policies” like the one described above because Section 512 does not contain a clear requirement that service providers disclose their actual policies. Although Section 512 requires service providers to “inform[] subscribers and account holders of...a policy that provides for the termination in appropriate circumstances of...repeat infringers,” 17 U.S.C. § 512(i)(1)(A), courts have not interpreted this requirement to mean that the *terms* of the policy be publicly disclosed. Instead, courts appear to find it sufficient that the service provider merely inform subscribers and account holders that it *has* a policy, without regard to what the policy actually is. *See, e.g., Cox*, 2015

WL 7756130, at *2 (noting without criticism that Cox’s fourteen-step “graduated response procedure” for addressing infringement was “not publicize[d] to customers,” who were instead informed of Cox’s “Acceptable Use Policy,” which merely provided that violations of that policy “may result in the immediate suspension or termination of either...access to the Service and/or [the] Cox account”); *Capitol Records, LLC v. Escape Media Group, Inc.*, Case No. 12-CV-6646 (AJN)(SN), 2015 WL 1402049, at *48 (S.D.N.Y. Mar. 25, 2015) (observing that “Escape does not implement the repeat infringer policy stated in its Terms of Service” disclosed to account holders, and instead evaluating whether the defendant reasonably implemented the undisclosed repeat infringer that it actually maintained). It is only through time-consuming and costly litigation that the *actual* policies adopted by these service providers has been uncovered. Section 512 should be revised to require that a service provider must (a) disclose the specific terms of the “repeat infringer” policy that it actually applies; and (b) routinely disclose data respecting the application of the policy (*e.g.*, routine disclosure of the number of users terminated); moreover, a service provider’s failure to follow the policy that it discloses should preclude the service provider from relying on the Section 512 safe harbors.

Third, some service providers have imposed arbitrary limitations on the receipt of Section 512 takedown notices. These include refusing to accept more than a certain number of takedown notices per day from any given complainant, or refusing to accept takedown notices that include additional language beyond the statutory requirements, such as settlement offers. *See, e.g., Cox*, 2015 WL 7756130, at *2. Section 512 should be revised to preclude service providers from limiting the number of takedown notices that it will accept, and to clarify that as long as a takedown notice includes the statutorily-required elements, *see* 17 U.S.C. § 512(c)(3), it may not be rejected simply because it also includes other information.

And finally, the case law is replete with examples of service providers that pay lip service to the repeat infringer policy requirement, only to disregard any such policy in application. While some courts – including those in the *Cox* and *Escape Media* cases – have seen through the charade and refused DMCA protection for the service providers, other courts appear to have bent over backwards to find compliance (or at least to let a service provider survive summary judgment). *See, e.g., Perfect 10, Inc. v. Giganeews, Inc.*, 993 F. Supp. 2d 1192, 1197 (C.D. Cal. 2014) (denying the copyright owner’s motion for summary judgment respecting the service provider’s failure to reasonably implement a “repeat infringer” policy, even though the service provider had terminated only 46 repeat infringers despite receiving DMCA notices covering more than 531 million messages sent by its users). At a minimum, clarification and then vigorous application and enforcement of the requirements of Section 512(i)(1)(A) is required.

23. Is there sufficient clarity in the law as to what constitutes a repeat infringer policy for purposes of section 512’s safe harbors? If not, what should be done to address this concern?

As described in response to No. 22 above, there is not sufficient clarity on this issue. The response to No. 22 also identifies a number of possible measures to address the concern.

Standard Technical Measures

24. Does section 512(i) concerning service providers’ accommodation of “standard technical measures” (including the definition of such measures set forth in section 512(i)(2)) encourage or discourage the use of technologies to address online infringement?

Section 512(i)’s provision respecting the accommodation of “standard technical measures” appears to have discouraged the use of technology to address online infringement. For information and analysis respecting this issues, UMG refers to the comments to the NOI provided by the Music Community.

25. Are there any existing or emerging “standard technical measures” that could or should apply to obtain the benefits of section 512’s safe harbors?

As described in response to No. 11 above, a service provider should be required to adopt effective content identification technologies in order to obtain the benefit of Section 512’s safe harbors. While such technologies are not a complete answer to the many problems that exist under Section 512, their mandatory adoption would be a meaningful step toward a much-needed rebalancing of the burdens under that statute.

Remedies

26. Is section 512(g)(2)(C), which requires a copyright owner to bring a federal lawsuit within ten business days to keep allegedly infringing content offline—and a counter-notifying party to defend any such lawsuit—a reasonable and effective provision? If not, how might it be improved?

As discussed in response to Nos. 16 and 17 above, the provisions of Section 512(g)(2)(C) are neither reasonable nor effective. One proposal for addressing the flaws in that section is set forth in response to No. 17.

27. Is the limited injunctive relief available under section 512(j) a sufficient and effective remedy to address the posting of infringing material?

The limited injunctive relief under Section 512(j) is rarely invoked and unlikely to be useful in any event. Injunctive relief is often rendered moot through the voluntary take-down of infringing content or termination of an offending user, and given the “whack-a-mole” problem among others, is not a sufficient remedy to address the more fundamental problems afflicting Section 512. For further information and analysis respecting this issue, UMG refers to the comments to the NOI provided by the Music Community.

28. Are the remedies for misrepresentation set forth in section 512(f) sufficient to deter and address fraudulent or abusive notices and counter notifications?

As discussed in response to Nos. 12 and 17, UMG believes that the provisions of Section 512(f) are fundamentally flawed, at least as interpreted and applied in the recent *Lenz* opinion. The response to No. 17 sets forth an alternative proposed scheme for addressing the issue.

Other Issues

29. Please provide any statistical or economic reports or studies that demonstrate the effectiveness, ineffectiveness, and/or impact of section 512's safe harbors.

UMG refers to the comments to the NOI provided by the Music Community, including without limitation Exhibit D to those comments.

April 1, 2016

Respectfully submitted,

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Exhibit DIDP A70

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RIAA Wins \$22 Million MP3Skull Judgement, But They'll Never See A Dime And The Site Is Still Online



The RIAA has scored a series of high-profile victories against illegal file sharing sites, but its latest win may ring hollow since appears unlikely that the perpetrator will ever be found or pay a single dime of the \$22 million awarded.

Working on behalf of the major labels, the RIAA has won a \$22.2 million dollar judgement against illegal download site MP3Skull. But as of today the site is still online and it appears unlikely that a single dime will ever be collected from its owners.

The judge awarded maximum statutory damages of \$150,000 for each of 148 offending songs. But the party behind mp3skull has never been identified and did not answer the court complaint. As of Friday morning, the site was still online and offering free illegal downloads of dozens of top tracks.



13 One Direction.Mp3
Size: 4.42 MB | Duration: 3:12

▶ DOWNLOADS (2016-02-26 11:27 PM)
▶ DOWNLOAD (2016-02-26 11:27 PM)
▶ DOWNLOAD (2016-02-26 11:27 PM)

The court order allows the RIAA to sieze any domains associated with MP3Skull. But it is likely that a seizure will just begin a cat and mouse game of new domains in other parts of the world. In fact, on Friday MP3Sull was being redirected from yesterday's .yoga domain to a new .mn domain in Mongolia.

But the RIAA is undeterred and explained its focus. "The site's sole purpose is to generate profit from that theft of music, and it makes no pretence about what it does or why it does it," the RIAA said in a [statement](#). "Virtually any commercial recording is available for free to download through the site and the most popular artists and songs ("Top Downloads") are invariably chart-topping hits."

Related articles



Full Text Of Official RIAA Statement On Grooves Shark Shutdown and



RIAA, Major Labels Find New Ally In Battle Against Grooves Shark:



Grooves Shark Returns Via Site Created By Former 'Associate'

Facebook Tweet LinkedIn Reddit ShareThis Email



Posted by [Bruce Houghton](#) on 02/26/2016 in [Downloads & P2P](#), [Music Business](#), [Music Tech](#) | [Permalink](#)

Comments



Sasha said...
Can't the domains all be blocked for access in the US at least?

[Reply 02/27/2016 at 11:27 PM](#)



aqmaher111@gmail.com said...
Mp3skull has resurfaced! The new address is mp3skull.world.
The original mp3skull is back...
Thanks

[Reply 03/28/2016 at 12:13 PM](#)

Comment below or sign in with [Typepad](#) [Facebook](#) [Twitter](#) [Google+](#) and [more...](#)



Music labels win \$22.2m damages from MP3Skull – if they can find its owners

Following a lawsuit coordinated by industry body the RIAA, rightsholders are awarded maximum damages and given green light to seize domain names

Stuart Dredge

Friday 26 February 2016 05.20 EST

Music filesharing site MP3Skull has been slapped with a \$22.2m (£15.8m) damages bill after losing a lawsuit filed by record labels in the US.

The labels, working through industry body the RIAA, won a default judgment against the site, with the judge in the case awarding maximum statutory damages of \$150k for each of the 148 songs submitted as evidence.

The judgment also gives the labels the power to seize domain names belonging to MP3Skull, whose operators have been barred from any future activity that infringes the copyrights of the music companies – although their identify remains unknown, and they did not respond to the lawsuit.

That indicates the next challenge for the RIAA, which is to enforce both the damages and the domain seizures. The site is currently operating from the MP3Skull.yoga domain, having moved from .com and .to domains – both of which are blocked by ISPs in the UK under a high-court order.

As TorrentFreak noted in its report, the ruling is likely to “trigger a cat and mouse game, with MP3Skull switching domains” to stay online.

MP3Skull has been in the RIAA’s sights for some time. In October 2015, the industry body attacked the site – which links to MP3 downloads of tracks by a host of popular artists – as being “dedicated to ripping off music”.

“The site’s sole purpose is to generate profit from that theft of music, and it makes no pretence about what it does or why it does it,” claimed the RIAA.

“Virtually any commercial recording is available for free to download through the site and the most popular artists and songs (‘Top Downloads’) are invariably chart-topping hits.”

The default judgement against MP3Skull comes shortly after the RIAA forced another unlicensed music service, Aurous, offline after just a few days of operation, eventually settling with its developer in December 2015.

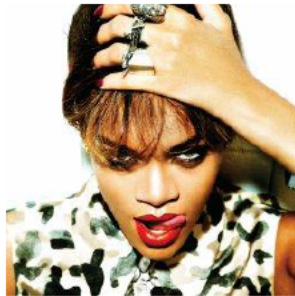
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Exhibit DIDP A71



Universal Music Group

INVESTOR MEETING NOVEMBER 2011





UNIVERSAL MUSIC GROUP

Lucian Grainge, CBE
Chairman and CEO

Boyd Muir
Executive Vice President and CFO

World's Leading Music Entertainment Company



UNIVERSAL MUSIC GROUP



UNIVERSAL MUSIC PUBLISHING GROUP



Operating Results 2010

Revenue	€4.4 billion
EBITA	€471 million
Margin	11%
Cash Flow	€470 million

Recorded Music

Finding, developing and retaining recording artists and marketing and promoting their recorded music in all formats and platforms

Music Publishing

Finding, developing and retaining songwriters and owning and administering copyrights to musical compositions for use in recordings, public performances and related uses, such as films and advertisements

Merchandising

Production and sale of artist and other branded products via multiple sales points including fashion retail, concert touring and the Internet.

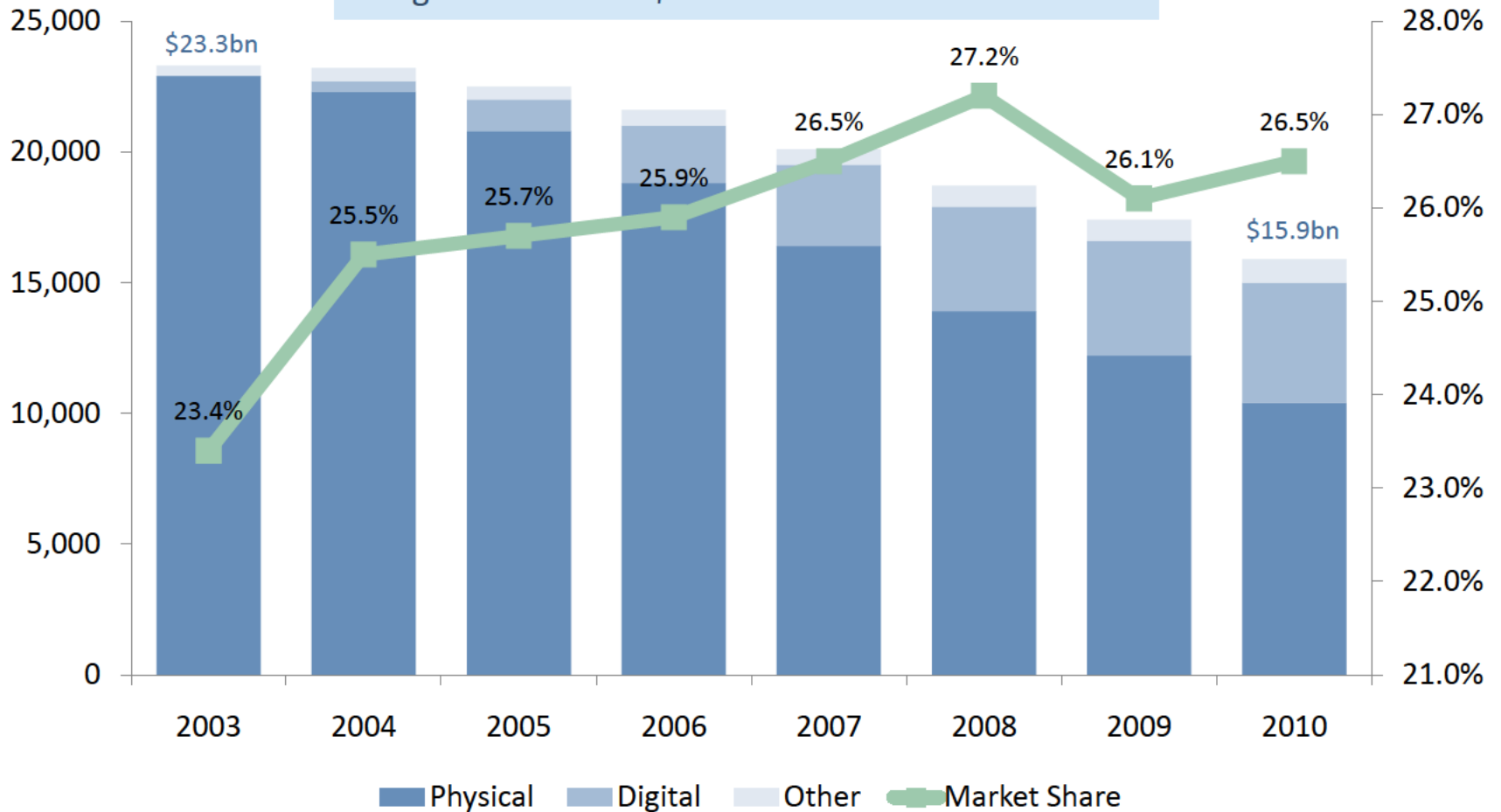
Market Dynamics: Recorded Music

Global music market of \$15.9 billion has declined 32% versus 2003

- Physical sales have declined 55%
- Digital sales were \$4.6 billion in 2010

UMG Recorded Music
Global Market Share

Global Recorded Music Sales
US\$ Million – Trade Value

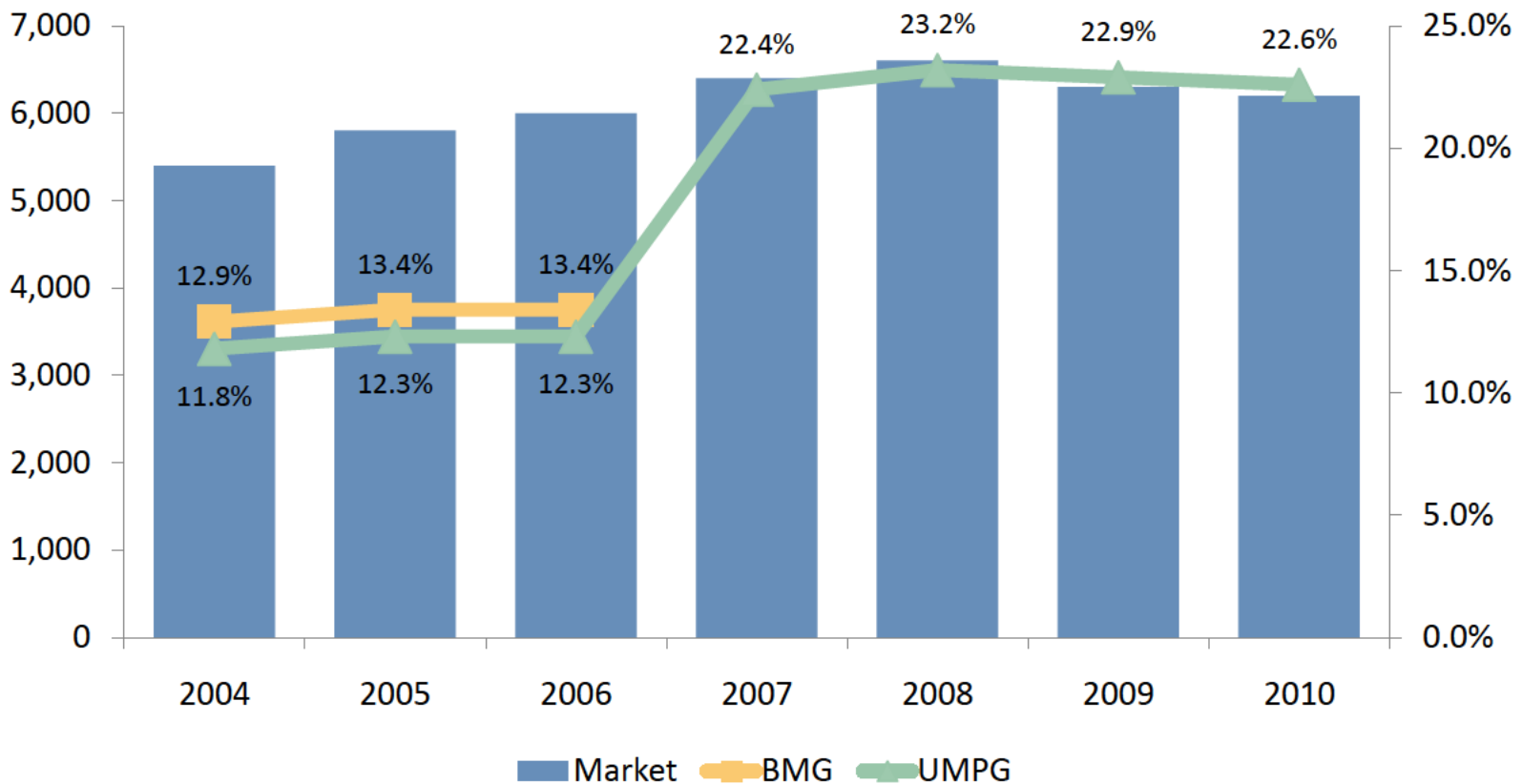


Market Dynamics: Music Publishing

Global music publishing market of \$6.1 billion has fallen 8% from its peak in 2008 reflecting the decline in the recorded music sector and tightening advertising spend during the global recession

Universal Music Publishing Group
Global Market Share

Global
Music Publishing Income
US\$ Million

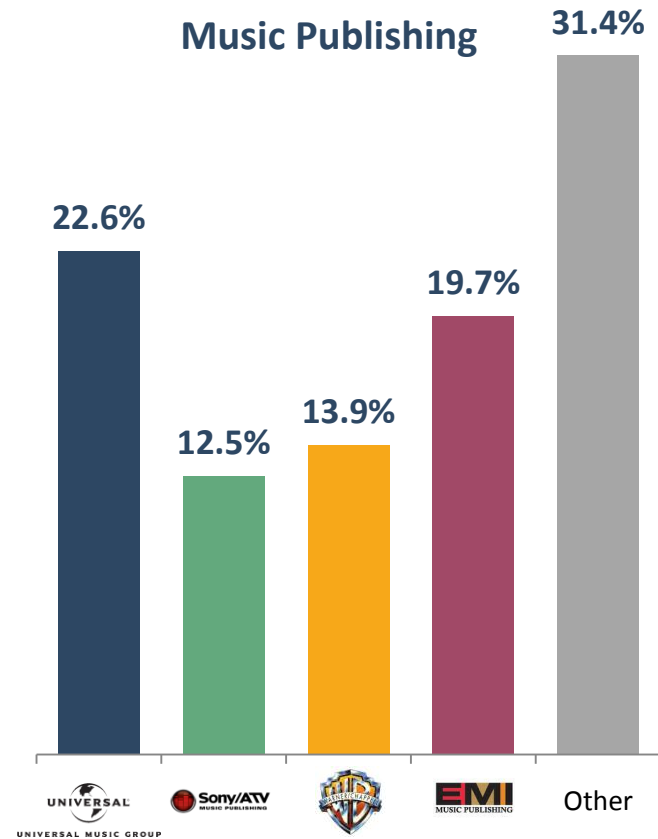
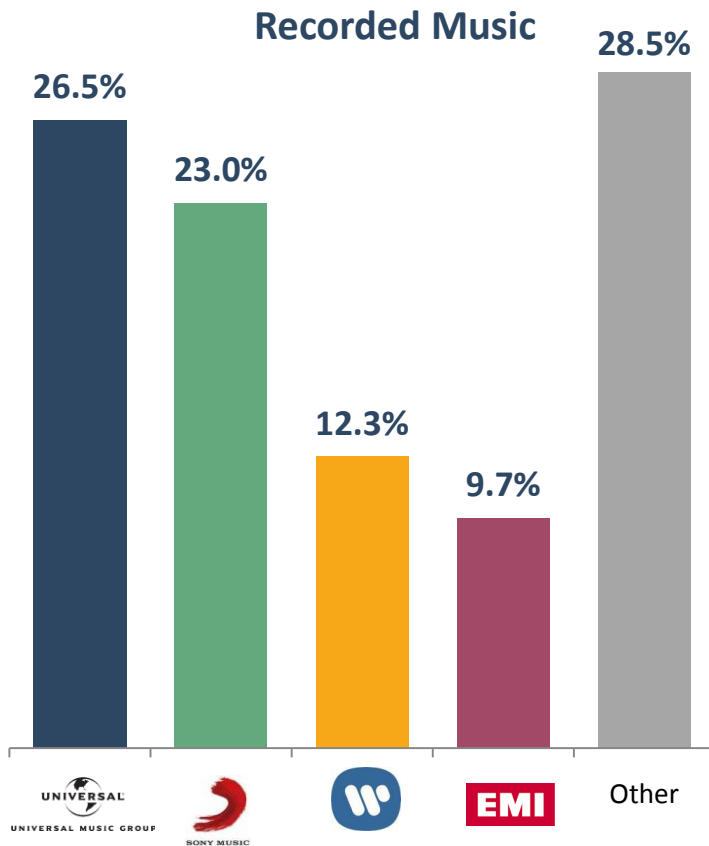


Note: UMPG acquired BMG Music Publishing in 2007. Certain asset disposals were mandated from the combined catalogs in order to receive regulatory approval.

Source: Market Data – Enders - Note market includes certain income paid directly to writers
Market Share Data - Music & Copyright, Enders (2006), UMG estimate (2007)

Market Dynamics: Competitive Landscape

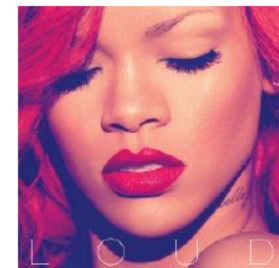
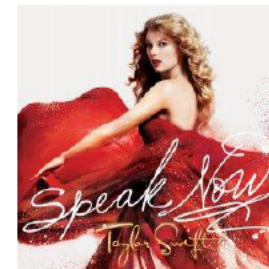
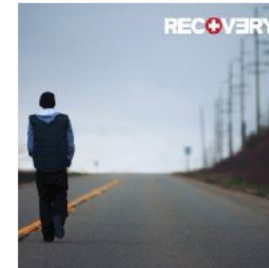
UMG is the leading music content company in the world with market leading positions in both Recorded Music and Music Publishing



Market Dynamics: UMG's Roster Strength

Global Top 10 Albums 2010

	Artist	Album
1)	Eminem	Recovery
2)	Lady Gaga	The Fame Monster
3)	Susan Boyle	The Gift
4)	Taylor Swift	Speak Now
5)	Lady Antebellum	Need You Now
6)	Michael Jackson	Michael
7)	Rihanna	Loud
8)	Justin Bieber	My World
9)	Justin Bieber	My Worlds 2.0
10)	Take That	Progress





UNIVERSAL MUSIC GROUP

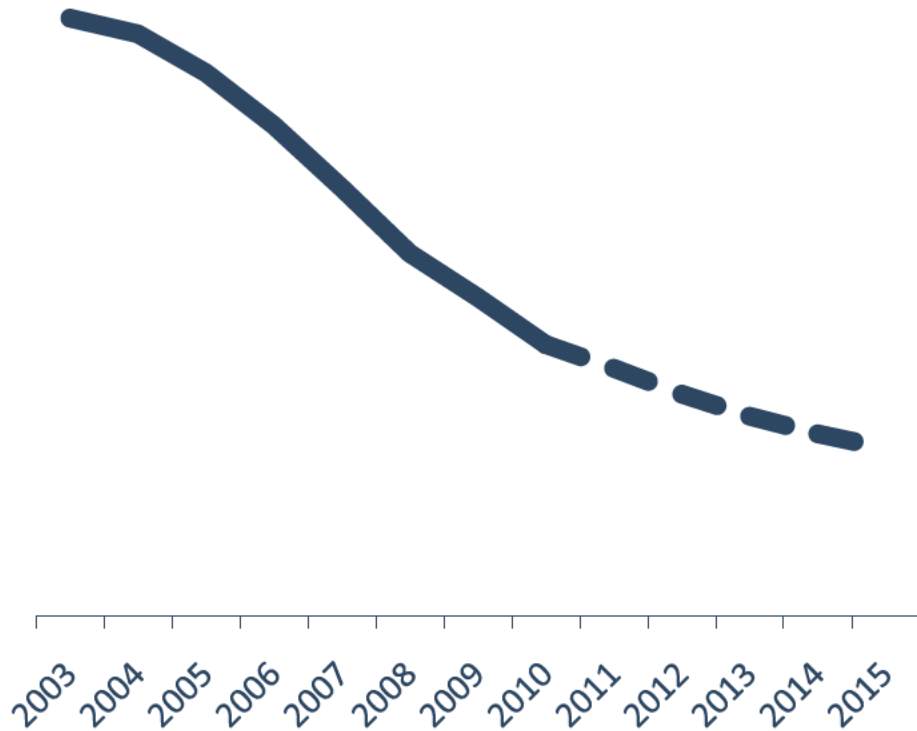
What concerns the financial community about the music industry

UMG wants to change the financial markets outlook on music and UMG

Key Concerns: Declining Physical Sales

Rate of decline decelerating

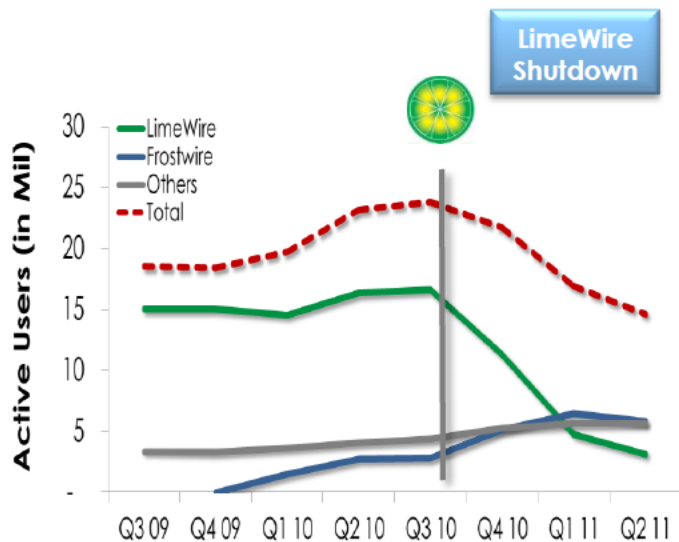
US\$ billions



- **Physical sales continue to decline but at a slower rate.**
 - 2010 -14%
 - 2011 1H -7%
- **Physical sales are proving resilient in several markets.**
 - Japan: 73% of sales are physical
 - Germany: 81% of sales are physical
- **CD sales in the U.S. have only declined 4% YTD** (Source: SoundScan)

Key Concerns: Piracy

Piracy continues to negatively impact the industry, but there is a growing recognition amongst policymakers that legislation is required to ensure that intellectual property rights are protected.



Source: IFPI/Nielsen

- A growing number of countries are adopting new laws or programs aimed at curbing online piracy.
- Graduated response systems and website blocking seem to be having an impact on P2P usage.
- While some consumers will move to other pirate services there are indications that some consumers are moving to legal services like Spotify.

Key Concerns: Unbundling of Albums

Cherry picking of tracks for \$0.99/\$1.29 was seen as a key trend of the physical to digital transition reducing the need to purchase full albums for \$9.99 but there are now signs that digital albums will have an important role in the market

- As more music is consumed digitally we are seeing a growing market for digital albums.
- In the United States digital album sales growth has offset the decline in CD sales. The UK market is close.
- Digital has created a massive singles market that was thought lost.



Units Millions	Q3 YTD 2010	Q3 YTD 2011	% Change
CD	157	152	-3.6%
Digital Album	62	74	+19.8%
Digital Track	860	952	+10.6%

Source: SoundScan



Units Millions	Q3 YTD 2010	Q3 YTD 2011	% Change
CD	61	54	-12.5%
Digital Album	12	16	+39.3%
Digital Track	105	120	+14.2%

Source: OCC

Key Concerns: Ownership to Access

Challenge is to get subscription services more widely adopted by the consumer



facebook



- **Ad-supported digital music services have proven to be unsustainable but a useful tool to migrate consumers away from pirates.**
- **Free music (e.g. YouTube, Facebook) is an impediment to the development of a pay model.**
- **UMG encourages the adoption of subscription services as a superior consumer alternative to piracy and as a stable recurring revenue source.**
- **Cloud and other access based models (e.g. locker services) should make the customer offering more compelling.**

Key Concerns: Challenging Retail Landscape

Physical retail faces numerous challenges while digital retail continues to be dominated by Apple's iTunes store



- A key driver behind the decline in CD sales has been the loss of retail outlets and the reduction in shelf space dedicated to music.
- Entertainment retailers also are facing the decline in DVD demand and price competition from supermarket and online retailers.
- The industry is facing the combined challenge in the physical sector of declining SKU's, a demand for deeper discounts and the modification of trading terms.
- Apple's iTunes is likely to dominate the digital retail landscape for the foreseeable future
- New market entrants such as Spotify and Deezer are broadening the digital retail market place.

Key Concerns: Music Publishing

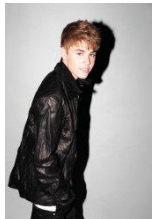


- The Music publishing sector has declined since its peak in 2008, caused by falling revenues from record sales and licensing disputes that have limited growth from digital.
- According to Enders Analysis, music publishing could return to growth in 2012.

2012	2013	2014	2015
+0.7%	+1.8%	+2.1%	+2.1%

(Source - Enders Analysis)

- Growth from performance and synchronization has compensated for some of the decline from mechanical, recorded music revenues.



Business Transformation

Create a global music entertainment company, focused on industry leadership, maximizing our revenues from our investment in creativity and fully leveraging all our strengths and assets.

- **Aligning our cost base to reflect the reality of the market place.**
- **Accelerate the development of new “music” business.**
- **Maintain our investment in creativity – A&R success and talent discovery are at the core of everything we do.**
- **Protect our market leadership position and rights.**

Business Transformation

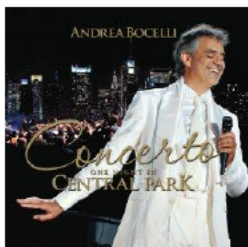
We have undertaken a comprehensive restructuring of our operations which will result in savings of €100 million per annum. All the steps necessary to deliver these savings have been taken and will be fully implemented in 2012.

- **US label reorganization**
- **Corporate centers**
- **Country transformation**
- **IT outsourcing**
- **Overhaul distribution and “non-creative” costs**

We are in constant pursuit of efficiencies and savings

New Growth Opportunities: Music

A&R success and talent discovery are at the heart of everything that we do.



- #1 destination for artists
- Fresh executive talent in A&R
- Adult contemporary
- Revitalize Motown
- Country music
- Global exploitation of English language repertoire
- TV platforms



New Growth Opportunities: Diversification

UMG is at the centre of artist activity and not just on the periphery of the business as an audio distributor.



VEVO: #1 Music Video Site for original artist content



Strategic Marketing Partnerships (SMPs):



Qatar Telecom (MENA) HP (Brazil) AMEX (US) Reliance (India)



Diversified Business:



Bravado, Beats By Dre, Universal Music Publishing Group



Broader media involvement:



The Voice, American Idol

New Growth Opportunities: Emerging Markets

New business models enable us to establish a presence in emerging markets

- Previous hurdles of vast geographies making physical distribution untenable and a lack of respect for intellectual copyright made monetization a major challenge.
- We will increase our presence and resources in markets such as Russia, China, India, Indonesia, Vietnam and MENA.
- Currently there is a disconnect between social media and monetization (Indonesia is now the second largest Facebook community in the world).
- UMG aligned with Vivendi's expansion into emerging markets e.g. Maroc Telecom (UMG Mobile Music Service – Sub Saharan) and GVT (Power Music Club – Brazil).

A NEW AUDIENCE



NEW DEVICES: PENETRATION AND GROWTH



SOCIAL MEDIA: GROWTH



New Growth Opportunities: Consumer Focus

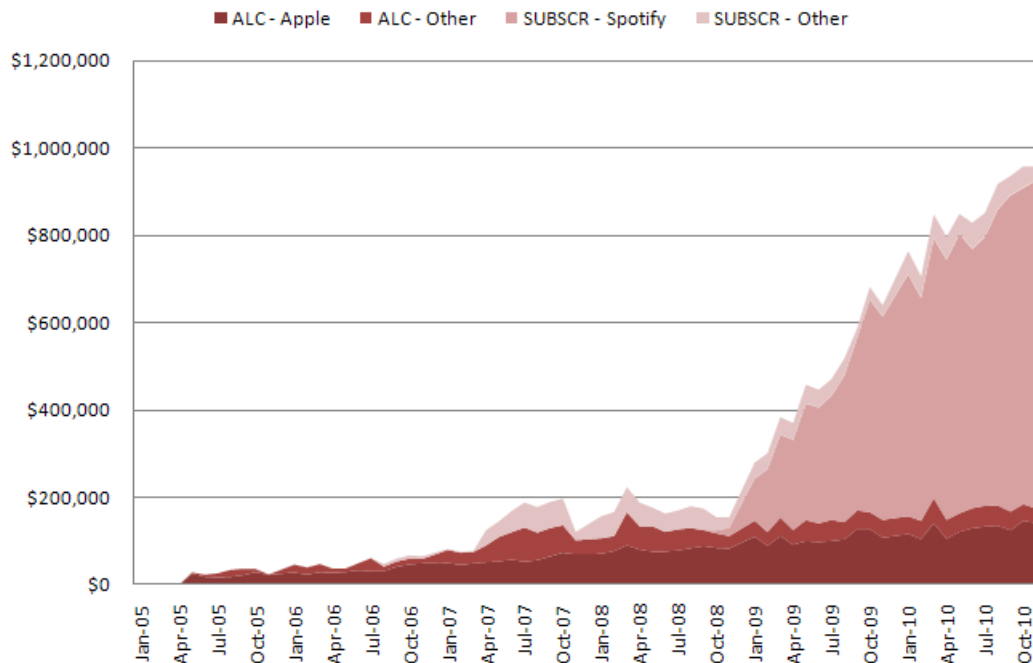
The creation of brands remains at the heart of our creative process but we are now putting consumers at the heart of our commercial process.

- **Leverage our CRM and develop a closer relationship with the consumer.**
- **Use music to assist global brands to access consumer groups.**
- **By deepening our understanding of consumer demand, we can maximize average revenue per consumer for each and every artist.**

New Growth Opportunities: Subscription

While subscription services still only represent a small portion of the global digital music market, Sweden provides an illustration of the potential.

Sweden Digital Revenues



- In Sweden, 1 out of 2 people under the age of 35 listen to Spotify and 22% of the overall population use the service.
- Digital represented 28% of the Swedish music market in 2010 (France 17%, Germany 13%).
- UMG encourages the adoption of subscription services as a superior consumer alternative to piracy and as a stable recurring revenue source.

New Growth Opportunities: New Business Models

Return on our creative investment



- Strategic global and localized marketing partnerships
- Expanding merchandise operations into the retail sector
- Building brands with artists at the centre



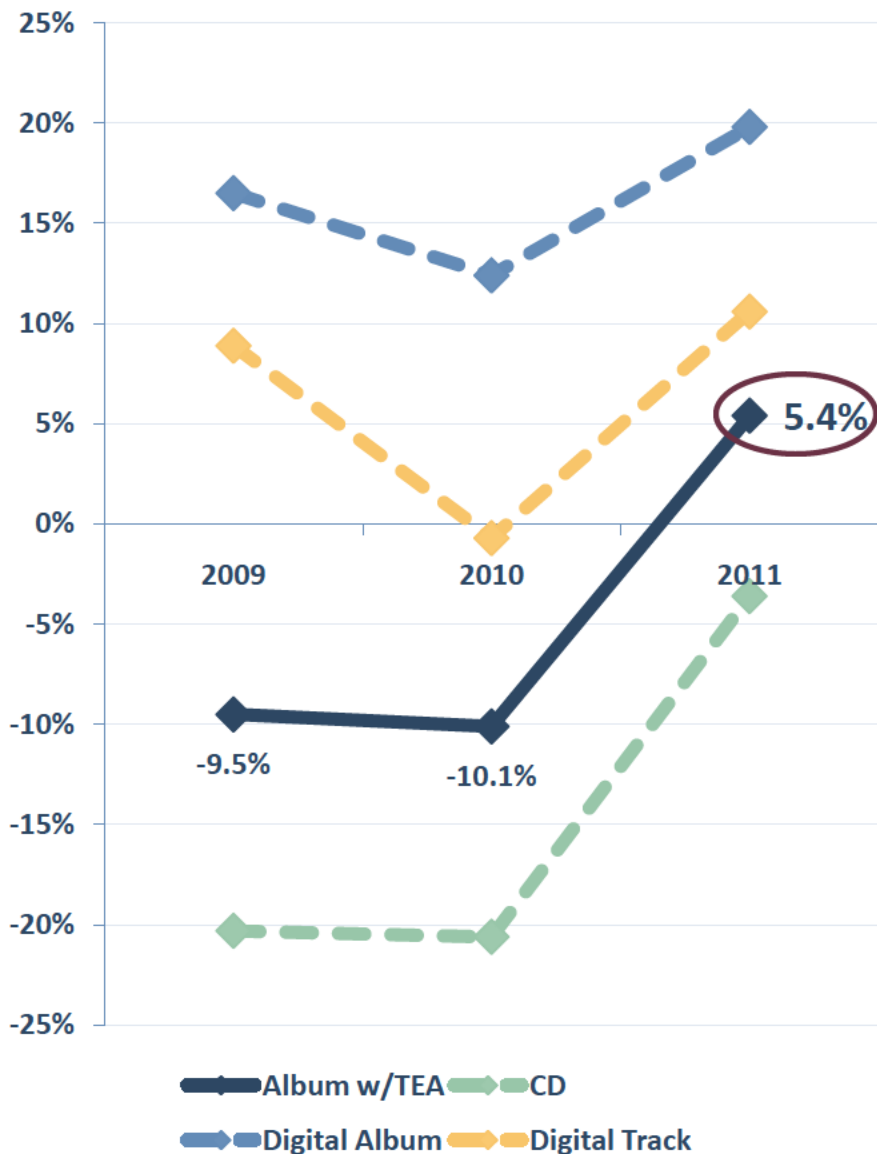
Universal Music Group

HIGHLIGHTS
Q3 YTD 2011

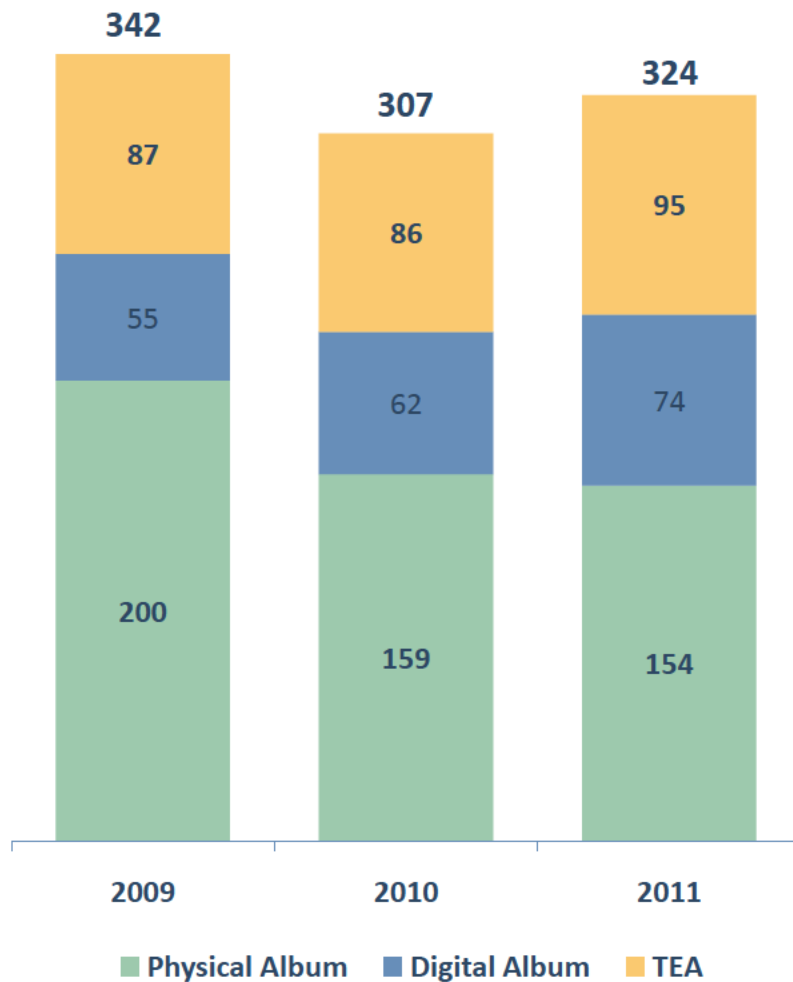
Highlights

- **Recorded music market conditions remain challenging but the US music market has grown 1.1% in value in 2011 Q3 YTD** (Source RIAA) •
- **UMG recorded music market share has remained steady bolstered by increases in Japan, France and Australia where success with domestic artists is complimenting sales of international repertoire led by Lady Gaga.**
- **UMG's business transformation initiative is complete.**

Highlights: US Market



Album Sales Units



2011 Outlook

Double digit EBITA margin, despite restructuring charges

Upcoming 2011 Releases

Amy Winehouse

Mary J Blige

Andrea Bocelli

Mylene Farmer

Drake

Rihanna

Florence & the Machine

Roberto Alagna

Justin Bieber

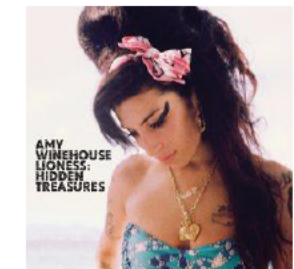
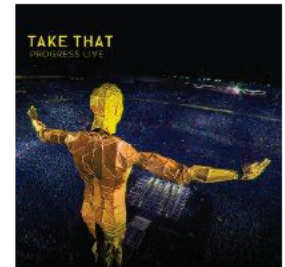
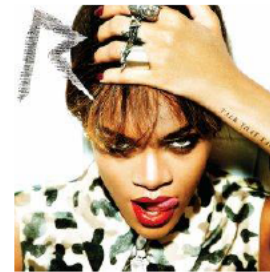
Snow Patrol

Lady Gaga

Taylor Swift

Louise Attaque

Take That





Universal Music Group

UNIVERSAL MUSIC GROUP TO ACQUIRE EMI RECORDED MUSIC

UMG agrees to purchase EMI Recorded Music for £1.2 billion at a likely inflexion point in the music industry cycle

- **Acquire a tremendous catalogue and superstar acts, complementary to UMG in genres and geographies**
- **Attractive valuation with significant synergy potential**
 - **EBITDA multiple of 7x and below 5x post full synergies in excess of £100 million per annum**
- **Very accretive to UMG EBITA margin rate due to broader asset base and synergies**
- **Accretive to earnings in year one* and ROCE to exceed WACC at year 3**
- **Expects to maintain BBB rating. UMG will dispose of non-core assets totaling €500 million in value to partially fund transaction**

Aligned with Vivendi's strategy of investing in premium content with compelling financial returns

* Before expected restructuring costs

Transaction Price

- **Enterprise value of £1.2 billion**
- **7x EBITDA*, and less than 5x EBITDA* post full synergies of over £100 million per annum**
 - **Valuation is DCF-based with a 9.5% WACC, a 0% perpetual growth rate, and applying a 35% tax rate**
 - **Multiple is below assumed price paid for Warner Music Group's recorded music business in May 2011, a transaction which did not generate any synergies**

Conservative earnings prospects do not take into account inflexion point currently seen in certain recorded music markets including the U.S.

* EMI fiscal year ending March 31, 2011

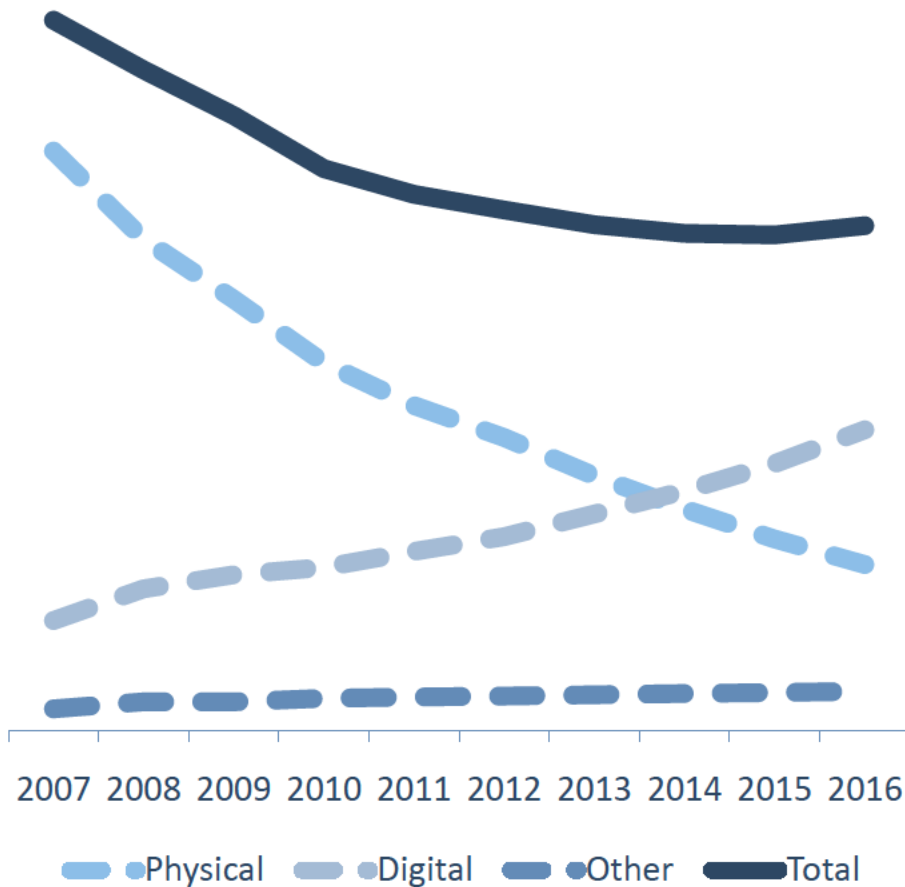


Universal Music Group

SUMMARY

The Future

The recorded music market is approaching its inflection point

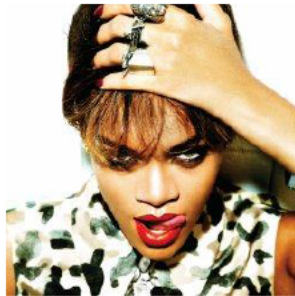


- **UMG is best positioned to maximize the benefit from the evolving music market.**
- **The balance of creativity and control are expected to deliver EBITA margins of 15% within 5 years.**



Universal Music Group

INVESTOR MEETING NOVEMBER 2011



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Important legal disclaimer

Forward looking Statements

This presentation contains "forward-looking statements" as that term is defined in the Private Securities Litigation Reform Act of 1995. Such forward-looking statements are not guarantees of future performance. Actual results may differ materially from the forward-looking statements as a result of a number of risks and uncertainties, many of which are outside our control, including but not limited to the risks that prospects for growth in revenues, earnings and adjusted net income may differ from forecasts made by Vivendi or UMG; UMG will not be able to obtain the regulatory, competition or other approvals necessary to complete certain transactions, including but not limited to the EMI transaction discussed in this presentation; synergies and profits arising from proposed acquisitions will not materialize in the timing or manner described above; UMG will be unable to further identify, develop and achieve success for new products, services and technologies; UMG will face increased competition and that the effect(s) on pricing, spending, third-party relationships and revenues of such competition will limit or reduce UMG's revenue and/or income; as well as any additional risks described in the documents Vivendi has filed previously with the U.S. Securities and Exchange Commission and/or the French Autorité des Marchés Financiers.

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Exhibit DIDP A72



Resources

▶ About CANN

▶ Board

▶ Accountability

▼ Governance

▼ Governance Documents

Guidelines

Articles of Incorporation

▼ Bylaws

Archive

Board Code of Conduct

Board Conflicts of Interest Policy

Board Statements of Interest

Lobbying Disclosures & Contribution Reports

Summary of Conflicts of Interest and Ethics Practices Review

▶ Agreements

Annual Reports

▶ Financials

▶ Planning

Presentations

RFPs

Litigation

Newsletter

▶ Correspondence

Quarterly Reports

▶ Groups

Business

▶ Contractual Compliance

▶ Registrars

▶ Registries

Operational Metrics

▶ Identifier Systems Security, Stability and Resiliency (SSR)

▶ ccTLDs

▶ Internationalized Domain Names

▶ Universal Acceptance Initiative

▶ Policy

▶ Public Comment

▶ Technical Functions

▶ Contact

▶ Help

BYLAWS FOR INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS | A California Nonprofit Public-Benefit Corporation

As amended 11 February 2016

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ARTICLE I: MISSION AND CORE VALUES

Section 1. MISSION

The mission of The Internet Corporation for Assigned Names and Numbers ("CANN") is to coordinate at the overall level the global name space systems of unique identifiers and in particular to ensure the stable and secure operation of the Internet's unique identifier systems in particular [CANN](#)

- 1 Coordinate the allocation and assignment of the three sets of unique identifiers for the Internet which are
 - a Domain names (forming a system referred to as "DNS")
 - b Internet Protocol ("IP") addresses and autonomous system ("AS") numbers and
 - c Protocol port and parameter numbers
- 2 Coordinate the operation and evolution of the DNS root name server system
- 3 Coordinate policy development reasonably and appropriately related to these technical functions

Section 2. CORE VALUES

In performing its mission the following core values should guide the decisions and actions of [CANN](#)

- 1 Preserving and enhancing the operational stability, reliability, security and global interoperability of the Internet
- 2 Respecting the creativity, innovation and flow of information made possible by the Internet by limiting [CANN's](#) activities to those matters within [CANN's](#) mission requiring or significantly benefiting from global coordination
- 3 To the extent feasible and appropriate delegating coordination functions to or recognizing the policy role of other responsible entities that reflect the interests of affected parties
- 4 Seeking and supporting broad informed participation reflecting the functional, geographic and cultural diversity of the Internet at all levels of policy development and decision-making
- 5 Where feasible and appropriate depending on market mechanisms to promote and sustain a competitive environment
- 6 Reducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest
- 7 Employing open and transparent policy development mechanisms that (i) promote well-informed decisions based on expert advice and (ii) ensure that those entities most affected can assist in the policy development process
- 8 Making decisions by applying documented policies neutrally and objectively with integrity and fairness

- 9 Acting with a speed that is responsive to the needs of the member while as part of the decision-making process obtaining informed input from those entities most affected
- 10 Remaining accountable to the member community through mechanisms that enhance CANN's effectiveness
- 11 While remaining rooted in the private sector recognizing that governments and public authorities are responsible for public policy and duly taking into account governments' or public authorities' recommendations

These core values are deliberately expressed in very general terms so that they may provide useful and relevant guidance in the broadest possible range of circumstances. Because they are not narrowly prescriptive the specific way in which they apply individually and collectively to each new situation will necessarily depend on many factors that cannot be fully anticipated or enumerated and because they are statements of principle rather than practice situations will inevitably arise in which perfect fidelity to all eleven core values simultaneously is not possible. Any CANN body making a recommendation or decision shall exercise its judgment to determine which core values are most relevant and how they apply to the specific circumstances of the case at hand and to determine if necessary an appropriate and defensible balance among competing values.

ARTICLE II: POWERS

Section 1. GENERAL POWERS

Except as otherwise provided in the Articles of Incorporation or these Bylaws the powers of CANN shall be exercised by and its properly controlled and its business and affairs conducted by or under the direction of the Board. With respect to any matters that would fall within the provisions of Article Section 6 the Board may act only by a majority vote of all members of the Board in all other matters except as otherwise provided in these Bylaws or by law the Board may act by majority vote of those present at any annual regular or special meeting of the Board. Any references in these Bylaws to a vote of the Board shall mean the vote of only those members present at the meeting where a quorum is present unless otherwise specifically provided in these Bylaws by reference to "all of the members of the Board."

Section 2. RESTRICTIONS

CANN shall not act as a Domain Name System Registry or Registrar or member Protocol Address Registry in competition with entities affected by the policies of CANN. Nothing in this Section is intended to prevent CANN from taking whatever steps are necessary to protect the operational stability of the member in the event of financial failure of a Registry or Registrar or other emergency.

Section 3. NON-DISCRIMINATORY TREATMENT

CANN shall not apply its standards policies procedures or practices inequally or single out any particular party for disparate treatment unless justified by substantial and reasonable cause such as the promotion of effective competition.

ARTICLE III: TRANSPARENCY

Section 1. PURPOSE

CANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness.

Section 2. WEBSITE

CANN shall maintain a publicly-accessible member World Wide Web site (the "Website") which may include among other things (i) a calendar of scheduled meetings of the Board Supporting Organizations and Advisory Committees (ii) a docket of all pending policy development matters including their schedule and current status (iii) specific meeting notices and agendas as described below (iv) information on CANN's budget annual audit financial contributors and the amount of their contributions and related matters (v) information about the availability of accountability mechanisms including reconsideration independent review and Ombudsman activities as well as information about the outcome of specific requests and complaints invoking these mechanisms (vi) announcements about CANN activities of interest to significant segments of the CANN community (vii) comments received from the community on policies being developed and other matters (viii) information about CANN's physical meetings and public forums and (ix) other information of interest to the CANN community.

Section 3. MANAGER OF PUBLIC PARTICIPATION

There shall be a staff position designated as Manager of Public Participation or such other title as shall be determined by the President that shall be responsible under the direction of the President for coordinating the various aspects of public participation in CANN including the Website and various other means of communicating with and receiving input from the general community of member users.

Section 4. MEETING NOTICES AND AGENDAS

At least seven days in advance of each Board meeting (or if not practicable as far in advance as is practicable) a notice of such meeting and of the expected agenda for the meeting shall be posted.

Section 5. MINUTES AND PRELIMINARY REPORTS

- 1 All minutes of meetings of the Board and Supporting Organizations (and any councils hereof) shall be approved promptly by the originating body and provided to the CANN Secretary for posting on the Website.
- 2 No later than 11:59 p.m. on the second business days after the conclusion of each meeting (as calculated by local time at the location of CANN's principal office) any resolutions passed by the Board of Directors at that meeting shall be made publicly available on the Website provided however that any actions relating to personnel or employment matters legal matters (other than the Board determines it is necessary or appropriate to protect the interests of CANN) matters that CANN is prohibited by law or

con rat from disclosing publicly and o her ma ers ha he Board de ermines by a hree-quar ers (3/4) vo e of Direc ors presen a he mee ing and vo ing are no appropria e for public dis ribu ion shall no be included in he preliminary repor made publicly available The Secre ary shall send no ice o he Board of Direc ors and he Chairs of he Supporting Organizations (as se for h in Ar icles V - X of hese Bylaws) and Advisory Commi ees (as se for h in Ar icle X of hese Bylaws) informing hem ha he resolu ions have been posed

- 3 No la er han 11 59 p m on he seven h business days af er he conclusion of each mee ing (as calcula ed by local ime a he loca ion of CANN's principal office) any ac ions aken by he Board shall be made publicly available in a preliminary repor on he Websi e subjec o he limia ions on disclosure se for h in Sec ion 5.2 above For any ma ers ha he Board de ermines no o disclose he Board shall describe in general erms in he relevan preliminary repor he reason for such nondisclosure
- 4 No la er han he day af er he da e on which hey are formally approved by he Board (or if such day is no a business day as calcula ed by local ime a he loca ion of CANN's principal office hen he nex immedia ely following business day) he minu es shall be made publicly available on he Websi e provided however ha any minu es rela ing o personnel or employem ma ers legal ma ers (o he exen he Board de ermines i is necessary or appropria e o pro ec he in eres s of CANN) ma ers ha CANN is prohibi ed by law or con rat from disclosing publicly and o her ma ers ha he Board de ermines by a hree-quar ers (3/4) vo e of Direc ors presen a he mee ing and vo ing are no appropria e for public dis ribu ion shall no be included in he minu es made publicly available For any ma ers ha he Board de ermines no o disclose he Board shall describe in general erms in he relevan minu es he reason for such nondisclosure

Section 6. NOTICE AND COMMENT ON POLICY ACTIONS

- 1 Wi h respec o any policies ha are being considered by he Board for adop ion ha subs anially affec he opera ion of he n erme or hird par ies including he imposi ion of any fees or charges CANN shall
 - a provide public no ice on he Websi e explaining wha policies are being considered for adop ion and why a leas wen y-one days (and if prac ical earlier) prior o any ac ion by he Board
 - b provide a reasonable oppor uni y for par ies o commen on he adop ion of he proposed policies o see he commen s of o hers and o reply o hose commen s prior o any ac ion by he Board and
 - c in hose cases where he policy ac ion affec s public policy concerns o reques he opinion of he Governmen al Advisory Commi ee and ake duty in o accoun any advice imely presen ed by he Governmen al Advisory Commi ee on i s own ini ia ive or a he Board's reques
- 2 Where bo h prac ically feasible and consis en wi h he relevan policy developmen process an in-person public forum shall also be held for discussion of any proposed policies as described in [Sec ion 6\(1\)\(b\) of his Ar icle](#) prior o any final Board ac ion
- 3 Af er aking ac ion on any policy subjec o his Sec ion he Board shall publish in he mee ing minu es he reasons for any ac ion aken he vo e of each Direc or vo ing on he ac ion and he separa e s a emen of any Direc or desiring publica ion of such a s a emen

Section 7. TRANSLATION OF DOCUMENTS

As appropria e and o he exen provided in he CANN budge CANN shall facila e he ransla ion of inal published documen s in o various appropria e languages

ARTICLE IV: ACCOUNTABILITY AND REVIEW

Section 1. PURPOSE

n carrying ou i s mission as se ou in hese Bylaws CANN should be accoun able o he communi y for opera ing in a manner ha is consis en wi h hese Bylaws and wi h due regard for he core values se for h in [Ar icle of hese Bylaws](#) The provisions of his Ar icle crea ing processes for reconsidera ion and independen review of CANN ac ions and periodic review of CANN's s ruc ure and procedures are in ended o reinforce he various accoun abili y mechanisms o herwise se for h in hese Bylaws including he ransparency provisions of [Ar icle](#) and he Board and o her selec ion mechanisms se for h hroughou hese Bylaws

Section 2. RECONSIDERATION

- 1 CANN shall have in place a process by which any person or en i y ma erially affec ed by an ac ion of CANN may reques review or reconsidera ion of ha ac ion by he Board
- 2 Any person or en i y may submi a reques for reconsidera ion or review of an CANN ac ion or inac ion ("Reconsidera ion Reques ") o he exen ha he she or i have been adversely affec ed by
 - a one or more s aff ac ions or inac ions ha con radic es ablished CANN policy(ies) or
 - b one or more ac ions or inac ions of he CANN Board ha have been aken or refused o be aken wi hou considera ion of ma erial informa ion excep where he par y submi ing he reques could have submi ed bu did no submi he informa ion for he Board's considera ion a he ime of ac ion or refusal o ac or
 - c one or more ac ions or inac ions of he CANN Board ha are aken as a resul of he Board's reliance on false or inaccura e ma erial informa ion
- 3 The Board has designa ed he Board Governance Commi ee o review and consider any such Reconsidera ion Reques s The Board Governance Commi ee shall have he au hori y o
 - a evalua e reques s for review or reconsidera ion
 - b summarily dismiss insufficien reques s
 - c evalua e reques s for urgen considera ion
 - d conduc wha ever fac ual inves iga ion is deemed appropria e
 - e reques addi onal wri en submissions from he affec ed par y or from o her par ies

- f make a final determination on Reconsideration Requests regarding suspension or inaction with reference to the Board of Directors and
 - g make a recommendation to the Board of Directors on the merits of the request as necessary
- 4 .CANN shall absorb the normal administrative costs of the reconsideration process. Reserves held to recover from a party requesting review or reconsideration any costs that are deemed to be extraordinary in nature. When such extraordinary costs can be foreseen, the fact and the reasons why such costs are necessary and appropriate to evaluating the Reconsideration Request shall be communicated to the party seeking reconsideration who shall then have the option of withdrawing the request or agreeing to bear such costs.
 - 5 All Reconsideration Requests must be submitted to an e-mail address designated by the Board Governance Committee within fifteen days after
 - a for requests challenging Board actions the date on which information about the challenged Board action is first published in a resolution unless the posting of the resolution is not accompanied by a rationale. In any instance the request must be submitted within 15 days from the initial posting of the rationale.
 - b for requests challenging suspensions the date on which the party submitting the request became aware of or reasonably should have become aware of the challenged suspension or
 - c for requests challenging either Board or suspension the date on which the affected person reasonably concluded or reasonably should have concluded that the action would not be taken in a timely manner.
 - 6 To properly initiate a Reconsideration process all requestors must review and follow the Reconsideration Request form posted on the .CANN website at <http://www.icann.org/en/groups/board/governance/reconsideration>. Requestors must also acknowledge and agree to the terms and conditions set forth in the form when filing.
 - 7 Requestors shall not provide more than 25 pages (double-spaced, 12-point font) of argument in support of a Reconsideration Request. Requestors may submit all documentary evidence necessary to demonstrate why the action or inaction should be reconsidered within the limitation.
 - 8 The Board Governance Committee shall have authority to consider Reconsideration Requests from different parties in the same proceeding so long as (i) the requests involve the same general action or inaction and (ii) the parties submitting Reconsideration Requests are similarly affected by such action or inaction. In addition, consolidated filings may be appropriate if the alleged causal connection and the resulting harm is the same for all of the requestors. Every requestor must be able to demonstrate that it has been materially harmed and adversely impacted by the action or inaction giving rise to the request.
 - 9 The Board Governance Committee shall review each Reconsideration Request upon its receipt to determine if it is sufficiently stated. The Board Governance Committee may summarily dismiss a Reconsideration Request if (i) the requestor fails to meet the requirements for bringing a Reconsideration Request, (ii) it is frivolous, querulous or vexatious, or (iii) the requestor had no notice and opportunity to be heard but did not participate in the public comment period relating to the contested action, if applicable. The Board Governance Committee's summary dismissal of a Reconsideration Request shall be posted on the Website.
 - 10 For all Reconsideration Requests that are not summarily dismissed, the Board Governance Committee shall promptly proceed to review and consideration.
 - 11 The Board Governance Committee may ask the .CANN staff for its views on the matter which comments shall be made publicly available on the Website.
 - 12 The Board Governance Committee may request additional information or clarifications from the requestor and may elect to conduct a meeting with the requestor by telephone, email or if acceptable to the party requesting reconsideration, in person. A requestor may ask for an opportunity to be heard. The Board Governance Committee's decision on any such request is final. To the extent any information gathered in such a meeting is relevant to any recommendation by the Board Governance Committee, it shall so state in its recommendation.
 - 13 The Board Governance Committee may also request information relevant to the request from third parties. To the extent any information gathered is relevant to any recommendation by the Board Governance Committee, it shall so state in its recommendation. Any information collected from third parties shall be provided to the requestor.
 - 14 The Board Governance Committee shall act on a Reconsideration Request on the basis of the public written record, including information submitted by the party seeking reconsideration or review by the .CANN staff and by any third party.
 - 15 For all Reconsideration Requests brought regarding suspension or inaction, the Board Governance Committee shall be delegated authority by the Board of Directors to make a final determination and recommendation on the matter. Board consideration of the recommendation is not required. As the Board Governance Committee deems necessary, it may make a recommendation to the Board for consideration and action. The Board Governance Committee's determination on suspension or inaction shall be posted on the Website. The Board Governance Committee's determination is final and establishes precedential value.
 - 16 The Board Governance Committee shall make a final determination or a recommendation to the Board with respect to a Reconsideration Request within thirty days following its receipt of the request, unless impractical, in which case it shall report to the Board the circumstances that prevented it from making a final recommendation and it shall be exempt from the time required to produce such a final determination or recommendation. The final recommendation shall be posted on the .CANN website.
 - 17 The Board shall not be bound to follow the recommendations of the Board Governance Committee. The final decision of the Board shall be made public as part of the preliminary report and minutes of the Board meeting at which action is taken. The Board shall issue its decision on the recommendation of the Board Governance Committee within 60 days of receipt of the Reconsideration Request or as soon thereafter as feasible. Any circumstances that delay the Board from acting within this timeframe must be identified and posted on the .CANN website. The Board's decision on the recommendation is final.

- 18 If he requestor believes that the Board action or inaction posed for Reconsideration is so urgent that the timing requirements of the Reconsideration process are too long, the requestor may apply to the Board Governance Committee for urgent consideration. Any request for urgent consideration must be made within two business days (calculated as CANN's headquarters in Los Angeles, California) of the posting of the resolution at issue. A request for urgent consideration must include a discussion of why the matter is urgent for reconsideration and must demonstrate a likelihood of success with the Reconsideration Request.
- 19 The Board Governance Committee shall respond to the request for urgent consideration within two business days after receipt of such request. If the Board Governance Committee agrees to consider the matter with urgency, it will cause no notice to be provided to the requestor who will have two business days after notification to complete the Reconsideration Request. The Board Governance Committee shall issue a recommendation on the urgent Reconsideration Request within seven days of the completion of the filing of the Request or as soon thereafter as feasible. If the Board Governance Committee does not agree to consider the matter with urgency, the requestor may still file a Reconsideration Request within the regular time frame set forth in these Bylaws.
- 20 The Board Governance Committee shall submit a report to the Board on an annual basis containing at least the following information for the preceding calendar year:
 - a. the number and general nature of Reconsideration Requests received, including an identification of the requests were acted upon, summarily dismissed, or remain pending;
 - b. for any Reconsideration Requests that remained pending at the end of the calendar year, the average length of time for which such Reconsideration Requests have been pending, and a description of the reasons for any requests pending for more than nine (90) days;
 - c. an explanation of any other mechanisms available to ensure that CANN is accountable to persons materially affected by its decisions; and
 - d. whether or not, in the Board Governance Committee's view, the criteria for which reconsideration may be requested should be revised, or another process should be adopted or modified, to ensure that all persons materially affected by CANN decisions have meaningful access to a review process that ensures fairness while limiting frivolous claims.

Section 3. INDEPENDENT REVIEW OF BOARD ACTIONS

1. In addition to the reconsideration process described in Section 2 of this Article, CANN shall have in place a separate process for independent third-party review of Board actions alleged by an affected party to be inconsistent with the Articles of Incorporation or Bylaws.
2. Any person materially affected by a decision or action by the Board that he or she asserts is inconsistent with the Articles of Incorporation or Bylaws may submit a request for independent review of that decision or action in order to be materially affected, the person must suffer injury or harm that is directly and causally connected to the Board's alleged violation of the Bylaws or the Articles of Incorporation, and not as a result of third parties acting in line with the Board's action.
3. A request for independent review must be filed within thirty days of the posting of the minutes of the Board meeting (and the accompanying Board Briefing Materials, if available) that the requesting party contends demonstrate that CANN violated its Bylaws or Articles of Incorporation. Consolidated requests may be appropriate when the causal connection between the circumstances of the requests and the harm is the same for each of the requesting parties.
4. Requests for such independent review shall be referred to an Independent Review Process Panel ("RP Panel") which shall be charged with comparing contested actions of the Board to the Articles of Incorporation and Bylaws, and with declaring whether the Board has acted consistently with the provisions of those Articles of Incorporation and Bylaws. The RP Panel must apply a defined standard of review to the RP request, focusing on:
 - a. did the Board act withou conflict of interest in making its decision?
 - b. did the Board exercise due diligence and care in having a reasonable amount of facts in front of them? and
 - c. did the Board members exercise independent judgment in making the decision believed to be in the best interests of the company?
5. Requests for independent review shall not exceed 25 pages (double-spaced, 12-point font) of argument. CANN's response shall not exceed the same length. Parties may submit documentary evidence supporting their positions without limitation, but they may not submit expert evidence; such evidence must be provided in writing and there will be a right of reply to the expert evidence.
6. There shall be an omnibus standing panel of between six and nine members with a variety of expertise including jurisprudence, judicial experience, alternative dispute resolution, and knowledge of CANN's mission and work from which each specific RP Panel shall be selected. The panels shall serve for terms that are staggered to allow for continued review of the size of the panel and the range of expertise. A Chair of the standing panel shall be appointed for a term not to exceed three years. Individuals holding an official position or office within CANN's structure are not eligible to serve on the standing panel, but even if an omnibus standing panel (i) is not in place when an RP Panel must be convened for a given proceeding, the RP proceeding will be considered by a one- or three-member panel comprised in accordance with the rules of the RP Provider, or (ii) is in place but does not have the requisite diversity of skill and experience needed for a particular proceeding, the RP Provider shall identify one or more panels, as required, from outside the omnibus standing panel to augment the panel members for that proceeding.
7. All RP proceedings shall be administered by an institutional dispute resolution provider appointed from time to time by CANN ("the RP Provider"). The membership of the standing panel shall be coordinated by the RP Provider subject to approval by CANN.
8. Subject to the approval of the Board, the RP Provider shall establish operating rules and procedures which shall implement and be consistent with this Section 3.
9. Either party may request that the RP be considered by a one- or three-member panel. The Chair of the standing panel shall make the final determination of the size of each RP panel, taking into account the

wishes of the parties and the complexity of the issues presented

- 10 The RP Provider shall determine a procedure for assigning members from the standing panel to individual RP panels
- 11 The RP Panel shall have the authority to
 - a summarily dismiss requests brought with outstanding lacking in substance or that are frivolous or vexatious
 - b request additional written submissions from the party seeking review the Board the Supporting Organizations or from other parties
 - c declare whether an action or inaction of the Board was inconsistent with the Articles of Incorporation or Bylaws and
 - d recommend that the Board say any action or decision or that the Board take any interim action until such time as the Board reviews and acts upon the opinion of the RP
 - e consolidate requests for independent review if the facts and circumstances are sufficiently similar and
 - f determine the timing for each proceeding
- 12 In order to keep the costs and burdens of independent review as low as possible the RP Panel should conduct its proceedings by email and otherwise via the internet to the maximum extent feasible Where necessary the RP Panel may hold meetings by telephone notwithstanding that a telephonic or in-person hearing is convened the hearing shall be limited to argument only all evidence including witness statements must be submitted in writing in advance
- 13 All panel members shall adhere to conflicts-of-interest policies adopted in the RP Provider's operating rules and procedures as approved by the Board
- 14 Prior to initiating a request for independent review the complainant is urged to enter into a period of cooperative engagement with CANN for the purpose of resolving or narrowing the issues that are contemplated to be brought to the RP The cooperative engagement process is published on CANN.org and is incorporated into this Section 3 of the Bylaws
- 15 Upon the filing of a request for an independent review the parties are urged to participate in a conciliation period for the purpose of narrowing the issues that are stated within the request for independent review A conciliation will be appointed from the members of the omnibus standing panel by the Chair of that panel The conciliation shall not be eligible to serve as one of the panels presiding over that particular RP The Chair of the standing panel may deem conciliation unnecessary if cooperative engagement sufficiently narrowed the issues remaining in the independent review
- 16 Cooperative engagement and conciliation are both voluntary However if the party requesting the independent review does not participate in good faith in the cooperative engagement and the conciliation processes if applicable and CANN is the prevailing party in the request for independent review the RP Panel must award to CANN all reasonable fees and costs incurred by CANN in the proceeding including legal fees
- 17 All matters discussed during the cooperative engagement and conciliation phases are to remain confidential and not subject to discovery or as evidence for any purpose with the RP and are without prejudice to either party
- 18 The RP Panel should strive to issue its written declaration no later than six months after the filing of the request for independent review The RP Panel shall make its declaration based solely on the documentation supporting materials and arguments submitted by the parties and in its declaration shall specifically designate the prevailing party The party not prevailing shall ordinarily be responsible for bearing all costs of the RP Provider but in an extraordinary case the RP Panel may in its declaration allocate up to half of the costs of the RP Provider to the prevailing party based upon the circumstances including a consideration of the reasonableness of the parties' positions and their contribution to the public interest Each party to the RP proceedings shall bear its own expenses
- 19 The RP operating procedures and all petitions claims and declarations shall be posted on CANN's website when they become available
- 20 The RP Panel may in its discretion grant a party's request to keep certain information confidential such as trade secrets
- 21 Where feasible the Board shall consider the RP Panel declaration at the Board's next meeting The declarations of the RP Panel and the Board's subsequent action on those declarations are final and have precedential value

Section 4. PERIODIC REVIEW OF ICANN STRUCTURE AND OPERATIONS

1 The Board shall cause a periodic review of the performance and operation of each Supporting Organization each Supporting Organization Council each Advisory Committee (other than the Governmental Advisory Committee) and the Nominating Committee by an entity or entities independent of the organization under review The goal of the review is to be undertaken pursuant to such criteria and standards as the Board shall direct shall be to determine (i) whether the organization has a continuing purpose in the CANN structure and (ii) if so whether any change in structure or operations is desirable to improve its effectiveness

These periodic reviews shall be conducted no less frequently than every five years based on feasibility as determined by the Board Each five-year cycle will be computed from the moment of the reception by the Board of the final report of the relevant review Working Group

The results of such reviews shall be posted on the Website for public review and comment and shall be considered by the Board no later than the second scheduled meeting of the Board after such results have been posted for 30 days The consideration by the Board includes the ability to revise the structure or operation of the parts of CANN being reviewed by a majority vote of all members of the Board

2 The Governmental Advisory Committee shall provide its own review mechanisms

ARTICLE V: OMBUDSMAN

Section 1. OFFICE OF OMBUDSMAN

- 1 There shall be an Office of Ombudsman to be managed by an Ombudsman and to include such staff support as the Board determines is appropriate and feasible. The Ombudsman shall be a full-time position with salary and benefits appropriate to the function as determined by the Board.
- 2 The Ombudsman shall be appointed by the Board for an initial term of two years, subject to renewal by the Board.
- 3 The Ombudsman shall be subject to dismissal by the Board only upon a three-fourths (3/4) vote of the entire Board.
- 4 The annual budget for the Office of Ombudsman shall be established by the Board as part of the annual CANN budget process. The Ombudsman shall submit a proposed budget to the President and the President shall include the budget submission in its entire and without change in the general CANN budget recommended by the CANN President to the Board. Nothing in his Article shall prevent the President from offering separate views on the substance, size, or other features of the Ombudsman's proposed budget to the Board.

Section 2. CHARTER

The charter of the Ombudsman shall be to act as a neutral dispute resolution practitioner for those matters for which the provisions of the Reconsideration Policy set forth in [Section 2 of Article V](#) or the Independent Review Policy set forth in [Section 3 of Article V](#) have not been invoked. The principal function of the Ombudsman shall be to provide an independent internal evaluation of complaints by members of the CANN community who believe that the CANN staff, Board, or an CANN constituent body has treated them unfairly. The Ombudsman shall serve as an objective advocate for fairness and shall seek to evaluate and, where possible, resolve complaints about unfair or inappropriate treatment by CANN staff, the Board, or CANN constituent bodies, clarifying the issues and using conflict resolution tools such as negotiation, facilitation, and "shuttle diplomacy" to achieve these results.

Section 3. OPERATIONS

The Office of Ombudsman shall

- 1 facilitate the fair, impartial, and timely resolution of problems and complaints of affected members of the CANN community (excluding employees and vendors/suppliers of CANN) who have specific actions or failures to act by the Board or CANN staff which have not otherwise become the subject of either the Reconsideration or Independent Review Policies.
- 2 exercise discretion to accept or decline to act on a complaint or question, including by the development of procedures to dispose of complaints that are insufficiently concrete, substantive, or related to CANN's interactions with the community, so as to be inappropriate subjects for the Ombudsman to act on. In addition, and without limiting the foregoing, the Ombudsman shall have no authority to act in any way with respect to internal administrative matters, personnel matters, issues relating to membership on the Board, or issues related to vendor/supplier relations.
- 3 have the right to have access to (but not to publish if otherwise confidential) all necessary information and records from CANN staff and constituent bodies to enable an informed evaluation of the complaint and to assist in dispute resolution where feasible (subject only to such confidentiality obligations as are imposed by the complainant or any generally applicable confidentiality policies adopted by CANN).
- 4 heighten awareness of the Ombudsman program and functions through routine interaction with the CANN community and online availability.
- 5 maintain neutrality and independence and have no bias or personal stake in an outcome, and
- 6 comply with all CANN conflicts-of-interest and confidentiality policies.

Section 4. INTERACTION WITH ICANN AND OUTSIDE ENTITIES

- 1 No CANN employee, Board member, or other participant in Supporting Organizations or Advisory Committees shall prevent or impede the Ombudsman's contact with the CANN community (including employees of CANN). CANN employees and Board members shall direct members of the CANN community who voice problems, concerns, or complaints about CANN to the Ombudsman, who shall advise complainants about the various options available for review of such problems, concerns, or complaints.
- 2 CANN staff and other CANN participants shall observe and respect determinations made by the Office of Ombudsman concerning confidentiality of any complaints received by the Office.
- 3 Contact with the Ombudsman shall not constitute an act of CANN of any particular action or cause of action.
- 4 The Ombudsman shall be specifically authorized to make such reports to the Board as he or she deems appropriate with respect to any particular matter and its resolution or the inability to resolve it. Absent a determination by the Ombudsman in his or her sole discretion, he or she would be inappropriate. Such reports shall be posted on the Website.
- 5 The Ombudsman shall not take any actions not authorized in these Bylaws, and in particular shall not insist upon or support in any way any legal actions challenging CANN's routine procedures, processes, or any conduct by the CANN Board, staff, or constituent bodies.

Section 5. ANNUAL REPORT

The Office of Ombudsman shall publish on an annual basis a consolidated analysis of the year's complaints and resolutions, appropriately dealing with confidentiality obligations and concerns. Such annual reports should include a description of any trends or common elements of complaints received during the period in question, as well as recommendations for steps that could be taken to minimize future complaints. The annual report shall be posted on the Website.

ARTICLE VI: BOARD OF DIRECTORS

Section 1. COMPOSITION OF THE BOARD

The CANN Board of Directors ("Board") shall consist of sixteen voting members ("Directors") in addition four non-voting liaisons ("Liaisons") shall be designated for the purposes set forth in [Section 9 of his Article](#). Only Directors shall be included in determining the existence of quorums and in establishing the validity of votes taken by the CANN Board.

Section 2. DIRECTORS AND THEIR SELECTION; ELECTION OF CHAIRMAN AND VICE-CHAIRMAN

1 The Directors shall consist of

- a Eight voting members selected by the Nominating Committee established by [Article V of these Bylaws](#). These seats on the Board of Directors are referred to in these Bylaws as Seats 1 through 8.
- b Two voting members selected by the Address Supporting Organization according to the provisions of [Article V of these Bylaws](#). These seats on the Board of Directors are referred to in these Bylaws as Seats 9 and Seat 10.
- c Two voting members selected by the Country-Code Names Supporting Organization according to the provisions of [Article X of these Bylaws](#). These seats on the Board of Directors are referred to in these Bylaws as Seats 11 and Seat 12.
- d Two voting members selected by the Generic Names Supporting Organization according to the provisions of [Article X of these Bylaws](#). These seats on the Board of Directors are referred to in these Bylaws as Seats 13 and Seat 14.
- e One voting member selected by the A-Large Community according to the provisions of [Article X of these Bylaws](#). This seat on the Board of Directors is referred to in these Bylaws as Seat 15.
- f The President ex officio who shall be a voting member.

2 In carrying out its responsibilities to fill Seats 1 through 8 the Nominating Committee shall seek to ensure that the CANN Board is composed of members who in the aggregate display diversity in geography, culture, skills, experience, and perspective by applying the criteria set forth in [Section 3 of his Article](#). At no time when it makes its selection shall the Nominating Committee select a Director to fill any vacancy or expired term whose selection would cause the total number of Directors (not including the President) from countries in any one Geographic Region (as defined in [Section 5 of his Article](#)) to exceed five, and the Nominating Committee shall ensure when it makes its selections that the Board includes at least one Director who is from a country in each CANN Geographic Region ("Diversity Calculation").

For purposes of this sub-section 2 of [Article V](#), [Section 2 of the CANN Bylaws](#), if any candidate for director maintains citizenship of more than one country or has been domiciled for more than five years in a country of which the candidate does not maintain citizenship ("Domicile") the candidate may be deemed to be from either country and must select in his/her Statement of Interest the country of citizenship or Domicile that he/she wants the Nominating Committee to use for Diversity Calculation purposes. For purposes of this sub-section 2 of [Article V](#), [Section 2 of the CANN Bylaws](#), a person can only have one "Domicile" which shall be determined by where the candidate has a permanent residence and place of habitation.

3 In carrying out their responsibilities to fill Seats 9 through 15 the Supporting Organizations and the A-Large Community shall seek to ensure that the CANN Board is composed of members that in the aggregate display diversity in geography, culture, skills, experience, and perspective by applying the criteria set forth in [Section 3 of his Article](#). At any given time, no two Directors selected by a Supporting Organization shall be citizens from the same country or of countries located in the same Geographic Region.

For purposes of this sub-section 3 of [Article V](#), [Section 2 of the CANN Bylaws](#), if any candidate for director maintains citizenship of more than one country or has been domiciled for more than five years in a country of which the candidate does not maintain citizenship ("Domicile") the candidate may be deemed to be from either country and must select in his/her Statement of Interest the country of citizenship or Domicile that he/she wants the Supporting Organization or the A-Large Community to use for selection purposes. For purposes of this sub-section 3 of [Article V](#), [Section 2 of the CANN Bylaws](#), a person can only have one "Domicile" which shall be determined by where the candidate has a permanent residence and place of habitation.

4 The Board shall annually elect a Chairman and a Vice-Chairman from among the Directors, not including the President.

Section 3. CRITERIA FOR SELECTION OF DIRECTORS

CANN Directors shall be

- 1 Accomplished persons of integrity, objectivity, and intelligence with reputations for sound judgment and open minds, and a demonstrated capacity for thoughtful group decision-making.
- 2 Persons with an understanding of CANN's mission and the potential impact of CANN decisions on the global name community and committed to the success of CANN.
- 3 Persons who will produce the broadest cultural and geographic diversity on the Board consistent with meeting the other criteria set forth in this Section.
- 4 Persons who in the aggregate have personal familiarity with the operation of gTLD registries and registrars, with ccTLD registries, with P address registries, with Internet technical standards and protocols, with policy-development procedures, legal relations, and the public interest, and with the broad range of business, individual, academic, and non-commercial users of the name, and
- 5 Persons who are able to work and communicate in written and spoken English.

Section 4. ADDITIONAL QUALIFICATIONS

- 1 No individual holding any office herein, or the contrary, no official of a national government, or a multinational entity established by treaty or other agreement between national governments, may serve as a Director. As used

herein the term "official" means a person (i) who holds an elective governmental office or (ii) who is employed by such government or multinational entity and whose primary function with such government or entity is to develop or influence governmental or public policies

2. No person who serves in any capacity (including as a liaison) on any Supporting Organization Council shall simultaneously serve as a Director or liaison of the Board of such a person accepts a nomination to be considered for selection by the Supporting Organization Council or the A-Large Community or be a Director of the person shall not following such nomination participate in any discussion of or vote by the Supporting Organization Council or the committee designated by the A-Large Community relating to the selection of Directors by the Council or Community until the Council or committee(s) designated by the A-Large Community has selected the full complement of Directors it is responsible for selecting. In the event that a person serving in any capacity on a Supporting Organization Council accepts a nomination to be considered for selection as a Director of the constituency group or other group or entity has selected the person may select a replacement for purposes of the Council's selection process. In the event that a person serving in any capacity on the A-Large Advisory Committee accepts a nomination to be considered for selection by the A-Large Community as a Director of the Regional A-Large Organization or other group or entity has selected the person may select a replacement for purposes of the Community's selection process.
3. Persons serving in any capacity on the Nominating Committee shall be ineligible for selection of positions on the Board as provided by [Article V Section 8](#)

Section 5. INTERNATIONAL REPRESENTATION

In order to ensure broad international representation on the Board the selection of Directors by the Nominating Committee each Supporting Organization and the A-Large Community shall comply with all applicable diversity provisions of these Bylaws or of any Memorandum of Understanding referred to in these Bylaws concerning the Supporting Organization. One intent of these diversity provisions is to ensure that all times each Geographic Region shall have at least one Director and at all times no region shall have more than five Directors on the Board (not including the President). As used in these Bylaws each of the following is considered to be a "Geographic Region": Europe, Asia/Australia/Pacific, Latin America/Caribbean islands, Africa, and North America. The specific countries included in each Geographic Region shall be determined by the Board and this Section shall be reviewed by the Board from time to time (but at least every three years) to determine whether any change is appropriate taking account of the evolution of the name.

Section 6. DIRECTORS' CONFLICTS OF INTEREST

The Board through the Board Governance Committee shall require a statement from each Director no less frequently than once a year setting forth all business and other affiliations that relate in any way to the business and other affiliations of CANN. Each Director shall be responsible for disclosing to CANN any matter that could reasonably be considered to make such Director an "interested director" within the meaning of Section 5233 of the California Nonprofit Public Benefit Corporation Law ("CNPBCL"). In addition, each Director shall disclose to CANN any relationship or other fact that could reasonably be considered to cause the Director to be considered to be an "interested person" within the meaning of Section 5227 of the CNPBCL. The Board shall adopt policies specifically addressing Director, Officer, and Supporting Organization conflicts of interest. No Director shall vote on any matter in which he or she has a material and direct financial interest that would be affected by the outcome of the vote.

Section 7. DUTIES OF DIRECTORS

Directors shall serve as individuals who have the duty to act in what they reasonably believe are the best interests of CANN and not as representatives of the entity that selected them, their employers, or any other organizations or constituencies.

Section 8. TERMS OF DIRECTORS

1. The regular term of office of Directors of Sections 1 through 15 shall begin as follows:
 - a. The regular terms of Sections 1 through 3 shall begin at the conclusion of CANN's annual meeting in 2003 and each CANN annual meeting every third year after 2003.
 - b. The regular terms of Sections 4 through 6 shall begin at the conclusion of CANN's annual meeting in 2004 and each CANN annual meeting every third year after 2004.
 - c. The regular terms of Sections 7 and 8 shall begin at the conclusion of CANN's annual meeting in 2005 and each CANN annual meeting every third year after 2005.
 - d. The terms of Sections 9 and 12 shall continue until the conclusion of CANN's annual meeting in 2015. The next terms of Sections 9 and 12 shall begin at the conclusion of CANN's annual meeting in 2015 and each CANN annual meeting every third year after 2015.
 - e. The terms of Sections 10 and 13 shall continue until the conclusion of CANN's annual meeting in 2013. The next terms of Sections 10 and 13 shall begin at the conclusion of CANN's annual meeting in 2013 and each CANN annual meeting every third year after 2013, and
 - f. The terms of Sections 11, 14, and 15 shall continue until the conclusion of CANN's annual meeting in 2014. The next terms of Sections 11, 14, and 15 shall begin at the conclusion of CANN's annual meeting in 2014 and each CANN annual meeting every third year after 2014.
2. Each Director holding any of Sections 1 through 15, including a Director selected to fill a vacancy, shall hold office for a term that lasts until the next term for that Section commences and until a successor has been selected and qualified or until that Director resigns or is removed in accordance with these Bylaws.
3. At least two months before the commencement of each annual meeting, the Nominating Committee shall give the Secretary of CANN written notice of its selection of Directors for each year beginning at the conclusion of the annual meeting.
4. At least six months before the date specified for the commencement of the term as specified in paragraphs 1 d-f above, any Supporting Organization or the A-Large Community shall select a Director for a Section with a term beginning that year shall give the Secretary of CANN written notice of its selection.

- 5 Subject to the provisions of the Transition Article of these Bylaws, no Director may serve more than three consecutive terms. For these purposes, a person selected to fill a vacancy in a term shall not be deemed to have served that term. (No election period prior to the beginning of the first regular term of Sea 15 in 2010. Sea 15 was deemed vacant for the purposes of calculation of terms of service.)
- 6 The term as Director of the person holding the office of President shall be for as long as, and only for as long as, such person holds the office of President.

Section 9. NON-VOTING LIAISONS

- 1 The non-voting liaisons shall include
 - a One appointed by the [Governmental Advisory Committee](#).
 - b One appointed by the Root Server System [Advisory Committee](#) established by [Article X of these Bylaws](#).
 - c One appointed by the [Security and Stability Advisory Committee](#) established by [Article X of these Bylaws](#).
 - d One appointed by the [nerve Engineering Task Force](#).
- 2 The non-voting liaisons shall serve terms that begin at the conclusion of each annual meeting. At least one month before the commencement of each annual meeting, each body entitled to appoint a non-voting liaison shall give the Secretary of [CANN](#) written notice of its appointment.
- 3 Each non-voting liaison may be reappointed and shall remain in his position until a successor has been appointed or until the liaison resigns or is removed in accordance with these Bylaws.
- 4 The non-voting liaisons shall be entitled to attend Board meetings, participate in Board discussions and deliberations, and have access (under conditions established by the Board) to materials provided to Directors for use in Board discussions, deliberations and meetings, but shall otherwise not have any of the rights and privileges of Directors. Non-voting liaisons shall be entitled (under conditions established by the Board) to use any materials provided to them pursuant to this Section for the purpose of consulting with their respective committee or organization.

Section 10. RESIGNATION OF A DIRECTOR OR NON-VOTING LIAISON

Subject to Section 5226 of the CNPBC, any Director or non-voting liaison may resign at any time either by oral tender of resignation at any meeting of the Board (followed by prompt written notice to the Secretary of [CANN](#)) or by giving written notice hereof to the President or the Secretary of [CANN](#). Such resignation shall take effect at the time specified and unless otherwise specified, the acceptance of such resignation shall not be necessary to make it effective. The successor shall be selected pursuant to [Section 12 of his Article](#).

Section 11. REMOVAL OF A DIRECTOR OR NON-VOTING LIAISON

- 1 Any Director may be removed following notice to that Director by a three-fourths (3/4) majority vote of all Directors, provided, however, that the Director who is the subject of the removal action shall not be entitled to vote on such an action or be counted as a voting member of the Board when calculating the required three-fourths (3/4) vote, and provided further that each vote to remove a Director shall be a separate vote on the sole question of the removal of that particular Director. If the Director was selected by a [Supporting Organization](#), notice must be provided to that [Supporting Organization](#) at the same time notice is provided to the Director. If the Director was selected by the A-Large Community, notice must be provided to the A-Large [Advisory Committee](#) at the same time notice is provided to the Director.
- 2 With the exception of the non-voting liaison appointed by the [Governmental Advisory Committee](#), any non-voting liaison may be removed following notice to that liaison and to the organization by which that liaison was selected by a three-fourths (3/4) majority vote of all Directors if the selecting organization fails to promptly remove that liaison following such notice. The Board may request the [Governmental Advisory Committee](#) to consider the replacement of the non-voting liaison appointed by that Committee if the Board, by a three-fourths (3/4) majority vote of all Directors, determines that such an action is appropriate.

Section 12. VACANCIES

- 1 A vacancy or vacancies in the Board of Directors shall be deemed to exist in the case of the death, resignation, or removal of any Director, if the authorized number of Directors is increased, or if a Director has been declared of unsound mind by a final order of court, or convicted of a felony or incarcerated for more than 90 days as a result of a criminal conviction, or has been found by final order or judgment of any court to have breached a duty under Sections 5230 et seq. of the CNPBC. Any vacancy occurring on the Board of Directors shall be filled by the Nominating Committee, unless (a) that Director was selected by a [Supporting Organization](#), in which case that vacancy shall be filled by that [Supporting Organization](#), or (b) that Director was the President, in which case that vacancy shall be filled in accordance with the provisions of [Article X of these Bylaws](#). The selecting body shall give written notice to the Secretary of [CANN](#) of their appointments to fill vacancies. A Director selected to fill a vacancy on the Board shall serve for the unexpired term of his or her predecessor in office and until a successor has been selected and qualified. No reduction of the authorized number of Directors shall have the effect of removing a Director prior to the expiration of the Director's term of office.
- 2 The organizations selecting the non-voting liaisons identified in [Section 9 of his Article](#) are responsible for determining the existence of and filling any vacancies in those positions. They shall give the Secretary of [CANN](#) written notice of their appointments to fill vacancies.

Section 13. ANNUAL MEETINGS

Annual meetings of [CANN](#) shall be held for the purpose of electing Officers and for the transaction of such other business as may come before the meeting. Each annual meeting for [CANN](#) shall be held at the principal office of [CANN](#) or any other appropriate place of the Board's time and choosing, provided such annual meeting is held within 14 months of the immediately preceding annual meeting. If the Board determines that it is practical, the annual meeting should be distributed in real-time and archived video and audio format on the [nerve](#).

Section 14. REGULAR MEETINGS

Regular meetings of the Board shall be held on dates to be determined by the Board in the absence of other designations regular meetings shall be held at the principal office of CANN

Section 15. SPECIAL MEETINGS

Special meetings of the Board may be called by or at the request of one-quarter (1/4) of the members of the Board or by the Chairman of the Board or the President. A call for a special meeting shall be made by the Secretary of CANN in the absence of designation special meetings shall be held at the principal office of CANN

Section 16. NOTICE OF MEETINGS

Notice of time and place of all meetings shall be delivered personally or by telephone or by electronic mail to each Director and non-voting liaison or sent by first-class mail (air mail for addresses outside the United States) or facsimile charges prepaid addressed to each Director and non-voting liaison at the Director's or non-voting liaison's address as it is shown on the records of CANN in case the notice is mailed it shall be deposited in the United States mail at least fourteen (14) days before the time of the holding of the meeting in case the notice is delivered personally or by telephone or facsimile or electronic mail it shall be delivered personally or by telephone or facsimile or electronic mail at least forty-eight (48) hours before the time of the holding of the meeting. No withdrawal of any notice in this Section or the contrary notice of a meeting need not be given to any Director who has signed a waiver of notice or a written consent to holding the meeting or an approval of the minutes hereof whether before or after the meeting or who attends the meeting without protesting prior thereto or at its commencement the lack of notice to such Director. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meetings.

Section 17. QUORUM

All annual, regular and special meetings of the Board a majority of the total number of Directors then in office shall constitute a quorum for the transaction of business and the act of a majority of the Directors present at any meeting at which there is a quorum shall be the act of the Board unless otherwise provided herein or by law. If a quorum shall not be present at any meeting of the Board the Directors present hereinafter may adjourn the meeting from time to time or to another place, time or date. If the meeting is adjourned for more than twenty-four (24) hours notice shall be given to those Directors not at the meeting at the time of the adjournment.

Section 18. ACTION BY TELEPHONE MEETING OR BY OTHER COMMUNICATIONS EQUIPMENT

Members of the Board or any Committee of the Board may participate in a meeting of the Board or Committee of the Board through use of (i) conference telephone or similar communications equipment provided that all Directors participating in such a meeting can speak to and hear one another or (ii) electronic video screen communication or other communication equipment provided that (a) all Directors participating in such a meeting can speak to and hear one another (b) all Directors are provided the means of fully participating in all matters before the Board or Committee of the Board and (c) CANN adopts and implements means of verifying that (x) a person participating in such a meeting is a Director or other person entitled to participate in the meeting and (y) all actions of or votes by the Board or Committee of the Board are taken or cast only by the members of the Board or Committee and no persons who are not members. Participation in a meeting pursuant to this Section constitutes presence in person at such meeting. CANN shall make available at the place of any meeting of the Board the telecommunications equipment necessary to permit members of the Board to participate by telephone.

Section 19. ACTION WITHOUT MEETING

Any action required or permitted to be taken by the Board or a Committee of the Board may be taken without a meeting if all of the Directors entitled to vote hereinafter shall individually or collectively consent in writing to such action. Such written consent shall have the same force and effect as the unanimous vote of such Directors. Such written consent or consents shall be filed with the minutes of the proceedings of the Board.

Section 20. ELECTRONIC MAIL

If permitted under applicable law communication by electronic mail shall be considered equivalent to any communication otherwise required to be in writing. CANN shall take such steps as it deems appropriate under the circumstances to assure itself that communications by electronic mail are authentic.

Section 21. RIGHTS OF INSPECTION

Every Director shall have the right at any reasonable time to inspect and copy all books, records and documents of every kind and to inspect the physical properties of CANN. CANN shall establish reasonable procedures to protect against the inappropriate disclosure of confidential information.

Section 22. COMPENSATION

1. Except for the President of CANN who serves ex officio as a voting member of the Board, each of the Directors shall be entitled to receive compensation for his/her services as a Director. The President shall receive only his/her compensation for service as President and shall not receive additional compensation for service as a Director.
2. If the Board determines to offer a compensation arrangement to one or more Directors other than the President of CANN for services to CANN as Directors, the Board shall follow a process that is calculated to pay an amount for service as a Director that is in line with Reasonable Compensation for such service under the standards set forth in §53.4958-4(b) of the Treasury Regulations.
3. As part of the process, the Board shall retain an independent Valuation Expert to consult with and to advise the Board regarding Director compensation arrangements and to issue to the Board a Reasoned Written Opinion from such expert regarding the ranges of Reasonable Compensation for any such services by a Director. The expert's opinion shall address all relevant factors affecting the level of compensation to be paid a Director including of fees held on the Board, a balance of Board and Committee meetings, the nature of service on the Board and on Board Committees and appropriate data as to comparability regarding director compensation arrangements for U.S.-based nonprofit tax-exempt organizations possessing a global employee base.
4. After having reviewed the expert's written opinion, the Board shall meet with the expert to discuss the

expert's opinion and to ask questions of the expert regarding the expert's opinion, the comparability data obtained and relied upon and the conclusions reached by the expert.

5. The Board shall adequately document the basis for any determination the Board makes regarding a Director compensation arrangement concurrently with making that determination.
6. In addition to authorizing payment of compensation for services as Directors as set forth in this Section 22, the Board may also authorize the reimbursement of actual and necessary reasonable expenses incurred by any Director and by non-voting liaisons performing their duties as Directors or non-voting liaisons.
7. As used in this Section 22, the following terms shall have the following meanings:
 - a. An "Independent Valuation Expert" means a person retained by CANN to value compensation arrangements that (i) holds itself out to the public as a compensation consultant, (ii) performs valuations regarding compensation arrangements on a regular basis with a majority of its compensation consulting services performed for persons other than CANN, (iii) is qualified to make valuations of the type of services involved in any engagement by and for CANN, (iv) issues to CANN a Reasoned Written Opinion regarding a particular compensation arrangement, and (v) includes in its Reasoned Written Opinion a certification that it meets the requirements set forth in (i) through (iv) of this definition.
 - b. A "Reasoned Written Opinion" means a written opinion of a valuation expert who meets the requirements of subparagraph 7(a) (i) through (iv) of this Section. To be reasoned, the opinion must be based upon a full disclosure by CANN to the valuation expert of the factual situation regarding the compensation arrangement that is the subject of the opinion. The opinion must articulate the applicable valuation standards relevant in valuing such compensation arrangements and the opinion must apply those standards to such compensation arrangements and the opinion must arrive at a conclusion regarding whether the compensation arrangement is within the range of Reasonable Compensation for the services covered by the arrangement. A written opinion is reasoned even though it reaches a conclusion that is subsequently determined to be incorrect so long as the opinion addresses itself to the facts and the applicable standards. However, a written opinion is not reasoned if it does nothing more than recite the facts and express a conclusion.
 - c. "Reasonable Compensation" shall have the meaning set forth in §53.4958-4(b)(1)(ii) of the Regulations issued under §4958 of the Code.
8. Each of the non-voting liaisons of the Board, with the exception of the Governmental Advisory Committee liaison, shall be entitled to receive compensation for his/her services as a non-voting liaison if the Board determines to offer a compensation arrangement to one or more non-voting liaisons. The Board shall approve that arrangement by a required three-fourths (3/4) vote.

Section 23. PRESUMPTION OF ASSENT

A Director present at a Board meeting at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his or her dissent or abstention is entered in the minutes of the meeting or unless such Director files a written dissent or abstention on such action with the person acting as the secretary of the meeting before the adjournment hereof or forwards such dissent or abstention by registered mail to the Secretary of CANN immediately after the adjournment of the meeting. Such right of dissent or abstention shall not apply to a Director who voted in favor of such action.

ARTICLE VII: NOMINATING COMMITTEE

Section 1. DESCRIPTION

There shall be a Nominating Committee of CANN responsible for the selection of all CANN Directors except the President and those Directors selected by CANN's Supporting Organizations and for such other selections as are set forth in these Bylaws.

Section 2. COMPOSITION

The Nominating Committee shall be composed of the following persons:

1. A non-voting Chair appointed by the CANN Board.
2. A non-voting Chair-Elect appointed by the CANN Board as a non-voting advisor.
3. A non-voting liaison appointed by the CANN Root Server System Advisory Committee established by [Article X of these Bylaws](#).
4. A non-voting liaison appointed by the CANN Security and Safety Advisory Committee established by [Article X of these Bylaws](#).
5. A non-voting liaison appointed by the Governmental Advisory Committee.
6. Subject to the provisions of the Transition Article of these Bylaws, five voting delegates selected by the Large Advisory Committee established by [Article X of these Bylaws](#).
7. Voting delegates of the Nominating Committee shall be selected from the Generic Names Supporting Organizations established by [Article X of these Bylaws](#) as follows:
 - a. One delegate from the Registries Stakeholder Group.
 - b. One delegate from the Registry Stakeholder Group.
 - c. Two delegates from the Business Consistency, one representing small business users and one representing large business users.
 - d. One delegate from the Internet Service Providers Consistency.
 - e. One delegate from the Intellectual Property Consistency and
 - f. One delegate from consumer and civil society groups selected by the Non-Commercial Users Consistency.

8. One voting delegate each selected by the following entities:
 - a. The Council of the County Code Names Supporting Organizations established by [Article X of these Bylaws](#)
 - b. The Council of the Address Supporting Organizations established by [Article V of these Bylaws](#) and
 - c. The name Engineering Task Force
9. A non-voting Associate Chair who may be appointed by the Chair at his or her sole discretion to serve during all or part of the term of the Chair. The Associate Chair may not be a person who is otherwise a member of the same Nominating Committee. The Associate Chair shall assist the Chair in carrying out the duties of the Chair but shall not serve temporarily or otherwise in the place of the Chair.

Section 3. TERMS

Subject to the provisions of the [Transition Article of these Bylaws](#)

1. Each voting delegate shall serve a one-year term. A delegate may serve a maximum of two successive one-year terms after which at least two years must elapse before the individual is eligible to serve another term.
2. The regular term of each voting delegate shall begin at the conclusion of an CANN annual meeting and shall end at the conclusion of the immediately following CANN annual meeting.
3. Non-voting liaisons shall serve during the term designated by the entity that appoints them. The Chair, the Chair-Elect, and any Associate Chair shall serve as such until the conclusion of the next CANN annual meeting.
4. It is anticipated that upon the conclusion of the term of the Chair-Elect, the Chair-Elect will be appointed by the Board to the position of Chair. However, the Board retains the discretion to appoint any other person to the position of Chair. At the time of appointing a Chair-Elect, if the Board determines that the person identified to serve as Chair shall be appointed as Chair for a successive term, the Chair-Elect position shall remain vacant for the term designated by the Board.
5. Vacancies in the positions of delegate, non-voting liaison, Chair or Chair-Elect shall be filled by the entity entitled to select the delegate, non-voting liaison, Chair or Chair-Elect involved. For any term that the Chair-Elect position is vacant pursuant to paragraph 4 of this Article or until any other vacancy in the position of Chair-Elect can be filled, a non-voting advisor to the Chair may be appointed by the Board from among persons with prior service on the Board or a Nominating Committee, including the immediately previous Chair of the Nominating Committee. A vacancy in the position of Associate Chair may be filled by the Chair in accordance with the criteria established by Section 2(9) of this Article.
6. The existence of any vacancies shall not affect the obligation of the Nominating Committee to carry out the responsibilities assigned to it in these Bylaws.

Section 4. CRITERIA FOR SELECTION OF NOMINATING COMMITTEE DELEGATES

Delegates to the CANN Nominating Committee shall be:

1. Accomplished persons of integrity, objectivity, and intelligence with reputations for sound judgment and open minds, and with experience and competence with collegial large group decision-making.
2. Persons with wide contacts, broad experience in the name community, and a commitment to the success of CANN.
3. Persons whom the selecting body is confident will consult widely and accept input in carrying out their responsibilities.
4. Persons who are neutral and objective without any fixed personal commitments to particular individuals, organizations, or commercial objectives in carrying out their Nominating Committee responsibilities.
5. Persons with an understanding of CANN's mission and the potential impact of CANN's activities on the broader name community who are willing to serve as volunteers without compensation other than the reimbursement of certain expenses, and
6. Persons who are able to work and communicate in written and spoken English.

Section 5. DIVERSITY

In carrying out its responsibilities to select members of the CANN Board (and selections to any other CANN bodies as the Nominating Committee is responsible for under these Bylaws), the Nominating Committee shall take into account the continuing membership of the CANN Board (and such other bodies) and seek to ensure that the persons selected to fill vacancies on the CANN Board (and each such other body) shall, to the extent feasible and consistent with the other criteria required to be applied by [Section 4 of this Article](#), make selections guided by Core Value 4 in [Article Section 2](#).

Section 6. ADMINISTRATIVE AND OPERATIONAL SUPPORT

CANN shall provide administrative and operational support necessary for the Nominating Committee to carry out its responsibilities.

Section 7. PROCEDURES

The Nominating Committee shall adopt such operating procedures as it deems necessary, which shall be published on the Website.

Section 8. INELIGIBILITY FOR SELECTION BY NOMINATING COMMITTEE

No person who serves on the Nominating Committee in any capacity shall be eligible for selection by any means to any position on the Board or any other CANN body having one or more membership positions, that the Nominating Committee is responsible for filling, until the conclusion of an CANN annual meeting that coincides with or is after the conclusion of that person's service on the Nominating Committee.

Section 9. INELIGIBILITY FOR SERVICE ON NOMINATING COMMITTEE

No person who is an employee of or paid consultant to CANN (including the Ombudsman) shall simultaneously serve in any of the Nominating Committee positions described in [Section 2 of his Article](#)

ARTICLE VIII: ADDRESS SUPPORTING ORGANIZATION

Section 1. DESCRIPTION

- 1 The Address Supporting Organization (ASO) shall advise the Board with respect to policy issues relating to the operation, assignment and management of name addresses
- 2 The ASO shall be hereby established by the Memorandum of Understanding entered on 21 October 2004 between CANN and the Number Resource Organization (NRO) an organization of the existing regional name registries (R Rs)

Section 2. ADDRESS COUNCIL

- 1 The ASO shall have an Address Council consisting of the members of the NRO Number Council
- 2 The Address Council shall select Directors whose seats on the Board designated to be filled by the ASO

ARTICLE IX: COUNTRY-CODE NAMES SUPPORTING ORGANIZATION

Section 1. DESCRIPTION

There shall be a policy-development body known as the Country-Code Names Supporting Organization (ccNSO) which shall be responsible for

- 1 developing and recommending to the Board global policies relating to country-code top-level domains
- 2 Nurturing consensus across the ccNSO's community including the name-related activities of ccTLDs and
- 3 Coordinating with other CANN Supporting Organizations, committees and constituencies under CANN

Policies that apply to ccNSO members by virtue of their membership are only those policies developed according to section 4.10 and 4.11 of this Article. However, the ccNSO may also engage in other activities authorized by its members. Adherence to the results of these activities will be voluntary and such activities may include seeking to develop voluntary best practices for ccTLD managers, assisting in skills building within the global community of ccTLD managers and enhancing operational and technical cooperation among ccTLD managers

Section 2. ORGANIZATION

The ccNSO shall consist of (i) ccTLD managers that have agreed in writing to be members of the ccNSO (see [Section 4\(2\) of his Article](#)) and (ii) a ccNSO Council responsible for managing the policy-development process of the ccNSO

Section 3. ccNSO COUNCIL

- 1 The ccNSO Council shall consist of (a) three ccNSO Council members selected by the ccNSO members within each of [CANN's Geographic Regions](#) in the manner described in [Section 4\(7\) through \(9\) of his Article](#) (b) three ccNSO Council members selected by the CANN Nominating Committee as described in [paragraph 2 of his Section](#) and (iv) observers as described in [paragraph 3 of his Section](#)
- 2 There shall also be one liaison to the ccNSO Council from each of the following organizations to whom they choose to appoint such a liaison (a) the Governmental Advisory Committee (b) the A-Large Advisory Committee and (c) each of the Regional Organizations described in [Section 5 of his Article](#). These liaisons shall not be members of or enrolled to vote on the ccNSO Council but otherwise shall be enrolled to participate on equal footing with members of the ccNSO Council. Appointments of liaisons shall be made by providing written notice to the CANN Secretary with a notification copy to the ccNSO Council Chair and shall be for the term designated by the appointing organization as stated in the written notice. The appointing organization may recall from office or replace its liaison at any time by providing written notice of the recall or replacement to the CANN Secretary with a notification copy to the ccNSO Council Chair
- 3 The ccNSO Council may agree with the Council of any other CANN Supporting Organization to exchange observers. Such observers shall not be members of or enrolled to vote on the ccNSO Council but otherwise shall be enrolled to participate on equal footing with members of the ccNSO Council. The appointing Council may designate its observer (or revoke or change the designation of its observer) on the ccNSO Council at any time by providing written notice to the CANN Secretary with a notification copy to the ccNSO Council Chair
- 4 Subject to the provisions of the [Transition Article of these Bylaws](#) (a) the regular term of each ccNSO Council member shall begin at the conclusion of an CANN annual meeting and shall end at the conclusion of the third CANN annual meeting hereafter (b) the regular terms of the three ccNSO Council members selected by the ccNSO members within each CANN Geographic Region shall be staggered so that one member's term begins in a year divisible by three, a second member's term begins in the first year following a year divisible by three and the third member's term begins in the second year following a year divisible by three and (c) the regular terms of the three ccNSO Council members selected by the Nominating Committee shall be staggered in the same manner. Each ccNSO Council member shall hold office during his or her regular term and until a successor has been selected and qualified or until the member resigns or is removed in accordance with these Bylaws
- 5 A ccNSO Council member may resign at any time by giving written notice to the CANN Secretary with a notification copy to the ccNSO Council Chair
- 6 ccNSO Council members may be removed for no other than ending three consecutive meetings of the ccNSO Council without sufficient cause or for grossly inappropriate behavior both as determined by at least a 66% vote of all of the members of the ccNSO Council

- 7 A vacancy on the ccNSO Council shall be deemed to exist in the case of the death, resignation or removal of any ccNSO Council member. Vacancies in the positions of the three members selected by the Nominating Committee shall be filled for the unexpired term involved by the Nominating Committee giving the CANN Secretary written notice of its selection with a notation copy to the ccNSO Council Chair. Vacancies in the positions of the ccNSO Council members selected by ccNSO members shall be filled for the unexpired term by the procedure described in [Section 4\(7\) through \(9\) of his Article](#).
- 8 The role of the ccNSO Council is to administer and coordinate the affairs of the ccNSO (including coordinating meetings including an annual meeting of ccNSO members as described in [Section 4\(6\) of his Article](#)) and to manage the development of policy recommendations in accordance with Section 6 of his Article. The ccNSO Council shall also undertake such other roles as the members of the ccNSO shall decide from time to time.
- 9 The ccNSO Council shall make selections of all Sections 11 and 12 on the Board by written ballot or by action at a meeting. Any such selection must have affirmative votes of a majority of all the members of the ccNSO Council then in office. Notification of the ccNSO Council's selections shall be given by the ccNSO Council Chair in writing to the CANN Secretary consistent with Article V [Sections 8\(4\) and 12\(1\)](#).
- 10 The ccNSO Council shall select from among its members the ccNSO Council Chair and such Vice Chair(s) as it deems appropriate. Selections of the ccNSO Council Chair and Vice Chair(s) shall be by written ballot or by action at a meeting. Any such selection must have affirmative votes of a majority of all the members of the ccNSO Council then in office. The term of office of the ccNSO Council Chair and any Vice Chair(s) shall be as specified by the ccNSO Council at or before the time the selection is made. The ccNSO Council Chair or any Vice Chair(s) may be recalled from office by the same procedure as used for selection.
- 11 The ccNSO Council subject to direction by the ccNSO members shall adopt such rules and procedures for the ccNSO as it deems necessary provided they are consistent with these Bylaws. Rules for ccNSO membership and operating procedures adopted by the ccNSO Council shall be published on the Website.
- 12 Except as provided by [paragraphs 9 and 10 of his Section](#), the ccNSO Council shall act at meetings. The ccNSO Council shall meet regularly on a schedule it determines but no fewer than four times each calendar year. At the discretion of the ccNSO Council, meetings may be held in person or by other means provided that all ccNSO Council members are permitted to participate by at least one means described in [paragraph 14 of his Section](#). Except where determined by a majority vote of the members of the ccNSO Council present, a closed session is appropriate. Physical meetings shall be open to a audience by all interested persons. To the extent practicable, ccNSO Council meetings should be held in conjunction with meetings of the Board or of one or more of CANN's other Supporting Organizations.
- 13 Notice of time and place (and information about means of participation other than personal attendance) of all meetings of the ccNSO Council shall be provided to each ccNSO Council member, liaison and observer by e-mail, telephone, facsimile, or a paper notice delivered personally or by post. In case the notice is sent by postal mail, it shall be sent at least 21 days before the day of the meeting. In case the notice is delivered personally or by telephone, facsimile, or e-mail, it shall be provided at least seven days before the day of the meeting. At least seven days in advance of each ccNSO Council meeting (or if not practicable, as far in advance as is practicable), a notice of such meeting and of the then known agenda for the meeting shall be posted.
- 14 Members of the ccNSO Council may participate in a meeting of the ccNSO Council through personal attendance or use of electronic communication (such as telephone or video conference) provided that (a) all ccNSO Council members participating in the meeting can speak to and hear one another, (b) all ccNSO Council members participating in the meeting are provided the means of fully participating in all matters before the ccNSO Council, and (c) there is a reasonable means of verifying the identity of ccNSO Council members participating in the meeting and their votes. A majority of the ccNSO Council members (if those entitled to vote) then in office shall constitute a quorum for the transaction of business and actions by a majority vote of the ccNSO Council members present at any meeting at which there is a quorum shall be actions of the ccNSO Council unless otherwise provided in these Bylaws. The ccNSO Council shall transmit minutes of its meetings to the CANN Secretary who shall cause those minutes to be posted on the Website as soon as practicable following the meeting and no later than 21 days following the meeting.

Section 4. MEMBERSHIP

- 1 The ccNSO shall have a membership consisting of ccTLD managers. Any ccTLD manager has met the membership qualifications set forth in [paragraph 2 of his Section](#) shall be entitled to be members of the ccNSO. For purposes of this Article, a ccTLD manager is the organization or entity responsible for managing an SO 3166 country-code top-level domain and referred to in the IANA database under the current heading of "Sponsoring Organization" or under any alternate variant for that country-code top-level domain.
- 2 Any ccTLD manager may become a ccNSO member by submitting an application to a person designated by the ccNSO Council to receive applications. Subject to the provisions of the Transition Article of these Bylaws, the application shall be in writing in a form designated by the ccNSO Council. The application shall include the ccTLD manager's recognition of the role of the ccNSO within the CANN structure as well as the ccTLD manager's agreement for the duration of its membership in the ccNSO: (a) to adhere to the rules of the ccNSO including membership rules; (b) to abide by policies developed and recommended by the ccNSO and adopted by the Board in the manner described by paragraphs 10 and 11 of his Section; and (c) to pay ccNSO membership fees established by the ccNSO Council under [Section 7\(3\) of his Article](#). A ccNSO member may resign from membership at any time by giving written notice to a person designated by the ccNSO Council to receive notices of resignation. Upon resignation, the ccTLD manager ceases to agree to (a) adhere to the rules of the ccNSO including membership rules; (b) to abide by policies developed and recommended by the ccNSO and adopted by the Board in the manner described by paragraphs 10 and 11 of his Section; and (c) to pay ccNSO membership fees established by the ccNSO Council under [Section 7\(3\) of his Article](#). In the absence of designation by the ccNSO Council of a person to receive applications and notices of resignation, they shall be sent to the CANN Secretary who shall notify the ccNSO Council of receipt of any such applications and notices.
- 3 Neither membership in the ccNSO nor membership in any Regional Organization described in [Section 5 of his Article](#) shall be a condition for access to or registration in the IANA database. Any individual relationship a ccTLD manager has with CANN or the ccTLD manager's receipt of IANA services is not

any way con ingen upon membership in he ccNSO

- 4 The Geographic Regions of ccTLDs shall be as described in [Article V Section 5 of these Bylaws](#). For purposes of this Article managers of ccTLDs within a Geographic Region shall be members of the ccNSO. The ccNSO members within the Geographic Region shall be referred to as ccNSO members "within" the Geographic Region regardless of the physical location of the ccTLD manager. In cases where the Geographic Region of a ccNSO member is unclear the ccTLD member should self-select according to procedures adopted by the ccNSO Council.
- 5 Each ccTLD manager may designate in writing a person, organization, or entity to represent the ccTLD manager in the absence of such a designation the ccTLD manager shall be represented by the person, organization, or entity listed as the administrative contact in the ANA database.
- 6 There shall be an annual meeting of ccNSO members which shall be coordinated by the ccNSO Council. Annual meetings should be open for all to attend and a reasonable opportunity shall be provided for ccTLD managers who are not members of the ccNSO as well as other non-members of the ccNSO to address the meeting. To the extent practicable annual meetings of the ccNSO members shall be held in person and should be held in conjunction with meetings of the Board or of one or more of CANN's other Supporting Organizations.
- 7 The ccNSO Council members selected by the ccNSO members from each Geographic Region (see [Section 3\(1\)\(a\) of this Article](#)) shall be selected through nomination and if necessary election by the ccNSO members within the Geographic Region. At least 90 days before the end of the regular term of any ccNSO-member-selected member of the ccNSO Council or upon the occurrence of a vacancy in the seat of such a ccNSO Council member the ccNSO Council shall establish a nomination and election schedule which shall be sent to all ccNSO members within the Geographic Region and posted on the Website.
- 8 Any ccNSO member may nominate an individual to serve as a ccNSO Council member representing the ccNSO member's Geographic Region. Nominations must be seconded by another ccNSO member from the same Geographic Region. By accepting their nomination individuals nominated to the ccNSO Council agree to support the policies committed to by ccNSO members.
- 9 (a) In the close of nominations there are no more candidates nominated (with seconds and acceptances) in a particular Geographic Region than there are seats on the ccNSO Council available for that Geographic Region then the nominated candidates shall be selected to serve on the ccNSO Council. Otherwise an election by written ballot (which may be by e-mail) shall be held to select the ccNSO Council members from among those nominated (with seconds and acceptances) with ccNSO members from the Geographic Region being entitled to vote in the election through their designated representatives. In such an election a majority of all ccNSO members in the Geographic Region entitled to vote shall constitute a quorum and the selected candidate must receive the votes of a majority of those cast by ccNSO members within the Geographic Region. The ccNSO Council Chair shall provide the CANN Secretary prompt written notice of the selection of ccNSO Council members under this paragraph.
- 10 Subject to clause 4(11) CANN policies shall apply to ccNSO members by virtue of their membership in the ccNSO and only to the extent that the policies (a) only address issues that are within the scope of the ccNSO according to Article X Section 6 and Annex C (b) have been developed through the ccPDP as described in [Section 6 of this Article](#) and (c) have been recommended as such by the ccNSO or the Board and (d) are adopted by the Board as policies provided that such policies do not conflict with the law applicable to the ccTLD manager which shall at all times remain paramount. In addition such policies shall apply to CANN in its activities concerning ccTLDs.
- 11 A ccNSO member shall not be bound if it provides a declaration to the ccNSO Council stating that (a) implementation of the policy would require the member to breach custom, religion, or public policy (not embodied in the applicable law described in [paragraph 10 of this Section](#)) and (b) failure to implement the policy would not impair DNS operations or interoperability giving detailed reasons supporting its statement. After investigation the ccNSO Council will provide a response to the ccNSO member's declaration. If there is a ccNSO Council consensus disagreeing with the declaration which may be demonstrated by a vote of 14 or more members of the ccNSO Council the response shall state the ccNSO Council's disagreement with the declaration and the reasons for disagreement. Otherwise the response shall state the ccNSO Council's agreement with the declaration. If the ccNSO Council disagrees the ccNSO Council shall review the situation after a six-month period. At the end of that period the ccNSO Council shall make findings as to (a) whether the ccNSO members' implementation of the policy would require the member to breach custom, religion, or public policy (not embodied in the applicable law described in [paragraph 10 of this Section](#)) and (b) whether failure to implement the policy would impair DNS operations or interoperability. In making any findings disagreeing with the declaration the ccNSO Council shall proceed by consensus which may be demonstrated by a vote of 14 or more members of the ccNSO Council.

Section 5. REGIONAL ORGANIZATIONS

The ccNSO Council may designate a Regional Organization for each CANN Geographic Region provided that the Regional Organization is open to full membership by all ccNSO members within the Geographic Region. Decisions to designate or de-designate a Regional Organization shall require a 66% vote of all of the members of the ccNSO Council and shall be subject to review according to procedures established by the Board.

Section 6. ccNSO POLICY-DEVELOPMENT PROCESS AND SCOPE

- 1 The scope of the ccNSO's policy-development role shall be as stated in [Annex C of these Bylaws](#); any modifications to the scope shall be recommended to the Board by the ccNSO by use of the procedures of the ccPDP and shall be subject to approval by the Board.
- 2 In developing global policies within the scope of the ccNSO and recommending them to the Board the ccNSO shall follow the ccNSO Policy-Development Process (ccPDP). The ccPDP shall be as stated in [Annex B of these Bylaws](#); modifications shall be recommended to the Board by the ccNSO by use of the procedures of the ccPDP and shall be subject to approval by the Board.

Section 7. STAFF SUPPORT AND FUNDING

- 1 Upon request of the ccNSO Council a member of the CANN staff may be assigned to support the ccNSO and shall be designated as the ccNSO Staff Manager. Alternatively the ccNSO Council may designate a ccNSO expense and other person to serve as ccNSO Staff Manager. The work of the ccNSO Staff

Manager on substantive matters shall be assigned by the Chair of the ccNSO Council and may include the duties of ccPDP Issue Manager

- 2 Upon request of the ccNSO Council, CANN shall provide administrative and operational support necessary for the ccNSO to carry out its responsibilities. Such support shall not include an obligation for CANN to fund travel expenses incurred by ccNSO participants for travel on any meeting of the ccNSO or for any other purpose. The ccNSO Council may make provision for a ccNSO expense for administrative and operational support in addition or as an alternative to support provided by CANN.
- 3 The ccNSO Council shall establish fees to be paid by ccNSO members to defray ccNSO expenses as described in paragraphs 1 and 2 of this Section as approved by the ccNSO members.
- 4 Written notices given to the CANN Secretary under this Article shall be permanently retained and shall be made available for review by the ccNSO Council on request. The CANN Secretary shall also maintain the roll of members of the ccNSO, which shall include the name of each ccTLD manager's designated representative and which shall be posted on the Website.

ARTICLE X: GENERIC NAMES SUPPORTING ORGANIZATION

Section 1. DESCRIPTION

There shall be a policy-development body known as the Generic Names Supporting Organization (GNSO) which shall be responsible for developing and recommending to the CANN Board substantive policies relating to generic top-level domains.

Section 2. ORGANIZATION

The GNSO shall consist of

- i A number of Constituencies where applicable, organized within the Stakeholder Groups as described in Section 5 of this Article.
- ii Four Stakeholder Groups organized within Houses as described in Section 5 of this Article.
- iii Two Houses within the GNSO Council as described in Section 3(8) of this Article, and
- iv a GNSO Council responsible for managing the policy development process of the GNSO as described in Section 3 of this Article.

Except as otherwise defined in these Bylaws, the four Stakeholder Groups and the Constituencies will be responsible for defining their own characters with the approval of their members and of the CANN Board of Directors.

Section 3. GNSO COUNCIL

1 Subject to the provisions of Transition Article XX, Section 5 of these Bylaws and as described in Section 5 of Article X, the GNSO Council shall consist of

- a three representatives selected from the Registries Stakeholder Group
- b three representatives selected from the Registrars Stakeholder Group
- c six representatives selected from the Commercial Stakeholder Group
- d six representatives selected from the Non-Commercial Stakeholder Group, and
- e three representatives selected by the CANN Nominating Committee, one of which shall be non-voting but otherwise entitled to participate on equal footing with other members of the GNSO Council including the making and seconding of motions and of serving as Chair if elected. One Nominating Committee Appointee voting representative shall be assigned to each House (as described in Section 3(8) of this Article) by the Nominating Committee.

No individual representative may hold more than one seat on the GNSO Council at the same time.

Stakeholder Groups should in their characters ensure their representation on the GNSO Council is as diverse as possible and practicable, including considerations of geography, GNSO Constituency sector, ability and gender.

There may also be liaisons to the GNSO Council from other CANN Supporting Organizations and/or Advisory Committees from time to time. The appointing organization shall designate, revoke or change its liaison on the GNSO Council by providing written notice to the Chair of the GNSO Council and to the CANN Secretary. Liaisons shall not be members of or entitled to vote to make or second motions or to serve as an officer on the GNSO Council but otherwise liaisons shall be entitled to participate on equal footing with members of the GNSO Council.

2 Subject to the provisions of Transition Article XX and Section 5 of these Bylaws, the regular term of each GNSO Council member shall begin at the conclusion of an CANN annual meeting and shall end at the conclusion of the second CANN annual meeting hereafter. The regular term of two representatives selected from Stakeholder Groups with three Council seats shall begin in even-numbered years and the regular term of the other three representatives selected from the Stakeholder Group shall begin in odd-numbered years. The regular term of three representatives selected from Stakeholder Groups with six Council seats shall begin in even-numbered years and the regular term of the other three representatives selected from the Stakeholder Group shall begin in odd-numbered years. The regular term of one of the three members selected by the Nominating Committee shall begin in even-numbered years and the regular term of the other two of the three members selected by the Nominating Committee shall begin in odd-numbered years. Each GNSO Council member shall hold office during his or her regular term and until a successor has been selected and qualified or until the member resigns or is removed in accordance with these Bylaws.

Except in a "special circumstance" such as but not limited to meeting geographic or other diversity requirements defined in the Stakeholder Group characters, where no alternative representative is available, to serve no Council member may be selected to serve more than two consecutive terms, in such a special circumstance a Council member may serve one additional term. For these purposes, a person selected to fill a vacancy in a term shall not be deemed to have served that term. A former Council member who has served two consecutive terms

mus remain out of office for one full term prior to serving any subsequent term as Council member. A "special circumstance" is defined in the GNSO Operating Procedures.

3. A vacancy on the GNSO Council shall be deemed to exist in the case of the death, resignation, or removal of any member. Vacancies shall be filled for the unexpired term by the appropriate Nominating Committee or Stakeholder Group that selected the member holding the position before the vacancy occurred by giving the GNSO Secretariat written notice of its selection. Procedures for handling Stakeholder Group-appointed GNSO Council member vacancies, resignations, and removals are prescribed in the applicable Stakeholder Group Charter.

A GNSO Council member selected by the Nominating Committee may be removed for cause (i) satisfied by a three-fourths (3/4) vote of all members of the applicable House to which the Nominating Committee appointee is assigned, or (ii) satisfied by a three-fourths (3/4) vote of all members of each House in the case of the non-voting Nominating Committee appointee (see [Section 3\(8\) of his Article](#)). Such removal shall be subject to reversal by the CANN Board on appeal by the affected GNSO Council member.

4. The GNSO Council is responsible for managing the policy development process of the GNSO. It shall adopt such procedures (the "GNSO Operating Procedures") as it sees fit to carry out its responsibility provided that such procedures are approved by a majority vote of each House. The GNSO Operating Procedures shall be effective upon the expiration of a twenty-one (21) day public comment period and shall be subject to Board oversight and review. Until any modifications are recommended by the GNSO Council, the applicable procedures shall be as set forth in [Section 6 of his Article](#).

5. No more than one officer, director, or employee of any particular corporation or other organization (including its subsidiaries and affiliates) shall serve on the GNSO Council at any given time.

6. The GNSO shall make selections to fill Sections 13 and 14 on the CANN Board by written ballot or by action at a meeting. Each of the two voting Houses of the GNSO, as described in [Section 3\(8\) of his Article](#), shall make a selection to fill one of two CANN Board seats as outlined below. Any such selection must have affirmative votes comprising sixty percent (60%) of all the respective voting House members:

- a. The Contracted Party House shall select a representative to fill Section 13, and
- b. The Non-Contracted Party House shall select a representative to fill Section 14.

Election procedures are defined in the GNSO Operating Procedures.

Notification of the Board seat selections shall be given by the GNSO Chair in writing to the CANN Secretary consistent with Article V, Sections [8\(4\)](#) and [12\(1\)](#).

7. The GNSO Council shall select the GNSO Chair for a term the GNSO Council specifies but no longer than one year. Each House (as described in [Section 3\(8\) of his Article](#)) shall select a Vice-Chair who will be a Vice-Chair of the whole of the GNSO Council for a term the GNSO Council specifies but no longer than one year. The procedures for selecting the Chair and any other officers are contained in the GNSO Operating Procedures. In the event that the GNSO Council has not elected a GNSO Chair by the end of the previous Chair's term, the Vice-Chairs will serve as interim GNSO Co-Chairs until a successful election can be held.

8. Except as otherwise required in these Bylaws for voting purposes, the GNSO Council (see [Section 3\(1\) of his Article](#)) shall be organized into a bicameral House structure as described below:

- a. The Contracted Parties House includes the Registries Stakeholder Group (three members), the Registries Stakeholder Group (three members), and one voting member appointed by the CANN Nominating Committee for a total of seven voting members, and
- b. The Non-Contracted Parties House includes the Commercial Stakeholder Group (six members), the Non-Commercial Stakeholder Group (six members), and one voting member appointed by the CANN Nominating Committee of that House for a total of thirteen voting members.

Except as otherwise specified in these Bylaws, each member of a voting House is entitled to cast one vote in each separate matter before the GNSO Council.

9. Except as otherwise specified in these Bylaws, [Annex A](#), [Annex A-1](#), and [Annex A-2](#) here or the GNSO Operating Procedures, the default threshold to pass a GNSO Council motion or other voting action requires a simple majority vote of each House. The voting thresholds described below shall apply to the following GNSO actions:

- a. Create an Issues Report requires an affirmative vote of more than one-fourth (1/4) vote of each House or majority of one House.
- b. Initiate a Policy Development Process ("PDP") Within Scope (as described in [Annex A](#)) requires an affirmative vote of more than one-third (1/3) of each House or more than two-thirds (2/3) of one House.
- c. Initiate a PDP, No Within Scope requires an affirmative vote of GNSO Supermajority.
- d. Approve a PDP Team Charter for a PDP, Within Scope requires an affirmative vote of more than one-third (1/3) of each House or more than two-thirds (2/3) of one House.
- e. Approve a PDP Team Charter for a PDP, No Within Scope requires an affirmative vote of a GNSO Supermajority.
- f. Changes to an Approved PDP Team Charter. For any PDP Team Charter approved under d or e above, the GNSO Council may approve an amendment to the Charter through a simple majority vote of each House.
- g. Terminate a PDP. Once initiated and prior to the publication of a Final Report, the GNSO Council may terminate a PDP only for significant cause upon a motion that passes with a GNSO Supermajority Vote in favor of termination.
- h. Approve a PDP Recommendation Without a GNSO Supermajority requires an affirmative vote of a majority of each House and further requires that one GNSO Council member represent a minimum of at least three (3) of the four Stakeholder Groups supporting the Recommendation.
- i. Approve a PDP Recommendation With a GNSO Supermajority requires an affirmative vote of a GNSO

Supermajority

- j Approve a PDP Recommendation imposing New Obligations on Certain Contracting Parties where an CANN contract provision specifies that a "two-thirds vote of the council" demonstrates the presence of a consensus the GNSO Supermajority vote threshold will have to be met or exceeded
- k Modification of Approved PDP Recommendation Prior to Final Approval by the CANN Board an Approved PDP Recommendation may be modified or amended by the GNSO Council with a GNSO Supermajority vote
- l Initiation of an Expedited Policy Development Process (EPDP) requires an affirmative vote of a GNSO Supermajority
- m Approve an EPDP Team Charter requires an affirmative vote of a GNSO Supermajority
- n Approval of EPDP recommendations requires an affirmative vote of a GNSO Supermajority
- o Approve an EPDP Recommendation imposing New Obligations on Certain Contracting Parties where an CANN contract provision specifies that a "two-thirds vote of the council" demonstrates the presence of a consensus the GNSO Supermajority vote threshold will have to be met or exceeded
- p Initiation of a GNSO Guidance Process (GGP) requires an affirmative vote of more than one-third (1/3) of each House or more than two-thirds (2/3) of one House
- q Rejection of initiation of a GGP requested by the CANN Board requires an affirmative vote of a GNSO Supermajority
- r Approval of GGP recommendations requires an affirmative vote of a GNSO Supermajority
- s A "GNSO Supermajority" shall mean (a) two-thirds (2/3) of the Council members of each House or (b) three-fourths (3/4) of one House and a majority of the other House "

Section 4. STAFF SUPPORT AND FUNDING

- 1 A member of the CANN staff shall be assigned to support the GNSO whose work on substantive matters shall be assigned by the Chair of the GNSO Council and shall be designated as the GNSO Staff Manager (Staff Manager)
- 2 CANN shall provide administrative and operational support necessary for the GNSO to carry out its responsibilities. Such support shall not include an obligation for CANN to fund travel expenses incurred by GNSO participants for travel to any meeting of the GNSO or for any other purpose. CANN may at its discretion fund travel expenses for GNSO participants under any travel support procedures or guidelines that it may adopt from time to time.

Section 5. STAKEHOLDER GROUPS

- 1 The following Stakeholder Groups are hereby recognized as representative of a specific group of one or more Constituencies or interest groups and subject to the provisions of the [Transition Article XX Section 5 of these Bylaws](#)
 - a Registries Stakeholder Group representing all gTLD registries under contract to CANN
 - b Registrars Stakeholder Group representing all registrars accredited by and under contract to CANN
 - c Commercial Stakeholder Group representing the full range of large and small commercial entities of the Internet and
 - d Non-Commercial Stakeholder Group representing the full range of non-commercial entities of the Internet
- 2 Each Stakeholder Group is assigned a specific number of Council seats in accordance with [Section 3\(1\) of this Article](#)
- 3 Each Stakeholder Group identified in [paragraph 1 of this Section](#) and each of its associated Constituencies where applicable shall maintain recognition with the CANN Board. Recognition is granted by the Board based upon the extent to which in fact the entity represents the global interests of the stakeholder communities it purports to represent and operates to the maximum extent feasible in an open and transparent manner consistent with procedures designed to ensure fairness. Stakeholder Group and Constituency Charters may be reviewed periodically as prescribed by the Board
- 4 Any group of individuals or entities may petition the Board for recognition as a new or separate Constituency in the Non-Contracted Parties House. Any such petition shall contain
 - a A detailed explanation of why the addition of such a Constituency will improve the ability of the GNSO to carry out its policy-development responsibilities
 - b A detailed explanation of why the proposed new Constituency adequately represents on a global basis the stakeholders it seeks to represent
 - c A recommendation for organizational placement within a particular Stakeholder Group and
 - d A proposed charter that adheres to the principles and procedures contained in these Bylaws

Any petition for the recognition of a new Constituency and the associated charter shall be posted for public comment

- 5 The Board may create new Constituencies as described in [Section 5\(3\)](#) in response to such a petition or on its own motion if the Board determines that such action would serve the purposes of CANN. In the event the Board is considering acting on its own motion it shall post a detailed explanation of why such action is necessary or desirable, set a reasonable time for public comment and not make a final decision on whether to create such new Constituency until after reviewing all comments received. Whenever the Board posts a petition or recommendation for a new Constituency for public comment the Board shall notify the GNSO Council and the appropriate Stakeholder Group affected and shall consider any response to that notification prior to taking action

Section 6. POLICY DEVELOPMENT PROCESS

The policy-development procedures to be followed by the GNSQ shall be as set out in [Annex A](#) of these Bylaws. These procedures may be supplemented or revised in the manner set out in [Section 3\(4\) of this Article](#).

ARTICLE XI: ADVISORY COMMITTEES

Section 1. GENERAL

The Board may create one or more Advisory Committees in addition to those set forth in this Article. Advisory Committee membership may consist of Directors only, Directors and non-directors, or non-directors only, and may also include non-voting or alternate members. Advisory Committees shall have no legal authority to act for CANN, but shall report their findings and recommendations to the Board.

Section 2. SPECIFIC ADVISORY COMMITTEES

There shall be at least the following Advisory Committees:

1. Governmental Advisory Committee

- a. The Governmental Advisory Committee should consider and provide advice on the activities of CANN as they relate to concerns of governments, particularly matters where there may be an interaction between CANN's policies and various laws and international agreements or where they may affect public policy issues.
- b. Membership in the Governmental Advisory Committee shall be open to all national governments. Membership shall also be open to Disinc Economies as recognized in international fora and multinational governmental organizations and treaty organizations on the invitation of the Governmental Advisory Committee through its Chair.
- c. The Governmental Advisory Committee may adopt its own charter and internal operating principles or procedures to guide its operations to be published on the Website.
- d. The chair of the Governmental Advisory Committee shall be elected by the members of the Governmental Advisory Committee pursuant to procedures adopted by such members.
- e. Each member of the Governmental Advisory Committee shall appoint one accredited representative to the Committee. The accredited representative of a member must hold a formal official position with the member's public administration. The term "official" includes a holder of an elected governmental office or a person who is employed by such government, public authority or multinational governmental or treaty organization and whose primary function with such government, public authority or organization is to develop or influence governmental or public policies.
- f. The Governmental Advisory Committee shall annually appoint one non-voting liaison to the CANN Board of Directors with authority to reappoint and shall annually appoint one non-voting liaison to the CANN Nominating Committee.
- g. The Governmental Advisory Committee may designate a non-voting liaison to each of the Supporting Organization Councils and Advisory Committees to the extent the Governmental Advisory Committee deems it appropriate and useful to do so.
- h. The Board shall notify the Chair of the Governmental Advisory Committee in a timely manner of any proposal raising public policy issues on which it or any of CANN's supporting organizations or advisory committees seeks public comment and shall take duty into account any timely response or notification prior to taking action.
- i. The Governmental Advisory Committee may put issues to the Board directly either by way of comment or prior advice, or by way of specifically recommending action or new policy development or revision of existing policies.
- j. The advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account both in the formulation and adoption of policies. Nonetheless, the CANN Board determines to take an action that is not consistent with the Governmental Advisory Committee advice, it shall so inform the Committee and state the reasons why it decided not to follow the advice. The Governmental Advisory Committee and the CANN Board will then try in good faith and in a timely and efficient manner to find a mutually acceptable solution.
- k. If no such solution can be found, the CANN Board will state in its final decision the reasons why the Governmental Advisory Committee advice was not followed, and such statement will be without prejudice to the rights or obligations of Governmental Advisory Committee members with regard to public policy issues falling within their responsibilities.

2. Security and Stability Advisory Committee

- a. The role of the Security and Stability Advisory Committee ("SSAC") is to advise the CANN community and Board on matters relating to the security and integrity of the Internet's naming and address allocation systems. It shall have the following responsibilities:
 1. To communicate on security matters with the Internet technical community and the operators and managers of critical DNS infrastructure services, to include the root name server operator, the top-level domain registries and registrars, the operators of the reverse delegation trees such as in-addr.arpa and ip6.arpa, and others as events and developments dictate. The Committee shall gather and articulate requirements to offer to those engaged in technical revision of the protocols related to DNS and address allocation and those engaged in operations planning.
 2. To engage in ongoing threat assessments and risk analysis of the Internet naming and address allocation services, to assess where the principal threats to stability and security lie, and to advise the CANN community accordingly. The Committee shall recommend any necessary audit activities to assess the current status of DNS and address allocation security in relation to identified risks and threats.
 3. To communicate with those who have direct responsibility for Internet naming and address allocation security matters (ETF, RSSAC, RRs, name registries, etc.) to ensure that its advice on security risks, issues, and priorities is properly synchronized with existing standardization, deployment, operational, and coordination activities. The Committee shall monitor these activities.

and inform the CANN community and Board on their progress as appropriate

4 To report periodically to the Board on its activities

5 To make policy recommendations to the CANN community and Board

- b The SSAC's chair and members shall be appointed by the Board. SSAC membership appointments shall be for a three-year term commencing on 1 January and ending the second year hereafter on 31 December. The chair and members may be re-appointed and there are no limits on the number of terms the chair or members may serve. The SSAC chair may provide recommendations to the Board regarding appointments to the SSAC. The SSAC chair shall suggest appointments/recommendations so that approximately one-third (1/3) of the membership of the SSAC is considered for appointments or re-appointments each year. The Board shall also have the power to remove SSAC appointees as recommended by or in consultation with the SSAC. (Note: The first full term under this paragraph shall commence on 1 January 2011 and end on 31 December 2013. Prior to 1 January 2011, the SSAC shall be comprised as set in the Bylaws as amended 25 June 2010 and the SSAC chair shall recommend the re-appointments of all current SSAC members on full or partial terms as appropriate to implement the provisions of this paragraph.)
- c The SSAC shall annually appoint a non-voting liaison to the CANN Board according to [Section 9 of Article V](#)

3. Root Server System Advisory Committee

- a The role of the Root Server System Advisory Committee ("RSSAC") is to advise the CANN community and Board on matters relating to the operation, administration, security and integrity of the Internet's Root Server System. It shall have the following responsibilities:
1. Communicate on matters relating to the operation of the Root Servers and their multiple instances with the Internet technical community and the CANN community. The Committee shall gather and articulate requirements to offer to those engaged in technical revision of the protocols and best common practices related to the operation of DNS servers.
 2. Communicate on matters relating to the administration of the Root Zone with those who have direct responsibility for its administration. These matters include the processes and procedures for the production of the Root Zone File.
 3. Engage in ongoing threat assessment and risk analysis of the Root Server System and recommend any necessary activities to assess the current status of root servers and the root zone.
 4. Respond to requests for information or opinions from the CANN Board of Directors.
 5. Report periodically to the Board on its activities.
 6. Make policy recommendations to the CANN community and Board.
- b The RSSAC shall be led by two co-chairs. The RSSAC's chairs and members shall be appointed by the Board.
1. RSSAC membership appointments shall be for a three-year term commencing on 1 January and ending the second year hereafter on 31 December. Members may be re-appointed and there are no limits on the number of terms the members may serve. The RSSAC chairs shall provide recommendations to the Board regarding appointments to the RSSAC. If the board declines to appoint a person nominated by the RSSAC, then it will provide the rationale for its decision. The RSSAC chairs shall suggest appointments/recommendations so that approximately one-third (1/3) of the membership of the RSSAC is considered for appointments or re-appointments each year. The Board shall also have the power to remove RSSAC appointees as recommended by or in consultation with the RSSAC. (Note: The first term under this paragraph shall commence on 1 July 2013 and end on 31 December 2015 and shall be considered a full term for all purposes. All other full terms under this paragraph shall begin on 1 January of the corresponding year. Prior to 1 July 2013, the RSSAC shall be comprised as set in the Bylaws as amended 16 March 2012 and the RSSAC chairs shall recommend the re-appointments of all current RSSAC members on full or partial terms as appropriate to implement the provisions of this paragraph.)
 2. The RSSAC shall recommend the appointment of the chairs to the board following a nomination process that it devises and documents.
- c The RSSAC shall annually appoint a non-voting liaison to the CANN Board according to [Section 9 of Article V](#)

4. A-Large Advisory Committee

- a The A-Large Advisory Committee (ALAC) is the primary organizational home within CANN for individual Internet users. The role of the ALAC shall be to consider and provide advice on the activities of CANN insofar as they relate to the interests of individual Internet users. This includes policies created through CANN's Supporting Organizations, as well as the many other issues for which community input and advice is appropriate. The ALAC, which plays an important role in CANN's accountability mechanisms, also coordinates some of CANN's outreach to individual Internet users.
- b The ALAC shall consist of (i) two members selected by each of the Regional A-Large Organizations ("RALOs") established according to paragraph 4(g) of [his Section](#) and (ii) five members selected by the Nominating Committee. The five members selected by the Nominating Committee shall include one citizen of a country within each of the five Geographic Regions established according to [Section 5 of Article V](#).
- c Subject to the provisions of the [Transition Article of these Bylaws](#), the regular terms of members of the ALAC shall be as follows:
1. The term of one member selected by each RALO shall begin at the conclusion of an CANN annual meeting in an even-numbered year.
 2. The term of the other member selected by each RALO shall begin at the conclusion of an CANN annual meeting in an odd-numbered year.

- 3 The terms of three of the members selected by the Nominating Committee shall begin at the conclusion of an annual meeting in an odd-numbered year and the terms of the other two members selected by the Nominating Committee shall begin at the conclusion of an annual meeting in an even-numbered year
 - 4 The regular term of each member shall end at the conclusion of the second CANN annual meeting after the term began
- d The Chair of the ALAC shall be elected by the members of the ALAC pursuant to procedures adopted by the Committee
- e The ALAC shall after consultation with each RALO annually appoint five voting delegates (no two of whom shall be citizens of countries in the same Geographic Region as defined according to [Section 5 of Article V](#)) of the Nominating Committee
- f Subject to the provisions of the [Transition Article of these Bylaws](#) the A-Large Advisory Committee may designate non-voting liaisons to each of the ccNSO Council and the GNSO Council
- g There shall be one RALO for each Geographic Region established according to [Section 5 of Article V](#). Each RALO shall serve as the main forum and coordination point for public input to CANN in its Geographic Region and shall be a non-profit organization certified by CANN according to criteria and standards established by the Board based on recommendations of the A-Large Advisory Committee. An organization shall become the recognized RALO for its Geographic Region upon entering a Memorandum of Understanding with CANN addressing the respective roles and responsibilities of CANN and the RALO regarding the process for selecting ALAC members and requirements of openness, participatory opportunities, transparency, accountability and diversity in the RALO's structure and procedures, as well as criteria and standards for the RALO's constituent A-Large Structures
- h Each RALO shall be comprised of self-supporting A-Large Structures within its Geographic Region that have been certified to meet the requirements of the RALO's Memorandum of Understanding with CANN according to [paragraph 4\(i\) of this Section](#). If so provided by its Memorandum of Understanding with CANN, a RALO may also include individual members who are citizens or residents of countries within the RALO's Geographic Region
- i Membership in the A-Large Community
- 1 The criteria and standards for the certification of A-Large Structures within each Geographic Region shall be established by the Board based on recommendations from the ALAC and shall be stated in the Memorandum of Understanding between CANN and the RALO for each Geographic Region
 - 2 The criteria and standards for the certification of A-Large Structures shall be established in such a way that participation by individual members who are citizens or residents of countries within the Geographic Region (as defined in [Section 5 of Article V](#)) of the RALO will predominate in the operation of each A-Large Structure within the RALO while not necessarily excluding additional participation compatible with the interests of the individual members within the region by others
 - 3 Each RALO's Memorandum of Understanding shall also include provisions designed to allow to the greatest extent possible every individual member user who is a citizen of a country within the RALO's Geographic Region to participate in at least one of the RALO's A-Large Structures
 - 4 To the extent compatible with these objectives, the criteria and standards should also afford to each RALO the type of structure that best fits the customs and characteristics of its Geographic Region
 - 5 Once the criteria and standards have been established as provided in this Clause, the ALAC, with the advice and participation of the RALO where the applicant is based, shall be responsible for certifying organizations as meeting the criteria and standards for A-Large Structure accreditation
 - 6 Decisions to certify or decertify an A-Large Structure shall be made as decided by the ALAC in its Rules of Procedure, save always that any changes made to the Rules of Procedure in respect of ALS applications shall be subject to review by the RALOs and by the CANN Board
 - 7 Decisions as to whether to accredit, to deaccredit or disaccredit an A-Large Structure shall be subject to review according to procedures established by the Board
 - 8 On an ongoing basis, the ALAC may also give advice as to whether a prospective A-Large Structure meets the applicable criteria and standards
- j The ALAC is also responsible, working in conjunction with the RALOs, for coordinating the following activities
- 1 Making a selection by the A-Large Community to fill [Section 15](#) on the Board. Noification of the A-Large Community's selection shall be given by the ALAC Chair in writing to the CANN Secretary consistent with [Article V](#), [Sections 8\(4\)](#) and [12\(1\)](#)
 - 2 Keeping the community of individual members informed about the significant news from CANN
 - 3 Distributing (through posting or otherwise) an updated agenda/news about CANN and information about items in the CANN policy-development process
 - 4 Promoting outreach activities in the community of individual members
 - 5 Developing and maintaining on-going information and education programs regarding CANN and its work
 - 6 Establishing an outreach strategy about CANN issues in each RALO's Region
 - 7 Participating in the CANN policy development processes and providing input and advice that accurately reflects the views of individual members
 - 8 Making public and analyzing CANN's proposed policies and its decisions and their (potential) regional impact and (potential) effect on individuals in the region
 - 9 Offering member-based mechanisms that enable discussions among members of A-Large

structures and

10. Establishing mechanisms and processes that enable two-way communication between members of A-Large Structures and those involved in CANN decision-making so interested individuals can share their views on pending CANN issues

Section 3. PROCEDURES

Each Advisory Committee shall determine its own rules of procedure and quorum requirements

Section 4. TERM OF OFFICE

The chair and each member of a committee shall serve until his or her successor is appointed or until such committee is sooner terminated or until he or she is removed, resigns, or otherwise ceases to qualify as a member of the committee

Section 5. VACANCIES

Vacancies on any committee shall be filled in the same manner as provided in the case of original appointments

Section 6. COMPENSATION

Committee members shall receive no compensation for their services as a member of a committee. The Board may however authorize the reimbursement of actual and necessary expenses incurred by committee members including Directors performing their duties as committee members

ARTICLE XI-A: OTHER ADVISORY MECHANISMS

Section 1. EXTERNAL EXPERT ADVICE

1. Purpose: The purpose of seeking external expert advice is to allow the policy-development process within CANN to take advantage of existing expertise that resides in the public or private sector or outside of CANN in those cases where there are relevant public bodies with expertise or where access to private expertise could be helpful. The Board and constituent bodies should be encouraged to seek advice from such expert bodies or individuals
2. Types of Expert Advisory Panels
 - a. On its own initiative or at the suggestion of any CANN body, the Board may appoint or authorize the President to appoint Expert Advisory Panels consisting of public or private sector individuals or entities if the advice sought from such Panels concerns issues of public policy. The provisions of [Section 1\(3\)\(b\) of this Article](#) shall apply
 - b. In addition, in accordance with [Section 1\(3\) of this Article](#), the Board may refer issues of public policy pertinent to matters within CANN's mission to a multinational governmental or reay organization
3. Process for Seeking Advice-Public Policy Matters
 - a. The Governmental Advisory Committee may at any time recommend that the Board seek advice concerning one or more issues of public policy from an external source as set out above
 - b. In the event that the Board determines upon such a recommendation or otherwise that external advice should be sought concerning one or more issues of public policy, the Board shall, as appropriate, consult with the Governmental Advisory Committee regarding the appropriate source from which to seek the advice and the arrangements including definition of scope and process for requesting and obtaining that advice
 - c. The Board shall, as appropriate, transmit any request for advice from a multinational governmental or reay organization including specific terms of reference to the Governmental Advisory Committee with the suggestion that the request be transmitted by the Governmental Advisory Committee to the multinational governmental or reay organization
4. Process for Seeking and Advice-Other Matters: Any reference of issues not concerning public policy to an Expert Advisory Panel by the Board or President in accordance with [Section 1\(2\)\(a\) of this Article](#) shall be made pursuant to terms of reference describing the issues on which input and advice is sought and the procedures and schedule to be followed
5. Receipt of Expert Advice and its Effect: External advice pursuant to this Section shall be provided in written form. Such advice is advisory and non-binding and is intended to augment the information available to the Board or other CANN body in carrying out its responsibilities
6. Opportunity to Comment: The Governmental Advisory Committee, in addition to the Supporting Organizations and other Advisory Committees, shall have an opportunity to comment upon any external advice received prior to any decision by the Board

Section 2. TECHNICAL LIAISON GROUP

1. Purpose: The quality of CANN's work depends on access to complete and authoritative information concerning the technical standards that underlie CANN's activities. CANN's relationship to the organizations that produce these standards is therefore particularly important. The Technical Liaison Group (TLG) shall connect the Board with appropriate sources of technical advice on specific matters pertinent to CANN's activities
2. TLG Organizations: The TLG shall consist of four organizations: the European Telecommunications Standards Institute (ETSI), the International Telecommunications Union's Telecommunication Standardization Sector (ITU-T), the World Wide Web Consortium (W3C), and the Internet Architecture Board (IAB)
3. Role: The role of the TLG organizations shall be to channel technical information and guidance to the Board and to other CANN entities. This role has both a responsive component and an active "watchdog" component which involve the following responsibilities
 - a. In response to a request for information to connect the Board or other CANN body with

appropriate sources of technical expertise. This component of the TLG role covers circumstances in which CANN seeks an authoritative answer to a specific technical question. Where information is requested regarding a particular technical standard for which a TLG organization is responsible, requests shall be directed to that TLG organization.

b. As an ongoing "watchdog" activity to advise the Board of the relevance and progress of technical developments in the areas covered by each organization's scope, it could affect Board decisions or other CANN actions and to draw attention to global technical standards issues that affect policy development within the scope of CANN's mission. This component of the TLG role covers circumstances in which CANN is unaware of a new development and would therefore otherwise not realize that a question should be asked.

4. **TLG Procedures.** The TLG shall not have officers or hold meetings nor shall it provide policy advice to the Board as a committee (although TLG organizations may individually be asked by the Board to do so as the need arises in areas relevant to their individual characters). Neither shall the TLG debate or otherwise coordinate technical issues across the TLG organizations, establish or attempt to establish unified positions, or create or attempt to create additional layers or structures within the TLG for the development of technical standards or for any other purpose.

5. **Technical Work with the ETF.** The TLG shall have no involvement with the CANN's work for the nerve Engineering Task Force (ETF), nerve Research Task Force, or the nerve Architecture Board (AB) as described in the ETF-CANN Memorandum of Understanding Concerning the Technical Work of the Nerve Assigned Numbers Authority ratified by the Board on 10 March 2000.

6. **Individual Technical Experts.** Each TLG organization shall designate two individual technical experts who are familiar with the technical standards issues that are relevant to CANN's activities. These 8 experts shall be available as necessary to determine through an exchange of e-mail messages where to direct a technical question from CANN when CANN does not ask a specific TLG organization directly.

ARTICLE XII: BOARD AND TEMPORARY COMMITTEES

Section 1. BOARD COMMITTEES

The Board may establish one or more committees of the Board which shall continue to exist until otherwise determined by the Board. Only Directors may be appointed to a Committee of the Board; if a person appointed to a Committee of the Board ceases to be a Director, such person shall also cease to be a member of any Committee of the Board. Each Committee of the Board shall consist of two or more Directors. The Board may designate one or more Directors as alternate members of any such committee who may replace any absent member at any meeting of the committee. Committee members may be removed from a committee at any time by a two-thirds (2/3) majority vote of all members of the Board, provided, however, that any Director or Directors which are the subject of the removal action shall not be entitled to vote on such an action or be counted as a member of the Board when calculating the required two-thirds (2/3) vote, and provided further, however, that in no event shall a Director be removed from a committee unless such removal is approved by no less than a majority of all members of the Board.

Section 2. POWERS OF BOARD COMMITTEES

1. The Board may delegate to Committees of the Board all legal authority of the Board except with respect to:
 - a. The filling of vacancies on the Board or on any committee.
 - b. The amendment or repeal of Bylaws or the Articles of Incorporation or the adoption of new Bylaws or Articles of Incorporation.
 - c. The amendment or repeal of any resolution of the Board which by its express terms is not so amendable or repealable.
 - d. The appointment of committees of the Board or the members thereof.
 - e. The approval of any self-dealing transaction as such transactions are defined in Section 5233(a) of the CNPBCL.
 - f. The approval of the annual budget required by [Article XV](#) or
 - g. The compensation of any officer described in [Article X](#).
2. The Board shall have the power to prescribe the manner in which proceedings of any Committee of the Board shall be conducted. In the absence of any such prescription, such committee shall have the power to prescribe the manner in which its proceedings shall be conducted. Unless these Bylaws, the Board or such committee shall otherwise provide, the regular and special meetings shall be governed by the provisions of [Article V](#) applicable to meetings and actions of the Board. Each committee shall keep regular minutes of its proceedings and shall report the same to the Board from time to time as the Board may require.

Section 3. TEMPORARY COMMITTEES

The Board may establish such temporary committees as it sees fit with membership duties and responsibilities as set forth in the resolutions or charters adopted by the Board in establishing such committees.

ARTICLE XIII: OFFICERS

Section 1. OFFICERS

The officers of CANN shall be a President (who shall serve as Chief Executive Officer), a Secretary and a Chief Financial Officer. CANN may also have at the discretion of the Board any additional officers that it deems appropriate. Any person other than the President may hold more than one office, except that no member of the Board (other than the President) shall simultaneously serve as an officer of CANN.

Section 2. ELECTION OF OFFICERS

The officers of CANN shall be elected annually by the Board pursuant to the recommendation of the President or

in the case of the President or the Chairman of the CANN Board. Each such officer shall hold his or her office until he or she resigns, is removed, is otherwise disqualified to serve, or his or her successor is elected.

Section 3. REMOVAL OF OFFICERS

Any Officer may be removed either with or without cause by a two-thirds (2/3) majority vote of all the members of the Board. Should any vacancy occur in any office as a result of death, resignation, removal, disqualification, or any other cause, the Board may delegate the powers and duties of such office to any Officer or to any Director until such time as a successor for the office has been elected.

Section 4. PRESIDENT

The President shall be the Chief Executive Officer (CEO) of CANN in charge of all of its activities and business. All other officers and staff shall report to the President or his or her delegate unless stated otherwise in these Bylaws. The President shall serve as an ex officio member of the Board and shall have all the same rights and privileges of any Board member. The President shall be empowered to call special meetings of the Board as set forth herein and shall discharge all other duties as may be required by these Bylaws and from time to time may be assigned by the Board.

Section 5. SECRETARY

The Secretary shall keep or cause to be kept the minutes of the Board in one or more books provided for that purpose. He shall see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law and in general shall perform all duties as from time to time may be prescribed by the President or the Board.

Section 6. CHIEF FINANCIAL OFFICER

The Chief Financial Officer ("CFO") shall be the chief financial officer of CANN if required by the Board. The CFO shall give a bond for the faithful discharge of his or her duties in such form and with such surety or sureties as the Board shall determine. The CFO shall have charge and custody of all the funds of CANN and shall keep or cause to be kept in books belonging to CANN full and accurate amounts of all receipts and disbursements and shall deposit all money and other valuable effects in the name of CANN in such depositories as may be designated for that purpose by the Board. The CFO shall disburse the funds of CANN as may be ordered by the Board or the President and whenever requested by them shall deliver to the Board and the President an account of all his or her transactions as CFO and of the financial condition of CANN. The CFO shall be responsible for CANN's financial planning and forecasting and shall assist the President in the preparation of CANN's annual budget. The CFO shall coordinate and oversee CANN's funding, including any audits or other reviews of CANN or its Supporting Organizations. The CFO shall be responsible for all other matters relating to the financial operation of CANN.

Section 7. ADDITIONAL OFFICERS

In addition to the officers described above, any additional or assistant officers who are elected or appointed by the Board shall perform such duties as may be assigned to them by the President or the Board.

Section 8. COMPENSATION AND EXPENSES

The compensation of any Officer of CANN shall be approved by the Board. Expenses incurred in connection with the performance of their officer duties may be reimbursed to Officers upon approval of the President (in the case of Officers other than the President) by another Officer designated by the Board (in the case of the President) or the Board.

Section 9. CONFLICTS OF INTEREST

The Board through the Board Governance Committee shall establish a policy requiring a statement from each Officer not less frequently than once a year setting forth all business and other affiliations that relate in any way to the business and other affiliations of CANN.

ARTICLE XIV: INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES, AND OTHER AGENTS

CANN shall to maximum extent permitted by the CNPBCL indemnify each of its agents against expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with any proceeding arising by reason of the fact that any such person is or was an agent of CANN provided that the indemnified person's acts were done in good faith and in a manner that the indemnified person reasonably believed to be in CANN's best interests and no criminal. For purposes of this Article, an "agent" of CANN includes any person who is or was a Director, Officer, employee, or any other agent of CANN (including a member of any Supporting Organization, any Advisory Committee, the Nominating Committee, any other CANN committee, or the Technical Liaison Group) acting within the scope of his or her responsibility or is or was serving at the request of CANN as a Director, Officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise. The Board may adopt a resolution authorizing the purchase and maintenance of insurance on behalf of any agent of CANN against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such whether or not CANN would have the power to indemnify the agent against that liability under the provisions of this Article.

ARTICLE XV: GENERAL PROVISIONS

Section 1. CONTRACTS

The Board may authorize any Officer or Officers, agent or agents, to enter into any contract or execute or deliver any instrument in the name of and on behalf of CANN and such authority may be general or confined to specific instances. In the absence of a contrary Board authorization, contracts and instruments may only be executed by the following Officers: President, any Vice President, or the CFO. Unless authorized or ratified by the Board, no other Officer, agent, or employee shall have any power or authority to bind CANN or to render it liable for any debts or obligations.

Section 2. DEPOSITS

All funds of CANN not otherwise employed shall be deposited from time to time to the credit of CANN in such banks, trust companies, or other depositories as the Board or the President under its delegation may select.

Section 3. CHECKS

All checks, drafts, or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of CANN shall be signed by such Officer or Officers, agent or agents of CANN and in such a manner as shall from time to time be determined by resolution of the Board.

Section 4. LOANS

No loans shall be made by or for CANN and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the Board. Such authority may be general or confined to specific instances provided, however, that no loans shall be made by CANN to its Directors or Officers.

ARTICLE XVI: FISCAL MATTERS

Section 1. ACCOUNTING

The fiscal year end of CANN shall be determined by the Board.

Section 2. AUDIT

At the end of the fiscal year, the books of CANN shall be closed and audited by certified public accountants. The appointment of the fiscal auditors shall be the responsibility of the Board.

Section 3. ANNUAL REPORT AND ANNUAL STATEMENT

The Board shall publish at least annually a report describing its activities, including an audited financial statement and a description of any payments made by CANN to Directors (including reimbursements of expenses). CANN shall cause the annual report and the annual statement of certain transactions as required by the CNPBCL to be prepared and sent to each member of the Board and to such other persons as the Board may designate no later than one hundred twenty (120) days after the close of CANN's fiscal year.

Section 4. ANNUAL BUDGET

At least forty-five (45) days prior to the commencement of each fiscal year, the President shall prepare and submit to the Board a proposed annual budget of CANN for the next fiscal year, which shall be posted on the Website. The proposed budget shall identify anticipated revenue sources and levels and shall, to the extent practical, identify anticipated material expense items by line item. The Board shall adopt an annual budget and shall publish the adopted Budget on the Website.

Section 5. FEES AND CHARGES

The Board may set fees and charges for the services and benefits provided by CANN, with the goal of fully recovering the reasonable costs of the operation of CANN and establishing reasonable reserves for future expenses and contingencies reasonably related to the legitimate activities of CANN. Such fees and charges shall be fair and equitable, shall be published for public comment prior to adoption, and once adopted shall be published on the Website in a sufficiently detailed manner so as to be readily accessible.

ARTICLE XVII: MEMBERS

CANN shall not have members as defined in the California Nonprofit Public Benefit Corporation Law ("CNPBCL") notwithstanding the use of the term "Member" in these Bylaws, in any CANN document, or in any action of the CANN Board or staff.

ARTICLE XVIII: OFFICES AND SEAL

Section 1. OFFICES

The principal office for the transaction of the business of CANN shall be in the County of Los Angeles, State of California, United States of America. CANN may also have an additional office or offices within or outside the United States of America as it may from time to time establish.

Section 2. SEAL

The Board may adopt a corporate seal and use the same by causing it or a facsimile hereof to be impressed or affixed or reproduced or otherwise.

ARTICLE XIX: AMENDMENTS

Except as otherwise provided in the Articles of Incorporation or these Bylaws, the Articles of Incorporation or Bylaws of CANN may be altered, amended, or repealed and new Articles of Incorporation or Bylaws adopted only upon action by a two-thirds (2/3) vote of all members of the Board.

ARTICLE XX: TRANSITION ARTICLE

Section 1. PURPOSE

This Transition Article sets forth the provisions for the transition from the processes and structures defined by the CANN Bylaws as amended and revised on 29 October 1999 and amended through 12 February 2002 (the "Old Bylaws") to the processes and structures defined by the Bylaws of which this Article is a part (the "New Bylaws") [Explanatory Note (dated 10 December 2009): For Section 5(3) of this Article, reference to the Old Bylaws refers to the Bylaws as amended and revised through 20 March 2009].

Section 2. BOARD OF DIRECTORS

1. For the period beginning on the adoption of this Transition Article and ending on the Effective Date and Time of the New Board, as defined in [paragraph 5 of this Section 2](#), the Board of Directors of the

Corporation ("Transition Board") shall consist of the members of the Board who would have been Directors under the Old Bylaws immediately after the conclusion of the annual meeting in 2002 except those A-Large members of the Board under the Old Bylaws who elected to do so by notifying the Secretary of the Board on 15 December 2002 or in writing or by e-mail no later than 23 December 2002 shall also serve as members of the Transition Board. Notwithstanding the provisions of [Article V Section 12 of the New Bylaws](#) vacancies on the Transition Board shall not be filled. The Transition Board shall not have liaisons as provided by [Article V Section 9 of the New Bylaws](#). The Board Committees existing on the date of adoption of this Transition Article shall continue in existence subject to any change in Board Committees or their membership that the Transition Board may adopt by resolution.

2. The Transition Board shall elect a Chair and Vice-Chair to serve until the Effective Date and Time of the New Board.
3. The "New Board" is the Board described in [Article V Section 2\(1\) of the New Bylaws](#).
4. Promptly after the adoption of this Transition Article a Nominating Committee shall be formed including to the extent feasible the delegates and liaisons described in [Article V Section 2 of the New Bylaws](#) with terms to end at the conclusion of the CANN annual meeting in 2003. The Nominating Committee shall proceed without delay to select Directors to fill Seats 1 through 8 on the New Board with terms to conclude upon the commencement of the first regular terms specified for those Seats in [Article V Section 8\(1\)\(a\)-\(c\) of the New Bylaws](#) and shall give the CANN Secretary written notice of the selection.
5. The Effective Date and Time of the New Board shall be a time as designated by the Transition Board during the first regular meeting of CANN in 2003 that begins no less than seven calendar days after the CANN Secretary has received written notice of the selection of Directors to fill at least one of Seats 1 through 14 on the New Board. As of the Effective Date and Time of the New Board it shall assume from the Transition Board all the rights, duties, and obligations of the CANN Board of Directors. Subject to Section 4 of this Article the Directors ([Article V Section 2\(1\)\(a\)-\(d\)](#)) and non-voting liaisons ([Article V Section 9](#)) as to which the CANN Secretary has received notice of selection shall, along with the President ([Article V Section 2\(1\)\(e\)](#)) be seated upon the Effective Date and Time of the New Board and hereafter any additional Directors and non-voting liaisons shall be seated upon the CANN Secretary's receipt of notice of their selection.
6. The New Board shall elect a Chairman and Vice-Chairman as its first order of business. The terms of those Board offices shall expire at the end of the annual meeting in 2003.
7. Committees of the Board in existence as of the Effective Date and Time of the New Board shall continue in existence according to their existing charters but the terms of all members of those committees shall conclude at the Effective Date and Time of the New Board. Temporary committees in existence as of the Effective Date and Time of the New Board shall continue in existence with their existing charters and membership subject to any change the New Board may adopt by resolution.
8. In applying the term-limitation provision of [Section 8\(5\) of Article V](#) a Director's service on the Board before the Effective Date and Time of the New Board shall count as one term.

Section 3. ADDRESS SUPPORTING ORGANIZATION

The Address Supporting Organization shall continue in operation according to the provisions of the [Memorandum of Understanding originally entered on 18 October 1999](#) between CANN and a group of regional internet registries (RIRs) and [amended in October 2000](#) until a replacement Memorandum of Understanding becomes effective. Promptly after the adoption of this Transition Article the Address Supporting Organization shall make selections and give the CANN Secretary written notice of those selections of:

1. Directors to fill Seats 9 and 10 on the New Board with terms to conclude upon the commencement of the first regular terms specified for each of those Seats in [Article V Section 8\(1\)\(d\) and \(e\) of the New Bylaws](#) and
2. the delegate to the Nominating Committee selected by the Council of the Address Supporting Organization as called for in [Article V Section 2\(8\)\(f\) of the New Bylaws](#).

With respect to the CANN Directors that is intended to select and taking into account the need for rapid selection to ensure that the New Board becomes effective as soon as possible the Address Supporting Organization may select those Directors from among the persons it previously selected as CANN Directors pursuant to the Old Bylaws. To the extent the Address Supporting Organization does not provide the CANN Secretary written notice on or before 31 March 2003 of its selections for Seats 9 and 10 the Address Supporting Organization shall be deemed to have selected for Seat 9 the person it selected as an CANN Director pursuant to the Old Bylaws for a term beginning in 2001 and for Seat 10 the person it selected as an CANN Director pursuant to the Old Bylaws for a term beginning in 2002.

Section 4. COUNTRY-CODE NAMES SUPPORTING ORGANIZATION

1. Upon the enrollment of thirty ccTLD managers (with a least four within each Geographic Region) as members of the ccNSO written notice shall be posted on the Website. As soon as feasible after that notice the members of the initial ccNSO Council to be selected by the ccNSO members shall be selected according to the procedures set forth in [Article X Section 4\(8\) and \(9\)](#). Upon the completion of the selection process a written notice that the ccNSO Council has been constituted shall be posted on the Website. Three ccNSO Council members shall be selected by the ccNSO members within each Geographic Region with one member to serve a term that ends upon the conclusion of the first CANN annual meeting after the ccNSO Council is constituted, a second member to serve a term that ends upon the conclusion of the second CANN annual meeting after the ccNSO Council is constituted, and the third member to serve a term that ends upon the conclusion of the third CANN annual meeting after the ccNSO Council is constituted. (The definition of "ccTLD manager" set forth in [Article X Section 4\(1\)](#) and the definitions set forth in [Article X Section 4\(4\)](#) shall apply within this Section 4 of Article XX.)
2. After the adoption of [Article X of these Bylaws](#) the Nominating Committee shall select the three members of the ccNSO Council described in [Article X Section 3\(1\)\(b\)](#) by selecting three individuals to serve on the ccNSO Council. The Nominating Committee shall designate one to serve a term that ends upon the conclusion of the first CANN annual meeting after the ccNSO Council is constituted, a second member to serve a term that ends upon the conclusion of the second CANN annual meeting after the ccNSO Council is constituted, and the third member to serve a term that ends upon the conclusion of the third CANN

annual meeting after the ccNSO Council is constituted. The three members of the ccNSO Council selected by the Nominating Committee shall not take their seats before the ccNSO Council is constituted.

3. Upon the ccNSO Council being constituted, the A-Large Advisory Committee and the Governmental Advisory Committee may designate one liaison each to the ccNSO Council as provided by [Article X Section 3\(2\)\(a\) and \(b\)](#).
4. Upon the ccNSO Council being constituted, the Council may designate Regional Organizations as provided in [Article X Section 5](#). Upon its designation, a Regional Organization may appoint a liaison to the ccNSO Council.
5. Until the ccNSO Council is constituted, Sections 11 and 12 on the New Board shall remain vacant. Promptly after the ccNSO Council is constituted, the ccNSO shall through the ccNSO Council make selections of Directors to fill Sections 11 and 12 on the New Board with terms to conclude upon the commencement of the next regular term specified for each of those Sections in [Article V Section 8\(1\)\(d\) and \(f\) of the New Bylaws](#) and shall give the CANN Secretary written notice of its selections.
6. Until the ccNSO Council is constituted, the delegate of the Nominating Committee established by the New Bylaws designated to be selected by the ccNSO shall be appointed by the Transition Board or New Board depending on which is in existence at the time any particular appointment is required after due consultation with members of the ccTLD community. Upon the ccNSO Council being constituted, the delegate of the Nominating Committee appointed by the Transition Board or New Board according to his Section 4(9) when serving shall remain in office except that the ccNSO Council may replace that delegate with one of its choosing within three months after the conclusion of CANN's annual meeting or in the event of a vacancy. Subsequent appointments of the Nominating Committee delegate described in [Article V Section 2\(8\)\(c\)](#) shall be made by the ccNSO Council.

Section 5. GENERIC NAMES SUPPORTING ORGANIZATION

1. The Generic Names Supporting Organization ("GNSO") upon the adoption of this Transition Article shall continue its operations; however, it shall be restructured into four new Stakeholder Groups which shall represent organizationally the former Constituencies of the GNSO, subject to CANN Board approval of each individual Stakeholder Group Charter:
 - a. The gTLD Registries Constituency shall be assigned to the Registries Stakeholder Group.
 - b. The Registrars Constituency shall be assigned to the Registrars Stakeholder Group.
 - c. The Business Constituency shall be assigned to the Commercial Stakeholder Group.
 - d. The Intellectual Property Constituency shall be assigned to the Commercial Stakeholder Group.
 - e. The Internet Services Providers Constituency shall be assigned to the Commercial Stakeholder Group and
 - f. The Non-Commercial Users Constituency shall be assigned to the Non-Commercial Stakeholder Group.
2. Each GNSO Constituency described in paragraph 1 of this subsection shall continue operating substantially as before and no Constituency official, working group, or other activity shall be changed until further action of the Constituency provided that each GNSO Constituency described in paragraph 1 (c-f) shall submit to the CANN Secretary a new or revised Charter inclusive of its operating procedures adopted according to the Constituency's processes and consistent with these Bylaws Amendments no later than the CANN meeting in October 2009 or another date as the Board may designate by resolution.
3. Prior to the commencement of the CANN meeting in October 2009 or another date, the Board may designate by resolution the GNSO Council shall consist of its current Constituency structure and of officers as described in [Article X Section 3\(1\) of the Bylaws](#) (as amended and revised on 29 October 1999 and amended through 20 March 2009 (the "Old Bylaws")). Thereafter, the composition of the GNSO Council shall be as provided in these Bylaws as they may be amended from time to time. All committees, task forces, working groups, drafting committees, and similar groups established by the GNSO Council and in existence immediately before the adoption of this Transition Article shall continue in existence with the same characters, membership, and activities, subject to any change by action of the GNSO Council or CANN Board.
4. Beginning with the commencement of the CANN Meeting in October 2009 or another date, the Board may designate by resolution (the "Effective Date of the Transition") the GNSO Council seats shall be assigned as follows:
 - a. The three seats currently assigned to the Registry Constituency shall be reassigned as three seats of the Registries Stakeholder Group.
 - b. The three seats currently assigned to the Registrar Constituency shall be reassigned as three seats of the Registrars Stakeholder Group.
 - c. The three seats currently assigned to each of the Business Constituency, the Intellectual Property Constituency, and the Internet Services Provider Constituency (nine total) shall be decreased to be six seats of the Commercial Stakeholder Group.
 - d. The three seats currently assigned to the Non-Commercial Users Constituency shall be increased to be six seats of the Non-Commercial Stakeholder Group.
 - e. The three seats currently selected by the Nominating Committee shall be assigned by the Nominating Committee as follows: one voting member of the Contracted Party House, one voting member of the Non-Contracted Party House, and one non-voting member assigned to the GNSO Council at large.

Representatives on the GNSO Council shall be appointed or elected consistent with the provisions in each applicable Stakeholder Group Charter approved by the Board and sufficiently in advance of the October 2009 CANN Meeting that will permit those representatives to act in their official capacities at the start of said meeting.

5. The GNSO Council, as part of its Resilience Implementation Plan, will document (a) how vacancies, if any, will be handled during the transition period, (b) for each Stakeholder Group, how each assigned

Council shall take effect at the 2009 CANN annual meeting will be filled whether through a continuation of an existing term or a new election or appointment (c) how it plans to address staggered terms such as the new GNSO Council preserves as much continuity as reasonably possible and (d) the effect of Bylaws term limits on each Council member

- 6 As soon as practical after the commencement of the CANN meeting in October 2009 or otherwise the Board may designate by resolution the GNSO Council shall in accordance with [Article X Section 3\(7\)](#) and its GNSO Operating Procedures elect officers and give the CANN Secretary written notice of its selections

Section 6. PROTOCOL SUPPORTING ORGANIZATION

The [Protocol Supporting Organization](#) referred to in the [Old Bylaws](#) is discontinued

Section 7. ADVISORY COMMITTEES AND TECHNICAL LIAISON GROUP

- 1 Upon the adoption of the New Bylaws the Governmental Advisory Committee shall continue in operation according to its existing operating principles and practices until further action of the committee. The Governmental Advisory Committee may designate liaisons to serve with other CANN bodies as contemplated by the New Bylaws by providing written notice to the CANN Secretary. Promptly upon the adoption of this Transition Article the Governmental Advisory Committee shall notify the CANN Secretary of the person selected as its delegate to the Nominating Committee as set forth in [Article V Section 2 of the New Bylaws](#)
- 2 The organizations designated as members of the Technical Liaison Group under [Article X-A Section 2\(2\) of the New Bylaws](#) shall each designate two individual technical experts described in [Article X-A Section 2\(6\) of the New Bylaws](#) by providing written notice to the CANN Secretary. As soon as feasible the delegate from the Technical Liaison Group to the Nominating Committee shall be selected according to [Article X-A Section 2\(7\) of the New Bylaws](#)
- 3 Upon the adoption of the New Bylaws the [Security and Stability Advisory Committee](#) shall continue in operation according to its existing operating principles and practices until further action of the committee. Promptly upon the adoption of this Transition Article the Security and Stability Advisory Committee shall notify the CANN Secretary of the person selected as its delegate to the Nominating Committee as set forth in [Article V Section 2\(4\) of the New Bylaws](#)
- 4 Upon the adoption of the New Bylaws the [Root Server System Advisory Committee](#) shall continue in operation according to its existing operating principles and practices until further action of the committee. Promptly upon the adoption of this Transition Article the Root Server Advisory Committee shall notify the CANN Secretary of the person selected as its delegate to the Nominating Committee as set forth in [Article V Section 2\(3\) of the New Bylaws](#)
- 5 A-Large Advisory Committee
 - a There shall exist an interim A-Large Advisory Committee until such time as CANN recognizes through the entry of a Memorandum of Understanding all of the Regional A-Large Organizations (RALOs) identified in [Article X Section 2\(4\) of the New Bylaws](#). The interim A-Large Advisory Committee shall be composed of (i) ten individuals (two from each CANN region) selected by the CANN Board following nominations by the A-Large Organizing Committee and (ii) five additional individuals (one from each CANN region) selected by the initial Nominating Committee as soon as feasible in accordance with the principles established in [Article V Section 5 of the New Bylaws](#). The initial Nominating Committee shall designate two of these individuals to serve terms until the conclusion of the CANN annual meeting in 2004 and three of these individuals to serve terms until the conclusion of the CANN annual meeting in 2005
 - b Upon the entry of each RALO in such a Memorandum of Understanding, herein, shall be entitled to select two persons who are citizens and residents of that Region to be members of the A-Large Advisory Committee established by [Article X Section 2\(4\) of the New Bylaws](#). Upon the entry's written notification to the CANN Secretary of such selections, those persons shall immediately assume the seats held until their notification by the interim A-Large Advisory Committee members previously selected by the Board from the RALO's region
 - c Upon the seating of persons selected by all five RALOs, the interim A-Large Advisory Committee shall become the A-Large Advisory Committee as established by [Article X Section 2\(4\) of the New Bylaws](#). The five individuals selected to the interim A-Large Advisory Committee by the Nominating Committee shall become members of the A-Large Advisory Committee for the remainder of the terms for which they were selected
 - d Promptly upon its creation, the interim A-Large Advisory Committee shall notify the CANN Secretary of the persons selected as its delegates to the Nominating Committee as set forth in [Article V Section 2\(6\) of the New Bylaws](#)

Section 8. OFFICERS

CANN officers (as defined in [Article X of the New Bylaws](#)) shall be elected by the then-existing Board of CANN at the annual meeting in 2002 to serve until the annual meeting in 2003

Section 9. GROUPS APPOINTED BY THE PRESIDENT

Notwithstanding the adoption or effectiveness of the New Bylaws, task forces and other groups appointed by the CANN President shall continue unchanged in membership, scope, and operation until changes are made by the President

Section 10. CONTRACTS WITH ICANN

Notwithstanding the adoption or effectiveness of the New Bylaws, all agreements including employment and consulting agreements entered by CANN shall continue in effect according to their terms

The following process shall govern the GNSO policy development process ("PDP") until such time as modifications are recommended to and approved by the CANN Board of Directors ("Board"). The role of the GNSO is outlined in Article X of these Bylaws. If the GNSO is conducting activities that have no intended result in a Consensus Policy, the Council may act through other processes.

Section 1 Required Elements of a Policy Development Process

The following elements are required as a minimum to form Consensus Policies as defined within CANN contracts and any other policies for which the GNSO Council requests application of this Annex A:

- a) Final Issue Report requested by the Board, the GNSO Council ("Council") or Advisory Committee, which should include as a minimum a) the proposed issue raised for consideration, b) the identity of the party submitting the issue, and c) how the party is affected by the issue.
- b) Formal initiation of the Policy Development Process by the Council.
- c) Formation of a Working Group or other designated work method.
- d) Initial Report produced by a Working Group or other designated work method.
- e) Final Report produced by a Working Group or other designated work method and forwarded to the Council for deliberation.
- f) Council approval of PDP Recommendations contained in the Final Report by the required thresholds.
- g) PDP Recommendations and Final Report shall be forwarded to the Board through a Recommendations Report approved by the Council and
- h) Board approval of PDP Recommendations.

Section 2 Policy Development Process Manual

The GNSO shall maintain a Policy Development Process Manual (PDP Manual) within the operating procedures of the GNSO maintained by the GNSO Council. The PDP Manual shall contain specific additional guidance on completion of all elements of a PDP, including those elements that are not otherwise defined in these Bylaws. The PDP Manual and any amendments thereto are subject to a twenty-one (21) day public comment period as well as Board oversight and review as specified in Article X, Section 3.6.

Section 3 Requesting an Issue Report

Board Request: The Board may request an Issue Report by instructing the GNSO Council ("Council") to begin the process outlined in the PDP Manual. In the event the Board makes a request for an Issue Report, the Board should provide a mechanism by which the GNSO Council can consult with the Board to provide information on the scope, timing, and priority of the request for an Issue Report.

Council Request: The GNSO Council may request an Issue Report by a vote of at least one-fourth (1/4) of the members of the Council of each House or a majority of one House.

Advisory Committee Request: An Advisory Committee may raise an issue for policy development by action of such committee to request an Issue Report and transmission of the request to the Staff Manager and GNSO Council.

Section 4 Creation of an Issue Report

Within forty-five (45) calendar days after receipt of either (i) an instruction from the Board, (ii) a properly supported motion from the GNSO Council, or (iii) a properly supported motion from an Advisory Committee, the Staff Manager will create a report (a "Preliminary Issue Report"). In the event the Staff Manager determines that more time is necessary to create the Preliminary Issue Report, the Staff Manager may request an extension of time for completion of the Preliminary Issue Report.

The following elements should be considered in the Issue Report:

- a) The proposed issue raised for consideration.
- b) The identity of the party submitting the request for the Issue Report.
- c) How the party is affected by the issue, if known.
- d) Support for the issue, including the PDP, if known.
- e) The opinion of the CANN General Counsel regarding whether the issue proposed for consideration within the Policy Development Process is properly within the scope of the CANN's mission, policy process, and more specifically, the role of the GNSO as set forth in the Bylaws.
- f) The opinion of CANN Staff as to whether the Council should initiate the PDP on the issue.

Upon completion of the Preliminary Issue Report, the Preliminary Issue Report shall be posted on the CANN website for a public comment period that complies with the designated practice for public comment periods within CANN.

The Staff Manager is responsible for drafting a summary and analysis of the public comments received on the Preliminary Issue Report and producing a Final Issue Report based upon the comments received. The Staff Manager should forward the Final Issue Report along with any summary and analysis of the public comments received to the Chair of the GNSO Council for consideration for initiation of a PDP.

Section 5 Initiation of the PDP

The Council may initiate the PDP as follows:

Board Request: If the Board requests an Issue Report, the Council within the timeframe set forth in the PDP Manual shall initiate a PDP. No vote is required for such action.

GNSO Council or Advisory Committee Requests The Council may only initiate the PDP by a vote of the Council. Initiation of a PDP requires a vote as set forth in [Article X Section 3 paragraph 9\(b\) and \(c\)](#) in favor of initiating the PDP.

Section 6 Reports

Annual Reports should be delivered to the GNSO Council and posted for a public comment period that complies with the designated practice for public comment periods within CANN, which time may be extended in accordance with the PDP Manual. Following the review of the comments received and, if required, additional deliberations, a Final Report shall be produced for transmission to the Council.

Section 7 Council Deliberation

Upon receipt of a Final Report, whether as the result of a working group or otherwise, the Council chair will (i) distribute the Final Report to all Council members and (ii) call for Council deliberation on the matter in accordance with the PDP Manual.

The Council approval process is set forth in [Article X Section 3 paragraph 9\(d\) through \(g\)](#) as supplemented by the PDP Manual.

Section 8 Preparation of the Board Report

If the PDP recommendations contained in the Final Report are approved by the GNSO Council, a Recommendations Report shall be approved by the GNSO Council for delivery to the CANN Board.

Section 9 Board Approval Processes

The Board will meet to discuss the GNSO Council recommendation as soon as feasible, but preferably no later than the second meeting after receipt of the Board Report from the Staff Manager. Board deliberation on the PDP Recommendations contained within the Recommendations Report shall proceed as follows:

- a. Any PDP Recommendations approved by a GNSO Supermajority Vote shall be adopted by the Board unless, by a vote of more than two-thirds (2/3) of the Board, the Board determines that such policy is not in the best interests of the CANN community or CANN. If the GNSO Council recommendation was approved by less than a GNSO Supermajority Vote, a majority vote of the Board will be sufficient to determine that such policy is not in the best interests of the CANN community or CANN.
- b. Notwithstanding the Board determines in accordance with paragraph a. above that the policy recommended by a GNSO Supermajority Vote or less than a GNSO Supermajority vote is not in the best interests of the CANN community or CANN (the Corporation), the Board shall (i) articulate the reasons for its determination in a report to the Council (the "Board Statement") and (ii) submit the Board Statement to the Council.
- c. The Council shall review the Board Statement for discussion with the Board as soon as feasible after the Council's receipt of the Board Statement. The Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and Board will discuss the Board Statement.
- d. At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its recommendation and communicate that conclusion (the "Supplemental Recommendation") to the Board, including an explanation for the then-current recommendation. Notwithstanding the Council is unable to reach a GNSO Supermajority Vote on the Supplemental Recommendation, the Board shall adopt the recommendation unless more than two-thirds (2/3) of the Board determines that such policy is not in the best interests of the CANN community or CANN. For any Supplemental Recommendation approved by less than a GNSO Supermajority Vote, a majority vote of the Board shall be sufficient to determine that the policy in the Supplemental Recommendation is not in the best interests of the CANN community or CANN.

Section 10 Implementation of Approved Policies

Upon a final decision of the Board adopting the policy, the Board shall, as appropriate, give authorization or direction to CANN staff to work with the GNSO Council to create an implementation plan based upon the implementation recommendations identified in the Final Report and to implement the policy. The GNSO Council may, but is not required to, direct the creation of an implementation review team to assist in implementation of the policy.

Section 11 Maintenance of Records

Throughout the PDP, from policy suggestion to a final decision by the Board, CANN will maintain on the Website a status web page detailing the progress of each PDP issue. Such a status page will outline the completed and upcoming steps in the PDP process and contain links to key resources (e.g., Reports, Comments, Forums, WG Discussions, etc.).

Section 12 Additional Definitions

"Comments Site," "Comments Forum," "Comments For a" and "Website" refer to one or more websites designated by CANN on which notifications and comments regarding the PDP will be posted.

"Supermajority Vote" means a vote of more than sixty-six (66) percent of the members present at a meeting of the applicable body with the exception of the GNSO Council.

"Staff Manager" means an CANN staff person(s) who manages the PDP.

"GNSO Supermajority Vote" shall have the meaning set forth in the Bylaws.

Section 13 Applicability

The procedures of this Annex A shall be applicable to all requests for Issue Reports and PDPs initiated after 8 December 2011. For all ongoing PDPs initiated prior to 8 December 2011, the Council shall determine the feasibility of transitioning to the procedures set forth in this Annex A for all remaining steps within the PDP. If the Council determines that any ongoing PDP cannot be feasibly transitioned to these updated procedures, the PDP shall be concluded according to the procedures set forth in Annex A in force on 7 December 2011.

Annex A-1: GNSO Expedited Policy Development Process

The following process shall govern the specific instances where the GNSO Council invokes the GNSO Expedited Policy Development Process ("EPDP"). The GNSO Council may invoke the EPDP in the following limited circumstances: (1) to address a narrowly defined policy issue that was identified and scoped after either the adoption of a GNSO policy recommendation by the CANN Board or the implementation of such an adopted recommendation; or (2) to create new or additional recommendations for a specific policy issue that had been substantially scoped previously such that extensive pertinent background information already exists, e.g. (a) in an Issue Report for a possible PDP, that was not initiated; (b) as part of a previous PDP, that was not completed; or (c) through other projects such as a GGP. The following process shall be in place until such time as modifications are recommended, adopted and approved by the CANN Board of Directors. Where a conflict arises in relation to an EPDP between the PDP Manual (see Annex 2 of the GNSO Operating Procedures) and the procedures described in this Annex A-1, the provisions of this Annex A-1 shall prevail.

The role of the GNSO is outlined in Article X of these Bylaws. Provided the Council believes and documents via Council vote that the above-listed criteria are met, an EPDP may be initiated to recommend an amendment to an existing Consensus Policy; however, in all cases where the GNSO is conducting policy-making activities, it does not meet the above criteria as documented in a Council vote, the Council should act through a Policy Development Process (see Annex A).

Section 1 Required Elements of a GNSO Expedited Policy Development Process

The following elements are required as a minimum to develop expedited GNSO policy recommendations including recommendations that could result in amendments to an existing Consensus Policy as part of a GNSO Expedited Policy Development Process:

- a. Formal initiation of the GNSO Expedited Policy Development Process by the GNSO Council including an EPDP scoping document
- b. Formation of an EPDP Team or other designated work methodology
- c. Initial Report produced by an EPDP Team or other designated work methodology
- d. Final EPDP Policy Recommendation(s) Report produced by an EPDP Team or other designated work methodology and forwarded to the Council for deliberation
- e. GNSO Council approval of EPDP Policy Recommendation(s) contained in the Final EPDP Policy Recommendation(s) Report by the required thresholds
- f. EPDP Recommendations and Final EPDP Recommendation(s) Report forwarded to the Board through a Recommendation Report approved by the Council and
- g. Board approval of EPDP Recommendation(s)

Section 2 Expedited Policy Development Process Manual

The GNSO shall include a specific section(s) on the EPDP process as part of its mainenance of the GNSO Policy Development Process Manual (PDP Manual) described in Annex 5 of the GNSO Operating Procedures. The EPDP Manual shall contain specific additional guidance on completion of all elements of an EPDP, including those elements that are not otherwise defined in these Bylaws. The EPDP Manual and any amendments thereto are subject to a twenty-one (21) day public comment period, a minimum, as well as Board oversight and review as specified in Article X, Section 3.4.

Section 3 Initiation of the EPDP

The Council may initiate an EPDP as follows:

The Council may only initiate the EPDP by a vote of the Council. Initiation of an EPDP requires an affirmative Supermajority vote of the Council (as defined in these Bylaws) in favor of initiating the EPDP.

The request to initiate an EPDP must be accompanied by an EPDP scoping document which is expected to include at a minimum the following information:

1. Name of Council Member / SG / C
2. Origin of issue (e.g. previously completed PDP)
3. Scope of the effort (detailed description of the issue or question that the EPDP is expected to address)
4. Description of how this issue meets the criteria for an EPDP, i.e. how the EPDP will address either (1) a narrowly defined policy issue that was identified and scoped after either the adoption of a GNSO policy recommendation by the CANN Board or the implementation of such an adopted recommendation; or (2) new or additional policy recommendations on a specific GNSO policy issue that had been scoped previously as part of a PDP, that was not completed or other similar effort including relevant supporting information in either case.
5. If not provided as part of item 4, the opinion of the CANN General Counsel as to whether the issue proposed for consideration is properly within the scope of the CANN's mission, policy process and more specifically the role of the GNSO.
6. Proposed EPDP mechanism (e.g. WG, DT, individual volunteers)
7. Method of operation if different from GNSO Working Group Guidelines
8. Decision-making methodology for EPDP mechanism if different from GNSO Working Group Guidelines
9. Target completion date

Section 4 Council Deliberation

Upon receipt of an EPDP Final Recommendation(s) Report whether as the result of an EPDP Team or otherwise, the Council chair will (i) distribute the Final EPDP Recommendation(s) Report to all Council members

and (ii) call for Council deliberation on the matter in accordance with the PDP Manual

Approval of EPDP Recommendation(s) requires an affirmative vote of the Council meeting the thresholds set forth in Article X Section 3 paragraphs 9-10 as supplemented by the PDP Manual

Section 5 **Preparation of the Board Report**

If the EPDP Recommendation(s) contained in the Final EPDP Recommendation(s) Report are approved by the GNSO Council, a Recommendation(s) Report shall be approved by the GNSO Council for delivery to the CANN Board

Section 6 **Board Approval Processes**

The Board will meet to discuss the EPDP recommendation(s) as soon as feasible but preferably no later than the second meeting after receipt of the Recommendation(s) Report from the Staff Manager Board deliberation on the EPDP Recommendations contained within the Recommendation(s) Report shall proceed as follows

- a. Any EPDP Recommendations approved by a GNSO Supermajority Vote shall be adopted by the Board unless by a vote of more than two-thirds (2/3) of the Board the Board determines that such policy is not in the best interests of the CANN community or CANN. If the GNSO Council recommendation was approved by less than a GNSO Supermajority Vote, a majority vote of the Board will be sufficient to determine that such policy is not in the best interests of the CANN community or CANN
- b. Not even if the Board determines in accordance with paragraph a above that the proposed EPDP Recommendations are not in the best interests of the CANN community or CANN (the Corporation) the Board shall (i) articulate the reasons for its determination in a report to the Council (the "Board Statement") and (ii) submit the Board Statement to the Council
- c. The Council shall review the Board Statement for discussion with the Board as soon as feasible after the Council's receipt of the Board Statement. The Board shall determine the method (e.g. by teleconference, e-mail, or otherwise) by which the Council and Board will discuss the Board Statement
- d. At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its recommendation and communicate that conclusion (the "Supplemental Recommendation") to the Board including an explanation for the then-current recommendation. Not even if the Council is able to reach a GNSO Supermajority Vote on the Supplemental Recommendation, the Board shall adopt the recommendation unless more than two-thirds (2/3) of the Board determines that such guidance is not in the best interests of the CANN community or CANN. For any Supplemental Recommendation approved by less than a GNSO Supermajority Vote, a majority vote of the Board shall be sufficient to determine that the guidance in the Supplemental Recommendation is not in the best interests of the CANN community or CANN

Section 7 **Implementation of Approved Policies**

Upon a final decision of the Board adopting the EPDP recommendations, the Board shall, as appropriate, give authorization or direction to CANN staff to implement the EPDP Recommendations if deemed necessary. The Board shall direct CANN staff to work with the GNSO Council to create a guidance implementation plan based upon the guidance recommendations identified in the Final EPDP Recommendation(s) Report

Section 8 **Maintenance of Records**

Throughout the EPDP from initiation to a final decision by the Board, CANN will maintain on the Website a status web page detailing the progress of each EPDP issue. Such a status page will outline the completed and upcoming steps in the EPDP process and contain links to key resources (e.g. Reports, Comments, Forums, EPDP Discussions, etc.)

Section 9 **Applicability**

The procedures of this Annex A-1 shall be applicable from 28 September 2015 onwards

Annex A-2: GNSO Guidance Process

The following process shall govern the GNSO guidance process ("GGP") until such time as modifications are recommended to and approved by the CANN Board of Directors ("Board"). The role of the GNSO is outlined in Article X of these Bylaws. If the GNSO is conducting activities that are intended to result in a Consensus Policy, the Council should act through a Policy Development Process (see Annex A)

Section 1 **Required Elements of a GNSO Guidance Process**

The following elements are required as a minimum to develop GNSO guidance

1. Formal initiation of the GNSO Guidance Process by the Council, including a GGP scoping document
2. Identification of the types of expertise needed on the GGP Team
3. Recruiting and formation of a GGP Team or other designated work method
4. Proposed GNSO Guidance Recommendation(s) Report produced by a GGP Team or other designated work method
5. Final GNSO Guidance Recommendation(s) Report produced by a GGP Team or other designated work method and forwarded to the Council for deliberation
6. Council approval of GGP Recommendations contained in the Final Recommendation(s) Report by the required thresholds
7. GGP Recommendations and Final Recommendation(s) Report shall be forwarded to the Board through a Recommendation(s) Report approved by the Council and
8. Board approval of GGP Recommendation(s)

Section 2 GNSO Guidance Process Manual

The GNSO shall maintain a GNSO Guidance Process (GGP Manual) within the operating procedures of the GNSO maintained by the GNSO Council. The GGP Manual shall contain specific additional guidance on completion of all elements of a GGP including those elements that are not otherwise defined in these Bylaws. The GGP Manual and any amendments thereto are subject to a twenty-one (21) day public comment period a minimum as well as Board oversight and review as specified in Article X, Section 3.4.

Section 3 **Initiation of the GGP**

The Council may initiate a GGP as follows:

The Council may only initiate the GGP by a vote of the Council or at the formal request of the CANN Board. Initiation of a GGP requires a vote as set forth in Article X, Section 3, paragraph 9 p in favor of initiating the GGP. In the case of a GGP requested by the CANN Board, a GGP will automatically be initiated unless the GNSO Council votes against the initiation of a GGP as set forth in Article X, Section 3, paragraph 9 q.¹

The request to initiate a GGP must be accompanied by a GGP scoping document which is expected to include a minimum of the following information:

1. Name of Council Member / SG / C
2. Origin of issue (e.g. board request)
3. Scope of the effort (detailed description of the issue or question that the GGP is expected to address)
4. Proposed GGP mechanism (e.g. WG, DT, individual volunteers)
5. Method of operation if different from GNSO Working Group Guidelines
6. Decision-making methodology for GGP mechanism if different from GNSO Working Group Guidelines
7. Desired completion date and rationale

In the event the Board makes a request for a GGP, the Board should provide a mechanism by which the GNSO Council can consult with the Board to provide information on the scope, timing, and priority of the request for a GGP.

Section 4 **Council Deliberation**

Upon receipt of a Final Recommendation(s) Report, whether as the result of a GGP Team or otherwise, the Council chair will (i) distribute the Final Recommendation(s) Report to all Council members and (ii) call for Council deliberation on the matter in accordance with the GGP Manual.

The Council approval process is set forth in Article X, Section 3, paragraph 9 r² as supplemented by the GGP Manual.

Section 5 **Preparation of the Board Report**

If the GGP recommendations contained in the Final Recommendation(s) Report are approved by the GNSO Council, a Recommendations Report shall be approved by the GNSO Council for delivery to the CANN Board.

Section 6 **Board Approval Processes**

The Board will meet to discuss the GNSO Guidance recommendation(s) as soon as feasible, but preferably no later than the second meeting after receipt of the Board Report from the Staff Manager. Board deliberation on the GGP Recommendations contained within the Recommendations Report shall proceed as follows:

- a. Any GGP Recommendations approved by a GNSO Supermajority Vote shall be adopted by the Board unless by a vote of more than two-thirds (2/3) of the Board, the Board determines that such guidance is not in the best interests of the CANN community or CANN.
- b. In the event that the Board determines in accordance with paragraph a above that the proposed GNSO Guidance recommendation(s) adopted by a GNSO Supermajority Vote is not in the best interests of the CANN community or CANN (the Corporation), the Board shall (i) articulate the reasons for its determination in a report to the Council (the "Board Statement") and (ii) submit the Board Statement to the Council.
- c. The Council shall review the Board Statement for discussion with the Board as soon as feasible after the Council's receipt of the Board Statement. The Board shall determine the method (e.g. by teleconference, e-mail, or otherwise) by which the Council and Board will discuss the Board Statement.
- d. At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its recommendation and communicate that conclusion (the "Supplemental Recommendation") to the Board including an explanation for the then-current recommendation. In the event that the Council is unable to reach a GNSO Supermajority Vote on the Supplemental Recommendation, the Board shall adopt the recommendation unless more than two-thirds (2/3) of the Board determines that such guidance is not in the best interests of the CANN community or CANN.

Section 7 **Implementation of Approved GNSO Guidance**

Upon a final decision of the Board adopting the guidance, the Board shall, as appropriate, give authorization or direction to CANN staff to implement the GNSO Guidance. If deemed necessary, the Board may direct CANN staff to work with the GNSO Council to create a guidance implementation plan, if deemed necessary, based upon the guidance recommendations identified in the Final Recommendation(s) Report.

Section 8 **Maintenance of Records**

Throughout the GGP, from initiation to a final decision by the Board, CANN will maintain on the Website a status web page detailing the progress of each GGP issue. Such status page will outline the completed and upcoming steps in the GGP process and contain links to key resources (e.g. Reports, Comments, Forums, GGP Discussions).

e c)

Section 9 Additional Definitions

"Comments Site" "Comments Forum" "Comments Fora" and "Website" refer to one or more websites designated by CANN on which notifications and comments regarding the GGP will be posted

"GGP Staff Manager" means an CANN staff person(s) who manages the GGP

Annex B: ccNSO Policy-Development Process (ccPDP)

The following process shall govern the ccNSO policy-development process ("PDP")

1. Request for an Issue Report

An Issue Report may be requested by any of the following

- a *Council* The ccNSO Council (in this Annex B the "Council") may call for the creation of an Issue Report by an affirmative vote of at least seven of the members of the Council present at any meeting or voting by e-mail
- b *Board* The CANN Board may call for the creation of an Issue Report by requesting the Council to begin the policy-development process
- c *Regional Organization* One or more of the Regional Organizations representing ccTLDs in the CANN recognized Regions may call for creation of an Issue Report by requesting the Council to begin the policy-development process
- d *ICANN Supporting Organization or Advisory Committee* An CANN Supporting Organization or an CANN Advisory Committee may call for creation of an Issue Report by requesting the Council to begin the policy-development process
- e *Members of the ccNSO* The members of the ccNSO may call for the creation of an Issue Report by an affirmative vote of at least ten members of the ccNSO present at any meeting or voting by e-mail

Any request for an Issue Report must be in writing and must set out the issue upon which an Issue Report is requested in sufficient detail to enable the Issue Report to be prepared. It shall be open to the Council to request further information or undertake further research or investigation for the purpose of determining whether or not the requested Issue Report should be created

2. Creation of the Issue Report and Initiation Threshold

Within seven days after an affirmative vote as outlined in item 1(a) above or the receipt of a request as outlined in items 1 (b) (c) or (d) above the Council shall appoint an Issue Manager. The Issue Manager may be a staff member of CANN (in which case the costs of the Issue Manager shall be borne by CANN) or such other person or persons selected by the Council (in which case the ccNSO shall be responsible for the costs of the Issue Manager)

Within fifteen (15) calendar days after appointment (or such other time as the Council shall in consultation with the Issue Manager deem to be appropriate) the Issue Manager shall create an Issue Report. Each Issue Report shall contain at least the following

- a The proposed issue raised for consideration
- b The identity of the party submitting the issue
- c How the party is affected by the issue
- d Support for the issue outlined in the PDP.
- e A recommendation from the Issue Manager as to whether the Council should move to initiate the PDP for this issue (the "Manager Recommendation"). Each Manager Recommendation shall include and be supported by an opinion of the CANN General Counsel regarding whether the issue is properly within the scope of the CANN policy process and within the scope of the ccNSO. In coming to his or her opinion the General Counsel shall examine whether
 - 1 The issue is within the scope of CANN's mission statements
 - 2 Analysis of the relevant factors according to Article X Section 6(2) and Annex C affirmatively demonstrates that the issue is within the scope of the ccNSOin the event that the General Counsel reaches an opinion in the affirmative with respect to points 1 and 2 above then the General Counsel shall also consider whether the issue
 - 3 Implicates or affects an existing CANN policy
 - 4 Is likely to have lasting value or applicability albeit with the need for occasional updates and to establish a guide or framework for future decision-making

In all events consideration of revisions to the ccPDP (in this Annex B) or to the scope of the ccNSO (Annex C) shall be within the scope of CANN and the ccNSO

In the event that the General Counsel is of the opinion the issue is not properly within the scope of the ccNSO. Scope the Issue Manager shall inform the Council of his opinion. If after an analysis of the relevant factors according to Article X Section 6 and Annex C a majority of 10 or more Council members is of the opinion the issue is within scope the Chair of the ccNSO shall inform the Issue Manager accordingly. General Counsel and the ccNSO Council shall engage in a dialogue according to agreed rules and procedures to resolve the matter. In the event no agreement is reached between General Counsel and the Council as to whether the issue is within or outside Scope of the ccNSO then by a vote of 15 or more members the Council may decide the issue is within scope. The Chair of the ccNSO shall inform General Counsel and the Issue Manager accordingly. The Issue Manager shall then proceed with a recommendation whether or not the Council should move to initiate the PDP including both the opinion and analysis of General Counsel and

Council in the Issues Report

- f. If not even after the Manager Recommendation is in favor of initiating the PDP, a proposed timeline for conducting each of the stages of PDP outlined herein (PDP Time Line)
- g. If possible, the issue report shall indicate whether the resulting output is likely to result in a policy to be approved by the CANN Board. In some circumstances, it will not be possible to do this until subsequent discussions on the issue have taken place. In these cases, the issue report should indicate this uncertainty. Upon completion of the Issues Report, the Issue Manager shall distribute it to the full Council for a vote on whether to initiate the PDP.

3. Initiation of PDP

The Council shall decide whether to initiate the PDP as follows:

- a. Within 21 days after receipt of an Issue Report from the Issue Manager, the Council shall vote on whether to initiate the PDP. Such vote should be taken at a meeting held in any manner deemed appropriate by the Council, including in person or by conference call, but if a meeting is not feasible, the vote may occur by e-mail.
- b. A vote of ten or more Council members in favor of initiating the PDP shall be required to initiate the PDP, provided that the Issue Report satisfies that the issue is properly within the scope of the CANN mission statement and the ccNSO Scope.

4. Decision Whether to Appoint Task Force; Establishment of Time Line

At the meeting of the Council where the PDP has been initiated (or where the Council employs a vote by e-mail in accordance with paragraph 3 above), the Council shall decide, by a majority vote of members present at the meeting (or voting by e-mail), whether or not to appoint a task force to address the issue. If the Council votes

- a. in favor of convening a task force, it shall do so in accordance with item 7 below.
- b. Against convening a task force, then it shall collect information on the policy issue in accordance with item 8 below.

The Council shall also, by a majority vote of members present at the meeting or voting by e-mail, approve or amend and approve the PDP Time Line set out in the Issue Report.

5. Composition and Selection of Task Forces

- a. Upon voting to appoint a task force, the Council shall invite each of the Regional Organizations (see [Article X, Section 6](#)) to appoint two individuals to participate in the task force (the "Representatives"). Additionally, the Council may appoint up to three advisors (the "Advisors") from outside the ccNSO and following formal request for GAC participation in the Task Force, accept up to two Representatives from the Governmental Advisory Committee or sit on the task force. The Council may increase the number of Representatives that may sit on a task force in its discretion in circumstances that it deems necessary or appropriate.
- b. Any Regional Organization wishing to appoint Representatives to the task force must provide the names of the Representatives to the Issue Manager within ten (10) calendar days after such request, so that they are included on the task force. Such Representatives need not be members of the Council, but each must be an individual who has an interest and ideally knowledge and expertise in the subject matter coupled with the ability to devote a substantial amount of time to the task force's activities.
- c. The Council may also pursue other actions that it deems appropriate to assist in the PDP, including appointing a particular individual or organization to gather information on the issue or scheduling meetings for deliberation or briefing. All such information shall be submitted to the Issue Manager in accordance with the PDP Time Line.

6. Public Notification of Initiation of the PDP and Comment Period

After initiation of the PDP, CANN shall post a notification of such action on the Website and on the other CANN Supporting Organizations and Advisory Committees. A comment period (in accordance with the PDP Time Line and ordinarily at least 21 days long) shall be commenced for the issue. Comments shall be accepted from ccTLD managers, other Supporting Organizations, Advisory Committees, and from the public. The Issue Manager or some other designated Council representative shall review the comments and incorporate them into a report (the "Comment Report") to be included in either the Preliminary Task Force Report or the final Report, as applicable.

7. Task Forces

- a. *Role of Task Force*. A task force is created; its role shall be responsible for (i) gathering information, documenting the positions of the ccNSO members within the Geographic Regions and other parties and groups, and (ii) otherwise obtaining relevant information that shall enable the Task Force Report to be as complete and informative as possible to facilitate the Council's meaningful and informed deliberation.

The task force shall not have any formal decision-making authority. Rather, the role of the task force shall be to gather information that shall document the positions of various parties or groups as specifically and comprehensively as possible, thereby enabling the Council to have a meaningful and informed deliberation on the issue.
- b. *Task Force Charter or Terms of Reference*. The Council, with the assistance of the Issue Manager, shall develop a charter or terms of reference for the task force (the "Charter") within the time designated in the PDP Time Line. Such Charter shall include:
 1. The issue to be addressed by the task force, as such issue was articulated for the vote before the Council has initiated the PDP.
 2. The specific timeline that the task force must adhere to, as set forth below, unless the Council determines that there is a compelling reason to extend the timeline, and
 3. Any specific instructions from the Council for the task force, including whether or not the task force should solicit the advice of outside advisors on the issue.

The task force shall prepare its report and otherwise conduct its activities in accordance with the Charter. Any request to deviate from the Charter must be formally presented to the Council and may only be undertaken by the task force upon a vote of a majority of the Council members present at a meeting or voting by e-mail. The quorum requirements of [Article X Section 3\(14\)](#) shall apply to Council actions under this item 7(b).

c. **Appointment of Task Force Chair** The Issue Manager shall convene the first meeting of the task force within the time designated in the PDP Time Line. At the initial meeting the task force members shall among other things vote to appoint a task force chair. The chair shall be responsible for organizing the activities of the task force including compiling the Task Force Report. The chair of a task force need not be a member of the Council.

d. **Collection of Information**

1. **Regional Organization Statements** The Representatives shall each be responsible for soliciting the position of the Regional Organization for their Geographic Region at a minimum and may solicit other comments as each Representative deems appropriate including the comments of ccNSO members in that region that are not members of the Regional Organization regarding the issue under consideration. The position of the Regional Organization and any other comments gathered by the Representatives should be submitted in a formal statement to the task force chair (each a "Regional Statement") within the time designated in the PDP Time Line. Every Regional Statement shall include at least the following:

- i. If a Supermajority Vote (as defined by the Regional Organization) was reached a clear statement of the Regional Organization's position on the issue.
- ii. If a Supermajority Vote was not reached a clear statement of all positions espoused by the members of the Regional Organization.
- iii. A clear statement of how the Regional Organization arrived at its position(s). Specifically the statement should detail specific meetings, teleconferences, or other means of deliberating an issue, and a list of all members who participated or otherwise submitted their views.
- iv. A statement of the position on the issue of any ccNSO members that are not members of the Regional Organization.
- v. An analysis of how the issue would affect the Region, including any financial impact on the Region, and
- vi. An analysis of the period of time that would likely be necessary to implement the policy.

2. **Outside Advisors** The task force may in its discretion solicit the opinions of outside advisors, experts, or other members of the public. Such opinions should be set forth in a report prepared by such outside advisors and (i) clearly labeled as coming from outside advisors, (ii) accompanied by a detailed statement of the advisors' (a) qualifications and relevant experience and (b) potential conflicts of interest. These reports should be submitted in a formal statement to the task force chair within the time designated in the PDP Time Line.

e. **Task Force Report** The chair of the task force, working with the Issue Manager, shall compile the Regional Statements, the Comment Report, and other information or reports as applicable, into a single document ("Preliminary Task Force Report") and distribute the Preliminary Task Force Report to the full task force within the time designated in the PDP Time Line. The task force shall have a final task force meeting to consider the issues and try and reach a Supermajority Vote. After the final task force meeting the chair of the task force and the Issue Manager shall create the final task force report (the "Task Force Report") and post it on the Website and on the other CANN Supporting Organizations and Advisory Committees. Each Task Force Report must include:

1. A clear statement of any Supermajority Vote (being 66% of the task force) position of the task force on the issue.
2. If a Supermajority Vote was not reached a clear statement of all positions espoused by task force members submitted within the time line for submission of consultancy reports. Each statement should clearly indicate (i) the reasons underlying the position and (ii) the Regional Organizations that held the position.
3. An analysis of how the issue would affect each Region, including any financial impact on the Region.
4. An analysis of the period of time that would likely be necessary to implement the policy, and
5. The advice of any outside advisors appointed to the task force by the Council, accompanied by a detailed statement of the advisors' (i) qualifications and relevant experience and (ii) potential conflicts of interest.

8. Procedure if No Task Force is Formed

- a. If the Council decides not to convene a task force, each Regional Organization shall within the time designated in the PDP Time Line appoint a representative to solicit the Region's views on the issue. Each such representative shall be asked to submit a Regional Statement to the Issue Manager within the time designated in the PDP Time Line.
- b. The Council may in its discretion take other steps to assist in the PDP, including for example, appointing a particular individual or organization to gather information on the issue or scheduling meetings for deliberation or briefing. All such information shall be submitted to the Issue Manager within the time designated in the PDP Time Line.
- c. The Council shall formally request the Chair of the GAC to offer opinion or advice.
- d. The Issue Manager shall take all Regional Statements, the Comment Report, and other information and compile (and post on the Website) an initial Report within the time designated in the PDP Time Line. Thereafter, the Issue Manager shall in accordance with item 9 below create a Final Report.

9. Comments to the Task Force Report or Initial Report

- a. A comment period (in accordance with the PDP Time Line and ordinarily at least 21 days long) shall be opened for comments on the Task Force Report or initial Report. Comments shall be accepted from ccTLD managers, other Supporting Organizations, Advisory Committees, and from the public. All

comments shall include the author's name, relevant experience, and inferences in the issue.

- b. At the end of the comment period, the Issue Manager shall review the comments received and may, in the Issue Manager's reasonable discretion, add appropriate comments to the Task Force Report or final Report to prepare the "Final Report." The Issue Manager shall not be obligated to include all comments made during the comment period, nor shall the Issue Manager be obligated to include all comments submitted by any one individual or organization.
- c. The Issue Manager shall prepare the Final Report and submit it to the Council chair within the time designated in the PDP Time Line.

10. Council Deliberation

- a. Upon receipt of a Final Report, whether as the result of a task force or otherwise, the Council chair shall (i) distribute the Final Report to all Council members, (ii) call for a Council meeting within the time designated in the PDP Time Line wherein the Council shall work towards achieving a recommendation to present to the Board, and (iii) formally send to the GAC Chair an invitation to the GAC to offer opinion or advice. Such meeting may be held in any manner deemed appropriate by the Council, including in person or by conference call. The Issue Manager shall be present at the meeting.
- b. The Council may commence its deliberation on the issue prior to the formal meeting, including via in-person meetings, conference calls, e-mail discussions, or any other means. The Council may choose
- c. The Council may, if it so chooses, solicit the opinions of outside advisors at its final meeting. The opinions of these advisors, if relied upon by the Council, shall be (i) embodied in the Council's report to the Board, (ii) specifically identified as coming from an outside advisor, and (iii) accompanied by a detailed statement of the advisor's (a) qualifications and relevant experience and (b) potential conflicts of interest.

11. Recommendation of the Council

In considering whether to make a recommendation on the issue (a "Council Recommendation"), the Council shall seek to act by consensus. If a minority opposes a consensus position, a minority shall prepare and circulate to the Council a statement explaining its reasons for opposition. If the Council's discussion of the statement does not result in consensus, then a recommendation supported by 14 or more of the Council members shall be deemed to reflect the view of the Council and shall be conveyed to the Members as the Council's Recommendation. No whimsical or foregone conclusions as outlined below, all viewpoints expressed by Council members during the PDP must be included in the Members Report.

12. Council Report to the Members

Notwithstanding a Council Recommendation is adopted pursuant to item 11, then the Issue Manager shall, within seven days after the Council meeting, incorporate the Council's Recommendation together with any other viewpoints of the Council members into a Members Report to be approved by the Council and then to be submitted to the Members (the "Members Report"). The Members Report must contain at least the following:

- a. A clear statement of the Council's recommendation.
- b. The Final Report submitted to the Council, and
- c. A copy of the minutes of the Council's deliberation on the policy issue (see item 10) including all the opinions expressed during such deliberation, accompanied by a description of who expressed such opinions.

13. Members Vote

Following the submission of the Members Report and within the time designated by the PDP Time Line, the ccNSO members shall be given an opportunity to vote on the Council Recommendation. The vote of members shall be electronic and members' votes shall be lodged over such a period of time as designated in the PDP Time Line (at least 21 days long).

Notwithstanding at least 50% of the ccNSO members lodge votes within the voting period, the resulting vote will be employed without further process. If fewer than 50% of the ccNSO members lodge votes in the first round of voting, the first round will not be employed and the results of a final second round of voting conducted after at least thirty days notice to the ccNSO members will be employed if at least 50% of the ccNSO members lodge votes. If more than 66% of the votes received at the end of the voting period shall be in favor of the Council Recommendation, then the recommendation shall be conveyed to the Board in accordance with item 14 below as the ccNSO Recommendation.

14. Board Report

The Issue Manager shall, within seven days after a ccNSO Recommendation being made in accordance with item 13, incorporate the ccNSO Recommendation into a report to be approved by the Council and then to be submitted to the Board (the "Board Report"). The Board Report must contain at least the following:

- a. A clear statement of the ccNSO recommendation.
- b. The Final Report submitted to the Council, and
- c. the Members' Report.

15. Board Vote

- a. The Board shall meet to discuss the ccNSO Recommendation as soon as feasible after receipt of the Board Report from the Issue Manager, taking into account procedures for Board consideration.
- b. The Board shall adopt the ccNSO Recommendation unless by a vote of more than 66% the Board determines that such policy is not in the best interests of the CANN community or of CANN.
 1. Notwithstanding that the Board determines not to act in accordance with the ccNSO Recommendation, the Board shall (i) state its reasons for its determination not to act in accordance with the ccNSO Recommendation in a report to the Council (the "Board Statement") and (ii) submit the Board Statement to the Council.
 2. The Council shall discuss the Board Statement with the Board within thirty days after the Board Statement is submitted to the Council. The Board shall determine the method (e.g., by

eleconference, e-mail, or otherwise) by which the Council and Board shall discuss the Board's action. The discussions shall be held in good faith and in a timely and efficient manner, and a mutually acceptable solution.

3. At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its Council Recommendation. A recommendation supported by 14 or more of the Council members shall be deemed to reflect the view of the Council (the Council's "Supplemental Recommendation"). The Supplemental Recommendation shall be conveyed to the Members in a Supplemental Members Report, including an explanation for the Supplemental Recommendation under the same conditions outlined in item 13. If, even though more than 66% of the votes cast by ccNSO Members during the voting period are in favor of the Supplemental Recommendation, then the recommendation shall be conveyed to the Board as the ccNSO Supplemental Recommendation and the Board shall adopt the recommendation unless by a vote of more than 66% of the Board determines that acceptance of such policy would constitute a breach of the fiduciary duties of the Board of the Company.
4. If, even though the Board does not accept the ccNSO Supplemental Recommendation, it shall state its reasons for doing so in its final decision ("Supplemental Board Statement").
5. If, even though the Board determines not to accept a ccNSO Supplemental Recommendation, then the Board shall not be entitled to set policy on the issue addressed by the recommendation and the status quo shall be preserved until such time as the ccNSO shall, under the ccPDP, make a recommendation on the issue that is deemed acceptable by the Board.

16. Implementation of the Policy

Upon adoption by the Board of a ccNSO Recommendation or ccNSO Supplemental Recommendation, the Board shall, as appropriate, direct or authorize CANN to implement the policy.

17. Maintenance of Records

With respect to each ccPDP for which an Issue Report is requested (see item 1), CANN shall maintain on the Website a status web page detailing the progress of each ccPDP, which shall provide a list of relevant dates for the ccPDP and shall also link to the following documents, to the extent they have been prepared pursuant to the ccPDP:

- a. Issue Report
- b. PDP Time Line
- c. Comment Report
- d. Regional Statement(s)
- e. Preliminary Task Force Report
- f. Task Force Report
- g. Initial Report
- h. Final Report
- i. Members' Report
- j. Board Report
- k. Board Statement
- l. Supplemental Members' Report, and
- m. Supplemental Board Statement

In addition, CANN shall post on the Website comments received in electronic written form specifically suggesting that a ccPDP be initiated.

Annex C: The Scope of the ccNSO

This annex describes the scope and the principles and method of analysis to be used in any further development of the scope of the ccNSO's policy-development role. As provided in [Article X, Section 6\(2\)](#) of the Bylaws, the scope shall be defined according to the procedures of the ccPDP.

The scope of the ccNSO's authority and responsibilities must recognize the complex relationship between CANN and ccTLD managers/registries with regard to policy issues. This annex shall assist the ccNSO, the ccNSO Council, and the CANN Board and staff in delineating relevant global policy issues.

Policy areas

The ccNSO's policy role should be based on an analysis of the following functional model of the DNS:

1. Data is registered/mainained to generate a zone file.
2. A zone file is in turn used in TLD name servers.

Within a TLD, two functions have to be performed (these are addressed in greater detail below):

1. Entering data into a database (Data Entry Function) and
2. Maintaining and ensuring upkeep of name-servers for the TLD (Name Server Function).

These two core functions must be performed at the ccTLD registry level as well as at a higher level (ANA function and root servers) and at lower levels of the DNS hierarchy. This mechanism, as RFC 1591 points out, is recursive.

There are no requirements on sub domains of top-level domains beyond the requirements on higher-level domains themselves. That is, the requirements in this memo are applied recursively. In particular, all sub domains shall be allowed to operate their own domain name servers, providing in them whatever information the sub domain manager sees it (as long as it is true and correct).

The Core Functions

1 Data Entry Function (DEF)

Looking at a more detailed level, the first function (entering and maintaining data in a database) should be fully defined by a naming policy. This naming policy must specify the rules and conditions

- a under which data will be collected and entered into a database or data changed (at the TLD level among others: data to reflect a transfer from registrar to registrar or changing registrar) in the database
- b for making certain data generally and publicly available (be it for example through Whois or nameservers)

2 The Name-Server Function (NSF)

The name-server function involves essential in operability and stability issues at the heart of the domain name system. The importance of this function extends to nameservers at the ccTLD level but also to the root servers (and root-server system) and nameservers at lower levels.

On its own merit and because of in operability and stability considerations, properly functioning nameservers are of utmost importance to the individual as well as to the local and the global name communities.

With regard to the nameserver function, therefore, policies need to be defined and established. Most parties involved, including the majority of ccTLD registries, have accepted the need for common policies in this area by adhering to the relevant RFCs, among others RFC 1591.

Respective Roles with Regard to Policy, Responsibilities, and Accountabilities

In the instances of CANN and ccTLD managers, to ensure the stable and proper functioning of the domain name system, CANN and the ccTLD registries each have a distinctive role to play in this regard. It can be defined by the relevant policies. The scope of the ccNSO cannot be established without reaching a common understanding of the allocation of authority between CANN and ccTLD registries.

Three roles can be distinguished as to which responsibility must be assigned on any given issue:

- Policy role: i.e. the ability and power to define a policy
- Executive role: i.e. the ability and power to act upon and implement the policy and
- Accountability role: i.e. the ability and power to hold the responsible entity accountable for exercising its power

Firstly, responsibility presupposes a policy and this delineates the policy role. Depending on the issue, it needs to be addressed: those who are involved in defining and setting the policy need to be determined and defined. Secondly, this presupposes an executive role: defining the power to implement and act within the boundaries of a policy. Finally, as a counter-balance to the executive role, the accountability role needs to be defined and determined.

The information below offers an aid to:

- 1 delineate and identify specific policy areas
- 2 define and determine roles with regard to these specific policy areas

This annex defines the scope of the ccNSO with regard to developing policies. The scope is limited to the policy role of the ccNSO policy-development process for functions and levels explicitly stated below. It is anticipated that the accuracy of the assignments of policy, executive, and accountability roles shown below will be considered during a scope-definition ccPDP process.

Name Server Function (as to ccTLDs)

Level 1 Root Name Servers

Policy role: ETF, RSSAC (CANN)
Executive role: Root Server System Operators
Accountability role: RSSAC (CANN) (US DoC-CANN MoU)

Level 2 ccTLD Registry Name Servers in respect to in operability

Policy role: ccNSO Policy Development Process (CANN) for best practices a ccNSO process can be organized
Executive role: ccTLD Manager
Accountability role: par CANN (ANA) par Local Name Community including local government

Level 3 User's Name Servers

Policy role: ccTLD Manager, ETF (RFC)
Executive role: Registrar
Accountability role: ccTLD Manager

Data Entry Function (as to ccTLDs)

Level 1 Root Level Registry

Policy role: ccNSO Policy Development Process (CANN)
Executive role: CANN (ANA)
Accountability role: CANN community and ccTLD Managers, US DoC (national authorities in some cases)

Level 2 ccTLD Registry

Policy role: Local Name Community including local government and/or ccTLD Manager according to local structure

Executive role [ccTLD Manager](#)

Accountability role Local Name Community including national authorities in some cases

Level 3 Second and Lower Levels

Policy role [Registrar](#)

Executive role [Registrar](#)

Accountability role [Registrar](#) users of lower-level domain names

¹A [GNSO Supermajority Vote](#) will be required to initiate a GGP following a formal request from the [CANN Board](#)

²Approval of GGP recommendations requires a [GNSO Supermajority Vote](#)



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Exhibit DIDP A73



The Internet Corporation for Assigned Names and Numbers

James Bladel
Chair, GNSO Council

12 April 2016

Re: GNSO Council Response to ICANN Board Letter concerning New gTLD Program Committee Resolutions Concerning Exclusive Registry Access for gTLD Strings Representing Generic Terms

Dear James:

I am writing in response to the GNSO Council letter of 24 November 2015. In that letter, the Council appears to request three items of information regarding the following: 1) information that demonstrates how the Board has interpreted and considered the public interest in relation to its responsibilities under the ICANN Bylaws; 2) information on the research done by ICANN into "the development and implementation of a global public interest framework bounded by ICANN's mission;" and 3) timing and next steps in developing a global public interest framework bounded by ICANN's mission.

The Board supports the Council member statements regarding the importance of a global public interest framework bounded by ICANN's mission and, in light of discussions at ICANN55, I am glad to have the opportunity to further update you on this work.

I. Board interpretation and consideration of the public interest

While, historically at ICANN, there has been no explicit definition of the term "global public interest," the Board has understood the term within the context of [Paragraph 3 of the Articles of Incorporation](#):

"In furtherance of the foregoing purposes, and in recognition of the fact that the Internet is an international network of networks, owned by no single nation, individual or organization, the Corporation shall, except as limited by Article 5 hereof, pursue the charitable and public purposes of lessening the burdens of government and promoting the global public interest in the operational stability of the Internet by (i) coordinating the assignment of Internet technical

parameters as needed to maintain universal connectivity on the Internet; (ii) performing and overseeing functions related to the coordination of the Internet Protocol ("IP") address space; (iii) performing and overseeing functions related to the coordination of the Internet domain name system ("DNS"), including the development of policies for determining the circumstances under which new top level domains are added to the DNS root system; (iv) overseeing operation of the authoritative Internet DNS root server system; and (v) engaging in any other related lawful activity in furtherance of items (i) through (iv)."

II. ICANN research on global public interest framework

As you noted in your letter, Nora Abusitta, Senior Vice President of ICANN's Development and Public Responsibility Programs, has been facilitating this process as set out in ICANN's strategic plan. Recognizing the intense focus on other ongoing dialogues, she and her team have been preparing resources that will be useful for all involved when the time comes to embark upon a deeper exploration of definitions of the public interest within ICANN's remit.

To date, the following materials have been collated:

- The report and related resources from the Strategy Panel on the Public Responsibility Framework which first proposed a definition of public interest with community input in 2014;
- Desk research on ICANN Department current understandings of the term and its application. This was carried out with a view to understand ICANN's internal processes and documentation that relates to this term, given that we will all need to be cognizant of the fiscal, legal, and operational parameters and limitations to any potential definition(s);
- An inventory of ICANN documents that reference either the term 'global public interest' or 'public interest';
- Useful resources: including links to recent sessions where this topic has recently been discussed and relevant online articles.

In response to requests during discussions, these resources were placed on a [community wikispace](#) launched in late December 2015 for ease of access. To facilitate discussion and organization on this topic, [a mailing list was created](#). As per requests, the topic was submitted



as High Interest Session at ICANN55, and took place on Monday 7th March 2016, details and materials of which can be found [here](#).

III. Next steps

Future conversation and work on exploring the public interest within ICANN's remit will require global, multistakeholder, bottom up discussion and I am glad to see the GNSO Council, along with other groups, is already taking a keen interest in these next steps.

Regards,

A handwritten signature in dark ink, which appears to read "Steve Crocker". The signature is fluid and cursive, written in a professional style.

Steve Crocker
Chairman, ICANN Board

Exhibit DIDP *A74*



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Definition of "public interest" - English Dictionary

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Business

"public interest" in Business English

► See all translations

public interest

noun (U)



used when talking about people's rights to know the facts about a particular situation

The Board was satisfied that it was in the public interest to broadcast the story.

But the public interest defence - exposing a public health hazard - didn't seem to count with the jury.

(Definition of public interest from the Cambridge Business English Dictionary © Cambridge University Press)

What is the pronunciation of public interest?

Browse

- public hearing
- public holiday
- public house
- public housing
- public interest
- public investment
- public issue
- public land
- public lands

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There, their and they're - which one should you use?

by , April 27, 2016

by Liz Walter you are a learner of English

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Activities

Word of the Day

flavoursome

having good flavour or a lot of flavour

Word of the Day



New Words



bio-banding noun

April 25, 2016

in sport grouping children according to the

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Convert Any File to a PDF. Get the Free From Doc to Pdf App!



5 Foods That Kill Testosterone and Cause Belly Fat!



Men: Cut down a bit of stomach fat every day by never eating these 5 foods.

➔ Never eat

V-Taper Solution

public interest

definition and synonyms

Show less



NOUN [SINGULAR/UNCOUNTABLE] Pronunciation

Using the thesaurus

Contribute to our Open Dictionary

- 1 the fact that the public has a right to know about something because it affects them
Cabinet members should be willing to answer questions on matters of genuine public interest
in the public interest *The matter was not deemed to be in the public interest so it was dropped from the discussion*

Synonyms and related words

A right to know, have or do something: *access entry entrance*

Explore Thesaurus

- 2 the fact that people in general are interested in something
Several concerts were canceled because of a lack of public interest

Synonyms and related words

Feelings of interest: *interest motivation involvement*

Explore Thesaurus

Related words

be in the public/national interest

ONLINE UNIVERSITY
Earn your College Degree Online



AIU
Atlantic International University

A new age of distance learning

Did you know?

Click any word in a definition or example to find the entry for that word

This is the American English definition of public interest. View British English definition of public interest
Change your default dictionary to British English
View the pronunciation for public interest

Watch Scott's #realvocabulary videos



EMPLOYABILITY SKILLS
Essential skills for work



5 Foods That Kill Testosterone and Cause Belly Fat!



Men: Cut down a bit of stomach fat every day by never eating these 5 foods. ➔ Never eat

V-Taper Solution



Exhibit DIDP A76

o e > US g s > pub c e es

Def n t on of *public interest* n Eng sh

public interest

Entry from Br t sh & Wor d Eng sh d ct onary



NOUN

The benef t or advantage of the commun ty as a who e; the pub c good

Origin

Late 16th century

Most popu ar n the wor d ▾

- 1 Trustafarian 🔥
- 2 Cambridge
- 3 racism
- 4 practice
- 5 remustering

🔥 = trending

WORD OF THE DAY

lobule

Related Words

- public interest immunity
- public interest immunity certificate

Nearby words

- public housing
- public intellectual
- public interest
- public interest immunity
- public interest immunity certificate

Exhibit DIDP *A77*



deinitions public interest

Denkt u dat de beurs op instorten staat?

Lees nu waar de beurs volgens ons naartoe gaat en waarom in het laatste rapport van het bedrijf van Forbes-columnist en vermogensbeheerder Ken Fisher. Als u een vrij belegbaar vermogen van meer dan € 350.000 heeft, dan moet u dit echt lezen. Bevat onderzoek analyses en de laatste marktoverzichten.

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Word Games

Star icon, CTE, A>あ, Facebook, Twitter, Google+ icons

public interest

Word of the Day

Examples Word Origin See more synonyms on Thesaurus.com

noun

- 1 the welfare or well-being of the general public commonwealth health programs that directly affect the public interest.
2 appeal or relevance of the general populace a news story of public interest.

Origin of public interest

1670-1680

1670-80

Related forms

public-interest, adjective

Dictionary.com Unabridged Based on the Random House Dictionary, © Random House, Inc. 2016 Cite This Source

Examples from the Web for public interest

Contemporary Examples

Whistleblowing has traditionally served the public interest

THE DAILY BEAST Welcome to Glenn Greenwald, Inc? Lloyd Grove February 9, 2014

The assumptions of the "regulation as public interest" crowd undermine their sacred conclusions

THE DAILY BEAST The Best Regulator? That's Easy It's the Market Veronique de Rugy October 15, 2014

David Cameron must put his own interests aside and lead the change with only the public interest in mind

THE DAILY BEAST David Cameron's Credibility Problem Alastair Campbell July 7, 2011

This school year parents learned a tough lesson The only force on behalf of the public interest is an interested public

THE DAILY BEAST Vergara v California The Most Important Court Case You've Never Heard Of Campbell Brown May 28, 2014

Should the paper's journalists ever face trial one imagines they will enjoy an excellent "public interest" defense

THE DAILY BEAST The Appalling Probe on The Guardian Alex Massie September 16, 2011

Historical Examples

For any future work discussing we are going to use our strength to regulate these monopolies in the public interest

The Conflict between Private Monopoly and Good Citizenship

Difficulty index for public interest



Few English speakers likely know this word

Word Value for public interest

12 Scrabble

17 Words With Friends

Nearby words for public interest

- public health inspector
public holiday
public house
public housing
public international law
public interest
public international law
public journalism
public key
public key infrastructure
public law

John Graham Brooks

Then after ten days of strain *public interest* began to flag

[The Octopus](#)

Frank Norris

He was apprized of the dangers to be encountered but believed it to be for the *public interest* to meet them

[The Life of George Washington, Vol 4 \(of 5\)](#)

John Marshall

These also should be men of influence and a leisure to take care of the *public interest*

[Laws](#)

Plato

Every topic of *public interest* was brought to the home circle

[The American Country Girl](#)

Martha Foote Crow

Discover our greatest shows



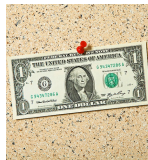
[Q Who? U 9
Mus -Know Terms
for](#)



[Death & Taxes: All
We Can Do is](#)



[What's Your Sign?
14 As Logical](#)



[Dough Clams
and Greenbacks](#)

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Learn the correct uses of these two commonly confused homophones

[What Character Was Removed from the Alphabet?](#)

What mispronunciation gave his character his name?

[Apostrophes 101](#)

This small mark has two primary uses to signify possession or omitted letters

[How Do We Add a Word in the Dictionary?](#)

People invent new words all the time but which ones actually make it?

Exhibit DIDP A78



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 - ▼ [Governance Documents](#)
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 - [Board Code of Conduct](#)
 - [Board Conflicts of Interest Policy](#)
 - [Board Statements of Interest](#)
 - [Lobbying Disclosures & Contribution Reports](#)
 - [Summary of Conflicts of Interest and Ethics Practices Review](#)
 - ▶ [Agreements](#)
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- ▶ [Registrars](#)
- ▶ [Registries](#)
 - [Operational Metrics](#)
- ▶ [Identifier Systems Security, Stability and Resiliency \(S-SSR\)](#)
- ▶ [ccTLDs](#)
- ▶ [Internationalized Domain Names](#)
- ▶ [Universal Acceptance Initiative](#)
- ▶ [Policy](#)
- ▶ [Public Comment](#)
- ▶ [Technical Functions](#)
- ▶ [Contact](#)
- ▶ [Help](#)

Governance Documents

Articles of Incorporation

Articles of incorporation for [CANN](#)

Board Code of Conduct

[CANN's](#) expected standards of ethical conduct for Board members and Liaisons. The Board has also developed [Code of Conduct Guidelines](#) on encouraging adherence to the Code of Conduct and how to address potential breaches of the Code.

Board Conflicts of Interest Policy

Policy to ensure that the deliberations and decisions of [CANN](#) are made in the interests of the global internet community.

Board Governance Guidelines

Board governance policies and practices.

Board Meeting Transcripts, Minutes & Resolutions

[CANN](#) Board of Directors' meeting dates, notes and minutes.

Board Statements of Interest

Summary of Board Member and Board Liaison statements of interests disclosed pursuant to the Conflicts of Interest Policy.

Bylaws and Bylaws Archives

The bylaws outlining [CANN's](#) powers and responsibilities and previous versions of the [CANN](#) bylaws.

ICANN Conflict of Interest Enforcement and Compliance Report

- [2016](#) [PDF 49 KB]
- [2015](#) [PDF 43 KB]
- [2014](#) [PDF 53 KB]

Summary of Conflicts of Interest and Ethics Practices Review



Exhibit DIDP A79

ICANN CALL FOR EXPRESSIONS OF INTEREST (EOIs) for a New gTLD Comparative Evaluation Panel

25 February 2009

1 Introduction

Generic top-level domains (gTLDs) are an important part of the structure of the DNS. Examples of existing gTLDs include .BIZ, .COM, .INFO and .JOBS. A complete listing of all gTLDs is available at <http://www.iana.org/gtld/gtld.htm>. The responsibility for operating each gTLD (including maintaining the authoritative registry of all domain names registered within that gTLD) is delegated to a particular organization. These organizations are referred to as "registry operators" or "sponsors," depending upon the type of agreement they have with ICANN.

Following years of community-driven policy development that recommended the introduction of new gTLDs, ICANN is preparing a process to receive applications to operate new generic top-level domain (gTLD) registries. This new program is described in detail at <http://www.icann.org/en/topics/new-gtld-program.htm>. ICANN has published a draft Applicant Guidebook at <http://www.icann.org/en/topics/new-gtlds/comments-2-en.htm> that provides detailed information about the process for applying to operate a new gTLD. The Applicant Guidebook will constitute the request for proposals (RFP) for new gTLDs.

The development of the Applicant Guidebook is an iterative process, which includes seeking public comment on draft versions. The comment resulting from the publication of the first draft Applicant Guidebook led to the identification of several overarching issues that will require additional examination and discussion to resolve. Although ICANN has prepared a revised Applicant Guidebook, the information in the Guidebook is not yet fixed and the new gTLD process is not yet launched. While that work goes forward, steps will also be taken to assure there will be a robust, effective and timely evaluation process in place to review applications once the round is launched. Retaining competent evaluation panels with sufficient expertise, resources and geographic diversity is expected to take many months. Some preliminary steps, such as the publication of this call for expressions of interest, are being taken now, even as important decisions regarding the overall implementation process are still being considered.

ICANN is now seeking expertise to enable the formation of panels to evaluate applications against the criteria published in the Applicant Guidebook. Expressions of Interest (EOIs) in providing management and evaluation services are sought in the following five areas of assessment:

1. Has the applicant demonstrated their technical capability to run a registry for the purpose specified in the application, as measured against the criteria in the Applicant Guidebook?
2. Has the applicant demonstrated their financial and organizational capability, as measured against the criteria in the Applicant Guidebook?
3. In the context of the criteria specified in the Applicant Guidebook, does the gTLD represent a geographical name, and if so, have authenticated support from the relevant government?

4. Will the introduction of the proposed gTLD string likely result in user confusion with (i.e., due to similarity with) (i) a reserved name; (ii) an existing TLD; or (iii) other proposed gTLDs?
5. In the context of resolving contention among two or more applicants for the same or similar gTLD string, does an applicant claim to represent a community and if so, satisfy the criteria for prevailing in a comparative evaluation?

ICANN also seeks information from potential providers regarding estimation of reasonable timeframes for each type of evaluation (e.g., per string or per application) and anticipated costs associated with conducting the evaluation. The cost and time to process an application are critical factors that must be carefully considered in the information provided by the interested parties.

This EOI refers to question 5 above and describes the criteria and requirements for providers that seeking to perform the comparative evaluation of applications for identical (or very similar) strings. The comparative evaluation seeks to award a priority to applications representing communities. Providers should respond by 13 April 2009 23:59 UTC with the required information that is described below. From the information provided, ICANN will invite respondents to exchange additional information.

Contracts will not be awarded from this EOI, but ICANN expects to use the responses to identify entities capable of providing the various evaluation roles and better refine the costs and time frames for conducting evaluation as part of the new gTLD process.

2 Background

The [Internet Corporation for Assigned Names and Numbers](#) (ICANN) is a not-for-profit, multi-stakeholder, international organization that has responsibility for Internet Protocol (IP) address space allocation, protocol identifier assignment, generic (gTLD) and country code (ccTLD) top-level domain name system management, and root server system management functions. ICANN's mission is to coordinate, at the overall level, the global Internet's systems of unique identifiers, and in particular to ensure the stable and secure operation of these systems. It coordinates policy development reasonably and appropriately related to these technical functions, consistent with ICANN's core values. Among these values are:

- Preserving and enhancing the operational stability, reliability, security, and global interoperability of the Internet;
- Where feasible and appropriate, depending on market mechanisms to promote and sustain a competitive environment;
- Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest; and
- Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making.

New gTLDs have previously been established based on proposals that were submitted to ICANN during two specific application periods. Materials from the 2000 application round, which led to the delegation of .AERO, .BIZ, .COOP, .INFO, .MUSEUM, .NAME and .PRO, are available at <http://www.icann.org/tlds/app-index.htm>. Materials from the 2003 round, which led to the delegation of .ASIA, .CAT, .JOBS, .MOBI, .TEL and .TRAVEL, are available at <http://www.icann.org/tlds/std-apps-19mar04>. Applications received during both of these rounds were evaluated on the basis of instructions and criteria contained in the respective RFPs published by ICANN. Applicants that were successful went on to negotiate and enter gTLD agreements with ICANN.

ICANN is now seeking a provider to supply and enable comparative evaluation of applications in cases of contention involving two or more applications for the same or similar strings, when one of the applicants indicates that it represents a community. (Note: A separate EOI is being issued for experts to assist with the Applicant Evaluation, i.e., assessment of technical and financial criteria; geographic names; and string similarity. It is recommended that potential providers review all drafts of the Applicant Guidebook and other resources on the new gTLD program available at <http://www.icann.org/en/topics/new-gtld-program.htm>).

The number of applications that will be received is unknown; however it is estimated to be several hundred or more. It is therefore vital that the provider be able to convene – or have the capacity to convene - as many panels of evaluators as is necessary to evaluate all the applications, in a timely and complete manner. For example, the provider may wish to consider the process it will use to evaluate applications, and how that process will scale if 100, 250, 500, 700, 900 or more applications are received. There should be a statement describing how 2000 applications would be processed (even though this is thought to be highly unlikely). The provider should also consider how the number of applications may impact evaluation timeframes and costs of evaluations.

It is expected that there will be more than one application round. Therefore, there may be an opportunity for cyclical work in evaluating applications. In the longer term, the work may become continuous with new gTLD applications being submitted and evaluated at any time.

In addition, given the international nature of the ICANN community and the likelihood that applications will be received for both ASCII and non-ASCII new gTLDs, it will be important that the provider can convene – or have the capacity to convene - globally diverse panels familiar with internationalized domain names (IDNs). A non-ASCII domain name, also called an IDN, is one that utilizes characters from the full Unicode set rather than just the “letter-digit-hyphen” characters specified in the original DNS standards. Using IDNs, for example, make it possible to add TLDs in Arabic, Hebrew, Cyrillic and other scripts. For more information on IDNs, please visit <http://www.icann.org/en/topics/idn/>.

3 Comparative evaluation

If multiple Applicants request the same string, or strings that are determined to be unacceptably similar¹ to one another, a “string contention” process is invoked to determine which Applicant(s) should be permitted to proceed. The new gTLD policy states a claim to support a community by

¹ String similarity is determined through a separate process that takes place prior to comparative evaluation.

one party will be a reason to award priority to that application. “Comparative evaluation” refers to the process whereby the claims of one or more Applicants to represent defined communities² are compared with respect to a set of evaluation criteria to determine if such a priority should be given. The process and the evaluation criteria are specified in [Module 4](#) of the Applicant Guidebook and in the new gTLD program [explanatory memorandum](#) “Resolving String Contention.” See appendix A, “Applicant Guidebook section describing Comparative Evaluation Process.”

Comparative evaluation is used only when a contention set³ identified during the string contention process contains one or more self-declared community Applicant(s) and at least one of those community Applicants declared a preference for comparative evaluation. When these conditions are met, comparative evaluation applies to all of the community Applicants in a contention set, including those that did not declare a preference for comparative evaluation during the Application Phase.

Community Applicants will be asked to respond to a set of questions during the Application Phase to provide information should a comparative evaluation be necessary. Before a comparative evaluation begins, an Applicant may be asked by the evaluation service provider sought here to furnish additional information to substantiate its claim to represent the designated community.

String contention is resolved only after Applications have been subjected to and passed other evaluations, however, comparative evaluation is an independent analysis which does not consider any other results.⁴

When comparative evaluation is invoked during the string contention resolution process, a comparative evaluation panel will review and score the community Applicants according to four criteria:

- Nexus between proposed string and community
- Dedicated registration policies
- Community establishment
- Community endorsement

These criteria are defined in Module 4 of the Applicant Guidebook, which also defines the way in which the string contention process incorporates the various possible outcomes of comparative evaluation. The scoring process requires that the evaluators exercise considerable subjective judgment concerning the extent to which each community Applicant meets or fails to meet the standards defined for each of the four criteria. (A section of the Guidebook describing the criteria and scoring is attached in Appendix A.)

4 Criteria

ICANN anticipates expressions of interest (i.e., answers to questions posed in section 5 below) from providers to conduct the comparative evaluation of applications in contention must meet the following criteria:

² Comparative evaluation applies only to Applicants claiming to represent different defined communities. Applicants competing to represent the same defined community must resolve their differences outside of the new gTLD program.

³ The term “contention set” is defined in Module 4 of the Applicant Guidebook.

⁴ An Application that fails at any point during IE or EE will, of course, never be involved in string contention.

1. The provider will be an internationally recognized firm or organization with significant demonstrated expertise in the evaluation and assessment of proposals in which the relationship of the proposal to a defined public or private community plays an important role.
2. The provider must be able to convene (either in advance or rapidly on-demand) a linguistically and culturally diverse panel capable (even though the applications will be submitted in English), in the aggregate, of evaluating Applications from a wide variety of different communities, which may:
 - be local or global in scope;
 - be based on geography, political affiliation, common interests, or other factors;
 - involve either commercial or non-commercial interests (or both); and
 - be either objectively defined or self-defining.⁵
3. The provider must propose a structure and plan for the comparative evaluation panel that is viable for a range in number of Applications, as the number of Applications, and the percentage of those that will invoke the comparative evaluation process, will not be known in advance. It is anticipated that the percentage of applications requiring comparative evaluation will be relatively small compared to the total number. Applications requiring comparative evaluation must: be a self-declared community-based TLD; be in contention with other applicants; and elect comparative evaluation.
4. Considering the comparative evaluation criteria defined in Module 4 of the Applicant Guidebook and described in Section 3 of this document, the provider must propose a panel that is capable of:
 - exercising consistent and somewhat subjective judgment in making its evaluations, (the Guidebook criteria seeks to make the judgment as objective as possible)
 - reaching conclusions that are compelling and defensible, and
 - documenting the way in which it has done so in each case.
5. The provider must convene and operate the comparative evaluation panel so as to prevent communication between the panel (or any of its members) and any party with an interest in the Applications being evaluated, except as may be explicitly permitted by the process as defined in the Applicant Guidebook, and to avoid conflicts of interest.
6. The provider should be comfortable that the Applicant Guidebook is comprehensive and satisfactorily expresses all selection criteria, but understand that it is not finalized. It is possible, that the provider will be selected before the Applicant Guidebook is finalized, it will have the opportunity to review the text to ensure that the basis for the evaluation is clear. The criteria must be objective, measurable, publicly available at the outset of the evaluation process, and described fully in the Applicant Guidebook. All applications will be evaluated against these criteria.
7. The evaluation process for selection of new gTLDs will respect the principles of fairness, transparency, avoiding potential conflicts of interest, and non-discrimination.

5 Response to EOI Requirements

Interested parties should respond to each of the eight subject areas below. Responses will be gauged on the basis of the criteria defined in this document and Applicant Guidebook. Candidates desiring to express their interest to ICANN in the comparative evaluation role in the new gTLD program should provide the following:

⁵ An example of an objectively defined community is “the registered voters in the city of Perth, Australia”; an example of a self-defining community is “people who are interested in dogs.”

1. A Statement of Suitability that includes a detailed description of the candidate's ability to perform the work described in the previous section which demonstrates knowledge, experience and expertise, including but not limited to projects, consulting work, research, publications and other relevant information.
2. Evidence of the candidate's knowledge of and familiarity with ICANN, its role, structure and processes, including the Internet's Domain Name System (DNS) and past gTLD application and evaluation rounds.
3. The *curriculum vitae* for each person proposed by the candidate to manage or lead work on this project, the candidate's selection process for persons being proposed to ICANN, and explanation of the role that each named person would play. Also indicate the experience and availability of proposed panelists. The submission should identify any potential conflicts that would prevent them from making an objective evaluation of any application and how the conflict can be addressed.
4. A warrant that the candidate, if selected, will operate under ICANN's non-disclosure agreement and standard consulting agreement, and that neither the candidate nor any individual who might be engaged to work on this project (whether or not declared pursuant to (4) above) has a known conflict of interest.
5. A statement of the candidate's plan for ensuring fairness, nondiscrimination and transparency.
6. Considering the nature of the expertise necessary for evaluating applications for financial and technical criteria at a global scale, a statement of the candidate's plan for ensuring that the evaluation teams will consist of qualified individuals and that the candidate will make every effort to ensure a consistently diverse and international panel.
7. Project and operational timelines.
 - a. A proposed work schedule for planning and starting panel operations including key milestone dates, consistent with but more detailed than those specified in this document.
 - b. Projected targets for the time frame necessary for it to complete a thorough and careful evaluation of all applications. Identification of volumes of applications that can be processed in those timeframes.
8. Costs. The candidate should provide a detailed statement of the proposed fee structure, including any variable provisions that may be based on the number of comparative evaluations conducted, the number of comparative evaluations that involve IDNs, or other factors.

6 Deadline

Interested providers must submit expressions of interest by email to compara-eval-eoi@icann.org by 13 April 2009, 23:59 UTC. A confirmation email will be sent for each submission received within one business day.

Also send queries regarding this request to compara-eval-eoi@icann.org. Questions will be accepted until 3 April 2009, 23:59 UTC. Queries and answers will be posted to a page on the ICANN website dedicated to this purpose.

If selected, the successful candidate is expected to be ready to assist ICANN with the finalization of the Applicant Guidebook, prepare for the evaluation phase, and be ready to begin work within four months after release of the final Applicant Guidebook.

Thanks you for your interest.

Exhibit DIDP A80



gTLD APPLICATION PROCESSING: INITIAL EVALUATION

QUALITY PROGRAM REPORT



26 August 2014

FOR PUBLIC RELEASE

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1 Summary

New gTLD application evaluation was a labor-intensive business process performed by multiple vendors and hundreds of individuals on a global basis. Initial Evaluation (IE) included seven distinct evaluation types: applicant background, financial capability, technical/operational capability, registry services, geographic names, DNS stability, and string similarity. For commercial and practical reasons, including application volume and handling conflicts of interest between an applicant and evaluator, multiple evaluator firms were contracted. Application evaluation was performed against detailed criteria as published in the *New gTLD Applicant Guidebook* (AGB).¹ Quality and consistency of evaluation across all applications and all evaluator firms was a key business requirement for ICANN. Given the importance of demonstrable quality, 50% of the applications were subject to quality sampling in some capacity and 100% of the applications were reviewed using analytical techniques. All application data was subject to a suite of manual and automated data consistency checks performed by ICANN staff and JAS.

At a high level, the new gTLD application evaluation training and quality program was designed to both *improve* and *measure*:

- **Consistency/Precision:** a measure of the degree of agreement between independent assessments of a particular sample. Precision is expressed in terms of the standard deviation of the consistency rating among primary and independent half-blind *de novo* assessments (calculation of the consistency rating is described in Section 5.2). Precision is important because multiple evaluator firms should produce similar results given similar applications. Situations where precision was not as expected triggered additional training, documentation, and may inform future process revisions.
- **Accuracy:** a measure of the degree of agreement of a sample with an accepted reference. In the case of application evaluation, the accepted reference is the result of “work-out” conferences between the primary evaluator firm, the quality firm, and ICANN when discrepancies occur. Accuracy is expressed in terms of percent of the samples reflecting the expected value. Situations where accuracy was not as expected triggered additional training, documentation, and may inform future process revisions.
- **Process Fidelity:** a measure of the alignment between the expected process per the vendor’s contract and the actual process performed for a given application. Process fidelity is expressed in terms of a percent of the samples where a post-evaluation Procedural Inspection indicated that proper procedures were followed.

As quality measurement and improvement are typically somewhat competing goals (performing quality improvement on a process while measurement is occurring leads to a degree of Heisenberg uncertainty), the overall quality program was designed primarily to monitor, incent, and improve quality during evaluation with a secondary objective of providing analysis and a quantitative baseline to assess the process in arrears and inform future rounds.

¹ *New gTLD Applicant Guidebook*, ICANN, 4 June 2012, <http://newgtlds.icann.org/en/applicants/agb>



The training and quality program is comprised of six functions:

Unified Training

A unified, cross-firm approach to training was developed and implemented prior to the commencement of production evaluation. Unified training was essential in bringing together the evaluation operations of all evaluator firms – particularly the large-scale operations of the three technical/operational and financial firms – and maintaining ongoing alignment in a challenging and dynamic environment.

For technical/operational and financial panels – the most complex evaluations – all three evaluator firms shared training materials and conducted joint training sessions. For other panels, standardized training templates were utilized.

Content Reviews

Content Reviews were discussions between two or more evaluator firms that had completed a full or partial review of the same application. Content Reviews were designed to improve consistency/precision and accuracy among the three technical/operational and financial evaluator firms. Content Reviews of selected applications were performed as a part of the comprehensive training program prior to commencement of production evaluation and additionally throughout Initial Evaluation to maintain communication and alignment between all three evaluator firms. One special case of content reviews was the applicant-facing Clarifying Question (CQ) pilot that provided immense value. Of the 1917 application IDs receiving Prioritization Draw results, 107 applications were involved in a complete or partial content review at some point.

Blind Content Inspections

Content Inspections were half-blind independent evaluation and scoring of a randomly selected set of applications. The Content Inspection included review of the primary evaluator firm's Clarifying Questions (CQs) prior to issuance, and independently generated final scoring by the quality evaluator firm. Blind Content Inspections were designed to measure and improve consistency/precision and accuracy among the three technical/operational and financial panel firms. The inspections were half-blind in that the primary panel firm did not know in advance which applications were selected for inspection and the quality firm was not aware of the primary firm's scores in advance. Content Inspections were conducted on a randomly selected 15% of the 1917 application IDs receiving Prioritization Draw results.

Blind Procedural Inspections

Procedural Inspections were half-blind reviews of the primary firm's records to gain confidence that the agreed-upon processes and procedures were performed as expected. Procedural Inspections were designed to measure the process fidelity of the panel firms. The inspections were blind in that the primary panel firm did not know in advance which applications were selected for inspection. Procedural Inspections were conducted on a randomly selected 35% of the 1917 application IDs receiving Prioritization Draw results.



Analytics

ICANN received in excess of 1900 applications, largely comprised of unstructured text and attachments. Many latent similarities existed between the applications due to common applicants, consultants, and service providers. Analytical tools were developed to highlight these latent similarities and improve confidence that applications with similar content received a similar final disposition. Moreover, in excess of 5000 Clarifying Questions (CQs) were generated as a part of evaluation; as CQ generation is labor-intensive and subject to a range of error modalities, analytical systems provided automated quality and content checks of CQs prior to issuance.

Data Consistency Checks

Application evaluation was a large-scale global operation with a number of dynamic components. Ensuring that ICANN's systems of record were both internally consistent and accurately reflective of the authoritative evaluation results as documented in numerous vendor reports was critical. Automated systems provided routine data validation and crosschecking spanning numerous systems and record types to reduce likelihood of consistency errors.

1.1 Program Coverage

While designing training and quality programs, the process of application evaluation was divided into *content* and *process* components. The process components covered each vendor's obligation to perform their contracted duties and interact with the broader system and ICANN as specified, and the general requirement to maintain data consistency across several systems given emergent and fast-moving processes. The content components covered each vendor's obligation to evaluate the application pursuant to the Applicant Guidebook and all relevant guidance. The training and quality program recognized and provided coverage to both of these at multiple points in time during application processing.

Content-oriented aspects of the training and quality program were focused on the technical/operational and financial panel types due to the nature of these evaluations and the complexity and scale of the combined evaluation operations of all three evaluator firms. For all panel types, the process-oriented aspects of the quality program were focused on ensuring that all evaluator panels followed procedures agreed upon with ICANN.



Panel Type	Prior to CQ Release	Final Scoring (IE)	
	Content	Content	Process
Financial	Training Content Review Blind Content Inspection Analytics	Ongoing Training & Communication Content Review Blind Content Inspection Analytics	Training Blind Procedural Inspection Data Consistency Checks
Technical/Operational	Training Content Review Blind Content Inspection Analytics	Ongoing Training & Communication Content Review Blind Content Inspection Analytics	Training Blind Procedural Inspection Data Consistency Checks
Registry Services	Training	Analytics	Training Blind Procedural Inspection Data Consistency Checks
DNS Stability	Training		Training Blind Procedural Inspection Data Consistency Checks
String Contention	Training		Training Blind Procedural Inspection Data Consistency Checks
Geographic	Training		Training Blind Procedural Inspection Data Consistency Checks

Table 1: Training and Quality Program Coverage

1.2 Program Scope

The training and quality programs were operational prior to the commencement of production evaluation and continued through the completion of Initial Evaluation. Extended Evaluation was not included in the scope of the quality program.

1.3 Roles and Responsibilities

JAS Global Advisors LLC (“JAS”) was responsible for designing the overall training and quality programs based on requirements developed with ICANN. JAS was responsible for administering the quality program during execution, coordinating content reviews, performing Content Inspections, performing Procedural Inspections, implementing analytical and consistency checking systems, and reporting results. JAS was the primary technical/operational and financial reviewer for fewer than 50 applications and only in situations where no other technical/operational and financial firms were available due to a conflict of interest with the applicant. Related to the training and quality programs, all evaluator firms had obligations to provide data, participate in training activities, produce documentation, and generally cooperate with training and quality activities.



2 Program Objectives

The training and quality program was designed to achieve multiple objectives. The most important objective was to provide confidence that applications with similar content received a similar final pass/fail disposition. It's important to note that with respect to scoring, the quality program viewed Initial Evaluation as a pass/fail exercise consistent with the description in the Applicant Guidebook. No meaning is or should be imparted to numerical differences in score between two passing (or two failing) applications.

To achieve this objective, training and quality programs focused on:

- Upfront “calibration” among evaluator firms via unified training, discussion, scoring exercises, and pilots;
- Encouraging and maintaining ongoing communication among evaluator firms throughout the process via training, scoring exercises, and comparison of evaluation results;
- Leveraging analytics to identify latent similarities and determine potential scoring inconsistencies; and
- Providing visibility and early notification to ICANN in the event inconsistencies were discovered.

Clearly, *communication* and *visibility* are the central themes. Given the scale and nature of evaluation, absent active mechanisms to maintain communication between firms and with ICANN, there was a risk that evaluator firms would become isolated and produce increasingly divergent results over time. A central objective was to maintain open communication among all participants during the entire evaluation process.

A second central objective was to provide ICANN visibility into evaluation quality throughout the evaluation time period. Absent active mechanisms to assess quality during evaluation, it would be hard to quickly determine if quality was acceptable or unacceptable, converging or diverging, or if process improvements or additional training was required, leading to a sort of unmanaged Markov process.

By creating active communication and visibility mechanisms, ICANN was able to successfully keep the evaluation process under control.

Additionally, the program had the following secondary objectives:

- Improve quality of issued CQs
- Reduce data and clerical errors
- Provide quantitative baseline for future rounds



3 Content Reviews

Content Reviews were discussions between two or more firms that had completed a full or partial review of the same application. Content Reviews were designed to improve consistency/precision and accuracy among the three technical/operational and financial evaluator firms.

Content Reviews were performed early in the process – during training and early in Initial Evaluation – in order to add maximum value to the calibration process; subsequent and less frequent Content Reviews were performed throughout Initial Evaluation to encourage continued communication and alignment, particularly around emergent issues. Content Reviews were performed on technical/operational and financial panel results.

One special case of content reviews was the applicant-facing Clarifying Question (CQ) pilot that provided immense value; multiple pilots that were not applicant-facing were also conducted.

3.1 Process and Sampling

Content Reviews leveraged approximately 107 applications that both a primary reviewer and a secondary reviewer had evaluated (in part or in full) in some capacity. An effort was made to select applications for Content Review that represented a wide range of applicants and service providers to maximize the value of the exercise. Applications utilized for Content Reviews were not eligible for selection for Content Inspection.

3.2 Roles and Responsibilities

JAS coordinated Content Review activities among the three technical/operational and financial evaluator firms. Prior to the availability of actual applicant data, JAS developed several mock applications as a part of the training materials.

3.3 Exceptions

Differences in scoring were discussed and remediated between the evaluator firms with input from ICANN requested on an as-needed basis.

3.4 Metrics and Reporting

The primary objective was to facilitate calibration and maintain communication; the Content Review program did not generate metrics.



4 Blind Content Inspections

A statistically relevant number of technical/operational and financial evaluations were subject to half-blind Content Inspection reviews performed on a *de novo* basis. A *de novo* review is a complete and independent review performed “from the beginning” by the quality firm simultaneously with – but independently from – the primary evaluator firm. The review is also half-blind; the primary evaluator firm did not know in advance which applications were selected for Content Inspection. The intent of the review was to measure CQ and scoring consistency and accuracy against scoring guidance and training, and to provide an opportunity to quickly detect quality and consistency issues.

4.1 Process and Sampling

Blind Content Inspections were selected via random ordering of the 1917 application IDs receiving Prioritization Draw results. JAS performed the random ordering via computer on 20 Dec 2012. Note that withdrawals reduced the size of the population, requiring limited selection of additional samples to compensate for the aforementioned issues. The first 15% (288) applications in the random ordering were selected for Content Inspection. As additional samples were needed due to withdrawals or other factors requiring de-sampling, applications starting at 289 in the random ordering were selected.

Final metrics for the quality control program were taken on 28 August 2013 at the conclusion of Initial Evaluation work and are as follows:

Total Active Applications (28 Aug 2013)	1768
Applications Sampled	274
Sampled Proportion	15.50%

Table 2: Content Inspection Sampling

4.2 Metrics

The blind Content Inspections produced the following quantitative metrics:

- **Consistency Rating (per question).** This is the simple numeric pairwise comparison between the primary and QC review final scores on a per question basis. A pairwise comparison of 0 indicates that the primary and QC review final scores are identical whereas a pairwise comparison of +1 or -1 indicates the final scores differ. Instances of non-objection were de-sampled (see below).

For the purpose of QC, no distinction is made between passing scores with score = 1 and score > 1. Any score greater than or equal to 1 will be considered a 1 for the purpose of QC – for both the primary firm score and the QC firm score. For example, a score of 2 is equal to a score of 1 and to a score of 3 – all were transformed to a score of 1 prior to calculation of the consistency rating. This transformation is necessary to align the QC program with the pass/fail design of Initial Evaluation as described in the Applicant Guidebook.

- **Consistency Rating (per application).** This is a proportional measure of consistency of final (pass/fail) dispositions for a given application. The quality evaluator firm maintained the option to deem an application “non-objection” meaning that for reasons related to maintaining the



integrity of the half-blind selection, not enough information was available to score the application but the quality evaluator firm did not find sufficient cause to disagree with the primary firm's pass/fail disposition.

4.3 Roles and Responsibilities

JAS was the quality evaluator firm. If an application was selected for Content Inspection where JAS was the Primary Review Firm (due to conflict with both primary evaluator firms), the application was de-sampled for quality control purposes and the next application in the random ordering that had not already been released was selected.

JAS' small number of primary evaluations were therefore ineligible for Content Inspection; however, as JAS was a party to each and every consistency rating metric, evaluation of JAS' performance as compared to the other firms was evident and obvious.

4.4 Exceptions

Differences in scoring appear in the consistency rating; exceptions were brought to ICANN's attention as soon as they were discovered for discussion with the evaluator firms as necessary.

4.5 Results

Content Inspections generated metrics on a horizontal basis (per question across applications) and on a per-application basis. Content Inspection samples were taken before and after the Outreach phase. Outreach was an ICANN process that in limited situations allowed the applicant to provide missing information that may have stemmed from an oversight.

Shown below are statistics describing the Content Inspection samples taken prior to Outreach; following Outreach, all primary and Content Inspection evaluations were in agreement (consistency rating = 0). Small variances in the sample size in the table below occurred because in certain limited circumstances the quality firm asserted "non-objection" discrepancies as described above and those individual questions were de-sampled for statistical purposes.

In summary, prior to the Outreach phase there were six individual application question/response instances (1 technical/operational and 5 financial) where a bona-fide scoring discrepancy existed that would have impacted the final disposition of the application (moving an application from a pass to a fail or vice versa). To highlight root causes, for purposes of this analysis and presentation, a single scoring issue that cascaded into multiple scoring discrepancies has been reduced to the single root cause and the cascading discrepancies are not reflected here. For example, a discrepancy in financial cost calculations may cascade into a discrepancy in the question 50 Continuation of Operations (COI) Instrument calculation; the former is indicative of a root cause quality issue whereas the latter is not.

Applications containing a question that received a zero score following the Clarifying Question phase proceeded to the Outreach phase. All of the per-question discrepancies below were resolved during Outreach; following Outreach, all primary and Content Inspection evaluations were in agreement and every question selected for Content Inspection received a passing (non-zero) score.



Question #	n where consistency rating = 0 (Consistent)	n where consistency rating != 0 (Not Consistent)	Standard Deviation of Consistency Rating for the Population
24	261	0	0.000
25	256	0	0.000
26	261	0	0.000
27	260	0	0.000
28	261	0	0.000
29	261	0	0.000
30	261	0	0.000
31	261	0	0.000
32	260	1	0.024
33	260	0	0.000
34	261	0	0.000
35	261	0	0.000
36	261	0	0.000
37	261	0	0.000
38	261	0	0.000
39	261	0	0.000
40	261	0	0.000
41	261	0	0.000
42	261	0	0.000
43	260	0	0.000
44	N/A – Optional	N/A – Optional	N/A – Optional
45	258	2	0.037
46	261	1	0.000
47	261	0	0.000
48	261	0	0.000
49	261	0	0.000
50	256	2	0.041

Table 3: Per-Question Consistency Rating



An application must have no individually failing questions (score=0) and reach a minimum score threshold in both technical/operational and financial questions in order to pass evaluation. As an application with all passing individual questions may still fail due to insufficient total points, consistency was also analyzed on a per-application basis to capture this aspect.

In summary, prior to the Outreach phase there were five (5) applications where a bona-fide scoring discrepancy existed that would have impacted the final disposition of the application (moving an application from a pass to a fail or vice versa).

Note that this analysis is considering an application as a whole whereas the previous analysis is considering all question/response instances. In the former, there were six (6) question/response instances where the consistency rating was not zero; in the later, there were five (5) whole applications where the final disposition was not consistent pre-Outreach. All inconsistencies were resolved Post Outreach.

Application Status	n	%
Consistent Pre-Outreach	261	95.26%
Not Consistent Pre-Outreach	5	1.82%
No Objection	8	2.92%
Consistent Post Outreach	274	100.00%

Table 4: Per-Application Consistency Rating

Analyzing the five (5) instances where there was a scoring discrepancy prior to Outreach on a per-evaluator firm basis revealed balanced data (note that aliases are used to identify evaluator firms):

Status	n
Evaluator Firm Alpha consistency rating as compared to quality firm is > 0 (Evaluator Firm Alpha scored higher than quality firm)	1
Evaluator Firm Alpha consistency rating as compared to quality firm is < 0 (Evaluator Firm Alpha scored lower than quality firm)	2
Evaluator Firm Bravo consistency rating as compared to quality firm is > 0 (Evaluator Firm Bravo scored higher than quality firm)	0
Evaluator Firm Bravo consistency rating as compared to quality firm is < 0 (Evaluator Firm Bravo scored lower than quality firm)	2

Table 5: Per Evaluator Firm Analysis of Application Discrepancies

4.6 Analysis and Discussion

Given the overall scale, scope, and challenge of Initial Evaluation, evaluation was remarkably consistent. Several points are worth noting:

- Evaluator firms spent considerable effort in training and calibration, and clearly it proved effective. The Applicant Guidebook describes Initial Evaluation as a pass/fail exercise (as long as the minimum point requirements are met, there is no benefit in receiving additional points and no penalty in receiving fewer points). As such, during initial training and calibration, evaluator firms focused on “zero/non-zero” issues/scoring to gain confidence that pass/fail alignment



would be high. As a result, pass/fail consistency was very high but raw numeric scoring – which included the additional points – was less consistent. Analysis of the additional point system beyond the minimum pass/fail thresholds was not a part of the design of the quality program.

- Consistency of CQs was desirable but not always possible. Variance in internal firm processes and other factors reduced the overall consistency of CQs. However, pass/fail application disposition remained high despite variance in CQs. A contributing factor is that a significant proportion of CQ inconsistencies were related to additional points components of questions (criteria required to receive a score of two (2) or three (3) on a question).
- Consistency issues are highly concentrated in very few questions, particularly financial questions 45 and 50. Anyone familiar with the application process will recognize these questions and not be at all surprised with this finding. The fact that these questions were the subject of the majority of post-AGB ICANN guidance – both to applicants and evaluators – underscores the localized difficulties present in these two questions. Discrepancies that surfaced in questions 45 and 50 tended to be systemic issues (symptoms of unanticipated scenarios and/or broader lack of clarity) whereas the discrepancies that surfaced in other questions tended to be isolated and unusual corner cases.
- Numerous subjective terms (such as “adequate,” “commensurate,” “comprehensive,” “highly developed,” and similar terms) appear frequently in the Applicant Guidebook. Evaluator firms and ICANN spent significant effort defining these terms crisply and calibrating for the purpose of consistent evaluation. While the results show that this effort was largely successful, additional definition of subjective terms in future revisions of the Applicant Guidebook would be of value.
- The Applicant Guidebook did not recognize the concept of a Registry Service Provider nor did it contemplate an applicant describing a registry being run as a cost center with limited or no revenue. Ambiguity surrounding these concepts was the root cause of several calibration discussions and scoring discrepancies. Overt recognition of these concepts in future revisions of the Applicant Guidebook would be of value.



5 Blind Procedural Inspections

Work performed by technical/operational, financial, string similarity, and geographic name panels/providers was subject to a Procedural Inspection on a statistically relevant randomly selected sample of applications. The intent of the Procedural Inspection was to provide assurance that the application was fully processed, and that all panel providers completed (and provided evidence of completing) all the steps required of them as documented in the Applicant Guidebook and individual SOWs. A team of JAS personnel conducted the Procedural Inspections.

Each of the five panel types had a “procedural checklist” which was developed by ICANN and the panel providers in advance. Multiple firms performing the same function (e.g. financial review) used the same procedural checklist. The procedural checklist was the basis on which the Procedural Inspections were conducted.

5.1 Process and Sampling

Blind Procedural Inspections were selected via random ordering of the 1917 application IDs receiving Prioritization Draw results. The first 35% (671) applications in the random ordering were selected for Procedural Inspection; if additional samples were needed due to withdrawals, selection of an application where the applicant is conflicted with both primary evaluator firms, or other factor requiring de-sampling, applications starting at 672 in the random ordering were selected. Each selected application was subjected to a Procedural Inspection for all panel types. Note that the random ordering generated for Procedural Inspections was different – and independent – from the random ordering generated for Content Inspections.

Procedural Inspections were conducted on final work products after final scoring was submitted to ICANN.

Final metrics for the quality control program were taken on 28 August 2013 and are as follows:

Total Active Applications (28 Aug 2013)	1768
Applications Sampled	639
Sampled Proportion	36.14%
Compliance Rate	99.84%

Table 6: Procedural Inspection Sampling

As the String Similarity panel operated on unique strings, a separate random ordering and selection were performed for these Procedural Inspections. Content Inspection metrics for String Similarity are as follows:

Unique Strings (28 Aug 2013)	1388
Applications Sampled	490
Sampled Proportion	35.30%
Compliance Rate	100.00%

Table 7: String Similarity Procedural Inspection Sampling



5.2 Metrics

Each Procedural Inspection reviewed the primary evaluation as a whole and generated one metric per application. The resulting metric is an assessment of the fidelity with which the primary evaluation followed the agreed-upon Procedural Checklist for the specific application. The metric is one of: *Compliant (C)*; *Minor Discrepancy (MD)*; *Significant Discrepancy (SD)*.

5.3 Roles and Responsibilities

JAS was the quality evaluator firm. If an application was selected for Procedural Inspection where JAS was the Primary Review Firm (due to conflict with both primary evaluator firms), the application was de-sampled for quality control purposes and the next application in the random ordering that had not already been released was selected.

5.4 Exceptions

Exceptions were brought to ICANN’s attention as soon as they were discovered for discussion with the evaluator firms as necessary.

5.5 Results

Procedural Inspections generated metrics on a per-evaluator firm basis for each evaluation type. One sample was taken after the primary evaluator firm submitted final results for an application that was selected for Procedural Inspection.

Evaluation Type	Evaluator Firm (alias)	n Compliant	n Minor Discrepancy	n Significant Discrepancy
Technical/Operational	Charlie	329	1	0
Technical/Operational	Delta	309	0	0
Financial	Charlie	329	1	0
Financial	Delta	309	0	0
Geographic	Echo	399	0	0
Geographic	Foxtrot	240	0	0
DNS Stability	Golf	639	0	0
Registry Services	Lima	639	0	0
String Similarity ²	Oscar	490	0	0

Table 8: Per Evaluator Firm Analysis of Procedural Inspections

5.6 Analysis and Discussion

Each evaluation vendor’s adherence to agreed-upon evaluation procedures was a critical success factor for the program. Procedural Inspection results show that this adherence did indeed occur.

² Note that String Similarity Procedural Inspections were performed on 490 evaluations based on applications for 1388 unique strings.



6 Analytical System Review

ICANN received in excess of 1900 applications, largely comprised of unstructured text and attachments. Many latent similarities existed between the applications due to common applicants, consultants, and service providers. Analytical tools were developed to achieve three objectives:

- Provide confidence that all similar applications received similar final (pass/fail) dispositions;
- Help identify potential CQ inconsistencies that could lead to a discrepancy in final disposition;
- Improve the quality of CQs by programmatically checking application and Applicant Guidebook citations.

While the previously described quality procedures applied to a sample of applications, analytical techniques were performed on all applications and CQs.

The analytical system allowed the evaluator firms, quality firm, and ICANN to visually review connections between similar applications, the CQs generated for those applications, the responses to those CQs from applicants, and the final score on an ongoing basis. While complete and absolute consistency through all of those steps would be a desirable – albeit Quixotic – outcome, in reality, analytics allowed discrepancies to be identified and reviewed for impact. Potentially problematic discrepancies were identified and rectified.

6.1 Process

Financial and technical/operator evaluator firms interacted with the analytical system at three points in time:

1. Following submission of CQs to ICANN’s application management system (but prior to their transmission to the applicant);
2. Prior to submitting final scores to ICANN; and
3. Following submission of final scores to ICANN.

Following submission of CQs to ICANN’s application management system, the analytical system programmatically matched quotes and citations appearing in the CQs to the relevant application and the Applicant Guidebook. Matches were confirmed and potential mismatches were flagged for manual verification. This step reduced the occurrence of misquotes and copy/paste errors given that thousands of similar CQs were generated. This was an especially important error mode to control, given that oft-quoted portions of the applications were confidential. Additionally, the analytical system compared the CQs for the submitted application to the CQs generated for similar applications and flagged discrepancies for manual verification.

Following submission of final scores to ICANN’s application management system, the analytical system compared the scores of the submitted application to the scores of similar applications previously submitted. Potential discrepancies were flagged for manual verification.

Finally, at the completion of Initial Evaluation, JAS performed an analytical review of all applications that completed Initial Evaluation successfully vs. those that were referred to Extended Evaluation.



6.2 Analysis and Discussion

The sheer volume and unstructured nature of the application data necessitated an analytical approach. During each weekly application processing cycle, reports were delivered to evaluator firms and ICANN containing the results of the analytical reviews described above. As manual verification confirmed or refuted analytical results, false positives were identified and tuned out to improve future efficacy of the system. Noting that analytical reviews were a backstop measure designed to catch issues that remained undetected relatively late in the application cycle, a low and decreasing number of analytical system exceptions were indicative of high quality work by the evaluator firms. While there was an initial burst of analytical system exceptions, by the end of Initial Evaluation, very few valid analytical exceptions were being identified. This was an indication that the evaluation system was performing adequately and that the internal quality procedures being performed by each firm were effective. This was the desired behavior.

Following the completion of Initial Evaluation, JAS performed an analytical comparison of all applications that completed Initial Evaluation successfully vs. those that were referred to Extended Evaluation and found that the applications that were referred to Extended Evaluation were materially different than the applications that passed Initial Evaluation successfully. As this analysis took the entire population of applications into consideration, this step served as a valuable system-wide double-check on all of the previous sample-oriented quality programs.

Despite acknowledged inconsistencies in CQs and numeric scores (above and beyond the passing thresholds), this last analysis provided a strong indication that – when the process reached completion – all similar applications received passing scores and the applications referred to Extended Evaluation correctly were individual special cases requiring additional clarification.



7 Overall Analysis, Discussion, and Recommendations

The ICANN New gTLD evaluation program resulted in the successful evaluation of over 1900 applications from a full range of global applicants, delivering a demonstrably high level of evaluation consistency while providing ICANN with the practical and commercial benefits of evaluator depth and diversity. Some additional overall comments in closing:

1. The extensive advanced preparation, training, synchronization, and evaluation exercises (pilots) undertaken by the technical/operational and financial evaluator firms were essential and probably the single largest critical success factor. As verified by the positive quality program results, a unified approach to these activities coalesced the team and substantially mitigated the risk of isolation and inconsistent or divergent evaluations.
2. As quality practitioners well know, one value of a proactive quality program is that the mere (visible) existence of such a program helps incent the desired behaviors. In this case, it is highly probable that the existence of a visible and well-publicized proactive quality program properly incited all evaluation panel vendors to be appropriately cognizant of evaluation consistency, accuracy, and process fidelity, and perform accordingly.
3. Although the questions were provided in advance and there was an expectation that applicants would be clear on the material, it was apparent that many applicants, including sophisticated applicants, were confused as to how to respond to the questions. This resulted in two undesirable effects: (a) applicants tended to “over-respond” to the application, adding unnecessary volume and complexity; and (b) there was more effort put into clarification communications (including CQs) than was probably intended in the original vision. While not “providing the answers” there is an opportunity to make the application process more objective and deterministic for both applicants and evaluators. Reducing subjectivity of evaluation will enable improved quality and consistency and reduce costs associated with extensive synchronization activities.
4. The lack of structured application data was an impediment during evaluation; future application rounds should capture data in a more structured format, greatly facilitating evaluation, quality reviews, and subsequent processes like contracting.
5. Several questions, particularly technical/operational questions, have overlapping remits complicating evaluation, quality processes, and unnecessarily creating the appearance of inconsistency. Some topics, such as the use of IDNs, often have material spread throughout several questions. This makes it harder for applicants to “know what to put where” and for evaluators to find the information they’re looking for. A highly structured application will help address this issue.
6. Releasing results incrementally opened the opportunity for difficult-to-manage inconsistencies. Future rounds designed for one release of results at the end will make comprehensive consistency and quality checking more effective.
7. The publication of detailed numeric scores confused and undermined the AGB-driven premise that evaluation was pass/fail. Inconsistencies in numeric scores incorrectly sent a message that evaluation was much more inconsistent than the final results and the quality programs assert.



Future application rounds should either publish results as pass/fail only, or re-calibrate the entire process to produce numerically consistent scores.

8. Financial evaluation of questions 45 and 50 exhibited systemic issues that made consistent evaluation difficult. Recognizing applicants that choose to run their registry as a cost center and revising the approach to the problematic question 50 regarding the Continuity of Operations Instrument will go a long way to increase the evaluation consistency of these questions.



Exhibit DIDP A81



Program Statistics

13 June 2012, ICANN posted all the applied-for strings to this site.

On this page you will find high-level statistics about the overall program as the applications work their way through the evaluation process.

[Centralized Zone Data Service \(CZDS\)](#)

[Comments & Feedback](#)

[Current Application Status](#)

[Delegated Strings](#)

[Contention Set Status](#)

[Evaluation Panels](#)

[gTLD Correspondence](#)

[Objecton & Dispute](#)

[Resolution](#)

[Post-Delegation Dispute](#)

[Resolution Procedures](#)

[\(PDDRP\)](#)

Program Statistics

[Timelines](#)

[TLD Startup Information, Sunrise and Claims Periods](#)

[Trademark Clearinghouse \(TMCH\)](#)

[Uniform Rapid Suspension System](#)

RELATED LINKS

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[New gTLD Application Quick Facts](#)

[Overview of New gTLD Applications](#)

PROGRAM STATISTICS

Current Statistics (Updated weekly)

Application Statistics: Overview (as of 22 April 2016)	
Total Applications Submitted	1930
Completed New gTLD Program (gTLD Delegated** introduced into internet)	978
Application Withdrawn	567
Applications that Will Not Proceed/Not Approved	40
Currently Proceeding through New gTLD Program*	345

Contention Resolution	
Total Contention Sets	234
Resolved Contention Sets	214
Contention Sets Resolved via CANN Auction	15
Unresolved Contention Sets	20
Applications Pending Contention Resolution	45

Contracting	
Executed Registry Agreements (completed contracting)	1227
Registry Agreements with Specification 13	475
Registry Agreements with Code of Conduct Exemption	68
In Contracting	21

Pre-Delegation Testing (PDT)	
Passed PDT	1108

**Breakdown: Delegation Statistics	
Delegated gTLDs (introduced into internet)	978
Select Subcategories of Delegated gTLDs	
(NOTE: gTLDs may fall into more than one subcategory)	

Community	42
Geographic	48
Internationalized Domain Names (DNs)	80

gTLD Startup Statistics (as of 19 April 2016)	
Sunrise	
Completed	484
In Progress	9
Not Started	10
Claims	
Completed	522
In Progress	127
Not Started	32

[Get a status update on an individual application »](#)

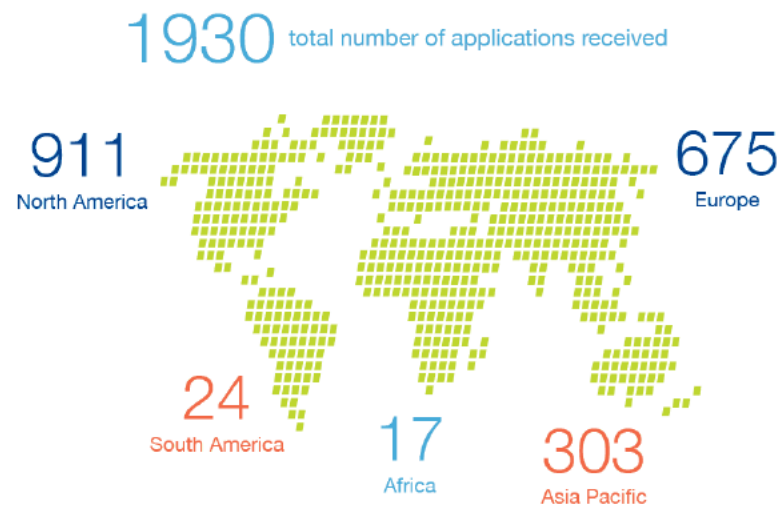
New gTLD Application Submission Statistics

The statistics in this section were calculated based on applications received by the 29 March 2012 deadline.

Application Breakdown by [Region](#) [Type](#) [String Similarity](#)

Application Breakdown by Region

Statistics as of 13 June 2012

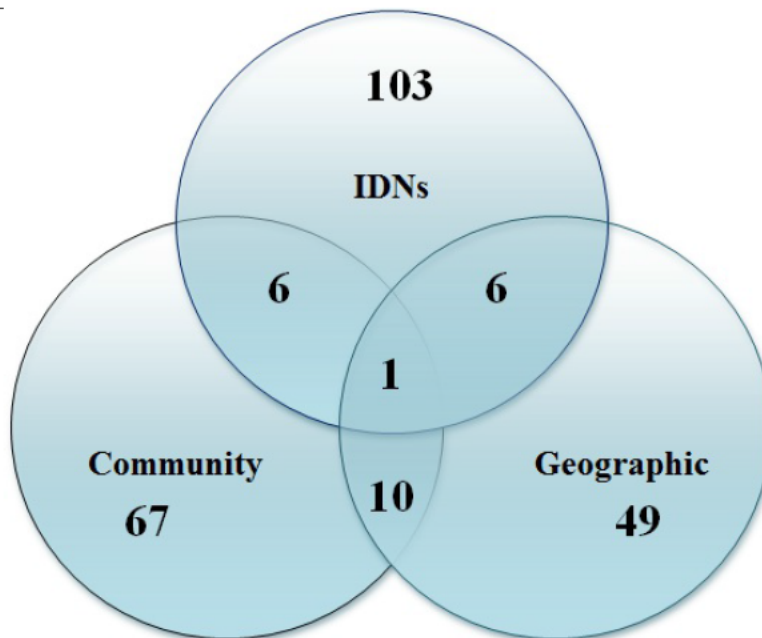


Application Breakdown by Type

Statistics as of 13 June 2012

Application Totals

- Community 84
- Geographic 66
- Internationalized Domain Names 116
 - Total Scripts Represented 12
- Other 1846



Application Breakdown by String Similarity
 Statistics as of 26 February 2013

Approximate Number of Unique Applied for Strings: 1,400

- Content on Sets
 - Exact Match: 230
(two or more applications for a string with same characters)
 - Confusingly Similar: 2
 - hotels & hote s
 - un com & un com
- Applications in a Content on Set: 751

Exhibit DIDP A82

COMMUNITY PRIORITY EVALUATION PANEL AND ITS PROCESSES

Overview

At the time of submitting the new gTLD application, applicants had the opportunity to designate themselves as a community-based application, as prescribed in the section 1.2.3 of the Applicant Guidebook (AGB).

Community Priority Evaluation (CPE) is defined in section 4.2 of the AGB, and allows a community based-application to undergo an evaluation against the criteria as defined in section 4.2.3 of the AGB, to determine if the application warrants the minimum score of 14 points (out of a maximum of 16 points) to earn priority and thus win the contention set.

Only community-based applicants are eligible to participate in a community priority evaluation. A determination by a community priority panel, appointed by ICANN, must be made before a community name is awarded to an applicant. This determination will be based on the string and the completeness and validity of supporting documentation.

There are two possible outcomes to a Community Priority Evaluation:

- Determination that the application met the CPE requirements specified in the Applicant Guidebook (Section 4.2.2) to receive priority over other applications for the same or confusingly similar string = Prevalled.
- Determination that the application did not meet the CPE requirements specified in the Applicant Guidebook (Section 4.2.2) to receive priority over other applications for the same or confusingly similar string = Did not prevail.

Section 4.2.2 of the AGB prescribes that the Community Priority Evaluations will be conducted by an independent panel. ICANN selected the Economist Intelligence Unit (EIU) as the panel firm for Community Priority Evaluations.

The Economist Intelligence Unit

The Economist Intelligence Unit (EIU) was selected as a Panel Firm for the gTLD evaluation process. The EIU is the business information arm of The Economist Group, publisher of The Economist. Through a global network of more than 500 analysts and contributors, the EIU continuously assesses political, economic, and business conditions in more than 200 countries. As the world's leading provider of country intelligence, the EIU helps executives, governments, and institutions by providing timely, reliable, and impartial analysis.

The evaluation process respects the principles of fairness, transparency, avoidance of potential conflicts of interest, and non-discrimination. Consistency of approach in scoring applications is of particular importance. In this regard, the Economist Intelligence Unit has more than six decades of experience building evaluative frameworks and benchmarking models for its clients, including governments, corporations, academic institutions and NGOs. Applying scoring systems to complex questions is a core competence.

EIU evaluators and core team

The Community Priority Evaluation panel comprises a core team, in addition to several independent¹ evaluators. The core team comprises a Project Manager, who oversees the Community Priority Evaluation project, a Project Coordinator, who is in charge of the day-to-day management of the project and provides guidance to the independent evaluators, and other senior staff members, including The Economist Intelligence Unit's Executive Editor and Global Director of Public Policy. Together, this team assesses the evaluation results. Each application is assessed by seven individuals: two independent evaluators, and the core team, which comprises five people.

The following principles characterize the EIU evaluation process for gTLD applications:

- All EIU evaluators, including the core team, have ensured that no conflicts of interest exist.
- All EIU evaluators undergo regular training to ensure full understanding of all CPE requirements as listed in the Applicant Guidebook, as well as to ensure consistent judgment. This process included a pilot training process, which has been followed by regular training sessions to ensure that all evaluators have the same understanding of the evaluation process and procedures.
- EIU evaluators are highly qualified, they speak several languages and have expertise in applying criteria and standardized methodologies across a broad variety of issues in a consistent and systematic manner.
- Language skills and knowledge of specific regions are also considered in the selection of evaluators and the assignment of specific applications.

CPE Evaluation Process

The EIU evaluates applications for gTLDs once they become eligible for review under CPE.

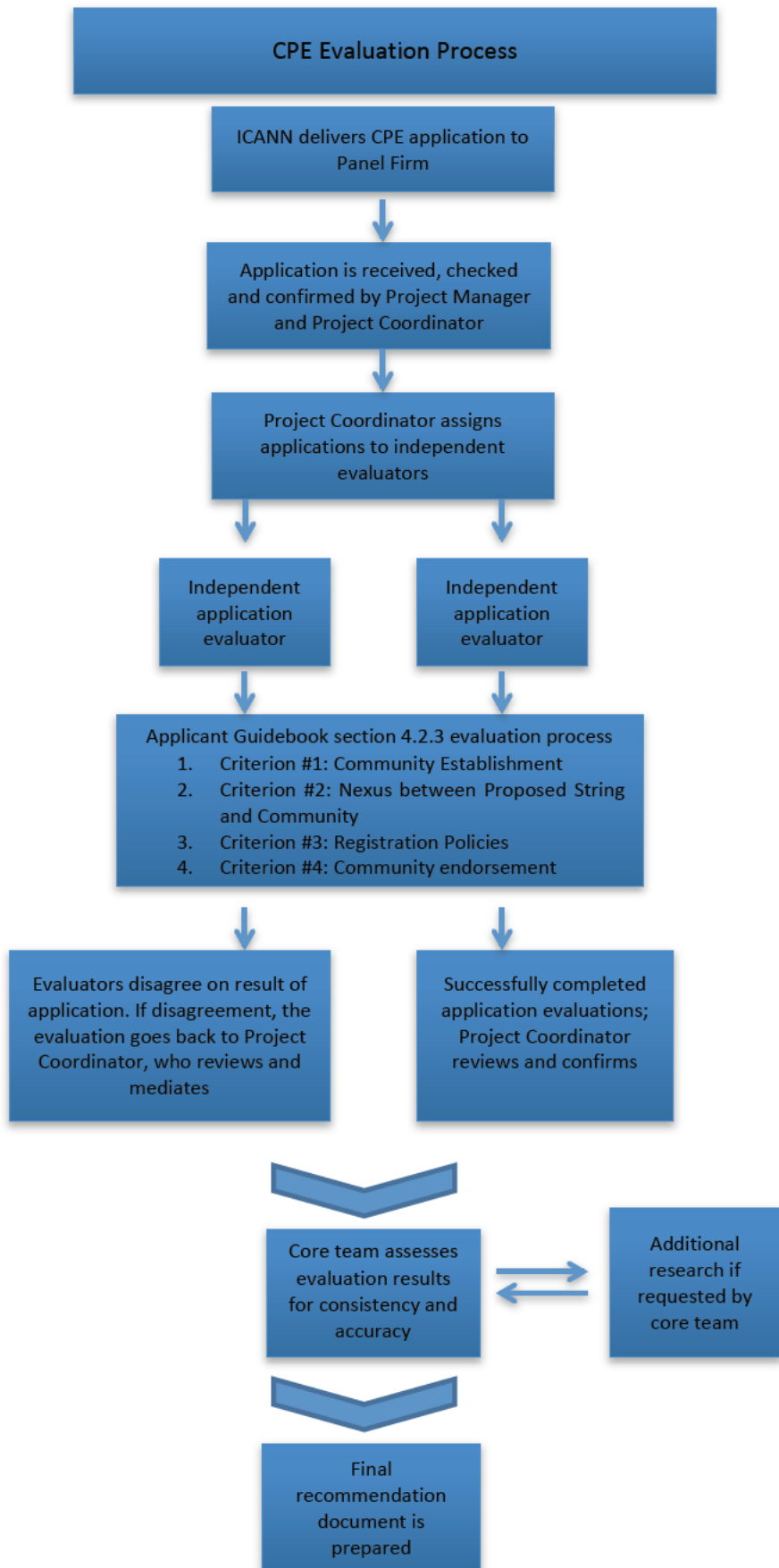
The evaluation process as described in section 4.2.3 of the Applicant Guidebook and discussed in the CPE Guidelines document is described below:

- The Panel Firm's Project Manager is notified by ICANN that an application for a gTLD is ready for CPE, and the application ID and public comments are delivered to the EIU. The EIU is responsible for gathering the application materials and other documentation, including letter(s) of support and relevant correspondence, from the public ICANN website. The EIU Project Manager reviews the application and associated materials, in conjunction with the EIU Project Coordinator. The Project Coordinator assigns the application to each of two evaluators, who work independently to assess and score the application.
- Each evaluator reviews the application and accompanying documentation, such as letter(s) of support and opposition. Based on this information and additional independent research, the evaluators assign scores to the four CPE criteria as defined in the Applicant Guidebook.
- As part of this process, one of the two evaluators assigned to assess the same string is asked to verify the letters of support and opposition. (Please see "Verification of letter(s) of support and opposition" section for further details.)
- When evaluating an application the CPE Panel also considers the public application comments. The public comments are provided to EIU by ICANN following the close of the 14-day window associated with the CPE invitation. For every comment of support/opposition received, the designated evaluator assesses the relevance of the organization of the poster along with the content of the comment. A separate verification of the comment author is not performed as the Application Comments

¹ The term "independent" means that the evaluators do not have any conflict of interest with CPE applicants. It also means that the evaluators sit outside the core EIU team; they provide individual evaluation results based on their assessment of the AGB criteria, application materials, and secondary research without any influence from core team members.

system requires that users register themselves with an active email account before they are allowed to post any comments. However, the evaluator will check the affiliated website to ascertain if the person sending the comment(s) is at that entity/organization named, unless the comment has been sent in an individual capacity.

- Once the two evaluators have completed this process, the evaluation results are reviewed by the Project Coordinator, who checks them for completeness and consistency with the procedures of the Applicant Guidebook.
- If the two evaluators disagree on one or more of the scores, the Project Coordinator mediates and works to achieve consensus, where possible.
- The Project Director and Project Coordinator, along with other members of the core team, meet to discuss the evaluators' results and to verify compliance with the Applicant Guidebook. Justifications for the scores are further refined and articulated in this phase.
- If the core team so decides, additional research may be carried out to answer questions that arise during the review, especially as they pertain to the qualitative aspects of the Applicant Guidebook scoring procedures.
- If the core team so decides, the EIU may provide a clarifying question (CQ) to be issued via ICANN to the applicant to clarify statements in the application materials and/or to inform the applicant that letter(s) of support could not be verified.
- When the core team achieves consensus on the scores for each application, an explanation, or justification, for each score is prepared. A final document with all scores and justifications for a given application, including a determination of whether the application earned the requisite 14 points for prevailing, is presented to ICANN.
- The Economist Intelligence Unit works with ICANN when questions arise or when additional process information may be required to evaluate an application.
- The Panel Firm exercises consistent judgment in making its evaluations in order to reach conclusions that are compelling and defensible, and documents the way in which it has done so in each case.



Verification of letter(s) of support and opposition

As part of this CPE evaluation process, one of the two evaluators assigned to assess the same string verifies the letters of support and opposition. This process is outlined below:

- On a regular basis, the EIU reviews ICANN's public correspondence page (<http://newgtlds.icann.org/en/program-status/correspondence>) for recently received correspondence to assess whether it is relevant to an ongoing evaluation. If it is relevant, the public correspondence is provided to the evaluators assigned to the evaluation for review.
- For every letter of support/opposition received, the designated evaluator assesses both the relevance of the organization and the validity of the documentation. Only one of the two evaluators is responsible for the letter verification process.
- With few exceptions, verification emails are sent to every entity that has sent a letter(s) of support or opposition to validate their identity and authority.
- The exceptions noted above regarding sending verification letter(s) include but may not be limited to:
 - If there are no contact details included in the letter(s). However, the evaluator will attempt to obtain this information through independent research.
 - If the person sending the letters(s) does not represent an organization. However, if the content of the letter(s) suggests that the individual sending a letter has sent this letter(s) on behalf of an organization/entity the evaluator will attempt to validate this affiliation.
- The verification email for letter(s) of support/opposition requests the following information from the author of the letter:
 - Confirmation of the authenticity of the organization(s) letter.
 - Confirmation that the sender of the letter has the authority to indicate the organization(s) support/opposition for the application.
 - In instances where the letter(s) of support do not clearly and explicitly endorse the applicant, the verification email asks for confirmation as to whether or not the organization(s) explicitly supports the community based application.
- To provide every opportunity for a response, the evaluator regularly contacts the organization for a response by email and phone for a period of at least a month.
- A verbal acknowledgement is not sufficient. The contacted individual must send an email to the EIU acknowledging that the letter is authentic.

Exhibit DIDP A83

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. **16-CV-00862 RGK (JCx)** Date April 12, 2016

Title *DotConnectAfrica Trust v. Internet Corporation for Assigned Names and Numbers & ZA Central Registry*

Present: The Honorable R. GARY KLAUSNER, U.S. DISTRICT JUDGE

Sharon L. Williams (Not Present)	Not Reported	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiffs:
Not Present

Attorneys Present for Defendants:
Not Present

Proceedings: (IN CHAMBERS) Order re: Plaintiff’s Motion for Preliminary Injunction (DE 16)

I. INTRODUCTION

On February 26, 2016, Plaintiff DotConnectAfrica Trust (“DCA”) filed a First Amended Complaint (“FAC”) against Defendants Internet Corporation for Assigned Names and Numbers (“ICANN”), and ZA Central Registry (“ZACR”) (collectively “Defendants”) alleging the following claims: (1) Breach of Contract; (2) Intentional Misrepresentation; (3) Negligent Misrepresentation; (4) Fraud & Conspiracy to Commit Fraud; (5) Unfair Competition (Violation of Cal. Bus. & Prof. Code. § 17200); (6) Negligence; (7) Intentional Interference with Contract; (8) Confirmation of IRP Award; (9) Declaratory Relief (that ICANN follow the IRP Declaration and allow the DCA application to proceed through the delegation phase of the process); (10) Declaratory Relief (that the registry agreement between ZACR and ICANN is null and void and that ZACR’s application does not meet ICANN standards); and (11) Declaratory Relief (that the covenant not to sue is unenforceable, unconscionable, procured by fraud and/or void as a matter of law and public policy).

Presently before the Court is DCA’s Motion for Preliminary Injunction. For the following reasons, the Court **GRANTS** the Motion.

II. STATEMENT OF FACTS

The following facts are alleged in the Complaint.

Defendant ICANN is the sole organization worldwide that assigns rights to Generic Top-level

Domains (“gTLDs”). In 2011, ICANN approved the expansion of the number of gTLDs available to eligible applicants as part of its 2012 Generic Top-Level Domains Internet Expansion Program (“New gTLD Program”). Examples of gTLDs include .Lat, .Wales, .Africa, and .Swiss. ICANN invited eligible parties to submit applications to obtain the rights to these various gTLDs. ICANN promised to conduct the bid process in a transparent manner, ensure competition, and abide by its own bylaws and the rules set forth in the gTLD Applicant’s Guidebook. In March 2012, Plaintiff DCA submitted an application to ICANN to obtain the rights to the .Africa gTLD. DCA paid ICANN the mandatory application fee of \$185,000. On February 17, 2014, Defendant ZACR also submitted an application for .Africa.

A. Geographic Name Applications and the Governmental Advisory Committee

ICANN’s Applicant Guidebook contains an overview of the application process. (Bekele Decl., Ex. 3 at 1-3–1-14, ECF No. 17.) After the administrative completeness check, ICANN conducts an initial evaluation of the application. (Bekele Decl., Ex. 3 at 1-7, ECF No. 17.) During the initial evaluation, ICANN conducts string reviews, which determine whether a gTLD is too similar to existing TLDs. (Bekele Decl., Ex. 3 at 1-7, ECF No. 17.) The initial evaluation also includes the geographic name evaluation, in which ICANN determines whether an application contains sufficient endorsements, along with determining whether an applicant has the requisite technical, operational, and financial capabilities to operate a gTLD. (Bekele Decl., Ex. 3 at 1-7, ECF No. 17.) Applicants can request an extended evaluation if it fails the initial evaluation. (Bekele Decl., Ex. 3 at 1-11, ECF No. 17.) Applicants who have successfully completed the initial evaluation (and the extended evaluation, if requested) proceed to the delegation stage, which includes executing a registry agreement with ICANN and conducting a pre-delegation technical test to validate information in the application. (Bekele Decl., Ex. 3 at 1-14, ECF No. 17.)

According to ICANN’s policy and procedures, applicants for geographic gTLDs must obtain endorsements from 60% of the national governments in the region and no more than one written objection from the relevant governments or public authorities associated with the region. DCA obtained endorsements of the United Nations Economic Commission for Africa (“UNECA”) in August 2008 and the African Union Commission (“AUC”) in August 2009. In 2010, however, AUC sent a letter informing DCA that it has “reconsidered its approach” and “no longer endorses individual initiatives in this matter related to continental resource.” (FAC ¶ 24, ECF No. 10.) The Guidebook states that a government may withdraw its endorsement only if the conditions of its endorsement have not been satisfied. Contrary to ICANN’s allegations, DCA maintains that the AUC letter did not formally withdraw its endorsement of DCA because AUC did not have conditions on its endorsement.

On behalf of ICANN, InterConnect Communications (“ICC”) performs string similarity and geographic review during the initial evaluation stage of the gTLD application process. ICC explained to ICANN that if the endorsements of regional organizations like AUC and UNECA were not applied toward the 60% requirement, neither DCA nor Defendant ZACR would have sufficient geographic support. (Bekele Decl., Ex. 19 & 23, ECF No. 17.) ICANN decided to accept endorsements from both AUC and UNECA. During its initial evaluation, the ICC was required to inform applicants of any problems with their endorsements. The ICC failed to inform DCA of any such problems. Therefore DCA assumed that its endorsements from AUC and UNECA were sufficient.

In 2011, AUC itself, attempted to obtain the rights to .Africa by requesting ICANN to include .Africa in the list of Top-Level Reserved Names, which would have made .Africa unavailable for delegation under the New gTLD Program. In a March 8, 2012 letter, the ICANN Board Chairman Stephen Crocker explained to AUC that ICANN could not reserve .Africa for AUC’s use. However, Crocker explained, AUC could “play a prominent role in determining the outcome of any application” for .Africa as a public authority associated with the continent by (1) filing one written statement of objection, (2) filing a community objection, or (3) utilizing the Governmental Advisory Committee

(“GAC”) to combat a competing application. (FAC ¶ 69, ECF No. 10.) The Governmental Advisory Committee (“GAC”) is an internal committee that considers applicants and provides advice related to governmental concerns. Under ICANN’s rules, the GAC can recommend that ICANN cease reviewing an application if all of the GAC members agree that an application should not proceed because an applicant is sensitive or problematic. Membership on the GAC is open to representatives of all national governments. AUC became a GAC member in June 2012, apparently on the advice of ICANN.

Because AUC could not obtain .Africa directly through ICANN, AUC contracted with ZACR in March 2014. In exchange for AUC’s endorsement, ZACR would assign to AUC all rights relating to .Africa upon its delegation to ZACR. Subsequently, because of AUC’s interest in ZACR’s application for .Africa, AUC used its influence as a GAC member to campaign against DCA’s application. In June 2013, ICANN accepted the GAC’s advice and rejected DCA’s application for lacking the requisite endorsements. This decision was made amid DCA’s objection that several members of the GAC had conflicts of interest and that Kenya was unrepresented at the GAC meeting. (Bekele Decl., Ex. 24 & 25, ECF. No. 17.) Contrary to ICANN’s contentions, DCA maintains that the lack of unanimous support within the GAC rendered the decision to suspend DCA’s application improper.

DCA further argues that, if ICANN applied the GAC’s rationale for rejecting DCA’s application equally to ZACR, ZACR’s application should have failed as well. Specifically, applying the same standards, ZACR did not have sufficient country specific endorsements to meet ICANN’s requirements: (1) only five of the purported endorsement letters from specific African governments referenced ZACR by name; and (2) ZACR filed support letters in which African governments generally endorsed AUC’s “Reserved Names” initiative without specifically referencing ZACR. ZACR presumably passed the 60% threshold requirement based on the same regional endorsements that the GAC used to derail DCA’s application. Nonetheless, ZACR passed the initial evaluation and entered into the delegation phase with ICANN.

B. The Independent Review Process

As a means to challenge ICANN’s actions with respect to gTLD applications, ICANN provides applicants with an independent review process (“IRP”). The IRP is arbitration comprised of an independent panel of arbitrators. In October 2013, DCA sought an IRP to review ICANN’s processing of its application, including ICANN’s handling of the GAC opinion. In its decision, the IRP Panel found against ICANN as follows: (1) ICANN’s actions and inactions with respect to DCA’s application were inconsistent with ICANN’s bylaws and articles of incorporation; and (2) ICANN should refrain from delegating .Africa and permit DCA’s application to proceed through the remainder of the evaluation process.

DCA asserts that ICANN did not act in accordance with the decision, which was binding. Instead of allowing DCA’s application to proceed through the remainder of the application process (i.e. the delegation phase), ICANN restarted DCA’s application from the beginning and re-reviewed its endorsements. In September 2015, during the second review, ICANN issued clarifying questions regarding DCA’s endorsements, which it did not raise during the initial evaluation of these same endorsements. The DCA requested an extended evaluation, hoping to gain insight on what was wrong with its application. Rather than providing clarification, ICANN merely restated the same questions – allegedly as a pretext to deny DCA’s application – then denied DCA’s application in February 2016. Soon thereafter, ICANN began the process of delegating .Africa to ZACR.

On March 4, 2016, this Court issued a Temporary Restraining Order to prevent ICANN from delegating .Africa to ZACR until the Court decided this present Motion.

III. JUDICIAL STANDARD

“[I]njunctive relief [is] an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). For a court to grant a preliminary injunction, a plaintiff must establish the following: (1) likelihood of success on the merits, (2) likelihood of irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in its favor, and (4) that the public interest favors injunction. *Id.* at 20.

The Ninth Circuit also employs a “sliding scale” approach to preliminary injunctions. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). This approach uses the same four factors as the *Winter* test, but allows the plaintiff to receive a preliminary injunction in situations where there are “serious questions” going toward the plaintiff’s likelihood of success on the merits, so long as the “balance of hardships tips sharply in the plaintiff’s favor.” *Id.* at 1134-35. The plaintiff must still demonstrate a likelihood of irreparable harm and that public interest favors the injunction. *Id.* at 1135.

VI. DISCUSSION

DCA seeks a preliminary injunction barring ICANN from issuing the rights to .Africa until this case is resolved. DCA moves for a preliminary injunction based on its Ninth Claim for Declaratory Relief. DCA’s Ninth Claim seeks a judicial declaration that ICANN follow the IRP decision and allow the DCA application to proceed through the delegation phase of the application process. In determining whether relief should be granted, the Court addresses each of the relevant factors for preliminary injunction.

A. Likelihood of Success on the Merits

1. *The Release Does Not Bar DCA’s Claim at This Time.*

As a preliminary matter, ICANN argues that DCA, by submitting a New gTLD Program application, is bound by the terms in the Applicant Guidebook. These terms include a Release barring applicants from challenging in court any decision made by ICANN. (Bekele Decl. 6-4, Ex. 3, ECF No. 17.) DCA argues, however, that the Release is unenforceable because it violates California Civil Code § 1668, is unconscionable, and was procured by fraud. The Court finds substantial questions as to the Release, weighing toward its unenforceability.

California Civil Code § 1668 finds that “[a]ll contracts which have for their object, directly or indirectly, to exempt anyone from responsibility for his own fraud, or willful injury to the person or property or another, or violation of law, whether willful or negligent, are against the policy of the law.”

The Release applies to all gTLD applicants and states, in relevant part:

Applicant hereby releases ICANN . . . from any and all claims by applicant that arise out of, are based upon, or are in any way related to, any action, or failure to act, by ICANN . . . in connection with ICANN’s . . . review of this application. . . . Applicant agrees not to challenge . . . and irrevocably waives any right to sue or proceed in court.

(Bekele Decl. 6-4, Ex. 3, ECF No. 17.) On its face, the Release is “against the policy of the law” because it exempts ICANN from *any and all claims* arising out of the application process, even those arising from fraudulent or willful conduct. Cal. Civ. Code § 1668.

ICANN argues that Section 1668 is limited only to agreements involving the public interest,

which the Guidebook is not, and cites to *Tunkl v. Regents of Cal.*, 383 P.2d 441 (Cal. 1963) for support. However, *Tunkl* concerns the validity of a release from liability for negligence, not intentional acts or fraud. Here, the Release waives all liability, not just liability resulting from negligence. Thus, *Tunkl* is distinguishable, and the Court need not determine whether the Release is in an agreement involving the public interest.

ICANN further argues that, if the Release is found to violate Section 1668, the Court should limit its unenforceability to DCA's claims sounding in fraud. ICANN contends that because the request for preliminary injunction is based solely on DCA's Declaratory Relief Claim, which does not sound in fraud, the Release is enforceable as it pertains to this Claim. (Def.'s Opp'n to Mot. for Prelim. Inj. 15:12-14, ECF No. 35.) The Court disagrees. ICANN fails to recognize that the alleged conduct giving rise to this claim is intentional. Specifically, DCA alleges that ICANN intended to deny DCA's application after the IRP proceeding under any pretext and without a legitimate reason. (FAC ¶ 59, ECF No. 10.) DCA claims that "the process ICANN put Plaintiff through was a sham with a predetermined ending – ICANN's denial of Plaintiff's application so that ICANN could steer the gTLD to ZACR." (FAC ¶ 60, ECF No. 10.)

In support, DCA offers the following evidence. ICANN's initial evaluation report in July 2013 stated that DCA's endorsement letters "met all relevant criteria in Section 2.2.1.4.3 of the Applicant Guidebook." (Bekele Decl. ¶ 40, Ex. 27, ECF No. 17.) After the IRP Decision, ICANN performed a second evaluation on the same information originally submitted by DCA. In the second evaluation, however, ICANN found that the endorsement letters did not meet the same criteria applied in the first evaluation, and sent DCA clarifying questions regarding its endorsements. (Bekele Decl. ¶ 24, Ex. 15, ECF No. 17.) The clarifying questions required DCA to submit endorsement letters that "[d]emonstrate[d] the government's or public authority's understanding that the string is being sought through the gTLD application process and that the applicant is willing to accept the conditions under which the string will be available." (Bekele Decl. ¶ 24, Ex. 15, ECF No. 17.) The discrepancy between the pre-IRP and post-IRP evaluations led DCA to seek further clarification, specifically regarding the standard imposed on the endorsement letters at issue. However, in response, ICANN merely sent the same questions. (Bekele Decl. ¶ 26, Ex. 17, ECF No. 17.) DCA then submitted to an extended evaluation, which allows further review and is available to applicants who failed the initial evaluation. Without further communication, ICANN then issued a final decision that restated that the endorsement letters "did not meet the criteria described in Section 2.2.1.4.3 of the Applicant Guidebook." (Bekele Decl. ¶ 28, Ex. 18, ECF No. 17.) ICANN's conduct thereby rendered DCA's application ineligible for further review. (Bekele Decl. ¶ 28, Ex. 18, ECF No. 17.)

The evidence suggests that ICANN intended to deny DCA's application based on pretext. Defendants have not introduced any controverting facts. As such, the Court finds serious questions regarding the enforceability of the Release due to California Civil Code § 1668.

Because the Court finds serious questions regarding the enforceability of the Release due to California Civil Code § 1668, the Court need not address DCA's arguments regarding unconscionability or procurement by fraud.

2. *There Are Serious Questions as to the Merits of DCA's Ninth Claim.*

After its review, the IRP Panel declared: (1) "both the actions and inactions of the Board with respect to the application of DCA [] relating to the .AFRICA gTLD were inconsistent with the Articles of Incorporation and Bylaws of ICANN" and (2) ICANN "continue to refrain from delegating the .AFRICA gTLD and permit [DCA's] application to proceed through the remainder of the [New gTLD Program] application process." (Bekele Decl., Ex. 1 ¶ 61, ECF No. 17.) DCA alleges in its Ninth Claim that ICANN failed to follow the IRP Panel's binding order, resulting in ICANN's not properly

considering DCA's application.

After the IRP Decision, ICANN placed DCA at the geographic name evaluation stage of the application process and thereafter determined that DCA lacked the requisite support. (Bekele Decl. ¶ 28, Ex. 18, ECF No. 17.) DCA contends that ICANN violated the IRP Decision by restarting the geographic name evaluation, which it had already passed, rather than permitting the application to resume at the delegation phase. (Pl.'s Mot. for Prelim. Inj. 13:4-5, ECF No.16.) ICANN, however, argues that at the time DCA's application had been initially rejected, the application was still under review at the geographic name evaluation stage, and the evaluation was not yet complete. (Def.'s Opp'n to Mot. for Prelim. Inj. 17:20-22, ECF No. 35.) Accordingly, ICANN maintains that it placed DCA's application at the proper stage of evaluation after the IRP Decision.

Despite ICANN's contention, the evidence presents serious questions pointing in favor of DCA's argument. First, a March 2013 email from ICC to ICANN stated that ICANN needs to clarify AUC's endorsements since AUC properly endorsed both DCA and ZACR. (Bekele Decl. ¶ 30, Ex. 19, ECF No. 17.) Subsequently, ICANN's July 2013 initial evaluation report found that the endorsement letters have "met all relevant criteria in Section 2.2.1.4.3 of the Applicant Guidebook." (Bekele Decl. ¶ 40, Ex. 27, ECF No. 17.) Because ICANN found DCA's application passed the geographic names evaluation in the July 2013 initial evaluation report, the Court finds serious questions in DCA's favor as to whether DCA's application should have proceeded to the delegation stage following the IRP Decision.

ICANN further argues that even if ICANN failed to follow the IRP Decision, the Decision was only advisory, and not binding. The evidence does not provide clear indications on this point. On the one hand, the Panel concluded "that its [Decision] on the IRP and its future [Decision] on the Merits of the case were binding on the Parties." (Bekele Decl., Ex. 1 ¶ 23, ECF No. 17.) The Panel explains, "[v]arious provisions of ICANN's Bylaws and the Supplementary Procedures support the conclusion that the Panel's decisions, opinions and declarations are binding . . . [t]he selection of the [International Dispute Resolution Procedures] as the baseline set of procedures for IRP's, therefore, points to a binding adjudicative process." (Bekele Decl., Ex. 1 ¶ 23, ECF No. 17.) The Panel opined that if the decision is not binding, then at a minimum, "the IRP should forthrightly explain and acknowledge that the process is merely advisory." (Bekele Decl., Ex. 1 ¶ 23, ECF No. 17.) The IRP did not provide such explanation or acknowledgment. (Bekele Decl., Ex. 1 ¶ 23, ECF No. 17.) On the other hand, language in the IRP Decision states that the Panel "*recommends* that ICANN continue to refrain from delegating the .Africa gTLD and permit [DCA's] application to proceed through the remainder of the new gTLD application process." (Bekele Decl., Ex. 1 ¶ 149, ECF No. 17 (emphasis added).) It is clear the decision that ICANN violated its bylaws by failing to fairly review DCA's application is binding. However, it is *not* clear whether ICANN was mandated to permit DCA's application to proceed through the remainder of the process. Without extrinsic evidence as a guide, logic dictates that if the "recommendation" is, in fact, non-binding, the Panel's decision that ICANN violated its bylaws (which is undisputedly binding) is rendered ineffectual. Because the IRP is presumably in place to effect dispute resolution, and the IRP provided no explanation or acknowledgment that its decision was merely advisory, the Court finds serious questions on this issue.

For the reasons stated above, the Court finds serious questions going toward the merits of DCA's Ninth Claim.

B. Likelihood of Irreparable Harm

As DCA points out, without preliminary relief, DCA will lose the opportunity to fairly have its application reviewed by ICANN. If DCA loses this opportunity, DCA will suffer irreparable harm because .Africa can be delegated only once, and only by ICANN. (Bekele Decl., Ex. 3 Application Terms and Conditions ¶ 3, ECF No. 17.) Further, only one entity can operate .Africa. (Bekele Decl., Ex. 3 at 4-2, ECF No. 17.) DCA has sufficiently demonstrated that, due to the unique nature of .Africa, it will likely suffer irreparable harm without preliminary relief.

Moreover, on March 4, 2016, the Court issued a temporary restraining order precluding ICANN from delegating the rights to .Africa until the Court rules on the present motion. (Order Granting TRO, ECF No. 27.) In that Order, the Court found that without a TRO, ICANN would have immediately delegated the rights to .Africa. (Order Granting TRO, ECF No. 27.) The Court finds no evidence indicating a change in circumstances. It is reasonable to believe that without a preliminary injunction, ICANN will immediately delegate the rights to .Africa to ZACR, causing DCA to suffer irreparable harm.

ICANN argues only that DCA cannot possibly suffer irreparable harm because it seeks compensatory relief. This argument is unavailing. Seeking compensatory damages does not preclude the Court from finding irreparable harm, as the control over .Africa cannot fully be compensated by money. *See Blackwater Lodge & Training Ctr., Inc. v. Broughton*, 2008 U.S. Dist. Lexis 49371 at *28 (S.D. Cal. 2008) (granting preliminary injunction despite plaintiff seeking monetary relief).

The Court thus finds that without relief, DCA will likely suffer irreparable harm.

C. Balance of Equities

The balance of equities tips in favor of granting the preliminary injunction. Without a preliminary injunction, DCA will lose the opportunity to obtain rights to .Africa because ICANN will likely delegate the rights to ZACR prior to the conclusion of this action, and these rights can be delegated only once. DCA has invested much time and money in the application process under the representation that the process would be unbiased and fair. Although DCA may be able to recover certain funds through litigation, such as the application fee, the opportunity to obtain the rights to .Africa would be forever gone. ICANN's position, however, will be no different if it delays delegating the rights to .Africa. Thus, the balance of equities tips sharply in DCA's favor.

D. The Public Interest Favors Granting Preliminary Injunction

The public interest favors granting a preliminary injunction. "The public interest analysis for the issuance of a preliminary injunction requires us to consider whether there exists some critical public interest that would be injured by the grant of preliminary relief." *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1138 (9th Cir. 2011). Here, the public has an interest in the fair and transparent application process that grants gTLD rights. ICANN regulates the internet – a global system that dramatically impacts daily life in today's society. The IRP Declaration recognizes that ICANN's function is "special, unique, and publicly important" and ICANN itself "is the steward of a highly valuable and important international resources." (Bekele Decl. ¶ 23.110, Ex. 1, ECF No. 17.)

ICANN argues that a delay in delegating .Africa will prejudice the African community's efforts to participate in the Internet economy and strengthen their technology sectors. (Def.'s Opp'n to Mot. for Prelim. Inj. 20:3-5, ECF No. 35.) The evidence supporting ICANN's argument is a declaration of Moctar Yedaly, the head of the Information Society Division of the AUC's Infrastructure and Energy Department. (Yedaly Decl. ¶ 11, ECF No. 40.) The AUC's relationship with ZACR, and its interest in

preventing the delay of issuing rights to .Africa creates a conflict of interest. Therefore, on this point, the Court accords little weight to the Yedaly Declaration. On balance, the Court finds it more prejudicial to the African community, and the international community in general, if the delegation of .Africa is made prior to a determination on the fairness of the process by which it was delegated.

For the reasons stated, the Court finds the public interest favors granting the preliminary injunction.

E. Implementing the “Sliding Scale” Approach

Implementing the Ninth Circuit’s “sliding scale” approach to preliminary injunctions, the Court finds “serious questions” going toward DCA’s likelihood of success on the merits and a balance of hardships that tips sharply in DCA’s favor. *Alliance for the Wild Rockies* at 1131. Additionally, the Court finds that both the likelihood of irreparable injury and the public interest favors the injunction. As such, the Court **GRANTS** a preliminary injunction barring ICANN from delegating the rights to .Africa until this case is resolved.

VI. CONCLUSION

For the foregoing reasons, the Court **GRANTS** Plaintiff’s Motion for Preliminary Injunction.

IT IS SO ORDERED.

: _____
Initials of Preparer _____

Exhibit DIDP A84



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April 20, 2016

Judge Halts .Africa Domain; Lengthy Litigation Likely

From [Electronic Commerce and Law Report](#)

FREE TRIAL

By [Joseph Wright](#)

April 13 — A pan-African Internet domain remains on hold after a federal court April 12 enjoined the Internet Corporation for Assigned Names and Numbers from finalizing the domain while an unsuccessful competitor's lawsuit proceeds.

Judge R. Gary Klausner of the U.S. District Court for the Central District of California granted DotConnectAfrica Trust's request to enjoin ICANN from delegating the .africa top-level domain (similar to .com or .org) to the ZA Central Registry. DotConnect and ZACR were the only two applicants for operating the domain.

"The evidence suggests that ICANN intended to deny DCA's application based on pretext," Judge Klausner said.

The decision undermines two important pieces of the legal framework underlying ICANN's expansion of the domain name space in recent years—a broad litigation waiver for all applicants, and ICANN's longstanding view that independent review process (IRP) arbitrations challenging ICANN decisions are merely advisory.

The decision also comes at the end of a long process to enhance ICANN's accountability as it prepares to free itself from U.S. government oversight. Paul Rosenzweig, principal at Red Branch Consulting and a former deputy assistant secretary for policy with the Department of Homeland Security, told Bloomberg BNA April 13 that the decision underscores the importance of those enhancements.

“You've got a neutral federal judge on top of three arbitration panelists saying ICANN's not playing by the rules,” Rosenzweig said. “It's a paradigm about the accountability of ICANN and the board. We're giving ICANN an awful lot of power to make decisions like this.”

The decision also addressed many of the arguments raised in ICANN's pending motion to dismiss the suit, strongly suggesting the case will proceed to discovery and a much longer delay before the domain can become active. The motion to dismiss hearing is scheduled for April 25. ICANN's arguments for dismissal relied heavily on the litigation waiver that the court found ineffective in the injunction ruling, DotConnect's attorney told Bloomberg BNA April 13.

“That finding now means that, at the very least, the substantial majority of DCA's case will survive the Motion to Dismiss and the case against ICANN will move forward to full litigation and discovery,” said Ethan Brown, partner at Brown Neri Smith & Khan LLP in Los Angeles.

Neil Dundas, executive director of ZACR, told Bloomberg BNA April 13 that the injunction ruling is “devastating for the African Internet community.”

“The voice of the African community has not been heard during this prolonged war of attrition between a U.S. organisation and (what is essentially) a U.S. resident,” Dundas said in an e-mail. “No true African entity has been party to these legal proceedings, but the outcomes have had a profound negative effect on the African digital landscape.”

Competing Applicants

DotConnect and ZACR each applied to ICANN to operate the .africa domain. Under ICANN's rules, applicants for names matching multinational regions must have the support of at least 60 percent of affected governments. The African Union, consisting of all African countries except Morocco, initially backed DotConnect but revoked that support in favor of ZACR, which operates South Africa's .za domain. DotConnect has asserted that the African Union's revocation of support was ineffective under ICANN's rules.

Both applicants passed ICANN's initial evaluation, but government representatives flagged DotConnect's bid and ultimately advised that it not proceed (18 ECLR 717, 4/17/13). ICANN's board accepted that advice, but an IRP panel determined it did so without an appropriate investigation and recommended that DotConnect's application go forward (20 ECLR 956, 7/15/15). ICANN restarted DotConnect's application at the geographic names review stage and failed the bid, saying it lacked the necessary support (21 ECLR 250, 2/24/16).

DotConnect sued ICANN for breach of contract, fraud and declaratory relief that ICANN should refrain from processing ZACR's application and that it shouldn't have required a new geographic names evaluation. DotConnect obtained a

temporary restraining order against ICANN and sought an injunction (21 ECLR 325, 3/9/16).

ICANN responded that DotConnect had agreed to a broad litigation waiver and that all disputes would be resolved through the IRP process (21 ECLR 404, 3/23/16).

Litigation Waiver Unenforceable

The court found that an injunction was appropriate because DotConnect raised serious questions on the merits. It also found that .africa is a unique asset and DotConnect could suffer irreparable harm without an injunction.

The court said that ICANN's broad litigation waiver, which includes intentional and fraudulent behavior, is likely unenforceable under California law. DotConnect alleged that ICANN intentionally put its application through a “sham” process with a predetermined outcome.

The crux of DotConnect's argument is that the initial evaluation report on its application said it met the criteria for a geographic name with properly documented support. That evidence raised serious questions that ICANN's post-IRP geographic evaluation was pretextual, the court found. ICANN had argued that DotConnect didn't complete geographic review before its application was initially denied.

The court previously found that ICANN was likely to delegate .africa to ZACR immediately had it not granted DotConnect a temporary restraining order. It said that was still true if it didn't grant a preliminary injunction.

ICANN argued DotConnect's damages request suggested no irreparable harm would come from an injunction denial. The court disagreed, saying an alternative request for damages didn't preclude seeking an injunction.

The court also said the public interest is best served by a “fair and transparent application process” for domains.

ICANN argued delay is harming Africa's ability to participate in the Internet economy. But the court said it gave little weight to an African Union official's declaration because of the Union's relationship with ZACR.

ICANN didn't respond to a request for comment.

Jones Day LLP represented ICANN.

To contact the reporter on this story: Joseph Wright in Washington at jwright@bna.com

To contact the editor responsible for this story: Alexis Kramer at akramer@bna.com

For More Information

Full text at http://www.bloomberglaw.com/public/document/DotConnectAfrica_Trust_v_Internet_Corporation_For_Assigne

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Guiding principles

The Economist Group's guiding principles

The Group operates in a clear and ethical context, and the Board has therefore approved the following guiding principles:

- We aim to offer insight and analysis and services that are valued by our customers.
- Underpinning our ability to fulfil this objective is our commitment to independence, integrity and delivering high quality in everything we do. These values govern our relationships with readers, customers and clients, shareholders, staff, suppliers and the community at large.
- We believe in conducting business with common decency. We are opposed to bribery and do not engage in corrupt practices. We abide by strict guidelines governing the acceptance of gifts and the disclosure of potential conflicts of interest.
- As an international company, we conduct business in many different markets around the world. In the countries in which we operate, we abide by local laws and regulations. We make an active contribution to local charities by charitable giving. We encourage our people to participate in charitable and community activities and we permit them to take time off for this purpose. We match employee donations of time and money to charities.
- We respect environmental standards and comply with relevant local laws. We take environmental issues seriously. We review the environmental impact of our operations, specifically carbon emissions, annually. Plans to reduce or mitigate those emissions are ongoing.
- The Economist and its sister publications, Intelligent Life and The World In series, account for the majority of our annual spend on paper and printing. All suppliers of paper and print services used in producing these publications adhere to one or more of the following internationally recognised environmental standards: ISO 14001, FSC and PEFC.
- We value our colleagues and treat each other fairly. The Group is committed to equality of opportunity in all employment practices and policies. We do not discriminate against employees or job applicants based on the grounds of age, sex, sexual orientation, marital status, race, colour, religion, national origin or disability. We support staff who through disability or illness are unable to perform their duties, by adapting the work environment and hours of work to suit the employee where it is reasonable for the business.
- The Group is committed to increasing staff diversity. We particularly focus on ensuring that we recruit from the widest possible pool of talent. We are also keen that people feel comfortable and valued at work, regardless of their background.
- We recognise that it is essential to keep employees informed of the progress of the Group. We regularly provide employees with information on the Group's activities and its financial performance through staff meetings and communication through our intranet. We have a strong consultative culture and we follow legal and regulatory requirements to consult with staff on major issues affecting the company.

Exhibit DIDP A86



The Internet Corporation for Assigned Names and Numbers

4 December 2015

Mr. Constantine Roussos, Founder & CEO
Mr. Paul Zamek, EVP: Communications & Strategic Relationships
DotMusic Limited
4058 Wayland Drive
Nashville, TN 37215

Re: Community Support Letters and Deadline for Submission

Dear Mr. Roussos and Mr. Zamek:

Thank you for the letter from Mr. Zamek, dated 1 December 2015. We have posted the letter to the gTLD correspondence page (<https://www.icann.org/en/system/files/correspondence/zamek-to-icann-eiu-01dec15-en.pdf>), where it is available for the community to review.

We would like to remind DotMusic Limited of the deadlines relevant to letters of support or non opposition in the Community Priority Evaluation (CPE) process.

Per the CPE Panel Process document (<http://newgtlds.icann.org/en/applicants/cpe/panel-process-07aug14-en.pdf>), the CPE Panel will review public correspondence and verify any letters deemed to be relevant. Any correspondence or application comments received more than 14 days after the date of invitation may not be considered by the CPE Panel. In the case of DotMusic Limited's application for .MUSIC (1-1115 14110), the 14 day window closed on 12 August 2015. For more information, please see the CPE Frequently Asked Questions document (<http://newgtlds.icann.org/en/applicants/cpe/faqs-10sep14-en.pdf>).

As you are aware, DotMusic Limited and its supporters have submitted a high volume of correspondence (hundreds of letters) to ICANN for the CPE Panel's consideration. Much of this correspondence was submitted well after the deadline, including the most recent document submitted on 1 December 2015, which included 500 letters. Please be advised that the Panel has attempted to verify correspondence dated 13 October 2015 or earlier. We will continue to publish letters submitted to ICANN to the gTLD correspondence page so that they are available to the CPE Panel, however, any correspondence dated later than 13 October 2015 or submitted from today on will not go through the Panel's verification process and may not be considered by the Panel. This is to support fairness to all applicants and to prevent delays to the evaluation.



Thank you for your participation in the New gTLD Program. Should you have any questions, please do not hesitate to contact us.

Sincerely,

A handwritten signature in blue ink, which appears to read "Christine A. Willett". The signature is fluid and cursive, written over a light blue horizontal line.

Christine A. Willett
Vice President, GDD Operations
ICANN

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March 28, 2016

Chris Disspain, ICANN Chair of the Board Governance Committee (“BGC”), Board and NGPC Member;
 Dr. Steve Crocker, ICANN Chair of the Board and New gTLD Program Committee (“NGPC”) Member;
 Akram Atallah, ICANN Interim President and CEO;
 Cherine Chalaby, ICANN Chair of the NGPC, Vice-Chair of Board and BGC Member;
 Thomas Schneider, ICANN Government Advisory Committee Chair, Board and NGPC Liaison;
 Erika Mann, ICANN BGC, Board and NGPC Member;
 Rinalia Abdul Rahim, ICANN BGC, Board and NGPC Member;
 Mike Silber, ICANN BGC, Board and NGPC Member;
 Dr. Bruce Tonkin, ICANN BGC and Board Member;
 Suzanne Woolf, ICANN BGC and Board Liaison;
 John Jeffrey, ICANN General Counsel; and
 Chris LaHatte, ICANN Ombudsman

Re: Response to .MUSIC LLC’s (“Far Further”) Letter; International Law and Conventions

Dear ICANN BGC Chair Chris Disspain, ICANN BGC and ICANN Board:

We write in response to the letter submitted by Far Further¹ attempting to obstruct the .MUSIC Reconsideration Request 16-5² (“RR”). This repeated pattern of behavior of filing spurious letters and abuse of accountability mechanisms³ is misguided and anti-competitive. The Far Further letter was intended to purposely derail the RR to serve the interests of Far Further’s shareholders not the interests of Far Further’s supporting organizations, many of whom are RR co-filers⁴ or have supported the RR.⁵ Please note that DotMusic’s application has received more support than all CPE applicants combined.⁶

On November 18th, 2014, the BGC rejected⁷ a Reconsideration Request 14-45 filed by Far Further concerning their CPE Report (released on October 7, 2014), which scored 3 points and did not pass.⁸

The GAC Category 1 Resolutions were accepted by the Board and the NGPC on February 5th, 2014⁹ (i.e. before Far Further’s CPE result).

¹ <https://icann.org/en/system/files/files/reconsideration-16-5-dotmusic-letter-music-llc-to-icann-22mar16-en.pdf>

² <https://www.icann.org/resources/pages/reconsideration-16-5-dotmusic-request-2016-02-25-en>

³ For example, Far Further attempted to obstruct DotMusic’s Public Interest Commitments (against the interests of the majority of Far Further’s supporting organizations that have also supported DotMusic) by filing a Reconsideration Request 15-6, which was rejected by the BGC on May 6th, 2015. See BGC Reconsideration Request Determination 15-6, <https://icann.org/en/system/files/files/determination-15-6-music-06may15-en.pdf>

⁴ RR co-filers - the International Federation of Musicians, Association of Independent Music, American Association of Independent Music, Independent Music Companies Association and the Nashville Songwriters Association International - are also Far Further supporting organizations. Yet, Far Further opposes the RR against their interests.

⁵ See letter from the International Federation for the Phonographic Industry, <https://icann.org/en/system/files/files/reconsideration-16-5-dotmusic-letter-ifpi-to-icann-24feb16-en.pdf>

⁶ DotMusic is supported by organizations with members representing over 95% of music consumed globally: See <http://music.us/supporters>. An overwhelming majority of Far Further’s supporting organizations have also supported DotMusic. DotMusic’s logical alliance of supporting music organizations is the largest ever amassed for a music cause.

⁷ BGC Determination 14-45, <https://icann.org/en/system/files/files/determination-music-18nov14-en.pdf>

⁸ <https://www.icann.org/sites/default/files/tlds/music/music-cpe-1-959-51046-en.pdf>



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Far Further chose not to file for relief or utilize other accountability mechanisms to challenge the BGC's Reconsideration Request 14-45 decision or any ICANN action/inaction relating to GAC Category 1 Resolutions. Rather than initiating a timely Independent Review Proceeding (or timely invoking any other ICANN accountability mechanism), Far Further waited nearly a year and a half after the BGC decision on their Reconsideration Request 14-45 to speak out – and only did so as to challenge DotMusic's RR. As such, any claim by Far Further is time-barred.¹⁰ Furthermore, according to the BGC, Far Further did not identify any procedural failures with respect to their CPE. The BGC's Determination noted that Far Further (i) "*claim[ed] that the number of points awarded by the CPE Panel for various criteria was 'wrong';*" and (ii) did "*not claim that the CPE Panel violated established policy or procedure, but instead improperly challenge[d] the CPE Panels' substantive determination.*"

In contrast, the RR filed by DotMusic and co-requesters relate to process violations and contravening established procedures. Contrary to Far Further's flawed assertions that "*the BGC affirmed the Panel's determination not to award [Far Further] community status, and that BGC opinions "establish[] precedential value,"*" the BGC cannot determine the RR based on another applicant's application in this manner. While "*consistency of approach in scoring Applications*" is "*of particular importance*" to "*exercise consistent judgment...to reach conclusions that are compelling and defensible,*"¹¹ it is important to note that Far Further's application and Request for Reconsideration 14-45 are completely different to DotMusic's application (or those applications that have passed CPE) and RR. Agreeing to such an improper request would violate established AGB procedures to "*ensure applications are evaluated in an objective and independent manner*"¹² and to "*avoid any double-counting.*"¹³ As such, the BGC must follow ICANN processes to provide fair and equitable, reasonable and non-discriminatory treatment.¹⁴

The claim by Far Further that DotMusic "*applied for community status for the same string, for essentially the same community*" is factually imprecise because DotMusic's definition of the music community ("*a strictly*

⁹ See Approved ICANN Board Resolutions, <https://icann.org/resources/board-material/resolutions-new-gtld-2014-02-05-en>; Also see <https://icann.org/en/groups/board/documents/resolutions-new-gtld-annex-1-05feb14-en.pdf>, <https://icann.org/en/system/files/files/resolutions-new-gtld-annex-2-05feb14-en.pdf>

¹⁰ See ICANN Accountability Mechanisms timing at <https://icann.org/resources/pages/mechanisms-2014-03-20-en>

¹¹ See CPE Guidelines, <https://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf>, p.22

¹² See AGB, Module 2, Evaluation Procedures, 2.4.3.1, p. 2-33

¹³ See AGB, Module 4.2.3, pp. 4-9 - 4-10 ("The sequence of the criteria reflects the order in which they will be assessed by the panel. The utmost care has been taken to avoid any "double-counting" - any negative aspect found in assessing an application for one criterion should only be counted there and should not affect the assessment for other criteria")

¹⁴ The BGC must conduct adequate diligence to ensure that ICANN's policies and procedures are applied fairly and in an open and transparent manner. It is well recognized under principles of international law that the obligations to treat entities fairly and equitably are "related to the traditional standard of due diligence," which international tribunals have defined as requiring the reasonable amount of prevention that one would expect well administered organization to provide. See e.g. CME v. Czech Republic, Partial Award of Sept. 13, 2001, <http://italaw.com/sites/default/files/case-documents/ita0178.pdf>, ¶614, p.174 (Unfair and inequitable treatment, ...unreasonable actions...are together a violation of the principles of international law); Lauder v. Czech Republic, Final Award of Sept. 2001, <http://italaw.com/sites/default/files/case-documents/ita0451.pdf>, ¶292, pp.67-68 (Fair and equitable treatment is related to the traditional standard of due diligence and provides a 'minimum international standard which forms part of customary international law.');

In addition, ICANN's obligation to conduct due diligence and exercise due care is an express area of focus when comparing contested actions of the Board to the Articles and Bylaws Art. IV, § 3(4)(b).



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*delineated and organized logical alliance of communities that relate to music*¹⁵) is entirely different from Far Further's stated community definition, which only covers four (4) million members and restricts registration to members of select music organizations.

Far Further lost three (3) points under *Registration Policies*, so even if they were awarded a full score in all other sections (including *Community Establishment* that relates to *cohesion*), Far Further would still not pass CPE. In contrast, DotMusic would pass CPE if the Panel followed established procedures and ICANN processes were "*in conformity with relevant principles of international law and applicable international conventions*" as mandated by ICANN's Articles of Incorporation that, among other things, calls for recognition of principles of international law and international conventions:

The Corporation shall operate for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and applicable international conventions and local law and, to the extent appropriate and consistent with these Articles and its Bylaws, through open and transparent processes that enable open competition and open entry in Internet-related markets. To this effect, the Corporation shall cooperate as appropriate with relevant international organizations.¹⁶

As such, the BGC should accept the RR and recognize music community *cohesion* through "*applicable international conventions*," such as the 1886 Berne Convention (that relates to the protection of copyright signed by 170 countries¹⁷).

On that subject, please further note that The Economist, the parent company of the Economist Intelligence Unit (the "EIU"), also recognizes the Berne Convention because The Economist is reliant on copyright cohesion and international law protection¹⁸ to conduct its activities. According to The Economist's website:

Copyright is a property right that gives the creators of certain kinds of material rights to control the ways in which such material can be used. These rights are established as soon as the material has been created, with no need for official registration. Copyright applies globally and is regulated by a number of international treaties and conventions (including the Berne Convention, the Universal Copyright Convention, the Rome Convention and the Geneva Convention).¹⁹

The Economist's own words invalidate the EIU's CPE Report rationale that "*application materials and further research provide no substantive evidence of what the AGB calls "cohesion" – that is, that the various members of the community as defined by the application are "united or form a whole."*"²⁰ Concluding that there is "*no substantive evidence*" that the music community defined in its entirety has no cohesion (i.e. does not unite cohesively under international music copyright or is reliant on international conventions) is not a compelling and defensible argument. Indeed, in The Economist's own words: "*copyright applies globally*

¹⁵ As explicitly outlined in the AGB, DotMusic's "logical alliance" community definition explicitly meets the AGB criteria. According to the AGB, Module 4, 4.2.3, p. 4-12: "*With respect to "Delineation" and "Extension," it should be noted that a community can consist of...a logical alliance of communities.*"

¹⁶ ICANN Articles of Incorporation, <https://www.icann.org/resources/pages/governance/articles-en>, Article 4

¹⁷ Berne Convention for the Protection of Literary and Artistic Works of 1886 with 170 contracting countries (See http://wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=15)

¹⁸ See The Economist website, *Terms of Use, "Governing Law and Jurisdiction,"* <http://economist.com/legal/terms-of-use>, ("*The Economist shall also retain the right to bring proceedings as to the substance of the matter in the courts of the country of your residence.*")

¹⁹ See The Economist website, *Copyright Information,* <https://economist.com/rights/copyright.html>

²⁰ DotMusic .MUSIC CPE Report, <https://icann.org/sites/default/files/tlds/music/music-cpe-1-1115-14110-en.pdf>, p.4



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and is regulated by a number of international treaties and conventions.” It thus appears that the EIU failed to undertake appropriate (if any) research to support its conclusions. The decision was rendered despite DotMusic's provision of thousands of pages of “*application materials and...research*” as “*substantive evidence*” of “*cohesion*,” including citing in numerous materials the international Berne Convention. For example, DotMusic defined its Community and clarified that:

The requisite awareness of the community is clear: participation in the Community, the logical alliance of communities of similar nature related to music, -- a symbiotic, interconnected eco-system that functions because of the awareness and recognition of its members. The delineated community exists through its members participation within the logical alliance of communities related to music (the “Community” definition). Music community members participate in a shared system of creation, distribution and promotion of music with common norms and communal behavior e.g. commonly-known and established norms in regards to how music entities perform, record, distribute, share and consume music, including a shared legal framework in a regulated sector governed by common copyright law under the **Berne Convention**, which was established and agreed upon by over 167 international governments with shared rules and communal regulations.²¹

To that end, as mentioned in our previous letter, in 2014, the members of the ICANN Board and the NGPC (who are also members of the BGC) accepted GAC Category 1 Advice that .MUSIC is a “*string that is linked to regulated sector*” that “*should operate in a way that is consistent with applicable laws;*”²² a Resolution that, in effect, agrees that all music groups that comprise the music community defined (“*logical alliance of communities that relate to music*”) participate as a whole in a regulated sector with demonstrated activities tied to music that cohere to international copyright law, united under international treaties, agreements and conventions.

We hope it is helpful to have provided you with clarifications in response to Far Further’s letter and to raise pertinent issues relating to international law and conventions. Thank you in advance for your consideration.

Please let us know should you have any questions.

Kind Regards,

Tina Dam
 COO
 DotMusic

Cc: Constantine Roussos
 Founder
 DotMusic

Cc: Jason Schaeffer
 Legal Counsel
 DotMusic

Website: <http://www.music.us>
 Supporting Organizations: <http://www.music.us/supporters>
 Board: <http://www.music.us/board>

²¹ See DotMusic Public Interest Commitments (“PIC”),

<https://gtldresult.icann.org/applicationstatus/applicationdetails/downloadpicposting/1392?t:ac=1392>, p.6

²² <https://icann.org/en/system/files/correspondence/crocker-to-schneider-23jun15-en.pdf>, pp.1-2

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24 February 2016

Dr. Steve Crocker
Chairman of the Board
ICANN
(steve.crocker@icann.org)

Mr Fadi Chehadé
CEO
ICANN
(fadi.chehade@icann.org)

Mr Chris Disspain
Chair of the Board Governance Committee
ICANN
(chris.disspain@icann.org)

By email

Dear Messrs Chehadé, Crocker and Disspain

.MUSIC COMMUNITY PRIORITY EVALUATION REPORT APPLICATION ID. 1-1115-14110

We write following the publication of the .MUSIC Community Priority Evaluation (CPE) Report for Application ID. 1-1115-14110 (the "DotMusic" application), which found that the applicant had failed to establish that it represents the music community for the purposes of ICANN's CPE evaluation. We believe the finding to be flawed, not least in view of the support for the application provided by representative organisations from all areas of the music community, including IFPI. Given the scale of the music community's support for the DotMusic application, it is difficult to understand what level of support a CPE applicant would need to demonstrate to prevail, and this gives rise to serious misgivings about the transparency, consistency, and accountability of the CPE process.

On 5th March, IFPI co-signed a letter to ICANN from a coalition of national and international trade associations representing songwriters; recordings artists, music publishers, record labels, studio professionals, and performing rights societies around the world. In that letter we expressed our shared disappointment with the CPE process, highlighting the disparity

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between the decisions of the EIU Panel. Unfortunately, these inconsistencies have continued in the EIU Panel's evaluation of the DotMusic application. We have read DotMusic Limited's Request for Reconsideration, and we note with concern the different criteria that appear to have been applied to the .HOTEL and .MUSIC CPE applications respectively.

Also of concern is the EIU Panel's finding that DotMusic failed to provide documented support from "recognised community institution(s)/member organization(s)". IFPI is a globally recognised organisation representing 1,300 record companies. Our members operate in 61 countries and IFPI has affiliated organisations, including national groups in 57 countries. We also administer the internationally recognised ISRC system. We therefore object to the EIU Panel's finding.

We previously provided our support for the DotMusic application in our letter dated 18 May 2015, in which we expressed the importance of the .MUSIC gTLD being administered by an applicant that had committed to meaningful and robust safeguards to protect against online infringement. This remains crucial to the music community, as expressed in the numerous letters of support provided by members of our community. We reiterate that given the Public Interest Commitments submitted by DotMusic Limited for their community application, we understand that DotMusic has made such commitments. Accordingly, we continue to support this applicant (in addition to our support for the other community priority applicant for .music) and we request that ICANN gives due recognition to the music community's support when making a determination on the DotMusic Reconsideration Request.

Yours sincerely



Patrick Charnley
Senior Legal Policy Adviser

Copy (By email): ICANN Board Governance Committee

Exhibit DIDP A89



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March 17, 2016

Dr. Steve Crocker, ICANN Chair of the Board and New gTLD Program Committee (“NGPC”) Member;
 Akram Atallah, ICANN Interim CEO;
 Chris Disspain, ICANN Chair of the Board Governance Committee (“BGC”), Board and NGPC Member;
 Cherine Chalaby, ICANN Chair of the NGPC, Vice-Chair of Board and BGC Member;
 Thomas Schneider, ICANN Government Advisory Committee Chair, Board and NGPC Liaison;
 Erika Mann, ICANN BGC, Board and NGPC Member;
 Rinalia Abdul Rahim, ICANN BGC, Board and NGPC Member;
 Mike Silber, ICANN BGC, Board and NGPC Member;
 Dr. Bruce Tonkin, ICANN BGC and Board Member;
 Suzanne Woolf, ICANN BGC and Board Liaison;
 John Jeffrey, ICANN General Counsel; and
 Chris LaHatte, ICANN Ombudsman

Reconsideration Request 16-5: ICANN Board and NGPC Policy Resolutions set precedent for BGC

Dear ICANN and Board Governance Committee:

We write to you to remind you of the consensus GAC Category 1 Advice Resolutions that were accepted by the ICANN Board and NGPC in 2014, which set precedent for DotMusic’s CPE and RR.

As you may be aware, DotMusic (with Application ID 1-1115-14110)¹ and ten (10) other globally-recognized music community organizations recently filed a Reconsideration Request 16-5² (“RR”) concerning the .MUSIC CPE Report³ (“Report”). The Report did not follow numerous established processes and policies or recognize international law, agreements, treaties or conventions concerning the music community.

To that end, in 2014 the ICANN Board and the NGPC accepted GAC Category 1 Advice that .MUSIC is a “*string that is linked to regulated sector*” that “*should operate in a way that is consistent with applicable laws*;⁴” a Resolution that, in effect, agrees that all music groups that comprise the music community defined (“*logical alliance of communities that relate to music*”) participate as a whole in a regulated sector with demonstrated activities tied to music that cohere to copyright law, united under international treaties, agreements and conventions.⁵ Despite this acceptance, the Report did not recognize the music community or

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

²<https://www.icann.org/resources/pages/reconsideration-16-5-dotmusic-request-2016-02-25-en>

³DotMusic CPE Report, <https://icann.org/sites/default/files/tlds/music/music-cpe-1-1115-14110-en.pdf>

⁴<https://icann.org/en/system/files/correspondence/crocker-to-schneider-23jun15-en.pdf>, pp.1-2

⁵The ICANN’s Board’s and NGPC’s Resolutions (2014.02.05.NG01) provide that the music community defined in its entirety abides to copyright law that provides protection for copyrightable work once it is created (i.e. “fixed in a tangible medium of expression”) regardless whether it is commercial or not. International conventions, treaties and agreements include the Berne Convention for the Protection of Literary and Artistic Works of 1886 with 170



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evaluate the Application in a manner that acknowledges that music is a globally regulated sector united by copyright law with cohesion and recognized international rights protections.

The Resolution, consistent with applicable international law and a cohesive music regulated sector, provides, in pertinent part:

Whereas, the NGPC is undertaking this action pursuant to the authority granted to it by the Board on 10 April 2012, to exercise the ICANN Board's authority for any and all issues that may arise relating to the New gTLD Program. Resolved (2014.02.05.NG01), the NGPC adopts the "GAC Advice (Beijing, Durban, Buenos Aires): Actions and Updates" (5 February 2014), attached as Annex 1⁶ to this Resolution, in response to open items of Beijing, Durban and Buenos Aires GAC advice as presented in the scorecard.⁷

This means that the ICANN Board and NGPC have accepted that the music community, in its entirety, has cohesion based on international law. The above-referenced Resolution alone should have led to a prevailing DotMusic CPE.⁸

Given the overlap between the ICANN Board, NPGC and the BGC, DotMusic believes it would be helpful for BGC members to be reminded of the relevancy of the 2014 Resolution to the CPE process and in assessing the RR in accordance to ICANN's Bylaws. The Bylaws establish that "*ICANN shall not apply its standards, policies, procedures, or practices inequitably or single out any particular party for disparate treatment unless justified by substantial and reasonable cause, such as the promotion of effective competition.*"⁹ This Bylaw reflects the prohibition on discrimination where "*(i) similar cases are (ii) treated differently (iii) and without reasonable justification.*"¹⁰

As such, BGC members cannot render a RR determination that does incorporate established ICANN policy and Resolutions (2014.02.05.NG01) because it would violate ICANN's Bylaws and be grossly negligent and create irreparable harm to the Applicant and the Community.

Furthermore, at the Meeting of the ICANN Board on March 10, 2016, the Board affirmed the serious issues that were raised by an Independent Review Proceeding Panel concerning lack of consistency or predictability in the CPE process. The Board resolved that:

contracting countries (See http://wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=15) and the Agreement on Trade-Related Aspects of Intellectual Property Rights of 1994 ("TRIPS") with 162 contracting countries (See http://wipo.int/wipolex/en/other_treaties/parties.jsp?treaty_id=231&group_id=22)

⁶ <https://www.icann.org/en/groups/board/documents/resolutions-new-gtld-annex-1-05feb14-en.pdf>

⁷ Approved Resolutions, Meeting of the New gTLD Program Committee, <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-02-05-en>, <https://www.icann.org/en/groups/board/documents/resolutions-new-gtld-annex-1-05feb14-en.pdf>, <https://www.icann.org/en/system/files/files/resolutions-new-gtld-annex-2-05feb14-en.pdf>

⁸ The Reconsideration Request 16-5 includes additional process violations and other related issues. The lack of implementation of the ICANN Resolutions is only one of these. However, it is sufficient to overturn the CPE result.

⁹ Bylaws, <https://www.icann.org/resources/pages/bylaws-2012-02-25-en>, Art. II, § 3

¹⁰ Saluka Investments B.V. v. The Czech Republic, UNCITRAL, <http://www.italaw.com/sites/default/files/case-documents/ita0740.pdf>, p.67, ¶ 313



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Resolved (2016.03.10.11), the Board notes the Panel's suggestions, and: directs the President and CEO, or his designee(s), to ensure that the New gTLD Program Reviews take into consideration the issues raised by the Panel as they relate to the consistency and predictability of the CPE process and third-party provider evaluations.¹¹

ICANN must apply policy Resolutions in all evaluations to ensure transparency, predictability and consistency according to its Bylaws, regardless whether or not a Panel chooses to contravene ICANN process-related Resolutions or relevant facts originating from these Resolutions in its Report. As its consulting agreement with ICANN states, the Panel is a consultant. ICANN is the ultimate decision-maker.

We look forward to a positive result of the RR so that the Music Community is able to launch a safe, trusted and secure .MUSIC gTLD in a timely manner to serve the public interest and benefit the Music and general Internet Community.

Kind regards,

Tina Dam
COO
DotMusic

CC: Constantine Roussos
Founder
DotMusic

CC: Jason Schaeffer
Legal Counsel
DotMusic

Website: <http://www.music.us>
Supporting Organizations: <http://www.music.us/supporters>
Board: <http://www.music.us/board>

¹¹ <https://www.icann.org/resources/board-material/resolutions-2016-03-10-en#2.a>

Exhibit DIDP A90



Academy of Country Music
American Academy of Teachers of Singing
American Composers Forum
American Federation of Musicians
American Guild of Musical Artists
American Guild of Organists
American Harp Society
American Music Center
American Orff-Schulwerk Association
Artists Against Hunger & Poverty
ASCAP
BMI
Chopin Foundation of the United States
Conductors' Guild
Country Music Association
Delta Omicron International Music Fraternity
Early Music America
Interlochen Center for the Arts
International Alliance for Women in Music
International Federation of Festival
Organizations
International Music Products Association
(NAMM)
Mu Phi Epsilon International Music Fraternity
Music Critics Association of North America
Music Performance Fund
Music Publishers Association of the United
States
Music Teachers' Association of California
Music Teachers National Association
National Academy of Popular Music
National Academy of Recording Arts & Sciences
National Association for Music Education
National Association of Negro Musicians
National Association of Recording
Merchandisers
National Association of Teachers of Singing
National Federation of Music Clubs
National Flute Association
National Guild for Community Arts Education
National Guild of Piano Teachers/
American College of Musicians
National Music Publishers' Association
National Opera Association
Recording Industry Association of America
SESAC
Sigma Alpha Iota
The Songwriters Guild of America

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Director: David Sanders

March 28, 2016

Dr. Steve Crocker
Chairman of the Board, ICANN
(steve.crocker@icann.org)

Mr Fadi Chehadé
CEO, ICANN
(fadi.chehadé@icann.org)

Mr Chris Disspain
Chair of the Board Governance Committee, ICANN
(chris.disspain@icann.org)

Dear Messrs Chehadé, Crocker and Disspain,

I am writing on behalf of the board of directors of the National Music Council and the almost one million individual constituents of our member organizations. We would like to express our concern for the decision by ICANN to reject the DotMusic application ID. 1-1115-14110, on the basis that it failed to represent the music community for the purposes of ICANN's CPE evaluation. The international music community has come together across the globe to support the DotMusic application, and we cannot comprehend how the application could have failed on the community criteria.

The National Music Council of the United States was founded in 1940 and chartered by the 84th Congress in 1956 to act as a clearinghouse for the joint opinion and decision of its members and to work to strengthen the importance of music in the nation's life and culture. The Music Council represents the United States to the International Music Council. The Council's initial membership of 13 has grown to almost 50 national music organizations, encompassing every important form of professional and commercial musical activity and education.

The protection of intellectual property rights is vitally important to our members. For that reason, we want to do our part to ensure that any

music-themed, generic top-level domains are operated in the best interests of the legitimate music community. Any alternative is likely to encourage and support damaging and debilitating piracy that negatively impacts every fan, musician and music professional.

We therefore object to the decision noted above, the basis of which is an apparent inconsistency in the application of the governing rules. The global music community supports the DotMusic application, and we urge you to reconsider this decision, as we fear the alternatives will have far-reaching and damaging consequences to the public and to the music industry.

We would be happy to discuss this situation further with you at your convenience.

Yours Sincerely,

Dr. David Sanders
Director

Exhibit DIDP A91

DotMusic Reconsideration Request (“RR”)

1. Requester Information

Name: DotMusic Limited (“DotMusic”)¹

Address: Contact Information Redacted

Email: Constantine Roussos, Contact Information Redacted

Counsel: Jason Schaeffer, Contact Information Redacted

Name: International Federation of Musicians² (“FIM”)

Email: Benoît Machuel, Contact Information Redacted

Name: International Federation of Arts Councils and Culture Agencies³ (“IFACCA”)

Email: Sarah Gardner, Contact Information Redacted

Name: Worldwide Independent Network⁴ (“WIN”)

Email: Alison Wenham, Contact Information Redacted

Name: Merlin Network⁵ (“Merlin”)

Email: Charles Caldas, Contact Information Redacted

Name: Independent Music Companies Association⁶ (“IMPALA”)

Email: Helen Smith, Contact Information Redacted

Name: American Association of Independent Music⁷ (“A2IM”)

Email: Dr. Richard James Burgess, Contact Information Redacted

Name: Association of Independent Music⁸ (“AIM”)

Email: Charlie Phillips, Contact Information Redacted

Name: Content Creators Coalition⁹ (“C3”)

Email: Jeffrey Boxer, Contact Information Redacted

Name: Nashville Songwriters Association International¹⁰ (“NSAI”)

Email: Barton Herbison, Contact Information Redacted

Name: ReverbNation¹¹

Email: Jean Michel, Contact Information Redacted

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

¹ <http://music.us>; Also see Supporting Organizations at: <http://music.us/supporters>

² <http://fim-musicians.org/about-fim/history>

³ http://ifacca.org/membership/current_members and http://ifacca.org/membership/current_members

⁴ <http://winformusic.org/win-members>

⁵ <http://merlinnetwork.org/what-we-do>

⁶ <http://impalamusic.org/node/16>

⁷ <http://a2im.org/groups/tag/associate+members> and <http://a2im.org/groups/tag/label+members>

⁸ <http://musicindie.com/about/aimmembers>

⁹ <http://c3action.org>

¹⁰ <https://nashvillesongwriters.com/about-nsai>

¹¹ <https://reverbnation.com/band-promotion> (Artists/Bands), <https://reverbnation.com/industryprofessionals>, (Industry), <https://reverbnation.com/venue-promotion> (Venues), and <https://reverbnation.com/fan-promotion> (Fans)

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

The above-referenced requesters request to have the .MUSIC Community Priority Evaluation (“CPE”) Report for Application ID. 1-1115-14110 (“Report”)¹² corrected and properly graded to accurately reflect the true nature of DotMusic’s *community establishment, community definition, support* and *nexus* based on established Applicant Guidebook (“AGB”) policies and processes.¹³

The Report provided a total score of ten (10) points, resulting in a failing grade for the Application’s request for Community Status. The result unfairly denied Music Community recognition and necessary intellectual property protection. A review of the Report evidences multiple prejudicial errors that ICANN, both directly and as extension of the Economist Intelligence Unit (“EIU”) Panel, either incorrectly applied ICANN-approved processes and policies, or completely failed to apply ICANN established processes and policies. Such material errors resulted in the incorrect evaluation of the Application, an improper scoring of points when compared to over forty-three (43) independent expert testimony letters (*See* Expert Chart, Exhibit A40)¹⁴ and inconsistent, disparate treatment when compared to prevailing CPE Applicants (*See* CPE Comparison Chart, Exhibit A41).¹⁵ Each error, when corrected and overturned, would result to a total Application score of sixteen (16) points. Despite a materially improper evaluation by the EIU, and the disclaimer contained in the Report that “[...] *these Community Priority Evaluation results do not necessarily determine the final result of the application,*” ICANN accepted the Report’s inaccurate results and changed the “*Contention Resolution Result*” to “*Into Contention.*”¹⁶ Accordingly, DotMusic and other affected global organizations identified above (collectively referenced as the “Requesters”) seek to overturn the “*Contention Resolution Result*” to “*Prevailed Contention.*”

4. Date of action/inaction: February 10th, 2016 PST

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

February 10th, 2016 PST

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

¹² DotMusic CPE Report, <https://icann.org/sites/default/files/tlds/music/music-cpe-1-1115-14110-en.pdf>, Ex.A1

¹³ *See* AGB, <https://newgtlds.icann.org/en/applicants/agb/guidebook-full-11jan12-en.pdf>, §4.2.3

¹⁴ *See* Independent Expert Testimony Letters Scoring Chart, Ex.A40

¹⁵ *See* linear CPE Comparison Chart, Ex.A41

¹⁶ DotMusic community application, Application ID: 1-1115-14110, Prioritization Number: 448; *See* <https://gtldresult.icann.org/applicationstatus/applicationdetails/1392>, Ex. A2

DotMusic is adversely affected by ICANN's actions and inactions. If DotMusic is not awarded .MUSIC, DotMusic, will suffer material brand dilution¹⁷ and be subject to expensive auctions which (as agreed upon by the EU¹⁸) were designed to favor deep pocketed Applicants - such as Amazon and Google (who also have a prior history with the piracy of music: Google as a provider of ad networks to pirate sites and Amazon as a leading advertiser on pirate sites).¹⁹ As set forth in the Application, DotMusic has an all-inclusive tent that is united by its core principles consistent with its articulated community-based purpose:

- Creating a trusted, safe online haven for music consumption and licensing
- Establishing a safe home on the Internet for Music Community ("Community") members regardless of locale or size
- Protecting intellectual property & fighting piracy
- Supporting Musicians' welfare, rights & fair compensation
- Promoting music and the arts, cultural diversity & music education
- Following a multi-stakeholder approach of fair representation of all types of global music constituents, including a rotating regional Advisory Committee Board working in the Community's best interest. The global Music Community includes both reaching commercial and non-commercial stakeholders.²⁰

Per DotMusic's Application and Public Interest Commitments ("PIC"),²¹ .MUSIC will be launched as a safe haven for legal music consumption that ensures that .MUSIC domains are trusted and authenticated to benefit the interests of the Internet community and the global music community. DotMusic, its current and future music members and supporters will be adversely affected if the Report stands and DotMusic is awarded to any of the competing non-community applicants²² (which will also be a disservice to the Internet user community in general) because competing applicants either: (i) lack the music community multi-stakeholder governance model to represent the community's interests; and/or (ii) lack the extensive music-tailored safeguard policies that DotMusic has.²³

Allowing the Report to stand would turn .MUSIC into an unsafe, unreliable and untrusted string governed by non-community interests that will create material harm to the legitimate interests

¹⁷ DotMusic holds the European community trademarks for "*DotMusic*" and "*MUSIC*." Ex.A35, A37 and A38

¹⁸ <http://forum.icann.org/lists/comments-new-gtld-auction-rules-16dec13/msg00016.html>

¹⁹ <http://billboard.com/biz/articles/news/digital-and-mobile/6106454/online-pirates-thrive-on-legitimate-ad-dollars>, <http://venturebeat.com/2014/02/18/the-average-piracy-site-makes-4-4m-each-year-on-ads-from-amazon-lego-etc>

²⁰ Application, 18A. Also see 20C

²¹ PIC, <https://gtldresult.icann.org/applicationstatus/applicationdetails/downloadpicposting/1392?t:ac=1392>, Ex.A3

²² All of the competing non-community applicants in DotMusic's contention set are existing gTLD portfolio registries (Google, Amazon, Donuts/Rightside, Radix, Minds & Machines and Famous Four Media).

²³ See Application 20E; Also See PIC, Commitments 1-8, pp.1-2; PIC, pp.22-27; Also see .MUSIC Applicant Comparison Chart, <https://www.icann.org/en/system/files/correspondence/schaeffer-to-crocker-et-al-2-redacted-12aug15-en.pdf>, Appendix C, pp.43-45, Ex.A32

of the Music Community by increasing intellectual property infringement and other types of malicious abuse. Music is a sensitive string driven by content and copyright protection that must be operated responsibly within its regulated sector as outlined in the Application. The Music Community is one of the Internet's most vulnerable communities given the adverse effects of mass piracy, intellectual property infringement and malicious abuse on the web and the inefficiencies of the outdated 1998 DMCA Law to provide adequate music copyright protection online.²⁴ By not awarding .MUSIC to DotMusic, the Music Community will lose the only opportunity to offer assurance to Internet users that all .MUSIC sites are indeed trusted, safe and licensed, which will also help search engines provide a better user experience by replacing unsafe, insecure pirate sites (that dominate music-themed web search results today) with relevant and higher quality .MUSIC sites.²⁵

By virtue of ICANN's actions and inactions, the public interest is harmed and the multi-stakeholder music community will not be able to ensure trust and reliability in the DNS for Internet users because the music community will not be able to govern the last remaining music-themed gTLD,²⁶ in violation of ICANN's "*key responsibilities is introducing and promoting competition*"²⁷ in the registration of domain names, while ensuring the security and stability of the domain name system (DNS)."²⁸ Further, ICANN disregards its own 2007 Recommendations and Principles that stated "*where an applicant lays any claim that the TLD is intended to support a particular community...that claim will be taken on trust*."²⁹

Without a reserved, safe and reliable zone on the Internet dedicated to the Music Community, the community and the public will be harmed because the music community will be unable to promote a trusted and secure sector through enhanced safeguards. The Music Community (the

²⁴ <https://www.google.com/transparencyreport/removals/copyright/?hl=en> e.g. One single DotMusic supporter, BPI, filed over 2 million URL takedown requests to Google for the week of February 15, 2016, *see*

<https://google.com/transparencyreport/removals/copyright/reporters/1847/BPI-British-Recorded-Music-Industry-Ltd>

²⁵ *See* <http://theverge.com/2015/11/23/9781752/google-takedown-requests-2015> and

<http://billboard.com/biz/articles/news/1083146/business-matters-legal-mp3-sites-are-still-buried-by-google-search-results>

²⁶ No community applicant has been awarded a music-themed string in the New gTLD Program.

²⁷ ICANN has awarded Amazon the .SONG and .TUNES music-themed strings. Amazon is also a competing applicant for .MUSIC. Allowing Amazon to possibly be awarded the three most relevant music-themed strings violates ICANN's Bylaws with respect to "promoting competition."

²⁸ <https://newgtlds.icann.org/en/about/program>

²⁹ <http://gnso.icann.org/en/issues/new-gtlds/summary-principles-recommendations-implementation-guidelines-22oct08.doc.pdf>, Implementation Guidelines (IG H), Mission and Core Values (CV 7-10), p.6, Ex.A4; Also *see* <http://gnso.icann.org/en/issues/new-gtlds/pdp-dec05-fr-part-a-08aug07.htm>. Ex.A5

defined “*logical alliance*” with members representing over 95% of music consumed globally) has been negatively affected by the Report.

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

See Answer to Question 6 above.

8. Detail of Board Action/Inaction – Required Information

In this section, DotMusic presents the evidence required for ICANN to approve the request in this RR: **(8.1)** The relationship and contractual obligations between ICANN and the Economist with respect to the CPE process; **(8.2)** the AGB process and relevance of ICANN-approved GAC Category 1 and 2 Advice; **(8.3)** Comparisons to other CPE-prevailing community applications, demonstrating quality control deficiencies, unpredictability, inconsistencies, process failures, fairness issues and disparate treatment; and **(8.4)** Facts and procedural violations demonstrating that ICANN did not follow established processes in the evaluation of the Application in its grading as set forth in the .MUSIC Report, including material errors and omissions in determining the critical areas of *community establishment, nexus and support*. As a result of the material process, procedural errors and omissions set forth below, the Application was prevented from scoring the full 16 points and improperly did not receive a passing CPE grade.

(8.1) The relationship and contractual obligations between ICANN and the EIU.

Ultimately, ICANN makes the final decision on CPE results. The ICANN Board is responsible for the acts of its Staff and the EIU with respect to the CPE process because it is within ICANN’s sole discretion whether an applicant passes or fails. Pursuant to its contract with ICANN, the EIU provides “*recommended scores to ICANN for final review and approval*” and ICANN is “*free in its complete discretion to decide whether to follow [the EIU]’s determination and to issue a decision on that basis or not.*”³⁰ ICANN and the EIU specifically acknowledge that: “*each decision and all associated materials must be issued by ICANN in its own name only;*” that CPE results are “*ICANN’s final decision;*” and that “*ICANN will be solely responsible to applicants and other interested parties for the decisions it decides to issue.*”³¹ In a declaration, the EIU confirmed that:

³⁰ <https://icann.org/en/system/files/files/additional-submission-exhibits-c35-13jul15-en.pdf>, New gTLD Program Consulting Agreement, Statement of Work No.: 2, ICANN New gTLD Program, Application Evaluation Services – Community Priority Evaluation and Geographic Names p.6, § 10(b) (ii) (12 Mar. 2012) [Ex. C-40]), Ex.A7

³¹ *Id.*, § 10(b) (iii)-(iv), (vii)

[t]he EIU is a privately held company working as a vendor to ICANN. We are not a gTLD decision-maker but simply a consultant to ICANN.³²

Moreover, ICANN is the gatekeeper of all information exchanged between applicants and the EIU, including alerting the EIU of relevant GAC Advice pertaining to the existence of a “*cohesive*” regulated sector for the string evaluated to ensure scoring predictability and scoring consistency. ICANN and the EIU “*agreed that [the] EIU, while performing its contracted functions, would operate largely in the background, and that ICANN would be solely responsible for all legal matters pertaining to the application process.*”³³ Furthermore, the Report includes a disclaimer representing that ICANN is ultimately responsible for determining whether or not to implement the EIU evaluators’ conclusions.³⁴ While the Board may not be responsible for its Staff’s day-to-day operations, the Board is responsible for final CPE determinations, process, evaluations, and acceptance or rejection of the .MUSIC Report.

(8.2) The AGB process and the relevance of ICANN-approved GAC Category 1 and 2 Advice.

Per the AGB, Board decisions on certain strings are not merely a “box-ticking” administrative exercise by staff or consultants. The Board has accepted GAC Advice on many occasions to determine the fate of certain strings (e.g. .AMAZON and .AFRICA); and even superseding the determinations of Panels if deemed necessary by ICANN to serve the public interest (e.g. the Community Objections for .ISLAM and .HALAL). In relation to .MUSIC, the ICANN Board accepted GAC Advice with respect to Category 1 and Category 2 Safeguards,³⁵ but the Board took no action pertaining to GAC’s Advice to give “*preferential treatment for all applications which have demonstrable community support*” such as DotMusic’s. At the Singapore ICANN meeting in

³² EIU Declaration <https://icann.org/en/system/files/files/eiu-declaration-13apr15-en.pdf>, Pg.2, Ex.A8

³³ New gTLD Program Consulting Agreement, Statement of Work No.: 2, ICANN New gTLD Program, Application Evaluation Services – Community Priority Evaluation and Geographic Names p.6, § 10(b)(ii) (12 Mar. 2012) [<https://icann.org/en/system/files/files/additional-submission-exhibits-c35-13jul15-en.pdf>, Ex. C-40].), § 10(b)(iii)-(iv), (vii), Ex.A7

³⁴ See Report, p.9. Each CPE report states that “these Community Priority Evaluation results do not necessarily determine the final result of the application. *In limited cases the results might be subject to change.*” New gTLD Program, Report; see also New gTLD Program Consulting Agreement, p. 2 (26 July 2011) (“ICANN retains the right to inspect, to stop work, to prescribe alterations, and generally supervise the Contractor’s work to insure its conformity with the . . . Statement of Work”) [<https://www.icann.org/en/system/files/files/additional-submission-exhibits-c35-13jul15-en.pdf>, Ex. C-41], Ex.A9

³⁵ DotMusic’s Application was a community application with music-tailored enhanced safeguards that extended beyond the minimum GAC Advice requirements. To serve the public interest, the Internet community and the entire global music community, DotMusic also filed a PIC to reflect its accountability and to clarify its Application’s specifications, which also pertained to its *community definition, community establishment, nexus, registration policies* and *support*. See PIC

March 2014, GAC reiterated that advice to ICANN “to protect the public interest and improve outcomes for communities”³⁶ and to take “better account of community views and improving outcomes for communities”³⁷ (i.e. giving community applicants the benefit of the doubt). Throughout the process, ICANN has allowed non-community applicants to materially alter their applications to follow GAC Advice to either remain in contention or be awarded sensitive strings (such as .GMBH³⁸). Because such change requests for non-community applicants were allowed and accepted (in response to GAC Advice), it is equally and reasonably fair to allow DotMusic to be awarded .MUSIC based on trust, GAC’s Advice favoring community applicants with demonstrable support and ICANN’s own acceptance that the music string has cohesion under an ICANN-approved regulated sector. It is also reasonable to award DotMusic this sensitive string, because the Application responsibly and conscientiously already had the requisite music-tailored enhanced safeguards that served a higher purpose when it filed its Application in 2012 (notably, DotMusic’s safeguards exceed GAC Category 1 Safeguard Advice). Further, it should have been clear to ICANN and the EIU that the Application exceeds the CPE criteria and serves the public interest, Internet community and music community, as outlined in the Application and confirmed in more detail throughout its PIC. For these reasons alone the .MUSIC Report should be overturned and a passing grade awarded to Applicant.

(8.3) Comparisons to other CPE-prevailing community applications, demonstrate inconsistencies, unpredictability, process failures, fairness issues and disparate treatment.

ICANN did not follow established procedures in the *community establishment, nexus* and *support* evaluation process, which resulted in a failing CPE grade. For example, the criterion concerning “*organization*” (that relates to having support from a “*recognized*” organization), the Report specifically failed to consider many globally-recognized organizations that are *mainly* dedicated to the music community addressed (“*logical alliance of communities that relate to music*”).

³⁶ <https://gacweb.icann.org/download/attachments/27132037/Final%20Communique%20-%20Singapore%202014.pdf?version=2&modificationDate=1396429776778&api=v2> Section 3, 1a, p.4, ExA10

³⁷ <http://icann.org/en/groups/board/documents/resolutions-new-gtld-annex-1-10sep13-en.pdf>, Register #18, Ex.A11

³⁸ Donuts was allowed to make material changes to their application to proceed with the delegation of .GMBH based on GAC advice and Donuts’ Public Interest Commitments (PIC), *See* <https://www.icann.org/en/system/files/correspondence/willett-to-metzger-28jan16-en.pdf>. ICANN rejected a similar change request by the .CPA community applicants. ICANN “deferred consideration of AICPA’s December 2014 Change Request, including changes made to reflect the principles of the Beijing Communiqué,” *See* <https://www.icann.org/en/system/files/files/reconsideration-request-15-17-aicpa-redacted-19sep15-en.pdf>, p.4

The FIM, an “*international federation of national communities of similar nature*”³⁹ representing the “*voice of musicians worldwide*” (musicians represent the overwhelming majority of the Music Community). This is contrary to the unsubstantiated, indefensible and undocumented opinion of ICANN that the FIM is not a “*recognized community institution(s)/member organization(s)*.”⁴⁰

The IFPI, another globally recognized supporting organization, also exceeds the same criteria under *community establishment* and *support*. The IFPI is only associated with music and it is the globally-recognized organization that administers the International Standard Recording Code (ISRC), an international standard code for uniquely identifying sound recordings and music video recordings, which is reciprocally recognized across all segments of the Music Community. The code was developed with the ISO technical committee 46, subcommittee 9 (TC 46/SC 9), which codified the standard as ISO 3901 in 1986.⁴¹ The IFPI’s ISRC is “intentionally standardised under ISO,” globally structured⁴² and “well established, widely accepted internationally”⁴³ Furthermore, it relates to the addressed music community defined by DotMusic, an “*organized and delineated logical alliance of communities that relate to music*.” The IFPI does not restrict ISRC codes to solely its members. In fact, ISRC eligibility is available and dedicated to the entire global music community, irrespective of whether they are members of organizations or not, are professionals or amateurs, are independent or non-independent, commercial or non-commercial:

Owners of recordings may for example be independent artists, record labels or recorded music groups. ISRC is available to all owners of recordings regardless of their membership⁴⁴ (or not) with any industry association.⁴⁵

³⁹ CPE Guidelines: “With respect to “Delineation” and “Extension,” it should be noted that a community can consist of...a logical alliance of communities,” <https://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf>, p.4, Ex.A12-1; Also see AGB, <https://newgtlds.icann.org/en/applicants/agb/guidebook-full-11jan12-en.pdf>, 4-12, Ex.A13 and “Descriptions should include: How the community is structured and organized. For a community consisting of an alliance of groups, details about the constituent parts are required,” Notes, 20A, A-14, Ex.A13

⁴⁰ The FIM is a globally-recognized music community organization with documented official relations with the United Nations Economic and Social Council (“ECOSOC”) (Ros C); the United Nations Educational, Scientific and Cultural Organization (“UNESCO”) (Consultative Status); the World Intellectual Property Organization (“WIPO”) (Permanent Observer Status); and the Organisation Internationale de la Francophonie (“OIF”). The FIM is also consulted by the Council of Europe, the European Commission and the European Parliament. FIM is also a member of the International Music Council (“IMC”).

⁴¹ http://www.iso.org/iso/home/store/catalogue_tc/catalogue_detail.htm?csnumber=23401

⁴² <http://isrc.ifpi.org/en/isrc-standard/structure>

⁴³ <http://isrc.ifpi.org/en/why-use/benefits>

⁴⁴ DotMusic’s community application defines the community as “a strictly delineated and organized community of individuals, organizations and business, a “logical alliance of communities of a similar nature,” that relate to music: the art of combining sounds rhythmically, melodically or harmonically.” The IFPI’s ISRC codes do not restrict eligibility to members of select music organizations but are available to the entire music community as defined.

In fact, without the IFPI's ISRC codes there would not be legal music consumption because there would be no way to appropriately and efficiently attribute music to music community members.⁴⁶

In the case of .HOTEL's CPE Report, the prevailing applicant received a full grade for "Organization" **because** the Panel found "*recognized community institution(s)/member organization(s)*,"⁴⁷ the International Hotel & Restaurant Association (IH&RA) and HOTREC:

the community as defined in the application has at least one entity mainly dedicated to the community. In fact there are several entities that are mainly dedicated to the community, such as the International Hotel and Restaurant Association (IH&RA), Hospitality Europe (HOTREC), the American Hotel & Lodging Association (AH&LA) and China Hotel Association (CHA)...⁴⁸

...The applicant possesses documented support from the recognized community institution(s)/member organization(s).⁴⁹

In awarding .HOTEL the full two (2) points for *support*, the Panel concluded that the .HOTEL applicant fulfilled two options (either option was acceptable under the CPE Guidelines):

[t]hese groups constitute the recognized institutions to represent the community, and a majority of the overall community as described by the applicant.⁵⁰

The .HOTEL community applicant passed with full scores for *community establishment* and *support* where several entities were found to be *mainly dedicated to the community* and *recognized*, despite those organizations also representing other interests or sectors such as "restaurants" (or some being geographically focused like the AH&LA and the CHA). Conversely, the .MUSIC Report failed to provide full scoring to DotMusic stating that "[t]here is no single such organization recognized by all of the defined community's members as representative of the defined community in its entirety."⁵¹ This finding is improper because there is no policy or rule that requires an organization to represent a community *in its entirety* in order to score the full two points under *support*. While there is an option requiring the "*authority to represent the community*," the Guidelines provided other alternative options available to score the full two points under "*support*." The CPE Guidelines define

⁴⁵ <http://isrc.ifpi.org/en/using-isrc>

⁴⁶ Without the IFPI's ISRC codes, YouTube Music (which is consumed by over 1 billion YouTube users) would be unable to effectively credit the corresponding music copyright owner related to each music video, *see* <https://support.google.com/youtube/answer/6007080> and; For the same reason, nearly all digital music retailers rely on and require ISRC codes, including Apple iTunes⁴⁶ (the world's largest music retailer with over 43 million music tracks⁴⁶, *see* <http://apple.com/itunes/working-itunes/sell-content/music-faq.html> and <http://apple.com/itunes/music> and <http://www.digitalmusicnews.com/2014/04/24/itunes800m>

⁴⁷ .HOTEL CPE, <https://www.icann.org/sites/default/files/tlds/hotel/hotel-cpe-1-1032-95136-en.pdf>, p.6, Ex.A14

⁴⁸ Ibid, *community establishment*, p.2

⁴⁹ Ibid, *support*, p.6

⁵⁰ Ibid

⁵¹ Report, p.3 and p.8

“recognized” as “*institution(s)/organization(s) that are clearly recognized by the community members as representative of that community*” i.e. not in their “*entirety*” but merely “*representative*.” According to the Oxford dictionary, the primary definition of “*recognize*” is to “identify.”⁵² According to the Oxford dictionary, the definition of the adjective “*representative*” is “typical of a class, group, or body of opinion” or “containing typical examples of many or all types” or “to act and speak on behalf of a wider group.”⁵³

Even if an “*entirety*” criterion (not specifically mentioned in the AGB or CPE Guidelines) is assessed, both the International Federation of Arts Councils and Culture Agencies (“IFACCA”) (the only international federation representing government culture agencies and arts councils globally covering all of the Application’s music categories and subsets in their entirety⁵⁴) and ReverbNation (the world’s largest music-dedicated community covering nearly 4 million musicians and industry individuals and organizations in over 100 countries and across all of the Application’s music categories and subsets in their entirety⁵⁵) qualify because they represent all the music categories and music subsets delineated in their entirety without discrimination globally. Based on the foregoing, it is clear that both co-requesters IFACCA and ReverbNation are “typical of a group” that is representative of the “music” community defined in its entirety. Therefore, it is clear that the Application had demonstrable support from multiple globally-recognized organizations mainly dedicated to the Music Community. ICANN’s and the EIU’s failure to properly evaluate the application and find support for the community is apparent when the .MUSIC Report is compared to other prevailing CPE Determinations. Thus, the rationale ICANN used to find that the International Hotel & Restaurant Association (IH&RA) is representative of “hotel” community should apply to IFACCA and ReverbNation in the case of Music Community. That is, if the IH&RA is found to be “recognized” and “representative” entity of the “hotel” community, then the IFACCA and ReverbNation are “representative” [of the music community] too because they share similar characteristics as the IH&RA and other entities found to have satisfy CPE in other determinations. Per the Guidelines:

⁵² http://www.oxforddictionaries.com/us/definition/american_english/recognize

⁵³ http://www.oxforddictionaries.com/us/definition/american_english/representative

⁵⁴ http://ifacca.org/membership/current_members and http://ifacca.org/membership/current_members

⁵⁵ <https://reverbnation.com/band-promotion> (Artists/Bands), <https://reverbnation.com/industryprofessionals>, (Industry), <https://reverbnation.com/venue-promotion> (Venues), and <https://reverbnation.com/fan-promotion> (Fans)

*Consistency of approach in scoring Applications will be of particular importance...⁵⁶ and “[t]he panel must be able to exercise **consistent** and somewhat subjective judgment in making its evaluations in order to reach conclusions that are compelling and defensible...⁵⁷*

According to the CPE Guidelines, the contextual interpretation of community particularities requires in-depth knowledge and expertise of the community.⁵⁸ All the Music Community categories and Music Community subsets that DotMusic delineated as members are essential for the global music sector to operate. Further, the “*logical alliance of communities that related to music*” (or “*alliance of groups*”) functions with cohesion as a whole in a regulated sector to protect music under agreed-upon structures governed by copyright law and international treaties. Without this cohesion, there would be no regulated music sector, and more importantly, music would not exist as we know it.

There are other clear examples of error relating to: consistency, fairness, predictability, equal treatment and procedural violations pertaining to DotMusic’s CPE process in comparison to community applicants that have prevailed CPE for whom ICANN applied the right threshold to pass. For example, ICANN’s scoring of the prevailing .RADIO applicant, in which ICANN assessed the “*majority*” support criterion (thereby granting .RADIO full points), while in contrast for DotMusic’s Application ICANN did not assess the “*majority*” criterion as outlined earlier in this RR:

However, the [.RADIO] applicant possesses documented support from institutions/organizations representing a majority of the community addressed.⁵⁹

The EIU also determined that all .RADIO, .HOTEL, .OSAKA, .ECO, .GAY and .SPA community applicants had “*cohesion*” for *community establishment*:

(i) The EIU established that the .RADIO had *cohesion* solely on the basis of being “*participants in this...[radio] industry*.”⁶⁰

(ii) The EIU awarded .HOTEL full points for *community establishment* for a “*cohesive*” community definition that is comprised of “*categories [that] are a logical alliance of members*.”⁶¹

Even though DotMusic similarly presents music community based on “*logical alliance*” definition that is delineated by “music categories” and “music subsets,” its Application received no points. Failure to recognize the alliance that encompasses the music community is improper;

⁵⁶ CPE Guidelines, p.22

⁵⁷ Ibid

⁵⁸ The CPE Guidelines mandate that “[t]he panel will be an internationally recognized firm or organization with significant demonstrated expertise in the evaluation and assessment of proposals in which the relationship of the proposal to a defined...community plays an important role,” CPE Guidelines, p.22

⁵⁹ .RADIO CPE, <https://icann.org/sites/default/files/tlds/radio/radio-cpe-1-1083-39123-en.pdf>, p.7, Ex.A15-1

⁶⁰ Ibid, p.2

⁶¹ .HOTEL CPE, p.2, Ex.A14

(iii) The EIU awarded full points to .OSAKA determining there was “*cohesion*” for its community because members self identify as having a tie to Osaka, or with the culture of Osaka;⁶² Similarly, DotMusic’s “*logical alliance*” is “*related to music*” (i.e. has a tie) but its Application was penalized;

(iv) The EIU awarded .ECO full points, stating that “*cohesion and awareness is founded in their demonstrable involvement in environmental activities” which “may vary among member categories.”⁶³ Conversely, the EIU penalized DotMusic with a grade of zero based on similar category variance and members that also have demonstrable involvement in music-related activities;*

(v) The improper grading and evaluation in the .MUSIC Report is even more apparent considering the recent CPE decision providing .GAY a full score under *community establishment* establishing that there is stronger *cohesion* than DotMusic based on “*an implicit recognition and awareness of belonging to a community of others who have come out as having non-normative sexual orientations or gender identities, or as their allies*”⁶⁴ (emphasis added). In contradiction, the EIU determined DotMusic’s “*logical alliance*” operating under a regulated sector that is united by copyright lacked any “*cohesion*” of belonging to a community; and

(vi) The EIU awarded .SPA the full points under *community establishment* and *nexus*, while DotMusic scored zero points and three respectively. A perfunctory comparison between DotMusic’s application and the prevailing .SPA application reveals substantial bias and contradictions. Similarly, based on ICANN’s rationale for the .SPA CPE, it is evident that the .MUSIC application should have consistently and fairly received maximum points as well. According to the .SPA application:

The spa community primarily includes:

- Spa operators, professionals and practitioners
- Spa associations and their members around the world
- Spa products and services manufacturers and distributors

...The secondary community generally also includes holistic and personal wellness centers and organizations. While these secondary community organizations do not relate directly to the operation of spas, they nevertheless often overlap with and participate in the spa community and may share certain benefits for the utilization of the .spa domain.⁶⁵

Yet, the .MUSIC Report penalized the Application under *community establishment* to the fullest extent possible (grading zero points) for lacking “*cohesion*” while the .SPA community applicant

⁶² .OSAKA CPE, p.2, Ex.A18

⁶³ .ECO CPE, p.2, Ex.A17

⁶⁴ .GAY CPE, p.2, Ex.A15-2

⁶⁵ .SPA Community Application, <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/downloadapplication/123?t:ac=123>, 20A, Ex.A16-2

was given full points even though their definition of the spa community included a “secondary community” that “do[es] not relate directly” to the string. Contrary to the .MUSIC Report, DotMusic’s application is delineated and restricted to music categories and music subsets that only relate to music, yet it received no points for *community establishment*. ICANN assessed that the .SPA application’s defined community had the requisite awareness among its members because members of all the categories recognize themselves as part of the spa community by their *inclusion* in industry organizations and *participation* in their events:

Members...recognize themselves as part of the spa community as evidenced...by their inclusion in industry organizations and participation in their events.⁶⁶

In contrast, ICANN rejected DotMusic’s membership music categories and music subsets as not having the requisite awareness even though, similar to the spa community, all Music Community members also “*participate*” in music-related events and are included in music groups or music subsets as evidenced by DotMusic’s *majority* music (*logical alliance*) community support of organizations with members representing the overwhelming *majority* of music consumed globally.

Moreover, despite a general definition of the *spa community* that included entities with a non-essential, tangential relationship with the spa community and a *secondary community* that did *not relate directly* to the string, the .SPA applicant was also awarded a full score under *nexus*. In contrast DotMusic’s community *name*, the “*Music Community*,” which matches string, lost 1 point for *nexus*.

As illustrated, when compared to other CPE determinations (*See Exhibit A41*), had policies been followed and a consistent evaluation been applied, then the Application should have received maximum points that would have resulted in a passing CPE grade, a conclusion that is also supported by forty-three (43) separate independent experts (*See Exhibit A40*).

(8.4) Facts and procedural violations show that ICANN did not follow its own processes in the determination of the .MUSIC Report, including critical areas relating to *community establishment, nexus and support*. ICANN is the party responsible for ensuring quality control and a predictable, consistent and fair CPE process.

According to ICANN, “all applicants for a new gTLD registry should be evaluated against transparent and predictable criteria.”⁶⁷ There were multiple prejudicial errors and improper procedural issues with ICANN not following the AGB guidelines and requirements, including:

⁶⁶ .SPA CPE Report, Community Establishment, p.2, Ex.A16-1

⁶⁷ According to the Oxford dictionary, the word “fully” is defined as “completely or entirely; to the furthest extent” or “without lacking or omitting anything,” http://www.oxforddictionaries.com/us/definition/american_english/fully

(i) **Policy misapplication of ICANN-accepted GAC Advice adopted by ICANN before the CPE process began is a procedural error.** Contrary to the .MUSIC CPE Report, the ICANN Board accepted GAC Category 1 Advice that music is a cohesive “regulated sector.” This means that the ICANN Board also agrees that the music community has cohesion. By accepting GAC Advice and rendering a decision that music is: (i) a “*string likely to invoke a level of implied trust from consumers, and carry higher levels of risk associated with consumer harm;*” and (ii) that it is a “*string that is linked to [a] regulated sector*” that “*should operate in a way that is consistent with applicable laws,*”⁶⁸ there is reasonable expectation that ICANN would apply this policy acceptance in all evaluations that are processed to ensure transparency, predictability and consistency. This misapplication of a policy adopted by ICANN before the CPE process began is a procedural error. As such, the New gTLD Program procedural process for DotMusic’s evaluation was unpredictable, lacking both transparency and consistency.

(ii) **Not properly identifying the community definition required in 20A that was labeled as a defined term in the Application in reference to the AGB (“Community”):**

The Community is a strictly delineated and organized community of individuals, organizations and business, a “logical alliance of communities of a similar nature (“**Community**”)", that relate to music: the art of combining sounds rhythmically, melodically or harmonically (Application, 20A)

According to the AGB, the Question section for 20A explicitly states:

20A. Provide the name and full description of the community that the applicant is committing to serve. In the event that this application is included in a community priority evaluation, it will be scored based on the community identified in response to **this** question.⁶⁹

ICANN not only disregarded DotMusic’s definition from 20A, the Report does not mention or properly reference DotMusic’s definition. Instead ICANN construed its own general definition from 20D contravening the AGB’s instructions that “*community priority evaluation*” for DotMusic “*will be scored based on the community identified in response to **this** question*” (i.e. the definition identified in the Application answer to 20A not 20D). According to the .MUSIC Report:

[T]he applicant also includes in its application a more general definition of its community: “all constituents involved in music creation, production and distribution, including government culture agencies and arts councils and other complementor organizations involved in support activities that are aligned with the .MUSIC mission” (**Application, 20D**).

⁶⁸ <https://icann.org/en/system/files/correspondence/crocker-to-schneider-23jun15-en.pdf>, pp.1-2, An.5, p.8, Ex.A34

⁶⁹ AGB, Attachment to Module 2, Evaluation Questions and Criteria, <https://newgtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>, Question, 20A, A-14

In other words, ICANN scored DotMusic’s application relying on critically incorrect variables and parameters. In assessing DotMusic’s definition of the Music Community, ICANN misapplied material policy and permitted material procedural defects and inconsistencies in CPE evaluations to occur, resulting in an improper conclusion that DotMusic did not prevail CPE.

(iii) **Not properly identifying the name of the community to address nexus** that was labeled as a defined term in the Application in reference to the AGB (“**Name**”). While the *name* of the community “*Music Community*” was acknowledged by the EIU, it was not applied under its scoring for *nexus*:

The name of the community served is the “Music Community” (“**Community**”) ⁷⁰

*The “MUSIC” string matches the name (“Name”) of the Community and is the established name by which the Community is commonly known by others.*⁷¹ (See Application 20)

According to the Report:

The community as defined in the application is of considerable size, both in terms of geographical reach and number of members. According to the applicant:

The Music Community’s geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries... with a Community of considerable size with millions of constituents (Application, 20A)⁷²

As evidenced, under *nexus*, ICANN misapplied the wrong “*name*” definition by not applying the Application’s *established name* (the “*Music Community*”) inaccurately determining that the “*there is no “established name” for the applied-for string to match...for a full score on Nexus.*”⁷³ It is beyond shadow of a doubt that the established name that the Application defines and identifies, the “*Music Community*,” exactly matches the string .MUSIC.

(iv) **Not applying the alternate criterion to earn maximum points for support** that corresponds “*documented support...from institutions/organizations representing a majority of the overall community addressed.*”⁷⁴ CPE Guidelines provide that if an applicant lacks “documented authority to represent the community”⁷⁵ then the Panel should consider alternative options as follows: First, the Panel should decide whether the applicant has “documented support from the

⁷⁰ Application, 20A

⁷¹ Ibid

⁷² Report, p.4

⁷³ Report, *Nexus*, p.5

⁷⁴ AGB, *Support*, “Also with respect to “Support,” the plurals in brackets for a score of 2, relate to cases of multiple institutions/organizations. In such cases there must be documented support from institutions/organizations representing a majority of the overall community addressed in order to score 2,” 4-18

⁷⁵ CPE Guidelines, pp.16-18

recognized community institution(s)/member organization(s) to represent the community?”⁷⁶ If the applicant meets this criterion then the full two (2) points are awarded. If not, the Panel should then consider whether:

[t]here are multiple institutions/organizations supporting the application, with documented support from institutions/organizations representing a majority of the overall community addressed?⁷⁷

The Application meets this “*majority*” criterion, but this option was not applied to the .MUSIC CPE process. The Application is a global music community initiative supported by organizations with members representing over ninety-five percent (95%) of music consumed globally (an overwhelming majority),⁷⁸ yet the “majority” criterion was not assessed by ICANN in the grading of *Support*. If one excluded all the music related to DotMusic’s supporting organizations and their members, then music as we know it today would not exist. In fact the majority of music would not be available for consumption or enjoyment (**emphasis added**). The absurdity of the findings of the .MUSIC Report is further shown by another key supporter of DotMusic, NAMM, the trade association that represents nearly all the major music instrument and products’ manufacturers.⁷⁹ Without NAMM’s members’ instruments and music products, music cannot be created. Therefore, it is clear that the Application has the support of the “*majority*” of the community addressed.

In summary of (i), (ii), (iii) and (iv), the evidence supports that there is prejudicial pattern of behavior by ICANN not to follow established process and instructions. No other applicant in the New gTLD Program has provided more evidence, correspondence and research to assist ICANN with the CPE process than DotMusic has to ensure a consistent, predictable and fair evaluation in comparison to other community applicants that have prevailed. Judging from the Report’s inconsistent and contradictory rationale and ICANN’s failure to follow due process, it appears that the objective was to find ways to reject DotMusic’s Application by relying on inaccurate facts and not giving DotMusic the same benefit of the doubt given to the CPE applicants that prevailed. At ICANN’s request, DotMusic also provided detailed answers to Clarifying Questions⁸⁰ (“CQ Answers”), including significant credible and reputable evidence substantiating DotMusic’s

⁷⁶ CPE Guidelines, pp.17-18

⁷⁷ Ibid

⁷⁸ <http://music.us/supporters> and <https://gtldresult.icann.org/applicationstatus/applicationdetails/downloadattachment/142588?t:ac=1392>; See over two-thousand (2,000) Support Letters at Ex.A19-1, A19-2, A19-3, and A19-4; and <https://gtldcomment.icann.org/applicationcomment/viewcomments>

⁷⁹ <https://www.namm.org/about>

⁸⁰ See Clarifying Questions (“CQ”), Ex.A20 and Answers to Clarifying Questions (“CQ Answers”), Ex.A21

Application’s position with respect to the *community definition, community establishment* (including “cohesion”), *nexus* and *support*. A cursory review of the CQ Answers would find support to overturn all the points deducted from the Application.

If the EIU carefully reviewed the CQ Answers then it would be clear what the *community definition (community establishment)* and the *name* of the community (*nexus*) were because it was explicitly identified multiple times.⁸¹ As explicitly outlined in the CPE Guidelines, DotMusic’s “*logical alliance*” community definition explicitly meets criteria: “*With respect to “Delineation” and “Extension,” it should be noted that a community can consist of...a logical alliance of communities.*” This is also substantiated by the AGB, which explicitly states that in the case of a community of an “*alliance of groups*” (such as DotMusic’s Application), “*details about the constituent parts are required.*”⁸² DotMusic’s community definition is a “*strictly delineated and organized logical alliance of communities that relate to music*” (Application, 20A) which unequivocally meets this criterion. Contradicting established procedure, the EIU improperly found that the “*logical alliance*” definition has no cohesion. Moreover, while DotMusic followed the AGB and CPE Guidelines and provided details on each of the delineated music categories and music subsets (i.e. the *constituent parts*) demonstrating how they form the “*logical alliance*” community definition, the Application was penalized to the maximum extent under the Report’s *community establishment* for doing so. Further, dictionary definitions for “*logical*”⁸³ and “*alliance*”⁸⁴ establish that these definitions require cohesion and the *requisite awareness*.

The degree of multitude of direct and indirect evidence make it beyond reasonable doubt that overlooking the Application’s *community definition* and *name* of the community identified was

⁸¹ See CQ Answers: The *community definition* of “logical alliance” is referred to and explicitly defined in seven (7) separate pages of the CQ Answers provided to the EIU at p.6, p.8, p.9, p.12, p.14, p.16 and p.17. Also see CQ Answers, *Community Establishment & Definition Rationale and Methodology*, Annex A (pp-22-43) defining the community as “a delineated and organized logical alliance of communities of similar nature related to music” at p.22, p.25, p.38. Also see *Annexes’* table of contents (p.20), which include *Annex D Venn Diagram for Community Definition and Nexus* that explicitly defines and identifies the *community definition* relating to *community establishment* (See Application, 20A) and the *name* of the community “*music community*” relating to *nexus*.

⁸² AGB, Attachment to Module 2, Evaluation Questions and Criteria: “*Descriptions should include: How the community is structured and organized. For a community consisting of an alliance of groups, details about the constituent parts are required,*” Notes, 20A, A-14

⁸³ Oxford Dictionaries “**logical**” definition: (i) *1. Of or according to the rules of logic or formal argument;* (ii) *1.1 Characterized by or capable of clear, sound reasoning;* (iii) *1.2 (Of an action, development, decision, etc.) natural or sensible given the circumstances, see http://oxforddictionaries.com/us/definition/american_english/logical*

⁸⁴ Oxford Dictionaries “**alliance**” definition: (i) *1. A union or association formed for mutual benefit, especially between organizations;* (ii) *1.1 A relationship based on an affinity in interests, nature, or qualities;* (iii) *1.2 A state of being joined or associated, see http://oxforddictionaries.com/us/definition/american_english/alliance*

grossly negligent resulting in a failing grade for the Application. The omission of the Application's *community definition* and *name* from the .MUSIC Report was a gross error because it would have been impossible to ignore them given that they were explicitly mentioned and identified a significantly number of times as evidenced in:

1. The Application, Q20A;
2. The Public Interest Commitments;
3. Nearly *two-thousand correspondence letters* to ICANN and the EIU;⁸⁵
4. Public comments from supporters in ICANN's microsite relating to the Application;
5. Answers to Clarifying Questions that the EIU requested (emphasis added);
6. Testimonies from over 40 independent experts submitted to ICANN and the EIU;
7. An independent Nielsen poll identifying the *community definition*;

As set forth above, ICANN and the EIU contravened the established vital CPE Guidelines and EIU Panel Process procedures.

(v) ICANN and the EIU contravened established CPE Guidelines and EIU Panel Process procedures.

As the Board should be aware, CPE requires:

Consistency of approach in scoring Applications will be of particular importance...^{86 87}

The EIU will fully cooperate with ICANN's quality control process...⁸⁸

The Panel Firm exercises consistent judgment in making its evaluations in order to reach conclusions that are compelling and defensible, and documents the way in which it has done so in each case.⁸⁹

Furthermore, ICANN affirmed in correspondence with DotMusic that "*in accordance with the CPE Panel's process document to help assure independence of the process, ICANN (either Board or staff) is not involved with the CPE Panel's evaluation of criteria, scoring decisions, or underlying analyses. The coordination of the CPE Panel, as explained in the CPE Panel Process Document, is entirely within the work of the EIU's team.*"⁹⁰ Contrary to this correspondence and the procedures outlined in the ICANN's EIU Panel Process document, ICANN also appears to play a critical role in instructing and subjectively guiding the EIU to reach certain determinations by providing the EIU

⁸⁵ See Ex.A.19-4

⁸⁶ CPE Guidelines, p.22

⁸⁷ In an email exchange between ICANN and the EIU, there is evidence of a "quality control process" for "consistency of approach in scoring across applications" (in this case the CPE process for .LLP, .LLC and GMBH), comparing them for consistency purposes with the .MLS CPE Report: "*Can we have an example (such as was provided in MLS) as to what other meanings might exist?*" See C44, ICANN_DR-00458, p.3, Ex.A27

⁸⁸ Ibid, pp.22-23

⁸⁹ EIU Panel Process, <https://newgtlds.icann.org/en/applicants/cpe/panel-process-07aug14-en.pdf>, p.3, Ex.A12-2

⁹⁰ See Ex.A23

with rationale, subjective redline edits, comments, presentations and other forms of communication before the final CPE determinations are released publicly.

Public documents disclosed to Dot Registry (the community applicant for .INC, .LLC, and .LLP) and its legal counsel Arif Ali, in an Independent Review Proceeding (“IRP”) against ICANN, present clear evidence that ICANN edited and materially redlined the CPE draft Determinations for .INC, .GMBH, .LLC and .LLC on the EIU’s behalf before their final release, providing substantive and subjective rationale, making substantive redlines as well as suggested edits, which is a serious violation of established procedure and puts ICANN Staff at the heart of CPE decision-making in violation of CPE established procedure.⁹¹ For example, in an email from EIU to ICANN on June 2, 2014 the EIU makes ICANN suggested changes and even asks permission from ICANN to make the same changes to a different application:

From: EIU to ICANN
Email Subject: Re: Updated draft results (4)

...I've made the suggested changes... Quick question: is there a reason why you didn't send back .INC? Should we make the same changes for that evaluation?⁹²

On June 3rd, 2014, the most revealing email shows that ICANN is involved in the decision-making process for determining CPE results, including providing subjective feedback, discussing rationale and providing presentations to the EIU:

From: ICANN to EIU
Email Subject: Re: Updated draft results (4)

...On my initial review they looked really good. We will discuss the rationale in the presentation tomorrow. I would ask we make one change to all of the reports prior to final version...⁹³

Aside from the procedural, policy and quality control process violations by both ICANN and the EIU, it appears from the hands-on instructions, discussions, guidance and more importantly subjective decision-making rationale provided by ICANN to the EIU, that the EIU clearly lacked the necessary training and expertise to make consistent judgment even though the EIU Panel Process document required that:⁹⁴

All EIU evaluators undergo regular training to ensure full understanding of all CPE requirements as listed in the Applicant Guidebook, as well as to ensure consistent judgment. This process

⁹¹ See <https://icann.org/en/system/files/files/additional-submission-exhibits-c35-13jul15-en.pdf>, C042 – C044; Also see Ex.A25, Ex.A26 and Ex.A27

⁹² See Ex.27, C044, ICANN_DR_00457, p. 2

⁹³ Ibid, C044, p. ICANN_DR_00456, p.1

⁹⁴ EIU Panel Process, p.2

included a pilot training process, which has been followed by regular training sessions to ensure that all evaluators have the same understanding of the evaluation process and procedures.

EIU evaluators are highly qualified... and have expertise in applying criteria and standardized methodologies across a broad variety of issues in a consistent and systematic manner.

ICANN and the EIU relied on false and inaccurate material information and refused to take the clearly identified and relevant information into consideration in their rationale and decision-making process, which contradicted established ICANN policies. ICANN's and the EIU's disregard of the *community definition, name* of the community and failure to apply the majority *support* criterion is quite worrisome given the time allotted to determine the Report (July 27, 2015 to February 10, 2016). In an IRP final declaration concerning the .ECO and .HOTEL community applications,⁹⁵ the IRP Panelists agreed and also echoed DotMusic's serious concerns and glaring problems with the CPE Process in general:

[A]t the hearing, ICANN confirmed that...the EIU has no process for comparing the outcome of one CPE evaluation with another in order to ensure consistency. It further confirmed that ICANN itself has no quality review or control process, which compares the determinations of the EIU on CPE applications. Much was made in this IRP of the inconsistencies, or at least apparent inconsistencies, between the outcomes of different CPE evaluations by the EIU, some of which, on the basis solely of the arguments provided by the Claimants, have some merit.⁹⁶ ...[T]he Panel feels strongly that there needs to be a consistency of approach in making CPE evaluations and if different applications are being evaluated by different individual evaluators, some form of outcome comparison, quality review or quality control procedure needs to be in place to ensure consistency, both of approach and marking, by evaluators. As was seen in the .eco evaluation, where a single mark is the difference between prevailing at CPE and not, there needs to be a system in place that ensures that marks are allocated on a consistent and predictable basis by different individual evaluators.⁹⁷ ...ICANN confirmed that the EIU's determinations are presumptively final, and the Board's review on reconsideration is not substantive, but rather is limited to whether the EIU followed established policy or procedure...ICANN confirmed that the core values, which apply to ICANN by virtue of its Bylaws, have not been imposed contractually on the EIU, and the EIU are not, in consequence, subject to them.⁹⁸ The combination of these statements gives cause for concern to the Panel.⁹⁹ The Panel fails to see why the EIU is not mandated to apply ICANN's core values in making its determinations whilst, obviously, taking into account the limits on direct application of all the core values as reflected in that paragraph of the Bylaws. Accordingly, the Panel suggests that the ICANN Board should ensure that there is a flow through of the application of ICANN's core values to entities such as the EIU.¹⁰⁰ In conclusion,...the Claimants in this IRP have raised a number of serious issues which give cause for concern and which the Panel considers the Board need to address.¹⁰¹

⁹⁵ Little Birch and Minds + Machines v. ICANN (.ECO) & Despegar Online SRL, Donuts, Famous Four Media, Registry, and Radix v. ICANN (.HOTEL) Independent Review Proceeding final Declaration, (the “.HOTEL/.ECO IRP”) <https://icann.org/en/system/files/files/irp-despegar-online-et-al-final-declaration-12feb16-en.pdf>

⁹⁶ .HOTEL/.ECO IRP, ¶ 146, p.37, Ex.A28

⁹⁷ Ibid, ¶ 147, pp.37-38

⁹⁸ Ibid, ¶ 148, p.38

⁹⁹ Ibid, ¶ 149, p.38

¹⁰⁰ Ibid, ¶ 150, p.38

¹⁰¹ Ibid, ¶ 158, p.39

(vi) **Google conflict of interest.** Finally, it bears noting that the multiple process violations evidenced in this RR are further exacerbated by the conflict of interest with Google, another .MUSIC applicant.¹⁰² According to ICANN’s Panel Process document,¹⁰³ “*the following principles characterize the EIU evaluation process for gTLD applications: All EIU evaluators, including the core team, have ensured that no conflicts of interest exist.” However, Eric Schmidt, the chairman of Google, was a spokesperson,¹⁰⁴ a trustee¹⁰⁵ and on the board of Economist from November, 2013¹⁰⁶ to December, 2015.¹⁰⁷ DotMusic’s CPE process for .MUSIC conducted by the Economist began in July, 2015.¹⁰⁸ That means for about 5 months during DotMusic’s CPE evaluation the EIU had conflict of interest in its role of managing the CPE Process on behalf of ICANN. This potential conflict of interest supported by what appears to be a strong correlation in success and failure rates in CPE based on whether a community applicant was in Google’s contention set or not. As of February 10th, 2016, there were 22 community applicants that have gone through CPE.¹⁰⁹ Out of the 22 community applicants, 10 were in a contention set with Google. **None of the applicants in contention with Google prevailed CPE. The success rate to prevail CPE without Google in the contention set was approximately 42%** (i.e. 5 out of 12 applications). The EIU passed nearly half the community applications if they were not in a contention set with Google, while failing all applicants competing with Google (including DotMusic). This statistically significant difference is a substantial discrepancy following a strong correlative pattern. ICANN CEO Fadi Chehade and the Board acknowledged the significance and sensitivity of this conflict of interest at the Singapore ICANN Meeting *Public Forum* in February 2015,¹¹⁰ yet nothing was done to ensure the Economist had no conflict of interest when CPE began in July 2015.*

¹⁰² This is not the first time DotMusic reports a conflict of issue relating to .MUSIC. Doug Isenberg represented .MUSIC competitor Amazon in Community Objections (“CO”) filed by DotMusic, while also serving as a New gTLD Program Legal Rights Objection (“LRO”) panelist.

¹⁰³ EIU Panel Process, p.2

¹⁰⁴ <https://www.youtube.com/watch?v=kHSwRHeeCqg>, see Ex.A29, p.1; Also see Ex.A29, p.2

¹⁰⁵ See http://www.economistgroup.com/pdfs/Annual_Report_2015_FINAL.pdf, p.18, Ex.A30-2

¹⁰⁶ Ibid, p.29; Also see The Economist Board retrieved on September 30, 2015:

https://web.archive.org/web/20150930040432/http://www.economistgroup.com/results_and_governance/board.html

¹⁰⁷ See <http://www.theguardian.com/media/2015/dec/10/economist-appoints-tessa-jowell-to-board-as-googles-eric-schmidt-departs>, Ex.A31

¹⁰⁸ See <https://newgtlds.icann.org/en/applicants/cpe#invitations>

¹⁰⁹ See, <https://newgtlds.icann.org/en/applicants/cpe#invitations>

¹¹⁰ See <https://singapore52.icann.org/en/schedule/thu-public-forum/transcript-public-forum-12feb15-en.pdf>, February 12th, 2015, p.61, Ex.A30-1

9. What are you asking ICANN to do now?

Requesters ask that the result of the .MUSIC Report be overturned by ICANN, by awarding DotMusic an additional six (6) points (or a passing grade). These are the total points that were deducted by ICANN as a result of ICANN not consistently following the CPE process and not applying the proper scoring guidelines to DotMusic’s Application in accordance with the policies and procedures defined in the AGB. In fact, ICANN engaged in numerous procedural and policy violations (including material omissions and oversights), which lead to substantial flaws in its rationale methodology and scoring process. Additionally a linear comparative analysis between DotMusic’s application and the prevailing CPE applications for .SPA, .RADIO, .ECO, .OSAKA, and .HOTEL leads to the conclusion ICANN contravened the CPE Process and did not employ “consistent judgment in making its evaluations in order to reach conclusions that are compelling and defensible, document[ing] the way in which it has done so in each of the above mentioned community application cases.”¹¹¹

DotMusic’s community Application clearly meets the **trust** claim (*See* ICANN’s 2007 Recommendations and Principles to launch the New gTLD Program, IGH CV-10) given its demonstrable global music community majority support, multi-stakeholder governance structure and music-tailored policies that serve a higher purpose, as outlined in its Application that .MUSIC:

1. Is exclusive only to legitimate members of the entire global music community;
2. Is governed and controlled by the global music community. Each music constituent community type has a governance seat on the multi-stakeholder .MUSIC Board (PAB);¹¹²
3. Is supported by organizations with members representing over 95% of music consumed globally (i.e. a majority);
4. Has enhanced safeguards to protect intellectual property, prevent cybersquatting and eliminate copyright infringement;
5. Has incorporated all IFPI intellectual property protection provisions that include policies to stop domain hopping, takedown policies in the case of piracy, authorization provisions, permanent blocks, privacy/proxy provision, true name/address mandates and trusted sender complaint policies amongst others;
6. Requires registrant validation via a mandatory two-step phone/email authentication process;
7. Protects names of famous music artists and brands by giving registration priority to those entities during a priority-based launch phase. .MUSIC also gives registration priority to community members belonging to legitimate Music Community Member Organizations to spur adoption, trust and safety;
8. Has domain naming conditions that eliminate cybersquatting and famous music brand trademark infringement. Registrants are only allowed to register their own name, acronym or “Doing Business As;”
9. Only allows legal music content and legal music usage; and
10. Will take down any domain infringing on any of its enhanced safeguards.

¹¹¹ EIU Panel Process, p.3

¹¹² *See* Expanding multi-stakeholder Board at <http://music.us/board>

Aligned with its community-based mission, policies and PIC,¹¹³ DotMusic's Application is the only applicant with music-tailored enhanced copyright protection safeguards that include:

- **Stopping Domain Hopping**: All domains that trusted senders...have sent over 10K notices against will be on the block domain list, which will continually be updated, unless there is evidence that the domain has been authorized by most of the applicable rights holders to use the content in question...
- **Take Down Policies**: DotMusic will require all registrants on music to have and implement policies that include the following: (i) upon receipt of a facially valid copyright take down notice, the registrant must search for all copies or links to access the noticed content on the site, and remove all such copies or links from its site; and (ii) it must implement a strong repeat infringer policy.... DotMusic will suspend the domain if the registrant fails to have or enforce such policies.
- **Stay Down and Repeat Offender**: DotMusic will suspend the domain if the registrant fails to have or enforce DotMusic takedown policies.Repeat offenders will be disallowed from registering.
- **Authorization**: Confirmation that "content that they otherwise have the right to post" means that the poster has express authorization to post the content.
- **Permanent Block**: Blocked domains will not be made available for registration by any third party unless there is a two third (2/3) vote by the Advisory Committee...
- **Privacy / Proxy**: Requirement that privacy/proxy services will be compliant with DotMusic's Name Selection policy (mandating that the domain is the name of the registrant, their acronym, "doing business as," description of their mission or activities) and discloses the beneficial registrant as per DotMusic's Registration Policies. If such disclosure is not made then the registrant will not be allowed to proceed with registration.
- **True name and address**: If a .MUSIC domain makes available any music owned or posted by a third party...(directly or indirectly), the domain must prominently post on the site the true name of the website operator, a contact person...phone number, physical address, and email address at which the contact person may be contacted.
- **Trusted Sender Complaint**: If .MUSIC receives a complaint from a trusted sender...then DotMusic will investigate the complaint and suspend the domain, giving the registrant reasonable time to fix compliance matter. The domain will be terminated if registrant does not fix the compliance matter or fails to respond to the complaint.¹¹⁴

The Board should note the level of support for DotMusic's Application and the Application's maximum score under its *Registration Policies* that are aligned with its community-based purpose (*Eligibility, Name Selection, Content and Use and Enforcement*¹¹⁵) as evidence that it is "in the best interest of the Internet community" for DotMusic to be awarded .MUSIC. ICANN Board/NGPC member George Sadowsky¹¹⁶ hit the nail on the head on the *only* goal that matters: "*ensuring user trust in using the DNS*" and "*to strengthen user trust*:"

The reconsideration process is a very narrowly focused instrument, relying solely upon investigating deviations from established and agreed upon process...it is limited in scope. In particular, it does not address situations where process has in fact been followed, but the results of such process have been regarded, sometimes quite widely, as being contrary to what might be best for significant or all segments of the...community and/or Internet users in general..."We are

¹¹³ Application 20E; Also See PIC, Commitments 1-8, pp.1-2; PIC, pp.22-27

¹¹⁴ Application 20E; Also See PIC, Commitments 1-8, pp.1-2; PIC, pp.22-27

¹¹⁵ Report, *Registration Policies*, pp.6-7

¹¹⁶ <https://www.icann.org/profiles/george-sadowsky>, <https://www.icann.org/resources/pages/board-of-directors> and <https://www.icann.org/resources/pages/new-gtld-program-committee-2014-03-21-en>

unwittingly substituting the means for the goal, and making decisions regarding the goal on the basis of a means test. This is a disservice to the Internet user community.¹¹⁷

In a statement the week after the release of the .MUSIC Report, ICANN CEO Fadi Chehade agreed that with respect to intellectual property infringement (which is at the heart of the Application's enhanced safeguards), "*ICANN, where necessary and appropriate, shape the discussion and commit to be part of a solution. [ICANN] cannot simply put [its] head in the sand and say these issues are not of [ICANN's] concern:*"

As issues such as intellectual property infringement...are addressed in other fora, ICANN ...where necessary and appropriate, shape the discussion and debate and commit to be part of a solution in keeping with our values and mission. We cannot simply put our head in the sand and say that these issues are outside of the logical infrastructure layer in which we operate and thus not of our concern. Some solutions within the economic and societal layers of digital governance require distributed, innovative and collaborative issue-specific networks, of which the technical community depending on the issue sometimes must be a key part. We must remain part of the global conversations on digital governance, aware and ready to act when necessary.¹¹⁸

Aligned with ICANN's CEO's own statements to protect the public interest and the music community's intellectual property rights, **we request ICANN to overturn the .MUSIC CPE Report and approve DotMusic's community application** because (i) of the preponderance of evidence and support that DotMusic's application exceeds the criteria established for community priority evaluation in comparison to other prevailing CPE applicants;¹¹⁹ (ii) ICANN inaction led to multiple CPE process violations, prejudicial errors and an unfair and inconsistent quality control process when evaluating DotMusic's application (in itself and in comparison to others); and (iii) more importantly "it would be in the best interest of the Internet community" for ICANN to do so given the community application's demonstrable support that represents over 95% of music consumed globally and DotMusic's Public Interest Commitments and music-tailored *Registration Policies* (taken from a "holistic perspective" as required by ICANN Guidelines¹²⁰) that scored

¹¹⁷ Booking.com B.V. v. ICANN, ICDR Case No. 50-2014-000247 (March 3, 2015) Final Declaration at <https://www.icann.org/en/system/files/files/final-declaration-03mar15-en.pdf>, ¶ 119, Ex.A6

¹¹⁸ Fadi Chehade (ICANN CEO), <https://icann.org/en/system/files/correspondence/chehade-to-icann-board-19feb16-en.pdf>, p.6, February 19, 2016, Ex.A33

¹¹⁹ ICANN ignored DotMusic's answers to Clarifying Questions, over 40 testimonies filed by independent experts (See Appendix A, p.36, Ex.A32), an independent Nielsen poll conducted with over 2,000 participants (See Appendix B, p.38, Ex.A32), and nearly 2,000 letters of support (See Ex.A19-1, A19-2, A19-3, A19-4 and A-19-5 and <https://gtldcomment.icann.org/applicationcomment/viewcomments>), which provide clear evidence that substantiates scoring maximum points under *Community Establishment, Nexus and Support*.

¹²⁰ The scoring of the *Registration Policies* section related to *Name Selection, Content and Use and Enforcement* is the only criterion to be graded from a "holistic perspective." See CPE Guidelines, pp.12-14

maximum points. DotMusic also requests: (i) to meet with individual Board members; (ii) a meeting with the ICANN Board; and (iii) a hearing to clarify the positions expressed in this RR.

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

DotMusic is a community applicant for .MUSIC. The justifications under which DotMusic has standing and the right to assert this RR are:

- i) Predictability: [gTLDs] must be introduced in an orderly, timely and predictable way.¹²¹
- ii) Breach of Fundamental Fairness: Basic principles of due process to proceeding were violated and lacked accountability by ICANN, including adequate quality control;¹²²
- iii) Conflict of Interest Issues;
- iv) Failure to Consider Evidence filed; and
- v) Violation of ICANN Articles of Incorporation/Bylaws:
 - 1. Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest.¹²³
 - 2. Preserving and enhancing the operational stability, reliability, security, and global interoperability of the Internet.¹²⁴
 - 3. Employing open and transparent policy development mechanisms that (i) promote well-informed decisions based on expert advice, and (ii) ensure that those entities most affected can assist in the policy development process.¹²⁵
 - 4. Making decisions by applying documented policies neutrally and objectively, with integrity and fairness.¹²⁶
 - 5. Acting with a speed that is responsive to the needs of the Internet while, as part of the decision-making process, obtaining informed input from those entities most affected.¹²⁷
 - 6. Remaining accountable to the Internet community through mechanisms that enhance ICANN's effectiveness.¹²⁸
 - 7. While remaining rooted in the private sector, recognizing that governments and public authorities are responsible for public policy [e.g. copyright law and setting certain royalty rates for music's regulated sector] and duly taking into account governments' or public authorities' recommendations.¹²⁹

¹²¹ Final Issue Report on New gTLD Subsequent Procedures, <https://gnso.icann.org/en/issues/new-gtlds/subsequent-procedures-final-issue-04dec15-en.pdf>, at pp.23-24

¹²² JAS established that “*the existence of a visible and well-publicized proactive quality program properly incented all evaluation panel vendors to be appropriately cognizant of evaluation consistency, accuracy, and process fidelity, and perform accordingly.*” The .MUSIC CPE lacked a “*proactive quality control process*” deficient of the Initial Evaluation “*unified approach,*” which “*substantially mitigated the risk of isolation and inconsistent or divergent evaluations,*” ICANN Initial Evaluation Quality Control Program Report, <https://newgtlds.icann.org/en/program-status/application-results/ie-quality-program-26aug14-en.pdf>, p.16. Also see Ex.A38 and Ex.A39

¹²³ ICANN Bylaws, Art. I, § 2.6

¹²⁴ ICANN Bylaws, Art. I, § 2.1

¹²⁵ ICANN Bylaws, Art. I, § 2.7

¹²⁶ ICANN Bylaws, Art. I, § 2.8

¹²⁷ ICANN Bylaws, Art. I, § 2.9

¹²⁸ ICANN Bylaws, Art. I, § 2.10

¹²⁹ ICANN Bylaws, Art. I, § 2.11

8. Non-discriminatory treatment: ICANN shall not apply its standards, policies, procedures, or practices inequitably or single out any particular party for disparate treatment unless justified by substantial and reasonable cause, such as the promotion of effective competition.¹³⁰
9. Transparency: ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness.¹³¹

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

Yes

11a. If yes, Is the causal connection between the circumstances of the Reconsideration Request and the harm the same for all of the complaining parties? Yes.

Do you have any documents you want to provide to ICANN? Yes, see Exhibits

Terms and Conditions for Submission of Reconsideration Requests:

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

Respectfully Submitted,

Constantinos Roussos
DotMusic Founder

Tina Dam
DotMusic Chief Operating Officer

Cc: Jason Schaeffer
DotMusic Legal Counsel

February 24, 2016

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

DotMusic Board: <http://music.us/board>

DotMusic Supporting Organizations: <http://music.us/supporters>

¹³⁰ ICANN Bylaws, Art. II, § 3

¹³¹ ICANN Bylaws, Art. III, § 1

Exhibit DIDP A92

yourname.music



www.music.us

**DotMusic Limited Response to Clarifying
Question 1 (A - E) from ICANN and the EIU**

Application ID: 1-1115-14110
Applied-for String: Music
Applicant Name: DotMusic Limited

October 29, 2015

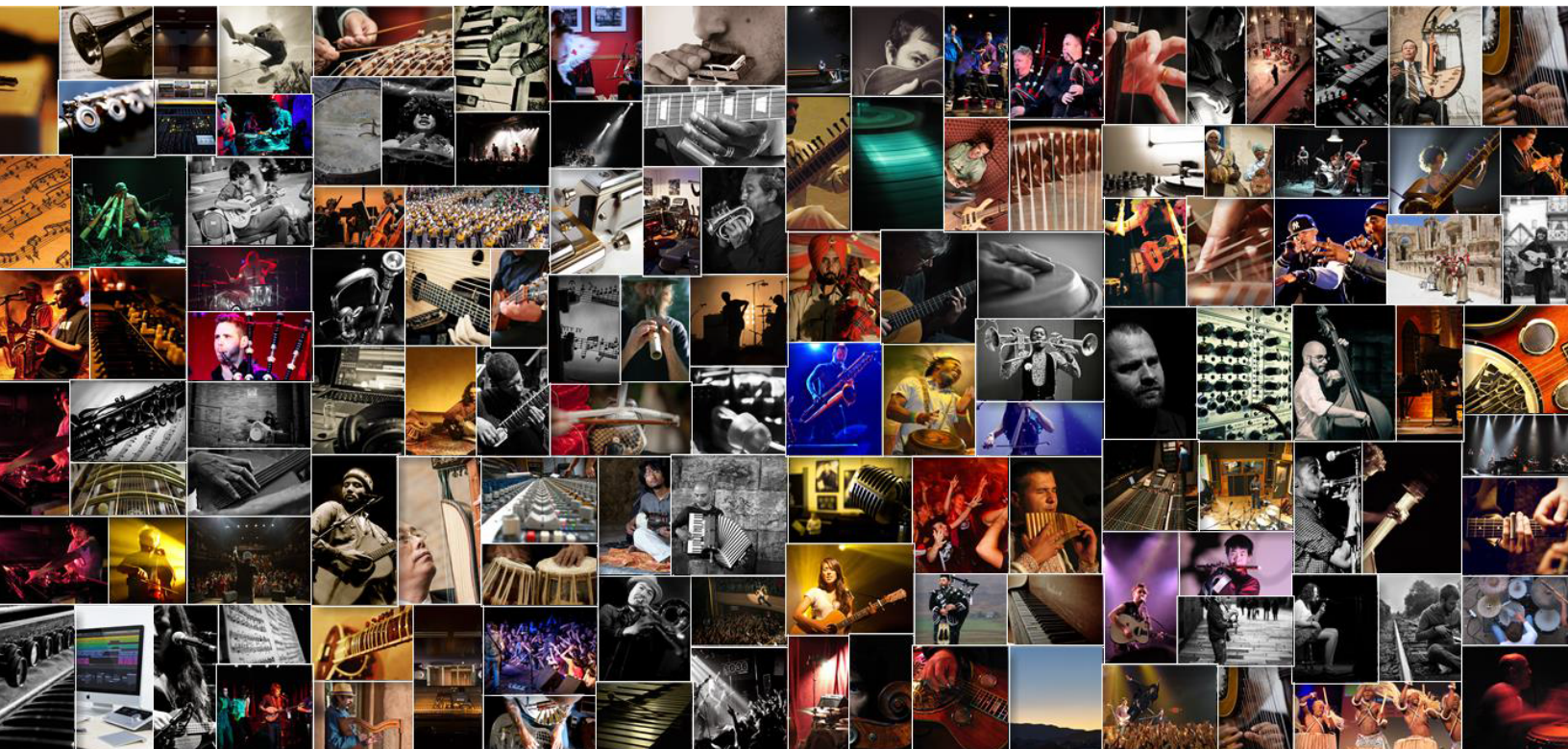


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Answers to Clarifying Questions

The objective of this Response to the EIU and ICANN is to answer the Clarifying Question (A – E) that was received from ICANN and the EIU on September 29th, 2015. All documentation and evidence provided by DotMusic is within the scope of the Clarifying Question in the areas of *Community Establishment* (Criterion 1) and the *Nexus between Proposed String and Community* (Criterion 2) consistent with the language in DotMusic’s Application¹ and consistent with previous CPE Determinations.²

DotMusic will also provide compelling evidence that the methodology adopted to define the community relating to the Clarifying Question was not construed because DotMusic:

- 1) Used the industry standard methodology using NAICS codes adopted by several of the most prominent music cities (Georgia,³ Nashville,⁴ Seattle,⁵ Detroit,⁶ Austin,⁷ Chicago,⁸ Cleveland⁹ and Memphis¹⁰) in defining, clustering and assessing their local music community’s impact with organized and delineated criteria;
- 2) Used the delineation recommendations by UNESCO of using an organized, delineated and symbiotic cluster of industry classification codes, “since no single standard industry classification adequately encompasses the diversity of musical activity and commerce; rather, it is possible to identify several components which taken together provide a delineation of the extent and coverage of the term “music industry”. This can be done by identifying...groups of stakeholders”¹¹ (emphasis added);

¹ <https://gtldresult.icann.org/applicationstatus/applicationdetails/1392>

² <https://newgtlds.icann.org/en/applicants/cpe#invitations>

³ B. William Riall, Ph.D., Economic and Fiscal Impact Analysis of the Music Industry in Georgia, May 2011,

<http://www.georgia.org/wp-content/uploads/2013/09/Georgia-Music-Business-Economic-Impact-Study2011.pdf>

⁴ <http://www.nashville.gov/Portals/0/SiteContent/MayorsOffice/EcDev/NashvilleMusicIndustryStudy.pdf>, Pg. 14-16

⁵ W. Beyers, A. Bonds, A. Wenzl, P. Sommers, The Economic Impact of Seattle’s music industry - A Report for the City of Seattle’s Office of Economic Development, University of Washington, February 2004

http://web.williams.edu/Economics/ArtsEcon/Documents/Seattle_Music_StudyFinal.pdf

⁶ Colby Spencer Cesaro, Alex Rosaen, Lauren Branneman, Music Business in Detroit, Anderson Economic Group,

<http://www.andersoneconomicgroup.com/portals/0/aeg%20report%20-%20music%20business%20in%20detroit.pdf>

⁷ Austin Music Census, The City of Austin Economic Development Department’s Music & Entertainment Division, June 2015, https://www.austintexas.gov/sites/default/files/files/Austin_Music_Census_Interactive_PDF_53115.pdf

⁸ Lawrence Rothfield, Don Coursey, Sarah Lee, Daniel Silver and Wendy Norris, A Report on the Music Industry in Chicago, Chicago Music Commission, Cultural Policy Center, University of Chicago, 2007, <http://www-news.uchicago.edu/releases/08/pdf/080122.music.pdf>

⁹ Dr. Iryna V. Lendel, Remix Cleveland: The Cleveland Music Sector and its Economic Impact, Community Partnership For Arts and Culture, Center for Economic Development, 2011,

http://cua6.urban.csuohio.edu/publications/center/center_for_economic_development/Remix_Cleveland_Full_Report_102411.pdf

¹⁰ Gnuschke, John E.; Jeff Wallace, Economic Impact of the Music Industry in Memphis and Shelby County, *Business Perspectives*. University of Memphis. 2004. *HighBeam Research*. 28 Oct. 2015,

<http://www.highbeam.com/doc/1G1-126612058.html> and <http://www.freepatentsonline.com/article/Business-Perspectives/126612058.html>

¹¹ UNESCO, The Global Alliance for Cultural Diversity, Division of Arts and Cultural Enterprise, The Music

- 3) Fine-tuned its Registration Policies to calibrate and offset the inefficiencies and deficiencies of the NAICS code methodology of Delineation to ensure there is no substantial overreaching (at either side of the spectrum) in order to completely match the Nexus of the string consistent with DotMusic’s community definition (i.e. to ensure only entities related to the string with the requisite awareness of the community defined are included and not to exclude any entity that has a legitimate purpose in addressing the community represented by the string);
- 4) Conducted a Nielsen/Harris poll with over two-thousand (2,000) diverse participants to ensure that the general public would clearly associate the string with the community defined by DotMusic (See Annex H);
- 5) Provided forty-three (43) expert testimonies agreeing that the Delineation and Nexus of the community defined matches the string as provided by DotMusic in its application (See Annex K);
- 6) Provided support letters from nearly all the most globally-recognized music organizations that comprise of a majority of the global music community as defined and represent over 95% of global music consumed, including organizations, such as the IFPI that *mainly* dedicated to the community.¹² These relevant, non-negligible organizations also provide compelling evidence that DotMusic’s definition is not construed and is indeed a definition supported by these endorsing organizations.

DotMusic used the NAICS Codes subset codes, allowing members to “self-identify” their “music” membership with “music” subsets of the NAICS. This standard NAICS methodology has been adopted by researchers analyzing the music industries, including city-based music industries. (See Annex A for further explanation and detailed analysis on the methodology and rationale adopted as well as Annexes I and J for a complete overview and analysis of the DotMusic application with respect to the CPE Guidelines and the Applicant Guidebook if more clarification is needed).

Industry in the New Millenium: Global and Local Perspectives, October 2002,
[http://portal.unesco.org/culture/en/files/25428/11066604353The Music Industry in the new Millenium.pdf/The+Music+Industry+in+the+new+Millenium.pdf](http://portal.unesco.org/culture/en/files/25428/11066604353The_Music_Industry_in_the_new_Millenium.pdf/The+Music+Industry+in+the+new+Millenium.pdf), Pg.2 and Pg.3

¹² For example, when the IFPI files to take down an illegal song on a pirate site, the IFPI also performs the function of protecting other specific rights that may be attributed to other rights holders as well, such as the publishers or songwriters that may also be associated with the song. This symbiotic and overlapping relationship further highlights why the IFPI is an organization *mainly* dedicated to the community defined (See <http://ifpi.org/what-we-do.php> and [https://www.prsformusic.com/SiteCollectionDocuments/Membership/The Music Universe.pdf](https://www.prsformusic.com/SiteCollectionDocuments/Membership/The_Music_Universe.pdf)). Furthermore, the IFPI administers the International Standard Recording Code (ISRC), the international identification system and global industry standard for sound recordings and music video recordings...which enables recordings to be uniquely and permanently identified across different services, across borders, or under different licensing deals (See <http://isrc.ifpi.org/en/>).

Answer to Clarifying Question #1: A

The Panel notes that for the following member categories in Table 2 below, the official NAICS code definition refers to a broader industry group or an industry group that is not identical to the one cited by the applicant. The Panel would like to clarify whether all entities identified by the NAICS code (see “Official 2012 NAICS definition:” in the table below) are included in the applicant’s defined community. If all entities included in the official NAICS definition are not included in the proposed community, please clarify the delineation of members and non-members and how that will be determined.

<i>Table 2 #</i>	<i>Application's member category</i>	<i>Corresponding NAICS Code Cited by Application</i>	<i>Official 2012 NAICS definition</i>
4	Music recording industries	512290	Other Sound Recording Industries
5	Music recording & rehearsal studios	512240	Sound Recording Studios
6	Music distributors, promoters & record labels	512220	Integrated Record Production/Distribution
12	Music accountants	541211	Offices of Certified Public Accountants
13	Music lawyers	541110	Offices of Lawyers
15	Music education & schools	611610	Fine Arts Schools
18	Music promoters of performing arts with facilities	711310	Promoters of Performing Arts, Sports, and Similar Events with Facilities
19	Music promoters of performing arts without facilities	711320	Promoters of performing arts, sports, and similar events without facilities
21	Other music performing arts companies	711190	Other Performing Arts Companies
23	Music audio and video equipment manufacturers	334310	Audio and Video Equipment Manufacturing
24	Music radio networks	515111	Radio Networks
25	Music radio stations	515112	Radio Stations
26	Music archives & libraries	519120	Libraries and Archives
27	Music business & management consultants	541611	Administrative Management and General Management Consulting Services
28	Music collection agencies & performance rights organizations	561440	Collection Agencies
29	Music therapists	621340	Offices of Physical, Occupational and Speech Therapists, and Audiologists
30	Music business associations	813910	Business Associations
31	Music coalitions, associations, organizations, information centers & export offices	813920	Professional Organizations
32	Music unions	813930	Labor Unions and Similar Labor Organizations
33	Music public relations agencies	541820	Public Relations Agencies
34	Music journalists & bloggers	711510	Independent Artists, Writers, and Performers

35	Internet Music radio station	519130	Internet Publishing and Broadcasting and Web Search Portals
36	Music broadcasters	515120	Television broadcasting
37	Music video producers	512110	Motion Picture and Video Production
38	Music marketing services	541613	Marketing Consulting Services
39	Music audio engineers	541330	Engineering Services
40	Music ticketing	561599	All Other Travel Arrangement and Reservation Services
41	Music recreation establishments	722410	Drinking Places (Alcoholic Beverages)
42	Music fans/clubs	813410	Civic and Social Organizations

Entities identified by the NAICS code (see "Official 2012 NAICS Definition" in Table 2) are included in the manner that DotMusic's application limits them solely to the Music Community. DotMusic addressed the NAICS Codes and ensured that only "**music**-related" entities that are organized and delineated by the NAICS codes may be members of the "Community" defined. It is noted that neither the Applicant Guidebook (the "AGB") nor the CPE Guidelines provided a concrete meaning for "define" and "definition" (emphasis added). Furthermore, the AGB requires only that the constituents of a community be members of that community. There was no requirement that members of a community "act" as a community nor does the AGB say anything about how community members must "associate themselves." The AGB also has no language disallowing membership based on participation in the community defined.¹³ Furthermore, a non-exhaustive list of membership criteria was allowed by the AGB, which may include "a logical alliance members based on categories that are solely community-related" (i.e. in the case of music, they are music-related),¹⁴ "self-identification" in a community (e.g. identifying that they have a tie with the community) or those who have a legitimate purpose in addressing the community (e.g. by certifying to abide to a set of community-tailored registration requirements that are aligned with the goals of the community i.e. are aligned with the community's mission and purpose).¹⁵ The AGB also allows for different types of membership just as long as there demonstrable involvement in community-related activities that may vary among member constituent types.¹⁶

As such, DotMusic used the industry standard methodology for defining music industries using NAICS codes, allowing members to "self-identify" their "music" membership with solely the "**music**" subsets of the NAICS codes that only relate to "**music**" (emphasis added) so there is no overreaching whatsoever and the community defined and delineated matches the "**music**" string. In order to match the string with

¹³ For example, in the prevailing .RADIO CPE Determination, the EIU was able to conclude that the .RADIO community is "clearly defined" and that, solely on the basis of being "participants in this clearly defined industry, they have an awareness and recognition of their inclusion in the industry community" (emphasis added) (Pg.2).

¹⁴ For example, in the prevailing .HOTEL CPE Determination, the EIU awarded full points for Community Establishment for a community definition that is comprised of "categories [that] are a logical alliance of members" (emphasis added) (Pg. 2)

¹⁵ For example, in the prevailing .OSAKA CPE Determination, the EIU awarded full points for Community Establishment and Nexus for a community definition that stated that: "[m]embers of the community are defined as those who are within the Osaka geographical area as well as those who self identify as having a tie to Osaka, or the culture of Osaka. Major participants of the community include, but are not limited to the following: [...] Entities, including natural persons who have a legitimate purpose in addressing the community" (emphasis added) (Pg. 2).

¹⁶ For example, in the prevailing .ECO CPE Determination, the EIU awarded full points for Community Establishment stating that "the application dictates four types of members, whose cohesion and awareness is founded in their demonstrable involvement in environmental activities and who "demonstrate active commitment, practice and reporting." This involvement may vary among member categories" (emphasis added) (Pg. 2).

the community defined it was vital to include all music constituent types (See Annex D, Venn Diagram for Community Definition and Nexus) – including complementary entities e.g. government culture agencies, arts councils and/or government agencies related to copyright -- that are considered essential for the smooth functioning of the music (industry) community and its sector’s regulation (since music is a copyright industry). As stated in DotMusic’s application, all legitimate Community members are included in the definition:

The Music Community encompasses global reaching commercial and non-commercial stakeholders, and amateur stakeholders.” (Answer to Question 20C)

The only NAICS classifications that were delineated by DotMusic to define the community were those that were considered essential for “music.” (For a more detailed analysis on the rationale and methodology for selecting the NAICS codes sub-sets in relation to music (industry) community defined consistent with the AGB and CPE Guidelines, see Annex A, Community Establishment & Definition Rationale and Methodology).

By way of example NAICS Code 541211 (Offices of Certified Public Accountants) is too broad and is therefore limited by DotMusic to solely “Music Accountants” who would have the requisite awareness of and association with the Community. In this case, only “music accountants” that were members of an mCMO would be delineated as members.

For members with requisite awareness that are also part of existing Music Community Member Organizations (mCMOs), the Application provides a Landrush registration (members of mCMO’s could also register their domains during General Registration as well as indicated below):

Music Community Member Organization (MCMO) Landrush for registrants with demonstrated MCMO memberships...

MUSIC COMMUNITY MEMBER ORGANIZATION (MCMO) LANDRUSH LAUNCH

This is the second phase of .MUSIC domain registration. It is a limited-time period reserved for members of DotMusic-accredited music Community Member Organizations (mCMO). (Application Answer to Question 18(B)(vi) & 20(e))

The mCMO domain allocation method during the Landrush phase was created by DotMusic to allow Community members to register through established Community organizations. During the General Registration phase the TLD is open to all Community members for registration, but also restricted by Eligibility, Use and other Policies, including enhanced safeguards. (Application Answer to Question 20B).

Alternatively, if a “music accountant” is not a member of an mCMO but has a legitimate purpose in addressing the music community, then that “music accountant” could be delineated by demonstrating requisite awareness and identification with the Community by:

- 1) Selecting that corresponding with the NAICS Code 541211 (and as limited by DotMusic to solely “Music” Accountants), and;

2) Certifying acceptance to the DotMusic Registration Policies aligned with the community-based goals and purpose. This certification aligned with community's goals applies to all Community members, including mCMO members:

DotMusic has incorporated enhanced policies to ensure only eligible members of the Music Community who comply with the values, purpose and mission of the TLD can participate; to ensure domains are used in a manner benefitting the Community; to protect intellectual property; and to safeguard domains from malicious conduct and copyright infringement.

USE POLICY

This policy is in place for .MUSIC registrants regardless of the applicable launch phase. It is developed with extensive participation of Music Community members; tailored to meet the specific needs of the Music Community; and solve issues currently existing in the Music Community related to intellectual property infringement and malicious conduct.

The policy is incorporated in the registration agreement for all .MUSIC registrants. DotMusic may modify or revise these use policies at any time...Registrants that do not accept and abide by the registration agreement are disqualified from domain registrations. (Application Answer to Question 20e)

Only those that are defined by and identify with the sub-set of the NAICS code that relates to “music” would qualify as a member of the Community (See Annex B, Venn Diagrams for Clarifying Question A). These music community-tailored Policies ensure that members have the requisite awareness of belonging to the community. This means entities or individuals with a casual, tangential relationship with the string music are excluded (emphasis added) i.e. only entities or individuals that have the requisite awareness of the Community and have taken affirmative steps to associate with either an mCMO or self-identify with the appropriate sub-set of a corresponding NAICS group are delineated as members (emphasis added).

The Registration Process identification process (See Annex G, Registration Process Flowchart for more information) is aligned with the member's requisite awareness of the community defined “logical alliance of communities related to music.” After their self-identifying, the Registry will place the registrant/community member into the corresponding premium channel(s) sorted according to music delineation type. Most importantly, all registrants/community members are governed by the applicant's Community Use Policies and Restrictions that are related to music.

Answer to Clarifying Question #1: B

For the member categories noted in Table 3 below, the applicant provided a corresponding NAICS code, which the Panel could not find listed in an official database³. Please clarify the appropriate code for each member category. If applicable, please also clarify, as per question A, if the official NAICS code definition matches the application's member category, and if not, clarify the delineation of members and non-members and how that will be determined.

<i>Table 3 #</i>	<i>Application's member category</i>	<i>Corresponding NAICS Code Cited by Application</i>
2	Independent music artists, performers, arrangers & composers	711500
11	Music stores	451220
16	Music agents & managers	711400
17	Music promoters & performing arts establishments	711300
20	Music performing arts companies	711100
22	Music record reproducing companies	334612

As clarified in the **Answer to Clarifying Question #1A** above, the official NAICS code definition refers to a broader industry group than that delineated by DotMusic in its Application. As clarified in #1A, members of the delineated community defined only include the “**music**” subset of each NAICS code set as cited in the Application. As the application indicates, every NAICS code is preceded by the applied-for string “**music**” to ensure that the Nexus of the string matches the community defined (i.e. a strictly delineated and organized community of individuals, organizations and business, a “logical alliance of communities of a similar nature” that relate to music (emphasis added): the art of combining sounds rhythmically, melodically or harmonically. (Question 20A)) and to exclude entities that have a no association or a non-essential relationship with “music” i.e. those casual entities that do not have the requisite awareness or recognition of the community are ineligible for registration.

DotMusic used official NAICS codes provided by the United States Department of Labor, Bureau of Labor Statistics (BLS).¹⁷. The appropriate codes and BLS references to Table 3 are:

2 - Independent music artists, performers, arrangers & composers 711500

See http://www.bls.gov/oes/current/naics4_711500.htm and http://www.bls.gov/cew/doc/titles/industry/industry_titles.htm

11 - Music stores 451220

See <http://www.bls.gov/ppi/ppiretailtrade.htm>, http://www.bls.gov/cew/doc/titles/industry/industry_titles.htm,

¹⁷ <http://www.bls.gov>

<http://www.dataplace.org/metadata?cid=112346&all=1> and
<http://naicscode.org/NAICSCode/451220/Prerecorded-Tape-Compact-Disc-and-Record-Stores>

According to the *United States Department of Labor, Bureau of Labor Statistics* (See <http://www.bls.gov/ppi/ppiretailtrade.htm>):

NAICS 443142—Electronic stores are establishments that retail a general line of new consumer-type electronic products; including radios, televisions, computers, computer peripherals, prepackaged computer software, cameras, photographic equipment, photographic supplies, prerecorded audio and video tapes, compact discs (CDs), digital video discs (DVDs), cellular phones and cellular phone plans.

NAICS 443142 is an aggregate of the following 2007 NAICS industries: -443112—Radio, Television, and Other Electronics Stores -443120—Computer and Software Stores -443130—Camera and Photographic Supplies Stores -451220—Prerecorded Tape, Compact Disc, and Record Stores prerecorded audio and video tapes, compact discs (CDs), digital video discs (DVDs), cellular phones and cellular phone plans.

NAICS 443142 is an aggregate of the following 2007 NAICS industries:

- *443112—Radio, Television, and Other Electronics Stores*
- *443120—Computer and Software Stores*
- *443130—Camera and Photographic Supplies Stores*
- *451220—Prerecorded Tape, Compact Disc, and Record Stores*

Also see http://www.bls.gov/cew/doc/titles/industry/industry_titles.htm, which indicates:

451220 NAICS07 451220 Precoded tape, cd, and record stores

16 - Music agents & managers 711400

See http://www.bls.gov/oes/current/naics4_711400.htm and
http://www.bls.gov/cew/doc/titles/industry/industry_titles.htm

17 - Music promoters & performing arts establishments 711300

See http://www.bls.gov/oes/current/naics4_711300.htm and
http://www.bls.gov/cew/doc/titles/industry/industry_titles.htm

20 - Music performing arts companies 711100

See http://www.bls.gov/oes/2003/november/naics4_711100.htm and
http://www.bls.gov/cew/doc/titles/industry/industry_titles.htm

22 - Music record reproducing companies 334612

See <http://unstats.un.org/unsd/cr/registry/regcssm.asp?Cl=230&Lg=1&Co=334612>,
http://www.bls.gov/cew/doc/titles/industry/industry_titles.htm,
<http://www.census.gov/econ/isp/sampler.php?naicscode=334614&naicslevel=6> and
<http://download.bls.gov/pub/time.series/cs/cs.industry>

For more clarification concerning membership delineation and references to the appropriate NAICS codes (including link references) also refer to **Annex C, Venn Diagrams for Clarifying Question B.** and **Answer to Clarifying Question #1A.**

Answer to Clarifying Question #1: C

The last category listed by the applicant is “Music fans/clubs” (see #42 in Table 1). The Panel would like to clarify the individuals and/or entities that would be included in this category.

DotMusic clarifies that only fans that belong to strictly delineated and organized “music fan clubs” are eligible for membership and included in the category. In other words, only “music fan club” entities that have the requisite awareness of the community defined (“a strictly delineated and organized community of individuals, organizations and business, a “logical alliance of communities of a similar nature” that relate to music: the art of combining sounds rhythmically, melodically or harmonically) are members. Casual fans, i.e. those who do not have the requisite awareness of belonging to the community defined, are not eligible.

Some examples to clarify member eligibility include those that belong to recognized music fan clubs or music fan-funding organizations:

The Bryan Adams Fan Club (See <http://bryan-adams-fan-club.vancouver.ca/amfibi.company/ca/c/693462-bryan-adams-fan-club> and <http://www.manta.com/ic/mvqr3rf/ca/bryan-adams-fan-club>).

Ten Club – Pearl Jam’s Official Fan Club (See <https://pearljam.com/tenclub>)

Compass Records Street Team (See <https://compassrecords.com/street-team.php>)

Linkin Park Street Team (See <http://linkinpark.com/users/lpuhq/blogs/6065651>)

PledgeMusic (See <http://www.pledgemusic.com/site/terms>)

For more examples, see **Annex E, Music Fan Club Examples for Clarifying Question C.**

Answer to Clarifying Question #1: D

The application also makes reference to the following description of its community:

.MUSIC relates to the Community by representing all constituents involved in music creation, production and distribution, including government culture agencies and arts councils and other complementor organizations involved in support activities that are aligned with the .MUSIC mission. (application, 20(d))

The Community Priority Evaluation panel would like to clarify to which entities the application is making reference to when citing “other complementor organizations involved in support activities” and whether such organizations fall under one or more of the categories explicitly mentioned in Table I.

According to the CPE Guidelines with respect to Nexus, there is no AGB language disallowing a community definition and delineation that may include complementary entities and subsets of the community, especially if they are essential components of the community defined (emphasis added).¹⁸ Furthermore, according to the AGB and CPE Guidelines, “scoring of applications against these subcriteria will be done from a holistic perspective, with due regard for the particularities of the community explicitly addressed.”

In order to match the string with the community defined it was vital to include all music constituent types – including complementary entities e.g. government culture agencies, arts councils and/or government agencies related to copyright -- that are considered essential for the smooth functioning of the music (industry) community and its sector’s regulation because music is a copyright industry (See Annex F, Music Sector Background: Music is a Copyright Industry for Clarifying Question D).

As such “complementary organizations involved in support activities...aligned with the .MUSIC mission” are vital to the Nexus of the string to ensure the community is “complete” taking into consideration the primary Oxford Dictionary definition of “complement” defined as “a thing that completes”¹⁹ ²⁰ i.e. that makes whole or in the case of *Nexus*, it matches completely (emphasis added). According to the Applicant Guidebook and CPE Guidelines, “to receive the maximum score for Nexus, the applied-for string must match the name of the community.”

¹⁸ For example, in the prevailing .SPA CPE Determination, the EIU awarded full points under Nexus stating that “the community as defined by the application also includes entities which are not spas or spa associations, such as distributors and providers of spa-related products and services. As described by the applicant, these affiliated services align closely with core spa services, and nothing in the application suggests that these entities are a non-essential component of the spa community (emphasis added). Furthermore, this category of the spa community is also included in the membership of organizations such as the International Spa Association. This subset of the community, along with the principal spa community, therefore, meets the requirement for “match” with regard to Nexus” (emphasis added) (Pg. 4 and Pg. 5).

¹⁹ http://www.oxforddictionaries.com/us/definition/american_english/complement

²⁰ In music terms, “complement” is defined as “the musical interval required with a given interval to complete the octave,” <http://www.merriam-webster.com/dictionary/complement>

Music is a copyright industry and a regulated sector. As such, the Community defined is subject to government regulation of similar nature (consistent with the definition of the community, which is a logical alliance of communities related to music are of “similar nature.” As such, “complementor organizations involved in support activities” related to the regulation and/or dedicated promotion of music are eligible for registration.

While in other industries some complementors may be considered peripheral industries, the true test of a “matching” complementor is whether the complementor makes the defined community “whole” in alignment with the definition of “complement.” **Music** is a copyright industry so complementors, such as related government agencies, are essential. If you remove “copyright” and government regulation then the music (industry) community would cease to function as we know it today.

The DotMusic Application did not identify a category under which the “complementor organizations” fall under because the only complementor organization – the International Federation of Arts Councils and Culture Agencies, which is the only organization representing government culture agencies and arts councils globally – is already an mCMO and an essential stakeholder in the community defined as stated in the DotMusic application.²¹

The corresponding NAICS code for IFACCA is *926110 - Cultural and arts development support program administration* which is covered under *Administration of General Economic Programs*.²² DotMusic has not identified any other such complementor constituent type so a NAICS classification code was not necessary for its application. If another such complementary organization exists then they would apply as an mCMO to qualify for a registration.²³

²¹ DotMusic’s application states: “DotMusic will be working closely with the International Federation of Arts Councils and Culture Agencies, with national members from over 70 countries comprised of governments’ Ministries of Culture and Arts Councils covering all continents, to ensure country names protection and the promotion of government-related cultural and music initiatives.” (Answer to Question 22) Customized government-tailored policies (such as appeals processes) have also been created to illustrate the significance of these complementor entities: “DotMusic will implement multiple dispute resolution policies to address dispute over any names not reserved by the above provisions; see response to question #20e and #28 and #29...DotMusic will ensure appropriate procedures to allow governments, public authorities or IGO’s to challenge abuses of names with national or geographic significance at the second level. (Answer to Question 22)

²² http://www.bls.gov/cew/doc/titles/industry/industry_titles.htm

²³ See <http://music.us/mcmo> and http://music.us/DotMusic_Music_Community_MCMO_Application.pdf for mCMO requirements and application

Answer to Clarifying Question #1: E

In addition to the categories of members referred to above, the application also states the following:

Registrants will be verified using Community-organized, unified “criteria taken from holistic perspective with due regard of Community particularities” that “invoke a formal membership” (application, 20(a))

The application goes on to cite four provisions related to the above, including: “(i) Qualification criteria as delineated by recognized NAICS codes corresponding to Community member classification music entity types...” (application, 20(a)).

The Community Priority Evaluation panel would like to clarify how “registrants will be verified” and what kind “formal membership” will be required.

As stated **Answer to Clarifying Question #1A**, music registrants may be verified if they are members of Music Community Member Organizations (mCMOs). As such, they will have the requisite awareness of belonging to the community defined. The Application provides a Landrush registration (members of mCMO’s could also register their domains during General Registration as well as indicated below):

Music Community Member Organization (MCMO) Landrush for registrants with demonstrated MCMO memberships...

MUSIC COMMUNITY MEMBER ORGANIZATION (MCMO) LANDRUSH LAUNCH

This is the second phase of .MUSIC domain registration. It is a limited-time period reserved for members of DotMusic-accredited music Community Member Organizations (mCMO). (Application Answer to Question 18(B)(vi) & 20(e))

The mCMO domain allocation method during the Landrush phase was created by DotMusic to allow Community members to register through established Community organizations. During the General Registration phase the TLD is open to all Community members for registration, but also restricted by Eligibility, Use and other Policies, including enhanced safeguards. (Application Answer to Question 20B).

Alternatively, if a Community member is not a member of an mCMO but has a legitimate purpose in addressing the music community, then that Community member could be delineated by demonstrating requisite awareness and identification with the Community by:

- 1) Selecting corresponding NAICS subset code (which is limited by DotMusic to solely “Music” constituents), and;

2) Certifying acceptance to the DotMusic Registration Policies aligned with the community-based goals and purpose. This certification aligned with community's goals applies to all Community members, including mCMO members:

DotMusic has incorporated enhanced policies to ensure only eligible members of the Music Community who comply with the values, purpose and mission of the TLD can participate; to ensure domains are used in a manner benefitting the Community; to protect intellectual property; and to safeguard domains from malicious conduct and copyright infringement.

USE POLICY

This policy is in place for .MUSIC registrants regardless of the applicable launch phase. It is developed with extensive participation of Music Community members; tailored to meet the specific needs of the Music Community; and solve issues currently existing in the Music Community related to intellectual property infringement and malicious conduct.

The policy is incorporated in the registration agreement for all .MUSIC registrants. DotMusic may modify or revise these use policies at any time... Registrants that do not accept and abide by the registration agreement are disqualified from domain registrations. (Application Answer to Question 20e)

Only those that are defined by and identify with the sub-set of the NAICS code that relates to “music” would qualify as a member of the Community. These music community-tailored Policies ensure that members have the requisite awareness of belonging to the community. This means entities or individuals with a casual, tangential relationship with the string music are excluded (emphasis added) i.e. only entities or individuals that have the requisite awareness of the Community and have taken affirmative steps to associate with either an mCMO or self-identify with the appropriate sub-set of a corresponding NAICS group are delineated as members (emphasis added).

The Registration Process identification process (See Annex G, Registration Process Flowchart for more information) is aligned with the member's requisite awareness of the community defined “logical alliance of communities related to music.” After their self-identifying, the Registry will place the registrant/community member into the corresponding premium channel(s) sorted according to music delineation type.

Another step that is mandatory is DotMusic's 2-Step Authentication that validates members:

REGISTRY DATA VALIDATION: DotMusic will validate elements of the received WHOIS data as a requirement for domain registration, also providing access to Premium Channels, such as the registrant's:

- Email address through validation links

- Phone number through validated PIN-codes (18B)

REGISTRY DATA VALIDATION

While DotMusic will hold the thick WHOIS data provided through registrars, we will also validate elements of the received WHOIS data:

1. The registrant's email address through validation links
2. The registrant's phone number through validated PIN-codes

Upon successful completion of these two steps, DotMusic will provide the registrant their Music Community membership details; used to join/access the Premium Channels. All future .MUSIC domains associated with the registrant-verified email address will not be re-verified. (Answer to Question 20e)

As stated in the **Answer to Clarifying Question #1A**, the AGB also has no language disallowing membership based on participation in the community defined.²⁴ Furthermore, a non-exhaustive list of membership criteria was allowed by the AGB, which may include “a logical alliance members based on categories that are solely community-related” (i.e. in the case of music, they are music-related),²⁵ “self-identification” in a community (e.g. identifying that they have a tie with the community) or those who have a legitimate purpose in addressing the community (e.g. by certifying to abide to a set of community-tailored registration requirements that are aligned with the goals of the community i.e. are aligned with the community's mission and purpose).²⁶ The AGB also allows for different types of membership just as long as there is demonstrable involvement in community-related activities that may vary among member constituent types.²⁷

As such, DotMusic used the industry standard methodology for defining music industries using NAICS codes, allowing members to “self-identify” their “music” membership with solely the “music” subsets of the NAICS codes that only relate to “music” (emphasis added) so there is no overreaching whatsoever and the community defined and delineated matches the “music” string. In order to match the string with the community defined it was vital to include all music constituent types – including complementary

²⁴ For example, in the prevailing .RADIO CPE Determination, the EIU was able to conclude that the .RADIO community is “clearly defined” and that, solely on the basis of being “participants in this clearly defined industry, they have an awareness and recognition of their inclusion in the industry community” (emphasis added) (Pg. 2).

²⁵ For example, in the prevailing .HOTEL CPE Determination, the EIU awarded full points for Community Establishment for a community definition that is comprised of “categories [that] are a logical alliance of members” (emphasis added) (Pg. 2)

²⁶ For example, in the prevailing .OSAKA CPE Determination, the EIU awarded full points for Community Establishment and Nexus for a community definition that stated that: “[m]embers of the community are defined as those who are within the Osaka geographical area as well as those who self identify as having a tie to Osaka, or the culture of Osaka. Major participants of the community include, but are not limited to the following: [...] Entities, including natural persons who have a legitimate purpose in addressing the community” (emphasis added) (Pg. 2).

²⁷ For example, in the prevailing .ECO CPE Determination, the EIU awarded full points for Community Establishment stating that “the application dictates four types of members, whose cohesion and awareness is founded in their demonstrable involvement in environmental activities and who “demonstrate active commitment, practice and reporting.” This involvement may vary among member categories” (emphasis added) (Pg. 2).

entities e.g. government culture agencies, arts councils and/or government agencies related to copyright -- that are considered essential for the smooth functioning of the music (industry) community and its sector's regulation (since music is a copyright industry). The only NAICS classifications that were delineated by DotMusic to define the community were those that were considered essential for "music." (For a more detailed analysis on the rationale and methodology for selecting the NAICS codes sub-sets in relation to music (industry) community defined consistent with the AGB and CPE Guidelines, see Annex A, Community Establishment & Definition Rationale and Methodology).

Furthermore, according to the AGB and CPE Guidelines, "scoring of applications against these subcriteria will be done from a holistic perspective, with due regard for the particularities of the community explicitly addressed." Under Community Establishment, the AGB and CPE Guidelines pertaining to Delineation outline a "non-exhaustive list denot[ing] elements of straight-forward member definitions: fees, skill and/or accreditation requirements, privileges or benefits entitled to members, certifications aligned with community goals, etc.

DotMusic's application also meets these additional "formal membership" criteria:

- (i) Fees e.g. Paid members mCMOs e.g. members of the The Recording Academy
- (ii) Skill and/or accreditation requirements e.g. a music creator/musician/songwriter, manager, accountant, lawyer
- (iii) Privileges or benefits entitled to members e.g. royalties collected (which are government regulated because music is copyright industry and a regulated sector); free exposure/marketing/branding through free mCMOs (such as Reverbnation).

Other benefits and privileges to Community members are inclusion in the DotMusic Premium Channels and the Song Registry:

INNOVATIVE PREMIUM NAMES RESERVATIONS:

DotMusic will reserve premium names that will be used in an innovative manner to benefit eligible members including the development of Premium Channels, such as genres (e.g Rock.MUSIC), that will define the locale web of music, promote Community members based on their classification/category, and improve music discovery. (Answer to Question 20e)

Developing the Music Community Social Network Premium Domain Channels (Premium Channels) sorted by NAICS classifications and category types e.g. genre/language. They will leverage Search Engine Optimization (SEO) best practices to improve .MUSIC site search result rankings. The objective is for .MUSIC domains to signal a badge of trust that enables search engines to provide music consumers more relevant and safer search results while reducing infringing and unlicensed rogue websites. Premium Channel development will also include a global Song Registry. (Answer to Question 20c)

- (iv) Certifications aligned with community goals e.g. All Community members must certify their agreement to the music-tailored DotMusic Registration Policies:

DotMusic has incorporated enhanced policies to ensure only eligible members of the Music Community who comply with the values, purpose and mission of the TLD can participate; to ensure domains are used in a manner benefitting the Community; to protect intellectual property; and to safeguard domains from malicious conduct and copyright infringement.

USE POLICY

This policy is in place for .MUSIC registrants regardless of the applicable launch phase. It is developed with extensive participation of Music Community members; tailored to meet the specific needs of the Music Community; and solve issues currently existing in the Music Community related to intellectual property infringement and malicious conduct.

The policy is incorporated in the registration agreement for all .MUSIC registrants. DotMusic may modify or revise these use policies at any time...Registrants that do not accept and abide by the registration agreement are disqualified from domain registrations. (Answer to Question 20e)

Dispute mechanisms, compliance efforts, and data validation processes will provide an added level of trust. (Answer to Question 18a)

As indicated, with registration, community members are mandated to certify that they align with the community goals and mission and music-tailored registration policies, including to certify that their activity will only relate to legal music activities and content (See Content and Use policy) and be subject to the music-tailored MPCIDRP, including dispute resolution and appeals processes. As mentioned earlier, all registrants must also go through 2-Step authentication to certify authenticity and to increase safety and trust (e.g. to eliminate impostors, impersonators and/or cybersquatters). These processes also improve quality control with respect to enforcing the Name Selection policy. Other quality control policies that are part of the certification agreement include the Content and Use policy that only allows legal music content and use i.e. no one can use a .MUSIC domain without music-related content. This will eliminate peripheral entities or entities that have no association with music. Also, registrants must certify that they will not have a parked page, which eliminates cybersquatters and domain speculators/investors and ensures higher quality, music related content.

Annexes

Annex A – Community Establishment & Definition Rationale and Methodology

Annex B – Venn Diagrams for Clarifying Question A

Annex C – Venn Diagrams for Clarifying Question B

Annex D – Venn Diagram for Community Definition and Nexus

Annex E – Music Fan Club Examples for Clarifying Question C

Annex F – Music Sector Background: Music is a Copyright Industry for Clarifying Question D

Annex G – Registration Policies Flowchart for Clarifying Question E

Annex H – Independent Nielsen / Harris Poll for Community Establishment and Nexus

Annex I – Community Application Overview, Specifications and Applicant Comparison Matrix

Annex J – Community Application Analysis with Respect to CPE Guidelines

Annex K – Forty-three (43) Expert Testimonies

ANNEX A

Community Establishment & Definition Rationale and Methodology

Neither the Applicant Guidebook (the “AGB”) nor the CPE Guidelines provided a concrete meaning for “define” and “definition” (emphasis added). Furthermore, the AGB requires only that the constituents of a community be members of that community. There was no requirement that members of a community “act” as a community nor does the AGB say anything about how community members must “associate themselves.” The AGB also has no language disallowing membership based on participation in the community defined.¹ Furthermore, a non-exhaustive list of membership criteria was allowed by the AGB, which may include “a logical alliance members based on categories that are solely community-related” (i.e. in the case of music, they are music-related),² “self-identification” in a community (e.g. identifying that they have a tie with the community) or those who have a legitimate purpose in addressing the community (e.g. by certifying to abide to a set of community-tailored registration requirements that are aligned with the goals of the community i.e. are aligned with the community’s mission and purpose).³ The AGB also allows for different types of membership just as long as there is demonstrable involvement in community-related activities that may vary among member constituent types.⁴ In addition, according to the CPE Guidelines with respect to Nexus, there is no AGB language disallowing a community definition and delineation that may include complementary entities and subsets of the community, especially if they are essential components of the community defined (emphasis added).⁵

As such, DotMusic used the industry standard methodology for defining music industries using NAICS codes, allowing members to “self-identify” their “music” membership with solely the “music” subsets of the NAICS codes that only relate to “music” (emphasis added) so there is no overreaching whatsoever and the community defined and delineated matches the “music” string. In order to match the string with the community defined it was vital to include all music constituent types – including complementary entities e.g. government culture agencies, arts councils and/or government agencies related to copyright -- that are considered essential for the smooth functioning of the music (industry) community and its sector’s regulation (since music is a copyright industry). The only NAICS classifications that were delineated by DotMusic to define the community were those that were considered essential for “music.”

¹ For example, in the prevailing .RADIO CPE Determination, the EIU was able to conclude that the .RADIO community is “clearly defined” and that, solely on the basis of being “participants in this clearly defined industry, they have an awareness and recognition of their inclusion in the industry community” (emphasis added) (Pg.2).

² For example, in the prevailing .HOTEL CPE Determination, the EIU awarded full points for Community Establishment for a community definition that is comprised of “categories [that] are a logical alliance of members” (emphasis added) (Pg. 2)

³ For example, in the prevailing .OSAKA CPE Determination, the EIU awarded full points for Community Establishment and Nexus for a community definition that stated that: “[m]embers of the community are defined as those who are within the Osaka geographical area as well as those who self identify as having a tie to Osaka, or the culture of Osaka. Major participants of the community include, but are not limited to the following: [...] Entities, including natural persons who have a legitimate purpose in addressing the community” (emphasis added) (Pg. 2).

⁴ For example, in the prevailing .ECO CPE Determination, the EIU awarded full points for Community Establishment stating that “the application dictates four types of members, whose cohesion and awareness is founded in their demonstrable involvement in environmental activities and who “demonstrate active commitment, practice and reporting.” This involvement may vary among member categories” (emphasis added) (Pg. 2).

⁵ For example, in the prevailing .SPA CPE Determination, the EIU awarded full points under Nexus stating that “the community as defined by the application also includes entities which are not spas or spa associations, such as distributors and providers of spa-related products and services. As described by the applicant, these affiliated services align closely with core spa services, and nothing in the application suggests that these entities are a non-essential component of the spa community (emphasis added). Furthermore, this category of the spa community is also included in the membership of organizations such as the International Spa Association. This subset of the community, along with the principal spa community, therefore, meets the requirement for “match” with regard to Nexus” (emphasis added) (Pg. 4 and Pg. 5).

This standard NAICS methodology has been adopted by the most prominent music industries and cities studies ever conducted (Georgia,⁶ Nashville,⁷ Seattle,⁸ Detroit,⁹ Austin,¹⁰ Chicago,¹¹ Cleveland¹² and Memphis¹³) in defining, clustering and assessing their local music community's impact with organized and delineated criteria, which is consistent with the Applicant Guidebook with respect to Delineation and CPE Determinations.¹⁴

This NAICS methodology for defining the music (industry) community is standard in research studies:

Several studies have collected data regarding urban music scenes and their economic impact on Metropolitan Statistical Areas (MSAs), including Austin (Texas), Seattle (Washington), Nashville (Tennessee), Atlanta (Georgia), and Memphis (Tennessee). In general, these estimates tally businesses and people associated with music scenes through various sources, and use a multiplier to estimate the economic impact of these businesses and individuals. Edmiston and Thomas (2004) use commercial data from ReferenceUSA, which categorizes businesses by SIC code. Beyers et al. (2004) use U.S. Census data to estimate music-related establishments, employment, and economic impact in the Seattle area. Austin's study (2001) uses U.S. Census data, as well as data from the Texas Music Office, a Texas state government entity charged with promoting the Texas music industry and compiling useful statewide information. Raines and Brown (2006) use ReferenceUSA and U.S. Census data, along with survey data from the local music community, to estimate employment and economic impact around Nashville, Tennessee.

⁶ B. William Riall, Ph.D., Economic and Fiscal Impact Analysis of the Music Industry in Georgia, May 2011,

<http://www.georgia.org/wp-content/uploads/2013/09/Georgia-Music-Business-Economic-Impact-Study2011.pdf>

⁷ <http://www.nashville.gov/Portals/0/SiteContent/MayorsOffice/EcDev/NashvilleMusicIndustryStudy.pdf>, Pg. 14-16

⁸ W. Beyers, A. Bonds, A. Wenzl, P. Sommers, The Economic Impact of Seattle's music industry - A Report for the City of Seattle's Office of Economic Development, University of Washington, February 2004

http://web.williams.edu/Economics/ArtsEcon/Documents/Seattle_Music_StudyFinal.pdf

⁹ Colby Spencer Cesaro, Alex Rosaen, Lauren Branneman, Music Business in Detroit, Anderson Economic Group,

<http://www.andersoneconomicgroup.com/portals/0/aeg%20report%20-%20music%20business%20in%20detroit.pdf>

¹⁰ Austin Music Census, The City of Austin Economic Development Department's Music & Entertainment Division, June 2015, https://www.austintexas.gov/sites/default/files/files/Austin_Music_Census_Interactive_PDF_53115.pdf

¹¹ Lawrence Rothfield, Don Coursey, Sarah Lee, Daniel Silver and Wendy Norris, A Report on the Music Industry in Chicago, Chicago Music Commission, Cultural Policy Center, University of Chicago, 2007, <http://www-news.uchicago.edu/releases/08/pdf/080122.music.pdf>

¹² Dr. Iryna V. Lendel, Remix Cleveland: The Cleveland Music Sector and its Economic Impact, Community Partnership For Arts and Culture, Center for Economic Development, 2011,

http://cua6.urban.csuohio.edu/publications/center/center_for_economic_development/Remix_Cleveland_Full_Report_102411.pdf

¹³ Gnuschke, John E.; Jeff Wallace, Economic Impact of the Music Industry in Memphis and Shelby County, Business Perspectives. University of Memphis. 2004. *HighBeam Research*. 28 Oct. 2015,

<http://www.highbeam.com/doc/1G1-126612058.html> and <http://www.freepatentsonline.com/article/Business-Perspectives/126612058.html>

¹⁴ The EIU also used the NAICS to delineate the prevailing .RADIO CPE determination. The prevailing .HOTEL community applicant also used the ISO 18513:2003 classification code for its delineation (The prevailing .SPA and .ECO community applications passed CPE without using industry classifications as part of their delineation).

*Each of these studies serves as a useful reference tool regarding local music scenes in established music cities.*¹⁵

DotMusic also selected NAICS for delineation because it is the most contemporary system of classification:

*In contrast to the SIC system, NAICS identifies hundreds of new and emerging industries.*¹⁶

Furthermore, the NAICS was chosen because it is the standard method for classifying music industries as highlighted in many prominent studies and reports. A reason for the use of NAICS for music (industry) community delineation is the nature of music being a copyright industry. The NAICS allows for a more accurate delineation of industries that specifically distribute copyrighted works (such as the music (industry) community):

NAICS codes may also permit more precise recognition of the industries that specifically distribute copyright protected works.¹⁷

In a study by the Creative Economy Coalition on recent definitions and approaches of measurement of creative economies, such as music, there was emphasis on individuals and entities engaging in activities that involve the creation, production, distribution and usage of goods and/or services, such as in the case of music:

[T]here seems to be reasonably strong congruence around the idea that the creative economy involves both individuals and entities who engage in activities that add value to society in one or more ways through the provision of goods and/or services that are inextricably linked to human creativity manifesting itself in one or more dimensions throughout the process of ideation, creation, production, distribution, and use.¹⁸

DotMusic's methodology was adopted based on the widespread use of NAICS code to define creative industries and communities. For example, according to the Creative Economy Coalition's research concerning reports related to defining creative industries, nearly all used an array of related NAICS codes to define creative industries:

Thirteen NAICS codes were used by 24 or more of the 25 reports; i.e., all or virtually all participants.... Our research suggests that the 39 NAICS codes used by 75% or more of the reports (i.e., 18 or more of the 25) could be considered a strong concurrence set of NAICS

¹⁵ Erik Porse, Innovation and Production Networks in Regional Music Scenes, George Mason University, http://www.meiea.org/Journal/html_ver/Vol07_No01/2007_Vol_7_No_1_A2.htm

¹⁶ Stephen E. Siwek, The Measurement of "Copyright" Industries, Review of Economic Research on Copyright Issues, 2004, vol. 1(1), <http://www.serci.org/docs/siwek.pdf>, Pg. 23

¹⁷ Ibid, Pg.24

¹⁸ Christine Harris, Margaret Collins, Dennis Cheek, America's Creative Economy: A Study of Recent Conceptions, Definitions, and Approaches to Measurement across the USA, Creative Economy Coalition (CEC), a Working Group of the National Creativity, Network, August, 2013, <https://www.arts.gov/sites/default/files/Research-Art-Works-Milwaukee.pdf>, Pg.2

codes¹⁹ ...to be jointly considered in the framing of a definition.²⁰ (which in the case of DotMusic is the music (industry) defined).

A few NAICS codes define a broader industry set, so would include a wider remit than music.²¹ For example, a music lawyer is defined by NAICS code 541110 (Offices of Lawyers). However, other types of lawyers (e.g. divorce lawyers) are also defined by the same NAICS category code 541110:

*[The] U.S. Census data can effectively estimate many categories, but lack specificity in the NAICS codes for some music-related businesses. This lack of specificity leads to overestimation in the absence of further crosschecking or validation.*²²

This is why DotMusic's application has specified that only the "music" subset of the NAICS code qualifies for membership in the defined community for the applied-for string. So in the case of lawyers, only music lawyers would qualify as an eligible community member while divorce lawyers would not. Each NAICS industry group cited by DotMusic only includes the music subset i.e. this is why DotMusic added the word "music" as a requisite for each classification code so there is no overreaching beyond the community defined, "a delineated and organized logical alliance of communities of similar nature related to music" and to ensure only music constituents can register a .MUSIC domain. This way any entities related to a broader industry other than music would be excluded from the community defined by DotMusic. (emphasis added)

The comprehensive study conducted by State of Georgia on the "Economic and Fiscal Impact Analysis of the Music Industry in Georgia"²³ defined, organized and delineated its "Music Industry Definition and Description" using NAICS codes (which was the same industry standard methodology that DotMusic adopted to delineate and organize the community defined):

The music industry is defined for this analysis as being composed of the subsectors described by the NAICS (North American Industrial Classification System) codes presented in Table E-1. Official NAICS codes do not go beyond the 6-digit classifications shown in the table, and some contain non-music elements. Steps were taken to minimize the inclusion of non-music elements by examining the individual firms which comprise

¹⁹ Ibid, Pg.4

²⁰ Ibid, Pg.86

²¹ For example, the fact that recently reformulated NAICS codes lump arts, entertainment and sports together makes it more difficult for researchers to distinguish arts [e.g. music] from other elements." (See Ann Markusen (University of Minnesota), Gregory H. Wassall (Northeastern University), Douglas DeNatale (Community Logic, Inc), Randy Cohen (Americans for the Arts), Defining the Cultural Economy: Industry and Occupational Approaches, November 2006 , Pg.8 and Pg.9,

<http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.542.4308&rep=rep1&type=pdf>). To ensure that the delineation is consistent with the community defined and matches the applied-for string, DotMusic's application specifically restricts eligibility to only the "music" subset of any NAICS code (See Venn diagrams for more detail).

²² Ibid

²³ B. William Riall, Ph.D., Economic and Fiscal Impact Analysis of the Music Industry in Georgia, May 2011, <http://www.georgia.org/wp-content/uploads/2013/09/Georgia-Music-Business-Economic-Impact-Study2011.pdf>

each sector. For example, “Promoters of Performing Arts with Facilities” also includes sports, so all firms that contained sports references were eliminated from the data; similar filtering was done for other sound recording studios.

This definition of the music industry is very similar to that used in two studies done by Georgia State University in 2003 (Edmiston, Kelley, and Marcus Thomas, “The Commercial Music Industry in Atlanta and the State of Georgia: An Economic Impact Study,” Fiscal Research Program Georgia State University (report FRC-85), August 2003.) updated in 2005 (Rushton, Michael and Marcus Thomas, “The Economics of the Commercial Music Industry in Atlanta and the State of Georgia: Industrial Organization and New Estimates of Economic Impacts,” Fiscal Research Program Georgia State University, February, 2005). The primary difference between the industry definition used in this analysis and that used previously is that this definition is in terms of NAICS sectors:

Table E-1: Definition of the Music Industry in Georgia

<u>NAICS Code</u>	<u>Description</u>
334310	Household Audio and Video Equipment Manufacturing
334610	CD, Tape and Record Production
339992	Musical Instrument Manufacturing
451140	Musical Instrument and Supplies Stores
451220	Prerecorded Tape, CD, and Record Stores
512210	Record production
512220	Integrated record production/distribution
512230	Music Publishers
512240	Sound Recording Studios
611610	Fine Arts Schools
711130	Musical Groups and Artists
711310	Promoters of Performing Arts with Facilities
711320	Promoters of Performing Arts without Facilities
711410	Agents
711510	Independent Artists, Writers, and Performers ²⁴

The Georgia Music Industry Study further substantiated NAICS as the standard for defining, organizing and delineating music (industry) communities:

[All] of the data used to describe the music industry is organized by NAICS (North American Industrial Classification System) codes:

Table 2-1: Music Industry Definition and Components

²⁴ Ibid, Pg.2 and Pg.3

Home Audio Equipment Manufacturing (NAICS 33410):

Amplifiers (e.g., auto, home, musical instrument, public address) manufacturing
Automobile radio receivers manufacturing
Car stereos manufacturing
Coin-operated jukebox manufacturing
Compact disc players (e.g., automotive, household-type) manufacturing
Home stereo systems manufacturing
Home tape recorders and players (e.g., cartridge, cassette, reel) manufacturing
Home theater audio and video equipment manufacturing
Jukeboxes manufacturing
Loudspeakers manufacturing
Microphones manufacturing
Portable stereo systems manufacturing
Radio headphones manufacturing
Radio receiving sets manufacturing
Speaker systems manufacturing
Tape players and recorders, household-type, manufacturing

CD, Tape, and Record Production (NAICS 334611, 334612, and 334613):

CD-ROM, software, mass reproducing
Compact discs (i.e., CD-ROM), software, mass reproducing
Cassette tapes, pre-recorded audio, mass reproducing
Compact discs, prerecorded audio, mass reproducing
Phonograph records manufacturing
Pre-recorded magnetic audio tapes and cassettes mass reproducing
Audiotape, blank, manufacturing
Blank tapes, audio and video, manufacturing
Compact discs, recordable or rewritable, blank, manufacturing
Diskettes, blank, manufacturing
Magnetic and optical media, blank, manufacturing
Magnetic recording media for tapes, cassettes, and disks, manufacturing
Magnetic tapes, cassettes and disks, blank, manufacturing
Tapes, magnetic recording (i.e., audio, data, video), blank, manufacturing

Musical Instrument Manufacturing (NAICS 339992)

Musical Instrument and Supplies Stores (NAICS 451140)

Prerecorded Tape, CD, and Record Stores (Naics 451220):

Music stores (e.g., cassette, compact disc, record, tape)
Record stores, new

Record Production (NAICS 512210)

Integrated Record Production/Distribution (NAICS 512220)

Music Publishers (NAICS 512230)

Sound Recording Studios (NAICS 512240)

Other Sound Recording Studios (NAICS 512290):

Music program distribution, pre-recorded
Radio program tape production (except independent producers)
Recording seminars and conferences, audio
Stock music and other audio services
Stock sound library (e.g., general background sounds, stock music)

Fine Arts Schools (NAICS 611610):

Conservatory of music (except academic)
Music instruction (e.g., guitar, piano)
Music schools (except academic)
Performing arts schools (except academic)
Schools, music (except academic)
Voice instruction

Musical Groups and Artists (NAICS 711130)

Promoters of Performing Arts with and without Facilities (NAICS 711310 and 711320):

Arts event managers, organizers and promoters
Arts festival managers, organizers and promoters
Concert hall operators
Concert booking agencies
Concert Managers, Organizers and Promoters
Live arts center operators
Live theater operators
Managers of arts events
Managers of festivals
Managers of live performing arts productions (e.g., concerts)
Music Festival Managers, Organizers, and Promoters
Organizers of live performing arts productions (e.g., concerts)

Performing arts center operators
Promoters of live performing arts productions (e.g., concerts)

Agents (NAICS 711410)

Independent artists, Writers, and Performers (NAICS 711510)²⁵

Another comprehensive Study by the Music City Music Council called *Nashville Music Industry: Impact, Contribution and Cluster Analysis*²⁶ also used NAICS codes to define its (industry) community using cluster sectors that make up the Nashville Music Industry (which was the same industry standard methodology that DotMusic adopted to delineate and organize the community defined):²⁷

*[F]irms will be identified with primary and secondary NAICS classifications. The choices of organizing segments of music derive from a body of research that fashions various approaches. Since the music industry at its heart is a “copyright industry,” it is useful to note the constant evolution of the industry and to recognize that particular components will always be shifting in the mix of the industry (Wikstrom, 2009).*²⁸

The Nashville Music Industry Study noted that there is no single classification code available that covers the entire scope of the music community:

*No single standardized measurement classification, such as NAICS (North American Industry Classification System), offers a singular grouping for music.*²⁹

This is why DotMusic did not use a singular NAICS classification code to delineate and organize the community defined. Taking such a methodology would overreach substantially because major categories of music constituent types would be excluded.

The NAICS categorization and clustering methodology was also adopted by another music industry economic study conducted for the City of Seattle’s Office of Economic development to present findings on the economic impact of Seattle’s music industry (which was the same industry standard methodology that DotMusic adopted to delineate and organize the community defined).³⁰

Another similar Study was conducted by the Anderson Economic Group on the Music Business in Detroit,³¹ which also used the NAICS methodology to “fit [their] definition of the music industry:”

²⁵ Ibid, Pg.13-15

²⁶ <http://www.nashville.gov/Portals/0/SiteContent/MayorsOffice/EcDev/NashvilleMusicIndustryStudy.pdf>

²⁷ Ibid, Pg.14

²⁸ Ibid, Pg.11

²⁹ Ibid, Pg.15 and Pg.16

³⁰ W. Beyers, A. Bonds, A. Wenzl, P. Sommers, The Economic Impact of Seattle's music industry - A Report for the City of Seattle’s Office of Economic Development, University of Washington, February 2004
http://web.williams.edu/Economics/ArtsEcon/Documents/Seattle_Music_StudyFinal.pdf, Appendix II Music Industry SIC/NAICS/SOC Codes

³¹ Colby Spencer Cesaro, Alex Rosaen, Lauren Branneman, Anderson Economic Group, Music Business in Detroit, Estimating the Size of the Music Industry in the Motor City,
<http://www.andersoneconomicgroup.com/portals/0/aeg%20report%20-%20music%20business%20in%20detroit.pdf>

To help gather data that fit our definition of the music industry, we identified the following NAICS codes:

33999 Musical Instrument Manufacturing
45114 Music Instrument and Supplies Stores
51222 Integrated Record Production/Distribution
51223 Music Publishers
51224 Sound Recording Studios
51229 Other Sound Recording Industries
61161 Fine Arts Schools
71113 Musical Groups and Artists
71131 Promoters of Performing Arts, Sports and Similar Events with facilities
71132 Promoters of Performing Arts, Sports and Similar Events without facilities
71151 Independent Artists, Writers and Performers³²

*Traditional Business Data for estimating the size of the music industry and benchmarking the music industry...came from the U.S Census Bureau...using ...NAICS codes.*³³

The same methodology was also used by the Center for Economic Development in its study of the Cleveland music sector (which was the same industry standard methodology that DotMusic adopted to delineate and organize the community defined):³⁴

*The Cleveland Music Sector was defined and studied using occupational data from the U.S. Bureau of Labor Statistics...The music sector was defined in terms of core music occupations and support music occupations.*³⁵

*The Cleveland Music Sector was also defined and studied by the industries it encompasses. The Center for Economic Development designed a methodology describing an industry-based Cleveland Music Sector by using a computer program capable of identifying music-related industries through keyword searches (Chapters 1 and 9). Using this program, the Center defined the Cleveland Music Sector as encompassing musicians and music venues from 45 unique industry codes in the North American Industry Classification System (NAICS). See Appendix 1-1 for brief descriptions of the 45 NAICS codes included as part of the Cleveland Music Sector's industry-based definition.*³⁶

The first step in defining the Cleveland Music Sector was to identify and collect the NAICS codes of industries that are involved both with music and music-related activities.... The preceding steps yielded a total of 45 unique music and music-related NAICS codes. Of those 45, all the

³² Ibid, Pg.4

³³ Ibid, Appendix A. Methodology

³⁴ Dr. Iryna V. Lendel, Remix Cleveland: The Cleveland Music Sector and its Economic Impact, Community Partnership For Arts and Culture, Center for Economic Development, 2011, http://cua6.urban.csuohio.edu/publications/center/center_for_economic_development/Remix_Cleveland_Full_Report_102411.pdf

³⁵ Ibid, Pg.xiv

³⁶ Ibid, Pg.xv

establishments (companies) in 10 NAICS codes were determined to be completely related to music. These 10 NAICS codes are listed in Table 1-1 (See below). The additional 35 NAICS codes were identified as encompassing both music-related and non-music-related establishments.³⁷

**Table 1-1:³⁸ Industry Sectors
Encompassing All Music-Related
Establishments NAICS Code**

	Definition
334310	Audio and Video Equipment Manufacturing
334612	Prerecorded Compact Disc (except Software), Tape, and Record Producing
339992	Musical Instrument Manufacturing
451140	Musical Instrument and Supplies Stores
451220	Prerecorded Tape, Compact Disc, and Record Stores
512210	Record Production
512230	Music Publishers
512240	Sound Recording Studios
512290	Other Sound Recording Industries
711130	Musical Groups and Artists

Table 1-2:³⁹ Music Subsectors by NAICS Code

NAICS Code	Definition
Education & Museums	
611610	Fine Arts Schools
712110	Museums
Manufacturing	
334310	Audio and Video Equipment Manufacturing
334612	Prerecorded Compact Disc (except Software), Tape, and Record Reproducing
339992	Musical Instrument Manufacturing
Musicians	
711110	Theater Companies and Dinner Theaters
711130	Musical Groups and Artists
711510	Independent Artists, Writers, and Performers
Promoters	
425120	Wholesale Trade Agents and Brokers
511110	Newspaper Publishers
515111	Radio Networks
515112	Radio Stations

³⁷ Ibid, Pg.1

³⁸ Ibid, Pg.2

³⁹ Ibid, Pg.3

541840	<i>Media Representatives</i>
711320	<i>Promoters of Performing Arts, Sports, and Similar Events without Facilities</i>
711410	<i>Agents and Managers for Artists, Athletes, Entertainers, and Other Public Figures</i>
722110	<i>Full-Service Restaurants</i>
722211	<i>Limited-Service Restaurants</i>
722410	<i>Drinking Places (Alcoholic Beverages)</i>
Recording & Publishing	
512110	<i>Motion Picture and Video Production</i>
512210	<i>Record Production</i>
512230	<i>Music Publishers</i>
512240	<i>Sound Recording Studios</i>
512290	<i>Other Sound Recording Industries</i>
541430	<i>Graphic Design Services</i>
Retail	
443112	<i>Radio, Television, and Other Electronics Stores</i>
451110	<i>Sporting Goods Stores</i>
451120	<i>Hobby, Toy, and Game Stores</i>
451140	<i>Musical Instrument and Supplies Stores</i>
451220	<i>Prerecorded Tape, Compact Disc, and Record Stores</i>
452990	<i>All Other General Merchandise Stores</i>
454111	<i>Electronic Shopping</i>
Service Providers	
484210	<i>Used Household and Office Goods Moving</i>
518210	<i>Data Processing, Hosting, and Related Services</i>
522130	<i>Credit Unions</i>
524126	<i>Direct Property and Casualty Insurance Carriers</i>
532299	<i>All Other Consumer Goods Rental</i>
541519	<i>Other Computer Related Services</i>
621340	<i>Offices of Physical, Occupational and Speech Therapists, and Audiologists</i>
811490	<i>Other Personal and Household Goods Repair and Maintenance</i>
813319	<i>Other Social Advocacy Organizations</i>
813410	<i>Civic and Social Organizations</i>
813930	<i>Labor Unions and Similar Labor Organizations</i>
Wholesale	
423690	<i>Other Electronic Parts and Equipment Merchant Wholesalers</i>
423920	<i>Toy and Hobby Goods and Supplies Merchant Wholesalers</i>
423990	<i>Other Miscellaneous Durable Goods Merchant Wholesalers</i>

The City of Austin Economic Development Department's Music & Entertainment Division also released a study on the Austin Music Industry that used NAICS codes and the categorization and sub-categorization methodology of delineating and organizing the Austin Music Industry. The Study re-affirms once again that research studies typically use NAICS codes for categorization to ensure standardization of methodology approach, consistency and comparability. However since there is no single category to delineate and organize the entire music (industry) community, segmentation using sectors and sub-sectors

is required (which was the same industry standard methodology that DotMusic adopted to delineate and organize the community defined):⁴⁰

Typically...research studies...will use the U.S. Federal North American Industry Standard Classification System (NAICS) codes to categorize respondent data. This approach has the advantage of making the data easily comparable to other research studies that use the same method, which can be useful for comparisons or other activities. However, a drawback to using this system to measure the Music Industry is that the standard NAICS classifications do not directly map to the way the Music Industry operates or describes itself.

The segmentation design contains 33 main Music Industry job sectors (and 74 sub-sectors) using common music industry job terminology, and then contains an internal (invisible to the respondent) mapping system, in which each of these “common” job descriptions is then mapped to an NAICS Sector and Subsector. For the purposes of the Austin Music Census, all of the analysis is explained using the common industry job descriptions rather than NAICS classifications...The core of this economy of course is the musicians, but the presence of those musicians spin off the creation of at least 13 other major NAICS economic activity sectors (and a correlating 66 sub-sectors):⁴¹

The thinking and strategic planning around any city-based “Music Industry” is better understood as a number of industries that comprise a large economic system based around commercial music.⁴²

The NAICS classification methodology to define the music (industry) community was also adopted by the Texas Music Office, which delineated the music industry through “conversion of music industry-related Standard Industrial Classification (SIC) codes into North American Industry Classification System (NAICS) codes:”⁴³

SIC to NAICS 2007 Conversion

COMMERCIAL MUSIC

(7311) Advertising Agencies | 541810 [Advertising Agencies]

(8999) Arrangers/Composers | 711510 [Independent Artists, Writers, and Performers incl. Composers, independent and Music arrangers, independent]

(4832) Environmental/Business Music | 513112 [Radio stations incl. Piped-in music services, Radio transmitted]

(8999) Film/Industrial Scoring | 711510 [Independent Artists, Writers, and Performers]

(4832) Jingles and advertising soundtracks | 541840 [Media Representatives]

(4832) Sound effects libraries | 513110 [Radio Broadcasting]

⁴⁰ Austin Music Census, The City of Austin Economic Development Department's Music & Entertainment Division, June 2015, https://www.austintexas.gov/sites/default/files/files/Austin_Music_Census_Interactive_PDF_53115.pdf

⁴¹ Ibid, Pg.38

⁴² Ibid, Pg.39

⁴³ <http://gov.texas.gov/music/guides/naics>

EDUCATION

- (8222) Community and technical college music programs / 611210 [Junior colleges]*
- (8211) Performing arts elementary/secondary schools / 611110 [Elementary and Secondary Schools]*
- (8231) Music Archives / 519120 [Music Archives]*
- (8299) Music Camps / 611610 [Fine arts schools]*
- (8299) Music Instruction Materials / 611610 [Fine arts schools]*
- (8299) Private Music Schools or instruction / 611610 [Fine arts schools]*
- (8221) University and college music programs / 611310 [Colleges, Universities, and Professional Schools]*

INDUSTRY SERVICES

- (8721) Accountants / 541211 [Offices of Certified Public Accountants]*
- (7336) Art/Creative studios / 541430 [Graphic design services]*
- (7922) Artist Management / 711410 [Agents and Managers for Artists, Athletes, Entertainers, and Other Public Figures]*
- (8111) Attorneys / 541110 [Offices of Lawyers]*
- (6399) Insurance / 524128 [Other Direct Insurance (except Life, Health, and Medical) Carriers]*
- (6021) Financial Institutions/Banks / 522110 [Commercial Banking]*
- (9999) Mobile DJs/Karaoke / 711510 [Independent Artists, Writers, and Performers incl. Announcers, independent radio and television]*
- (6794) Music administration/clearance / 512230 [Music Publishers incl. Music copyright authorizing use and Music copyright buying and licensing]*
- (6794) Music business consultants / 541611 [Management Consulting Services]*
- (2754) Music engraving / 323111 [Commercial Gravure Printing]*
- (6794) Music publishers / 512230 [Music Publishers]*
- (8049) Music therapy / 621340 [Offices of Physical, Occupational and Speech Therapists, and Audiologists incl. Music therapists' offices (e.g., centers, clinics)]*
- (7375) Record stores / 451220 [Prerecorded Tape, Compact Disc, and Record Stores]*
- (8600) Organizations/Associations / 813920 [Professional organizations]*
- (7221) Photographers / 541921 [Photography Studios, Portrait]*
- (8049) Physicians/Music medicine / 621399 [Offices of All Other Miscellaneous Health Practitioners]*
- (8743) Publicists / 541820 [Public Relations Agencies]*
- (8600) Unions / 813930 [Labor Unions and Similar Labor Organizations]*

MEDIA

- (2711) Daily newspapers / 511110 [Newspaper Publishers]*
- (2711) College newspapers / 511110 [Newspaper Publishers]*
- (2721) Weekly publications / 511120 [Periodical Publishers]*
- (2721) Monthly publications / 511120 [Periodical Publishers]*
- (2721) Publications on-line only / 511120 [Periodical Publishers]*
- (2721) Publications/Journals / 511120 [Periodical Publishers]*
- (8999) Freelance journalists / 711510 [Independent Artists, Writers, and Performers incl. Freelance journalists]*

- (4832) *Radio consultants* / 813920 [*Consultants' associations*]
- (4832) *Radio Stations* / 515112 [*Radio Stations*]
- (4832) *Internet Radio Stations* / 519130 [*Internet Radio Stations*]
- (4833) *Television programming* / 515120 [*Broadcasting stations, television*]

MUSIC VIDEOS

- (7812) *Soundstages* / 512110 [*Motion Picture and Video Production*]
- (7822) *Video distribution* / 512120 [*Motion Picture and Video Distribution*]
- (7812) *Video postproduction and duplication* / 512191 [*Teleproduction and Other Postproduction Services*]
- (7812) *Video production* / 512110 [*Motion Picture and Video Production*]

MUSICAL INSTRUMENTS AND EQUIPMENT

- (3651) *Electrical equipment-Manufacturers* / 334310 [*Audio and Video Equipment Manufacturing*]
- (3161) *Instrument and touring cases* / 316991 [*Luggage incl. Cases, musical instrument, manufacturing*]
- (3931) *Musical instruments-manufacturers* / 339992 [*Musical Instrument Manufacturing*]
- (7359) *Musical instruments-rental* / 532299 [*All Other Consumer Goods Rental incl. Musical instrument rental*]
- (7699) *Musical instruments-repair* / 811490 [*Other Personal and Household Goods Repair and Maintenance incl. "Musical instrument repair shops without retailing new musical instruments" and "Tuning and repair of musical instruments"*]
- (5736) *Musical instruments-retail* / 451140 [*Musical Instrument and Supplies Stores*]
- (5932) *Musical instruments-used* / 453310 [*Used Merchandise Stores incl. Music stores (e.g., cassette, instrument, record, tape), used*]
- (5099) *Musical instruments-wholesale/distribution* / 423990 [*Other Miscellaneous Durable Goods Wholesalers*]
- (5736) *Sheet music suppliers-Retail/wholesale* / 451140 [*Musical Instrument and Supplies Stores incl. Sheet music stores*]

RECORD PRODUCTION, DISTRIBUTION, AND SALES

- (3652) *Cassette duplication* / 334612 [*Prerecorded Compact Disc (except Software), Tape, and Record Reproducing*]
- (3652) *CD manufacturers* / 334612 [*Prerecorded Compact Disc (except Software), Tape, and Record Reproducing*]
- (7993) *Jukeboxes* / 713990 [*All Other Amusement and Recreation Industries*]or 334310 [*Audio and Video Equipment Manufacturing incl. jukebox manufacturing*]
- (5099) *Record distributors* / 512220 [*Sound recording, releasing, promoting, and distributing*]
- (2782) *Record jacket, CD booklet, J-card mfgs.* / 323118 [*Blankbook, Looseleaf Binders, and Devices manufacturing*]
- (3652) *Record labels* / 512220 [*Integrated Record Production/Distribution*]
- (3652) *Record pressing plants* / 334612 [*Prerecorded Compact Disc (except Software), Tape, and Record Reproducing*]
- (4832) *Record promotion and record pools* / 513111 [*Radio Networks*]
- (5735) *Record stores* / 451220 [*Prerecorded Tape, Compact Disc, and Record Stores*]
- (4832) *Retail marketing* / 541613 [*Marketing consulting services*]

RECORDING SERVICES

- (7389) Audio engineers / 541330 [Engineering Services]*
- (3695) Audiotape-manufacturers/retail / 334613 [Magnetic and Optical Recording Media Manufacturing incl. Audiotape, blank, manufacturing]*
- (7389) Mastering / 512290 [Other Sound Recording Industries]*
- (7389) Mobile recording studios / 512240 [Sound Recording Studios]*
- (7389) Record producers / 512210 [Record Production incl. Record producers (except independent)]*
- (7289) Recording studios / 512240 [Sound Recording Studios] or [Recording studios, sound, operating on a contract or fee basis] or [Sound recording studios (except integrated record companies)]*
- (7389) Rehearsal studios / 512240 [Sound Recording Studios]*
- (1542) Studio and audio design/construction/consultation / 236220 [Radio and television broadcast studio construction]*
- (3663) Studio equipment mfgs/sales/rental / 532490 [Other Commercial and Industrial Machinery and Equipment Rental and Leasing incl. TV broadcasting and studio equipment rental or leasing]*

TOUR SERVICES

- (7922) Annual events 711310 / [Promoters of Performing Arts, Sports, and Similar Events with Facilities]*
- (7922) Booking agents 711320 / [Promoters of Performing Arts, Sports, and Similar Events without Facilities]*
- (7922) Concert and event production / 711320 [Promoters of Performing Arts, Sports, and Similar Events without Facilities]*
- (3648) Lighting-manufacturers and supplies / 335129 [Other Lighting Equipment Manufacturing incl. Stage lighting equipment manufacturing]*
- (7922) Lighting-services / 541490 [Lighting design services]*
- (1731) PA systems/sound reinforcement / 334310 [Audio and Video Equipment Manufacturing incl. Public address systems and equipment mfg] or 235310 [Electrical contractors]*
- (7359) PA/Staging equipment-rental / 532490 [Audio visual equipment rental or leasing]*
- (7922) Promoters / 711320 [Promoters of Performing Arts, Sports, and Similar Events without Facilities]*
- (7381) Security / 561612 [Security Guards and Patrol Services]*
- (1799) Staging/stage construction / 711510 [Stage set (e.g., concert, motion picture, television) erecting and dismantling, independent]*
- (2759) Ticket printing / 323119 [Other Commercial Printing]*
- (7922) Ticket sales outlets / 561599 [All Other Travel Arrangement and Reservation Services incl. Ticket agencies, theatrical]*
- (4142) Tour buses/transportation / 532120 [Truck, Utility Trailer, and RV (Recreational Vehicle) Rental and Leasing incl. Bus rental or leasing and Trailer rental or leasing]*
- (1799) Tour management and personnel / 541611 [General management consulting services]*

VENUES

- (6512) Auditoriums/Arenas / 711310 [Promoters of Performing Arts, Sports, and Similar Events with Facilities]*
- (5813) Clubs/Dancehalls / 722410 [Drinking Places (Alcoholic Beverages) incl. Night clubs, alcoholic beverage] 713990 [All Other Amusement and Recreation Industries incl. Dance halls, Ballrooms, and Night clubs without alcoholic beverages]*

(6512) Concert Halls/Performing arts centers | 711310 [Promoters of Performing Arts, Sports, and Similar Events with Facilities]

(7941) Stadiums/Amphitheaters/Fairgrounds | 711310 [Promoters of Performing Arts, Sports, and Similar Events with Facilities]⁴⁴

The University of Memphis also released a study⁴⁵ that assessed local music industries and also used the NAICS classification methodology to delineate and organize the music industry in categories:

Commercial music studios, producers, promoters, bands, lawyers, singers, musicians, retail establishments, teachers, professors, and others form parts of the complex fabric of the music industry in the city....The data in Table 5 contain business employment and payroll information for Shelby County, Tennessee (Memphis), Davidson County, Tennessee (Nashville), and Travis County, Texas (Austin) provided by the United States Department of Labor, Bureau of Labor Statistics (BLS).

Since data for some segments are not released by BLS because of confidentiality restrictions, the data tend to understate the number of businesses, employment, and payrolls that could properly be attributed to the music industry. But, it does help in benchmarking the music industry in this area.

Table 5

NAICS	Description
51223	Music Publishers
339992	Musical Instrument Mfg.
33431	Audio and Video Equipment Mfg.
45114	Musical Instrument and Supplies Stores
71113	Musical Groups and Artists
71151	Independent Artists, Performers, and Writers
51224	Sound Recording Studios
51229	Other Sound Recording Industries
334612	Pre Recorded CD (Except Software), Tape, and Record Producing
51222	Integrated Record Production/Distribution
51221	Record Production
71312	Amusement Arcades
53311	Lessors of Non-Financial Intangible Assets
61161	Fine Arts Schools
51211	Motion Picture and Video Production
323119	Other Commercial Printing
45122	Prerecorded Tape, CD, and Record Stores
71141	Agents and Managers for Artists, Athletes, Entertainers, and Other Public Figures

⁴⁴ Ibid

⁴⁵ Gnuschke, John E.; Jeff Wallace, Economic Impact of the Music Industry in Memphis and Shelby County, *Business Perspectives*. University of Memphis. 2004. *HighBeam Research*. 28 Oct. 2015, <http://www.highbeam.com/doc/1G1-126612058.html> and <http://www.freepatentsonline.com/article/Business-Perspectives/126612058.html>

Another such Report was conducted on the Music Industry in Chicago by the Chicago Music Commission.⁴⁶ Once again, the Report illustrated that there is no classification code to cover the entire music (industry) community and that it was necessary to select NAICS categories and sub-categories to cover the “whole industry” (which was the same industry standard methodology that DotMusic adopted to delineate and organize the community defined). As the Report illustrates, one shortcoming of NAICS codes was that some NAICS codes also lump peripheral industries with categories that contain music industries. For example, “independent artists, writers or performers” lump together both music-related entities and non-music related entities. So that DotMusic does not overreach beyond the community defined, the DotMusic application clarifies that only the “music” component is relevant and peripheral entities not associated with “music” are excluded. This is why for every NAICS code the DotMusic application includes the word **music** as part of each NAICS classification category to clarify that all entities unrelated to music or with a tangential relationship with “**music**” are excluded . This methodology incorporated by DotMusic was to ensure that all entities have the requisite awareness that they belong to the **music** community defined in its application of a strictly delineated and organized logical alliance of communities **related to music** (emphasis added). The Report states:

Because music production involves what Caves calls a “motley crew” using very different skill sets and engaged in very different kinds of productive processes, however, there is no one NAICS code or set of codes covering the whole industry. To begin with, then, it is necessary to pick out those categories of business units that participate in the music industry.

We did this by examining each coded industry category to determine whether it had any connection to music at all, and if so, whether it constituted part of the core component of the music industry or part of its periphery. Businesses wholly or predominantly involved in the performance, production, or distribution of musical activity—such as “musical groups & artists,” “sound recording studios,” and “radio networks”—were easily designated as part of the core component. However, some industry categories, such as “independent artists, writers or performers,” lump together musical and non-musical work. Other categories—for example, “audio and video equipment manufacturing”—define businesses that support the performance, production or distribution of music, but may also support non-musical work. We place both these kinds of hybrids in the peripheral component of the music industry. The table below provides an exhaustive list of the 6-digit industries included in our definition of the music industry.⁴⁷

FIGURE 1 - MUSIC INDUSTRY DEFINITION

NAICS Code Sub-Industry Description

⁴⁶ Lawrence Rothfield, Don Coursey, Sarah Lee, Daniel Silver and Wendy Norris, A Report on the Music Industry in Chicago, Chicago Music Commission, Cultural Policy Center, University of Chicago, 2007, <http://www-news.uchicago.edu/releases/08/pdf/080122.music.pdf>

⁴⁷ Ibid, Defining the Music Industry, Pg.4

CORE MUSIC SUB-INDUSTRIES

339992	<i>Musical instrument manufacturing</i>
451140	<i>Musical instruments and supplies stores</i>
451220	<i>Prerecorded tape, compact disc and record stores</i>
512210	<i>Record production</i>
512220	<i>Integrated record production/distribution</i>
512230	<i>Music publishing</i>
512240	<i>Sound recording studios</i>
512290	<i>Other sound recording industries</i>
515111	<i>Radio networks</i>
515112	<i>Radio stations</i>
711130	<i>Musical groups and artists</i>

PERIPHERAL MUSIC SUB-INDUSTRIES

334310	<i>Audio and video equipment manufacturing</i>
334612	<i>Prerecorded compact disc, tape and record reproducing</i>
611610	<i>Art, drama and music schools</i>
621340	<i>Offices of physical, occupational and speech therapists and audiologists</i>
711110	<i>Theater companies and dinner theaters</i>
711300	<i>Promoters of performing arts, sports and similar events</i>
711400	<i>Agents and managers for artists, athletes, entertainers and other public figures</i>
711500	<i>Independent artists, writers and performers</i>
722400	<i>Drinking places</i> ⁴⁸

The Report all points out another NAICS discrepancy with respect to delineating music profit and non-profit entities:

*A classificatory framework of some kind is indispensable, and like every framework, ours has certain shortcomings. One is that it fails to register the distinction between for-profit and non-profit music businesses.*⁴⁹

With respect to DotMusic's application, in order to match the Nexus of the string with the community defined, DotMusic clarifies that both for-profit and non-profit entities are included in its community delineation:

The Music Community encompasses global reaching commercial and non-commercial stakeholders, and amateur stakeholders. (20c)

⁴⁸ Ibid, Defining the Music Industry, Pg.5

⁴⁹ Ibid, Defining the Music Industry, Pg.5

DotMusic's methodology and rationale for using NAICS codes is one based on what is traditionally used in research studies. However, as previously illustrated, there are some limitations to using classification codes with respect to overreaching beyond the community defined by DotMusic in its application, as highlighted by several reports on defining the cultural economy and methodological approaches for measuring creative industries (such as the music (industry) community) as well as UNESCO:

*All efforts to operationalize the cultural economy are forced to work with industrial and occupational categories...Given the regional variation, researchers might include different sets of industries in defining their regional cultural economies.*⁵⁰

*[P]roblems of highly aggregated occupational code categories (see Higgs et al., 2008) seem to jeopardize an accurate analysis.*⁵¹

*Implicit in the notion of class is "some kind of self-identity and consistent value system within a socio-political hierarchy" (Clifton, 2008: 66). Indeed, creative individuals have aspects in common. They often get involved in the social networks or communities...and they have common values, principles. (Florida 2002a: 78-9)*⁵²

*[T]he creative class concept needs to be related to a production context that should be interrelated with other organizations, institutional bodies and the community itself, in order to understand the linkages along the value chain and the locally enrooted practices that arise from these interconnections.*⁵³

*One of the most important issues in the analysis of creative activities is the emergent need for a universal conception and a classification system that can accurately gather and map data on these industries.*⁵⁴

*Classification of cultural industries is another issue which requires attention. The lack of a strong theoretical definition has led to misunderstanding and confused the situation concerning structural elements of these industries.*⁵⁵

The term "cultural industries" [such as the music industry community] is used in accordance with UNESCO's view "as a set of activities that produce and distribute cultural goods or services, which at the time they are considered as a specific attribute, use or purpose, embody or convey cultural expressions irrespective of the commercial value they may have" (UNESCO-UIS, 2009). A consensus seems to be emerging for a

⁵⁰ Ann Markusen (University of Minnesota), Gregory H. Wassall (Northeastern University), Douglas DeNatale (Community Logic, Inc), Randy Cohen (Americans for the Arts), Defining the Cultural Economy: Industry and Occupational Approaches, November 2006 , Pg.8 and Pg.9, <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.542.4308&rep=rep1&type=pdf>, Pg.23

⁵¹ Sara Cruz and Aurora A.C. Teixeira, Methodological approaches for measuring the creative employment, Universidade do Porto, <http://wps.fep.up.pt/wps/wp455.pdf>, Pg.2 and Pg.3

⁵² Ibid, Pg.4

⁵³ Ibid, Pg.8

⁵⁴ Ibid, Pg.9

⁵⁵ United Nations Educational, Scientific and Cultural Organization (UNESCO), Measuring the Economic Contribution of Cultural Industries: A review and assessment of current methodological approaches, Framework for Cultural Statistics Handbook, 2009, <http://www.uis.unesco.org/culture/Documents/FCS-handbook-1-economic-contribution-culture-en-web.pdf>, Pg.15

working definition of the “core” creative or cultural industries, while there is still confusion surrounding non-core and supporting activities. Usero and del Brío (2011) in their recent article also discuss and assess the contribution of the 2009 UNESCO FCS to the field of measuring the economic contribution of culture.⁵⁶

In the first Resolution of the European Parliament on this topic entitled European Parliament Resolution on Cultural Industries (2002/2017) cultural industries was considered as a field of multidimensional forms of cultural expressions ranging from cultural heritage to audiovisual industries. Two years later, Opinion of European Economic and Social Committee on Europe’s Creative Industries (2004) adopted a prescriptive definition of creative industries by identifying provisional list of activities labelled as creative industries.⁵⁷

There is a lack of a unique and common platform for discussing the classification of cultural industries, the measurement of their economic impact, and the potential of linking and upgrading multidisciplinary approaches. This lack not only has a negative impact on research in this field, but also makes it difficult to build a comprehensive scientific and practical framework for measuring the economic contribution of cultural industries to development.⁵⁸

At present, the statistics for cultural industries have not been harmonised in a systematic manner, and there is no unique statistical methodology.⁵⁹

Despite all the novelties and progress, the „original sin” intractably remains - the vagueness or even lack of clarification regarding the definitions and estimations of creative industries, creative class, cultural activities, creative city, or cultural labour force (Glaeser, 2005; Markusen et al., 2008; Pratt et al., 2009)...So far, the literature has barely come to agreement on what comprises the concepts of creative and cultural economics, as well as their precise boundaries and extent.⁶⁰

The formal [UK’s Department of Culture, Media and Sport (DCMS)] definition of creative industries is “...those activities which have their origins in individual creativity, skill and talent and which have the potential for wealth and job creation through generation and exploitation of intellectual property”...This definition provided the basis for several works developed by national governments worldwide (e.g., DCMS, 2001; Walton and Duncan, 2002; Heng et al., 2003; Scottish Government Social Research, 2009).⁶¹

The Branches of Activity approach categorizes the creative economy in terms of “upstream activities”, i.e., core cultural activities, and “downstream activities”, i.e., commercial and distribution industries, dedicated to the diffusion and commercialization of cultural contents (e.g., Heng et al., 2003; Scott, 2004; UNCTAD 2008: 13). The strength of this perspective lies in the importance of tracing the linkages and

⁵⁶ Ibid, Pg.17

⁵⁷ Ibid, Pg.29

⁵⁸ Ibid, Pg. 80

⁵⁹ Ibid, Pg. 87

⁶⁰ Sara Cruz and Aurora A.C. Teixeira, Industry-based methodological approaches to the measurement of Creative Industries: a theoretical and empirical account, Universidade do Porto, <http://wps.fep.up.pt/wps/wp453.pdf>, Pg.2

⁶¹ Ibid, Pg.4

interdependencies among all the industries that compose the value chain, differentiating the upstream segments from the downstream (Scott, 2004)...Finally, the Systemic/Evolutionary approach holds that creative industries are evolutionary systems characterized by processes mainly grounded in interactions (the “agents - networks - firms” triad) and social networks (Potts et al., 2008: 170). Here, creative industries are defined and modelled as complex systems of activities, where agents and firms interact dynamically through value flows on the basis of a network structure. Supply and demand of creative goods is characterized as a process where “decisions both to produce and to consume are determined by the choice of others in the social network” (Potts et al., 2008: 169-170).⁶²

In order to be as accurate as possible in this mapping and the respective estimation of all the approaches analyzed, we used detailed 5-digit industry codes...The use of ISIC - Rev. 3.1 in all the industry based approaches that were mapped...⁶³

As highlighted by UNESCO and the many research studies and reports, there is no single universal classification code that can accurately map the music (industry) community as defined. To ensure that the community definition matches the string, DotMusic’s application calibrated its delineation to only restrict the “music” subset of each NAICS code (See Venn diagrams).

The Future of Music also indicates the value of using NAICS codes because they are government classifications that provide categories that are consistent and reliable:

Government statistics have some value because they are reliably collected over time.

However, the one discrepancy that DotMusic calibrated in its Application is that the fact that NAICS codes do not include self-employed music entities or musicians e.g. amateurs:

[E]xamining government data can give you a sense of the size and changes over time, but the fact that BLS OES data [i.e. NAICS] does not include self-employed musicians makes it likely that the published number is far lower than reality.

Estimates for detailed occupations do not sum to the totals because the totals include occupations not shown separately. Estimates do not include self-employed workers.⁶⁴

So that DotMusic does not overreach beyond the community defined by excluding self-employed entities, it clarified in its application the community defined includes commercial, non-commercial and amateurs without discrimination:

⁶² Ibid, Pg.10

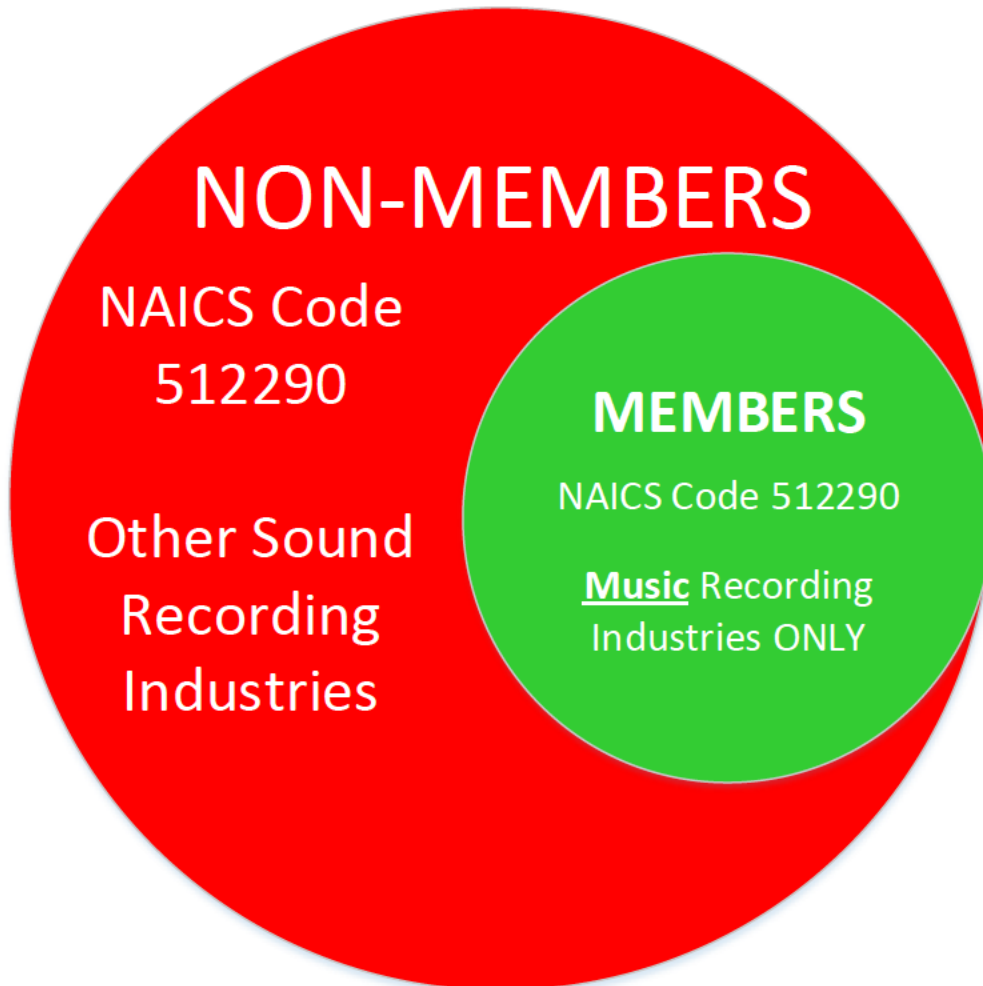
⁶³ Ibid, Pg.12. With respect to ISIC vs. NAICS, “definitions of individual categories have been designed in a way that statistical data collected according to NAICS can be re-aggregated into the two-digit divisions of ISIC, Rev.4, ensuring the comparability of data.” (See http://unstats.un.org/unsd/publication/seriesM/seriesm_4rev4e.pdf, Pg.37 and https://www.census.gov/eos/www/naics/concordances/2012_NAICS_to_ISIC_4.xls and <http://www.naics.com/naicswp2014/wp-content/uploads/2014/10/NAICS-to-SIC-Crosswalk.pdf>).

⁶⁴ U.S Bureau of Labor Statistics, <http://www.bls.gov/oes/current/oes272041.htm#%281%29>, (1)

The Music Community encompasses global reaching commercial and non-commercial stakeholders, and amateur stakeholders. (20c)

ANNEX B

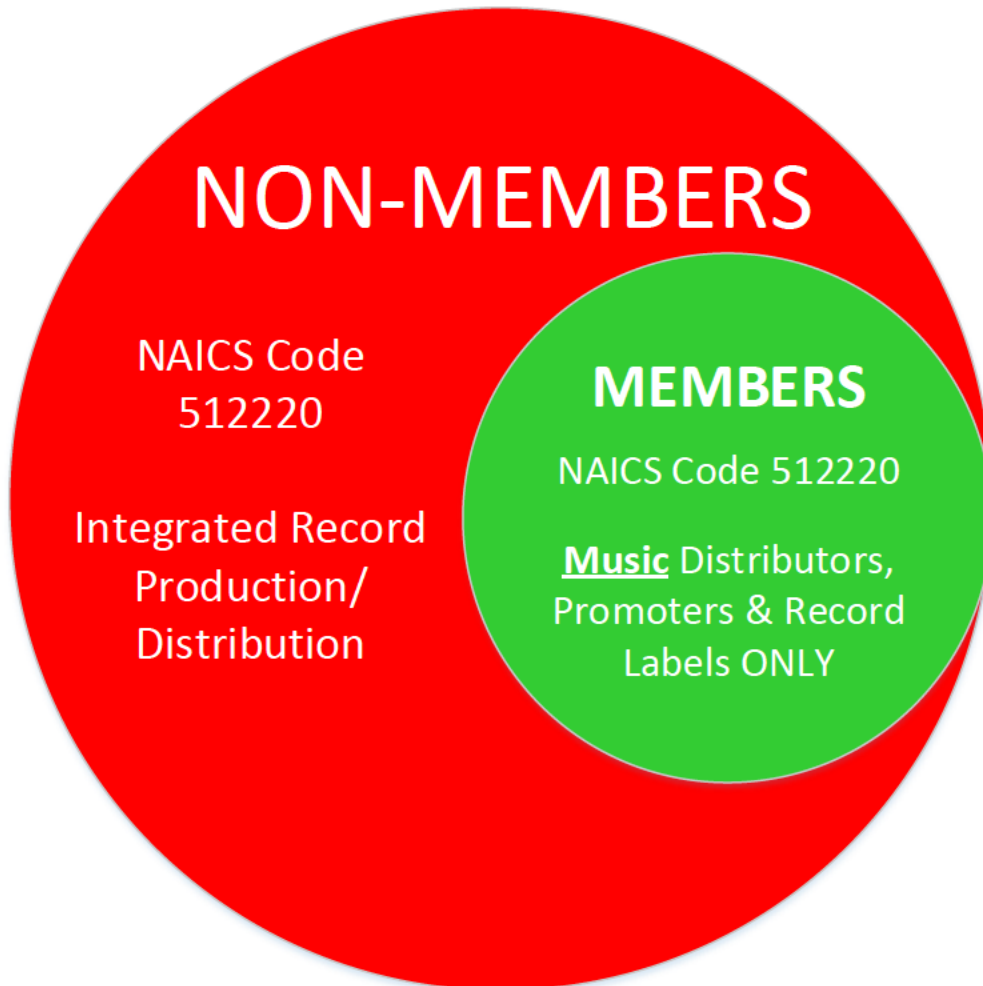
Clarifying Question A - Table 2 - #4 - NAICS 512290



Clarifying Question A - Table 2 - #5 - NAICS 512240



Clarifying Question A - Table 2 - #6 - NAICS 512220



Clarifying Question A - Table 2 - #12 - NAICS 541211



NON-MEMBERS

NAICS Code
541211

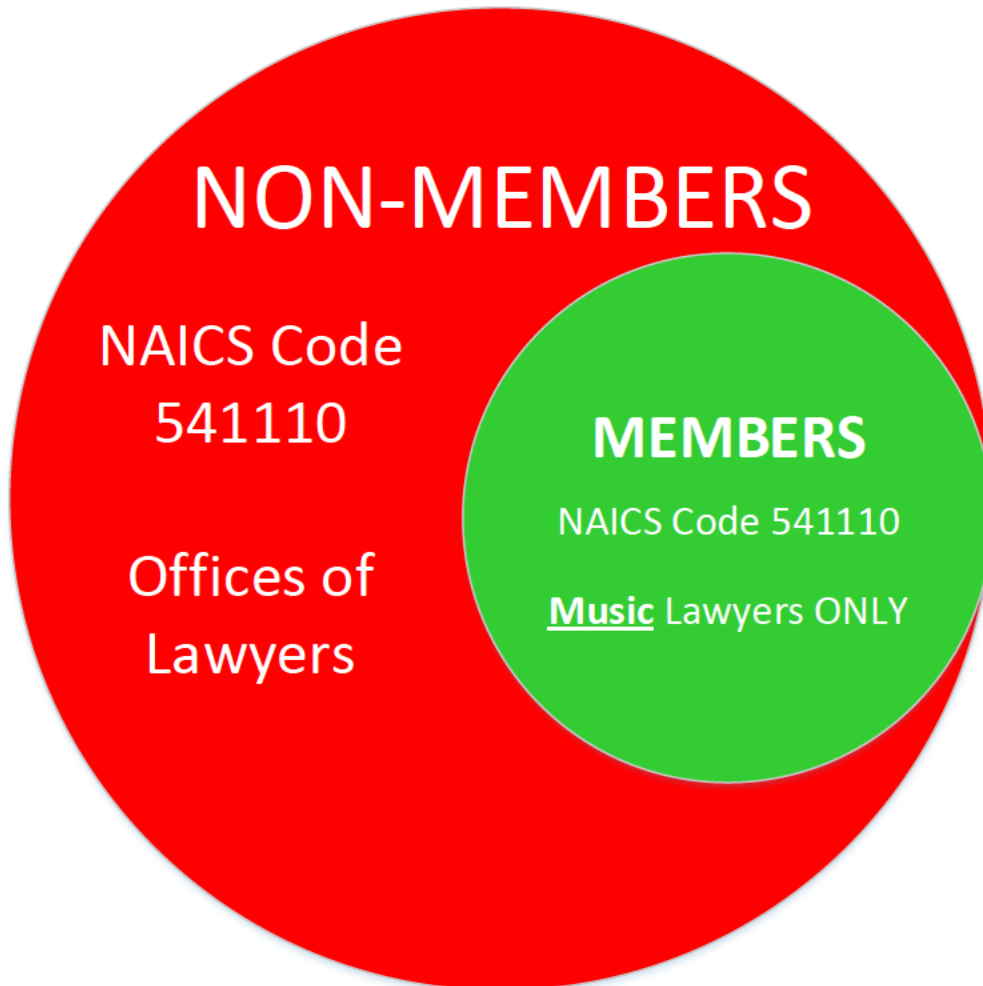
Offices of Certified
Public Accountants

MEMBERS

NAICS Code 541211

Music Accountants ONLY

Clarifying Question A - Table 2 - #13 - 541110



NON-MEMBERS

NAICS Code
541110

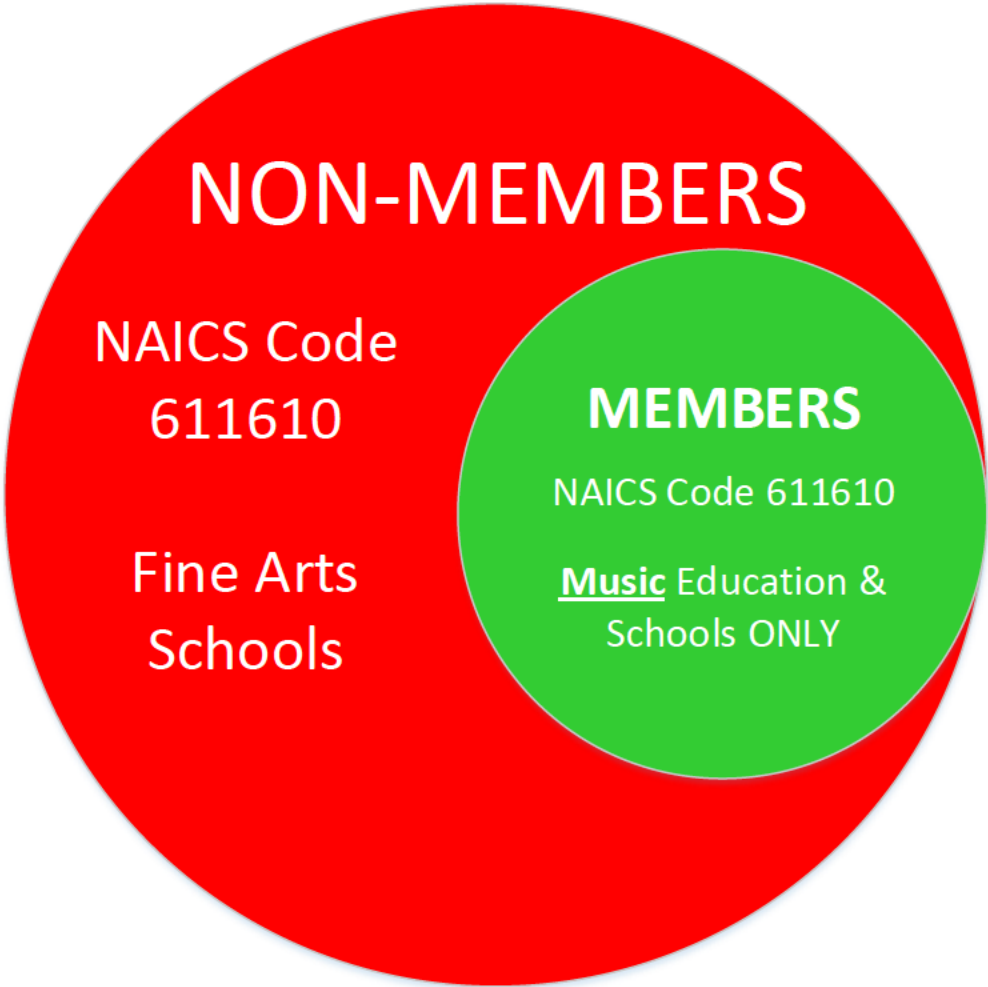
Offices of
Lawyers

MEMBERS

NAICS Code 541110

Music Lawyers ONLY

Clarifying Question A - Table 2 - #15 - NAICS 611610



NON-MEMBERS

NAICS Code
611610

Fine Arts
Schools

MEMBERS

NAICS Code 611610

Music Education &
Schools ONLY

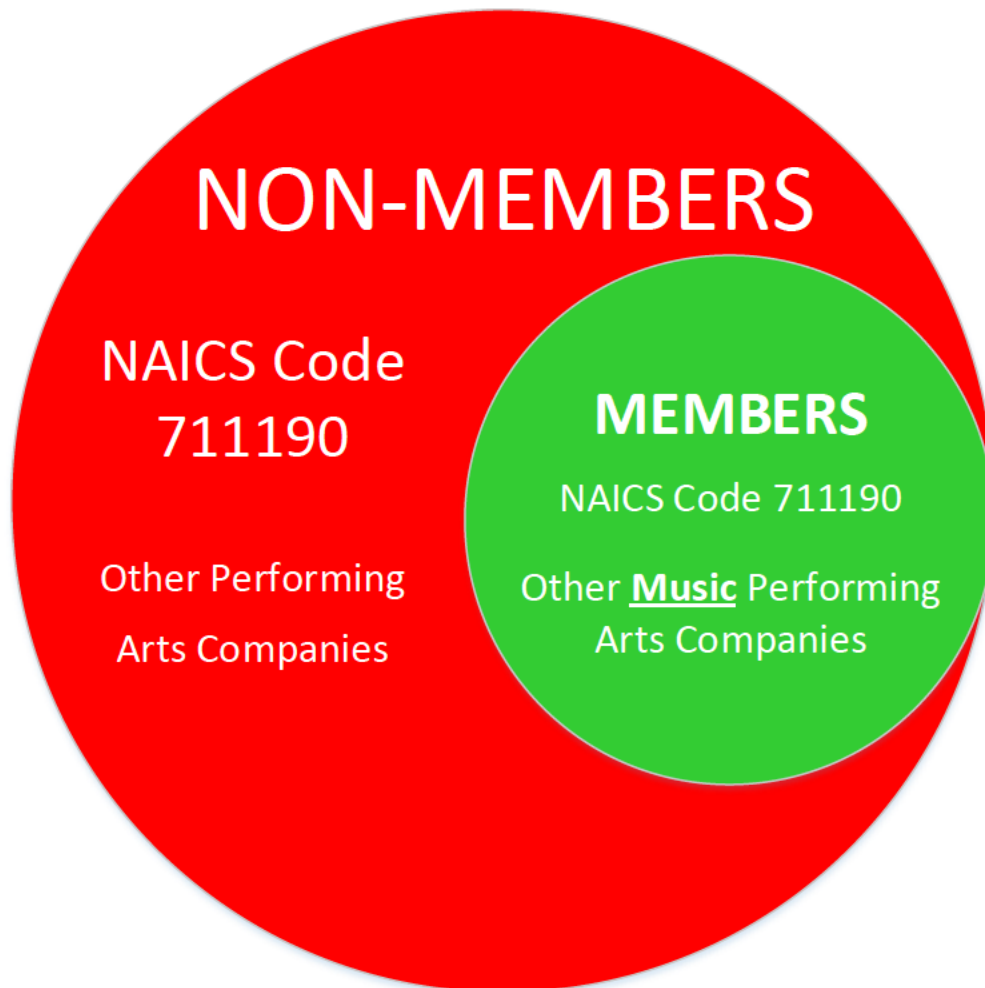
Clarifying Question A - Table 2 - #18 - NAICS 711310



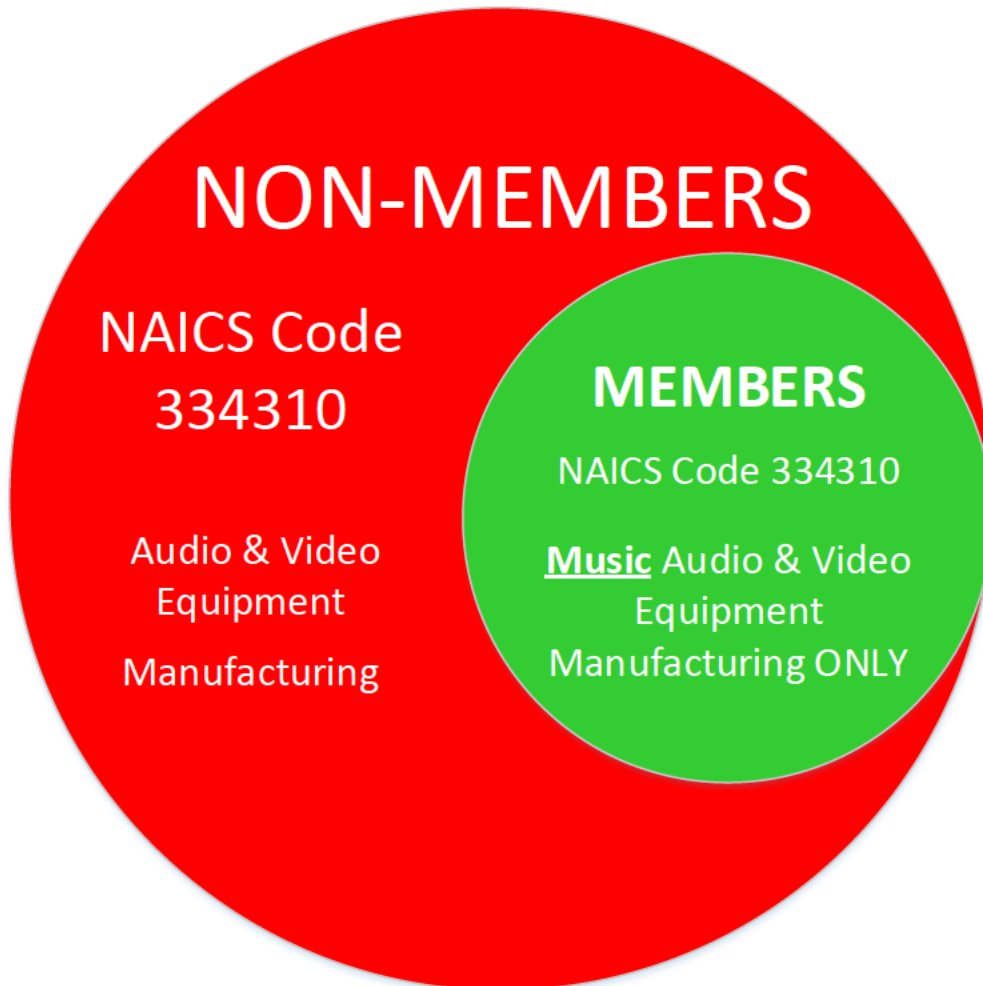
Clarifying Question A - Table 2 - #19 - NAICS 711320



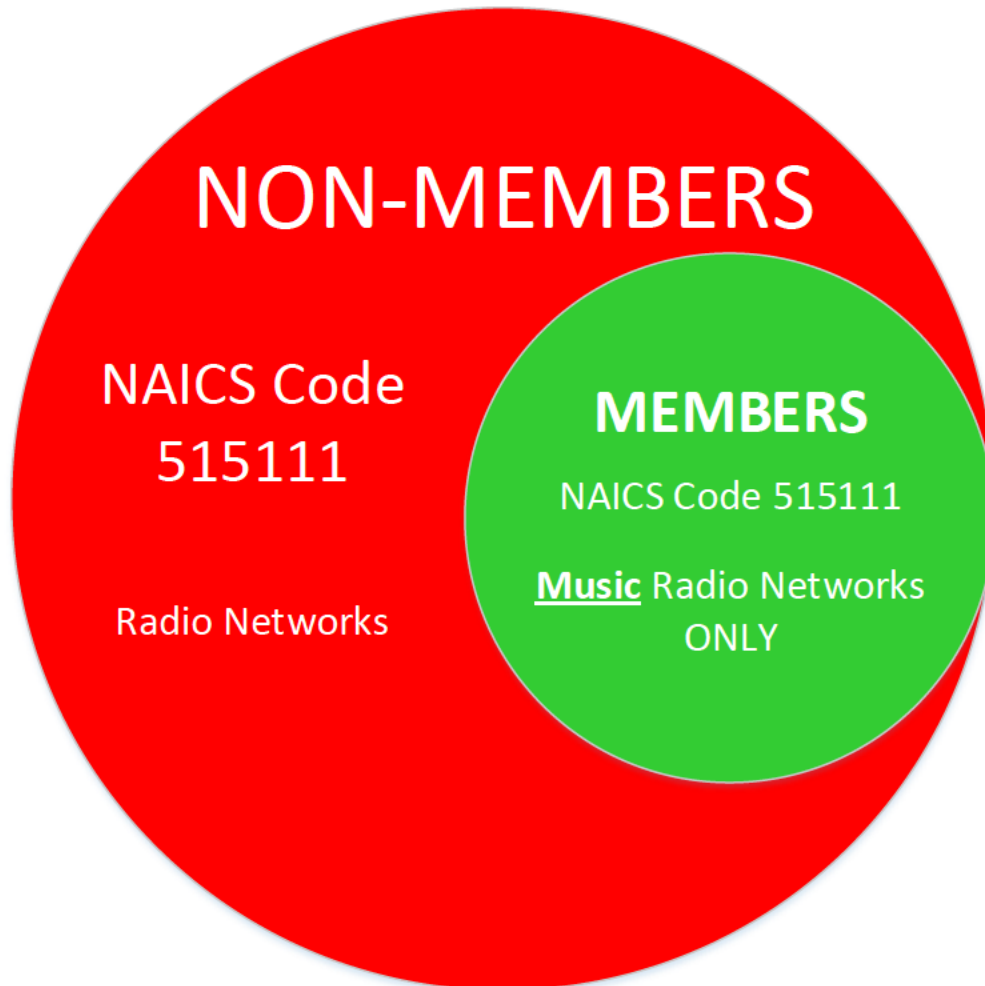
Clarifying Question A - Table 2 - #21 - NAICS 711190



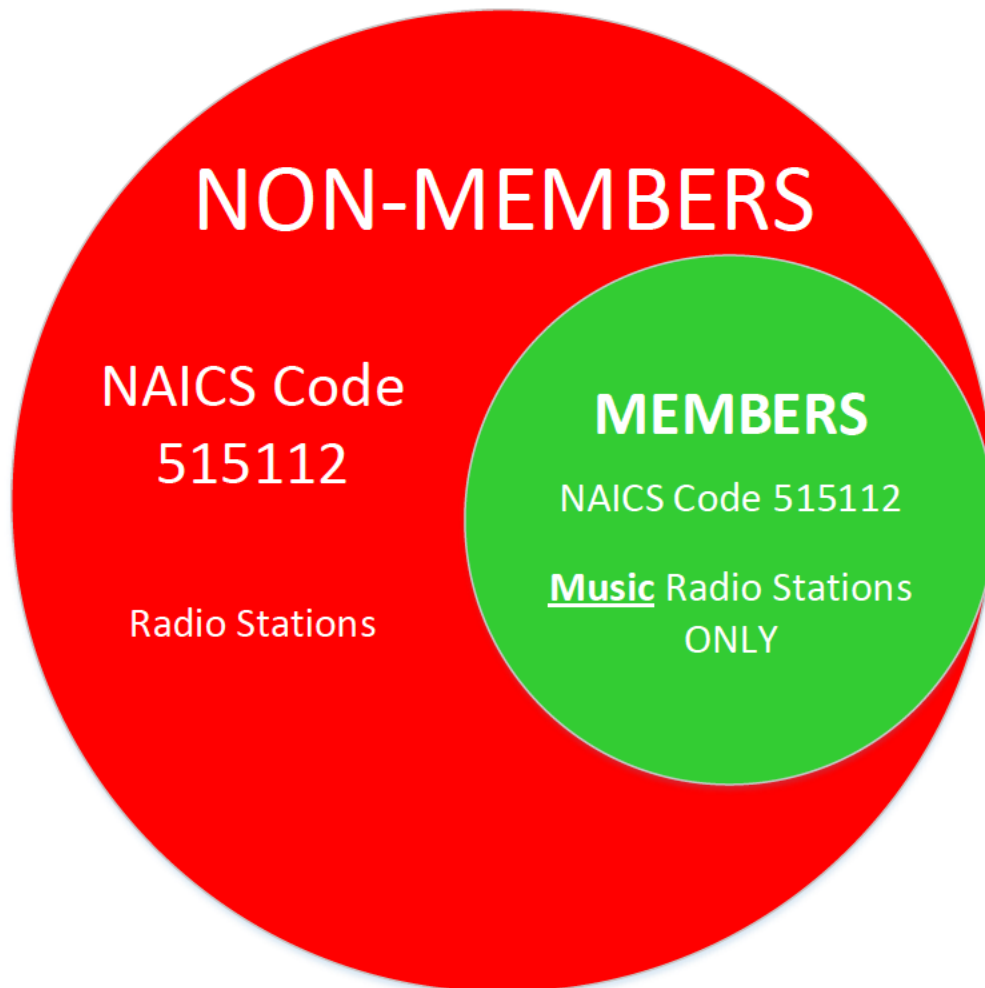
Clarifying Question A - Table 2 - #23 - NAICS 334310



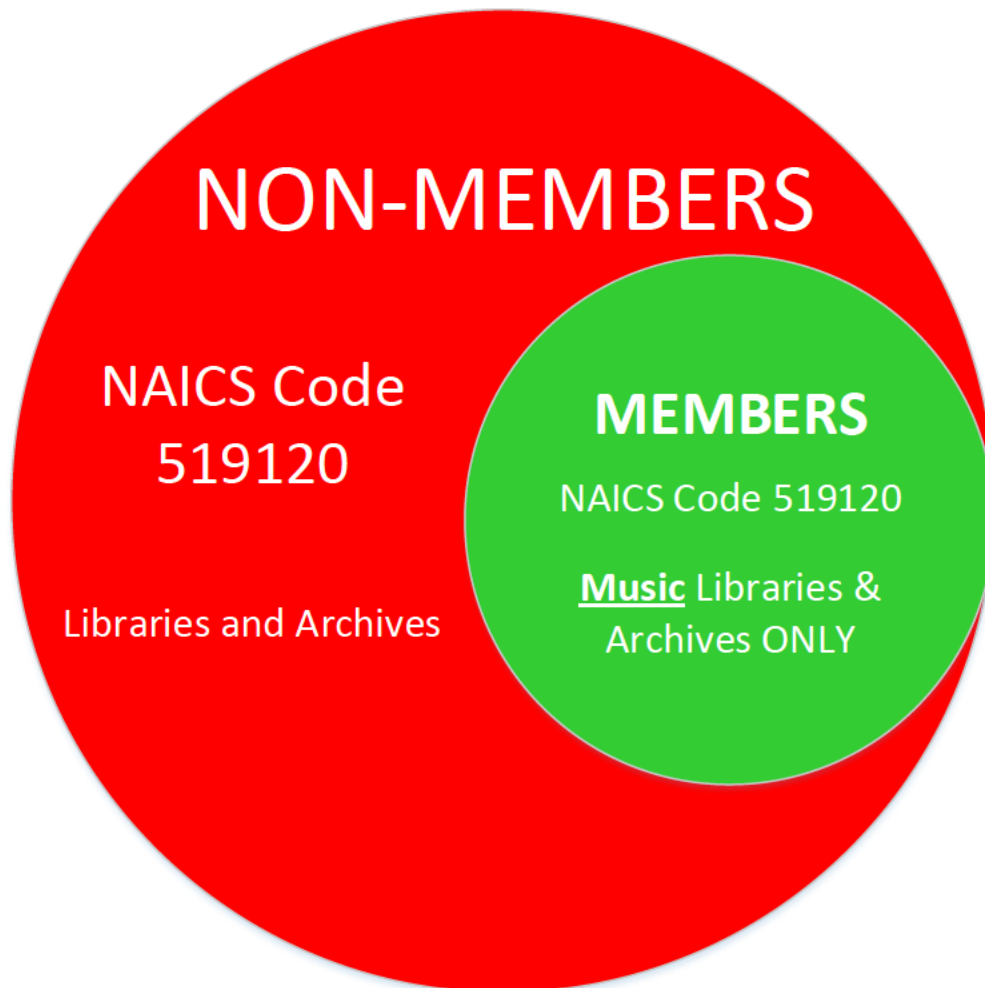
Clarifying Question A - Table 2 - #24 - NAICS 515111



Clarifying Question A - Table 2 - #25 - NAICS 515112



Clarifying Question A - Table 2 - #26 - NAICS 519120



NON-MEMBERS

NAICS Code
519120

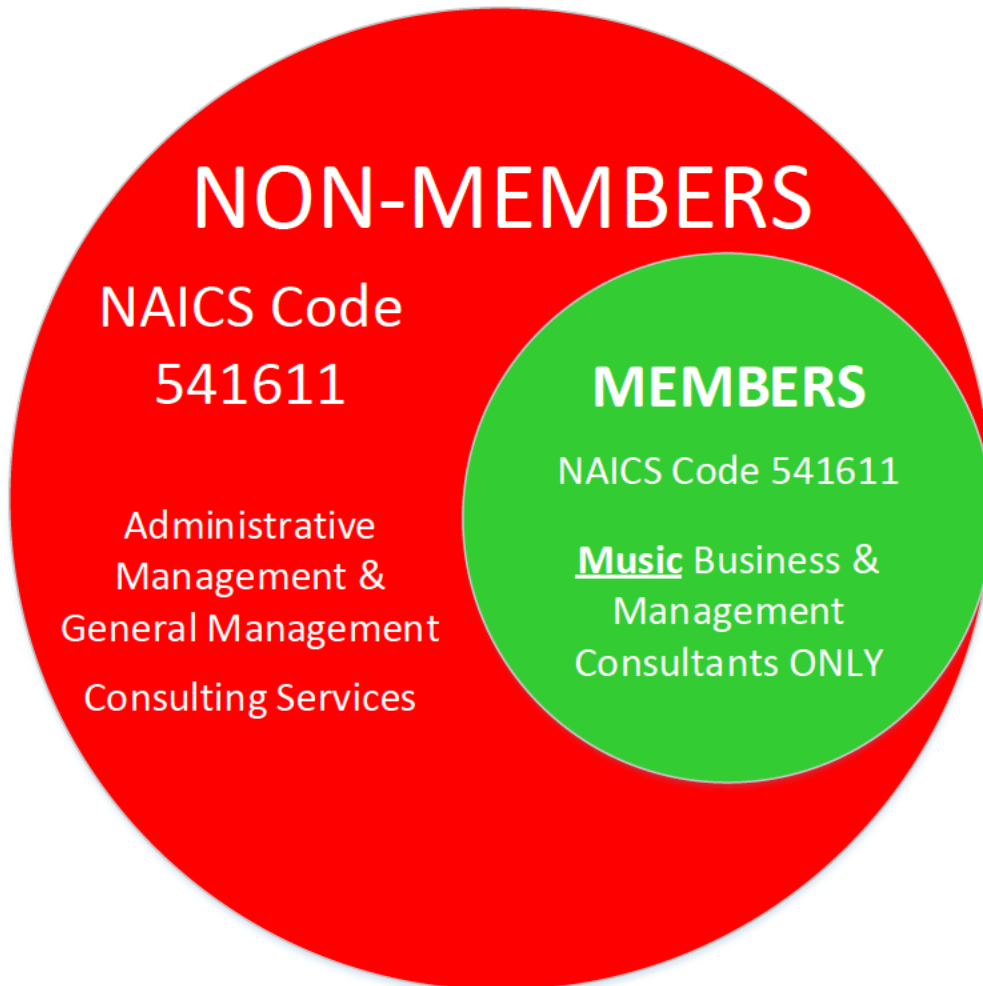
Libraries and Archives

MEMBERS

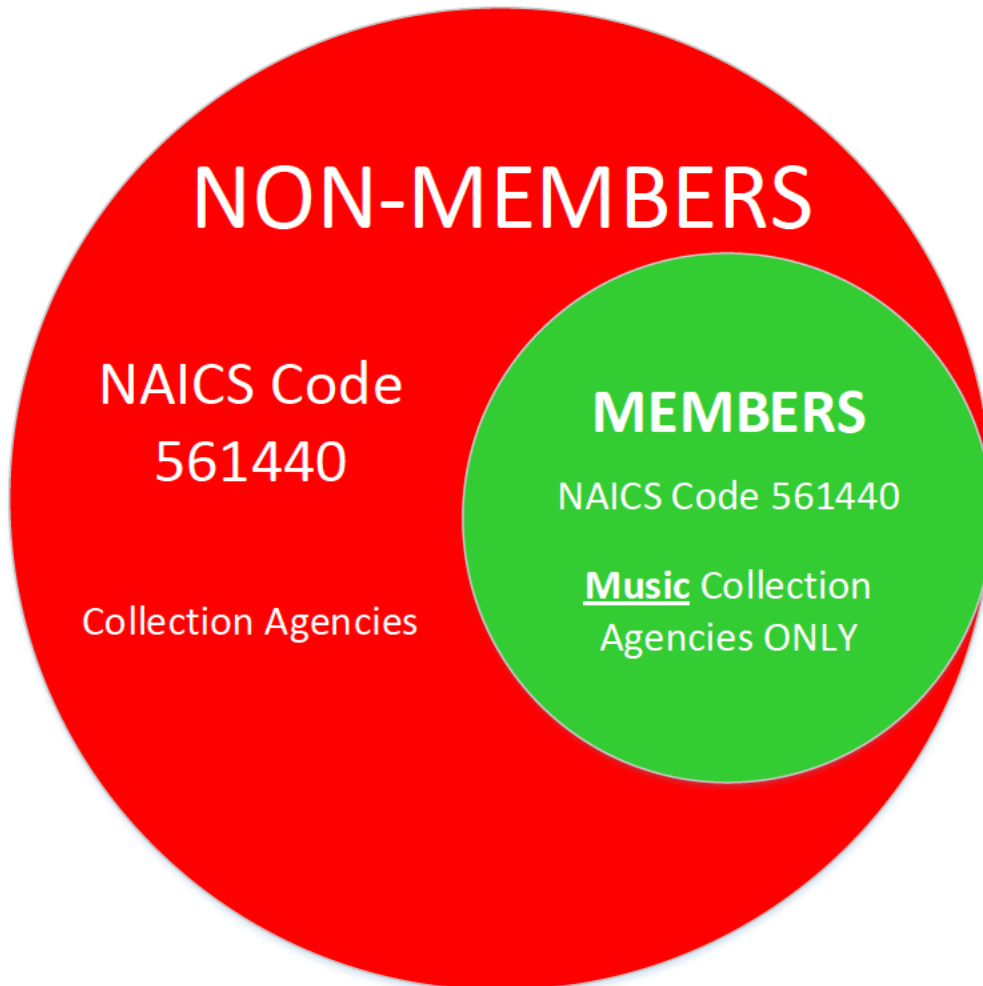
NAICS Code 519120

Music Libraries &
Archives ONLY

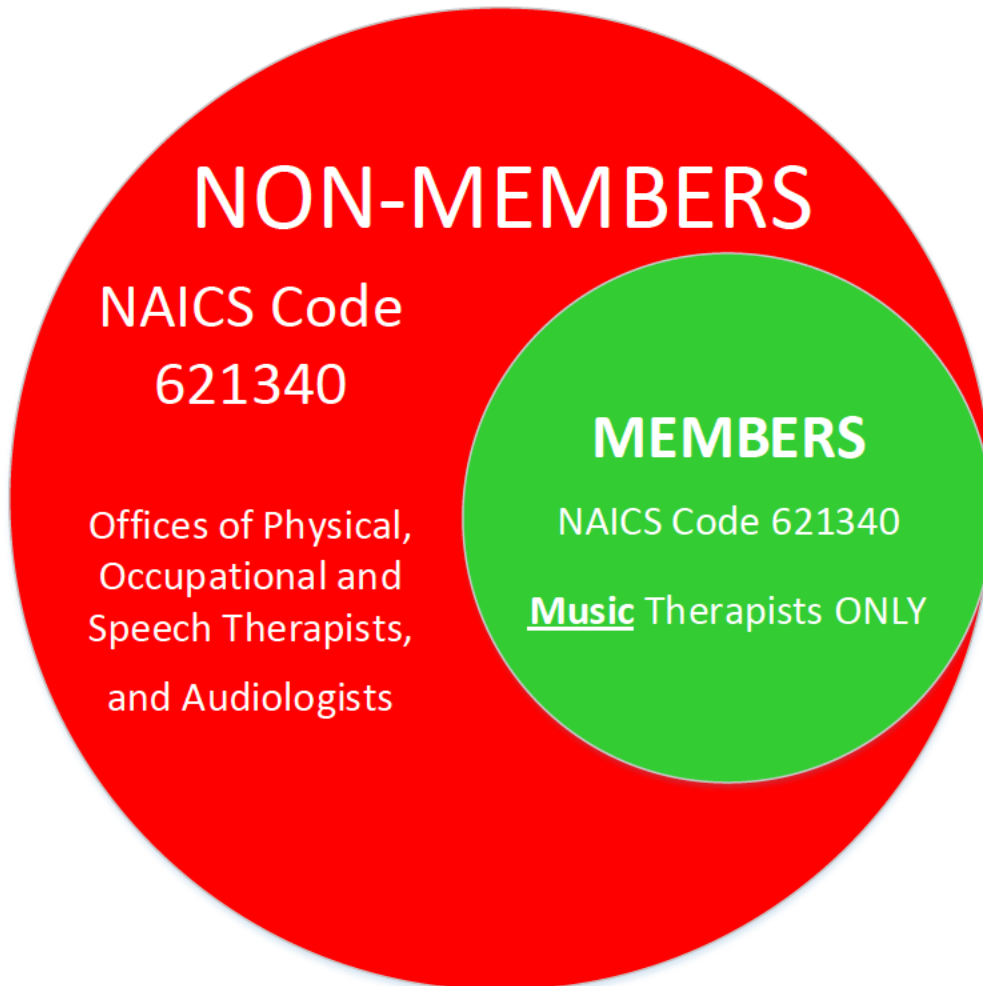
Clarifying Question A - Table 2 - #27 - NAICS 541611



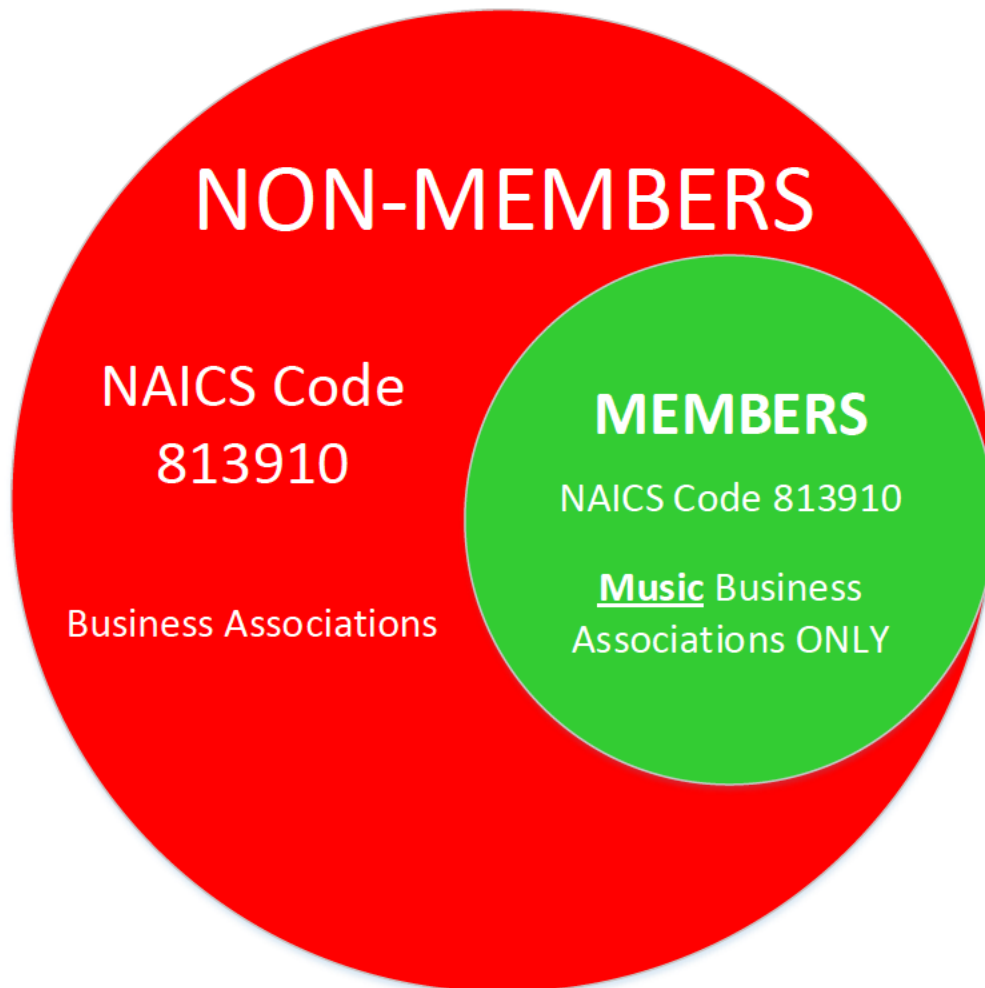
Clarifying Question A - Table 2 - #28 - NAICS 561440



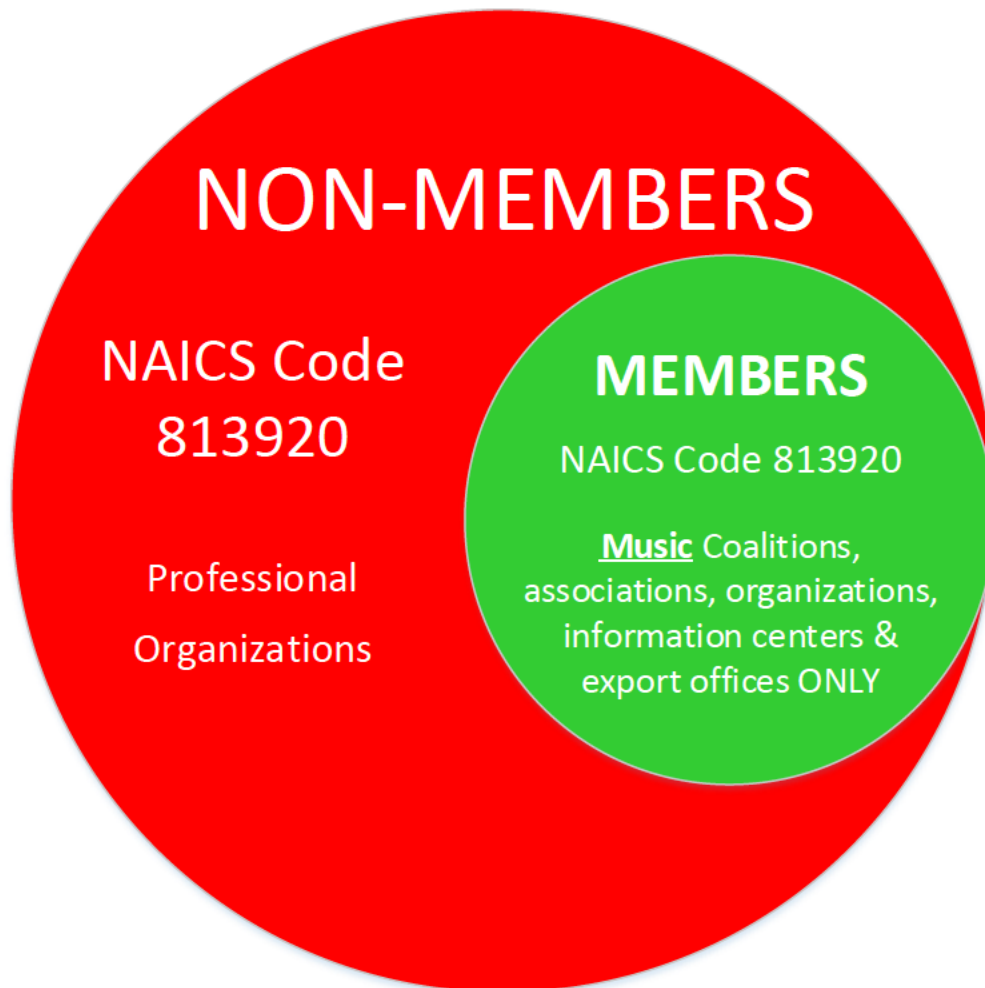
Clarifying Question A - Table 2 - #29 - NAICS 621340



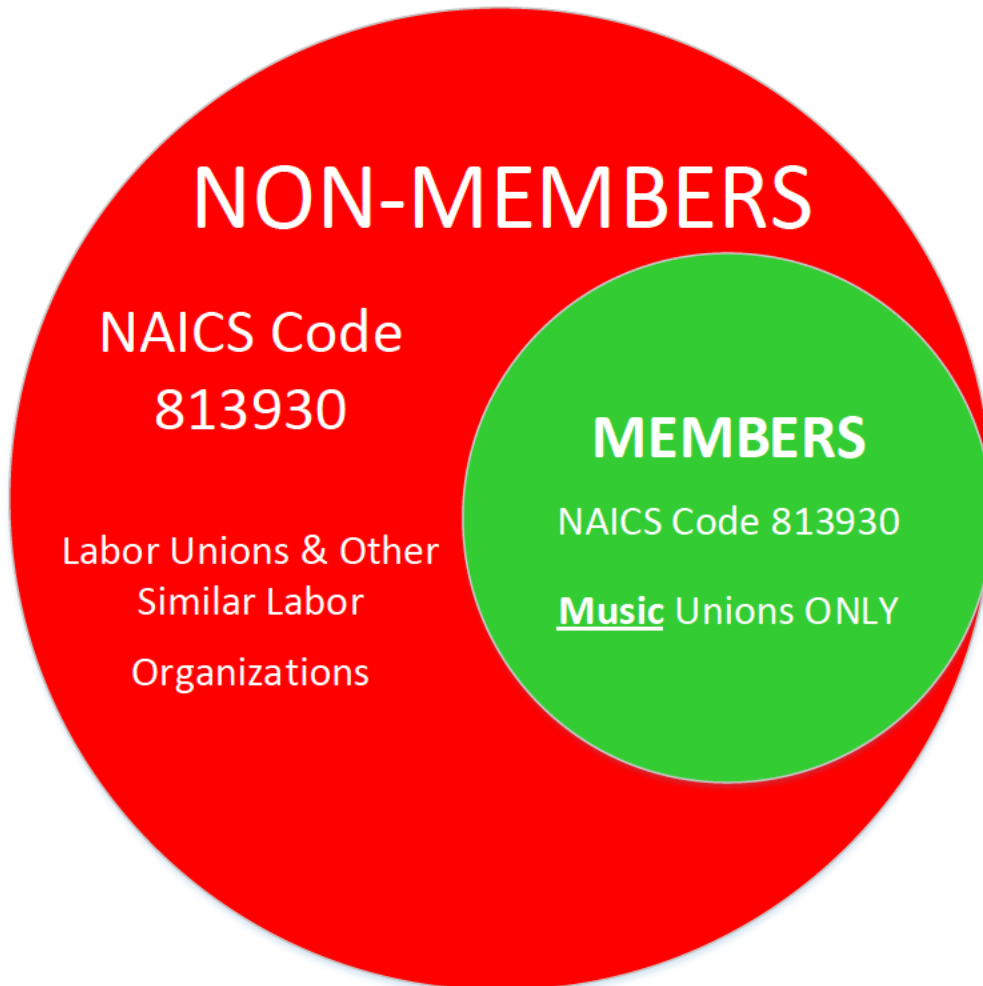
Clarifying Question A - Table 2 - #30 - NAICS 813910



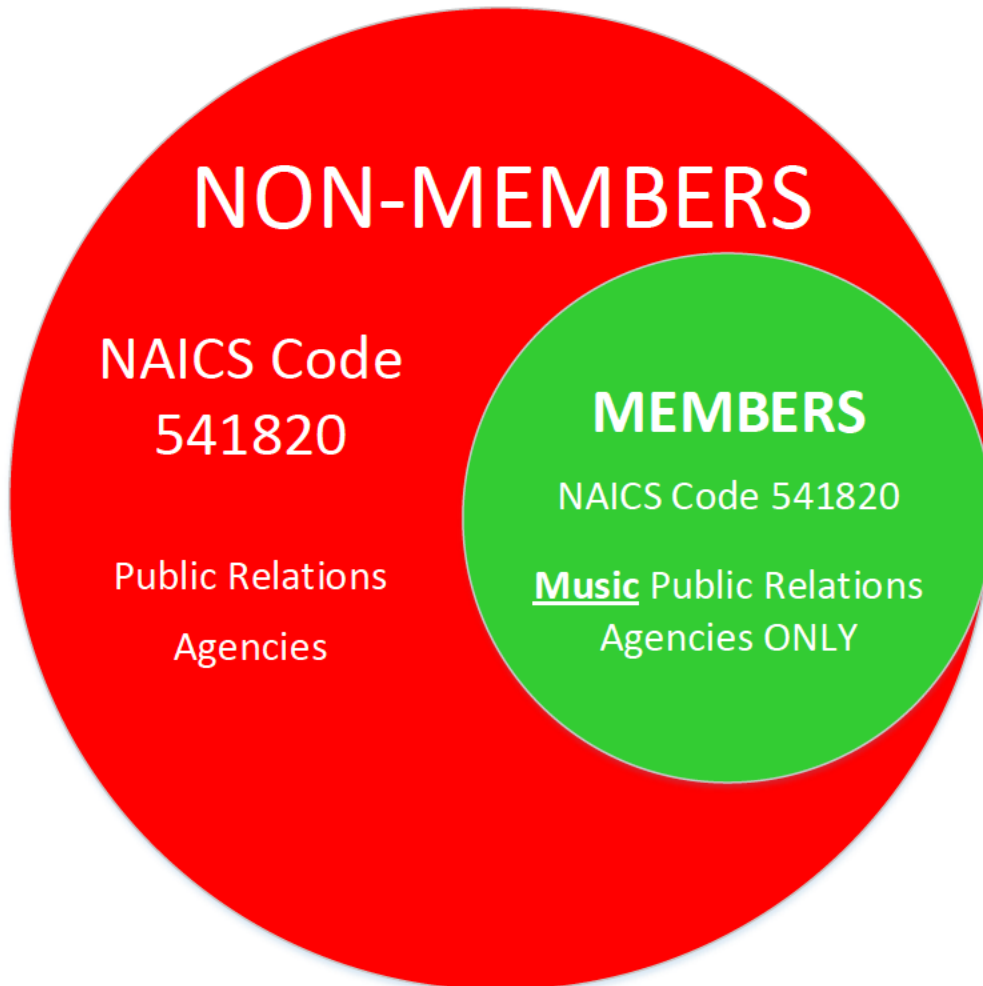
Clarifying Question A - Table 2 - #31 - NAICS 813920



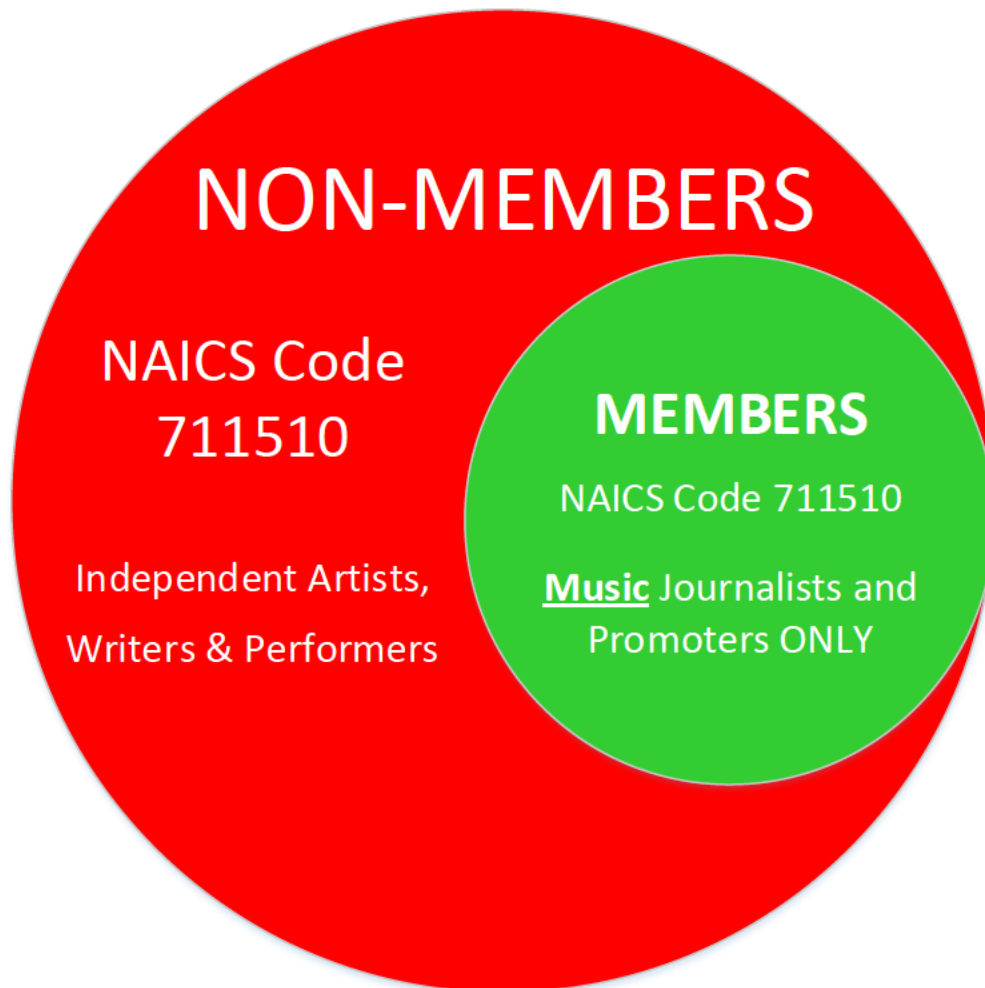
Clarifying Question A - Table 2 - #32 - NAICS 813930



Clarifying Question A - Table 2 - #33 - NAICS 541820



Clarifying Question A - Table 2 - #34 - NAICS 711510



NON-MEMBERS

NAICS Code
711510

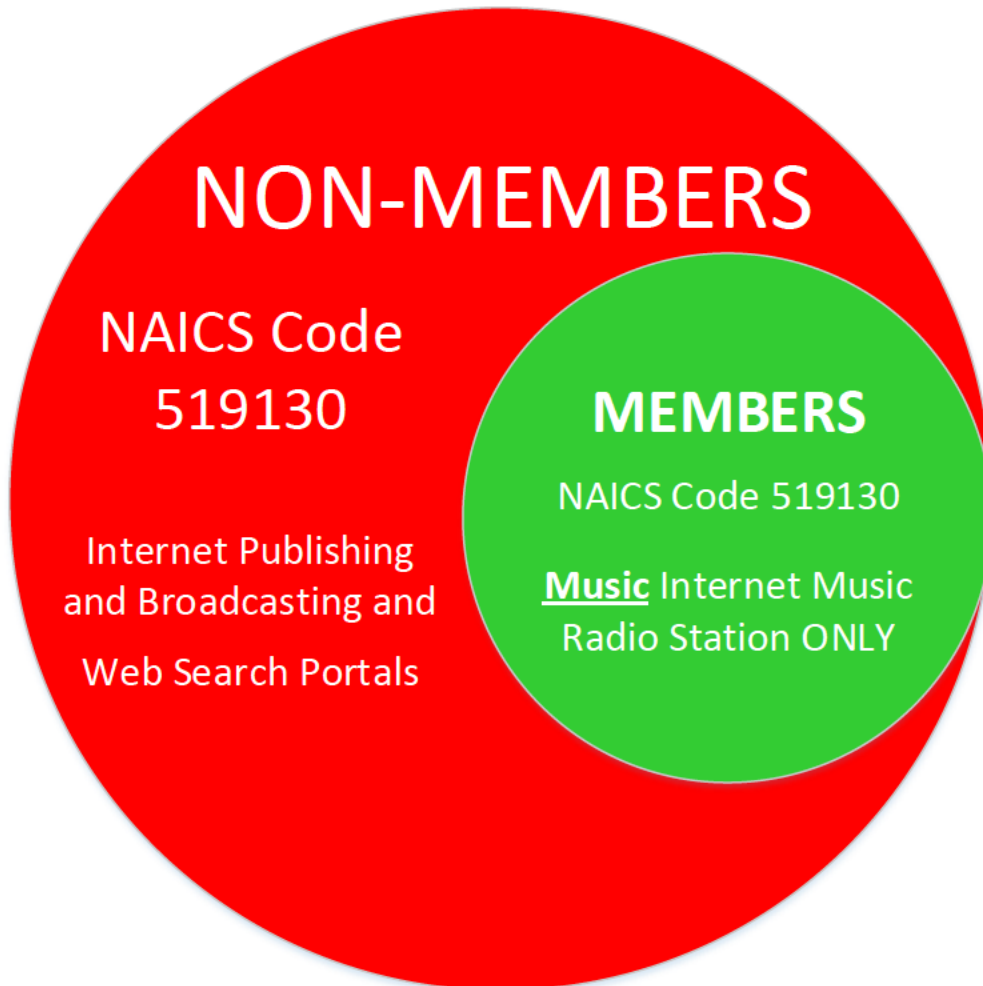
Independent Artists,
Writers & Performers

MEMBERS

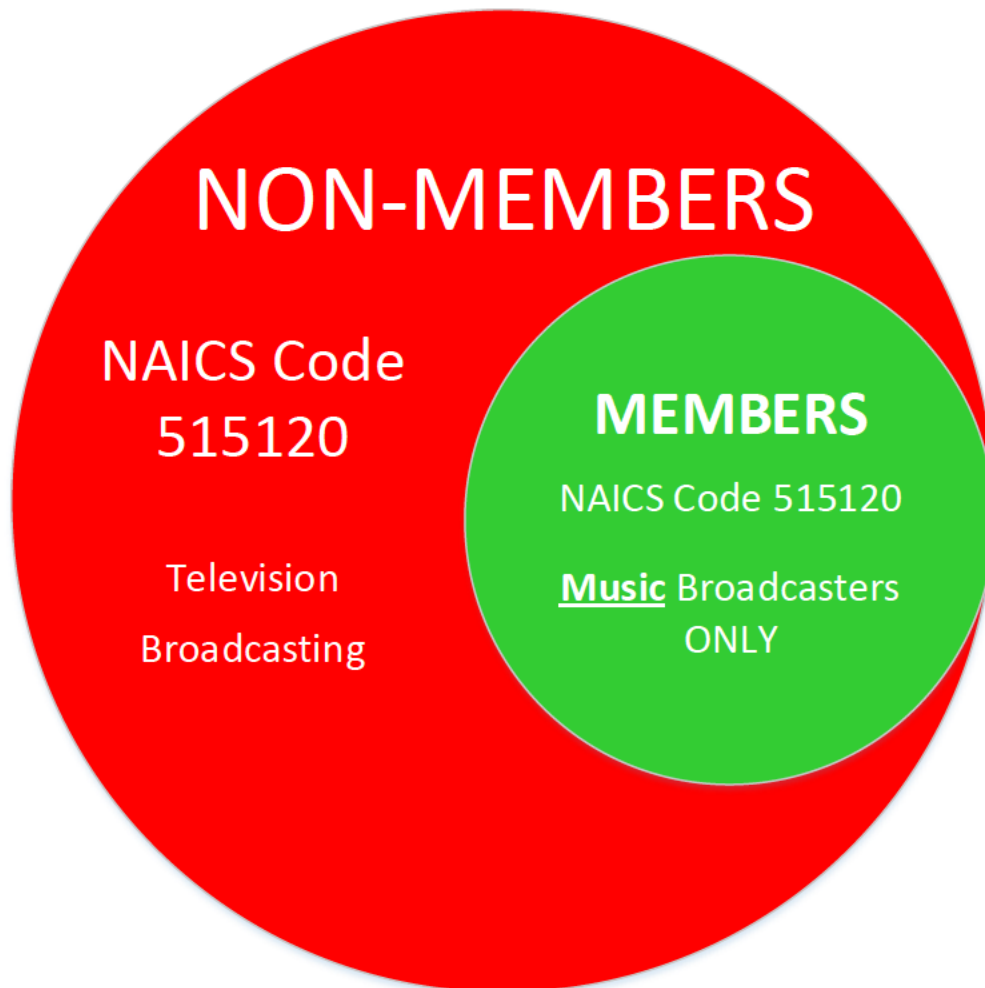
NAICS Code 711510

Music Journalists and
Promoters ONLY

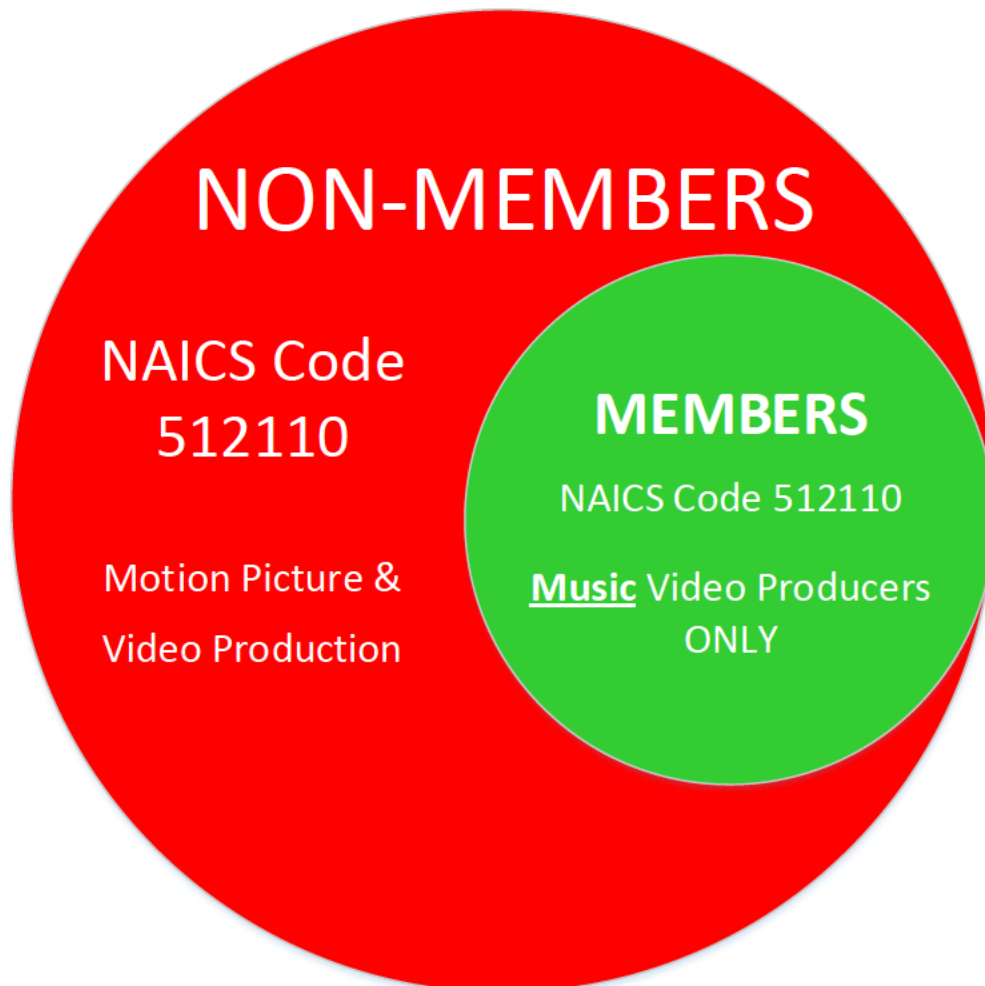
Clarifying Question A - Table 2 - #35 - NAICS 519130



Clarifying Question A - Table 2 - #36 - NAICS 515120



Clarifying Question A - Table 2 - #37 - NAICS 512110



NON-MEMBERS

NAICS Code
512110

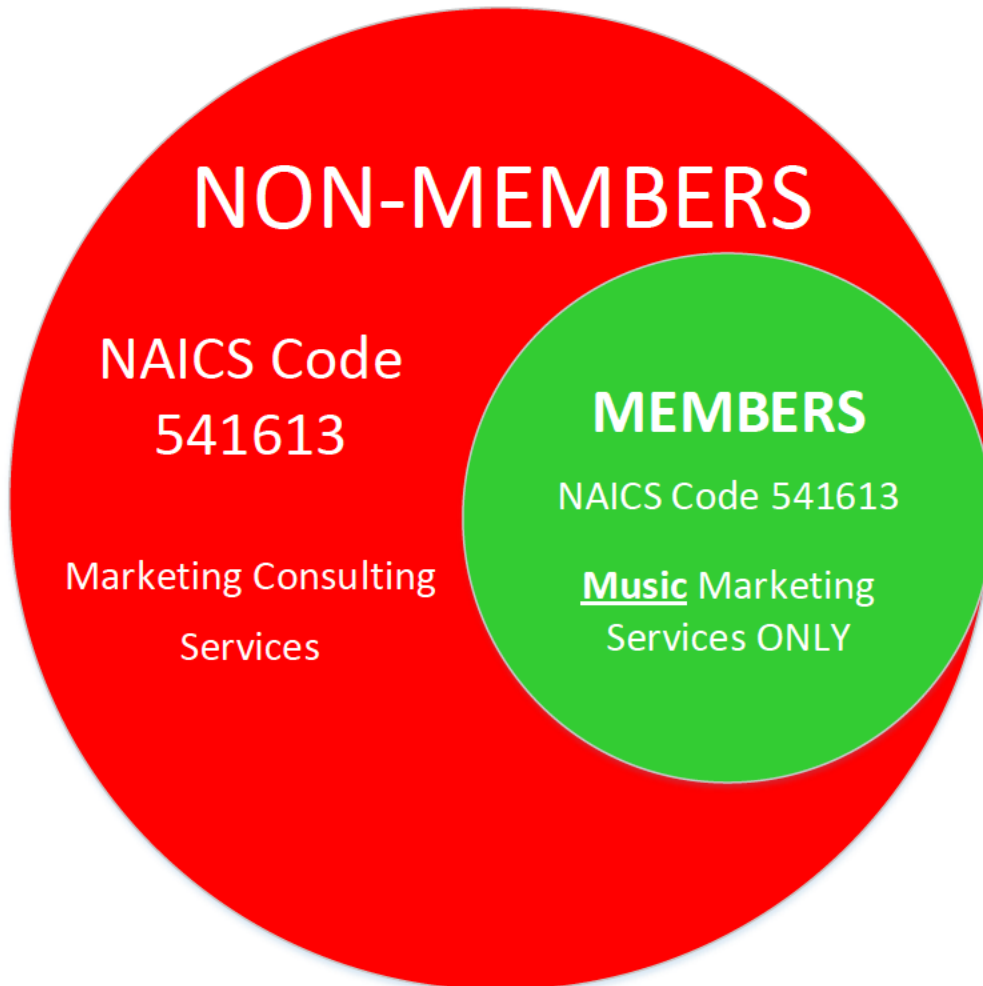
Motion Picture &
Video Production

MEMBERS

NAICS Code 512110

Music Video Producers
ONLY

Clarifying Question A - Table 2 - #38 - NAICS 541613



NON-MEMBERS

NAICS Code
541613

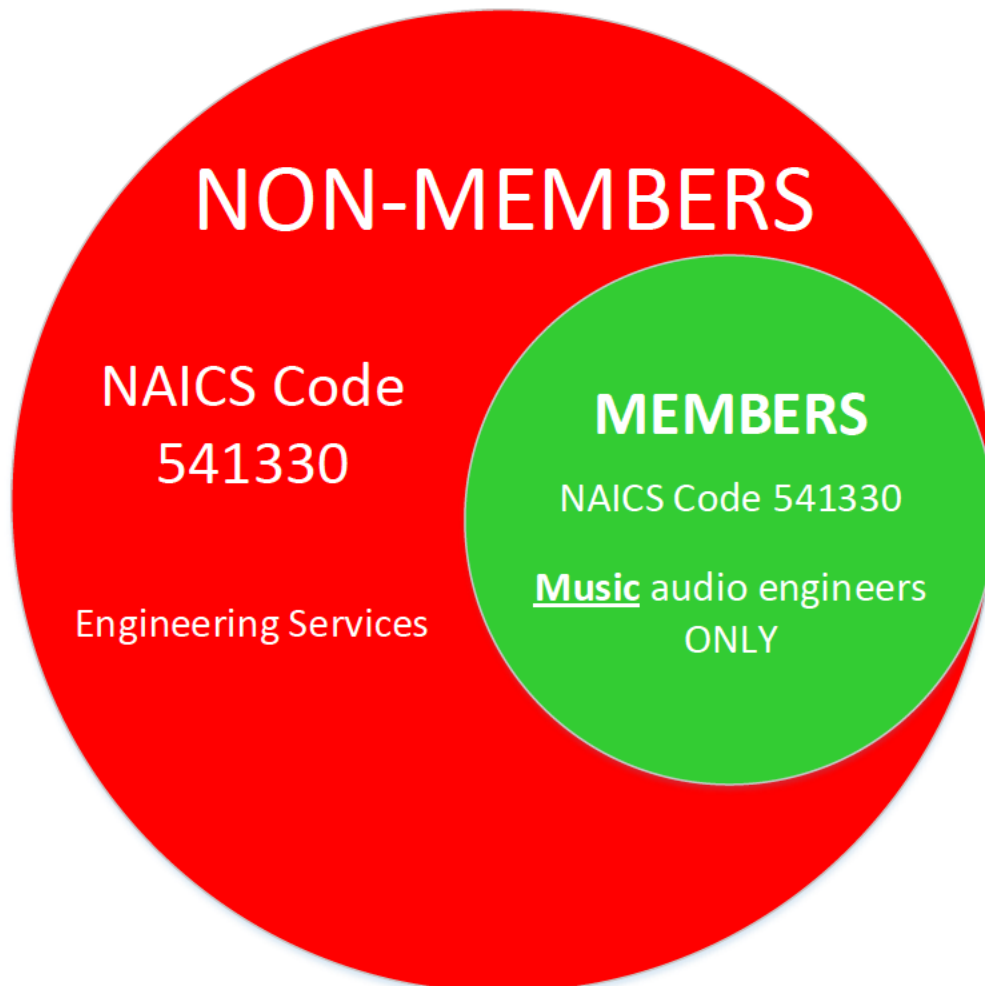
Marketing Consulting
Services

MEMBERS

NAICS Code 541613

Music Marketing
Services ONLY

Clarifying Question A - Table 2 - #39 - NAICS 541330



NON-MEMBERS

NAICS Code
541330

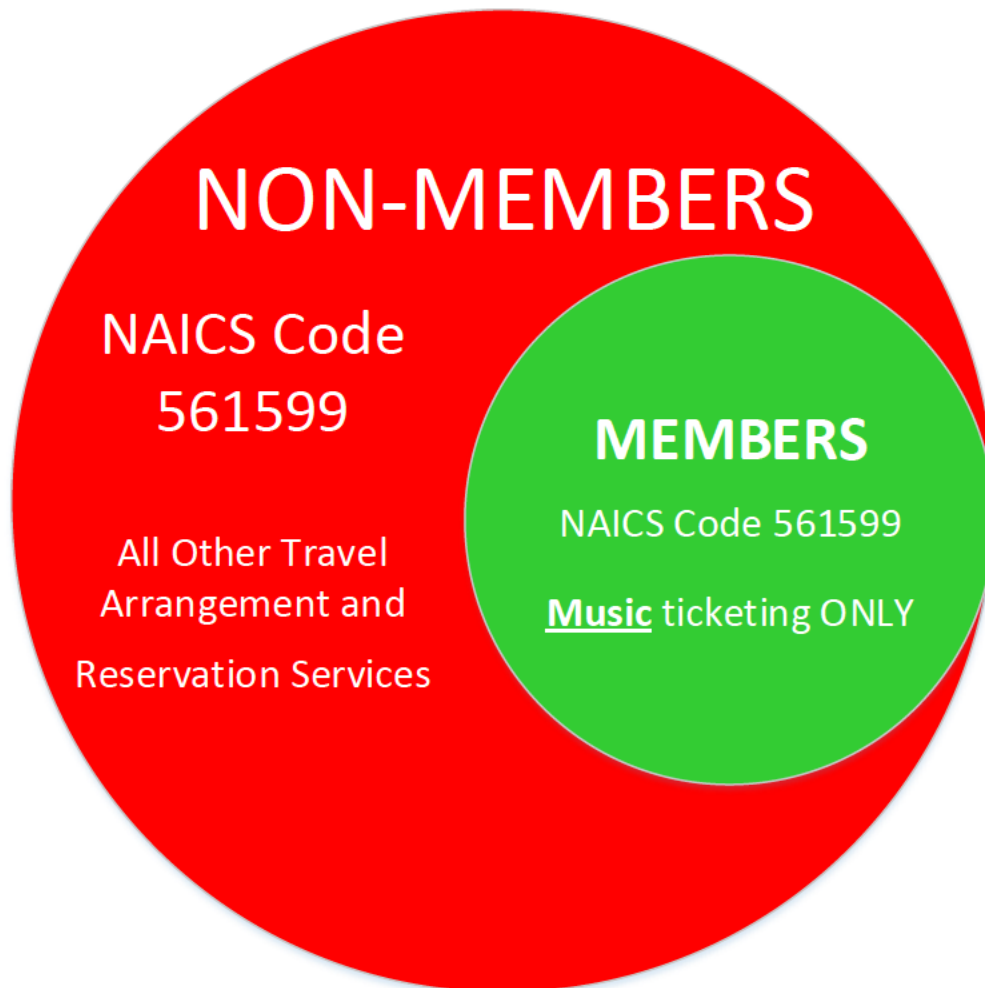
Engineering Services

MEMBERS

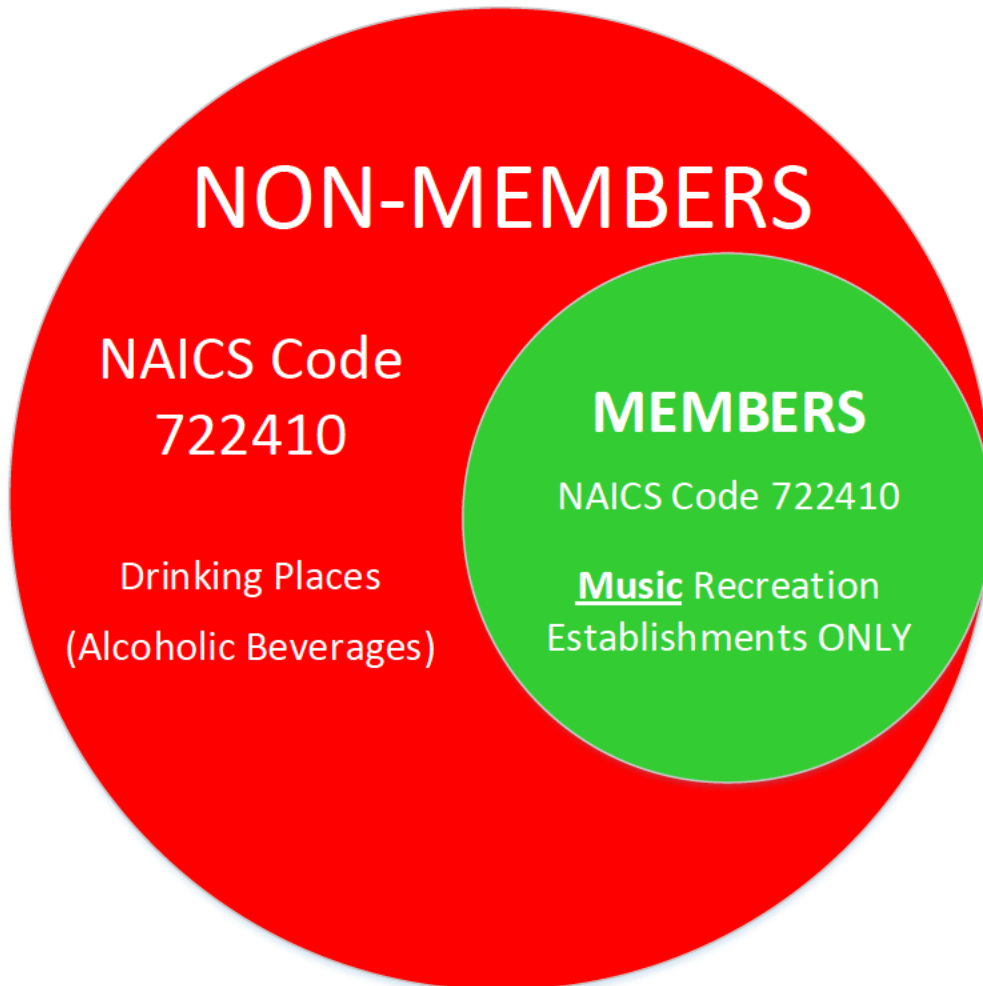
NAICS Code 541330

Music audio engineers
ONLY

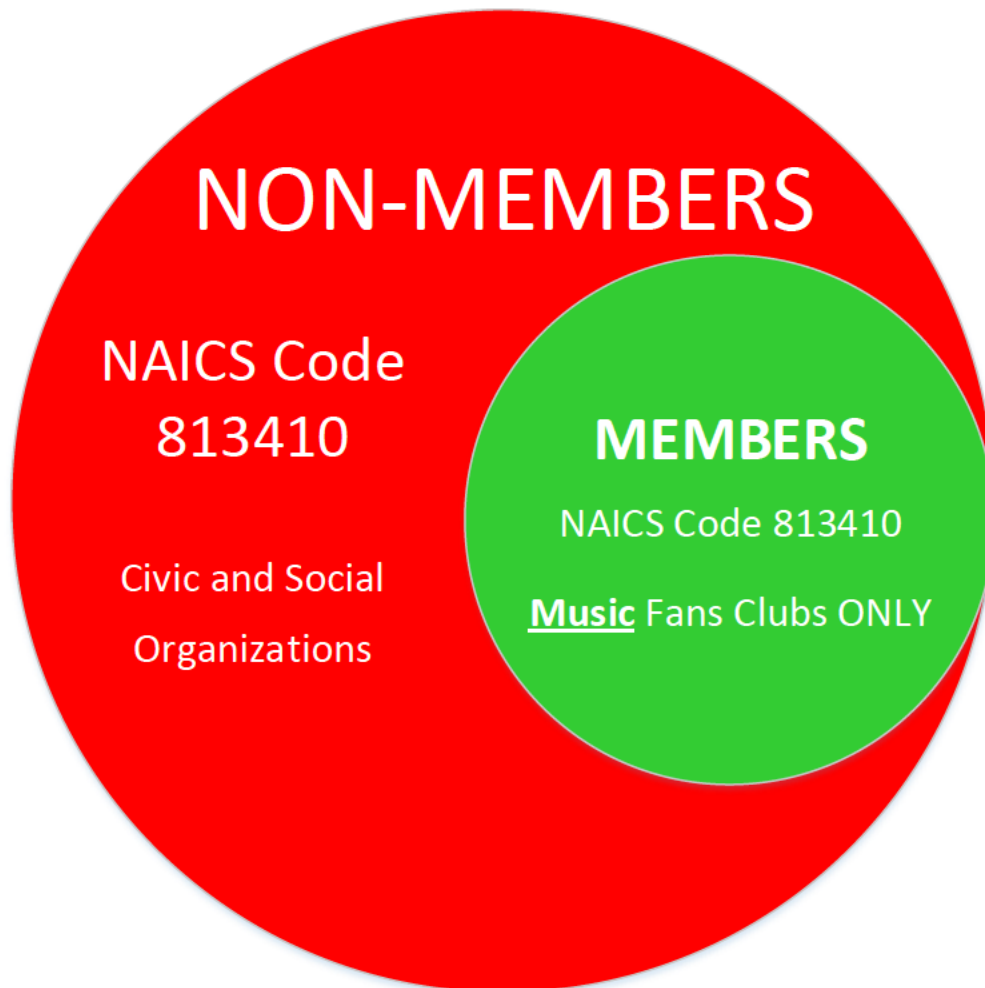
Clarifying Question A - Table 2 - #40 - NAICS 561599



Clarifying Question A - Table 2 - #41 - NAICS 722410

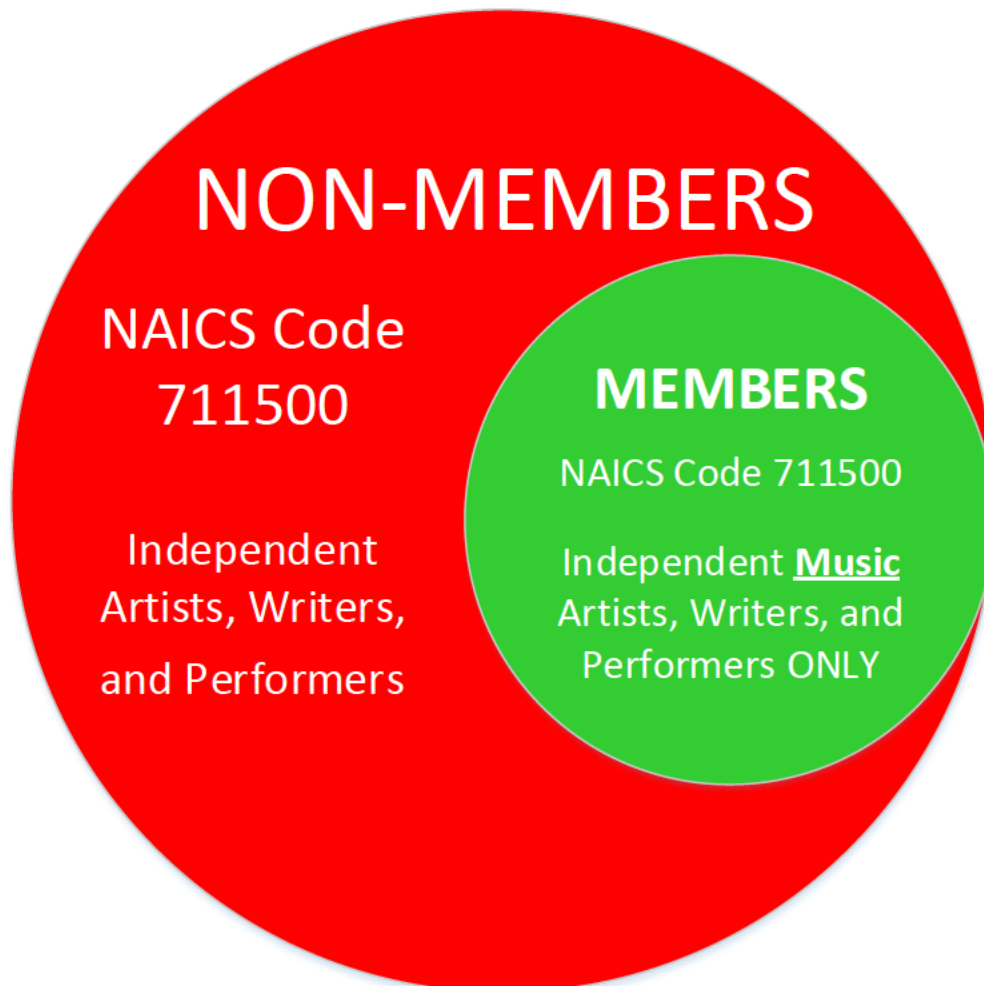


Clarifying Question A - Table 2 - #42 - NAICS 813410



ANNEX C

Clarifying Question B - Table 3 - #2 - NAICS 711500*

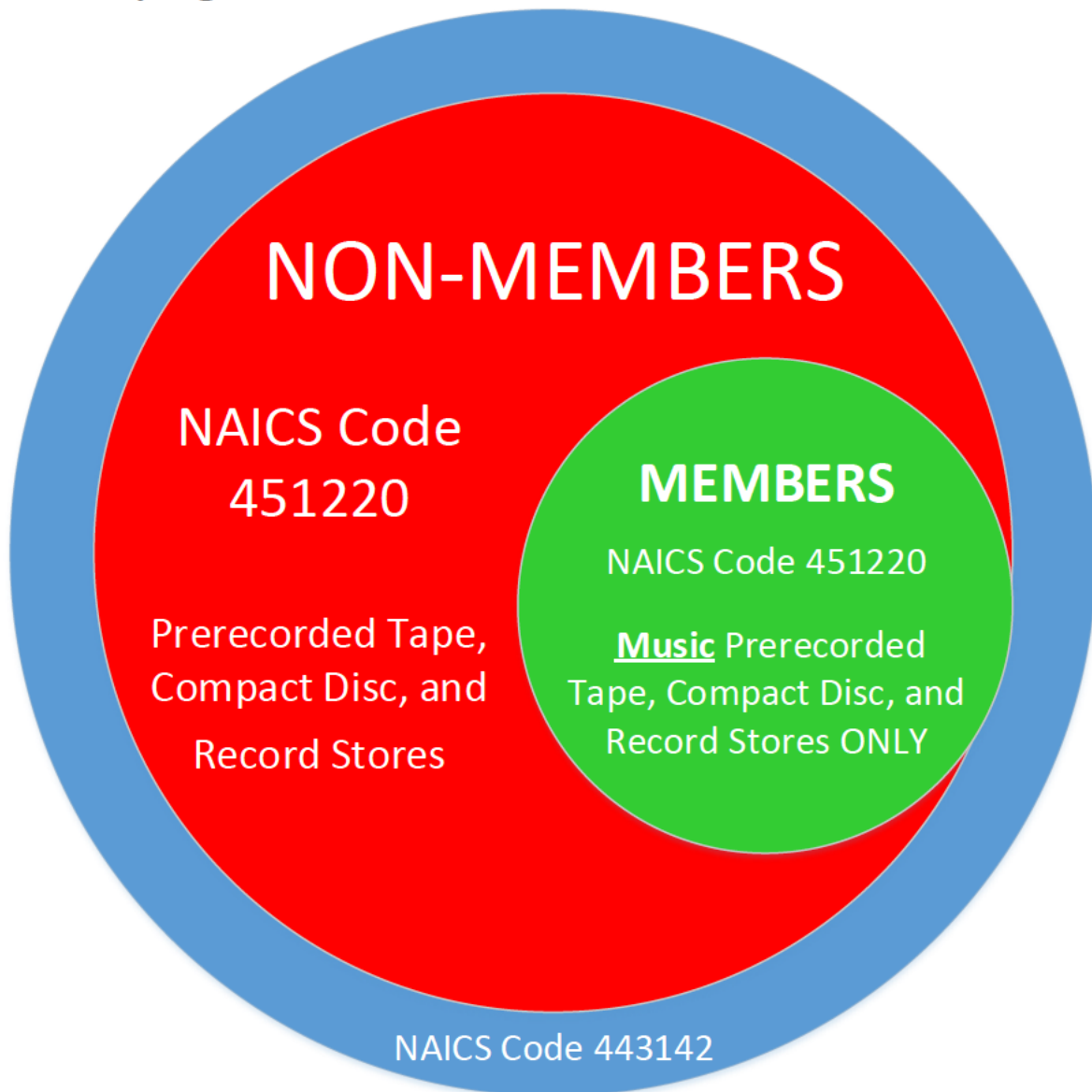


* See United States Department of Labor, Bureau of Labor Statistics:

http://www.bls.gov/oes/current/naics4_711500.htm and

http://www.bls.gov/cew/doc/titles/industry/industry_titles.htm

Clarifying Question B - Table 3 - #11 - NAICS 451220*



* See <http://www.dataplace.org/metadata?cid=112346&all=1> and <http://naicscode.org/NAICSCode/451220/Prerecorded-Tape-Compact-Disc-and-Record-Stores>

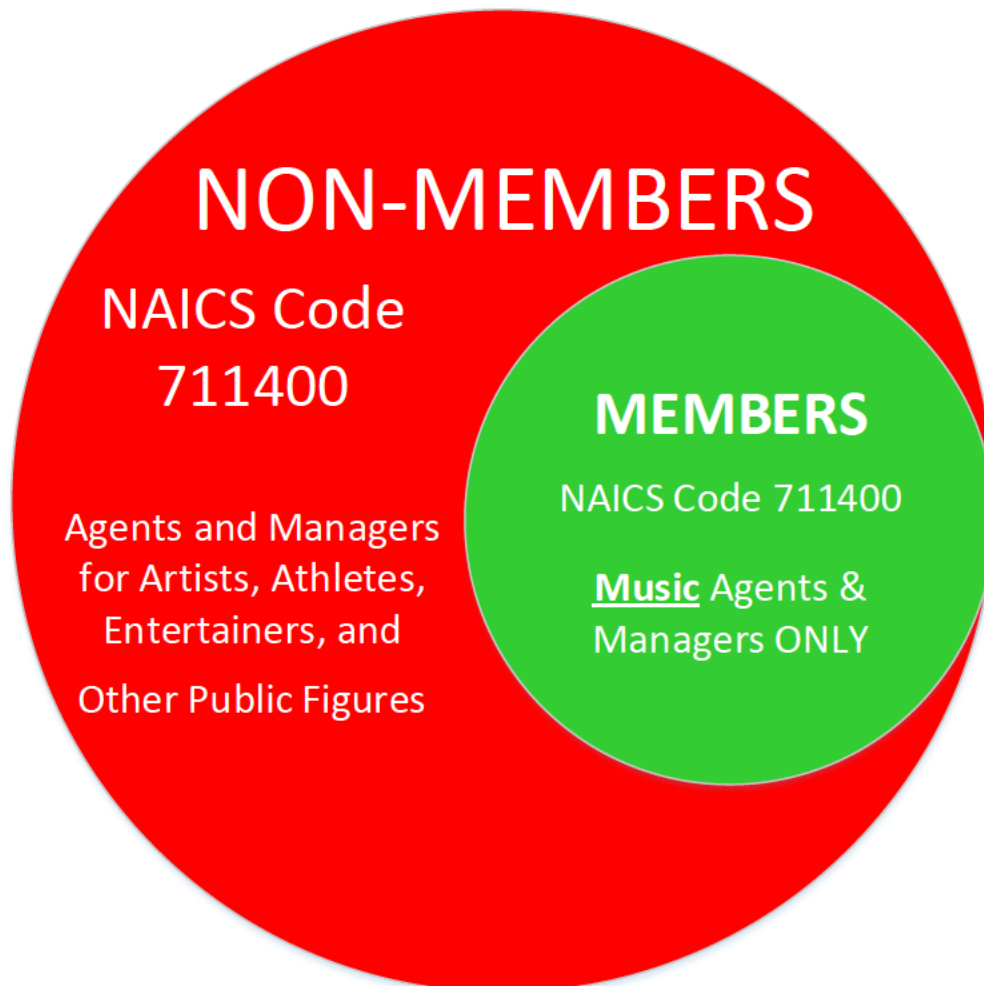
According to the United States Department of Labor, Bureau of Labor Statistics (See <http://www.bls.gov/ppi/ppiretailtrade.htm>):

“NAICS 443142—Electronic stores are establishments that retail a general line of new consumer-type electronic products; including radios, televisions, computers, computer peripherals, prepackaged computer software, cameras, photographic equipment, photographic supplies, prerecorded audio and video tapes, compact discs (CDs), digital video discs (DVDs), cellular phones and cellular phone plans.

NAICS 443142 is an aggregate of the following 2007 NAICS industries:

- 443112—Radio, Television, and Other Electronics Stores
- 443120—Computer and Software Stores
- 443130—Camera and Photographic Supplies Stores
- 451220—Prerecorded Tape, Compact Disc, and Record Stores”

Clarifying Question B - Table 3 - #16 - NAICS 711400*



* See *United States Department of Labor, Bureau of Labor Statistics:*

http://www.bls.gov/oes/current/naics4_711400.htm and

http://www.bls.gov/cew/doc/titles/industry/industry_titles.htm

Clarifying Question B - Table 3 - #17 - NAICS 711300*

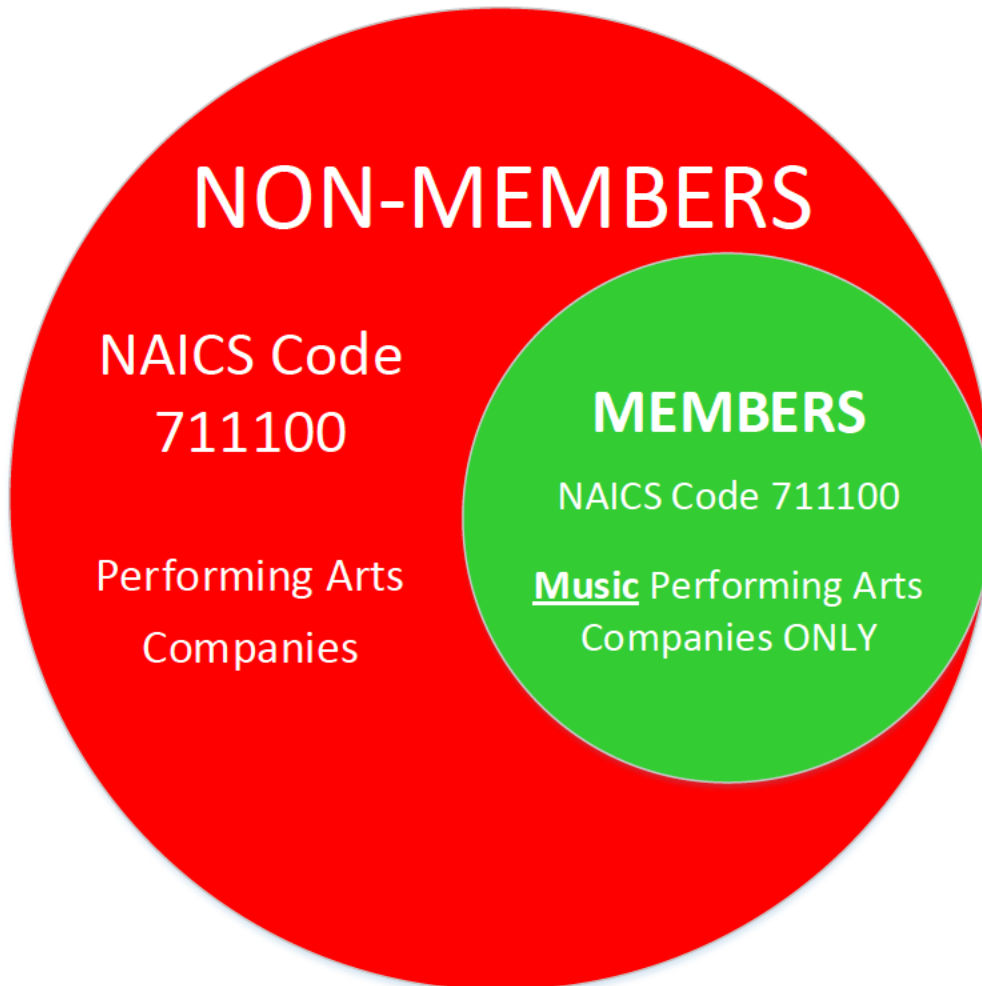


* See United States Department of Labor, Bureau of Labor Statistics:

http://www.bls.gov/oes/current/naics4_711300.htm and

http://www.bls.gov/cew/doc/titles/industry/industry_titles.htm

Clarifying Question B - Table 3 - #20 - NAICS 711100*

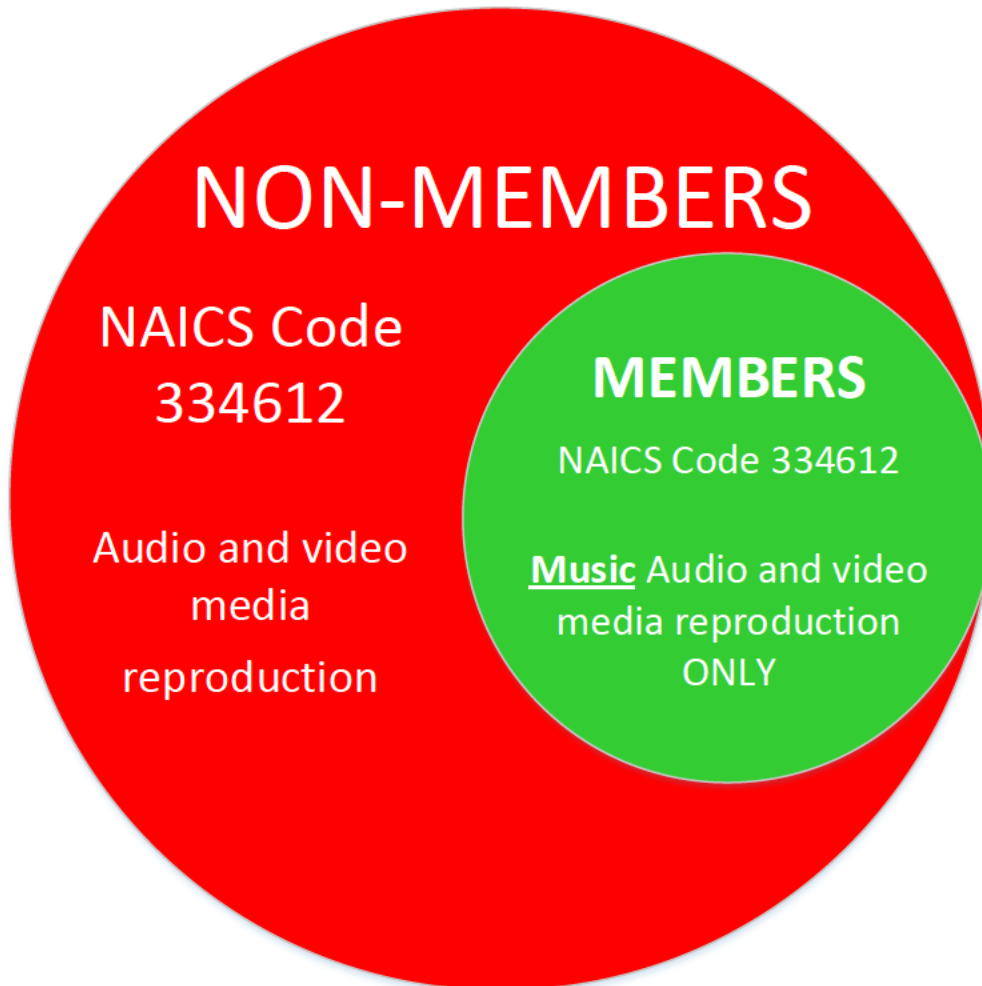


* See *United States Department of Labor, Bureau of Labor Statistics:*

http://www.bls.gov/oes/2003/november/naics4_711100.htm and

http://www.bls.gov/cew/doc/titles/industry/industry_titles.htm

Clarifying Question B - Table 3 - #22 - NAICS 334612*



* See United Nations Statistics Division, United States Department of Labor (Bureau of Labor Statistics) and United States Census Bureau:

<http://unstats.un.org/unsd/cr/registry/regcssm.asp?Cl=230&Lg=1&Co=334612>,

<http://census.gov/econ/isp/sampler.php?naicscode=334614&naicslevel=6> ,

<http://download.bls.gov/pub/time.series/cs/cs.industry> and

http://www.bls.gov/cew/doc/titles/industry/industry_titles.htm

Note: NAICS07 334612 (i.e. Prerecorded Compact Disc (except Software), Tape, and Record Reproducing) is now under the same NAICS Code 334612 and re-categorized as “Audio and video media reproduction”

ANNEX D

Music Community Eligibility Venn Diagram

Eligible .MUSIC Community



Strictly Delineated and Organized
Logical Alliance of Communities
Related to Music with Requisite
Awareness of Community Defined

Amateur
Music
Constituents

Commercial
Music
Constituents

Non-Commercial
Music
Constituents

**Ineligible Non-Music Community Members that lack
Recognition and Awareness of the Community Defined**

PEARL JAM

NEWS MUSIC TOUR MEDIA FORUM ACTIVISM SHOP THE BAND TEN CLUB GIFT CARDS

☰ FAQ JOIN TICKET POLICY EVENTS SIGN UP

TENCLUB



TEN CLUB IS PEARL JAM'S OFFICIAL FAN CLUB

Ten Club was born from the remains of the Mother Love Bone Earth Affair a fan organization started by Pearl Jam in 1990 as a way for the band to give back to their fans and create a community around Pearl Jam's music

Run entirely in house since its inception Ten Club has a staff of seven individuals dedicated to the care of the band's most devoted fans

For \$20 a year (Digital) and \$40US/\$50INT a year (Analog) Ten Club members from around the globe are provided with members-only goods and services that include:

- **Annual DEEP magazine:** A beautiful booklet made by the band for its fans it's a collectible piece that will look great up on your shelf (Digital members get digital download of the Deep Magazine)
- **Annual vinyl 45 single:** Our way of holding onto a touchstone of music the way it was when Pearl Jam and Ten Club started (Digital members get digital download of the Annual Single)
- **Priority ticketing:** Ten Club holds the best seats in the house for members only pre sales and rewards long time fans for their dedication with seniority based seating Ticket allocations and box office relations are handled in house to ensure that the best tickets end up in the hands of Ten Club members Although members are not guaranteed tickets they are given the best chance at the best seats via a drawing before the public on sales
- **Access to exclusive content on www.pearljam.com:** ncludes posting privileges on Ten Club Forums Ten Club Radio Ten Club Theater and much more
- **Monthly email newsletter:** ncludes updates about releases touring members only contests merchandise web content activism and more

[BECOME A TEN CLUB MEMBER HERE](#)



COMPASS RECORDS STREET TEAM

JOIN THE COMPASS RECORDS STREET TEAM

Compass Records is looking for motivated individuals (who appreciate great music) to join our Street Team and help us spread the word about our talented roster. If you are enthusiastic about music and wish to acquire experience in the music industry, the Compass Records Street Team is the perfect opportunity for you.

DETAILS Be one an artist performs or releases a new album considerable work must be done to notify the public on such an occasion. Street Team Representatives place posters in high-traffic areas and distribute handbills/contest postcards to audiences at shows of other similar artists. Street Team Reps keep their ears to the ground about trends and events in their places of residence and help spread the word about upcoming gigs in return. For their efforts, members receive a monthly insider newsletter and are thus the first to hear the latest at Compass Records. Members may also qualify for free merchandise, signed posters, free tickets and more.

WAYS STREET TEAM MEMBERS CAN GET INVOLVED

- Passing out hanging up posters to promote upcoming shows of Compass artists.
- Passing out handbills and contest postcards to audiences at various other shows.
- Hosting parties for new releases.
- Providing Compass with feedback about audience response in their areas, marketing techniques that worked, and their overall promotional experience.
- Announcing performances or album releases on the web (email (no spamming, please!), community blogs, Myspace pages, etc.).

IN APPRECIATION FOR ALL THEIR HELP, STREET TEAM MEMBERS QUALIFY TO RECEIVE AN ARRAY OF REWARDS, INCLUDING

- Posters signed by a variety of artists.
- CDs for listening parties (often before they are officially released).
- Access to special promotional materials.
- Tickets to Compass artists performances.
- And More!

We here at Compass - including the artists with whom we work - have the utmost appreciation for our fan-base and know that we absolutely could not succeed without you. Thank you for supporting independent music.

[SIGN UP TO BECOME A STREET TEAM MEMBER TODAY!](#)



Compass Records



Green Linne



Mulligan Records



Xenophile



Tayberry



Celophile

Distributed Labels



Dead Reckoning

BLOGS

JOIN THE LP STREET TEAM FOR THE THP TOUR

Nov 13, 2014 By: LPUHQ

The Linkin Park Street Team is seeking new and current members to carry out missions in the following cities and vicinities:

Orlando, FL - Nashville, TN - Indianapolis, IN - Pittsburgh, PA - Albany, NY - New York City - New York State - New Jersey - Pennsylvania, PA - Atlantic City, NJ - Providence, RI - Hershey, PA - Greensboro, NC - Uncasville, CT - Manchester, NH - Hamilton, ONT - Grand Rapids, MI - Des Moines, IA - Lincoln, NE - Saskatoon, SK - Calgary, AB - Edmonton, AB

Missions will be a mix of digital and street promotions. The deadline to complete this application is November 20, 2014.

To complete an application click [HERE](#).

- Lulu

Please Login to comment.



Dec 9, 2014 at 5:08 PM - LUCAS said

Nice

[Reply](#) [Message LUCAS](#)



Nov 22, 2014 at 5:50 AM - Mari37 said

Same Here KSetler :/

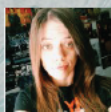
[Reply](#) [Message Mari37](#)



Nov 17, 2014 at 6:44 PM - KSetler said

Wish I could, but I have to travel 3 1/2 hours to attend the concert in the closest venue to where I live.

[Reply](#) [Message KSetler](#)



Nov 17, 2014 at 3:46 PM - Ipxertheoryfan said

This is awesome! Hope I get to help out.

[Reply](#) [Message Ipxertheoryfan](#)



Nov 17, 2014 at 12:30 PM - dominique meza said

Hmm :/ not in chille, sorry

[Reply](#) [Message dominique meza](#)



Nov 17, 2014 at 6:00 AM - Radden said

LPsMart, no :/

[Reply](#) [Message Radden](#)



Nov 16, 2014 at 11:41 AM - LPsMart said

Is there a street team in Germany??
Maaann I wanna live in america :(:D

[Reply](#) [Message LPsMart](#)



Nov 15, 2014 at 5:55 AM - Bayra said

Too bad I'm stuck living in Belgium. BOO :-)

[Reply](#) [Message Bayra](#)

LPU GIVEAWAY - SEPTEMBER

Sep 9, 2015 • 11 comments

LPU EXCLUSIVE - GUITAR...

Sep 4, 2015 • 6 comments

LPU DEALS

Sep 3, 2015 • 3 comments

CD SALE

Sep 2, 2015 • 2 comments

VIP EXPERIENCE WITH FC...

Aug 26, 2015 • 6 comments

LPU EARLY ENTRY DETAILS

Aug 21, 2015 • 12 comments

SUBMIT YOUR QUESTIONS...

Aug 21, 2015 • 6 comments

LPU PHOTO PASS

Aug 20, 2015 • 4 comments

FORT MINOR / LPU...

Aug 19, 2015 • 11 comments

LPU CHAT WITH JOE

Aug 18, 2015 • 10 comments

[VIEW ALL](#)



Nov 15, 2014 at 5:06 AM • kaitxnshaw said

Providence!!!!

Reply Message kaitxnshaw



Nov 15, 2014 at 4:55 AM • Annalisa said

Wish I could do it!

Reply Message Annalisa



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[Supplemental Terms and Conditions – Artists](#)

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General Terms and Conditions

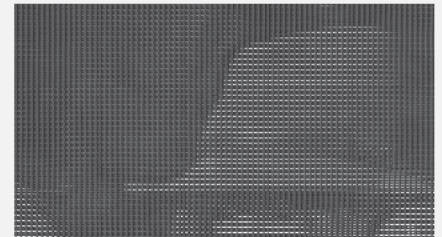
- Acceptance of Terms:** PledgeMusic.com Limited ("PledgeMusic") is an online service that facilitates musicians (a "Pledger") contributing to the recording costs of independent musicians (the "Artist") music and also (optionally) to contribute to a charity designated by the Artist (the "Charity") (collectively, the "Service"). The Service is operated from the website www.pledgemusic.com. The use of the PledgeMusic Service by an Artist to raise money from Pledgers shall be referred to as a "Campaign". To participate in the Service you must read and accept all of the terms and conditions of this agreement. Artists are also subject to the terms and conditions in Supplemental Terms and Conditions – Artists, which is incorporated by reference into this agreement. PledgeMusic may modify the terms of this agreement, in our sole discretion, by posting amended terms to the PledgeMusic.com website. Your continued use of the service indicates your acceptance of the amended agreement.
- Participation:** Your participation in the Service may require that you supply certain personal information to PledgeMusic. The information you supply must be full, complete, and accurate. You are required to maintain and update this information to keep it current, complete and accurate. Personal information supplied will be subject to PledgeMusic [Privacy Policy](#), which is incorporated by reference into this agreement. By using the Site or the Service, you are consenting to have your personal data transferred to and processed in the United States.
- Responsible Use / Code of Conduct:** As a condition of participation in the Service you will not use the Services for any purpose that is unlawful or prohibited by these Terms of Service, or any other purpose not reasonably intended by PledgeMusic. Further your use of the Service will be in conformity with the PledgeMusic Code of Conduct, which is incorporated by reference into this agreement. PledgeMusic may remove any content or account at any time for any reason at its sole discretion.
- Abuse:** To report any abuse of the Service please email: info@pledgemusic.com
- Content:** All postings, messages, text, files, images, photos, videos, sounds, or other materials ("Content") posted on, transmitted through, or linked from the Service, are the sole responsibility of the person from whom such Content originated. You are entirely responsible for any item of Content that you post, email or otherwise make available via the Service. PledgeMusic does not control, and is not responsible for, Content made available through the Service, and by using the Service you may be exposed to Content that is offensive, indecent, inaccurate, misleading, or otherwise objectionable. PledgeMusic makes no representation or warranty as to the accuracy, completeness or authenticity of the information contained in such Content. You must evaluate, and bear all risks associated with, the use of any Content or any reliance on said Content, and in no circumstances will PledgeMusic be liable in any way for any Content or for any loss or damage of any kind incurred as a result of the use of any Content made available via the Service. You acknowledge that PledgeMusic does not pre-screen or approve Content, but that PledgeMusic shall have the right (but not the obligation) in its sole discretion to refuse, delete or move any Content that is available via the Service for any reason.
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- Financial Transactions:** PledgeMusic acts as an intermediary between Pledgers and Artists, and all monies collected are held on account until they are disbursed. After a Campaign reaches a predetermined collection point (the

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Charity Children

Charity Children

Help us finish our new album if you like Peace and love Charity Children

68% of goal 48 days left



G. Love & Special Sauce

'Love Saves The Day'

is now available for Pre order with LIMITED EDITION goodies & experiences EXCLUSIVELY here on PledgeMusic

Order Now



Baroness

'Purple'

our new album is now available for pre order Deluxe bundle and limited edition items exclusively available here

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"Pledge Target"), PledgeMusic will charge participant Pledgers credit cards or payment accounts for the pledged amount. PledgeMusic will then make any charitable contribution required as part of the Campaign, and disburse funds to cover the Artist's recording and associated expenses (including PledgeMusic's fee for running the Campaign). If a Campaign does not reach the Pledge Target, or expires before collecting enough contributions to meet its target, PledgeMusic will neither charge nor accept payments from any Pledger. PledgeMusic shall in no way respond to the performance or obligations of the Artist. After PledgeMusic charges a Pledger's credit card or other payment account there will be no refunds, unless in its sole discretion PledgeMusic determines that a refund is appropriate (and any refunds made shall be subject to any associated transaction costs). PledgeMusic shall under no obligation to become involved in disputes between Pledgers and Artists, or between Pledgers and any third party. In the event of a dispute, you release PledgeMusic, its officers, employees, agents and successors from claims, damages, or demands of any kind, known or unknown, suspected or unsuspected, disclosed or undisclosed, arising out of or in any way related to such disputes and our service. Artists are who are responsible for fulfilling obligations both implied and stated in any campaign they create. PledgeMusic will engage in commercially reasonable efforts to collect monies committed by Pledgers, however PledgeMusic does not guarantee that it will collect the full amount of money committed by Pledgers. PledgeMusic reserves the right to terminate a Campaign and refund a Pledgers payments at any time for any reason.

8. **Termination:** PledgeMusic may terminate or suspend any and all Services, and your PledgeMusic account, immediately and without prior notice or liability, if you breach any of the terms or conditions of the Terms of Service. Upon termination of your account, your right to use the Services will immediately cease. If you wish to terminate your PledgeMusic account, you may simply discontinue using the Services or send an email to info@pledgemusic.com (a termination request will be completed within 30 days). A provision of the General Terms and Conditions which by their nature should survive termination shall survive termination, including, without limitation, ownership provisions, warranty disclaimers, indemnities and limitations of liability.
9. **Disclaimer of Warranties:** YOU EXPRESSLY AGREE THAT USE OF THE SERVICES AND/OR ANY OTHER CONTENT YOU DOWNLOAD FROM PLEDGEMUSIC IS AT YOUR SOLE RISK AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF FILES, SOFTWARE, SERVICES AND/OR OTHER CONTENT. THE SERVICES AND/OR OTHER CONTENT YOU DOWNLOAD FROM PLEDGEMUSIC ARE PROVIDED ON AN "AS IS" BASIS. PLEDGEMUSIC EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. PLEDGEMUSIC MAKES NO WARRANTY THAT THE SOFTWARE, SERVICES AND/OR ANY OTHER CONTENT YOU DOWNLOAD FROM PLEDGEMUSIC WILL MEET YOUR REQUIREMENTS, OR THAT THE SOFTWARE OR SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE; NOR DOES PLEDGEMUSIC MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE OR AS TO THE ACCURACY OR RELIABILITY OF ANY INFORMATION OBTAINED THROUGH THE SERVICE OR THAT DEFECTS IN THE SOFTWARE WILL BE CORRECTED.
10. **Limitation of Liability:** IN NO EVENT WILL PLEDGEMUSIC OR ITS DIRECTORS, EMPLOYEES OR AGENTS BE LIABLE TO YOU OR ANY THIRD PERSON FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, INCLUDING FOR ANY LOST PROFITS OR LOST DATA ARISING FROM YOUR USE OF THE SERVICE, ANY PLATFORM APPLICATIONS OR ANY OF THE SITE CONTENT OR OTHER MATERIALS ON, ACCESSED THROUGH OR DOWNLOADED FROM THE SERVICE, EVEN IF PLEDGEMUSIC IS AWARE OR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, PLEDGEMUSIC'S LIABILITY TO YOU FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF THE ACTION, WILL AT ALL TIMES BE LIMITED TO THE AMOUNT PAID, IF ANY, BY YOU TO PLEDGEMUSIC FOR THE SERVICE, BUT IN NO CASE WILL PLEDGEMUSIC'S LIABILITY TO YOU EXCEED £200. YOU ACKNOWLEDGE THAT IF NO SUMS ARE PAID TO PLEDGEMUSIC FOR THE SERVICE, YOU SHALL BE LIMITED TO INJUNCTIVE RELIEF ONLY, UNLESS OTHERWISE PERMITTED BY LAW, AND SHALL NOT BE ENTITLED TO DAMAGES OF ANY KIND FROM PLEDGEMUSIC, REGARDLESS OF THE CAUSE OF ACTION.
11. **External Links:** PledgeMusic may provide links to other websites or resources,



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however P edgeMus c s not respons b e for the ava ab ty of such externa s tes or resources, and does not endorse and s not respons b e or ab e for any Content, advert s ng, products or other mater a s on or ava ab e from such s tes or resources. You further acknow edge and agree that P edgeMus c sha not b e respons b e or ab e, d rect y or nd rect y, for any damage or oss caused or a eged to b e caused by or n connect on w th use of or re ance on any such Content, goods or serv ces ava ab e on or through any such s te or resource.

12. Indemn ty: You agree to ndemn fy and hod P edgeMus c, ts subs d ar es and aff ates, and each of the r d rectors, off cers, agents, contractors, partners and emp oyees, harm ess from and aga nst any oss, ab ty, c a m, demand, damages, costs and expenses, nc ud ng reasonab e attorney s fees, ar s ng out of or n connect on w th any content, any th rd party content you post or share on or through P edgeMus c, your use of the Serv ce or P edgeMus c, your conduct n connect on w th the Serv ce or P edgeMus c or w th other users of the Serv ce or P edgeMus c, or any v o at on of th s Agreement, any aw or the r ghts of any th rd party.
13. Ent re Agreement: Th s agreement const tutes the ent re agreement between you and P edgeMus c regard ng the use of the Serv ce, supersed ng any pr or agreements between you and P edgeMus c re at ng to the Serv ce. The fa ure of P edgeMus c to exerc se or enforce any r ght or prov s on of th s agreement sha not const tute a wa ver of such r ght or prov s on n that or any other nstance. If any prov s on of th s agreement s he d nva d, the rema nder of th s agreement sha cont nue n fu force and effect. If any prov s on of th s agreement sha b e deemed unawfu , vo d or for any reason unenforceab e, then that prov s on sha b e deemed severab e from th s agreement and sha not affect the va d ty and enforceab ty of any rema n ng prov s ons. No var at on to th s agreement w b e b nd ng upon P edgeMus c uness t s made n wr t ng and s gned by a d rector or off cer of P edgeMus c.
14. Govern ng Law and Jur sd ct on: These terms and cond t ons sha b e governed by and construed n accordance w th Eng sh aw, w thout regard to ts conf ct of aws pr nc pes. D sputes ar s ng n connect on w th these terms and cond t ons sha b e subject to the exc us ve jur sd ct on of the Eng sh courts. You wa ve any c a m that any a ega proceed ng (nc ud ng any tort c a m) brought n accordance w th th s c ause has been brought n an nconven ent forum or that the venue of that proceed ng s mproper.

Supplemental Terms and Conditions – Artists

1. P edgeMus c.com L m ted (“P edgeMus c”) s an on ne serv ce that fac tates mus c fans (a “P edger”) contr but ng to the record ng costs of ndependent mus c an s (the “Art st”) mus c and a so (opt ona y) to contr bute to a char ty des gnated by the Art st (the “Char ty”) (co ect ve y, the “Serv ce”). The Serv ce s operated from the webs te www.p edgemus c.com. The use of the P edgeMus c Serv ce by an Art st to raise money from P edgers sha b e referred to as a “Campa gn”. These Supplementa Terms and Cond t ons govern the re at onsh p between P edgeMus c and an Art st n re at on to the Serv ce.
2. S g ng ng up: In s g ng ng up to use the Serv ce, or dur ng the r Campa gn, Art sts may b e requested to prov de nformat on to P edgeMus c re evant to the r



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3. W thdrawal be e e edge ta get. Art sts may at any tme be e e e act ng the P edge Target, but a ways on 30 days not ce, w thdraw from the Serv ce and term nate the r Campa gn by ema ng nfo@p edgemus c.com and prov d ng deta s of the r reasons.
4. W thdrawa after P edge Target: Art sts who have reached the r P edge Target are comm tted to compet ng and record ng and d str but ng the r a bum. If for any reason th s s not poss b e the Art st must mmed ate y nform P edgeMus c of th s fact, and cooperate fu y and n the utmost of good fa th w th P edgeMus c to address th s s tuat on n a way that s cons stent w th the nterests of P edgeMus c, the Art st, and nvo ved P edgers.
5. D sbursement of p edged mon es: Mon es co ected by P edgeMus c for a Campa gn w b e he d on account for the Art st. P edgeMus c w mmed ate y make any Char tab e Contr but ons requ red by the Campa gn n the Art st s name, and then d sburse funds to cover the Art st s record ng and assoc ated expenses (nc ud ng P edgeMus c s fee for run ng the Campa gn) d rect y to the serv ce prov ders nvo ved. The Art st and P edgeMus c w agree together on wh ch serv ces prov ders are su tab e for the Art sts Campa gn requ rements, and P edgeMus c sha contract d rect y w th these serv ce prov ders for the Art sts requ rements. If P edgeMus c has reason to b e e ve that Art st w not compete the r Campa gn ob gat ons P edgeMus c may cease to d sburse funds for the Art st, and requ re that the Art st enter nto d scuss ons w th P edgeMus c to address P edgeMus c s concerns regard ng the compet on of

the campaign obligations. If the Artist and P edgeMus c are unable to reach a satisfactory agreement regarding the outstanding campaign obligations of the Artist P edgeMus c may terminate the Campaign and refund monies to P edgeMus c in proportion to the amounts remaining in the account for the Campaign. Interest on all funds held shall accrue to the benefit of P edgeMus c.

6. **ChargeBacks and Refunds:** If, for any reason, P edgeMus c is required to refund monies to P edgeMus c of a Campaign, the Artist will fully compensate P edgeMus c for the amount refunded as well as any associated costs, including but not limited to transaction or administrative costs.
7. **Intellectual Property:** Artist shall fully own all intellectual property to all publications and recordings they create through or result from the Campaign. Artist grants to P edgeMus c a non-exclusive, worldwide, royalty free license to reproduce, distribute, and publicly perform the recordings (as well as any underlying musical compositions) created or contributed by the Artist as part of the Campaign via any means developed, owned, or controlled by P edgeMus c or its partners solely for the purposes of promoting the Artist's Campaign or P edgeMus c. Artist also grants to P edgeMus c a non-exclusive, worldwide license to () to reproduce, display and distribute any artwork, photographs supplied by the Artist, liner notes, metadata, track data files and editorial content relating to the recordings, and () to use the name (including professional name(s)), likeness, performances, photographs, and biographical material of each performer, producer, and songwriter featured on a recording, in connection with promoting the Artist's Campaign or P edgeMus c. Notwithstanding the foregoing, Artist acknowledges and agrees that P edgeMus c's business model may involve free promotional downloads and/or streams of recordings.
8. **Representations, Warranties and Indemnities:** Artist hereby warrants and represents that: () It has the right and power to enter into and fully perform all of its obligations under this Agreement; () It has the authority and right to provide P edgeMus c with the rights granted herein; () P edgeMus c's exercise of the rights granted herein will not infringe upon any copyright, trademark, right of publicity, moral right or other proprietary, intellectual property, contractual or other right of any person anywhere in the world; (v) Neither the recordings, nor any other content provided to P edgeMus c by the Artist violate any applicable laws or regulations, including, without limitation, defamation and obscenity laws; (v) The recordings do not include any uncensored samples or interpositions, Artist shall have the sole responsibility to ensure, as necessary, that all recordings are fully censored; (v) No agreement of any kind entered into by Artist does or will interfere in any manner with P edgeMus c's complete performance of this Agreement, or with the rights granted to P edgeMus c herein; and (v) P edgeMus c shall not be required to make any payments to third parties in connection with the exploitation of the Masters, Controlled Compositions or Content hereunder. Artist will defend, indemnify, and hold harmless P edgeMus c, its parents, subsidiaries, affiliates, and the respective directors, officers, employees, and agents, with respect to any claim, demand, cause of action, or debt or liability brought by or claimed by any third party, including attorneys fees, to the extent that any such claim is based upon or arises out of a breach of any of Licensee's representations, warranties, covenants, or obligations.
9. **Tax or other financial obligations:** Artist will be fully responsible for any taxation or other financial obligations arising out of its participation in the service. If, for any reason, P edgeMus c is required to pay any monies relating thereto directly or indirectly to an Artist's campaign, Artist shall fully reimburse P edgeMus c for those amounts within 30 days of being notified of these payments.

Code of Conduct

1. **Principles:** P edgeMus c.com Limited ("P edgeMus c") is an online service that facilitates music fans (a "P edger") contributing to the recording costs of independent musicians (the "Artist") music and also (optionally) to contribute to a charity designated by the Artist (the "Charity") (collectively, the "Service"). In order to facilitate this we require that all users of the Service abide by this Code of Conduct. P edgeMus c may modify the terms of this Code of Conduct, in our sole discretion, by posting amended terms to the P edgeMus c.com website. Your continued use of the Service indicates your acceptance of the amendments.
2. **When using the Service activities that are not permitted include, but are in no way limited to, the following:**
 1. to act in an abusive or threatening way;
 2. to intimidate or impersonate anyone;
 3. any illegal acts;
 4. any infringement of intellectual property rights;
 5. any commercial activities not approved in writing by P edgeMus c
3. You will not post, email, or otherwise make available Content:

1. that is unlawful, harmful, threatening, abusive, harassing, defamatory, obscene, invasive of another's privacy, or is harmful to minors in any way;
 2. that is pornographic;
 3. that harasses, degrades, intimidates or is hateful toward an individual or group of individuals on the basis of religion, gender, sexual orientation, race, ethnicity, age, or disability;
 4. that impersonates any person or entity, including, but not limited to, a PageMusc employee, or falsely states or otherwise misrepresents your affiliation with a person or entity;
 5. that includes personal or identifying information about another person without that person's explicit consent;
 6. that is false, deceptive, misleading, or defamatory;
 7. that infringes any patent, trademark, trade secret, copyright or other proprietary rights of any party, or Content that you do not have a right to make available under any law or under contractual or fiduciary relationships;
 8. that constitutes or contains "affiliate marketing," "referral code," "junk mail," "spam," "chatters," "pyramid schemes," or unsolicited commercial advertisement;
 9. that constitutes or contains any form of advertising or solicitation;
 10. that includes links to commercial services or websites;
 11. that advertises any illegal service or the sale of any items the sale of which is prohibited or restricted by any applicable law;
 12. that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;
 13. that disrupts the normal flow of dialogue with an excessive amount of Content (flooding attack) to the Service, or that otherwise negatively affects other users' ability to use the Service; or
 14. that employs misleading email addresses, or forged headers or otherwise manipulated identifiers in order to disguise the origin of Content transmitted through the Service.
4. You agree not to:
1. contact anyone who has asked not to be contacted;
 2. "stalk" or otherwise harass anyone;
 3. collect personal data about other users for commercial or unlawful purposes;
 4. use automated means, including spiders, robots, crawlers, data mining tools, or the like to download data from the Service – unless expressly permitted by PageMusc;
 5. post relevant Content, repeatedly post the same or similar Content or otherwise impose an unreasonable or disproportionate y large load on our infrastructure;
 6. attempt to gain unauthorized access to PageMusc's computer systems or engage in any activity that disrupts, diminishes the quality of, interferes with the performance of, or impairs the functionality of, the Service or PageMusc website; or
 7. use any form of automated device or computer program that enables the submission of posts on PageMusc without each post being manually entered by the author thereof (an "automated posting device"), including without limitation, the use of any such automated posting device to submit posts in bulk, or for automatic submission of posts at regular intervals, or engage in any other acts which could be considered "gaming the system"

Privacy Policy

1. **Principles:** PageMusc.com Limited ("PageMusc") is an online service that facilitates music fans (a "P edger") contributing to the recording costs of independent musicians (the "Artist") musician and a solo (optionally) to contribute to a charity designated by the Artist (the "Charity") (collectively, the "Service"). To achieve this a PageMusc collects and processes certain personal information (the "Personal Information"). PageMusc may modify the terms of this [Privacy Policy](#), in our sole discretion, by posting amended terms to the PageMusc.com website. Your continued use of the Service indicates your acceptance of the amendments.
2. **What information is collected:** When signing up with the Service you will be asked to supply information which may include your name, address, telephone number, email address, credit card details, date of birth, gender, or other information. When using the Service we may collect your browser type, OS type, IP address. We also store certain information in your browser called "cookies". We use session ID cookies to confirm that users are logged in. These cookies terminate once the user closes the browser. By default, we use a persistent cookie that stores your login ID (but not your password) to make it easier for you

to log in when you come back to the Service. You can remove or block these cookies using the settings in your browser if you wish to disable this convenience feature.

3. Why is this information gathered and how is it used: All information gathered by PledgeMusic is for the express purpose of enabling a more productive, customized, and efficient experience for our users. We do not sell user information. Private information gathered may be used to verify users in order to increase the soundness of a Campaign, by a Campaign in which the Pledger is a member to make a statement (as organized by members of that Campaign), or any other disclosure, and only if, approved by the user whose information is being revealed. Campaign information, detached from any private information, will also be reviewed by PledgeMusic staff periodically for the purpose of improving the website and enforcing the General Terms and Conditions. PledgeMusic may occasionally email you notifications regarding new services, the status of a Campaign you are engaged in, internal messages you have received from other site members, and other account information. PledgeMusic may disclose this information to business partners, and Artists running a Campaign to which a Pledger has Pledged.
4. Abuse: Any improper collection or misuse of information provided on PledgeMusic is a violation of PledgeMusic's General Terms and Conditions and should be reported to: nfo@pedgemusic.com
5. Credit Card Information and Security: PledgeMusic does not store credit card information. Credit card transactions are transmitted to a secure financial gateway, and we endeavour to protect the security of your payment information during transactions on by using Secure Sockets Layer (SSL) technology. Credit card information is stored in an encrypted form by our payment gateway provider. PledgeMusic stores only the last four digits of any credit card with a reference ID for the payment gateway.
6. Archives: PledgeMusic may keep copies of user information or Campaigns after the removal from the site in archive storage. This archive storage may include past versions of stored items that have since been modified or deleted.
7. Children Under Age 13: PledgeMusic does not knowingly collect information from persons under the age of 13. If PledgeMusic learns that a posting is by a person under the age of 13, PledgeMusic will remove that post.
8. Children Between the Ages of 13 and 18: We recommend that minors over the age of 13 ask their parents for permission before sending any information about themselves to anyone over the Internet.
9. Changes to this privacy policy: PledgeMusic may amend this privacy policy from time to time, at its sole discretion. Use of information we collect now is subject to the privacy policy in effect at the time such information is used. If we make changes to the privacy policy, we will notify you by posting an announcement on PledgeMusic website to allow you to learn what information we collect, how we use it, and under what circumstances if any, it is disclosed.
10. Conditions of Use: If you decide to visit PledgeMusic website, your visit and any possible dispute over privacy is subject to this privacy policy and our General Terms and Conditions, including limitations on damages, and jurisdiction.
11. Contacting PledgeMusic: If you have any questions about this privacy policy, please contact us. You may also reach us by mail at "Pledge Music, 22 Ende Street, Covent Garden, London, WC2H 9AD", or you can contact us through email at nfo@pedgemusic.com

Copyright Policy

1. PledgeMusic.com is in compliance with international copyright laws including 17 U.S.C. 512 and the Digital Millennium Copyright Act ("DMCA"). It is our policy to respond to any infringement notices and take appropriate actions under the Digital Millennium Copyright Act ("DMCA") and other applicable intellectual property laws.
2. If you are a copyright owner or an agent thereof and believe that any file or other content or link infringes upon your copyrights, you may submit a notification pursuant to the Digital Millennium Copyright Act ("DMCA") by providing us with the following information in writing (see 17 U.S.C 512©(3)):
 1. A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
 2. Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site;
 3. Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled and information reasonably sufficient to permit PledgeMusic to locate the material;
 4. Information reasonably sufficient to permit PledgeMusic to contact you, such as an address, telephone number, and, if available, an electronic mail;

5. A statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and
 6. A statement that the information in the notification is accurate, and under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.
3. If your notification complies with all of these requirements, you can send it to us by email to info@pedgemus.com. Any notifications not complying with the above requirements will be ignored. Please allow 1-2 business days for an email response.

ANNEX F

Music Sector Background: Music is a Copyright Industry

The community defined by DotMusic -- “a strictly delineated and organized community of individuals, organizations and business, a “logical alliance of communities of a similar nature” that relate to music, the art of combining sounds rhythmically, melodically or harmonically” -- functions in a regulated sector. Evidence to support this assessment include recent ICANN Resolutions and GAC Advice that recognized **music** as a regulated, sensitive sector.¹

As such, one can clearly “categorize the music industry is to consider it as a copyright industry. Copyright legislation is what makes it possible to commodify a musical work...The core of music industry is about ' developing musical content and personalities' (Negus, 1992), and to be able to license the use of that content and those personalities to consumers and business they need to be protected by copyright legislation.... The use of this term is not new in any way, but has been used by several institutions, for instance OECD, IFPI (2004a), Congress of the United States (CBO 2004) and of course by WIPO... The term also has a clearer definition and is less ambiguous than many of the other terms.”²

The music (industry) community is “commonly referred to in the literature and in public policy as one of the ‘cultural industries’ or ‘culture industries’ first coined by Theodor Adorno and Max Horkheimer in Dialectic of Enlightenment (2002). These are usually described as those industries that create, produce and distribute goods and services that are cultural in nature, and may be further defined by their relationship to copyright as a primary means of control over the economic functions of those industries.”³ “The study of the music industries as a function of culture and society is another popular approach to understanding the music industries. Music is culture, and industries are formed from aspects of cultural engagement.”⁴

Governments and their supporting government agencies play an essential complementary⁵ role in the music (industry) community because they regulate copyright. According to the U.S Copyright Office:⁶

The government’s involvement in the music marketplace is unusual and expansive relative to other kinds of works created and disseminated under the Copyright Act. In many cases, it compels copyright owners to license their works at government-set rates.

¹ <https://www.icann.org/en/system/files/bm/briefing-materials-2-05feb14-en.pdf>, Pg.3

² Patrick Wikström, The Music Industry: Music in the Cloud, Polity Press, Cambridge, 2009, <https://www.google.com/search?q=music+is+a+copyright+industry&ie=utf-8&oe=utf-8#q=music+is+a+%22copyright+industry%22>, Pg. 5

³ Chris Anderton, Andrew Dubber and Martin James, Understanding the Music Industries, Sage Publications Ltd, first edition, 2013, https://us.sagepub.com/sites/default/files/upm-binaries/54808_Anderton_ch_1.pdf, Pg. 8

⁴ Ibid, Pg.9

⁵ For example, IFACCA, a DotMusic supporting organization that is *mainly* dedicated to the community defined, is the sole organization that represents arts councils and government culture agencies globally, which provide essential complementary support services, regulatory enforcement and substantial funding to music globally.

⁶ United States Copyright Office, Copyright and the Music Marketplace, A Report of the Register of Copyright, February 2015, <http://copyright.gov/policy/musiclicensingstudy/copyright-and-the-music-marketplace.pdf>, Pg. 16-18. Also see Appendix D for diagrams concerning Licensing Frameworks. For more examples on royalty flow that many be regulated by government and the symbiotic relationships among music (industry) community members and organizations mainly dedicated to the community, see https://www.prsformusic.com/SiteCollectionDocuments/Membership/The_Music_Universe.pdf.

Regulation of music publishers and songwriters is particularly pervasive: the two most significant areas of their market (mechanical and performance licensing) are subject to mandatory licensing and ratesetting. Antitrust concerns have been the traditional rationale for government intervention. To be sure, where particular actors engage in anticompetitive conduct in violation of antitrust laws, that conduct should be addressed. But compulsory licensing does more than that—it removes choice and control from all copyright owners that seek to protect and maximize the value of their assets.

⁷...[L]icensees urge that government oversight is essential to forestall alleged monopolistic practices on the part of the PROs and large music publishers.⁸ Many licensing transactions are regulated by the government... They represent a series of statutory and judicial mandates that came into effect at various points during the last century to address particular concerns of the day.⁹

Congress passed the first federal copyright act in 1790 (Act of May 31, 1790, ch. 15, 1 Stat. 124)... In 1831, Congress amended the law to provide expressly that musical works were subject to federal copyright protection. (Act of Feb. 3, 1831, ch. 16, 4 Stat. 436). The 1831 amendment, however, provided owners of musical works with only the exclusive right to reproduce and distribute their compositions, i.e., to print and sell sheet music, because, “[a]t the time, performances were considered the vehicle by which to spur the sale of sheet music.” (See Maria A. Pallante, ASCAP at 100, 61 J. COPYRIGHT SOC’Y 545, 545-46 (2014)) In 1897, Congress expanded the rights of music owners to include the exclusive right to publicly perform their works. (Act of Mar. 3, 1897, ch. 392, 29 Stat. 694; see also Zvi S. Rosen, *The Twilight of the Opera Pirates: A Prehistory of the Exclusive Right of Public Performance for Musical Compositions*, 24 CARDOZO ARTS & ENT. L.J. 1157, 1158-59 (2007)). With the 1909 Copyright Act, federal copyright protection for musical works was further extended by adding an exclusive right to make “mechanical” reproductions of songs in “phonorecords”—in those days, piano rolls, but in the modern era, vinyl records and CDs. At the same time, Congress limited the new phonorecord right by enacting a compulsory license for this use... And in 1995, Congress confirmed that an owner’s exclusive right to reproduce and distribute phonorecords of musical works extends to digital phonorecord deliveries (“DPDs”)—that is, the transmission of digital files embodying musical works. (Digital Performance Right in Sound Recordings Act of 1995 (“DPRSRA”), Pub. L. No. 104-39, § 4, 109 Stat. 336, 344-48; see also 17 U.S.C. § 115(c)(3)(A).)¹⁰

Over time, new technologies changed the way people consumed music, from buying and playing sheet music, to enjoying player pianos, to listening to sound recordings on a phonograph or stereo system. (See U.S. COPYRIGHT OFFICE, FEDERAL COPYRIGHT PROTECTION FOR PRE-1972 SOUND RECORDINGS 7, 11 (2011) (“PRE-1972 SOUND RECORDINGS REPORT”); Michael Erlinger, Jr., *An Analog*

⁷ Ibid, Pg. 3

⁸ Ibid, Pg. 12

⁹ Ibid, Pg. 16

¹⁰ Ibid. Pg. 17

Solution in a Digital World: Providing Federal Copyright Protection for Pre-1972 Sound Recordings, 16 UCLA ENT. L. REV. 45, 57-58 (2009).) But it was not until 1971 that Congress recognized artists’ sound recordings as a distinct class of copyrighted works that were themselves deserving of federal copyright protection.(Pub. L. No. 92-140, 85 Stat. 391 (1971) (“Sound Recording Act of 1971”)) This federal protection, however, was limited to sound recordings fixed on or after February 15, 1972, and, until more recently, protected only the exclusive rights of reproduction, distribution, and preparation of derivative works. No exclusive right of public performance was granted. Then, in 1995, Congress granted sound recording owners a limited public performance right for digital audio transmissions—though, as discussed below, that right was made subject to compulsory licensing under sections 112 and 114 of the Copyright Act (DPRSRA §§ 2, 3. The digital performance right is also subject to a number of exceptions, including for transmissions to or within a business for use in the ordinary course of its business, for nonsubscription broadcast transmissions, and for certain geographically limited retransmissions of nonsubscription broadcast transmissions. 17 U.S.C. § 114(d)(1)(A), (B), (C)(ii), (C)(iv)).¹¹

As discussed, the United States government is one of many examples of government oversight and royalty rate-setting that are illustrated in the below charts:¹²

SERVICE TYPE	COPYRIGHT TYPE	REVENUE (%)
Terrestrial radio	Musical work	3.7 (2011-2016) ^[1]
	Sound recording	0.0
	<i>TOTAL</i>	3.7
Pre-existing satellite radio (i.e., Sirius XM)	Musical work	2.4 (2008) ^[2]
	Sound recording	9.0-11.0 (2013-2017)
	<i>TOTAL</i>	11.4-13.4
Pre-existing cable music service (i.e., Music Choice)	Musical work	5.5
	Sound recording	8.0-8.5 (2013-2017)
	<i>TOTAL</i>	13.5-14.0
Noninteractive	Musical work	4.0 (2014) ^[3]

¹¹ Ibid, Pg. 17 and Pg. 18

¹² Loren, Lydia Pallas, The Dual Narratives in the Landscape of Music Copyrights (August 1, 2014). Houston Law Review, Vol. 52, No. 2, 2014. Available at SSRN: <http://ssrn.com/abstract=2551342>

webcasters	Sound recording	25.0-56.0
	<i>TOTAL</i>	<i>29.0-60.0</i> ^[4]
Interactive webcasters	Musical work	10.5
	Sound recording	Unknown ^[5]
	<i>TOTAL</i>	<i>Unknown</i>

TYPE OF COPY	PRICE
Physical phonorecords	\$0.091 per song or \$0.0175 per minute of playing time ^[6]
Digital phonorecord deliveries (DPDs)	\$0.091 per song or \$0.0175 per minute of playing time ^[7]
Limited downloads (tethered devices)	3.9 percent of revenue ^[8]
Ringtones	\$0.24 per song ^[9]

^[1] Rate extrapolated by using the 1.7 percent rate charged by ASCAP, with a 45.6 percent PRO market share for ASCAP, resulting in an industrywide rate of 3.7 percent. See *Pandora Media Inc.*, 6 F. Supp. 3d at 361 (45.6 percent market share; *id.* at 366 (1.7 percent royalty rate).

^[2] Determination of Rates and Terms for Preexisting Subscription Services and Satellite Digital Audio Radio Services, 73 Fed. Reg. 4,080, 4,088 (Jan. 24, 2008) (to be codified at 37 C.F.R. pt. 382); Peter DiCola, *Copyright Equality: Free Speech, Efficiency, And Regulatory Parity in Distribution*, 93 B.U. L. REV. 1837, 1848 (2013).

^[3] This rate is extrapolated by using the 1.85 percent rate set for ASCAP. Using a 45.6 percent PRO market share for ASCAP, this results in an industrywide rate of approximately 4.0 percent. *Pandora Media Inc.*, 6 F. Supp. 3d at 361 (45.6 percent market share); *see id.* at 366 (1.85 percent royalty rate for noninteractive services). This 4 percent approximation was confirmed by the court's description. *Id.* at 346.

^[4] 60 percent is used here because it has been reported that "[i]n 2013, Pandora's content acquisition costs were...over 60 percent of its revenue for that fiscal year." *Pandora Media, Inc.*, 6 F. Supp. 3d at 328

^[5]The arrangements between interactive webcasters and sound recording copyright owners are privately negotiated and not subject to any disclosure requirements. See 17 U.S.C. § 114(e) (2012) (providing for private negotiations).

^[6]*Mechanical License Royalty Rates*, U.S. COPYRIGHT OFF., <http://www.copyright.gov/licensing/m200a.pdf> (last visited July 15, 2015)

^[7] *Ibid.*

^[8]This rate is arrived at by taking the 10.5 percent aggregate rate set by Copyright Office regulation and subtracting 6.6 percent as the portion to be paid for the public performance right. See infra notes 85–91 and accompanying text. 6.6 percent is arrived at by extrapolating from the 3 percent that ASCAP charges interactive webcasters, using a 45.6 percent market share for ASCAP, resulting in an industrywide rate of 6.6 percent. See *Pandora Media, Inc. v. Am. Soc’y of Composers, Authors, & Publishers*, 6 F. Supp. 3d 317, 351, 365 (S.D.N.Y. 2014).

^[9]*Mechanical License Royalty Rates*, supra note 6.

MusicBiz also provides other examples and infographics of Master, Mechanical Rights, and Public Performance/Communication Rights royalties that are regulated by global governments in 12 different countries are handled for the six most frequently requested types of music uses (download, non-interactive, on-demand, sync, lyrics, and karaoke).¹³ This symbiotic and overlapping structure of music (industry) community relationships and royalty structure of rights can also be downloaded below:

- [Argentina](#)
- [Australia](#)
- [Brazil](#)
- [Canada](#)
- [France](#)
- [Germany](#)
- [Italy](#)
- [Japan](#)
- [Mexico](#)
- [United Kingdom](#)
- [United States](#)

According to WIPO:¹⁴

These rights are defined within national copyright laws which are, in large part, shaped by international treaties, many of which are administered by WIPO (see box). Copyright law defines the rights conferred on authors of original works, and those who perform them, as well as those who support their widespread dissemination (i.e. record companies and broadcasters).

¹³ <http://musicbiz.org/press-releases/new-music-biz-infographic-simplifies-global-music-licensing-country-specific-guide/>

¹⁴ World Intellectual Property Organization, http://www.wipo.int/ip-outrreach/en/ipday/2015/creating_value_from_music.html

Once a work has been created – lyrics or musical notes written down, arranged or recorded - copyright protection kicks in. There is no formal obligation to register a work with a national authority, although in some countries, such the US, registering a work with the Library of Congress is the only way to bring a court action for infringement.

Under the 1886 WIPO Berne Convention for the Protection of Literary and Artistic Works,¹⁵ an original work is protected for a minimum of 50 years after the author’s death but in many jurisdictions that figure can be 70 years or more.

In a nutshell, copyright enables those who hold rights in a work to decide how, when and where it may be used and by whom. One of the purposes of copyright is to create the conditions for creators to be able: to earn a living from their talent by getting a financial return on the time and energy they put into producing a work and being recognized as its author.

Copyright includes economic rights which give the creator the right to authorize, prohibit or obtain financial compensation (in the form of equitable remuneration) for:

- the reproduction of a work, for example, on a CD, online or in a film;
- the distribution of copies of a work;
- the communication to the public of a work. If a piece of music is performed in public or played over a sound system in a shopping mall or a disco, a royalty is payable to authors, performers and/or right holders according to the national legislation.
- broadcasting or otherwise making available a work to the public (i.e. via radio, TV or online)
- the adaptation of a work (if someone translates the lyrics of a song and wants to record these using the same music as that of the original song, or changes an original work adding new elements to it, they first need to get authorization from those with rights in the original work). The new adapted work also qualifies for copyright protection in its own right. Depending on the terms of the agreement to license the original work, anyone seeking to publish or use such a work may need to get authorization to do so from those with rights in the original work.

Copyright also confers moral rights (Article 6b is of the Berne Convention) allowing the creator of a work to claim authorship in it (the right of paternity or attribution) and to object to any modification of it that may be damaging or prejudicial to them (the right of integrity).

Under certain circumstances, there are limitations on copyright and related rights (as set out in international and national copyright laws). For example, when someone wants to use a work or a portion of it for teaching, scientific research, news reporting, etc.

Most countries recognize the possibility of using work without the right owner’s authorization but may regulate such use in different ways. Some countries have a list of “permitted uses” whilst others have a general provision in their copyright law (e.g. “fair use” in the US). Considerations in determining “fair use” include the nature and purpose of use, the nature of the work used; the amount of the work used; and the likely impact on the work’s commercial value.

¹⁵ <http://www.wipo.int/treaties/en/ip/berne/>

As a guiding principle, the “free use” of protected works must be confined to certain specific instances; must not “conflict with the normal exploitation of the work”; and must “not unreasonably prejudice the legitimate interests of the author (or right holder).”

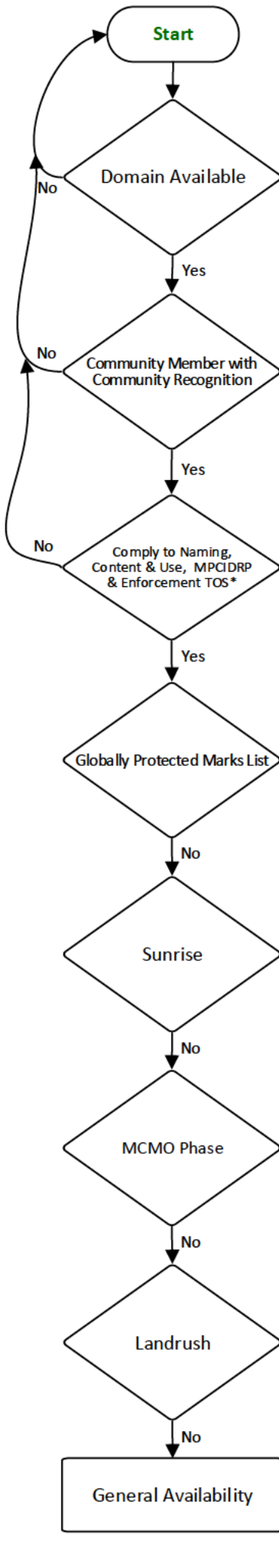
The owner of economic rights in a musical work (moral rights can never be transferred from the original author) can use them to generate income. They can **sell** or **license** them to a third party – a company or individual who is well placed to commercialize the work - in return for a payment known as a royalty, where payments usually depend on the actual use of the work. They can assign the rights to authorize or prohibit certain or all of the acts outlined above. In both instances, the person to whom the rights are sold or assigned becomes the new owner of the copyright. In some countries, e.g. Germany, assignment is not legally possible and so works can only be licensed.

Licensing involves the copyright owner entering into a deal with a third party, authorizing it to use the work for a specific purpose and time period. For example, a songwriter may give permission to a music publisher to authorize the recording of his or her song by performers and record companies. These licenses may be exclusive, involving only one party, or non-exclusive involving multiple parties.

Given the fact that it simply is not practical for authors and performers to negotiate separate licensing deals with every single radio or television station, or business that wants to use their work, musicians and other creators often sign up with, and in so doing, grant exclusive licenses to, a collective management organization. Acting on behalf of songwriters, musicians and performers, CMOs connect creators with those who want to use their work. National laws may also authorize a CMO to negotiate on behalf of authors and performers. CMOs authorize the use of a musician’s work; collect and distribute licensing fees or royalties, and also keep tabs on any misuse or infringement.

Every piece of music is protected by copyright. There is copyright in the music itself; in the lyrics of a song and related rights in the sound recording. If anyone wants to use a musical work, or a portion of it, they must obtain the permission of the copyright holder(s), except in the cases covered by a limitation (see above). Just as CMOs can help artists manage their music and collect associated royalties; they can also help those seeking to obtain permission to use a protected work.

.MUSIC Registration Process Flowchart



*** Registration Policies include:**

- **Eligibility** - Restricted to Music Community members with requisite awareness and recognition of the community addressed: the "strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music" (which includes members of DotMusic Music Community Member Organizations -- MCMOs);
- **Authentication** - Mandatory Two-Step Phone & Email Authentication
- **Naming Conditions** - Name of (entire or portion of) entity or DBA; Acronym; Name recognizing or describing registrant; or Name related to registrant mission or activities;
- **Content & Use** - Only legal music content & legal music-related usage. No parking pages allowed;
- **Enforcement** - Proactive and reactive enforcement measures and anti-abuse procedures with random compliance checks, including appropriate appeals mechanisms to fix compliance issues governed by the music-tailored .MUSIC Policy & Copyright Infringement Dispute Resolution Process ("MPCIDRP"). Independent appeals may be also conducted with the [National Arbitration Forum](#) (NAF).

For More Information on DotMusic:

- [.MUSIC Community Website](#)
- [.MUSIC Community Supporters](#)
- [.MUSIC Community Application](#)
- [.MUSIC Community Public Interest Commitments](#)

ANNEX H

Independent Nielsen/Harris Poll

To address the DotMusic Application’s “Community Establishment,” “Community Definition” and “Nexus,” an independent survey was conducted within the United States from August 7-11, 2015 among 2,084 adults ages 18 and older, by Harris Poll¹ on behalf of DotMusic Limited. Figures for age, sex, race/ethnicity, education, region and household income were weighted where necessary to bring them into line with their actual proportions in the population. The data was weighted to reflect the composition of the adult population. The independent polling organization Nielsen/Harris Poll addressed whether the applied-for string was commonly-known (i.e. known by most people²) and associated with the identification of the community defined by DotMusic by asking the question:

If you saw a website domain that ended in “.music” (e.g., www.name.music), would you associate it with musicians and/or other individuals or organizations belonging to the music community (i.e., a logical alliance of communities of individuals, organizations and business that relate to music)?³

Most people, 1562 out of 2084 (i.e. 3 in 4 or 75% of the respondents) responded “Yes,”⁴ which is aligned with the “Nexus” Criterion 2A requirements that the applied for-string is “commonly-known” as the identification of the community addressed by the application.

Furthermore, a majority agreed that DotMusic’s associated definition of the community addressed that matches the string (i.e. a logical alliance of communities of individuals, organizations and business that relate to music) is representative and accurate.

¹ <http://www.harrisinteractive.com/Products/HarrisPollQuickQuery.aspx>

² <http://www.wordreference.com/es/translation.asp?tranword=commonly%20known>

³ Nielsen / Harris Poll, Quick Query Q3505, <http://music.us/nielsen-harris-poll.pdf>,
Fielding Period: August 7-11, 2015, Pg. 1,2,3

⁴ Nielsen / Harris Poll, Quick Query Q3505, <http://music.us/nielsen-harris-poll.pdf>,
Fielding Period: August 7-11, 2015, Pg. 1,2,3

Q3505 If you saw a website domain that ended in ".music" (e.g., www.name.music), would you associate it with musicians and/or other individuals or organizations belonging to the music community (i.e., a logical alliance of communities of individuals, organizations and business that relate to music)?

11 Aug 2015
 Table 1

Base: All Respondents

	Region					Age					Male Age					Female Age						
	Total	North-east	South	Mid-west	West	18-34	35-44	45-54	55-64	65+	Total	18-34	35-44	45-54	55-64	65+	Total	18-34	35-44	45-54	55-64	65+
	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)	(J)	(K)	(L)	(M)	(N)	(O)	(P)	(Q)	(R)	(S)	(T)	(U)	(V)
Unweighted Base	2084	478	656	561	389	551	290	379	389	475	888	203	119	141	191	234	1196	348	171	238	198	241
Weighted Base	2084	437	705	449	493	634	311	386	358	395	999	322	147*	162*	194	175	1085	311	165	225	165	220
Yes	1562 75%	323 74%	509 72%	345 77%	386 78% c	465 73%	251 81% fj	280 72%	277 77%	290 73%	737 74%	234 73%	114 78%	114 70%	151 78%	124 71%	826 76%	231 74%	137 83% it	166 74%	126 77%	166 76%
No	522 25%	113 26%	196 28% e	105 23%	107 22%	168 27% g	60 19%	107 28% g	81 23%	105 27% g	263 26%	88 27%	32 22%	48 30%	43 22%	51 29%	259 24%	80 25% s	27 17%	59 26% s	39 23%	54 24%
Sigma	2084 100%	437 100%	705 100%	449 100%	493 100%	634 100%	311 100%	386 100%	358 100%	395 100%	999 100%	322 100%	147 100%	162 100%	194 100%	175 100%	1085 100%	311 100%	165 100%	225 100%	165 100%	220 100%

Proportions/Mean: Columns Tested (5%, 10% risk level) - B/C/D/E - F/G/H/I/J - K/Q - L/M/N/O/P - R/S/T/U/V - L/R - M/S - N/T - O/U - P/V
 Overlap formulae used. * small base

Q3505 If you saw a website domain that ended in ".music" (e.g., www.name.music), would you associate it with musicians and/or other individuals or organizations belonging to the music community (i.e., a logical alliance of communities of individuals, organizations and business that relate to music)?

11 Aug 2015
 Table 2

Base: All Respondents

	Income				Education			Employment Status				Children in HH		Parent of Child Under 18 in HH		Home Ownership		Marital Status		
	Total	Less Than \$50K	\$50K-\$74.9K	\$75K-\$99.9K	\$100K+	H.S. or Less	Some Col.	Col. Grad+	Total Emp.	Total Un-emp.	Student	Retired	Yes	No	Yes	No	Home-owner	Renter	Marr-ied	Not Married
	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)	(J)	(K)	(L)	(M)	(N)	(O)	(P)	(Q)	(R)	(S)	(T)
Unweighted Base	2084	932	393	231	335	678	666	740	990	1094	132	543	597	1487	521	1563	1301	721	1071	1013
Weighted Base	2084	771	347	256	515	866	600	618	1039	1045	182*	474	670	1414	552	1532	1306	729	1067	1017
Yes	1562 75%	563 73%	262 75%	205 80% b	424 82% Bc	620 72%	457 76%	485 78% F	789 76%	773 74%	139 77%	346 73%	495 74%	1067 75%	424 77%	1138 74%	1000 77%	537 74%	827 77% T	735 72%
No	522 25%	208 27% Df	85 25% e	50 20%	91 18% H	246 28%	143 24%	133 22%	249 24%	272 26%	43 23%	128 27%	175 26%	347 25%	128 23%	394 26%	306 23%	192 26%	240 23% S	281 28%
Sigma	2084 100%	771 100%	347 100%	256 100%	515 100%	866 100%	600 100%	618 100%	1039 100%	1045 100%	182 100%	474 100%	670 100%	1414 100%	552 100%	1532 100%	1306 100%	729 100%	1067 100%	1017 100%

Proportions/Means: Columns Tested (5%, 10% risk level) - B/C/D/E - F/G/H - I/J/K/L - M/N - O/P - Q/R - S/T
 Overlap formulae used. * small base

11 August 2015
QuickQuery
Fielding Period: August 7-11, 2015
DotMusic Limited
Weighted To The U.S. General Adult Population - Propensity

<u>Page</u>	<u>Table</u>	<u>Title</u>
1	1	Q3505 If you saw a website domain that ended in ".music" (e.g., www.name.music), would you associate it with musicians and/or other individuals or organizations belonging to the music community (i.e., a logical alliance of communities of individuals, organizations and business that relate to music)?
2	2	Q3505 If you saw a website domain that ended in ".music" (e.g., www.name.music), would you associate it with musicians and/or other individuals or organizations belonging to the music community (i.e., a logical alliance of communities of individuals, organizations and business that relate to music)?



ANNEX I

Trusted. Safe. Licensed.

Enhanced Safeguards to Protect IP.
 Monies Flow to the Music Community.
 Governed by the Global Music Community.
 Available to the Entire Global Music Community.

What is the DotMusic's community-based .MUSIC Initiative?

DotMusic is the only remaining .MUSIC community applicant with policies that ensure that music artists, bands, industry professionals and organizations register a trusted, secure and verified .MUSIC domain — just like a .EDU or .GOV domain — and own their exclusive www.name.music web address.

A community-based .MUSIC differentiates itself from .COM, .NET, .ORG and other domains because:

1. .MUSIC is exclusive only to legitimate members of the entire global music community;
2. .MUSIC is governed and controlled by the global music community. Each music constituent community type¹ has a governance seat on the multi-stakeholder .MUSIC policy advisory board;
3. .MUSIC's community application is supported by a majority of the global music community in terms of headcount, and growing (See <http://music.us/supporters>);
4. .MUSIC has enhanced safeguards to protect intellectual property, prevent cybersquatting and eliminate copyright infringement;
5. .MUSIC has incorporated all RIAA intellectual property protection provisions that include policies to stop domain hopping, takedown policies in the case of piracy, authorization provisions, permanent blocks, privacy/proxy provision, true name/address mandates and trusted sender complaint policies amongst others;
6. .MUSIC requires registrant validation through a mandatory two-step phone and email authentication process;
7. .MUSIC protects names of famous music artists and brands by giving registration priority to those entities during a priority-based launch phase. .MUSIC also gives registration priority to community members belonging to legitimate Music Community Member Organizations to spur adoption, trust and safety;
8. .MUSIC has domain naming conditions that eliminate cybersquatting and famous music brand trademark infringement. Registrants are only allowed to register their own name, acronym or "Doing Business As;"
9. .MUSIC only allows legal music content and legal music usage; and
10. .MUSIC will take down any domain infringing on any of its enhanced safeguard policies.

The DotMusic Mission for .MUSIC is focused on furthering the common interest shared by the entire global music community it serves: the legal promotion and distribution of music. Its purpose is:

1. Creating a trusted, safe online haven for music consumption and licensing;
2. Establishing a safe home on the Internet for Music Community members;
3. Protecting intellectual property and fighting piracy;
4. Supporting musicians' welfare, rights and fair compensation; and
5. Promoting music and the arts, cultural diversity and music education; and
6. Following a multi-stakeholder approach of fair representation of all types of global music constituents without discrimination, including both commercial and non-commercial entities.

For more information on .MUSIC visit: <http://www.music.us>

¹ *Constituent types include artists/bands/musicians, songwriters, major/independent labels, publishers, instrument and music product manufacturers, performance rights organizations, collection societies, unions, managers, engineers, agents, promoters, government ministries of culture, music/arts councils, music associations, music radio and others.*

DotMusic Limited: .MUSIC Community Application Specifications

	DotMusic Limited
"Also Known As"	.MUSIC™
Application ID	1-1115-14110
Total Top-Level Domain Applications Filed	1
Type of Application	Community (Restricted)
Policy Advisory Board & Multi-Stakeholder Governance	Yes
Community Member Organization Resellers/Partners	Yes
Music Organization Accreditation Requirements	Yes. Eligible organizations get priority in MCMO Phase(1)
Who Can Register (Eligibility)	Entire global Music Community
Phone & Email Two-Step Authentication	Yes
Protect Famous Music Artist/Brand Names	Music Globally Protected Marks List (GPML)
Domain Naming Conditions	Yes. 1. Entity name (or portion of); or 2. Doing Business As; or 3. Acronym (AKA); or 4. Name recognizing entity; or 5. Name describing entity
Use:	
Only Legal Music Activities	Yes. Only legal music activities allowed
Only Music-Related Activity Usage	Yes. Only music usage allowed
Prohibits registering of domain with established artist's/brand's name	Yes
Content:	
Only Music-Related Content	Yes. Only music content allowed
Quality Content Control (Parking Pages)	Yes. Parking pages are <u>not</u> allowed
Policy, IP & Copyright Infringement Enforcement	Extensive enforcement measures constituting a coherent set
Enforcement & Appeals Mechanisms	Appropriate appeals mechanisms
Independent Dispute Resolution Provider	Yes. National Arbitration Forum (NAF)
Music-Focused Registration Policy Dispute Resolution	MPCIDRP
Music-tailored Copyright Protection Provisions	Extensive enhanced safeguards and copyright provisions (2)
Community Definition	Organized & delineated logical alliance of music communities
Community Support	Majority. Coalition represents over 95% of global music consumed
Community Objection	There has been no Community Objection or relevant opposition (3)
Music-Tailored Public Interest Commitments (PIC)	Public Interest Commitments with Clarifications (4)
.music Community TLD Support Petition	1.5+ million signed petition
Public Community Outreach Campaign	200+ public events (2008-Present)
.music-focused Social Media Engagement	Extensive. 5+ million across all media
Trademark for .MUSIC™	Yes. Over 40 countries/regions
Community Premium Channels	Yes. Sorted by Type, Genre, Language, Geography, Keyword (5)
Global Legal Song Licensing Registry based on DNS	Yes

(1) DotMusic gives priority to members of Music Organizations during MCMO Phase. During General Availability all Community members (including non-MCMO members) can register .MUSIC.

(2) DotMusic has more enhanced safeguards than all .MUSIC applicants combined. DotMusic has incorporated all IFPI/RIAA IP protection provisions that include stopping domain hopping, takedown policies, authorizations, permanent blocks, privacy/proxy, true name/address and trusted sender complaint policies.

(3) DotMusic addressed all concerns/comments raised by the Music Community and filed the PIC which clarifies how the Application serves the Community and the public interest. According to the ICANN New gTLD Program Applicant Guidebook: "To be taken into account as relevant opposition, such objections or comments must be of a reasoned nature. Sources of opposition that are clearly spurious, unsubstantiated, made for a purpose incompatible with competition objectives, or filed for the purpose of obstruction will not be considered relevant." (Community Priority Evaluation Guidelines, P.20).

(4) By filing these Public Interest Commitments with ICANN, DotMusic commits to serve the Music Community and Public Interest as clarified and may be held accountable via the PICDRP.

(5) The Premium Channels available to all validated community members are sorted/delineated according to NAICS community type (Musician/Band/Professional/Company), Genre (e.g www.Rock.music), Language (e.g French.music), Geography (e.g London.music / France.music) and Keywords (e.g Lyrics.music).

For More Info on .MUSIC™ (DotMusic) visit:

<http://www.music.us>

.MUSIC Supporting Organizations:

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



.MUSIC Applicant Comparison Chart: DotMusic Limited vs. Other .MUSIC Applicants

	DotMusic Limited	.music LLC	Amazon S.a.r.l	Charleston Road	dot Music Limited	Victor Cross	Entertainment Names	Dotmusic Inc
"Also Known As"	.MUSIC™	Far Further	Amazon	Google	Famous Four Media	Donuts/Rightside	Minds and Machines	Radix
Application ID	1-1115-14110	1-959-51046	1-1316-18029	1-1680-18593	1-1175-68062	1-1571-12951	1-994-99764	1-1058-25065
Total Top-Level Domain Applications Filed	1	1	76 (Portfolio)	101 (Portfolio)	60 (Portfolio)	307 (Portfolio)	71 (Portfolio)	31 (Portfolio)
Type of Application	Community	Community	Standard (Closed)	Standard (Open)	Standard (Open)	Standard (Open)	Standard (Open)	Standard (Open)
Policy Advisory Board & Multi-Stakeholder Governance	Yes.	Yes. Board still pending.	No	No	Limited Board	No	No	No
Community Member Organization Resellers/Partners	Yes	Yes	No	No	No	No	No	No
Music Organization Accreditation Requirements	Yes. Eligible organizations get priority in MCMO Phase(1)	No. Invite-only.	No	No	No	No	No	No
Who Can Register (Eligibility)	Entire global Music Community	Only those belonging to 42 organizations	No	No	No	No	No	No
Phone & Email Two-Step Authentication	Yes	No	No	No	No	No	No	No
Protect Famous Music Artist/Brand Names	Music Globally Protected Marks List (GPML)	No	No	No	No	No	No	No
Domain Naming Conditions	Yes. 1. Entity name (or portion of); or	No. Open	No. Open	No. Open	No. Open	No. Open	No. Open	No. Open
	2. Doing Business As; or	No. Open	No. Open	No. Open	No. Open	No. Open	No. Open	No. Open
	3. Acronym (AKA); or	No. Open	No. Open	No. Open	No. Open	No. Open	No. Open	No. Open

	4. Name recognizing entity; or	No. Open	No. Open	No. Open	No. Open	No. Open	No. Open	No. Open
	5. Name describing entity	No. Open	No. Open	No. Open	No. Open	No. Open	No. Open	No. Open
Use:								
<i>Only Legal Music Activities</i>	Yes. Only legal <u>music</u> activities allowed	No. Open	No. Open	No. Open	No. Open	No. Open	No. Open	No. Open
<i>Only Music-Related Activity Usage</i>	Yes. Only <u>music</u> usage allowed	No. Open	No. Open	No. Open	No. Open	No. Open	No. Open	No. Open
<i>Prohibits registering of domain with established artist's/brand's name</i>	Yes	No. Open	No. Open	No. Open	No. Open	No. Open	No. Open	No. Open
Content:								
<i>Only Music-Related Content</i>	Yes. Only music content allowed	No. Open	No. Open	No. Open	No. Open	No. Open	No. Open	No. Open
<i>Quality Content Control (Parking Pages)</i>	Yes. Parking pages are <u>not</u> allowed	No. Open	No. Open	No. Open	No. Open	No. Open	No. Open	No. Open
Policy, IP & Copyright Infringement Enforcement	<u>Extensive enforcement measures constituting a coherent set</u>	No. General	No. General	No. General	No. General	No. General	No. General	No. General
Enforcement & Appeals Mechanisms	<u>Appropriate appeals mechanisms</u>	No. General	No. General	No. General	No. General	No. General	No. General	No. General
Independent Dispute Resolution Provider	<u>Yes. National Arbitration Forum (NAF)</u>	None specified	None	None	None	None	None	None
Music-Focused Registration Policy Dispute Resolution	<u>MPCIDRP</u>	Partial. Only for Eligibility (MEDRP)	No	No	No	No	No	No
Music-tailored Copyright Protection Provisions	<u>Extensive enhanced safeguards and copyright provisions (2)</u>	No. General.	No. General.	No. General.	No. General.	No. General.	No. General.	No. General.
Community Definition	<u>Organized & delineated logical alliance of music communities</u>	Segments from 42 organizations	Open	Open	Open	Open	Open	Open
Community Support	<u>Majority. Coalition represents over 95% of global music consumed</u>	Minority. Only 4 million members.	Open	Open	Open	Open	Open	Open
Community Objection	<u>There has been no</u>	Objection.	Objection.	Objection.	Objection.	Objection.	Objection.	Objection.

	Community Objection or relevant opposition (3)							
Music-Tailored Public Interest Commitments (PIC)	Public Interest Commitments with Clarifications (4)	No	No	No	No	No	No	No
.music Community TLD Support Petition	1.5+ million signed petition	No	No	No	No	No	No	No
Public Community Outreach Campaign	200+ public events (2008-Present)	Negligible	No	No	No	No	No	No
.music-focused Social Media Engagement	Extensive. 5+ million across all media	Negligible	No	No	No	No	No	No
Trademark for .MUSIC™	Yes. Over 40 countries/regions	No	No	No	No	No	1 country	No
Community Premium Channels	Yes. Sorted by Type, Genre, Language, Geography, Keyword (5)	No	No	No	No	No	No	No
Global Legal Song Licensing Registry based on DNS	Yes	No	No	No	No	No	No	No

(1) DotMusic gives priority to members of Music Organizations during MCMO Phase. During General Availability all Community members (including non-MCMO members) can register a .MUSIC domain.

(2) DotMusic has more enhanced safeguards than all .MUSIC applicants combined. DotMusic has incorporated all IFPI/RIAA IP protection provisions that include stopping domain hopping, takedown policies, authorizations, permanent blocks, privacy/proxy, true name/address and trusted sender complaint policies.

(3) DotMusic addressed all concerns/comments raised by the Music Community and filed the PIC which clarifies how the Application serves the Community and the public interest. According to the ICANN New gTLD Program Applicant Guidebook: "To be taken into account as relevant opposition, such objections or comments must be of a reasoned nature. Sources of opposition that are clearly spurious, unsubstantiated, made for a purpose incompatible with competition objectives, or filed for the purpose of obstruction will not be considered relevant." (Community Priority Evaluation Guidelines, P.20)

(4) By filing these Public Interest Commitments with ICANN, DotMusic commits to serve the Music Community and Public Interest as clarified and may be held accountable via the PICDRP.

(5) The Premium Channels available to all validated community members are sorted/delineated according to NAICS community type (Musician/Band/Professional/Company), Genre (e.g. www.Rock.music), Language (e.g. French.music), Geography (e.g London.music / France.music) and Keywords (e.g Lyrics.music).

Note: DotMusic has partnered with Afilias, the backend registry provider of .ORG. Afilias is the second largest registry in the world with over 20 million domains under management, which is more than all other .MUSIC applicants combined (See <http://www.afilias.info/about-us>).

ANNEX J

yourname.music

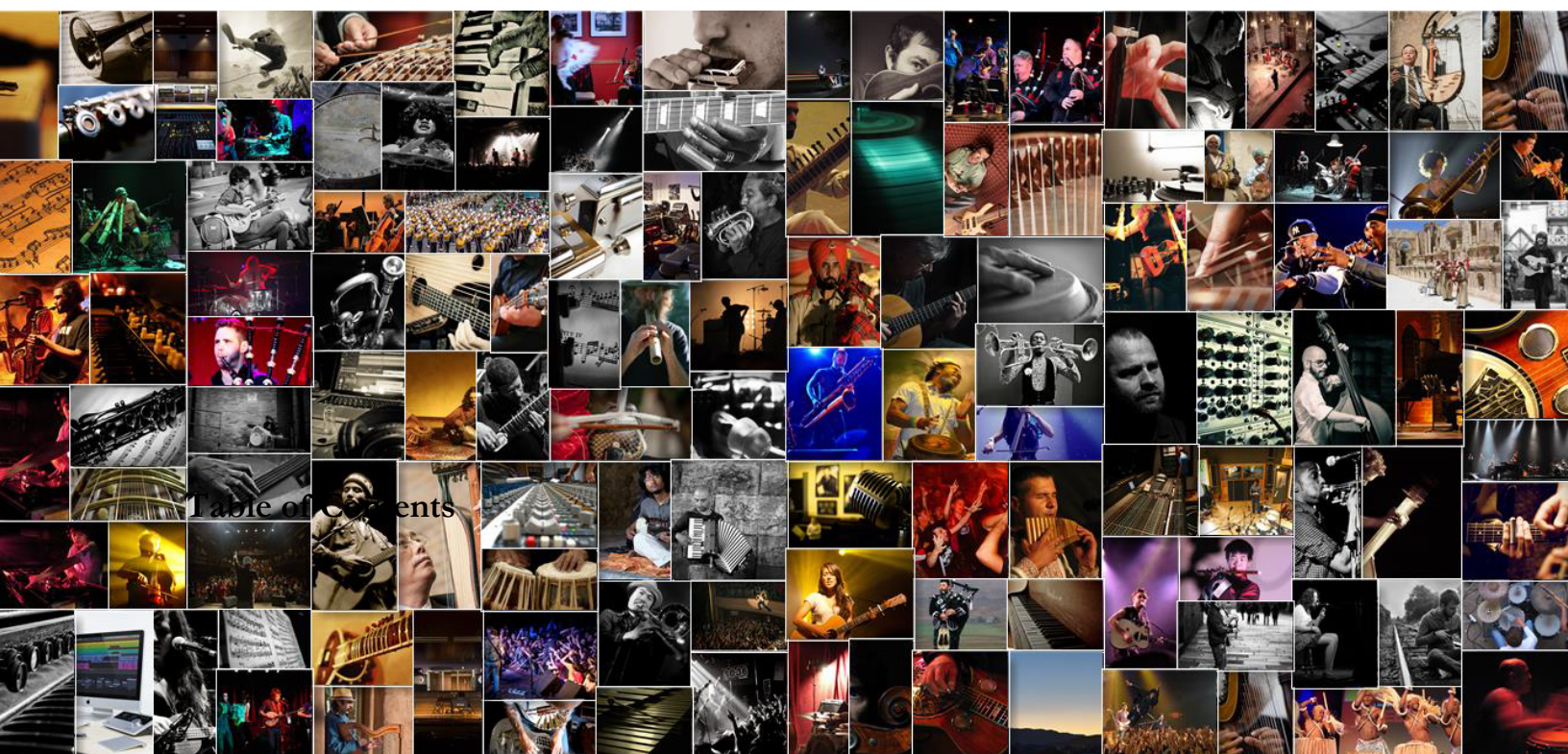


www.music.us

Letter to ICANN & Economist Intelligence Unit

**Analysis of DotMusic's Community-Based Application for .MUSIC
consistent with other CPE Determinations by the EIU**

September 23, 2015



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Preface

The objective of this letter to the EIU and ICANN is to provide compelling evidence that DotMusic Limited's community-based application for .MUSIC:

- 1) Is entirely different from that of Far Further's (.music LLC) community-based application for .MUSIC (See .MUSIC Applicant Comparison Chart, Appendix E);
- 2) Should pass CPE based on consistency with respect to points awarded to other CPE applicants by the EIU in their CPE Determinations; and
- 3) Has no opposition that is deemed relevant (i.e. opposition is clearly spurious, unsubstantiated, made for a purpose incompatible with competition objectives, and filed for the purpose of obstruction and should not be considered relevant)

Criterion #1: Community Establishment

1-A Delineation

The Community Priority Evaluation panel should determine that the community, as defined by the application, meets the criterion for Delineation as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook (AGB), because the community defined in the application demonstrates sufficient delineation, organization, and pre-existence. It is respectfully submitted that the application should receive a score of 2 out of 2 points under criterion 1-A: Delineation.

Delineation

Two conditions must be met to fulfill the requirements for delineation: there must be a clear, straightforward membership definition and there must be awareness and recognition of a community (as defined by the application) among its members.

The application defines its community as follows:

The Community is a strictly delineated and organized community of individuals, organizations and business, a "logical alliance of communities of a similar nature ("COMMUNITY")," that relate to music: the art of combining sounds rhythmically, melodically or harmonically. (Question 20A)

According to the .HOTEL¹ EIU Determination for *Delineation*:

.hotel domains will be available for registration to all companies which are member of the Hotel Community on a local, national and international level. The registration of .hotel domain names shall be dedicated to all entities and organizations representing:

1. *Individual Hotels*
2. *Hotel Chains*
3. *Hotel Marketing organizations representing members from 1. and/or 2.*

¹ <http://www.icann.org/sites/default/files/tlds/hotel/hotel-cpe-1-1032-95136-en.pdf>

4. International, national and local Associations representing Hotels and Hotel Associations representing members from 1. and/or 2.

5. Other Organizations representing Hotels, Hotel Owners and other solely Hotel related organizations representing on members from 1. and/or 2.

These categories are a **logical alliance** of members... Furthermore, association with the hotel sector can be verified through membership lists, directories and registers. In addition, the community as defined in the application has awareness and recognition among its members. This is because the community is defined in terms of its association with the hotel industry and the provision of specific hotel services.

According to the AGB, “[d]elineation relates to the membership of a community, where a clear and straight-forward membership definition scores high, while an unclear, dispersed or unbound definition scores low.” As required by the AGB, the application shows a clear and straight-forward membership definition because the application specifies that the Community definition is a “strictly delineated and organized community of individuals, organizations and business...that relate to music: the art of combining sounds, rhythmically, methodically or harmonically.”

According to the application:

DotMusic will use clear, organized, consistent and interrelated criteria to demonstrate Community Establishment beyond reasonable doubt and incorporate safeguards in membership criteria “aligned with the community-based Purpose” ...

Registrants will be verified using Community-organized, unified “criteria taken from holistic perspective with due regard of Community particularities” that “invoke a formal membership” without discrimination, conflict of interest or “likelihood of material detriment to the rights and legitimate interests” of the Community. (Question 20A)

The Application also provides that the “Community” served consists of:

[M]usic stakeholders being structurally organized using pre-existing, strictly delineated classes and recognized criteria to clearly organize the Community classified by:

- **North American Industrial Classification System codes (NAICS²) used by the Census Bureau and Federal statistical agencies as the classification standard for the purpose of collecting, analyzing, and publishing statistical data related to the U.S.**
- **United Nations International Standard Industrial Classification (ISIC) system³ to “delineate according to what is the customary combination of activities”⁴ such as those representing the Community.**

² <http://www.census.gov/eos/www/naics>

The Music Community is strictly delineated using established NAICS codes that align with the (i) characteristics of the globally recognized, organized Community, and (ii) .MUSIC global rotating multi-stakeholder Advisory Board model of fair representation, irrespective of locale, size or commercial/non-commercial status, organized with the following delineation (corresponding NAICS code in parenthesis):

- **Musical groups and artists (711130)**
- **Independent music artists, performers, arrangers & composers (711500)**
- **Music publishers (512230)**
- **Music recording industries (512290)**
- **Music recording & rehearsal studios (512240)**
- **Music distributors, promoters & record labels (512220)**
- **Music production companies & record producers (512210)**
- **Live musical producers (711130)**
- **Musical instrument manufacturers (339992)**
- **Musical instruments & supplies stores (451140)**
- **Music stores (451220)**
- **Music accountants (541211)**
- **Music lawyers (541110)**
- **Music education & schools (611610)**
- **Music agents & managers (711400)**
- **Music promoters & performing arts establishments (711300)**
- **Music promoters of performing arts with facilities (711310)**
- **Music promoters of performing arts without facilities (711320)**
- **Music performing arts companies (711100)**
- **Other music performing arts companies (711190)**
- **Music record reproducing companies (334612)**

³ http://www.unstats.un.org/unsd/publication/seriesM/seriesm_4rev4e.pdf

⁴ <http://www.unstats.un.org/unsd/class/family/family2.asp?CI=17>

- **Music, audio and video equipment manufacturers (334310)**
- **Music radio networks (515111)**
- **Music radio stations (515112)**
- **Music archives & libraries (519120)**
- **Music business & management consultants (541611)**
- **Music collection agencies & performance rights organizations (561440)**
- **Music therapists (621340)**
- **Music business associations (813910)**
- **Music coalitions, associations, organizations, information centers & export offices (813920)**
- **Music unions (813930)**
- **Music public relations agencies (541820)**
- **Music journalists & bloggers (711510)**
- **Internet Music radio station (519130)**
- **Music broadcasters (515120)**
- **Music video producers (512110)**
- **Music marketing services (541613)**
- **Music & audio engineers (541330)**
- **Music ticketing (561599)**
- **Music recreation establishments (722410)**
- **Music fans/clubs (813410)**

(Question 20A)

Membership is determined through those individuals or entities with requisite awareness that identify as members of the Music Community through either active verified membership and participation in a Music Community Member Organization (mCMO) (of which members comprise over 95% of music produced and consumed worldwide) **or** those individuals or organizations, which may not be mCMO members, but which have requisite awareness of the community and affirmative identify and categorize

themselves according to NAICS/ISIC classifications⁵ and agree to abide by and support the Community focused Use Policies (Also see Venn Diagram, Appendix C).

In support of those goals the Application provides that:

- 1) **DotMusic will incorporate Community membership eligibility restricted only to members verifying themselves as Community members based on NAICS/ISIC classifications and agreeing to Community-focused Use policies and dispute resolution/takedown mechanisms to benefit the .MUSIC Mission/Purpose and multi-stakeholder mission and to protect DotMusic from privacy and monopoly laws. Any violation of the membership criteria, Use and other Policies might lead to the cancellation of membership status, including domain takedown if deemed appropriate.**

Community members will be able to use their membership credentials to be included in the uniquely-classified Premium Channels that are sorted according to NAICS/ISIC classifications. For example, music publishers (NAICS code 512230) will be able to organically self-categorize themselves in a highly relevant manner and be included in the Publishers.MUSIC Premium Channel using their membership credentials to participate. (Question 18B ii);

And

- 2) For members with requisite awareness that are also part of existing Music Community Member Organizations (mCMOs), the Application provides a Landrush registration:

Music Community Member Organization (MCMO) Landrush for registrants with demonstrated MCMO memberships...

MUSIC COMMUNITY MEMBER ORGANIZATION (MCMO) LANDRUSH LAUNCH

This is the second phase of .MUSIC domain registration. It is a limited-time period reserved for members of DotMusic-accredited music Community Member Organizations (mCMO). (Application Answer to Question 18(B)(vi) & 20(e))

The mCMO domain allocation method during the Landrush phase was created by DotMusic to allow Community members to register through established Community organizations. During the General Registration phase the TLD is open to all Community members for registration, but also restricted by Eligibility, Use and other Policies, including enhanced safeguards. (Application Answer to Question 20B).

Applicant requires that members of the Community self-identify by selecting the delineation of the music constituent type to which they belong to or associate with. This identification process is aligned with the member's requisite awareness of the "logical alliance of communities related to music." After

⁵ Members sorted according to these classifications must be music-related

their self-identifying, the Registry will place the registrant/community member into the corresponding premium channel(s) sorted according to music delineation type. Most importantly, all registrants/community members are governed by the applicant's Community Use Policies and Restrictions that are related to music.

According to the .ECO⁶ EIU CPE Determination in *Community Establishment*:

The community as defined in the application has awareness and recognition among its members. According to the application:

The Community has historically structured and organized itself and its work through an international network of organizations, including millions of individual members with strongly aligned goals, values and interests. As well as collaborating via long-standing international multi-stakeholder fora and membership organizations, members traditionally organize through multi-organization alliances around specific events, geographies, and issues.

According to the AGB, "community" implies "more of cohesion than a mere commonality of interest" and there should be "an awareness and recognition of a community among its members." Based on the Panel's research and materials provided in the application, the community members as defined in the application demonstrate the "cohesion" required by the AGB. The application dictates four types of members, whose cohesion and awareness is founded in their demonstrable involvement in environmental activities and who "demonstrate active commitment, practice and reporting."

...the community as defined in the application has awareness and recognition among its members. This is because the community is defined in terms of its association with, and active participation in, environmental activities and environmental conservation and preservation.

The EIU's CPE Determination for .ECO is also consistent with DotMusic's Delineation for .MUSIC. According to the AGB's second Delineation criterion, "community" implies "more of cohesion than a mere commonality of interest" and there should be "an awareness and recognition of a community among its members." The community as defined in the application (the "Community") has awareness and recognition among its members. This is because the community as defined consists of entities that are in the music Community (which may be commonly referred to by many in the general public as the "music industry")⁷, and as participants, whether they be creators (amateur or professional), producers, manufacturers, publishers in this clearly defined industry, they have an awareness and recognition of their inclusion in the music Community. In addition, membership in the Community is sufficiently structured, as the requirements listed in the community definition above show. Members recognize

⁶ <http://www.icann.org/sites/default/files/tlds/eco/eco-cpe-1-912-59314-en.pdf>

⁷ <http://www.encyclopedia.com/doc/1G2-3401802800.html> and http://is.jrc.ec.europa.eu/pages/ISG/documents/FINALMusicreportwithcovers_EB_Corrected_02.pdf

themselves as part of the music community as evidenced, for example, by their inclusion in many music community organizations and participation in their events.

The application's Public Interest Commitments⁸ provide clarification of the application language concerning the requirement of Community awareness and recognition among its members:

- A commitment to not discriminate against any legitimate members of the global music community by adhering to the DotMusic Eligibility policy of non-discrimination that restricts eligibility to Music Community members -- as explicitly stated in DotMusic's Application -- that have an active, non-tangential relationship with the applied-for string and also have the requisite awareness of the music community they identify with as part of the registration process. This public interest commitment ensures the inclusion of the entire global music community that the string .MUSIC connotes. (PIC at p.1)
- A commitment that the string will be launched under a multi-stakeholder governance structure of representation that includes all music constituents represented by the string, irrespective of type, size or locale, including commercial, non-commercial and amateur constituents, as explicitly stated in DotMusic's Application.

As explicitly stated in its Application, DotMusic commits to:

- a. uphold its Community definition of a "logical alliance of communities of similar nature that relate to music" to incorporate all Music Community members;
 - b. accredit eligible non-negligible music organizations of relevance without discrimination if they meet the Music Community Member Organization (MCMO) Accreditation criteria;
 - c. to give members of MCMOs priority to register a .MUSIC domain during the MCMO Launch Phase to help launch .MUSIC responsibly and drive adoption;
 - d. to allow all legitimate members of the Community as defined to register a .MUSIC domain;
 - e. maintain a rotating, global Advisory Committee ("Policy Advisory Board" "PAB") consisting of and representing all multi-stakeholder constituent types. (PIC at p.2)
- [E]ntities with a casual, tangential relationship with music (i.e. without the requisite awareness of belonging to the Community) or those entities belonging to pirate networks or unlicensed networks are entirely excluded from the Music Community

⁸ <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/downloadpicposting/1392?t:ac=1392>

definition. (PIC at p.16)

- The defined Community is delineated and organized because it operates in a regulated sector that uses numerous globally-recognized standards and classification systems, which identify who the individual songwriters, publishers and rights holders are and which songs they are associated with so that Community members are appropriately compensated, regardless whether the constituent is a commercial, non-commercial or amateur entity. The “music” community cohesion is evidenced in commonly used in classification systems such as the ISMN,⁹ ISRC,¹⁰ ISWC¹¹ and ISNI¹²). (PIC at p.11 and Application Answer to Question 20a)
- DotMusic expects that the substantial majority of all of its registrations will originate from the music entity type classified as “Musical groups and artists” (e.g. See North American Industrial Classification System (NAICS) code 711130¹³ or the United Nations Industrial Classification (ISIC) code 9214¹⁴). (PIC at p.11).
- DotMusic has required all music entity types to be “music”-related. For example, all eligible entities delineated and organized under constituent types (using NAICS as a reference for clearly classifying constituent types) must have an association with the gTLD and “music” with respect to their primary activity. This is because the string naturally identifies all entities involved in music. For example, the NAICS code for “lawyers” is 541110. According to DotMusic’s Application, .music is only restricted to the “music” Community and excludes any peripheral entities. DotMusic’s Application has added the word “music” next to the DotMusic-selected NAICS code to ensure that

⁹ The International Standard Music Number (ISMN) is a unique number for the identification of all notated music publications from all over the world. The ISMN is an ISO certified global standard number (ISO 10957:2009). See <http://www.ismn-international.org/whatis.html> and http://www.iso.org/iso/home/store/catalogue_ics/catalogue_detail_ics.htm?csnumber=43173

¹⁰ The ISRC (International Standard Recording Code) is the international identification system for sound recordings and music video recordings. The ISRC is an ISO certified global standard number (ISO 3901:2001) and is managed by the IFPI (a DotMusic supporting organization that is mainly dedicated to the Community defined), See <http://isrc.ifpi.org>, <https://www.usisrc.org/about/index.html> and http://www.iso.org/iso/catalogue_detail?csnumber=23401

¹¹ The ISWC (International Standard Musical Work Code) is a unique, permanent and internationally recognized reference number for the identification of musical works. The ISWC has been approved by ISO (International Organization for Standardisation) as a global standard (ISO 15707:2001) and is managed by CISAC. See <http://www.iswc.org/en/faq.html> and http://www.iso.org/iso/catalogue_detail?csnumber=28780

¹² The International Standard Name Identifier (ISNI) is the ISO certified global standard number (ISO 27729) for identifying the millions of contributors to creative works and those active in their distribution. ISNI holds public records of over 8 million identities and 490,000 organizations. See <http://www.isni.org/> and http://www.iso.org/iso/catalogue_detail?csnumber=44292

¹³ The equivalent code for the NAICS code for “Musical groups and artists” (See <http://unstats.un.org/unsd/cr/registry/regcssm.asp?Cl=230&Lg=1&Co=711130>) under the United Nations International Standard of Industrial Classification (ISIC) is “Musicians and musical groups” with code 9214, See <https://unstats.un.org/unsd/cr/registry/regso2.asp?Cl=17&Co=9214&Lg=1>

¹⁴ See <http://www.census.gov/econ/isp/sampler.php?naicscode=711130&naicslevel=6>. The corresponding code relating to music-related activities according to the United Nations International Standard Industrial Classification (ISIC) is 592 (“sound recording and music publishing activities”), See http://unstats.un.org/unsd/publication/seriesM/seriesm_4rev4e.pdf Pg. 209 and <http://unstats.un.org/unsd/cr/registry/regcs.asp?Cl=27&Co=592&Lg=1>. According to the United Nations, “NAICS does provides more comparability to ISIC” and “NAICS is more detailed and recognizes many more high-tech and service industries,” See <http://unstats.un.org/unsd/class/intercop/expertgroup/1998/ac63-10.pdf>, Pg.8

the eligible Community members are automatically associated with the string. In this example, eligibility is restricted to “Music lawyers (541110)” (See Application Answer to Question 20a below) i.e. general, non-music lawyers are prohibited from registration because they are peripheral entities not automatically associated with the gTLD. (PIC at pp. 11-12).

- music-only eligibility is also in alignment with the Content & Use requirement that any content and usage must be music-only. This coherent set of restrictions serves the public interest because it is consistent with the string’s articulated community-based purpose tailored for music. (PIC at p.12)

As a result, the Music Community as defined is “closely united” (As per the definition of “cohesion” according to Merriam-Webster dictionary¹⁵) or “united or form a whole” (As per the definition of the word “cohesion” according to Oxford Dictionaries¹⁶).

The “Music Community” as defined (a “strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music”) establishes that:

- (1) There is an awareness and recognition among its members;
- (2) The organized and delineated logical alliance of communities exists; and
- (3) The Community is “closely united” (i.e. Each “organized community that relates to music” which is part of the “logical alliance of communities that relate to music” is not mutually exclusive).

Based on the Application, DotMusic uses “clear, organized, consistent and interrelated criteria to demonstrate Community Establishment beyond reasonable doubt and incorporate safeguards in membership criteria aligned with the community-based Purpose” (Application Answer to Question 20a). As such, each Community member must have demonstrable involvement in music-related activities aligned with the application’s articulated community-based purpose that follows unified goals which the Community addressed subscribes to, such as:

- 1) creating a trusted identifier and safe haven for music consumption by protecting musicians’ rights and intellectual property,
- 2) fighting copyright infringement/piracy,
- 3) supporting fair compensation and music education;
- 4) following a multi-stakeholder approach supporting all types of global music constituents without discrimination; and
- 5) Multi-stakeholder governance¹⁷ by relevant organizations with Community members representing over 95% of music consumed globally, including many

¹⁵ <http://www.merriam-webster.com/dictionary/cohesion>

¹⁶ http://www.oxforddictionaries.com/us/definition/american_english/cohesion

¹⁷ See expanding governance board at <http://music.us/board>

entities *mainly* dedicated to the Community. (See Application, Mission and Purpose, Q.18 and Q.20)

This active and overlapping commitment to shared goals among the various types of delineated music constituents are indicative of “cohesion” because they cohere in their activities which are aligned with DotMusic’s clearly defined purpose. The mission and activities overlap among the wide array of supporting member organizations and community members.

Accordingly, it is respectfully submitted that the Panel should determine that the community as defined in the application satisfies both of the conditions to fulfill the requirements for delineation.

Organization

Two conditions must be met to fulfill the requirements for organization: there must be at least one entity mainly dedicated to the community and there must be documented evidence of community activities. According to the AGB, “organized” implies that there is at least one entity mainly dedicated to the community, with documented evidence of community activities.”

According to ICANN’s Applicant Guidebook (“AGB”)¹⁸: “With respect to “Delineation” and “Extension,” it should be noted that a community can consist of...a logical alliance of communities (for example, an international federation of national communities of a similar nature... viable as such, provided the requisite awareness and recognition of the community is at hand among the members.” (AGB, 4-12). The community as defined in the DotMusic application has at least one entity mainly¹⁹ dedicated to the community which has supported DotMusic. Applicant’s supports include several “international federation of national communities of a similar nature” relating to music, music coalitions and other relevant and non-negligible music organizations. At least seven (7) such entities support Applicant.

One entity that is mainly dedicated to the community is the International Federation of Phonographic Industry (IFPI). The IFPI is the only organization that represents the interests of the recording industry worldwide. It is the “voice of the recording industry worldwide”²⁰ whose members²¹ – major and

¹⁸ <https://newgtlds.icann.org/en/applicants/agb/guidebook-full-11jan12-en.pdf>

¹⁹ Per the Oxford and Merriam Webster dictionaries, the word “mainly” is defined as “*more than anything else*” (See <http://www.oxforddictionaries.com/definition/english/mainly> and <http://www.merriam-webster.com/dictionary/mainly> respectively). According to DotMusic, the string .MUSIC relates to the Community “by representing all constituents involved in music creation, production and distribution” (Application Answer to Question 20d). Supporting organizations related to that string that are “mainly” dedicated to the Community and its activities, include the International Federation of Arts Councils and Culture Agencies (IFACCA) representing government culture ministries and arts councils, the International Federation of Musicians (FIM) representing musicians globally, the International Federation of Phonographic Industry (IFPI) representing the recording industry worldwide, the International Confederation of Music Publishers (ICPM) representing the voice of global music publishing, the International Association of Music Information Centres (IAMIC), the American Association of Independent Music (A2IM), whose associate members represent a majority of music consumed, the Independent Music Worldwide Independent Network (WIN) representing independent music worldwide, the International Society for Music Education (ISME) the premiere international organization representing music education, and many others (See support at <http://music.us/supporters> and <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/downloadattachment/142588?t:ac=1392>).

²⁰ <http://www.ifpi.org/about.php>

independent companies -- represent a majority of all commercial music consumed globally. For example, the RIAA, an IFPI national group member,²² represents “approximately 85% of all legitimate recorded music produced and sold in the United States,”²³ the world’s largest music market with 30% global market share.²⁴ Formed in 1933, the IFPI’s mission was to “represent the interests of the recording industry worldwide in all fora.” The IFPI has been active since its founding in 1933 and its documented activities and events include market research and global insight, legal policy and litigation, performance rights, anti-piracy, international trade, technology and communications.²⁵

A second entity that is mainly dedicated to the community is the International Federation of Musicians (FIM) representing the “voice of musicians worldwide.” FIM is the only global music body representing musicians and their trade unions globally with members in over 60 countries.²⁶ FIM is the only international federation that is mainly dedicated to and represents musicians globally which has official relations with the United Nations Economic and Social Council (ECOSOC)(Ros C); the United Nations Educational, Scientific and Cultural Organization (UNESCO) (Consultative Status); the World Intellectual Property Organization (WIPO) (Permanent Observer Status); and the Organisation internationale de la Francophonie (OIF). FIM is a member of International Music Council (IMC) founded in 1949 by UNESCO, which represents over 200 million music constituents from over 150 countries and over 1000 organizations.²⁷ FIM’s aim is to “protect and elevate the economic, social and artistic status and interests of musicians, both in their role as performers and as producers of the recording of their own performances.”²⁸

The FIM, founded in 1948, is globally-recognized and has a permanent relationship with the *United Nations Educational, Scientific and Cultural Organization* (UNESCO),²⁹ the International Labor Organization (ILO)³⁰ and the World Intellectual Property Organization (WIPO).³¹ It is recognized and consulted by the Council of Europe,³² the European Commission³³ and the European Parliament.³⁴ It enables it to participate in crucial negotiations on the protection of performers where it can make the voice of musicians heard. The FIM is also member of the International Music Council (IMC).³⁵ It also collaborates with all national and international organizations representing workers in the media field. Activities include the creation of the International Arts and Entertainment Alliance (IAEA)³⁶ with the

²¹ <http://www.ifpi.org/our-members.php>

²² <http://www.ifpi.org/national-groups.php>

²³ <http://www.riaa.com/faq.php>

²⁴ <http://www.statista.com/topics/1639/music/>

²⁵ <http://www.ifpi.org/what-we-do.php>

²⁶ <http://www.fim-musicians.org>

²⁷ <http://www.imc-cim.org/about-imc-separator/who-we-are.html>

²⁸ <http://ngo-db.unesco.org/r/or/en/1100025135>

²⁹ <http://en.unesco.org>

³⁰ <http://www.ilo.org>

³¹ <http://wipo.int>

³² <http://www.coe.int>

³³ http://ec.europa.eu/index_en.htm

³⁴ <http://www.europarl.europa.eu/portal/en/>

³⁵ <http://www.imc-cim.org>

³⁶ <http://www.iaea-globalunion.org>

International Federation of Actors (FIA)³⁷ and UNI-Media and Entertainment International (UNI-MEI).³⁸ IAEA is a member of the Council of Global Unions (CGU).³⁹ Furthermore, the FIM works closely with collecting societies administering performers' rights. Its documented activities and events include the furtherance of musicians in all countries, strengthening of international collaboration, promoting of national and international protective legislative (or other) initiatives in the interests of musicians, obtaining and compilation of statistical and other information referring to the music profession and provision of such information to member unions, as well as holding events such as international congresses and conferences.⁴⁰

Another third entity dedicated to the community is the only international federation of national communities relating to government culture agencies and arts councils, which has an integral association with music globally: the International Federation of Arts Councils and Culture Agencies (IFACCA). IFACCA is the only international federation that represents government culture agencies and arts councils globally. These national communities are governmental institutions that play a pivotal role with respect to music.⁴¹ IFACCA's members cover the majority of music entities globally, regardless of whether they are commercial, non-commercial or amateurs. Government ministry of culture and council agencies related to music cover a majority of the overall community with respect to headcount and geographic reach. The "Size" covered reaches over a hundred million music entities i.e. "considerable size with millions of constituents" per (Application Answer to Question 20a).

The string "music" falls under the jurisdiction of each country's Ministry of Culture governmental agency or arts/music council (emphasis added). The degree of power and influence of government ministry of culture and council agencies with respect to music surpasses any organization type since these agencies (i) provide the majority of funding for music-related activities; (ii) regulate copyright law; and (iii) encompass all the music entities that fall under their country, regardless whether these entities are commercial, non-commercial or amateurs. IFACCA is globally recognized by its strategic partners, such as UNESCO, a United Nations agency representing 195 member states and the European Commission.⁴² The UNESCO strategic partnership⁴³ is relevant, especially since UNESCO founded the International Music Council (the "IMC") in 1949, which represents over 200 million music constituents from over 150 countries and over 1000 organizations globally.⁴⁴ IFACCA's extensive activities, campaigns and global recognition can be evidenced by the recent release of a communique⁴⁵ in collaboration with other leading networks, such as the International Music Council, IFCCD, Agenda 21 for culture (UCLG), Culture Action Europe, Arterial Network, ICOMOS, IFLA and Red Latinoamericana de Arte para la Transformación Social. This global campaign was signed by 900 organisations in 120

³⁷ <http://www.fia-actors.com>

³⁸ <http://www.uniglobalunion.org>

³⁹ <http://www.global-unions.org>

⁴⁰ <http://www.fim-musicians.org/about-fim/history/>

⁴¹ http://www.ifacca.org/membership/current_members/

⁴² http://www.ifacca.org/strategic_partners/

⁴³ http://www.ifacca.org/strategic_partners/

⁴⁴ <http://www.imc-cim.org/about-imc-separator/who-we-are.html>

⁴⁵ http://media.ifacca.org/files/IFACCA_Sept2015_SDG_ENG.pdf

countries to create a global voice for the cultural sector.⁴⁶

Government activities in the clearly delineated and organized “Music Community” include setting statutory royalty rates. For example, in the United States, mechanical royalties are based on a “statutory rate” set by the U.S. Congress. This rate is increased to follow changes in the economy, usually based on the Consumer Price Index. Currently, the mechanical statutory rate is \$0.091 for songs five minutes or less in length or \$.0175 per minute for songs that are over five minutes long.⁴⁷

Ministries of culture and arts councils (that comprise IFACCA’s membership) support musicians, musical performances, independent music artists, non-commercial musical expression and education in their respective countries. The 165 ministries of culture, arts councils and affiliates that comprise IFACCA’s membership support the “performing arts” and music specifically. Without the financial and logistical support of arts councils and the ministries of culture, the music community would be adversely affected, and in some countries, may not exist in any appreciable manner. For example, the Ministry of Culture 2011 budget for the small country state of Cyprus for culture funding was €34,876,522 with critical support of music activities.⁴⁸ Other small government Ministries of Culture, such as Albania,⁴⁹ or government Ministries of Culture and Arts Councils from countries with larger populations, such as India,⁵⁰ all provide critical support and substantial advocacy for music. Other examples include government institutions collaborating and advocating music through their funded country-based pavilion initiatives at Midem, the world’s largest music conference.⁵¹

Government ministries and arts councils provide critical support for the Music Community, including commercial music organizations. By way of example, government ministries’ and arts councils’ substantial connection to and support of “music” is noted in the reports of funding and support for music. Some examples to showcase the degree of power of the IFACCA’s membership towards the string and global and national music are music investment and music funding (Annual reports by governments and councils):

- New Zealand Ministry of Culture has funded significant music projects. Some include the REAL New Zealand Music Tour (\$415,000), the New Zealand String Quartet (\$150,000) and New Zealand Music Commission: (\$1,378,000).⁵²

⁴⁶ <http://www.ifacca.org/announcements/2015/09/24/global-campaign-culture-releases-joint-communicue>

⁴⁷ U.S Copyright Office, <http://www.copyright.gov/carp/m200a.html>

⁴⁸ 2011 Annual Report for Cyprus Ministry of Culture, Section 1.2 “Music” (http://www.moec.gov.cy/en/annual_reports/annual_report_2011_en.pdf). Activities include Music Performances in Cyprus (1.2.1) and Abroad (1.2.2), Subsidization of Paphos Aphrodite Festival (1.2.3), Music Publications (1.2.4), Subsidization and Purchases of Digital Records (1.2.5), Promotion for Cypriot musical creativity abroad (1.2.6), Cyprus Symphony Orchestra Foundation (1.2.7), Music Information Centre (1.2.8), Developing Music Education (1.2.9), Organising of the 1st Musicological Symposium (1.2.10), Musical Festivities for the European Volunteerism Year (1.2.11)

⁴⁹ http://www.culturalpolicies.net/download/albania_012011.pdf

⁵⁰ 2010-11 Annual Report from India Ministry of Culture, [http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011\(Eng\).pdf](http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011(Eng).pdf)

⁵¹ <http://my.midem.com/en/contact-us/pavilion-representatives/>

⁵² 2011 Annual Report from New Zealand Ministry of Culture:

- The Australian Government/Council For The Arts invested \$51.2 million for the nation's orchestras; \$21.6 million for opera; \$10.8 million for other music artists and organizations; \$13.1 million for multi-platform artists and organizations; and \$4 million in miscellaneous funding, including sector building and audience development initiatives and programs.⁵³
- Canada Council for the Arts is Canada's national, arts funding agency investing \$28 million in its Canada Council Musical Instrument Bank (Page 16) and \$28,156,000 in Music Arts Programs (Page 66).⁵⁴ The Government of Canada also renewed its annual investment of \$27.6 million over five years in the Canada Music Fund.⁵⁵
- The United Kingdom Department for Culture and Education (DfE) will fund music education at significant levels: £77 million, £65 million and £60 million will be available in the three years from April 2012.⁵⁶
- The United States National Endowment of the Arts has awarded more than \$4 billion to support the arts since its inception⁵⁷ and has a strong focus on music as outlined in its Strategic Plan⁵⁸ with Congress requested to provide \$154,465,000 for fiscal year 2014.⁵⁹
- The National Arts Council of South Africa invested 2,536,131 ZAR in Music and 9,995,000 ZAR in Orchestras and has focused strongly on the "Strengthening of live indigenous music and advocating the revival of the live music circuit in South Africa"⁶⁰
- The Singapore Arts Council will fund \$10.2 million in the arts under its 2013 Grants Framework, including the Ding Yi Music Company and Siong Leng Musical Association.⁶¹
- In 2011, the support for artistic activities by the Arts Council of Finland was €32.4 million of which €4,921,850 was awarded to music.⁶²

[http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20\(D-0448383\).PDF](http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20(D-0448383).PDF)

⁵³ 2011 Annual Report for the Australia Council for the Arts,

http://www.australiacouncil.gov.au/data/assets/pdf_file/0016/142351/Australia-Council-Annual-Report-201112.pdf, Page 28

⁵⁴ 2011 Annual Report for Canada Council for the Arts, [http://www.canadacouncil.ca/NR/rdonlyres/6F7549BB-F4E5-4B8B-95F4-](http://www.canadacouncil.ca/NR/rdonlyres/6F7549BB-F4E5-4B8B-95F4-1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf)

[1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf](http://www.canadacouncil.ca/NR/rdonlyres/6F7549BB-F4E5-4B8B-95F4-1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf)

⁵⁵ <http://www.pch.gc.ca/eng/1294862453819/1294862453821>

⁵⁶ Department for Culture, The Importance of Music, A National Plan for Music Education, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/180973/DFE-00086-2011.pdf, Page 4, 2011

⁵⁷ 2011 Annual report for the National Endowment of the Arts, <http://www.nea.gov/about/11Annual/2011-NEA-Annual-Report.pdf>, Page 2

⁵⁸ NEA Strategic Plan 2012-2016, www.arts.gov/about/Budget/NEAStrategicPlan2012-2016.pdf

⁵⁹ http://www.ifacca.org/national_agency_news/2013/04/10/us-president-requests-154465000-neh-2014/

⁶⁰ 2010-2011 Annual Report for the National Arts Council South Africa, National Arts Council South Africa, <http://www.nac.org.za/media/publications/AR%2010-11%20NAC.PDF/download>, Page 11. Also Mmino, the South African – Norwegian Education Music Programme, solely funds music projects funding a total of 294 projects. Thirteen projects were allocated funding for a total of R1,680,600 of which R1,381,000 went towards music educational and R299,600 to exchange projects (Page 10)

⁶¹ Singapore Arts Council, <http://www.nac.gov.sg/media-centre/news-releases/news-detail?pid=c2db15e2-c319-40cc-939c-d58735d0a91c>

⁶² <http://www.taiteenkeskustoimikunta.fi/documents/10162/31704/TY+tilastotiedote+1+12+.pdf>, Page 1 and Page 23

Each of IFACCA's members has a clear association with, and mandate to support the music arts in their countries. In most countries, their ministry of culture/arts council is the largest funder and marketing supporter of the music arts.

A fourth entity NAMM, the International Music Products Association, is an entity mainly dedicated to the community and is a group of non-negligible size that has supported DotMusic. NAMM, formed in 1901, has globally-recognized members and exhibitors that include Yamaha, Roland, Sennheiser, Sony, Fender, Harman, Kawai, Shure, Steinway, Audio-Technica, AKAI, Gibson, Peavey, Korg, AKG, Selmer, JBL, Alesis, Ibanez, AVID, Casio, DW, Sabian, Pearl, Zildjian, Martin, Ludwig, Marshall and others.^{63 64} Every amateur and professional musician worldwide uses music products manufactured and distributed by NAMM's members. NAMM and its trade shows power the \$17 billion global music products industry serving as a hub for the global music community wanting to seek out the newest innovations in musical products, recording technology, sound and lighting. NAMM documented activities and events include the NAMM Show, the world's largest event for the music products community.⁶⁵

A fifth global Music Community Coalition led by the RIAA "on behalf of over 15 national and international trade associations" also expressed its support for .MUSIC to be under a "community" application model, including encouraging statements in support of DotMusic's policies that stated that the coalition "was encouraged to see" that DotMusic "included several measures to deter and address copyright infringement within that TLD." The "coalition members represent the people that write, sing, record, manufacture, distribute and/or license over 80% of the world's music"⁶⁶ – a majority of global music.⁶⁷

Another letter⁶⁸ sent to ICANN (on April 14th, 2015) from a sixth entity, the NMPA and on behalf of a music publisher and songwriter community coalition, representing a majority of the global music publishing community, also expressed "support [for] the .MUSIC community applications because respecting and protecting music rights serves the global music community and the public interest."

Finally, a seventh example of an "entity *mainly* dedicated to the community," with members that cover hundreds of millions of music constituents with formal boundaries, is A2IM, the American Association of Independent Music. A2IM has two types of members: U.S independent Label members and Associate members. A2IM membership for Labels and Associates is invoked formally through an application and if accepted would require annual membership dues.⁶⁹

The reach of A2IM Associate⁷⁰ membership covers hundreds of millions of entities (i.e. the reach of A2IM's total membership "geographic breadth is inclusive of all recognized territories covering regions

⁶³ https://www.namm.org/files/showdir/ExhibitorList_WN15.xls

⁶⁴ <http://www.musictrades.com/global.html>

⁶⁵ <https://www.namm.org/thenammshow>

⁶⁶ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.1

⁶⁷ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.3, Appendix A

⁶⁸ <https://www.icann.org/en/system/files/correspondence/aguirre-to-icann-board-ciu-14apr15-en.pdf>

⁶⁹ <http://a2im.org/about-joining/>

⁷⁰ <http://a2im.org/groups/tag/associate+members/>

associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents – See Application Answer to Question 20a).

Organized and strictly delineated communities related to music that are A2IM members include:

- **Apple iTunes**⁷¹ – iTunes accounts for 63% of global digital music market⁷² - a majority – with a registered community of 800 million registered members⁷³ available in 119 countries who abide to strict terms of service and boundaries⁷⁴ and have downloaded over 25 billion songs⁷⁵ from iTunes' catalog of over 43 million songs⁷⁶ covering a global music community, regardless of genre or whether the community entities are amateur, professional, commercial or non-commercial. To add music to iTunes, all music artists must have a formal membership with iTunes via an Apple ID registration, which includes a current credit card on file.⁷⁷
- **Pandora**⁷⁸ – Pandora is the world's largest streaming music radio with a community of over 250 million registered members.⁷⁹
- **Spotify**⁸⁰ – Spotify is the world's largest music streaming community with over 50 million active registered members in 58 countries and over 30 million songs. The music community uploads 20,000 songs every day.⁸¹
- **Vevo**⁸² – Vevo is the world's leading all-premium music video community and platform with over 8 billion monthly views globally.⁸³
- **Youtube**⁸⁴ – Youtube is the world's largest music video streaming community with millions of music creators -- amateur, professional, commercial or non-commercial -- and over 1 billion registered members covering all regions globally. 6 billion hours of video is watched every month on Youtube,⁸⁵ of which 38.4% is music-related.⁸⁶

⁷¹ <http://a2im.org/groups/itunes>

⁷² <http://appleinsider.com/articles/13/04/16/apples-itunes-rules-digital-music-market-with-63-share>

⁷³ <http://www.npr.org/blogs/therecord/2015/01/06/375173595/with-downloads-in-decline-can-itunes-adapt>

⁷⁴ <http://www.apple.com/legal/internet-services/itunes/ww/index.html>

⁷⁵ <http://www.apple.com/pr/library/2013/02/06iTunes-Store-Sets-New-Record-with-25-Billion-Songs-Sold.html>

⁷⁶ <https://www.apple.com/itunes/features/>

⁷⁷ <https://www.apple.com/itunes/working-itunes/sell-content/music-faq.html>

⁷⁸ <http://a2im.org/groups/pandora>

⁷⁹ <http://www.cnet.com/news/like-a-rolling-milestone-pandora-hits-250m-registered-users/> and <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MTkxNTM1fENoaWxkSUQ9LTf8VHlwZT0z&t=1>, Pg.9

⁸⁰ <http://a2im.org/groups/spotify>

⁸¹ <https://press.spotify.com/us/information/>

⁸² <http://a2im.org/groups/vevo/>

⁸³ <http://www.vevo.com/c/EN/US/about>

⁸⁴ <http://a2im.org/groups/youtube/>

⁸⁵ <https://www.youtube.com/yt/press/statistics.html>

⁸⁶ <http://www.researchandmarkets.com/reports/2092499/internet-video-2011-2014-view-share-site-and>

- **Reverbnation**⁸⁷ – Reverbnation⁸⁸ is one of the world’s largest music community and a leading music distributor with over 3.87 million musicians, venues labels and industry professionals covering every country globally. The Reverbnation community grows by over 50,000 artists, bands, labels and industry professionals monthly.
- **BMG**⁸⁹ – BMG is focused on the management of music publishing and recording rights. BMG has an international presence and represents over 2.5 million music rights globally.⁹⁰

A2IM also includes members that are associated with global government agencies which exclusively represent substantial music economies and music members, such as France (BureauExport⁹¹), China (China Audio Video Association⁹²) and Germany (Initiative Musik).⁹³ A2IM also has Affiliate⁹⁴ associations within the global music community. These include Affiliates such as MusicFirst,⁹⁵ the Copyright Alliance,⁹⁶ the Worldwide Independent Network (WIN)⁹⁷ and Merlin.⁹⁸

A2IM also represents a recognized Music Coalition representing the interests of the Global Independent Music Community.⁹⁹ The A2IM Coalition includes Merlin, a global rights agency for the independent label sector, representing over 20,000 labels from 39 countries, Worldwide Independent Network (representing label creators in over 20 countries), Association of Independent Music (representing largest and most respected labels in the world), and IMPALA (Independent Music Companies Association on behalf of over 4,000 independent music companies and national associations across Europe, representing 99% of music actors in Europe which are micro, small and medium sized enterprises.

Cumulatively, A2IM’s Label and Associate Membership, A2IM’s Affiliates and the A2IM’s Global Independent Music Community Coalition, covers a majority of the global music community. Its cumulative membership is in the hundreds of millions of entities with formal boundaries belonging to strictly organized and delineated communities related to music as per the Community Definition and Size

According to the .HOTEL¹⁰⁰ EIU CPE Determination for *Delineation (Organization)*:

⁸⁷ <http://a2im.org/groups/reverb-nation/>

⁸⁸ <http://www.reverbnation.com/about>

⁸⁹ <http://a2im.org/groups/bmg-rights/>

⁹⁰ <http://www.bmg.com/category/about-us/history/>

⁹¹ <http://a2im.org/groups/french-music-export-office>

⁹² <http://a2im.org/groups/china-audio-video-association-cava>

⁹³ <http://a2im.org/groups/initiative-musik-gmbh>

⁹⁴ <http://a2im.org/groups/tag/associate+members/>

⁹⁵ <http://musicfirstcoalition.org/coalition>, The musicFIRST Coalition, with founding members A2IM, RIAA, and Recording Academy represents musicians, artists, managers, music businesses, and performance right advocates.

⁹⁶ <http://www.copyrightalliance.org/members>

⁹⁷ <http://www.winformusic.org>

⁹⁸ <http://www.merlinnetwork.org>

⁹⁹ <https://www.icann.org/en/system/files/correspondence/bengloff-to-chehade-et-al-20aug14-en.pdf> and <https://www.icann.org/en/system/files/correspondence/bengloff-to-crocker-et-al-07mar15-en.pdf>

¹⁰⁰ <http://www.icann.org/sites/default/files/tlds/hotel/hotel-cpe-1-1032-95136-en.pdf>

The community as defined in the application has at least one entity mainly dedicated to the community. There are, in fact, several entities that are mainly dedicated to the community, such as the International Hotel and Restaurant Association (IH&RA), Hospitality Europe (HOTREC), the American Hotel & Lodging Association (AH&LA) and China Hotel Association (CHA), among others.

According to the .ECO¹⁰¹ EIU CPE Determination for *Delineation (Organization)*:

The community as defined in the application has at least one entity mainly dedicated to the community. In fact, several entities are mainly dedicated to the community as defined by the application, such as the International Union for Conservation of Nature (IUCN), World Wide Fund For Nature (WWF), United Nations Environment Program and the Global Reporting Initiative, among others.

Consistent with the .HOTEL and the .ECO EIU CPE Determinations, the equivalent for the International Hotel and Restaurant Association (.HOTEL) and the International Union for Conservation of Nature (.ECO) or World Wide Fund (.ECO) with respect to “music” include the International Federation of Phonographic Industry (IFPI), the International Confederation of Music Publishers (ICMP), the International Federation of Arts Councils and Culture Agencies (IFACCA), the International Federation of Musicians (FIM), the Worldwide Independent Network (WIN), Merlin and many others. The equivalent of Hospitality Europe (.HOTEL) includes the Independent Music Companies Association (IMPALA) and many others. The equivalent of the American Hotel (.HOTEL) and Lodging Association is the American Association of Independent Music.

Accordingly, it is respectfully submitted that the Panel should determine that the community as defined in the application satisfies both of the conditions to fulfill the requirements for organization.

Pre-existence

To fulfill the requirements for pre-existence, the community must have been active prior to September 2007 (when the new gTLD policy recommendations were completed) and must display an awareness and recognition of a community among its members.

The community as defined in the application was active prior to September 2007 as required by the AGB, section 4.2.3. According to the application:

The Community has bought, sold, and bartered music for as long (“LONGEVITY”) as it has been made (R. Burnett, International Music Industry, 1996 and P. Gronow, International History of the Recording Industry, 1998). The Community is a delineated network where production and distribution of music occur in a process relying on labor division and technology. Under such structured context music consumption becomes possible regardless whether the transaction is commercial and non-commercial (M. Talbot, Business of Music, 2002). The foundation for the structured

¹⁰¹ <http://www.icann.org/sites/default/files/tlds/eco/eco-cpe-1-912-59314-en.pdf>

and strictly delineated Community only resulted from the interplay between the growing music publishing business and an emerging public music concert culture in the 18th century (“PRE-EXISTING”). Consequently, music publishers and concert promoters assumed the function of institutional gatekeepers of the Music Community who decided which music reached consumers and in what form, thus setting the parameters within which creativity was able to unfold (P. Tschmuck, Creativity & Innovation in the Music Industry, Institute of Culture Management & Culture Science, 2006). (Question 20A)

The community as defined in the application was active prior to September 2007.

Furthermore, most of the supporting organizations that fall within the application’s delineation have been active prior to 2007, including the IFPI¹⁰² (1933), FIM¹⁰³ (1948), NAMM¹⁰⁴ (1901) and others. The Panel can determine that because organizations like those referenced above are mainly dedicated to the members of the community as defined by the application, and because they and most others were active prior to 2007, the community as defined in the application fulfills the requirements for Pre-existence.

As discussed above, these organizations and their members, in addition to being active prior to 2007, demonstrate the AGB’s requirements for awareness and recognition.

Accordingly, it is respectfully submitted that the Panel should determine that the community as defined in the application fulfills the requirements for pre- existence.

1-B Extension

The Panel should determine that the community as identified in the application meets the criterion for Extension specified in section 4.2.3 (Community Priority Evaluation Criteria) of the AGB, as the application fulfilled the requirements for the size and longevity of the community. The application should receive a score of 2 out of 2 points under criterion 1-B: Extension.

Size

Two conditions must be met to fulfill the requirements for size: the community must be of considerable size and must display an awareness and recognition of a community among its members.

The community as defined in the application is of considerable size.

¹⁰² <http://www.ifpi.org/downloads/ifpi-a-short-history-november-2013.pdf>

¹⁰³ <http://www.fim-musicians.org/about-fim/history/>

¹⁰⁴ <https://www.namm.org/library/blog/oldest-known-namm-member-photo-donated>

According to the application:

The Music Community’s geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries (“EXTENSION”) with a Community of considerable size with millions of constituents (“SIZE”). (Question 20A)

This is consistent with the .HOTEL,¹⁰⁵ .ECO¹⁰⁶ and .RADIO EIU CPE Determination for Size:

.HOTEL: The community as defined in the application is of a considerable size. The community for .HOTEL as defined in the application is large in terms of the number of members. According to the applicant, “the global Hotel Community consists of more than 500,000 hotels and their associations”

.ECO: The community as defined in the application is of a considerable size. The community for .ECO as defined in the application is large in terms of the number of members. According to the applicant:

40,000+ Not-for-Profit Organizations, eg, 34,376 US environmental organizations (2011 Internal Revenue Service Exempt Organizations Business Master File, National Center for Charitable Statistics); 6,157 in the UK (March 2012, 1/3 of 18,470 Environment / Conservation / Heritage registered charities, Charity Commission); 148,000+ Businesses, eg, 68,200 US businesses committed to environmental sustainability (Pew Charitable Trust, “The Clean Energy Economy”, 2009); 80,000 small and medium enterprises in the EU use certified environmental management systems (Danish Technological Institute, “SMEs and the Environment in the European Union”, 2010); 193+ Environment-focused Governmental Bodies – eg, 193 member states (UN website, March 2012); 18 million+ Individuals, eg, International: WWF, 5M; Greenpeace, 2.8M; FOE, 2M; Ocean Conservancy, 0.5M. National: National Wildlife Federation, 4M; Sierra Club, 1.4M; National Resources Defense Council, 1.2M; The Nature Conservancy, 1M (Members, 2010).

.RADIO: The community as defined in the application is of a considerable size. The community for .RADIO as defined in the application is large in terms of the number of members. According to the application:

Currently, there are about 50,000 radio stations worldwide, according to the figure published by CIA World Facts on their website. In addition, there are at least another 50,000 web radios.

Additionally, as discussed earlier, the community defined by the application demonstrates the recognition and awareness required by the AGB.

¹⁰⁵ <http://www.icann.org/sites/default/files/tlds/hotel/hotel-cpe-1-1032-95136-en.pdf>

¹⁰⁶ <http://www.icann.org/sites/default/files/tlds/eco/eco-cpe-1-912-59314-en.pdf>

While the exact size of the global Music Community as defined is unknown (there is no evidence providing an exact, finite number because amateur entities are also included in the Community's definition), it is in the considerable millions as explicitly stated in the DotMusic Application. DotMusic's definition of the Community and mutually-inclusive Registration Policies ensure that eligible members are only music-related and associated with the string. (PIC at p.13)

Accordingly the Panel should determine that the community as defined in the application satisfies both of the conditions to fulfil the requirements for size and awareness.

Longevity

Two conditions must be met to fulfill the requirements for longevity: the community must demonstrate longevity and must display an awareness and recognition of a community among its members.

The community as defined in the application demonstrates longevity. According to the application:

The Community has bought, sold, and bartered music for as long ("LONGEVITY") as it has been made (R. Burnett, International Music Industry, 1996 and P. Gronow, International History of the Recording Industry, 1998). The Community is a delineated network where production and distribution of music occur in a process relying on labor division and technology. Under such structured context music consumption becomes possible regardless whether the transaction is commercial and non-commercial (M. Talbot, Business of Music, 2002). The foundation for the structured and strictly delineated Community only resulted from the interplay between the growing music publishing business and an emerging public music concert culture in the 18th century ("PRE-EXISTING"). Consequently, music publishers and concert promoters assumed the function of institutional gatekeepers of the Music Community who decided which music reached consumers and in what form, thus setting the parameters within which creativity was able to unfold (P. Tschmuck, Creativity & Innovation in the Music Industry, Institute of Culture Management & Culture Science, 2006). (Question 20A)

Given the size of the music community and its historical background, the Panel should determine that the pursuits of the community are of a lasting, non-transient nature. Additionally, as discussed above, the community defined by the application demonstrates the recognition and awareness required by the AGB.

The Panel should determine that the community as defined in the application satisfies both of the conditions to fulfill the requirements for longevity.

Criterion #2: Nexus between Proposed String and Community

2A – Nexus

The Panel should determine that the application meets the criterion for Nexus as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the AGB. The string matches the name of the community as defined in the application. The application received a score of 3 out of 3 points under criterion 2-A: Nexus.

To receive the maximum score for Nexus, the applied-for string must match the name of the community or be a well-known short-form or abbreviation of the community name. To receive a partial score for Nexus (of 2 out of 3 points; 1 point is not possible), the applied-for string must identify the community. “Identify means that the applied-for string should closely describe the community or the community members, without over-reaching substantially beyond the community.”

According to the application:

The .MUSIC string relates to the Community by:

- **Completely representing the entire Community. It relates to all music-related constituents using an all-inclusive, multi-stakeholder model**
- **Directly communicating that the content is music-related and representing the Community in a positive and beneficial manner consistent with the .MUSIC Purpose and Use policy**

...The Community is not subject to merely commercial/financial variables. The music Community is driven primarily by technology and the socio-cultural environment that influence music-related media cultures and consumer behavior, including the Community itself.

The socio-cultural environment drives the TLD, including the cultural diversity that provides space within the Community for many genres/participants, general socioeconomic and demographic factors and their impact on diverse local environments, and the support that the Community gives to new creators/performers. The string and Community share a particular cultural ambience: a sensitivity and preference for certain cultural expressions. The ambience is diverse and influential: music preferences of different sections of the society vary, ranging from metal to classical; Socio-economic distributions and demographic patterns.

...The Community and the .MUSIC string share a core value system of artistic expression with diverse, niche subcultures and socio-economic interactions between music creators, their value chain, distribution channel, and ultimately engaging fans as well as other music constituents subscribing to common ideals. (Question 20D)

The Panel should determine that the Community (as defined by the application, including those community organizations supporting the application) are also “commonly known by others” (AGB) both in and outside of the community by the applied-for string “MUSIC” as required by the AGB. Indeed, the word “music” is defined in the application as “the art of combining sounds rhythmically, melodically or harmonically” or “vocal or instrumental sounds (or both) combined in such a way as to produce beauty of form, harmony, and expression of emotion” (Oxford Dictionaries). This common usage of the applied-for string closely aligns with the community as defined in the application.¹⁰⁷

¹⁰⁷ A dictionary or encyclopedia may be used to determine how the applied-for string is used for Nexus evaluation.

Music-only participation optimizes the relevancy of .MUSIC domains to the string and entirely matches the *nexus* between the string and Community defined. According to DotMusic, the Community *definition, eligibility* criteria and *content and use* requirements ensure that peripheral industries and entities not related to music are excluded so that the string and the defined Community matches and aligns in a consistent manner with DotMusic’s community-based purpose and connotes community cohesion i.e. only entities with music-related activities are able to register .MUSIC domains.

According to DotMusic’s application, any tangential or implicit association with the *nexus* of the Community and the string is not regarded as a delineated membership since it would be considered unclear, dispersed or unbound. Such unclear, dispersed or unbound tangential relationships with the defined “music” Community and applied-for “music” string would not constitute a qualifying Community membership and would be ineligible for registration. Every type of music constituent critically contributes to the function and operation of the music sector within a regulated framework¹⁰⁸ given the symbiotic overlapping nature of the music (industry) Community as defined and structured. Music would not function as it does today without the participation of all music constituent types which cumulatively match the string with the Community definition.

According to the AGB, “with respect to “Nexus,” for a score of 3, the essential aspect is that the applied-for string is commonly known by others as the identification / name of the community.” (CPE Guidelines, Pg.8)

Consistently, to address “Nexus,” an independent survey was conducted by Nielsen/Harris Poll¹⁰⁹ within the United States from August 7th through August 11th, 2015 among 2,084 adults ages 18 and older. Figures for age, sex, race/ethnicity, education, region and household income were weighted where necessary to bring them into line with their actual proportions in the population. The data was also weighted to reflect the composition of the adult population. Nielsen/Harris Poll addressed whether the applied-for string was commonly-known (i.e. known by most people¹¹⁰) and associated with the identification of the community defined by DotMusic by asking the question:

If you saw a website domain that ended in “.music” (e.g., www.name.music), would you associate it with musicians and/or other individuals or organizations belonging to the music community (i.e., a logical alliance of communities of individuals, organizations and business that relate to music)?¹¹¹

These may analyze present and evolving uses of a word, capturing in this case the most prevalent uses of “music”. See: http://oxforddictionaries.com/us/definition/american_english/music

¹⁰⁸ ICANN has disclosed that the string .MUSIC is a sensitive string operating in a regulated sector. ICANN also accepted Government Advisory Committee (GAC) advice for safeguards to protect the Music (industry) Community and the public interest (See <https://icann.org/en/system/files/correspondence/crocker-to-dryden-3-29oct13-en.pdf> Pg.7)

¹⁰⁹ <http://www.harrisinteractive.com/Products/HarrisPollQuickQuery.aspx>

¹¹⁰ <http://www.wordreference.com/es/translation.asp?tranword=commonly%20known>

¹¹¹ Nielsen / Harris Poll, Quick Query Q3505, <http://music.us/nielsen-harris-poll.pdf>,

Fielding Period: August 7-11, 2015, Pg. 1,2,3 and Appendix B

Most people, 1562 out of 2084 (3 in 4 or 75% of the respondents) responded “Yes,”¹¹² which is aligned with the “Nexus” Criterion 2A requirements that the applied for-string is “commonly-known” as the identification of the community addressed by the application.

Furthermore, independent testimonies and disclosures from over 40 experts agree that the application’s defined community matches the applied-for string.¹¹³

DotMusic’s community definition only includes members “related to music” i.e. there is no substantial overreach beyond the community defined. As such, the defined community matches the applied-for string because, according to the application, it “**completely represent[s] the entire Community. It relates to all music-related constituents using an all-inclusive, multi-stakeholder model.**” According to the application, the Community “will be **verified** using **Community-organized, unified “criteria** taken from holistic perspective with due regard of Community particularities” that “**invoke a formal membership**” **without discrimination, conflict of interest or “likelihood of material detriment to the rights and legitimate interests” of the Community.**”

As stated (and reiterated in its Public Interest Commitments), DotMusic’s application does not exclude or discriminate against any legitimate constituent associated with the applied-for string (Also see Venn Diagram, Appendix C). Therefore, the Panel should determine that the applied-for string is the established name by which the community is commonly known by others, and the applied-for string matches the community as defined in the application. Therefore, it is respectfully submitted that the Applicant meets the requirements for a full credit of 3 points on Nexus.

2B – Uniqueness

The Panel should determine that the application meets the criterion for Uniqueness as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the AGB. The application should receive a score of 1 out of 1 point under criterion 2-B: Uniqueness.

The string’s unique phonetic, visual and contextual meaning to identify the “music” Community described in the DotMusic application is also established in a significant number of other languages e.g. musiek (Africaans), muzikë (Albanian), musiqi (Azerbaijani), musika (Basque), музыка (Belarusian), muzika (Bosnian), музика (Bulgarian), música (Catalan), music (Cebuano), musik (Danish), muziek (Dutch), muziko (Esperanto), muusika (Estonian), musika (Filipino), musiikki (Finnish), musique (French), música (Galician), Musik (German), μουσική (Greek), mizik (Haitian Creole), music (Indonesian), musica (Italian), music (Javanese), musica (Latin), mūzika (Latvian), muzika (Lithuanian), музика (Macedonian), muzik (Malay), музика (Maltese), musikk (Norwegian), muzyka (Polish), música (Portuguese), muzică (Romanian), музыка (Russian), музика (Serbian), música (Spanish), muziki (Swahili), music (Swedish), müzik (Turkish), музика (Ukrainian) and others.

¹¹² Nielsen / Harris Poll, Quick Query Q3505, <http://music.us/nielsen-harris-poll.pdf>, Fielding Period: August 7-11, 2015, Pg. 1,2,3 and Appendix B

¹¹³ <http://music.us/expert/letters> and Appendix A

To fulfill the requirements for Uniqueness, the string must have no other significant meaning beyond identifying the community described in the application and it must also score a 2 or a 3 on Nexus. The string as defined in the application demonstrates uniqueness, as the string does not have any other meaning beyond identifying the community described in the application. The Community Priority Evaluation panel should determine that the applied-for string satisfies the condition to fulfill the requirements for Uniqueness.

Therefore, the Panel should determine that the applied-for string satisfies the condition to fulfill the requirements for Uniqueness.

Criterion #3: Registration Policies (Also See Registration Process & Policies Flowchart, Appendix D)

3-A Eligibility

The Panel should determine that the application meets the criterion for Eligibility as specified in section

4.2.3

(Community Priority Evaluation Criteria) of the AGB, as eligibility is restricted to community members. The application should receive a maximum score of 1 point under criterion 3-A: Eligibility.

To fulfill the requirements for Eligibility, the registration policies must restrict the eligibility of prospective registrants to community members. According to the application:

The TLD will be exclusive to the Community... .MUSIC domains will be validated to belong to Community members, who can only use the domains under Community-focused Policies. This way, Internet users will experience trusted interactions with registrants and be confident that any interaction is with legitimate Community members. (Question 18A)

...Registrants will be verified using Community-organized, unified “criteria taken from holistic perspective with due regard of Community particularities” that “invoke a formal membership” without discrimination, conflict of interest or “likelihood of material detriment to the rights and legitimate interests” of the Community... (Question 20A)

...Music Community Member Organization (MCMO)... phase... is a limited-time period reserved for members of DotMusic-accredited music Community Member Organizations (MCMO). Unique registrations will be granted to the sole registrant and delegated at the close of the time period; multiple registration requests for the same string will go through an auction. ...General Availability... phase of registration of .MUSIC domains. .MUSIC registrations will now be available to Music Community members on a first come, first served basis. (Question 20E)

The DotMusic *Eligibility* policy is consistent with various EIU CPE Determinations for *Eligibility*:

.ECO: To fulfill the requirements for Eligibility, the registration policies must restrict the eligibility of prospective registrants to community members. The application demonstrates adherence to this requirement by restricting eligibility to individuals and entities (non-for-profit, businesses and governments) that are members of the global environmental community and that meet recognized standards.

.RADIO: The application demonstrates adherence to this requirement by restricting eligibility to the community categories mentioned in Delineation, and additionally requiring that the registered domain name be “accepted as legitimate; and beneficial to the cause and values of the radio industry; and commensurate with the role and importance of the registered domain name; and in good faith at the time of registration and thereafter.”

.HOTEL: The application demonstrates adherence to this requirement by restricting eligibility to the narrow category of hotels and their organizations as defined by ISO 18513, and verifying this association through membership lists, directories and registries.

.ART (Dadotart): The application demonstrates adherence to this requirement by restricting eligibility to artists and those who have an identifiable engagement with the arts.

.ART (Eflux): The application demonstrates adherence to this requirement by restricting eligibility to art-related institutions and entities, and professionals or semi-professional members of the art community.

The application therefore demonstrates adherence to the AGB's requirement by restricting domain registration to entities who are members of the community defined by the application. The Panel should determine that the application satisfies the condition to fulfill the requirements for Eligibility.

3-B Name Selection

The Panel should determine that the application meets the criterion for Name Selection as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as name selection rules are consistent with the articulated community-based purpose of the applied-for TLD. The application should receive a score of 1 out of 1 point under criterion 3-B: Name Selection.

According to the application:

The Names Selection Policy ensures only music-related names are registered as domains under .MUSIC, with the following restrictions:

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

The DotMusic *Name Selection* policy is consistent with various EIU CPE Determinations for *Name Selection*:

.MLS:¹¹⁴ *The application demonstrates adherence to this requirement by specifying that the associated boards use their corporate name or an acronym, while foreign affiliates will also have to include geographical modifiers in their second level domains.*

¹¹⁴ <http://www.icann.org/sites/default/files/tlds/mls/mls-cpe-1-1888-47714-en.pdf>

.LLP,¹¹⁵ .INC,¹¹⁶ and .LLC:¹¹⁷ *The application demonstrates adherence to this requirement by outlining a comprehensive list of name selection rules, such as requirements that second level domain names should match or include a substantial part of the registrant's legal name.*"

Also, the Name Selection Policy also covers the music Globally Protected Marks List (GPML) and does not allow registrants to register a domain containing an established music brands' name that would be deemed confusing to Internet users and the Music Community:

Globally Protected Marks List (GPML) will ensure major music brands and established artists, such as RIAA-certified platinum-selling bands, are protected not cybersquatted. These are reserved at all times. (Question 20E)

...Applicants "cannot register a domain containing an established music brand's name in bad faith that might be deemed confusing to Internet users and the Music Community. (Question 20E)

The DotMusic GPML Name Selection policy is consistent with the .HOTEL¹¹⁸ EIU CPE Determination for *Name Selection*:

[T]he registry has set aside a list of domain names that will be reserved for the major hotel industry brands and sub-brands.

Therefore, the Panel should determine that the application satisfies the conditions to fulfill the requirements for Name Selection.

3-C Content and Use

The Community Priority Evaluation panel should determine that the application meets the criterion for Content and Use as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the rules for content and use are consistent with the articulated community-based purpose of the applied-for TLD. The application should receive a maximum score of 1 point under criterion 3-C: Content and Use.

To fulfill the requirements for Content and Use, the registration policies must include rules for content and use for registrants that are consistent with the articulated community-based purpose of the applied-for gTLD. The application demonstrates adherence to this requirement by specifying that use of the domain name must be beneficial to the cause and values of the Community:

¹¹⁵ <http://www.icann.org/sites/default/files/tlds/llp/llp-cpe-1-880-35508-en.pdf>

¹¹⁶ <http://www.icann.org/sites/default/files/tlds/inc/inc-cpe-1-880-35979-en.pdf>

¹¹⁷ <http://www.icann.org/sites/default/files/tlds/llc/llc-cpe-1-880-17627-en.pdf>

¹¹⁸ <http://www.icann.org/sites/default/files/tlds/hotel/hotel-cpe-1-1032-95136-en.pdf>

.MUSIC will effectively differentiate itself by addressing the key online usage issues of safety, trust, consistency, brand recognition as well as communicate site subject-matter: music-related content. The TLD will be exclusive to the Community and will incorporate enhanced safeguards and Use policies to protect creators, intellectual property and rights holders.

Community members need to be able to distinguish themselves from illegal or unlicensed sites. Ensuring monies flow to rightful owners and the Music Community is critical to the .MUSIC Mission.

DotMusic will provide Premium Channels and a Song Registry where the Community and Internet users can network, share information and engage in commerce in a trusted, secure ecosystem – a safe haven for legal music consumption and song licensing ensuring monies flow to the Community not unlicensed sites.

.MUSIC domains can serve as trusted signals for search engines and used as filters for legal, licensed and safe music sites with relevant, quality content. .MUSIC domains will be validated to belong to Community members, who can only use the domains under Community-focused Policies. This way, Internet users will experience trusted interactions with registrants and be confident that any interaction is with legitimate Community members. (Question 18A)

The application also has Content and Use policies that prohibit the use of parking pages:

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

The application also restricts Content and Use to legal music-related activities:

The following use requirements apply:

- **Use only for music-related activities**
- **Comply with applicable laws and regulations and not participate in, facilitate, or further illegal activities**
- **Do not post or submit content that is illegal, threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, invasive of another's privacy, or tortious**
- **Respect the intellectual property rights of others by posting or submitting only content that is owned, licensed, or otherwise have the right to post or submit**
- **Immediately notify us if there is a security breach, other member in compliance or**

illegal activity on .MUSIC sites

- Do not register a domain containing an established music brand’s name in bad faith that might be deemed confusing to Internet users and the Music Community
- Do not use any automated process to access or use the .MUSIC sites or any process, whether automated or manual, to capture data or content from any service for any reason
- Do not use any service or any process to damage, disable, impair, or otherwise attack .MUSIC sites or the networks connected to .MUSIC sites (Question 20E)

The DotMusic Content and Use policy is consistent with various EIU CPE Determinations for *Content and Use*:

*.HOTEL:*¹¹⁹ *The application demonstrates adherence to this requirement by specifying that each domain name must display hotel community-related content relevant to the domain name*

*.TAXI:*¹²⁰ *The application demonstrates adherence to this requirement by noting four relevant rules for content and use, which include restricting content to taxi-related issues or indicating a strong connection to it, amongst other rules.*

The Community Priority Evaluation panel should determine that the application satisfies the condition to fulfill the requirements for Content and Use.

3-D Enforcement

The Panel should determine that the application meets the criterion for Enforcement as specified in section 4.2.3 (Community Priority Evaluation Criteria) of the AGB. The application provides specific enforcement measures and outlines coherent and appropriate appeals mechanisms. The application should receive a score of 1 point under criterion 3-D: Enforcement.

Two conditions must be met to fulfill the requirements for Enforcement: the registration policies must include specific enforcement measures constituting a coherent set, and there must be appropriate appeals mechanisms.

The application commits to implement both proactive and reactive enforcement measures, such as proactive zone screening, Community crowdsourced enforcement (to “immediately notify [DotMusic] if there is a security breach, other member noncompliance or illegal activity on .MUSIC sites”) and random compliance checks, with appropriate dispute processes to fix compliance issues under its .MUSIC Policy & Copyright Infringement Dispute Resolution Process (MPCIDRP), including reasonable time to appeal (i.e. via “dispute processes”) with the registry to fix compliance issues or appeal with an independent dispute resolution provider, such as the National Arbitration Forum (NAF), which already has a

¹¹⁹ <http://www.icann.org/sites/default/files/tlds/hotel/hotel-cpe-1-1032-95136-en.pdf>

¹²⁰ <http://www.icann.org/sites/default/files/tlds/taxi/taxi-cpe-1-1025-18840-en.pdf>

customized DotMusic appeals mechanism in place.¹²¹

According to the application:

REGISTRY DATA VALIDATION

DotMusic will validate elements of the received WHOIS data as a requirement for domain registration, also providing access to Premium Channels, such as the registrant's:

- Email address through validation links
- Phone number through validated PIN-codes (Question 18B iv, Question 20E)

COMPLIANCE & ENFORCEMENT

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

Allegation that a domain is not used for legitimate music purposes or otherwise infringes on Policies shall be enforced under the provisions of the .MUSIC Policy & Copyright Infringement Dispute Resolution Process ("MPCIDRP"); described in question 28 response. (Question 18B iv, Question 20E)

The MPCIDRP is not a replacement for alleged violation of the UDRP/URS/PDDRP/RRDRP, which shall be enforced under the provisions contained therein. (Question 18B iv, Question 20E)

The DRP's are required in the registrars' registration agreements with registrants. Proceedings must be brought by interested 3rd-parties in accordance with associated policies and procedures to dispute resolution providers. (Question 18B iv)

DotMusic will conduct random compliance checks across all the .MUSIC Policies. Periodically a sample of .MUSIC registrations will be verified for compliance with all established Policies. (Question 18B iv, Question 20E)

If a registrant is found out of compliance with any of the .MUSIC Policies the registrant will be notified that the domain will be placed on registry lock. The registrant will have a reasonable time period to fix the compliance matter or the domain will be terminated. (Question 18B iv, Question 20E)

¹²¹ See DotMusic MPCIDRP at <http://www.adrforum.com/RegistrySpec> and [http://www.adrforum.com/users/odr/resources/Music_Policy_and_Copyright_Infringement_Dispute_Resolution_Process_final%20\(2\).docx](http://www.adrforum.com/users/odr/resources/Music_Policy_and_Copyright_Infringement_Dispute_Resolution_Process_final%20(2).docx)

The Sunrise Challenge Process solves disputes concerning domains registered under the Sunrise Policy. (Question 20E)

Repeat offenders of Policies will be placed on a special monitoring list that DotMusic will conduct additional compliance checks against. DotMusic holds the right to prohibit repeat offenders from registering .MUSIC domains for a period of time or indefinitely. (Question 18B iv)

DotMusic will review all policies and processes on a regular basis with involvement from the .MUSIC Advisory Committee and discussed publicly at Community events. (Question 18B iv, Question 20E)

DotMusic will also conduct registrar and registrant surveys based on the level of registrant satisfaction concerning .MUSIC usability and how to improve value proposition. (Question 20E)

[Registrants must] immediately notify [DotMusic] if there is a security breach, other member incompliance or illegal activity on .MUSIC sites. (Question 20E)

DotMusic will implement multiple dispute resolution policies to address dispute over any names not reserved by the above provisions; see response to question #20e and #28 and #29...DotMusic will ensure appropriate procedures to allow governments, public authorities or IGO's to challenge abuses of names with national or geographic significance at the second level. DotMusic will institute a provision in the registry-registrar agreements and the registrar-registrant agreements, to suspend domains names in the event of a dispute. DotMusic may exercise that right in the case of a dispute over a geographic name. (Question 22)

DotMusic and Afiliás may also engage in proactive screening of its zone for malicious use of the domains in the TLD, and report problems to the sponsoring registrars. (Question 28)

The DotMusic Enforcement policy is consistent with various EIU CPE Determinations for *Enforcement*:

.ART (Dadotart): The applicant outlines a comprehensive list of investigation procedures and circumstances in which the registry is entitled to suspend domain names. The application also outlines an appeals process, which will be managed by the registry service provider.

.ECO: The applicant's registry will evaluate complaints against a registrant agreement and decide on an appropriate course of action, which may result in the case being

referred to a dispute resolution process. There is also an appeals mechanism, whereby a registrant has the right to seek the opinion of an independent arbiter approved by the registry.

.HOTEL: The applicant's registry will establish a process for questions and challenges that could arise from registrations and will conduct random checks on registered domains. There is also an appeals mechanism, whereby a registrant has the right to request a review of a decision to revoke its right to hold a domain name.

.RADIO: The enforcement program is based on random checks, and if the content or use of an existing domain name shows bad faith, it will be suspended. There is also an appeals mechanism, which is managed in the first instance by the registry, with appeals heard by an independent, alternative dispute resolution provider.

.SPA: At which time, anyone can utilize the Sunrise Challenge Process to challenge the eligibility of a Sunrise application. The Sunrise Challenge Process is itself an appeal mechanism.

Consistent with other EIU CPE Determinations for *Enforcement*, the application outlines policies that include specific enforcement measures constituting a coherent set. The Panel should determine that the application satisfies both of the two conditions to fulfill the requirements for Enforcement and therefore scores 1 point.

Criterion #4: Community Endorsement

Support for or opposition to a CPE gTLD application may come by way of an application comment on ICANN's website, attachment to the application, or by correspondence with ICANN.

4-A Support

The Community Priority Evaluation panel should determine that the application fully meets the criterion for Support specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the applicant had documented support from the recognized community institution(s)/member organization(s). The application should receive a maximum score of 2 points under criterion 4-A: Support.

To receive the maximum score for Support, the applicant is, or has documented support from, the recognized community institution(s)/member organization(s), or has otherwise documented authority to represent the community. "Recognized" means those institution(s)/organization(s) that, through membership or otherwise, are clearly recognized by the community members as representative of the community. To receive a partial score for Support, the applicant must have documented support from at least one group with relevance. "Relevance" refers to the communities explicitly and implicitly addressed.

Collectively, the DotMusic application received support from the largest coalition of music community member organizations ever assembled to support a cause representing over 95% of music consumed globally.¹²² Such unparalleled global Music Community support also represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support¹²³ from institutions/organizations representing a majority of the Community addressed. Music -- as commonly-known by the general public and experienced today -- would not be possible without these supporting, non-negligible and relevant organizations that have endorsed DotMusic.

The Community Priority Evaluation panel should determine that the applicant was not the recognized community institution(s)/member organization(s). However, the applicant possesses documented support from institutions/organizations representing a majority of the community addressed, and this documentation contained a description of the process and rationale used in arriving at the expression of support. The applicant received support from a broad range of recognized community institutions/member organizations, which represented different segments of the community as defined by the applicant. These entities represent a majority of the overall community. The Community Priority Evaluation Panel should determine that the applicant fully satisfies the requirements for Support.

¹²² See <http://music.us/supporters>, <https://gtdresult.icann.org/application-result/applicationstatus/applicationdetails:downloadattachment/142588?t:ac=1392>, Bloomberg BNA at http://music.us/RIAA_Backs_DotMusic.pdf Pg.1, and <http://diffuser.fm/will-dot-music-domains-make-the-internet-better/>

¹²³ <http://music.us/supporters>

4-B Opposition

The Community Priority Evaluation panel should determine that the application meets the criterion for Opposition specified in section 4.2.3 (Community Priority Evaluation Criteria) of the Applicant Guidebook, as the application received no relevant opposition.

According to ICANN's CPE Guidelines:

To be taken into account as relevant opposition, such objections or comments must be of a reasoned nature. Sources of opposition that are clearly spurious, unsubstantiated, made for a purpose incompatible with competition objectives, or filed for the purpose of obstruction will not be considered relevant.¹²⁴

The AGB and CPE Guidelines provide in pertinent part that:

The evaluation process will respect the principles of fairness, transparency, avoiding potential conflicts of interest, and non-discrimination...¹²⁵

To receive the maximum score for Opposition, the application must not have received any opposition of relevance. A few letters were filed for the purpose of obstruction and therefore are not considered relevant.¹²⁶ The application also received letters of opposition, which should be deemed not to be relevant, as they were either from groups of negligible size, or were from entities/communities that do not have an association with the applied for string. As these letters are neither from the recognized community institutions/member organizations, nor were they from communities/entities that have an association with the community they should not be considered relevant.

DotMusic was also alerted of upcoming obstruction orchestrated by competitors, including Donuts as a reaction to the prevailing .SPA determination. Donuts distributed a template opposition letter with instructions to obstruct DotMusic's application revealing that "if a panel decides that this applicant [DotMusic] represents the "music community", [Donuts] application...will be automatically rejected." In its obstruction letter instructions, Donuts also revealed that ".SPA was granted community priority which might have been avoided had letters of opposition been submitted." DotMusic filed a pre-emptive public comment on August 3rd, 2015 alerting ICANN and the EIU of the upcoming obstruction and spurious anti-competitive pattern by applicants such as Donuts.¹²⁷ The first obstruction public

¹²⁴ ICANN CPE Guidelines, <http://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf>, Pg. 20

¹²⁵ CPE Guidelines, Pg. 22

¹²⁶ The correspondence for .MUSIC includes several letters from DotMusic (See <https://icann.org/en/system/files/correspondence/schaeffer-to-crocker-et-al-12aug15-en.pdf>) and letters from entities related to an opposition letter. These entities not only withdrew opposition but supported DotMusic. Furthermore, some are currently on DotMusic's Board (<http://music.us/board>). The letter's sender also was included in correspondence which disclosed that their organization and many others were "encouraged" by DotMusic's policies.

¹²⁷ See <https://gtldcomment.icann.org/applicationcomment/commentdetails/12754> and <https://gtldcomment.icann.org/applicationcomment/commentdetails/12738> (August 3, 2015)

comment using Donuts' obstruction talking point template was filed on August 11th, 2015.¹²⁸ Other identical letters followed that were filed either as Public Comments¹²⁹ or as ICANN Correspondence Letters.¹³⁰

An example to showcase the spurious nature of the template letters is the discrepancy and inconsistency illustrated in a letter,¹³¹ which described its organization as one that was "comprised of musicians...and individuals in the music community." Despite acknowledging the existence of the "music community" in its company description, the letter later takes a different position to doubt the existence of the "music community" by incorporating Donuts' talking points which refer to a "'music community,' if such a thing even exists."

In another Donuts coordinated effort, another spurious letter by Donuts' ally, IP Justice, was also attached in Donuts obstruction letter.¹³² This letter was first made public by Donuts¹³³ before IP Justice or ICANN posted it online. IP Justice opposed DotMusic's application on the grounds that it had "concerns...with the "community" TLD concept" and "as a free speech organization, IP Justice agrees that a term as broad and widely touching as "music" does not, and cannot, describe an exclusive "community," and believes that any attempt to utilize the term in such a fashion stifles competition and chills free expression on the Internet."

Just like ICANN states in its response¹³⁴ in Independent Review Process (IRP) proceedings filed by Donuts against the EIU Determinations for .ECO and .HOTEL, similarly IP Justice's arguments and opposition of the CPE Guidelines and DotMusic's community-based Eligibility policies (which require that Eligibility is restricted to community members) are time-barred and are not aligned with the GNSO's recommendations that clearly state that those applications "representing communities be awarded priority in string contention:"

Claimants' argument is time-barred. (Pg.15)... As detailed in the Board's Rationales for the Approval of the Launch of the New gTLD Program, issued in June 2011, the application evaluation procedures, including the CPE procedure (and the decision to grant successful community-based applications priority in cases of string contention), were adopted by the ICANN Board after years of extensive policy development and implementation that included extensive review and analysis by ICANN, as well as input and comment from legal counsel, numerous ICANN communities, Internet stakeholders, and community members from around the world, all in compliance with ICANN's Articles and Bylaws (ICANN Board Rationales at 93-105 (Cls. Ex. RM-11). (Pg.16 and 17). Despite having ample opportunity to do so, Claimants did not challenge the CPE process at the time the Guidebook was implemented. If Claimants, or anyone else for that matter, had concerns related to these issues, they were properly pursued at the time, and not years later. (Pg.18)

¹²⁸ <https://gtldcomment.icann.org/applicationcomment/commentdetails/12780>

¹²⁹ <https://gtldcomment.icann.org/applicationcomment/viewcomments>

¹³⁰ <https://www.icann.org/resources/pages/correspondence-2012-09-24-en>

¹³¹ <https://www.icann.org/en/system/files/correspondence/hutcherson-to-crocker-et-al-07aug15-en.pdf>

¹³² <https://www.icann.org/en/system/files/correspondence/moody-to-crocker-et-al-12aug15-en.pdf>, Exhibit F

¹³³ <https://gtldcomment.icann.org/applicationcomment/commentdetails/12813> and

<http://www.donuts.domains/images/pdfs/music-CPE-comment-Aug2015.pdf>

¹³⁴ <https://www.icann.org/en/system/files/files/icann-response-birch-mmx-irp-request-redacted-27apr15-en.pdf>

When an applicant submits a community-based application, it is not, as the Claimants imply, simply seeking to “exploit the application process” (IRP Request ¶ 47). As set forth in the Guidebook, community-based applicants agree to operate the applied-for gTLD “for the benefit of a clearly delineated community” (Guidebook § 1.2.3.1, Cls. Ex. RM-5). This involves implementing “dedicated registration and use policies for registrants in [the applied-for gTLD],” (Guidebook § 1.2.3.1, Cls. Ex. RM-5) policies that substantially restrict the sorts of domain name registrations a gTLD may accept and thereby might significantly limit the potential profitability of a gTLD. (Pg.6)...The recommendation of the GNSO that applications representing communities be awarded priority in string contention (ICANN Board Rationales for the Approval of the Launch of the New gTLD Program at 94 (“ICANN Board Rationales”) (Cls. Ex. RM-11)). (Pg.10)

Inconsistently, IP Justice did not oppose any other Community applicants’ applications. For example, IP Justice did not file opposition against Far Further’s (.music LLC) community application for .MUSIC even though Far Further included eligibility policies that excluded a majority of the global music community (a discriminatory policy that DotMusic publicly opposed and EIU concluded excluded a majority of the music community in their EIU Determination). If IP Justice had any sincere concerns about competition then it would have opposed Far Further (and other community applicants) as well but chose to target DotMusic Limited’s application instead despite DotMusic’s Public Interest Commitments which re-iterate and re-affirm:

A commitment to not discriminate against any legitimate members of the global music community by adhering to the DotMusic Eligibility policy of non-discrimination that restricts eligibility to Music Community members -- as explicitly stated in DotMusic’s Application -- that have an active, non-tangential relationship with the applied-for string and also have the requisite awareness of the music community they identify with as part of the registration process. This public interest commitment ensures the inclusion of the entire global music community that the string .MUSIC connotes,¹³⁵ (Enumerated Commitment #3)

A commitment that the string will be launched under a multi-stakeholder governance structure of representation that includes all music constituents represented by the string, irrespective of type, size or locale, including commercial, non-commercial and amateur constituents, as explicitly stated in DotMusic’s Application.¹³⁶ (Enumerated Commitment #5)

In another Donuts coordinated effort, another spurious letter was filed by Rightside, Donuts co-applicant for .MUSIC, disingenuously stating that “it is preposterous...to claim that there exists a “music community,””¹³⁷ which is defined by DotMusic as a “delineated and organized logical alliance of music communities.” Such statements are inconsistent with public marketing material for promoting the

¹³⁵ <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails:downloadpicposting/1392?t:ac=1392>

¹³⁶ <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails:downloadpicposting/1392?t:ac=1392> , Commitments #3 & #5

¹³⁷ <https://www.icann.org/en/system/files/correspondence/hammock-to-crocker-et-al-12aug15-en.pdf>

.BAND music-themed gTLD, which is operated by Donuts and Rightside. Marketing material clearly mentions promotions to “music communities” (Pg.2).¹³⁸ Another .BAND Marketing Kit also refers to the “music sector,” organizing it according to delineated music community types, such as record companies, publishing, and “other music-related sectors” (Pg.6). The Kit also refers to and recognizes many music communities and organizations that have supported DotMusic e.g. BMI, ASCAP, Reverbnation, A2IM, BPI, NMPA, IFPI, Harry Fox, NARAS, PRS, RIAA, SESAC and many others (Pg. 1, 2, 3, 9, 10). The Kit also quotes the IFPI a few times as an authoritative source for their research (which further highlights the IFPI’s status as an organization mainly dedicated to the Music Community), while also recognizing the existence of an organized “music industry”...“a massive engine worth more than US\$130 billion globally”(Pg.3).¹³⁹ Such revealing statements highlight that any opposition letters that doubt or shun the existence of the community are spurious and filed for the purpose of obstruction.

Accordingly, the Community Priority Evaluation panel should determine that there is no relevant opposition to the application. The Community Priority Evaluation Panel should determine that the applicant satisfies the requirements for Opposition.

Conclusion

For the aforementioned reasons, it is respectfully submitted that the Applicant satisfies all criteria to establish Community and should prevail with a passing grade in CPE.

Transparency and accountability mechanisms, including the quality control requirement of compelling and defensible documentation, forms an integral part of ICANN’s decision-making standards. The AGB and CPE Guidelines provide in pertinent part that:

*The evaluation process will respect the principles of fairness, transparency, avoiding potential conflicts of interest, and non-discrimination...*¹⁴⁰

*Consistency of approach in scoring Applications will be of particular importance...*¹⁴¹

*The EIU will work closely with ICANN when questions arise and when additional information may be required to evaluate an application...*¹⁴²

*The EIU will fully cooperate with ICANN’s quality control process...*¹⁴³

¹³⁸ <http://branding.rightside.co/api/download/28qb-dj9ehrud>

¹³⁹ <http://branding.rightside.co/api/download/28qj-3k4nku8>

¹⁴⁰ CPE Guidelines, Pg. 22

¹⁴¹ CPE Guidelines, Pg. 22

¹⁴² CPE Guidelines, Pg. 22 and Pg.23

¹⁴³ CPE Guidelines, Pg. 22 and Pg.23

*The panel must be able to exercise **consistent** and somewhat subjective judgment in making its evaluations in order to reach conclusions that are compelling and defensible...*¹⁴⁴

*The panel must be able to document the way in which it has done so in each case.*¹⁴⁵

*All EIU evaluators undergo regular training to ensure full understanding of all CPE requirements as listed in the Applicant Guidebook, as well as to ensure **consistent judgment** (CPE Panel Process Document, Pg.2)...*

*The Panel Firm exercises **consistent judgment** in making its evaluations in order to reach conclusions that are compelling and defensible, and documents the way in which it has done so in each case (CPE Guidelines, Pg.22 and CPE Panel Process Document, Pg. 3).*¹⁴⁶

In the case of opposition letters, community applicants must be given the opportunity to provide context and a challenge to any opposition letter if deemed relevant so that the EIU have a complete understanding of the subject-matter and adequately take into consideration both perspectives (just like any fair and equitable proceeding) before reliably determining that the panel has incorporated a “consistent and somewhat subjective judgment in making its evaluations in order to reach conclusions that are compelling and defensible.” The EIU “panel must be able to document the way in which it has done so in each case.”¹⁴⁷

DotMusic’s CPE must be evaluated using the **same consistent criteria and precedents** that were established in prior EIU determinations to ensure “**consistency of approach across all applications:**”

“All Applications will subsequently be reviewed by members of the core project team to verify accuracy and compliance with the AGB, and to ensure consistency of approach across all applications.”¹⁴⁸ (emphasis added)

In the prevailing CPE Determinations for .RADIO, .SPA and .HOTEL, the EIU consistently referred to the community as the “**(industry) community.**” as an acceptable threshold to its “Community Establishment”, “Nexus” and “Support” criteria:

According to the .RADIO prevailing CPE determination:

In addition, the community as defined in the application has awareness and recognition among its members. This is because the community as defined consists of

¹⁴⁴ CPE Guidelines, Pg. 22

¹⁴⁵ CPE Guidelines, Pg. 22

¹⁴⁶ CPE Guidelines, Pg.22, and CPE Panel Process Document, <http://newgtlds.icann.org/en/applicants/cpe/panel-process-07aug14-en.pdf>, Pg.3

¹⁴⁷ ICANN CPE Guidelines, Pg. 22

¹⁴⁸ CPE Guidelines, Pg. 22

entities and individuals that are in the radio industry, and as participants in this clearly defined industry, they have an awareness and recognition of their inclusion in the industry community. In addition, membership in the (industry) community is sufficiently structured, as the requirements listed in the community definition above show.¹⁴⁹

According to the .SPA prevailing CPE determination:

The community as defined in the application has awareness and recognition among its members. This is because the community as defined consists of entities that are in the spa industry, and as participants in this clearly defined industry, they have an awareness and recognition of their inclusion in the industry community. In addition, membership in the (industry) community is sufficiently structured, as the requirements listed in the community definition above show. Members of all three of these membership categories recognize themselves as part of the spa community as evidenced, for example, by their inclusion in industry organizations and participation in their events.¹⁵⁰

According to the .HOTEL prevailing CPE determination:

This community definition shows a clear and straightforward membership. The community is clearly defined because membership requires entities/associations to fulfill the ISO criterion for what constitutes a hotel. Furthermore, association with the hotel sector can be verified through membership lists, directories and registers. In addition, the community as defined in the application has awareness and recognition among its members. This is because the community is defined in terms of its association with the hotel industry.¹⁵¹

Following the rationale in the aforementioned EIU Determinations, DotMusic's community-based application would overwhelmingly exceed the minimum "(industry) community" threshold for the applied for string because its application is supported by organizations with members that **represent over 95% of global music consumed**. In fact, DotMusic's application has amassed the largest coalition of music-related organizations to support a music cause. Just like in the CPE application cases of .RADIO, .HOTEL and .SPA, DotMusic is supported by a global "(industry) community," with members that have the requisite awareness and recognition of the community defined.

Furthermore, in the .ECO prevailing CPE Determination it was found that "involvement in...activities" and the "interdependence and active commitment to shared goals" are "indicative of the "cohesion"

¹⁴⁹ <https://www.icann.org/sites/default/files/tlds/radio/radio-cpe-1-1083-39123-en.pdf>, Pg.2

¹⁵⁰ <https://www.icann.org/sites/default/files/tlds/spa/spa-cpe-1-1309-81322-en.pdf>, Pg.2

¹⁵¹ <https://www.icann.org/sites/default/files/tlds/hotel/hotel-cpe-1-1032-95136-en.pdf>, Pg.2

that the AGB requires in a CPE-eligible community.” The .ECO prevailing CPE determination provides in pertinent part that:

...Each individual or entity has a clear, public and demonstrable **involvement in environmental activities**. The **interdependence and active commitment to shared goals** among the various membership types **are indicative of the “cohesion” that the AGB requires in a CPE-eligible community**. The Panel found that entities included in the membership categories defined in the application are shown to cohere in their work towards clearly defined projects and goals that overlap among a wide array of member organizations...Furthermore, businesses that are included in the applicant’s defined community have voluntarily opted to subject themselves to evaluation of their compliance with environmental standards that qualify them for the accreditations referenced in the application. As such, the defined community’s membership is found to meet the AGB’s standard for cohesion, required for an adequately delineated community.¹⁵²

It follows that DotMusic’s community-based application should exceed the minimum threshold for “Community Establishment” because the DotMusic application and purpose follows unified goals which the represented global “Music Community” which “encompasses global reaching commercial and non-commercial stakeholders, and amateur stakeholders” addressed subscribes to, such as:

- Creating a trusted, safe online haven for music consumption
- Establishing a safe home on the Internet for Music Community members regardless of locale or size
- Protecting intellectual property and fighting piracy
- Supporting musicians’ welfare, rights & fair compensation
- Promoting music and the arts, cultural diversity and music education
- Following a multi-stakeholder approach of fair representation of all types of global music constituents, including a rotating regional advisory board working in the best interests of the Music Community

(Mission and Purpose, Q.18 and Q.20)

DotMusic developed its Mission and Registration Policies using feedback and universal principles collected in its ongoing, extensive public global communication outreach campaign launched in 2008, which gave the Community open opportunities to engage (e.g. via events, meetings, social media, ICANN’s 2012 public comment period or other correspondence). DotMusic has participated in hundreds of international music/domain events (<http://music.us/events>) and still continues to engage Community members. (See Question 18 and Question 20).

¹⁵² <https://www.icann.org/sites/default/files/tlds/eco/eco-cpe-1-912-59314-en.pdf>, Pg.3

Furthermore, in comparison, DotMusic's community-application has more music-tailored policies and enhanced safeguards aligned with DotMusic's community-based purpose to serve the interests of the global music community than all .MUSIC applicants combined. (See .MUSIC Applicant Comparison Chart, Appendix E)

Therefore, it is respectfully submitted that, consistent with other CPE Determinations, DotMusic satisfies all criteria to establish Community and should prevail with a passing grade in CPE.

References

Review the DotMusic Limited application for .MUSIC with ID 1-1115-14110:

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

Public Portion of the DotMusic Limited application: <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails:downloadapplication/1392?t:ac=1392>

DotMusic Limited support letters for 20f: <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails:downloadattachment/142588?t:ac=1392> and <http://music.us/supporters>

DotMusic Limited Public Interest Commitments (PIC): <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails:downloadpicposting/1392?t:ac=1392>

Independent Expert Letters: <http://music.us/expert/letters>

Independent Nielsen / Harris Poll: <http://music.us/nielsen-harris-poll.pdf>

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

DotMusic website: <http://music.us>

National Arbitration Forum website: <http://www.adrforum.com/RegistrySpec>

ANNEX K

Forty-Three (43) Expert Testimonies

Below are testimonies from 43 experts, including 33 Ph.Ds that provide compelling evidence and “conclusions that are compelling and defensible”¹ that conclude beyond reasonable doubt, that DotMusic’s community-based application for .MUSIC exceeds all the CPE criteria and should prevail CPE:

- 1) [Music Expert Letter Dr Argiro Vatakis.pdf](#)
- 2) [Music Expert Letter Dr Askin Noah.pdf](#)
- 3) [Music Expert Letter Dr Brian E Corner.pdf](#)
- 4) [Music Expert Letter Dr Chauntelle Tibbals.pdf](#)
- 5) [Music Expert Letter Dr Daniel James Wolf.pdf](#)
- 6) [Music Expert Letter Dr David Michael Ramirez II.pdf](#)
- 7) [Music Expert Letter Dr Deborah L Vietze.pdf](#)
- 8) [Music Expert Letter Dr Dimitrios Vatakis.pdf](#)
- 9) [Music Expert Letter Dr Dimitris Constantinou.pdf](#)
- 10) [Music Expert Letter Dr Eric Vogt.pdf](#)
- 11) [Music Expert Letter Dr Graham Sewell.pdf](#)
- 12) [Music Expert Letter Dr Jeremy Silver.pdf](#)
- 13) [Music Expert Letter Dr Joeri Mol.pdf](#)
- 14) [Music Expert Letter Dr John Snyder.pdf](#)
- 15) [Music Expert Letter Dr Jordi Bonada Sanjaume.pdf](#)
- 16) [Music Expert Letter Dr Jordi Janer.pdf](#)
- 17) [Music Expert Letter Dr Juan Diego Diaz.pdf](#)
- 18) [Music Expert Letter Dr Juliane Jones.pdf](#)
- 19) [Music Expert Letter Dr Kathryn Fitzgerald.pdf](#)
- 20) [Music Expert Letter Dr Lisa Overholser.pdf](#)
- 21) [Music Expert Letter Dr Luis-Manuel Garcia.pdf](#)
- 22) [Music Expert Letter Dr Manthos Kazantzides.pdf](#)
- 23) [Music Expert Letter Dr Michael Mauskapf.pdf](#)
- 24) [Music Expert Letter Dr Mike Alleyne.pdf](#)
- 25) [Music Expert Letter Dr Nathan Hesselink.pdf](#)
- 26) [Music Expert Letter Dr Paul McMahon.pdf](#)
- 27) [Music Expert Letter Dr Rachel Resop.pdf](#)
- 28) [Music Expert Letter Dr Shain Shapiro.pdf](#)
- 29) [Music Expert Letter Dr Sharon Chanley.pdf](#)
- 30) [Music Expert Letter Dr Tom ter Bogt.pdf](#)
- 31) [Music Expert Letter Dr Vassilis Varvaresos.pdf](#)
- 32) [Music Expert Letter Dr Wendy Tilton.pdf](#)
- 33) [Music Expert Letter Dr Wilfred Dolfsma.pdf](#)
- 34) [Music Expert Letter JD Matthew Covey Esq.pdf](#)
- 35) [Music Expert Letter Jonathan Segal MM.pdf](#)
- 36) [Music Expert Letter Lecturer David Loscos.pdf](#)
- 37) [Music Expert Letter Lecturer David Lowery.pdf](#)
- 38) [Music Expert Letter Lecturer Dean Pierides.pdf](#)
- 39) [Music Expert Letter Professor Andrew Dubber.pdf](#)

¹ CPE Guidelines, Pg.22, and CPE Panel Process Document, <http://newgtlds.icann.org/en/applicants/cpe/panel-process-07aug14-en.pdf>, Pg.3

- 40) [Music Expert Letter Professor Author Bobby Borg.pdf](#)
- 41) [Music Expert Letter Professor Heidi Vaquerano Esq.pdf](#)
- 42) [Music Expert Letter Professor Jeffrey Weber Esq.pdf](#)
- 43) [Music Expert Letter Stella Black MM.pdf](#)

Expert Letter Link: <http://music.us/expert/letters>

Re: Expert Testimony on (i) Community Establishment; (ii) Nexus; and (iii) Support for DotMusic’s Community-Based Application¹ for .MUSIC (Application ID 1-1115-14110)

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

Please accept this letter that indicates that there is substantive and compelling evidence that the DotMusic application convincingly meets the full criteria under Community Priority Evaluation on the following points: (i) the Music Community’s *Establishment* as defined by DotMusic; (ii) the matching *Nexus* between the “music” Community and the “music” string (or top-level domain); and (iii) that DotMusic possesses documented *Support* from organizations representing a majority of the global Music Community addressed and defined.

Please see my credentials attached hereto that identify my level of expertise and specialized knowledge with respect to the music community’s organization and delineation.

SUMMARY

DotMusic has established the following:

- 1) Its Community definition recognizes the cohesive, symbiotic and overlapping nature of the global Music Community. The definition includes those associated with commercial and non-commercial creation, performance, marketing and distribution of music;
- 2) “Music Community” members have the requisite awareness and recognition of the interdependency, overlapping and cohesive nature of each “organized community of similar nature that relates to music.” These organized and aligned communities are closely united and make “music” as we know it today. It is this self-awareness and interdependence that gives the “Music Community” its strength. With exponential growth of the Internet, mobile and the Domain Name System (DNS), the “Music Community’s” use and reliance on the Internet to create, market and disseminate music-related content, products, services and activities will continue to grow;
- 3) The “Music Community” functions in a regulated sector with global copyright protections – it is clear that the “community,” as defined, implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate a globally-recognized set of standards for

¹ <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1392>

the protection of the “Music Community” member rights with relation to their copyrighted music works around the world;

4) The “Music” Community -- as defined by DotMusic -- has at least one entity mainly dedicated to the community supporting DotMusic’s application. Such documented *Support* includes several “international federation of national communities of a similar nature,” music coalitions and others that are strongly associated with “music,” which represent a majority of the Community with considerable millions of members worldwide.²

5) The *Nexus* of the “music” Community matches the “music” applied-for string because it represents the entire global Music Community – a community that pre-existed 2007 with a size in the considerable millions of constituents. The “Music Community” definition -- which incorporates the strict fundamental attributes of a closely united Community definition that is “organized” and “delineated” -- ensures that all of its constituent members have a requisite awareness of the community as defined, including both commercial and non-commercial stakeholders, to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination.

6) DotMusic has received support from the largest coalition of Music Community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support³ from institutions/organizations representing a majority of the Community as defined and recognized in the DotMusic application.

There is substantive evidence that DotMusic fulfills the *Nexus, Community Establishment and Support* criteria for the “Music” string. The inclusion and representation of every music constituent type is paramount to the articulated purpose of the string. DotMusic and its application’s global Music Community supporters substantiate that every type of music constituent contributes to the function and operation of the music sector within a regulated framework. The symbiotic nature of the Community as defined and structured means that “Music” would not function as it does today without the participation of all music constituent types that interconnect to match the “music” string with the “music” Community definition.

² <http://music.us/supporters>

³ <http://music.us/supporters>

ASSESSMENT OF COMMUNITY DEFINITION, ESTABLISHMENT AND NEXUS

A) *Music Community Definition, Establishment & Community Endorsement*⁴

DotMusic's definition of the "Music Community" as a "strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music" (See Application Answer to Question 20a) is factually accurate and representative of the "Music Community." Community characteristics include:

i) An Organized, Cohesive, Interdependent Logically-Allied Community:

The "Music Community" definition covers the regulated, interdependent and cohesive nature of the music sector that exists today. "Music Community" members have the requisite awareness and recognition of the interdependent, overlapping and cohesive nature of each "organized community of similar nature that relates to music" that comprises the "Music Community." Without such cohesiveness and interdependency, the defined "Music" Community matching the applied-for string ("Music") would not be able to function in its regulated sector. "Music" is a regulated sector comprised of a logical alliance of interdependent communities relating to music with organized practices and institutions that enable and regulate the production, distribution and consumption of music that was publicly recognized by both ICANN and the Government Advisory Committee⁵

As a result, the Music Community as defined is "closely united" (As per the definition of "cohesion" according to Merriam-Webster dictionary⁶) or "united or form a whole" (As per the definition of the word "cohesion" according to Oxford Dictionaries⁷).

DotMusic's application follows unified principles that the entire Community subscribes to, such as: creating a trusted identifier and safe haven for music consumption, protecting musicians' rights and intellectual property, fighting copyright infringement/piracy, supporting fair compensation and music education, and following a multi-stakeholder approach of representation of all types of global music constituents without discrimination (See Application Answers to 18).

The "Music Community" as defined (a "strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music") establishes that:

- (1) There is an awareness and recognition among its members;

⁴ See <http://music.us/establishment>

⁵ <https://www.icann.org/en/system/files/bm/briefing-materials-2-05feb14-en.pdf>, Pg.3

⁶ <http://www.merriam-webster.com/dictionary/cohesion>

⁷ http://www.oxforddictionaries.com/us/definition/american_english/cohesion

- (2) The organized and delineated logical alliance of communities exists; and
- (3) The Community is “closely united” and “interdependent” (i.e. Each “organized community of similar nature that relates to music” which is part of the “logical alliance of communities that relate to music” is not mutually exclusive).

In short, the applied-for string (“Music”) matches the name of the “Music” Community as defined by DotMusic’s application. DotMusic’s “Music Community” definition accurately represents the common definition of the “Music Community,” which is confirmed by Wikipedia.

According to Wikipedia:⁸

Music community is defined as a logical alliance of interdependent communities that are related to music, which include commercial participants...and non-commercial participants...and consists of an “ensemble of practices and institutions that make possible and regulate the production, distribution and consumption of music”...UNESCO identifies the music community as a “community of identity” implying common identifiable characteristics and cohesive attributes such as sharing a music culture, norms and subscribing to common ideals related to music...The music community is not defined as much by demographic indicators such as race, gender, and income level, as it is by common values, cohesive norms and interconnected structures to build a community identity. It refers to music-related individuals and organisations in a shared environment with shared understandings and practices, modes of production and distribution. The shared organisation of collective musical activities, identity and community value is created as result of infrastructure and a shared set of common values...Many studies outline the historical, cultural, and spatial significance of the music community, including how its identity is formed through musical practices. The music community shares a cohesive and interconnected structure of artistic expression, with diverse subcultures and socio-economic interactions...subscribing to common ideals. Under such structured context music consumption becomes possible regardless whether the transaction is commercial and non-commercial.⁹

⁸ Wikipedia is ranked 6th among the ten most popular websites (Alexa, Retrieved March 23, 2015 from <http://www.alexa.com/siteinfo/wikipedia.org>) and constitutes the Internet's largest, most frequently updated and popular general reference work (See OECD, OECD Internet Economy Outlook 2012, OECD Publishing, http://www.oecd-ilibrary.org/science-and-technology/oecd-internet-economy-outlook-2012_9789264086463-en, Pg.172) that compares favorably to the accuracy of other encyclopedias (such as the Britannica) according to a 2012 study conducted in partnership with Oxford University (See <http://blog.wikimedia.org/2012/08/02/seven-years-after-nature-pilot-study-compares-wikipedia-favorably-to-other-encyclopedias-in-three-languages>).

⁹ Music Community. In *Wikipedia*. Retrieved July 6, 2015, from https://en.wikipedia.org/wiki/Music_community

ii) An Aware, Pre-Existing and Recognized Community of Considerable Millions Worldwide:

DotMusic's definition of the Community covers all Community members associated with the string, each with a requisite awareness of the Community that can be validated through their natural association with a particular music-related community that they clearly identify with. According to DotMusic, all Music Community members must identify their music-related community in order to demonstrate their requisite awareness of the defined Community as part of the .MUSIC registration and validation process.

According to DotMusic, the Music Community's geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents (Application Answer to Question 20a).

According to DotMusic, "registrants will be verified using Community-organized, unified "criteria taken from holistic perspective with due regard of Community particularities" that "invoke a formal membership (Application Answer to Question 20a)." The defined Community represents all music-related entities with a clear and straightforward membership with the Community involved in the legal production, performance, promotion, and distribution of music worldwide. According to DotMusic, the Music Community members must have an active, non-tangential relationship with the applied-for string "music" and also have the requisite awareness of the music-related community that they are a part of by specifically identifying it as part of the registration and validation process (i.e. upon successful registration and validation, each community member will be given a unique community identification number that will automatically associate them with their identified community and the "music" string).

DotMusic's Community definition matches the applied-for string because it allows both commercial and non-commercial stakeholders to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination/exclusion. Given the regulated sector of the community, it is clear that the "Music Community" as defined implies "more of cohesion than a mere commonality of interest" with an "awareness and recognition of a community among its members." Several international treaties mandate cohesive and globally-recognized set of standards for the protection of the music community members' rights with relation to their copyrighted music works around the world.¹⁰

The Berne Convention for the Protection of Literary and Artistic Works¹¹ provides that each of the 168 contracting parties¹² (representing an overwhelming majority of the world's population) provides automatic protection for music works first published in other countries of the Berne union and for unpublished music works whose authors are citizens of or resident in such other

¹⁰ http://www.rightsdirect.com/content/rd/en/toolbar/copyright_education/International_Copyright_Basics.html

¹¹ http://www.wipo.int/treaties/en/text.jsp?file_id=283698

¹² http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=15

countries.¹³ This means that if a Music Community member's copyright rights are violated in any other signatory country's jurisdiction, then the music community member will have the music copyright rights given by that country. Music Community members are clearly aware of the collective Community's rights, which could not be made possible without these cohesive and globally-recognized set of standards. If such standards were not coherent or enforced then music would not be able to exist in its current form and the industry component of the Music Community sector would not exist. As such, the Community's *Establishment* and definition is "cohesive" and hence cannot be construed since the Community is a logical alliance of music communities that establish a clearly delineated and organized Community structure that is "closely united" and functions as a "whole"

Further evidence to substantiate the cohesive, symbiotic and overlapping nature of the Community, includes other globally-recognized standards and classification systems, which identify who the individual songwriters, publishers and rights holders are and which songs they are associated with so that Community members are appropriately compensated, regardless of whether the constituent is a commercial, non-commercial or amateur entity. The "music" string is commonly used in classification systems such as ISMN,¹⁴ ISRC,¹⁵ ISWC,¹⁶ ISNI.¹⁷ (Application Answer to Question 20a). For example, if a music entity would like to distribute their music, either commercially or for free, then an ISRC can be assigned to globally identify any specific music work. An ISRC, which facilitates efficient music discovery and community member payment, is constructed from 12 characters representing country, registrant, year of registration and designation (i.e. the serial number assigned by the registrant). With respect to domains, an equivalent system that relates to identifying a specific domain's registrant and other relevant information pertaining to the domain is WHOIS. Domain registrants are required by ICANN "to provide accurate WHOIS contact data" or else their domain "registration may be suspended or even cancelled".¹⁸

¹³ <http://www.britannica.com/EBchecked/topic/62482/Berne-Convention>

¹⁴ The International Standard Music Number (ISMN) is a unique number for the identification of all notated music publications from all over the world. The ISMN is an ISO certified global standard number (ISO 10957:2009). See <http://www.ismn-international.org/whatis.html> and http://www.iso.org/iso/home/store/catalogue_ics/catalogue_detail_ics.htm?csnumber=43173

¹⁵ The ISRC (International Standard Recording Code) is the international identification system for sound recordings and music video recordings. The ISRC is an ISO certified global standard number (ISO 3901:2001) and is managed by the IFPI. See <http://isrc.ifpi.org>, <https://www.usisrc.org/about/index.html> and http://www.iso.org/iso/catalogue_detail?csnumber=23401

¹⁶ The ISWC (International Standard Musical Work Code) is a unique, permanent and internationally recognized reference number for the identification of musical works. The ISWC has been approved by ISO (International Organization for Standardisation) as a global standard (ISO 15707:2001) and is managed by CISAC. See <http://www.iswc.org/en/faq.html> and http://www.iso.org/iso/catalogue_detail?csnumber=28780

¹⁷ The International Standard Name Identifier (ISNI) is the ISO certified global standard number (ISO 27729) for identifying the millions of contributors to creative works and those active in their distribution. ISNI holds public records of over 8 million identities and 490,000 organizations. See <http://www.isni.org/> and http://www.iso.org/iso/catalogue_detail?csnumber=44292

¹⁸ <https://whois.icann.org/en/about-whois> and <https://www.icann.org/resources/pages/faqs-f0-2012-02-25-en>

Without such Music Community “cohesion” and standardized systems functioning in its regulated sector, the Music Community would not be able to create, market and distribute their music. By the same token, fans would not be able to identify the music they are listening to with a specific music artist, regardless of whether the listening activity or behavior is commercial or non-commercial in nature. The socio-economic structure that characterizes “music” as commonly-known today would be non-existent without these organized and delineated elements that commonly define the Community.

iii) *International Federations and Organizations mainly Dedicated to the Community:*

According to ICANN’s Applicant Guidebook (“AGB”)¹⁹: “*With respect to “Delineation” and “Extension,” it should be noted that a community can consist of...a logical alliance of communities (for example, an international federation of national communities of a similar nature... viable as such, provided the requisite awareness and recognition of the community is at hand among the members.*” (AGB, 4-12). The community as defined in the DotMusic application has at least one entity *mainly*²⁰ dedicated to the community which has supported DotMusic, which include several “international federation of national communities of a similar nature” relating to music, music coalitions and other relevant and non-negligible music organizations.

One of these entities include the only international federation of national communities relating to government culture agencies and arts councils, which has an integral association with music globally: the International Federation of Arts Councils and Culture Agencies (IFACCA).

IFACCA is the only international federation that represents government culture agencies and arts councils globally. These national communities are governmental institutions that play a pivotal

¹⁹ <https://newgtlds.icann.org/en/applicants/agb/guidebook-full-11jan12-en.pdf>

²⁰ Per the Oxford and Merriam Webster dictionaries, the word “mainly” is defined as “*more than anything else*” (See <http://www.oxforddictionaries.com/definition/english/mainly> and <http://www.merriam-webster.com/dictionary/mainly> respectively). According to DotMusic, the string .MUSIC relates to the Community “by representing all constituents involved in music creation, production and distribution” (Application Answer to Question 20d). Supporting organizations related to that string that are “mainly” dedicated to the Community and its activities, include the International Federation of Arts Councils and Culture Agencies (IFACCA) representing government culture ministries and arts councils, the International Federation of Musicians (FIM) representing musicians globally, the International Federation of Phonographic Industry (IFPI) representing the recording industry worldwide, the International Confederation of Music Publishers (ICPM) representing the voice of global music publishing, the International Association of Music Information Centres (IAMIC), the American Association of Independent Music (A2IM), whose associate members represent a majority of music consumed, the Independent Music Worldwide Independent Network (WIN) representing independent music worldwide, the International Society for Music Education (ISME) the premiere international organization representing music education, and many others (See support at <http://music.us/supporters> and <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails:downloadattachment/142588?t:ac=1392>).

role with respect to music.²¹ IFACCA's members cover the majority of music entities globally, regardless of whether they are commercial, non-commercial or amateurs. Government ministry of culture and council agencies related to music cover a majority of the overall community with respect to headcount and geographic reach. The "Size" covered reaches over a hundred million music entities i.e. "considerable size with millions of constituents" per Application Answer to Question 20a.

The string "music" falls under the jurisdiction of each country's Ministry of Culture governmental agency or arts/music council (emphasis added). The degree of power and influence of government ministry of culture and council agencies with respect to music surpasses any organization type since these agencies (i) provide the majority of funding for music-related activities; (ii) regulate copyright law; and (iii) encompass all the music entities that fall under their country, regardless whether these entities are commercial, non-commercial or amateurs. IFACCA is globally recognized by its strategic partners, such as UNESCO, a United Nations agency representing 195 member states and the European Commission.²² The UNESCO strategic partnership²³ is relevant, especially since UNESCO founded the International Music Council (the "IMC") in 1949, which represents over 200 million music constituents from over 150 countries and over 1000 organizations globally.²⁴

Government activities in the clearly delineated and organized "Music Community" include setting statutory royalty rates. For example, in the United States, mechanical royalties are based on a "statutory rate" set by the U.S. Congress. This rate is increased to follow changes in the economy, usually based on the Consumer Price Index. Currently, the mechanical statutory rate is \$0.091 for songs five minutes or less in length or \$.0175 per minute for songs that are over five minutes long.²⁵

Ministries of culture and arts councils (that comprise IFACCA's membership) support musicians, musical performances, independent music artists, non-commercial musical expression and education in their respective countries. The 165 ministries of culture, arts councils and affiliates that comprise IFACCA's membership support the "performing arts" and music specifically. Without the financial and logistical support of arts councils and the ministries of culture, the music community would be adversely affected, and in some countries, may not exist in any appreciable manner. For example, the Ministry of Culture 2011 budget for the small country state of Cyprus for culture funding was €34,876,522 with critical support of music activities.²⁶ Other small government Ministries of Culture, such as Albania,²⁷ or government

²¹ http://www.ifacca.org/membership/current_members/

²² http://www.ifacca.org/strategic_partners/

²³ http://www.ifacca.org/strategic_partners/

²⁴ <http://www.imc-cim.org/about-imc-separator/who-we-are.html>

²⁵ U.S Copyright Office, <http://www.copyright.gov/carp/m200a.html>

²⁶ 2011 Annual Report for Cyprus Ministry of Culture, Section 1.2 "Music"

(http://www.moec.gov.cy/en/annual_reports/annual_report_2011_en.pdf). Activities include Music Performances in Cyprus (1.2.1) and Abroad (1.2.2), Subsidization of Paphos Aphrodite Festival (1.2.3), Music Publications (1.2.4), Subsidization and Purchases of Digital Records (1.2.5), Promotion for Cypriot musical creativity abroad (1.2.6),

Ministries of Culture and Arts Councils from countries with larger populations, such as India,²⁸ all provide critical support and substantial advocacy for music. Other examples include government institutions collaborating and advocating music through their funded country-based pavilion initiatives at Midem, the world's largest music conference.²⁹

Government ministries and arts councils provide critical support for the Music Community, including commercial music organizations. By way of example, government ministries' and arts councils' substantial connection to and support of "music" is noted in the reports of funding and support for music. Some examples to showcase the degree of power of the IFACCA's membership towards the string and global and national music are music investment and music funding (Annual reports by governments and councils):

- New Zealand Ministry of Culture has funded significant music projects. Some include the REAL New Zealand Music Tour (\$415,000), the New Zealand String Quartet (\$150,000) and New Zealand Music Commission: (\$1,378,000).³⁰
- The Australian Government/Council For The Arts invested \$51.2 million for the nation's orchestras; \$21.6 million for opera; \$10.8 million for other music artists and organizations; \$13.1 million for multi-platform artists and organizations; and \$4 million in miscellaneous funding, including sector building and audience development initiatives and programs.³¹
- Canada Council for the Arts is Canada's national, arts funding agency investing \$28 million in its Canada Council Musical Instrument Bank (Page 16) and \$28,156,000 in Music Arts Programs (Page 66).³² The Government of Canada also renewed its annual investment of \$27.6 million over five years in the Canada Music Fund.³³
- The United Kingdom Department for Culture and Education (DfE) will fund music education at significant levels: £77 million, £65 million and £60 million will be available in the three years from April 2012.³⁴

Cyprus Symphony Orchestra Foundation (1.2.7), Music Information Centre (1.2.8), Developing Music Education (1.2.9), Organising of the 1st Musicological Symposium (1.2.10) and Musical Festivities for the European Volunteerism Year (1.2.11)

²⁷ http://www.culturalpolicies.net/down/albania_012011.pdf

²⁸ 2010-11 Annual Report from India Ministry of Culture, [http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011\(Eng\).pdf](http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011(Eng).pdf)

²⁹ <http://my.midem.com/en/contact-us/pavilion-representatives/>

³⁰ 2011 Annual Report from New Zealand Ministry of Culture:

[http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20\(D-0448383\).PDF](http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20(D-0448383).PDF)

³¹ 2011 Annual Report for the Australia Council for the Arts,

http://www.australiacouncil.gov.au/data/assets/pdf_file/0016/142351/Australia-Council-Annual-Report-201112.pdf, Page 28

³² 2011 Annual Report for Canada Council for the Arts, [http://www.canadacouncil.ca/NR/rdonlyres/6F7549BB-F4E5-4B8B-95F4-](http://www.canadacouncil.ca/NR/rdonlyres/6F7549BB-F4E5-4B8B-95F4-1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf)

[1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf](http://www.canadacouncil.ca/NR/rdonlyres/6F7549BB-F4E5-4B8B-95F4-1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf)

³³ <http://www.pch.gc.ca/eng/1294862453819/1294862453821>

³⁴ Department for Culture, The Importance of Music, A National Plan for Music Education,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/180973/DFE-00086-2011.pdf, Page 4, 2011

- The United States National Endowment of the Arts has awarded more than \$4 billion to support the arts since its inception³⁵ and has a strong focus on music as outlined in its Strategic Plan³⁶ with Congress requested to provide \$154,465,000 for fiscal year 2014.³⁷
- The National Arts Council of South Africa invested 2,536,131 ZAR in Music and 9,995,000 ZAR in Orchestras and has focused strongly on the “Strengthening of live indigenous music and advocating the revival of the live music circuit in South Africa”³⁸
- The Singapore Arts Council will fund \$10.2 million in the arts under its 2013 Grants Framework, including the Ding Yi Music Company and Siong Leng Musical Association.³⁹
- In 2011, the support for artistic activities by the Arts Council of Finland was €32.4 million of which €4,921,850 was awarded to music.⁴⁰

Each of IFACCA’s members has a clear association with, and mandate to support the music arts in their countries. In most countries, their ministry of culture/arts council is the largest funder and marketing supporter of the music arts.

The IFPI is another entity *mainly* dedicated to the Community. The IFPI is the only organization that represents the interests of the recording industry worldwide. It is the “voice of the recording industry worldwide”⁴¹ whose members⁴² – major and independent companies -- represent a majority of all commercial music consumed globally. For example, the RIAA, an IFPI national group member,⁴³ represents “approximately 85% of all legitimate recorded music produced and sold in the United States,”⁴⁴ the world’s largest music market with 30% global market share.⁴⁵ Formed in 1933, the IFPI’s mission was to “represent the interests of the recording industry worldwide in all fora.”

³⁵ 2011 Annual report for the National Endowment of the Arts, <http://www.nea.gov/about/11Annual/2011-NEA-Annual-Report.pdf>, Page 2

³⁶ NEA Strategic Plan 2012-2016, www.arts.gov/about/Budget/NEAStrategicPlan2012-2016.pdf

³⁷ http://www.ifacca.org/national_agency_news/2013/04/10/us-president-requests-154465000-neh-2014/

³⁸ 2010-2011 Annual Report for the National Arts Council South Africa, National Arts Council South Africa, <http://www.nac.org.za/media/publications/AR%2010-11%20NAC.PDF/download>, Page 11. Also Mmino, the South African – Norwegian Education Music Programme, solely funds music projects funding a total of 294 projects. Thirteen projects were allocated funding for a total of R1,680,600 of which R1,381,000 went towards music educational and R299,600 to exchange projects (Page 10)

³⁹ Singapore Arts Council, <http://www.nac.gov.sg/media-centre/news-releases/news-detail?id=c2db15e2-c319-40ec-939c-d58735d0a91c>

⁴⁰ <http://www.taiteenkeskustoimikunta.fi/documents/10162/31704/TY+tilastotiedote+1+12+.pdf>, Page 1 and Page 23

⁴¹ <http://www.ifpi.org/about.php>

⁴² <http://www.ifpi.org/our-members.php>

⁴³ <http://www.ifpi.org/national-groups.php>

⁴⁴ <http://www.riaa.com/faq.php>

⁴⁵ <http://www.statista.com/topics/1639/music/>

Another clear example of an “entity *mainly* dedicated to the community” with members that cover hundreds of millions of music constituents with formal boundaries is A2IM, the American Association of Independent Music. A2IM has two types of members: U.S independent Label members and Associate members. A2IM membership for Labels and Associates is invoked formally through an application and if accepted would require annual membership dues.⁴⁶

The reach of A2IM Associate⁴⁷ membership covers hundreds of millions of entities (i.e. the reach of A2IM’s total membership “geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents – See Application Answer to Question 20a).

Organized and strictly delineated communities related to music that are A2IM members include:

- **Apple iTunes**⁴⁸ – iTunes accounts for 63% of global digital music market⁴⁹ - a majority – with a registered community of 800 million registered members⁵⁰ available in 119 countries who abide to strict terms of service and boundaries⁵¹ and have downloaded over 25 billion songs⁵² from iTunes’ catalog of over 43 million songs⁵³ covering a global music community, regardless of genre or whether the community entities are amateur, professional, commercial or non-commercial. To add music to iTunes, all music artists must have a formal membership with iTunes via an Apple ID registration, which includes a current credit card on file.⁵⁴
- **Pandora**⁵⁵ – Pandora is the world’s largest streaming music radio with a community of over 250 million registered members.⁵⁶
- **Spotify**⁵⁷ – Spotify is the world’s largest music streaming community with over 50 million active registered members in 58 countries and over 30 million songs. The music community uploads 20,000 songs every day.⁵⁸
- **Vevo**⁵⁹ – Vevo is the world’s leading all-premium music video community and platform with over 8 billion monthly views globally.⁶⁰

⁴⁶ <http://a2im.org/about-joining/>

⁴⁷ <http://a2im.org/groups/tag/associate+members/>

⁴⁸ <http://a2im.org/groups/itunes>

⁴⁹ <http://appleinsider.com/articles/13/04/16/apples-itunes-rules-digital-music-market-with-63-share>

⁵⁰ <http://www.npr.org/blogs/therecord/2015/01/06/375173595/with-downloads-in-decline-can-itunes-adapt>

⁵¹ <http://www.apple.com/legal/internet-services/itunes/ww/index.html>

⁵² <http://www.apple.com/pr/library/2013/02/06iTunes-Store-Sets-New-Record-with-25-Billion-Songs-Sold.html>

⁵³ <https://www.apple.com/itunes/features/>

⁵⁴ <https://www.apple.com/itunes/working-itunes/sell-content/music-faq.html>

⁵⁵ <http://a2im.org/groups/pandora>

⁵⁶ <http://www.cnet.com/news/like-a-rolling-milestone-pandora-hits-250m-registered-users/> and <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MTkxNTM1fENoaWxkSUQ9LTF8VHlwZT0z&t=1>, Pg.9

⁵⁷ <http://a2im.org/groups/spotify>

⁵⁸ <https://press.spotify.com/us/information/>

⁵⁹ <http://a2im.org/groups/vevo/>

- **Youtube**⁶¹ – Youtube is the world’s largest music video streaming community with millions of music creators -- amateur, professional, commercial or non-commercial -- and over 1 billion registered members covering all regions globally. 6 billion hours of video is watched every month on Youtube,⁶² of which 38.4% is music-related.⁶³
- **ReverbNation**⁶⁴ – ReverbNation⁶⁵ is one of the world’s largest music community and a leading music distributor with over 3.87 million musicians, venues labels and industry professionals covering every country globally. The ReverbNation community grows by over 50,000 artists, bands, labels and industry professionals monthly.
- **BMG**⁶⁶ – BMG is focused on the management of music publishing and recording rights. BMG has an international presence and represents over 2.5 million music rights globally.⁶⁷

A2IM also includes members that are associated with global government agencies which exclusively represent substantial music economies and music members, such as France (BureauExport⁶⁸), China (China Audio Video Association⁶⁹) and Germany (Initiative Musik).⁷⁰ A2IM also has Affiliate⁷¹ associations within the global music community. These include Affiliates such as MusicFirst,⁷² the Copyright Alliance,⁷³ the Worldwide Independent Network (WIN)⁷⁴ and Merlin.⁷⁵

A2IM also represents a recognized Music Coalition representing the interests of the Global Independent Music Community.⁷⁶ The A2IM Coalition includes Merlin, a global rights agency for the independent label sector, representing over 20,000 labels from 39 countries, Worldwide Independent Network (representing label creators in over 20 countries), Association of Independent Music (representing largest and most respected labels in the world), and IMPALA (Independent Music Companies Association on behalf of over 4,000 independent music companies and national associations across Europe, representing 99% of music actors in Europe which are micro, small and medium sized enterprises.

⁶⁰ <http://www.vevo.com/c/EN/US/about>

⁶¹ <http://a2im.org/groups/youtube/>

⁶² <https://www.youtube.com/yt/press/statistics.html>

⁶³ http://www.researchandmarkets.com/reports/2092499/internet_video_2011_2014_view_share_site_and

⁶⁴ <http://a2im.org/groups/reverb-nation/>

⁶⁵ <http://www.reverbnation.com/about>

⁶⁶ <http://a2im.org/groups/bmg-rights/>

⁶⁷ <http://www.bmg.com/category/about-us/history/>

⁶⁸ <http://a2im.org/groups/french-music-export-office>

⁶⁹ <http://a2im.org/groups/china-audio-video-association-cava>

⁷⁰ <http://a2im.org/groups/initiative-musik-gmbh>

⁷¹ <http://a2im.org/groups/tag/associate+members/>

⁷² <http://musicfirstcoalition.org/coalition>, The musicFIRST Coalition, with founding members A2IM, RIAA, and Recording Academy represents musicians, artists, managers, music businesses, and performance right advocates.

⁷³ <http://www.copyrightalliance.org/members>

⁷⁴ <http://www.winformusic.org>

⁷⁵ <http://www.merlinnetwork.org>

⁷⁶ <https://www.icann.org/en/system/files/correspondence/bengloff-to-chehade-et-al-20aug14-en.pdf> and <https://www.icann.org/en/system/files/correspondence/bengloff-to-crocker-et-al-07mar15-en.pdf>

Cumulatively, A2IM's Label and Associate Membership, A2IM's Affiliates and the A2IM's Global Independent Music Community Coalition, covers a majority of the global music community. Its cumulative membership is in the hundreds of millions of entities with formal boundaries belonging to strictly organized and delineated communities related to music as per the Community Definition and Size (See Application answer to Question 20a).

Another global Music Community Coalition led by the RIAA “on behalf of over 15 national and international trade associations” also expressed its support for .MUSIC to be under a “community” application model, including encouraging statements in support of DotMusic’s policies that stated that the coalition “was encouraged to see” that DotMusic “included several measures to deter and address copyright infringement within that TLD.” The “coalition members represent the people that write, sing, record, manufacture, distribute and/or license over 80% of the world’s music”⁷⁷ – a majority of global music.⁷⁸

Another letter⁷⁹ sent to ICANN (on April 14th, 2015) by Danielle Aguirre from the NMPA and on behalf of a music publisher and songwriter community coalition representing a majority of the global music publishing community, also expressed “support [for] the .MUSIC community applications because respecting and protecting music rights serves the global music community and the public interest.”

The International Music Products Association, NAMM, is another globally-recognized and relevant group of non-negligible size that has supported DotMusic.⁸⁰ NAMM, formed in 1901, is *mainly* dedicated to the global music community by representing the international music products industry and community, with globally-recognized members and exhibitors that include Yamaha, Roland, Sennheiser, Sony, Fender, Harman, Kawai, Shure, Steinway, Audio-Technica, AKAI, Gibson, Peavey, Korg, AKG, Selmer, JBL, Alesis, Ibanez, AVID, Casio, DW, Sabian, Pearl, Zildjian, Martin, Ludwig, Marshall and others.^{81 82} Every amateur and professional musician worldwide uses music products manufactured and distributed by NAMM’s members. Without these musical instruments and products, music as we know it today would not be created or produced. NAMM and its trade shows power the \$17 billion global music products industry serving as a hub for the global music community wanting to seek out the newest innovations in musical products, recording technology, sound and lighting. NAMM’s mission is “to strengthen

⁷⁷ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.1

⁷⁸ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.3, Appendix A

⁷⁹ <https://www.icann.org/en/system/files/correspondence/aguirre-to-icann-board-eiu-14apr15-en.pdf>

⁸⁰ http://music.us/letters/NAMM_International_Music_Products_Association.pdf

⁸¹ https://www.namm.org/files/showdir/ExhibitorList_WN15.xls

⁸² <http://www.musictrades.com/global.html>

the music products industry and promote the pleasures and benefits of making music.”⁸³ NAMM also hosts the NAMM Show, the world's largest event for the music products industry.

Collectively, the DotMusic application received support from the largest coalition of music community member organizations ever assembled to support a cause representing over 95% of music consumed globally.⁸⁴ Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support⁸⁵ from institutions/organizations representing a majority of the Community addressed. Music -- as commonly-known by the general public and experienced today -- would not be possible without these supporting, non-negligible and relevant organizations that have endorsed DotMusic.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Community Establishment* and *Community Endorsement* from the majority of the global Music Community as defined.

B) Nexus⁸⁶

According to the Applicant Guidebook (“AGB”), to receive the maximum score for Nexus, the applied-for string -- “music” -- must match the name of the community or be a well-known short-form or abbreviation of the community name.

The *Nexus* of the “Music Community” entirely matches the applied-for “music” string because it represents the entire global Music Community as commonly-known and perceived by the general public. This definition allows for all constituents with a requisite awareness of the Community defined to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination. The definition of the Community requires that members have an active, non-tangential relationship with the applied-for string and the requisite awareness of the music community they identify with as part of the registration process. It is clear that the general public will directly associate and equate the string with the Community as defined by DotMusic. There is no possibility of overreaching beyond the definition or allowing unrelated non-music entities to be included as part of the Community. Community members may register a .MUSIC by either:

⁸³ <https://www.namm.org/about>

⁸⁴ See <http://music.us/supporters>, <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/downloadattachment/142588?t:ac=1392>, Bloomberg BNA at http://music.us/RIAA_Backs_DotMusic.pdf Pg.1, and <http://diffuser.fm/will-dot-music-domains-make-the-internet-better/>

⁸⁵ <http://music.us/supporters>

⁸⁶ See <http://music.us/nexus>

- 1) Identifying that they belong to a Music Community Member Organization (“MCMO”); or
- 2) Identifying the community they belong to, which is consistent with the definition of the Community: “the strictly delineated and organized logical alliance of communities of similar nature related to music.”

All Community members are aware of and recognize their inclusion in the defined Community by identifying which clearly defined community they belong to and have an active participation in. The *nexus* of the applied-for string ensures inclusion of the entire global community that the string represents while excluding unrelated-entities not associated with the string. This way there is a clear match and alignment between the “music” sting and the Community defined.

While the exact size of the global Music Community as defined is unknown (there is no empirical evidence providing an exact, finite number because amateur entities are also included in the Community’s definition), it is in the considerable millions as explicitly stated in the DotMusic Application. DotMusic’s definition of the Community and mutually-inclusive Registration Policies ensure that eligible members are only music-related and associated with the string. This is because the string identifies all constituents involved in music. Music-only participation optimizes the relevancy of .MUSIC domains to the string and entirely matches the *nexus* between the string and Community defined. According to DotMusic, the Community *definition, eligibility* criteria and *content and use* requirements ensure that peripheral industries and entities not related to music are excluded so that the string and the defined Community matches and aligns in a consistent manner consistent with DotMusic’s community-based purpose i.e. only entities with music-related activities are able to register .MUSIC domains.

Membership aligns with the *nexus* of the Community and the string, which is explicitly relevant to music. The string as defined in the application demonstrates uniqueness because it has no other significant meaning beyond identifying the community described in the application. According to DotMusic’s application, any tangential or implicit association with the *nexus* of the Community and the string is not regarded as a delineated membership since it would be considered unclear, dispersed or unbound. Such unclear, dispersed or unbound tangential relationships with the defined “music” Community and applied-for “music” string would not constitute a qualifying Community membership and would be ineligible for registration. Every type of music constituent critically contributes to the function and operation of the music sector within a regulated framework⁸⁷ given the symbiotic overlapping nature of the Community as defined and structured. Music would not function as it does today without the participation of all music constituent types which cumulatively match the string with the Community definition.

⁸⁷ ICANN has disclosed that the string .MUSIC is a sensitive string operating in a regulated sector. ICANN also accepted Government Advisory Committee (GAC) advice for safeguards to protect the Music Community and the public interest (See <https://icann.org/en/system/files/correspondence/crocker-to-dryden-3-29oct13-en.pdf> Pg.7)

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Nexus*.

Respectfully Submitted,

Signature:


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Education:

University of Oxford, Lincoln College, UK, 2004-2007

Doctor of Philosophy (D. Phil.) in Experimental Psychology

Thesis title: *Assessing the factors modulating synchrony perception for complex audiovisual stimuli.*

California State University Long Beach, USA, 2002-03

1st year completed, Masters (M.A.) Degree in Research Psychology

Honors in *Perception (PSY631)* and *Learning (PSY632)*

California State University Long Beach, USA, 1995-2000

Bachelors (B.A.) in Psychology

Awards & Prizes:

- Institute for Advanced Study Fellowship, Theme “Time”, Durham University, UK, 2012-2013
- Post-doctoral scholarship, “Maria P. Laimou” Foundation, Greece, 2009-10
- Graduate Senior Scholarship, Lincoln College, University of Oxford, 2007
- Brain Travel Grant, Brain, 2007
- Graduate Research Fund Award, Lincoln College, University of Oxford, 2007
- Onassis Foundation Science Lecture Series (‘*Brain plasticity: From molecules to behavior*’) Award, 2006
- Graduate Symposium Award, International Multisensory Research Forum (IMRF), 2006
- Neuroscience Training (NEUROTRAIN) in Europe Grant, European Commission, Research Directorate General, Marie Curie Conferences & Training Courses, Contract No. MSCF-CT-2005-029703, 2006
- Graduate Senior Scholarship, Lincoln College, University of Oxford, 2006
- European Commission Improving Human Potential Programme Fellowship, NeuralComp, 2006
- Graduate Research Fund Award, Lincoln College, University of Oxford, 2006
- Newton Abraham Studentship, Medical Sciences, University of Oxford, 2005-07
- William R. Miller Postgraduate Award, St. Edmund Hall College, University of Oxford, 2005-06
- St. Hugh’s Graduate Award, St. Hugh’s College, University of Oxford, 2005-07
- Grindley Grant, British Experimental Psychology Society, 2005
- Travel Award, St. Edmund Hall College, University of Oxford, 2005
- Brockhues Graduate Award, University of Oxford, 2004
- Sally Casanova California State University Pre-Doctoral Scholar Award, 2003-04
- Student Academic Travel Award, CSU Long Beach, 2003

- Psychology Department Travel Award, CSU Long Beach, 2003
- Dean's List, CSU Long Beach, 1998-99
- Student Access to Science Summer Scholarship, CSU Long Beach, 1996
- High School Honors, 4th Gymnasium of Chios, 1989-1991

Research/Work Experience:

Timing & Time Perception: Reviews, Brill Publishing House & University of Groningen, NL, 2014-2017

Position: Editor-in-Chief

Editor of this new and unique journal that aims to bring together all reviews on timing and time perception from different disciplines and perspectives.

Timing & Time Perception, Brill Publishing House, NL, 2013-2017

Position: Editor-in-Chief

Proposer and Editor of this new and unique journal that aims to bring together all research on timing and time perception from different disciplines and perspectives.

University of Athens, Department of Philosophy and History of Science, Greece, 2012-2015

Funded by: Cognitive Mechanisms in the Perception, Representation, and Organization of Knowledge (COGMEK), THALIS National Research Funding

PIs: Dr. Konstantinos Moutousis & Prof. Stella Vosniadou

Position: Researcher

As a researcher in COGMEK under the Group: *Spatial and Temporal Perception: General characteristics and the role of higher-level cognitive processes*, I will investigate whether or not learning and priming modulates synchrony perception and how this modulation can enhance or inhibit the peak and decline of the time-course of time perception through development. I will also co-supervise two doctoral students.

Cognitive Systems Research Institute (CSRI), Athens, Greece, 2011-present

Funded by: Time In MEntaL activitY: theoretical, behavioral, bioimaging and clinical perspectives (TIMELY), ISCH Action TD0904, 2010-2013. COST-ESF Networking grant (<http://www.timely-cost.eu>) & POETICON ++, FP7-ICT-Cognitive Systems, Interaction, Robotics

Director: Katerina Pastra, Ph.D.

Position: Coordinator/Researcher

TIMELY is a networking project between scientists working on time and time perception for the exchange of expertise and establishment of new collaborations. TIMELY seeks to explore fundamental questions on TP by bringing together, for the first time, senior and junior scientists from different disciplines and perspectives. Specifically, TIMELY will focus on four main themes:

- *Conceptual analysis and measurement of time*
- *Exploring Cognitive, Linguistic, and Developmental factors associated with TP variability*
- *Extending time research to ecologically-valid stimuli*

- *Uncovering the neural correlates of TP*

POETICON++ will be a continuation of the work done in POETICON on for discovering the “languages” of sensorimotor representations and the correspondences with natural language.

Institute for Language and Speech Processing (ILSP), Research Centers “Athena”, Athens, Greece, 2008-2011

Funded by: POETICON, European Commission 7th Framework Programme, Cognitive Systems and Robotics, STREP Project ICT-215843.

Department Head: S. Piperidis

Position: Post-doctoral Researcher

The POETICON project follows an empirical approach for discovering the “languages” of sensorimotor representations and the correspondences with natural language. Guided by cognitive experiments, it employs cutting-edge equipment and established cognitive protocols for collecting face and body movement measurements, visual object information and associated linguistic descriptions from interacting human subjects, with the objective to create an extensible computational resource which associates symbolic representations with corresponding sensorimotor representations.

Hellenic Institute of Transport (HIT), Center for Research and Technology Hellas (CERTH), Athens, Greece, 2007-08

Funded by: Center for Research and Technology Hellas (CERTH)

Department Head: Aggelos Bekiaris, Ph.D.

Position: Post-doctoral Researcher

Focusing on the study of the relationship of the driver with the vehicle and methods to increase safety while driving. Tasks included working with a driving simulator or real driving experiments. Involved in the European Union funded programs of:

- HUMABIO (Human monitoring and authentication using biodynamic indicators and behavioural analysis)
- ACTIBIO (Unobtrusive authentication using activity related and soft biometrics)
- TRAIN ALL (Integrated system for driver training and assessment using interactive education tools and new training curricula for all modes of road transport)
- DRUID (Driving under the influence of drugs, alcohol and medicines)
- SENSATION (Advanced sensor development for attention, stress, vigilance and sleep/wakefulness monitoring),
- ASK IT (Ambient intelligence system of agents for knowledge based and integrated services for mobility impaired users)
- IN SAFETY (Infrastructure and safety).

Crossmodal Research Laboratory, Department of Experimental Psychology, University of Oxford, UK, 2004-07

Funded by: Newton Abraham Studentship, Medical Sciences.

Lab Supervisor: Prof. Charles Spence, Ph.D.

Position: Doctoral Student

Focusing on the study of audiovisual temporal perception for complex stimuli using psychophysical and neuroimaging techniques.

Department of Neurology II and Center for Advanced Imaging Medicine, University of Magdeburg, Germany, 2006

Funded by: Visiting Scientist DFG Grant

Lab Supervisor: Toemme Noesselt, Ph.D.

Position: Visiting Scientist

Focusing on the study of auditory, visual, and tactile synchrony perception using psychophysical and fMRI techniques.

Max Planck Research Institute for Biological Cybernetics, Dr. Logothetis Department, Germany, 2004-05

Funded by: Max Planck Society

Lab Supervisor: Zoe Kourtzi, Ph.D.

Position: Research Scientist

Focusing on the study of visual perception using Glass Patterns using fMRI and psychophysical methods.

Behavioral Neuroscience Laboratory, Department of Psychology, CSU Long Beach, USA, 2003-04

Lab Supervisor: Diane W. Lee, Ph.D.

Position: Research Assistant

Focusing on understanding the processes underlying learning and memory formation, investigating the role of hippocampus in learning, and injury-induced hippocampal neurogenesis.

Boeing Corporation, Phantom Works, Long Beach, USA, 2003-04

Funded by: Boeing Corporation

Lab Supervisor: Jack Dwyer, Ph.D.

Position: Research Assistant

Focusing on the development of effective radar systems that function based on the principles of the mechanisms governing the human eye.

Psychoacoustics Laboratory, Dep. of Psychology, CSU Long Beach, USA, 2002-05

Lab Supervisor: Thomas Z. Strybel, Ph.D.

Position: Research Assistant

Investigation of unimodal and crossmodal (auditory and visual) perception of apparent motion.

Event Organization/Co-organization:

Conferences:

- International Conference on Timing and Time Perception, March 31st–April 3rd, 2014, Corfu, Greece (<http://www.finalconference.timely-cost.eu/>).

- 4th Annual Conference of the Hellenic Cognitive Science Society, June 6-8th, 2013, Athens, Greece (<http://cogsci13.helleniccognitivesciencesociety.gr/>).

Workshops:

- Workshop on *Temporal Prediction*, October 18th, 2013, Granada, Spain.
- Workshop on *Development of Timing and Time Perception: A lifespan perspective*, October 16-17th, 2013, Granada, Spain.
- Workshop on the *Applying the senses in the classroom*, November 20th, 2011, Athens, Greece.
- International Workshop on the *Multidisciplinary Aspects of Time and Time Perception*, October 7th-8th, 2010, Athens, Greece (<http://timely-cost.eu/1st-international-workshop-multidisciplinary-aspects-time-perception>).
- ECOLIFE Festival, Agora, OAKA Olympic Sports Complex, Athens, Greece, June 2006. *The Unique Fair on Environmental Friendly Products & Services*, 3-day “Food for thought” Multisensory sensory experience exhibition. *Funded by: British Council in Greece*

Satellite Meetings:

- Satellite Meeting on the *Neurobiology of Time: From Normality to Dysfunction*, September 9th, 2011, Seville, Spain (<http://www.ebbs-seville2011.com/index.php/scientific-programme/satellite>).

Symposiums:

- *Time to act: New perspectives on embodiment and timing* at the International Conference on Timing and Time Perception, March 31st-April 3rd, 2014, Corfu, Greece.
- 1-Day Symposium at the 4th Hellenic Cognitive Science Society Annual Conference on *Timing in Clinical Populations*, June 7th, 2013, Athens, Greece.
- 1-Day Symposium at the 13th Hellenic Conference of Psychological Research on *Timing in perception: Visual instability-temporal distortion [Ο χρόνος στην αντίληψη: Οπτική αστάθεια - χρονική διαστρέβλωση]*, May 15-19th, 2013, Alexandroupoli, Greece.
- 2-Day International Symposium on *Temporal Processing Within and Across Senses*, October 4th-5th, 2012, Tuebingen, Germany.
- 3-Day International Symposium on the *Time and the Conscious Brain*, October 31st- November 2nd, 2011, HWK, Delmenhorst, Germany.
- EuroCogSci2011 Symposium on the *Current advances on Time perception: Psychophysical, Neuronal, and Applied Perspectives*, May 21st-24th, 2011, Sofia, Bulgaria.
- Symposium at the International Neuropsychological Society (INS) meeting *Time and Cognition: From behavioral studies to brain imaging*, June 30-July 3, Krakow, Poland.

Training Schools:

- 5-Day Training School on the *Imaging Time*, February 23-27th, 2013, Magdeburg, Germany.
- 5-Day Training School on the *Temporal Timing and Time Perception: Procedures, Measures, & Applications*, February 4-8, 2013, Corfu, Greece.

- 3-Day Training School on *Dynamical systems for psychological timing and timing in speech processing*, May 2nd-4th, 2012, Vietri sul Mare, Italy.
- 5-Day Training School on the *Temporal processing in clinical populations*, March 26th-30th, 2012, Thessaloniki, Greece.
- 5-Day Training School on the *Psychophysical, Computational and Neuroscience Models of Time Perception*, April 4th-8th, 2011, Groningen, Netherlands (<http://timely-cost.eu/training-school-2>).

Chairing:

- Oral Session: Children's Learning & Perception in the *13th International-2nd World Conference of the Association of Psychology and Psychiatry for Adults and Children (APPAC)*, "Psychology, Neuropsychiatry & Social Work in Modern Times", May 20-23, 2008, Athens, Greece.
- Experimental Psychology Session in the *3rd Annual D. Phil. Students Meeting*, 22 June 2007, University of Oxford, Medical Sciences Division.

Teaching Experience:

Lecturer:

- *Research Methods in Experimental Psychology*, Department of Philosophy and History of Science, University of Athens, Greece, 2014-15
- *Multisensory Perception and Attention*, Department of Philosophy and History of Science, University of Athens, Greece, 2009-13
- *Cognitive Psychology*, Department of Philosophy and History of Science, University of Athens, Greece, 2011-14
- *Introduction to Cognitive Psychology II*, Department of Psychology, Panteio University, Athens, Greece, 2009-10
- *Current Topics in Cognitive Psychology*, Department of Psychology, Panteio University, Athens, Greece, 2009-10
- *Introduction to Cognitive Psychology I*, Department of Psychology, Panteio University, Athens, Greece, 2008-10

Graduate Assistant, PSYCH 110, *Introduction to Behavioral Statistics*, Department of Psychology, CSU Long Beach, USA, 2002-04

Tutor (Math & Psychology), Professional Tutors of America, Brea, USA, 2002-03

Laboratory Instructor, PSYCH 310, *Intermediate Statistics*, Department of Psychology, CSU Long Beach, USA, Summer Session 2002

Student Supervision:

Master thesis supervision:

- Georgia Anna Chandridi, Thesis Title: *Memory mixing in audiovisual duration judgments*, Dept. of Philosophy & History of Science, University of Athens, Current.
- Venetia Bakirtzi, Thesis Title: *Audiovisual Temporal Integration in Autism*, Dept. of Philosophy & History of Science, University of Athens, Current.

- Stella Angelaki, Thesis Title: *The Unity Effect: Top-down or Bottom-up processes?* Dept. of Philosophy & History of Science, University of Athens, Current.
- Efthimis Tsilionis, Thesis Title: *Imaging the Unity Effect*, Dept. of Philosophy & History of Science, University of Athens, Current.
- Mary Kostaki, Thesis Title: *Continuity and Synchrony: The common link*, Dept. of Philosophy & History of Science, University of Athens, Current.
- Elpida Manoudi, Thesis Title: *Timing in Cinematography*, Dept. of Philosophy & History of Science, University of Athens, Current.
- Alexandros Rouchitsas, Thesis Title: *Explicit and Implicit Temporal Learning*, Dept. of Philosophy & History of Science, University of Athens, Current.
- Markos Sellis, Thesis Title: *Multisensory Integration: Inverse Effectiveness or Stochastic Resonance?*, Dept. of Philosophy & History of Science, University of Athens, 2015.
- Petros Papavasiliou, Thesis Title: *Emotional Responses to Musical Intervals with Specific Acoustical Properties and the Effect of the Induced Emotions in Duration Perception*, Dept. of Philosophy & History of Science, University of Athens, 2015.
- Helena Sgouramani (co-supervision with Marc Leman & Leon van Noorden), Thesis Title: *In Search of Lost Time: Does Dance Experience Enhance Time Perception?* Dept. of Philosophy & History of Science, University of Athens, 2013.
- Miketa Arvanity (co-supervision with Noam Savig), Thesis Title: *Is 'A' always red? Multisensory integration in synesthetes and non-synesthetes*, Dept. of Philosophy & History of Science, University of Athens, 2013.
- Argiro Vagia, Thesis Title: *Language and Timing: How temporal and non temporal concepts can affect duration perception*, Dept. of Philosophy & History of Science, University of Athens, 2013.
- Dionisis Koymoytsos (co-supervision with Charles Spence), Thesis Title: *Unity assumption for non-speech stimuli*, Dept. of Philosophy & History of Science, University of Athens, 2012.
- Nancy Verriopoulou (co-supervision with Simon Grondin), Thesis Title: *Using video games and brain training software to modulate human time perception*, Dept. of Philosophy & History of Science, University of Athens, 2011.
- Vassiliki Sofra (co-supervision with Stella Vosniadou), Thesis Title: *Creativity and student performance*, Dept. of Philosophy & History of Science, University of Athens, 2010.
- Daphne Roumani (co-supervision with Konstantinos Moutousis), Thesis Title: *Binocular Rivalry*, Dept. of Philosophy & History of Science, University of Athens, 2009.
- Fotis Fotiadis (co-supervision with Thanasis Protopapas), Thesis Title: *The effect of cue naming in probabilistic category learning*, Dept. of Philosophy & History of Science, University of Athens, 2009.
- Eliza Argyriou (co-supervision with Nikolaos Smyrnis), Thesis Title: *Aspects of auditory-motor synchronization with isochronous rhythmic patterns*, Dept. of Philosophy & History of Science, University of Athens, 2009.

- Dimitris Rogaris (co-supervision with Georgios Gyftodimos), Thesis Title: *Perception of simple and complex musical pieces*, Dept. of Philosophy & History of Science, University of Athens, 2009.

Bachelor's thesis supervision:

- Eleni Psarrou, Thesis Title: *Intentional binding of naturalistic stimuli*, Dept. of Psychology, Panteion University, Athens, 2014.
- Konstantina Margiotoudi, Thesis Title: *Timing and Gestures*, Dept. of Psychology, Panteion University, Athens, 2013.

Publications

Journal:

Vatakis, A., Van Rijn, H., & Meck, W. (Start year: 2013). *Timing & Time Perception*. Brill: Leiden, The Netherlands.

Meck, W., Van Rijn, H., & Vatakis, A. (Start year: 2014). *Timing & Time Perception: Reviews*. University of Groningen and Brill, Leiden, The Netherlands.

Journal Special Issues:

Vatakis, A., & Ulrich, R. (2014). Temporal Processing Within and Across Senses – Part 2. *Acta Psychologica*, **149**, 129-178.

Vatakis, A., & Ulrich, R. (2014). Temporal Processing Within and Across Senses – Part 1. *Acta Psychologica*, **147**, 1-152.

Books/Edited Books/Proceedings:

Vatakis, A., Balci, F., Correa, A., & Di Luca, M. (in preparation). *Timing and time perception: Procedures, measures, and applications*. Brill: Leiden, The Netherlands.

Vatakis, A., & Allman, M. (2015). *Time Distortions in Mind: Temporal processing in clinical populations*. Brill: Leiden, The Netherlands.

Vatakis, A. (2014). International Conference on Timing and Time Perception, 31 March-3 April 2014, Corfu, Greece. *Procedia - Social and Behavioral Sciences, Proceedings Volume 126, 1-280*.

Vatakis, A., Esposito, A., Giagkou, M., Cummins, F., & Papadelis, G. (2011). *Multidisciplinary Aspects of Time and Time Perception*. Springer LNCS/LNAI Proceedings Volume.

Book Chapters:

Vatakis, A., & Bakou, A. E. (2015). Distorted multisensory experiences of order and simultaneity. In A. Vatakis & M. Allman (Eds.), *Time Distortions in Mind: Temporal processing in clinical populations*. Brill: Leiden, The Netherlands.

Vatakis, A. (2014). TIMELY: A network on timing and time perception. In B. Lewandowska-Tomaszczyk & K. Kosecki (Eds.), *Time and Temporality in Language and Human Experience*. Series: Lodz Studies in Language - Volume 32. Peter Lang Publishing Group.

Vatakis, A., & Papadelis, G. (2014). The research on audiovisual perception of temporal order and the processing of musical temporal patterns: Associations, pitfalls, and future directions. In D. Lloyd & V. Arstila (Eds.), *Subjective Time*. MIT Press.

- Vatakis, A. (2013). Cross-modality in speech processing: Synchrony perception and the unity effect. In J. Simner & E. Hubbard (Eds.), *The Oxford Handbook of Synaesthesia*. Oxford University Press.
- Vatakis, A. (2013). The role of stimulus properties and cognitive processes in the quality of the multisensory perception of synchrony. In L. Albertazzi (Ed.), *The Wiley-Blackwell Handbook of Experimental Phenomenology. Subtitle: Visual Perception of Shape, Space and Appearance*. Wiley-Blackwell.
- Vatakis, A., & Papadelis, G. (2011). A Timely Endeavor: Theoretical, Behavioral, Bioimaging, and Clinical Perspectives on Time Perception. In A. Esposito, A. M. Esposito, R. Martone, V. C. Muller, and G. Scarpetta (Eds.), *Toward Autonomous, Adaptive, and Context-Aware Multimodal Interfaces: Theoretical and Practical Issues*, Springer-Verlag: Berlin Heidelberg.
- Vatakis, A., & Spence, C. (2010). Audiovisual temporal integration for complex speech, object-action, animal call, and musical stimuli. In M. J. Naumer & J. Kaiser (Eds.), *Multisensory Object Perception in the Primate Brain*. Springer-Verlag: Berlin Heidelberg.

Translated Books:

- Ward, J. (2010). *The Frog Who Croaked Blue* (A. Vatakis & S. Samartzi, Trans.). Athens, Greece: Pedio. (Original work published 2008).
- Herrmann, D. J., Yoder, C. Y., Gruneberg, M., & Payne, D. G. (2010). *Applied Cognitive Psychology: A textbook* (S. Samartzi & A. Vatakis, Trans.). Athens, Greece: Pedio. (Original work published 2006).

Paper (Peer-Reviewed) Publications:

- Vatakis, A., & Pastra, K. (submitted). The PLT Corpus: A multimodal database of spontaneous speech and movement production on object affordances. *Science Data*.
- Vatakis, A., Pastra, K., & Dimitrakis, P. (submitted). Co-speech Exploratory Acts: The interaction of language and active touch in object knowledge acquisition. *Cognition*.
- Indraccolo, A., Spence, C., Vatakis, A., & Harrar, V. (2015). Combined effects of motor response, sensory modality, and stimulus intensity on temporal reproduction. *Experimental Brain Research*
- Meck, W., Vatakis, A., & van Rijn, H. (2014). Timing & Time Perception Reviews: Opening the door to theoretical discussions of consciousness, decision-making, multisensory processing, time cells and memory mapping ... to name but a few issues of relevance to temporal cognition. *Time & Time Perception Reviews*, **1**, 1-4.
- Vatakis, A. (2014). TIME(ly) is up! Conclusions and New Outlooks on Timing and Time Perception. *Procedia - Social and Behavioral Sciences*, **126**, 1-2.
- Vatakis, A., & Ulrich, R. (2014). Temporal Processing Within and Across Senses. *Acta Psychologica*, **147**, 1.
- Sgouramani, E., & Vatakis, A. (2014). "Flash" Dance: How speed modulates perceived duration in dancers and non-dancers. *Acta Psychologica*, **147**, 17-24.
- Meck, W. H., Vatakis, A., & van Rijn, H. (2013). Timing & time perception enters a new dimension. *Timing & Time Perception*, **1**, 1-2.
- Karambetsos, C., Kouskousis, C., Giannakopoulos, G., Agapidaki, E., Mihas, C., Katsarou, A., Miridakis, C., Vatakis, A., & Kolaitis, G. (2013). A comparison of

- mental health problems among children with alopecia areata or atopic dermatitis and their parents. *British Journal of Medicine and Medical Research*, **3(1)**, 162-172.
- Vatakis, A., Maragos, P., Rodomagoulakis, I., & Spence, C. (2012). Assessing the effect of physical differences in the articulation of consonants and vowels on audiovisual temporal perception. *Frontiers of Integrative Neuroscience*, **6 (71)**, 1-18.
- Esposito, A., Esposito, M., Giagkou, M., Vatakis, A., & Vinciarelli, A. (2012). On the perception of visual durational speech features: A comparison between native and non-native speakers. *CogInfoCom 2012, 3rd IEEE International Conference on Cognitive Inforcommunications*, Kosice, Slovakia.
- Vatakis, A., & Spence, C. (2011). Enhanced audiovisual temporal sensitivity when viewing videos that appropriately depict the effect of gravity on object movement. In A. Vatakis, A. Esposito, M. Giagkou, F. Cummins, and G. Papadelis (eds.) *Multidisciplinary Aspects of Time and Time Perception*. Springer LNCS/LNAI Proceedings Volume.
- Verriopoulou, D., & Vatakis, A. (2011). Using video games and brain training software to modulate human time perception. *5th European Conference on Games Based Learning*, Athens, Greece.
- Wallraven, C., Schultze, M., Mohler, B., Vatakis, A., & Pastra, K. (2011). The POETICON enacted scenario corpus: A tool for human and computational experiments on action understanding. *9th IEEE Conference on Automatic Face and Gesture Recognition*, art. no. 5771446, pp. 484-491, Santa Barbara, USA.
- Pastra, K., Wallraven, C., Schultze, M., Vatakis, A., & Kaulard, K. (2010). The POETICON corpus: Capturing language use and sensorimotor experience in everyday interaction. *Language Resources and Evaluation (LREC) 2010*, Malta.
- Wallraven, C., Schultze, M., Mohler, B., Volkova, E., Alexandrova, I., Vatakis, A., & Pastra, K. (2010). Understanding objects and actions - A VR experiment. *Language and Speech*, 1-2.
- Vatakis, A., Ghazanfar, A. A., & Spence, C. (2008). Facilitation of multisensory integration by the “unity effect” reveals that speech is special. *Journal of Vision*, **8(9)**:14, 1-11.
- Vatakis, A., Portouli, V., & Bekiaris, E. (2008). Investigating the effects of continuous positive airway pressure (CPAP) treatment on driving and attentional performance of patients with sleep impairments. *Proceedings of the 5th International Workshop on Wearable, Micro and Nano Technologies for the Personalised Health, pHealth 2008*.
- Vatakis, A., & Spence, C. (2008). Investigating the effects of inversion on configural processing using an audiovisual temporal order judgment task. *Perception*, **37**, 143-160.
- Vatakis, A., Navarra, J., Soto-Faraco, S., & Spence, C. (2008). Audiovisual temporal adaptation of speech: Temporal order versus simultaneity judgments. *Experimental Brain Research*, **185**, 521-529.
- Vatakis, A., & Spence, C. (2008). Evaluating the influence of the ‘unity assumption’ on the temporal perception of realistic audiovisual stimuli. *Acta Psychologica*, **127**, 12-23.
- Vatakis, A., & Spence, C. (2007). How ‘special’ is the human face? Evidence from an audiovisual temporal order judgment task. *Neuroreport*, **18**, 1807-1811.

- Vatakis, A., & Spence, C. (2007). Crossmodal binding: Evaluating the ‘unity assumption’ using complex audiovisual stimuli. *Proceedings of the 19th International Congress on Acoustics (ICA)*.
- Vatakis, A., & Spence, C. (2007). Crossmodal binding: Evaluating the ‘unity assumption’ using audiovisual speech stimuli. *Perception & Psychophysics*, **69**, 744-756.
- Vatakis, A., Navarra, J., Soto-Faraco, S., & Spence, C. (2007). Temporal recalibration during asynchronous audiovisual speech perception. *Experimental Brain Research*, **181**, 173-181.
- Vatakis, A., Bayliss, L., Zampini, M., & Spence, C. (2007). The influence of synchronous audiovisual distractors on audiovisual temporal order judgments. *Perception & Psychophysics*, **69**, 298-309.
- Vatakis, A., & Spence, C. (2007). Investigating the factors that influence the temporal perception of complex audiovisual events. *Proceedings of the European Cognitive Science 2007 (EuroCogSci07)*, 389-394.
- Vatakis, A., & Spence, C. (2006). Temporal order judgments for audiovisual targets embedded in unimodal and bimodal distractor streams. *Neuroscience Letters*, **408**, 5-9.
- Vatakis, A., & Spence, C. (2006). Audiovisual synchrony perception for music, speech, and object actions. *Brain Research*, **1111**, 134-142.
- Vatakis, A., & Spence, C. (2006). Evaluating the influence of frame rate on the temporal aspects of audiovisual speech perception. *Neuroscience Letters*, **405**, 132-136.
- Vatakis, A., & Spence, C. (2006). Audiovisual synchrony perception for speech and music using a temporal order judgment task. *Neuroscience Letters*, **393**, 40-44.
- Lyons, G., Sanabria, D., Vatakis, A., & Spence, C. (2006). The modulation of crossmodal integration by unimodal perceptual grouping: A visuo-tactile apparent motion study. *Experimental Brain Research*, **174**, 510-516.
- Krekelberg, B., Vatakis, A., & Kourtzi, Z. (2005). Implied motion from form in the human visual cortex. *Journal of Neurophysiology*, **94**, 4373-4386.
- Navarra, J., Vatakis, A., Zampini, M., Soto-Faraco, S., Humphreys, W., & Spence, C. (2005). Exposure to asynchronous audiovisual speech increases the temporal window for audiovisual integration of non-speech stimuli. *Cognitive Brain Research*, **25**, 499-507.
- Strybel, T. Z., & Vatakis, A. (2004). A comparison of auditory and visual apparent motion presented individually and with crossmodal moving distractors. *Perception*, **33**, 1033-1048.

Abstract (Peer-Reviewed) Publications:

- Angelaki, S., & Vatakis, A. (2014). The unity effect for non-speech stimuli: A top-down or bottom-up process? *Procedia - Social and Behavioral Sciences*, **126**, 156-157.
- Tsilionis, E., & Vatakis, A. (2014). Audiovisual speech integration in the brain: Semantics and temporal synchrony. *Procedia - Social and Behavioral Sciences*, **126**, 160-161.
- Kostaki, M., & Vatakis, A. (2014). Crossmodal binding rivalry: An alternative hypothesis for the double flash illusion. *Procedia - Social and Behavioral Sciences*, **126**, 158-159.
- Sellis, M., Maragos, P., & Vatakis, A. (2014). Synchrony perception and inverse effectiveness: Are they complementary or contrasting in audiovisual speech integration? *Procedia - Social and Behavioral Sciences*, **126**, 166-167.

- Margiotoudi, K., Spencer, K., & Vatakis, A. (2014). Audiovisual temporal integration of speech and gesture. *Procedia - Social and Behavioral Sciences*, **126**, 154-155.
- Bakirtzi, V., & Vatakis, A. (2014). The perception of integrated events in Autism Spectrum Disorders: The role of semantic relatedness and timing. *Procedia - Social and Behavioral Sciences*, **126**, 212-213.
- Vatakis, A., Sgouramani, E., Gorea, A., Hatzitaki, V., & Pollick, F. E. (2014). Time to act: New perspectives on embodiment and timing. *Procedia - Social and Behavioral Sciences*, **126**, 16-20.
- Indraccolo, A., Spence, C., Vatakis, A., & Harrar, V. (2014). The effect of motor response, sensory modality, and intensity on temporal reproduction. *Procedia - Social and Behavioral Sciences*, **126**, 226.
- Rouchitsas, A., & Vatakis, A. (2014). Explicit and implicit temporal learning using an action video game. *Procedia - Social and Behavioral Sciences*, **126**, 255-256.
- Bakou, A., Margiotoudi, K., Kouroupa, A., & Vatakis, A. (2014). Temporal and sensory experiences in the dreams of sighted and congenital blind individuals. *Procedia - Social and Behavioral Sciences*, **126**, 188-189.
- Papavasiliou, P., & Vatakis, A. (2014). Emotional responses to musical intervals with specific acoustical properties and the effect of the induced emotions in duration perception. *Procedia - Social and Behavioral Sciences*, **126**, 237-238.
- Vagia, A., Chandridi, G.-A., Orfanidou, E., Vatakis, A. (2014). Is it possible to have a short, leftward past and face a long, rightward future? *Procedia - Social and Behavioral Sciences*, **126**, 174-175.
- Sgouramani, H., Muller, C., Van Noorden, L., Leman, M., & Vatakis, A. (2013). Synchronization and continuation during a dance act. *Frontiers in Human Neurosciences*.
- Sgouramani, H., Muller, C., Van Noorden, L., Leman, M., & Vatakis, A. (2013). Synchronization and continuation during a dance act. *Frontiers of Human Neuroscience*.
- Sgouramani, E., & Vatakis, A. (2013). Alternating speed on dance videos influences duration judgments in dancers and non-dancers. *Multisensory Research*, **26(1)**, 103.
- Vatakis, A., Pastra, K., & Dimitrakis, P. (2012). Acquiring object affordances through touch, vision, and language. *Seeing and Perceiving*, **25**, 64.
- Vatakis, A., & Spence, C. (2012). Assessing audiovisual saliency and visual-information content in the articulation of consonants and vowels on audiovisual temporal perception. *Seeing and Perceiving*, **25**, 29.
- Arvaniti, M., Sagiv N., Lecoutre L., & Vatakis A. (2012). Is A always red? Multisensory integration of synesthetic stimuli in synesthetes and non-synesthetes. *Seeing and Perceiving*, **25**, 83.
- Sgouramani, E., Muller, C., van Noorden, L., Leman, M., & Vatakis, A. (2012). From observation to enactment: Can dance experience enhance multisensory temporal integration? *Seeing and Perceiving*, **25**, 188.
- Vatakis, A. (2011). Current advances and directions on Time perception: Theoretical, Psychophysical, Neuroimaging, and Applied Perspectives. In B. Kokinov, A. Karmiloff-Smith, & N. J. Nersessian (eds.) *European Perspectives on Cognitive Science*. Bulgaria: New Bulgarian University Press.

- Fotiadis, F. A., Protopapas, A., & Vatakis, A. (2011). The effect of cue naming in probabilistic category learning. In B. Kokinov, A. Karmiloff-Smith, & N. J. Nersessian (eds.) *European Perspectives on Cognitive Science*. Bulgaria: New Bulgarian University Press.
- Spence, C., Navarra, J., Vatakis, A., Hartcher-O'Brien, J., & Parise, C. (2009). The multisensory perception of synchrony. *Perception*, **38** (Suppl.), 113.
- Vatakis, A. (2008). Examining the possibility of an acquired deficit in audiovisual temporal perception for speech and musical events. *Annals of General Psychiatry*, **7**(Suppl 1): S137.
- Vatakis, A., Kregelberg, B., & Kourtzi, Z. (2004). Processing of global motion from form cues in the human visual cortex. *Society for Neuroscience Abstracts*, Program No. 301.19, 85.

Greek Paper Publications:

- Sgouramani, H., Vagia, A., & Vatakis, A. (2012). Ο κήπος των αισθήσεων με τα διακλαδωτά μονοπάτια: Ο πόνος ως ξεχωριστή τροπικότητα, αλληλεπιδράσεις με τις λοιπές αισθήσεις και αντιμετώπιση του; [Pain as a separate modality and its interactions with the other senses]. *Σύναψις*, **24**, 46-54.
- Arvaniti, M., & Vatakis, A. (2012). Όταν ο πόνος σου γίνεται και δικός μου: Το φαινόμενο της συναισθησίας πόνου [Pain and synesthesia]. *Σύναψις*, **24**, 55-61.
- Roumani, D., & Vatakis, A. (2011). Τυφλή όραση: Αντιλαμβανόμαστε πάντα αυτό που βλέπουμε; [Blind sight: Do we always perceive what we see?]. *Σύναψις*, **21**, 12-25.
- Argyriou, E., Vatakis, A., Tsoukas, E., Papadelis, G., Eydokimidis, I., & Smyrnis, N. (2010). Χαρακτηριστικά του ακουστικού - κινητικού συγχρονισμού με ισόχρονα ρυθμικά σχήματα [Aspects of auditory-motor synchronization with isochronous rhythmic patterns]. *Proceedings of the Hellenic Acoustic Society*, 435-443.
- Fotiadis, F., & Vatakis, A. (2010). Εξω-Σωματικές Εμπειρίες: Μια Επιστημονική Προσέγγιση στην Σωματική Συνείδηση [Out of body experiences: A scientific approach to bodily consciousness]. *Σύναψις*, **19**, 16-27.
- Roumani, D., Vatakis, A., & Moutousis, K. (2010). Όταν ο εγκέφαλος προσπαθεί να βγάλει νόημα: η περίπτωση του διοφθάλμιου ανταγωνισμού [When the brain is trying to extract meaning: The case of binocular rivalry]. *Σύναψις*, **11**, 65-74.
- Vatakis, A., & Kourtzi, Z. (2010). Η αντίληψη του προσώπου – Είναι γνωσιακά διαπερατή; [Face perception – Is it cognitively penetrable?]. *Νόησης*, **6**, 99-105.
- Vatakis, A. (2008). Οπτικοακουστική Αντίληψη του Χρόνου [Audiovisual temporal perception]. *Σύναψις*, **4**, 65-74.

Talks & Poster Presentations:

Talks:

- Vatakis, A. (2014). Time in mental activity. Invited talk at the *ESOF2014*, June 23, Copenhagen, Denmark.
- Vatakis, A. (2014). Timing and the senses in complex events. Invited seminar at the *Centre for the Study of the Senses, University of London*, May 8, London, UK.
- Sgouramani, E., & Vatakis, A. (2014). “While we dance...”: The effects of expertise, space, speed, and prediction on duration judgments. Invited talk presented at the *International Conference on Timing and Time perception*, March 31-April 3, Corfu, Greece.

- Vatakis, A. (2013). Synchronizing my lips with my voice. Invited talk at the *Speech and Time Talk Series at Aiginition Hospital*, Athens, Greece.
- Vatakis, A., & Maniadakis, M. (2013). Timing in humans and robots. Invited tutorial presented at the *Joint ROBOTDOC and POETICON++ Spring School on Developmental Robotics and Cognitive Bootstrapping*, 18-20 March, Athens, Greece.
- Sgouramani, E., & Vatakis, A. (2013). Alternating speed on dance videos influences duration judgments in dancers and non-dancers. Talk presented at the *14th International Multisensory Research Forum (IMRF)*, 3-6 June, Jerusalem, Israel.
- Sgouramani, E., & Vatakis, A. (2013). The influence of speed on duration estimation in dancers and non-dancers. Talk included in the symposium “Time in perception: Binocular rivalry-temporal distortions”, *14th Conference of the Hellenic Psychological Society*, 15-19 May 2013, Alexandroupoli, Greece.
- Vatakis, A., Pastra, K., & Dimitrakis, P. (2012). Acquiring object affordances through touch, vision, and language. Talk presented at the *13th International Multisensory Research Forum*, 19-22 June, Oxford, UK.
- Sgouramani, E., Muller, C., van Noorden, L., Leman, M., & Vatakis, A. (2012). In search of lost time: Does dance experience enhance time perception on audiovisual asynchronies and whole-body synchronization-continuation? Invited talk presented at the *Institute for Psychoacoustics and Electronic Music (IPEM)*, 23 February, Ghent University, Belgium.
- Vatakis, A. (2012). Η χρονική αντίληψη πολυαισθητηριακών ερεθισμάτων [Time perception for multisensory stimuli]. Invited talk at the *Symposium of Science and art-Science & Art: Time as the 4th dimension* organized by the Hellenic Society of Physics and Charokopeio University, January 20-22, Athens, Greece.
- Vatakis, A. (2011). Improving literacy by engaging the senses. Invited talk presented at the *Eugenidio Foundation*, November 19th, Athens, Greece.
- Vatakis, A. (2011). Temporal recalibration: Asynchronous audiovisual speech exposure extends the temporal window of multisensory integration. Talk presented at the EBBS2011 Satellite Meeting “Neurobiology of Time: From Normality to Dysfunction”, Seville, Spain.
- Vatakis, A. (2011). Οπτικοακουστική χρονική ευαισθησία και η επίδραση της βαρύτητας στις κινήσεις αντικείμενων [Audiovisual temporal sensitivity and the effect of gravity of moving objects]. Talk presented at the *13th Hellenic Conference of Psychological Research*, Athens, Greece.
- Vatakis, A., Pastra, K., & Dimitrakis, P. (2011). Ανακαλύπτοντας τον ορισμό ενός αντικείμενου και τις δυνατότητες χρήσης του (affordances) μέσω της γλώσσας [Uncovering the definition of an object and its affordances through language]. Talk presented at the *13th Hellenic Conference of Psychological Research*, Athens, Greece.
- Vatakis, A. (2010). Audiovisual temporal perception and integration: Acquired deficits in audiovisual temporal perception for complex stimuli. Talk presented at the “Time and Cognition: From behavioral studies to brain imaging” Symposium at the International Neuropsychological Society (INS), June 30-July 3, Krakow, Poland.
- Vatakis, A. (2010). Time in mental activity: theoretical, behavioral, bioimaging, and clinical perspectives. Invited talk presented at the *3rd COST 2102 International Training School*, 15-17 March, Caserta, Italy.

- Vatakis, A. (2009). The concept of psychological time and the case of audiovisual temporal perception. Invited talk presented at the *ESF SCSS Exploratory Workshop: Qualities in Perception Science*, 2-6 November, Rovereto, Italy.
- Spence, C., Navarra, J., Vatakis, A., Hartcher-O'Brien, J., & Parise, C. (2009). The multisensory perception of synchrony. Talk presented at the *Symposium: Multisensory Integration at the 32nd European Conference on Visual Perception (ECVP)*, August 24-28, Regensburg, Germany.
- Vatakis, A. (2008). Asynchronous audiovisual speech exposure extends the temporal window of multisensory integration. Paper presented at the *2nd Annual Meeting of the Hellenic Society for Neuroscience*, October 16-19, Athens, Greece.
- Vatakis, A. (2008). Η αντίληψη του χρόνου στην πειραματική ψυχολογία [Temporal perception in Experimental Psychology: An overview]. Invited talk at the 'A symposium on Time', September 12-14, Kozani, Greece.
- Vatakis, A. (2008). Time perception: A multidisciplinary approach. Invited talk presented at the *POETICON 2nd Technical Meeting, Collaboration Activities*, July 7-8, Athens, Greece.
- Vatakis, A. (2008). Investigating temporal perception in infants using complex stimuli. Paper presented at the *13th International Conference of the Association of Psychology and Psychiatry for Adults and Children (A.P.P.A.C.)*, May 20-23, Athens, Greece.
- Vatakis, A., & Spence, C. (2007). Investigating the factors that influence the temporal perception of complex audiovisual events. Paper presented at the *2nd European Cognitive Science 2007 Conference (EuroCogSci07)*, May 23-27, Delphi, Greece.
- Vatakis, A. (2006). Synchrony perception and temporal recalibration of complex audiovisual stimuli. Invited talk presented on Oct. 31st at the *Department of Biological Psychology and Neuropsychology, University of Hamburg, Research Group-Dr. Brigitte Roeder*, Hamburg, Germany.
- Vatakis, A. (2006). Temporal perception of audiovisual speech stimuli. Invited talk presented on Sept. 13th at the *REVES Research Group-Dr. George Drettakis*, INRIA Sophia-Antipolis, France.
- Vatakis, A., & Spence, C. (2006). Factors modulating the temporal perception of audiovisual speech stimuli. Paper presented at the *7th Annual Meeting of the International Multisensory Research Forum*, June 18-21, Dublin, Ireland.
- Sanabria, D., Lyons, G., Vatakis, A., & Spence, C. (2006). Perceptual grouping and hand posture effects on crossmodal interactions. *Experimental Psychology Meeting*, April 10-12, Birmingham, UK.
- Vatakis, A. (2005). Audiovisual synchrony perception for complex stimuli. Paper presented at the *2nd year Graduate Student Presentations, Department of Experimental Psychology, University of Oxford*, Oxford, UK.
- Vatakis, A. (2005). Audiovisual synchrony perception for complex stimuli: How 'special' is speech? Invited talk presented on May 25th at *St. Edmund Hall College, University of Oxford*, UK.
- Kourtzi, Z., Vatakis, A., & Krekelberg, B. (2005). Global motion from form in the human visual cortex. Paper presented at the *Annual Meeting of the Vision Sciences Society*, Sarasota, Florida.

Vatakis, A., & Strybel, T.Z. (2003). Auditory and visual apparent motion with crossmodal moving distractors. Paper presented at the *Spring Meeting of the Western Psychological Association*, Vancouver, B.C.

Posters:

Vatakis, A., Pastra, K., & Dimitrakis, P. (2014). Exploratory Acts for the Acquisition of Object Knowledge. Poster presented at the *4th Jointed IEEE International Conference on Development and Learning and on Epigenetic Robotics (IEEE ICDL-EPIROB 2014)*, 13-16 October, Genoa, IT.

Vatakis, A., Pastra, K., & Dimitrakis, P. (2014). Acquisition of object knowledge through Exploratory Acts. Poster presented at the *15th International Multisensory Research Forum (IMRF)*, 11-14 June, Amsterdam, NL.

Sellis, M., Beskow, J., Salvi, G., & Vatakis, A. (2014). Multisensory gain: A linear inverse or inverted U pattern? Poster presented at the *15th International Multisensory Research Forum (IMRF)*, 11-14 June, Amsterdam, NL.

Sgouramani, H., & Vatakis, A. (2014). Move still: A direct comparison of real and implied motion in duration perception. Poster presented at the *15th International Multisensory Research Forum (IMRF)*, 11-14 June, Amsterdam, NL.

Kostaki, M., & Vatakis, A. (2014). Could the unequal number of sensory inputs lead to a crossmodal binding rivalry? Poster presented at the *15th International Multisensory Research Forum (IMRF)*, 11-14 June, Amsterdam, NL.

Kostaki, M., & Vatakis, A. (2014). Crossmodal binding rivalry: An alternative hypothesis for the double flash illusion. Poster presented at the *International Conference on Timing and Time perception*, March 31-April 3, Corfu, Greece.

Sellis, M., Maragos, P., & Vatakis, A. (2014). Synchrony perception and inverse effectiveness: Are they complementary or contrasting in audiovisual speech integration? Poster presented at the *International Conference on Timing and Time perception*, March 31-April 3, Corfu, Greece.

Vagia, A., Chandridi, G., Orfanidou, E., & Vatakis, A. (2014). Is it possible to have a short, leftward past and face a long, rightward future? Poster presented at the *International Conference on Timing and Time perception*, March 31-April 3, Corfu, Greece.

Tsilionis, E., & Vatakis, A. (2014). Audiovisual speech integration in the brain: semantics and temporal synchrony. Poster presented at the *International Conference on Timing and Time perception*, March 31-April 3, Corfu, Greece.

Rouchitsas, A., & Vatakis, A. (2014). Explicit and implicit temporal learning using an action video game. Poster presented at the *International Conference on Timing and Time perception*, March 31-April 3, Corfu, Greece.

Papavasiliou, P., & Vatakis, A. (2014). Emotional responses to musical intervals with specific acoustical properties and the effect of the induced emotions in duration perception. Poster presented at the *International Conference on Timing and Time perception*, March 31-April 3, Corfu, Greece.

Angelaki, S., & Vatakis, A. (2014). The “unity effect” for non-speech stimuli: A top-down or bottom-up process? Poster presented at the *International Conference on Timing and Time perception*, March 31-April 3, Corfu, Greece.

- Sgouramani, H., Muller, C., Van Noorden, L., Leman, M., & Vatakis, A. (2013) Synchronization and continuation during a dance act. Poster presented at the *14th Rhythm Production and Perception Workshop*, 11-13th September, Birmingham, UK.
- Sgouramani, E., & Vatakis, A. (2013). Does speed modulate perceived duration in dancers and non-dancers? Poster presented at the *International Interdisciplinary Summer School Embodied Inter-subjectivity the 1st-person & the 2nd-person Perspective*, 9-15 June, Aegina, Greece.
- Sgouramani, E., Muller, C., van Noorden, L., Leman, M., & Vatakis, A. (2013). Does dance experience enhance audiovisual temporal integration? Poster presented at the *4th Conference of Hellenic Cognitive Science Society*, 6-8 June, Athens, Greece.
- Sgouramani, E., & Vatakis, A. (2013). The effect of fast and slow dance videos on dancers and non-dancers' time estimation. Poster presented at the *4th Conference of Hellenic Cognitive Science Society*, 6-8 June, Athens, Greece.
- Arvaniti, M., Sagiv N., Lecoutre L., & Vatakis A. (2012). When a letter is a colour: Audiovisual integration of crossmodal correspondences and synesthetic grapheme-colour associations. Poster presented at *TIMELY Workshop on Temporal Processing Within and Across Senses*, 4-5 October, Tübingen, Germany.
- Sgouramani, E., & Vatakis, A. (2012). Time goes fast: How speed modulates perceived duration in dancers and non-dancers. Poster presented at the *TIMELY Workshop on Temporal Processing Within and Across Senses*, 4-5 October, Tübingen, Germany.
- Vatakis, A., & Spence, C. (2012). Assessing audiovisual saliency and visual-information content in the articulation of consonants and vowels on audiovisual temporal perception. Poster presented at the *13th International Multisensory Research Forum*, 19-22 June, Oxford, UK.
- Arvaniti, M., Sagiv N., Lecoutre L., & Vatakis A. (2012). Is A always red? Multisensory integration of synesthetic stimuli in synesthetes and non-synesthetes. Poster presented at the *13th International Multisensory Research Forum*, 19-22 June, Oxford, UK.
- Sgouramani, E., Muller, C., van Noorden, L., Leman, M., & Vatakis, A. (2012). From observation to enactment: Can dance experience enhance multisensory temporal integration? Poster presented at the *13th International Multisensory Research Forum (IMRF)*, 19-22 June, Oxford, UK.
- Sgouramani, E., Muller, C., van Noorden, L., Leman, M., & Vatakis, A. (2012). How do dance experience and actual enactment of the stimulus affect audiovisual temporal integration? Poster presented at the *International Workshop on Joint Action, Models of Music and Movement Interactions in Time (JAMMMIT)*, 12 - 13 June, Ghent, Belgium.
- Verriopoulou, D., & Vatakis, A. (2011). Using video games and brain training software to modulate human time perception. Poster presented at the *5th European Conference on Games Based Learning*, 20-21 October, Athens, Greece.
- Bakou, E., Margiotoudi, K., & Vatakis, A. (2011). Μια σύγκριση της πολυαισθητηριακής γλώσσας των ονείρων από αναφορές βλεπόντων και τυφλών ατόμων [Comparing the multisensory language used in the dreams of blind and sighted individuals]. Poster presented at the *13th Hellenic Conference of Psychological Research*, Athens, Greece.
- Margiotoudi, K., Bakou, E., & Vatakis, A. (2011). Ο χρόνος στη γλώσσα των ονείρων [Time in the language of dreams]. Poster presented at the *13th Hellenic Conference of Psychological Research*, Athens, Greece.

- Verriopoulou, N., & Vatakis, A. (2011). Διαμόρφωση της χρονικής αντίληψης μέσα από την ενασχόληση με βιντεοπαιχνίδια και λογισμικών νοητικής άσκησης [Modulating time perception through training with video games and brain training software]. Poster presented at the 13th Hellenic Conference of Psychological Research, Athens, Greece.
- Verriopoulou, N., & Vatakis, A. (2011). Modulating time perception through training with video games and brain training software. Poster presented at the *TIMELY Training School*, Groningen, Netherlands.
- Vatakis, A. (2008). Temporal perception of audiovisual speech and non-speech stimuli. Poster presented at the PROUST, SSA "The temporal dimension of functional genomics" (LSSG-CT-2006-037654), Conference: "GENES AT WORK ON TIME", October 15-18, Turin, Italy.
- Vatakis, A. (2008). Διερεύνηση της αντίληψης του χρόνου σε βρέφη χρησιμοποιώντας σύνθετα οπτικοακουστικά ερεθίσματα. Poster presented at the 1st National Conference of Developmental Psychology in Greece 2008, May 29-June 1, Athens, Greece.
- Vatakis, A., Portouli, V., & Bekiaris, E. (2008). Investigating the effects of continuous positive airway pressure (CPAP) treatment on driving and attentional performance of patients with sleep impairments. Poster presented at the 5th International Workshop on Wearable, Micro and Nano Technologies for the Personalised Health, pHealth 2008, "From Research into Practice", May 21-23, Valencia, Spain.
- Vatakis, A., & Spence, C. (2007). Crossmodal binding: Evaluating the 'unity assumption' using complex audiovisual stimuli. Poster presented at the 19th International Congress on Acoustics (ICA), September 2-7, Madrid, Spain.
- Vatakis, A. (2007). Examining the possibility of an acquired deficit in audiovisual temporal perception for speech and musical events. Poster presented at the 3rd International Congress on Brain and Behavior and 16th Thessaloniki Conference of the South-East European Society for Neurology and Psychiatry, Nov. 28-Dec.2, Thessaloniki, Greece.
- Vatakis, A., & Spence, C. (2007). An assessment of the effect of physical differences in the articulation of consonants and vowels on audiovisual temporal perception. Poster presented at the *One-day meeting for young speech researchers*, University College London, London, UK.
- Vatakis, A., & Spence, C. (2006). The influence of synchronous audiovisual distractors on audiovisual temporal order judgments. Poster presented at the *Annual Autumn School in Cognitive Neuroscience*, Oxford, UK.
- Vatakis, A., & Spence, C. (2005). Audiovisual synchrony perception for complex stimuli: How 'special' is speech? Poster presented at the 6th Annual Meeting of the *International Multisensory Research Forum*, Rovereto, Italy.
- Navarra, J., Vatakis, A., Zampini, M., Soto-Faraco, S., & Spence, C. (2005). Exposure to asynchronous audiovisual speech extends the temporal window for audiovisual integration. Poster presented at the 6th Annual Meeting of the *International Multisensory Research Forum*, Rovereto, Italy.
- Zvyagintsev, M., Menning, H., Swirszcz, K., Vatakis, A., Kourtzi, Z., & Mathiak, K. (2005). Audio-visual perception of self-induced apparent motion. Poster presented at the 8th Perception Meeting, Tuebingen, Germany.

- Strybel, T. Z., & Vatakis, A. (2004). Effect of crossmodal distractors on auditory and visual apparent motion presented in the periphery. Poster presented at *the 45th Annual Meeting of the Psychonomic Society*, Minneapolis, Minnesota.
- Vatakis, A., Krekelberg, B., & Kourtzi, Z. (2004). Processing of global motion from form cues in the human visual cortex. Poster presented at the *Annual Meeting of the Society for Neuroscience*, San Diego, CA.
- Maxfield, L., Juroe, M., Reece, N., Vatakis, A., & Wright, C. (2004). Enhancing prospective memory with enactment and social motivation. Poster presented at the *84th Annual Convention of the Western Psychological Association*, Phoenix, AZ.
- Vatakis, A., & Strybel, T. Z. (2003). Auditory and visual apparent motion in the presence of moving and nonmoving cross modal distractors. Poster presented at *the 44th Annual Meeting of the Psychonomic Society*, Vancouver, B.C.

Clinical Setting Experience:

Employment Specialist, CSU Long Beach, Center for Career Studies, USA, 2002-04

Substance Abuse Counselor, Southern California Alcohol & Drug Programs, Downey, USA, 2002

Career Services Specialist, City of Westminster, USA, 2001-02

Summer Youth Counselor, City of Westminster, USA, 2001

Intern-Certified Domestic Violence Counselor, Su Casa Family Crisis & Support Center, Long Beach, USA, 1997-99

Volunteer Student Assistant, Long Beach Community Hospital, Department of Mental Health, USA, 1995-96

Relevant Work Experience:

Managing the publishing line of Experimental Psychology for the publishing house “Pedio” [www.pediobooks.gr].

Website administrator for the publishing company “Κοινός Τόπος” for the journal “Σύνναψις” (Collective journal for Psychiatry-Psychology-Neuroscience-Philosophy; www.sinapsis.gr).

Graduate Student Marker for Undergraduate Psychology Admissions, University of Oxford, UK, 2004-07

Graduate Assistant, *Visual Search Practicum*, University of Oxford, UK, 2004

Graduate Student Intern, Boeing Corp., Phantom Works, Long Beach, USA, 2003-04

Relevant Certifications, Workshops, Coursework, & Exhibitions:

Coursera Verified Certification:

- 7-week course: What a plant knows (and other things you didn't know about plants), Tel Aviv University, 2014-15 (coursera.org/verify/HXV828DDGW)

Graduate Skills Course, Medical Sciences Division's Skills Training Programme, University of Oxford, UK, January 2007

Funded by: Medical Sciences Division, University of Oxford

Good practice in citation and the avoidance of plagiarism, Certification course

UK GRAD School, Medical Sciences Division's Skills Training Programme, University of Oxford, UK, March 2006

Personal Development for Graduates and Post-docs, 4-day Graduate course

Funded by: Medical Sciences Division, University of Oxford

Interdisciplinary Center for Neural Computation (ICNC), Hebrew University of Jerusalem, Israel, February 2006

Changing your mind about the brain, 2-week Course & Workshop

Funded by: European Union Improving Human Potential Programme

Preparing Future Faculty (PFF) in Psychology Initiative, Association of American Colleges and Universities (AAC&U) & Council of Graduate Schools (CGS), September 2004

Preparing Future Faculty in Psychology, University of New Hampshire, GRAD980 Course

Funded by: American Psychological Association (APA)

Languages:

English – native language; speak fluently and read/write with high proficiency

Greek – native language; speak fluently and read/write with high proficiency

Peer-Reviewing:

Advisory Committee member for the “Archives, The International Journal of Medicine”.

Editorial Board Member for the “The International Journal of Medicine – Greek Pages” (Ελληνικές Σελίδες Ιατρικής).

Peer-reviewing journal articles on an *ad-hoc* basis for the following journals:

Proceedings of the Royal Society B: Biological Sciences, Journal of Cognitive Neuroscience, Perception & Psychophysics, PLoS ONE, Vision Research, Perception, Journal of Speech, Language, and Hearing Research, Experimental Brain Research, Medical Science Monitor, Proceedings of the European Cognitive Sciences 2005-08, Journal of Vision, Brain Research, Attention, Perception, & Psychophysics, Restorative Neurology and Neuroscience, Journal of Experimental Psychology: Human Perception

and Performance, Cognition, Cerebral Cortex, Speech Communication, PLOS Computational Biology, Acta Psychologica.

IT & Other Skills/Experiences:

Certified fMRI scanner operator; Driving simulator experience, Eye-tracker systems, & PC/Mac skills.

European Computer Driving License (ECDL) Certification.

Advanced European Computer Driving License (AECDL) Certification - Advanced Presentations

Programming languages: Presentation, Visual Basic, MATLAB, OpenSesame.

MS Office-Word, Works, Excel, Visio, Power Point, Front Page, Access, Publisher, and Outlook, Smart Draw, BrainVoyager 2000, SPM, SAS, SPSS, MiniTab, 3DS MAX, Graph Pad, EndNote, Neurolucida, VSearch (Mac), I-Web (Mac), I-Maker (Mac), Adobe- Premier 6.0, Audition, After-Effects and Creative Suite, Sony Vegas, PRAAT, Transcriber, Callisto, Anvil, ELAN, Audacity.

Re: Expert Testimony on (i) Community Establishment; (ii) Nexus; and (iii) Support for DotMusic’s Community-Based Application¹ for .MUSIC (Application ID 1-1115-14110)

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

Please accept this letter that indicates that there is substantive and compelling evidence that the DotMusic application convincingly meets the full criteria under Community Priority Evaluation on the following points: (i) the Music Community’s *Establishment* as defined by DotMusic; (2) the matching *Nexus* between the “music” Community and the “music” string (or top-level domain); and (3) that DotMusic possesses documented *Support* from organizations representing a majority of the global Music Community addressed and defined.

Please see my credentials attached hereto that identify my level of expertise and specialized knowledge with respect to the music community’s organization and delineation.

SUMMARY

DotMusic has established the following:

- 1) Its Community definition recognizes the cohesive, symbiotic and overlapping nature of the global Music Community. The definition includes those associated with commercial and non-commercial creation, performance, marketing and distribution of music;
- 2) “Music Community” members have the requisite awareness and recognition of the interdependency, overlapping and cohesive nature of each “organized community of similar nature that relates to music.” These organized and aligned communities are closely united and make “music” as we know it today. It is this self-awareness and interdependence that gives the “Music Community” its strength. With exponential growth of the Internet, mobile and the Domain Name System (DNS), the “Music Community’s” use and reliance on the Internet to create, market and disseminate music-related content, products, services and activities will continue to grow;
- 3) The “Music Community” functions in a regulated sector with global copyright protections – it is clear that the “community,” as defined, implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate a globally-recognized set of standards for

¹ <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1392>

the protection of the “Music Community” member rights with relation to their copyrighted music works around the world;

4) The “Music” Community -- as defined by DotMusic -- has at least one entity dedicated to the community supporting DotMusic’s application. Such documented *Support* includes several “international federation of national communities of a similar nature,” music coalitions and others that are strongly associated with “music,” which represent a majority of the Community with considerable millions of members worldwide.²

5) The *Nexus* of the “music” Community matches the “music” applied-for string because it represents the entire global Music Community – a community that pre-existed 2007 with a size in the considerable millions of constituents. The “Music Community” definition -- which incorporates the strict fundamental attributes of a closely united Community definition that is “organized” and “delineated” -- ensures that all of its constituent members have a requisite awareness of the community as defined, including both commercial and non-commercial stakeholders, to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination.

6) DotMusic has received support from the largest coalition of Music Community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support³ from institutions/organizations representing a majority of the Community as defined and recognized in the DotMusic application.

There is substantive evidence that DotMusic fulfills the *Nexus, Community Establishment and Support* criteria for the “Music” string. The inclusion and representation of every music constituent type is paramount to the articulated purpose of the string. DotMusic and its application’s global Music Community supporters substantiate that every type of music constituent contributes to the function and operation of the music sector within a regulated framework. The symbiotic nature of the Community as defined and structured means that “Music” would not function as it does today without the participation of all music constituent types that interconnect to match the “music” string with the “music” Community definition.

² <http://music.us/supporters>

³ <http://music.us/supporters>

ASSESSMENT OF COMMUNITY DEFINITION, ESTABLISHMENT AND NEXUS

A) *Music Community Definition, Establishment & Community Endorsement*⁴

DotMusic's definition of the "Music Community" as a "strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music" (See Application, 20a) is factually accurate and representative of the "Music Community." Community characteristics include:

i) An Organized, Cohesive, Interdependent Logically-Allied Community:

The "Music Community" definition covers the regulated, interdependent and cohesive nature of the music sector that exists today. "Music Community" members have the requisite awareness and recognition of the interdependent, overlapping and cohesive nature of each "organized community of similar nature that relates to music" that comprises the "Music Community." Without such cohesiveness and interdependency, the defined "Music" Community matching the applied-for string ("Music") would not be able to function in its regulated sector, a "Music" regulated sector that was publicly recognized by both ICANN and the Government Advisory Committee.⁵

As a result, the Music Community as defined is "closely united" (As per the definition of "cohesion" according to Merriam-Webster dictionary⁶) or "united or form a whole" (As per the definition of the word "cohesion" according to Oxford Dictionaries⁷).

The "Music Community" as defined (a "strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music") establishes that:

- (1) There is an awareness and recognition among its members;
- (2) The organized and delineated logical alliance of communities exists; and
- (3) The Community is "closely united" and "interdependent" (i.e. Each "organized community of similar nature that relates to music" which is part of the "logical alliance of communities that relate to music" is not mutually exclusive).

In short, the applied-for string ("Music") matches the name of the "Music" Community as defined by DotMusic's application. DotMusic's "Music Community" definition accurately represents the common definition of the "Music Community," which is confirmed by Wikipedia.

⁴ See <http://music.us/establishment>

⁵ <https://www.icann.org/en/system/files/bm/briefing-materials-2-05feb14-en.pdf>, Pg.3

⁶ <http://www.merriam-webster.com/dictionary/cohesion>

⁷ http://www.oxforddictionaries.com/us/definition/american_english/cohesion

According to Wikipedia:⁸

Music community is defined as a logical alliance of interdependent communities that are related to music, which include commercial participants...and non-commercial participants...and consists of an “ensemble of practices and institutions that make possible and regulate the production, distribution and consumption of music”...UNESCO identifies the music community as a “community of identity” implying common identifiable characteristics and cohesive attributes such as sharing a music culture, norms and subscribing to common ideals related to music...The music community is not defined as much by demographic indicators such as race, gender, and income level, as it is by common values, cohesive norms and interconnected structures to build a community identity. It refers to music-related individuals and organisations in a shared environment with shared understandings and practices, modes of production and distribution. The shared organisation of collective musical activities, identity and community value is created as result of infrastructure and a shared set of common values...Many studies outline the historical, cultural, and spatial significance of the music community, including how its identity is formed through musical practices. The music community shares a cohesive and interconnected structure of artistic expression, with diverse subcultures and socio-economic interactions...subscribing to common ideals. Under such structured context music consumption becomes possible regardless whether the transaction is commercial and non-commercial.⁹

ii) *An Aware, Pre-Existing and Recognized Community of Considerable Millions Worldwide:*

DotMusic’s definition of the Community covers all Community members associated with the string, each with a requisite awareness of the Community that can be validated through their natural association with a particular music-related community that they clearly identify with. According to DotMusic, all Music Community members must identify their music-related community in order to demonstrate their requisite awareness of the defined Community as part of the .MUSIC registration and validation process.

⁸ Wikipedia is ranked 6th among the ten most popular websites (Alexa, Retrieved March 23, 2015 from <http://www.alexacom/siteinfo/wikipedia.org>) and constitutes the Internet's largest, most frequently updated and popular general reference work (See OECD, OECD Internet Economy Outlook 2012, OECD Publishing, http://www.oecd-ilibrary.org/science-and-technology/oecd-internet-economy-outlook-2012_9789264086463-en,Pg.172) that compares favorably to the accuracy of other encyclopedias (such as the Britannica) according to a 2012 study conducted in partnership with Oxford University (See <http://blog.wikimedia.org/2012/08/02/seven-years-after-nature-pilot-study-compares-wikipedia-favorably-to-other-encyclopedias-in-three-languages>).

⁹ Music Community. In *Wikipedia*. Retrieved March 23, 2015, from https://en.wikipedia.org/wiki/Music_community

According to DotMusic, the Music Community’s geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents (Application Answer to Question 20a).

According to DotMusic, “registrants will be verified using Community-organized, unified “criteria taken from holistic perspective with due regard of Community particularities” that “invoke a formal membership (Application Answer to Question 20a).” The defined Community represents all music-related entities with a clear and straightforward membership with the Community involved in the legal production, performance, promotion, and distribution of music worldwide. According to DotMusic, the Music Community members must have an active, non-tangential relationship with the applied-for string “music” and also have the requisite awareness of the music-related community that they are a part of by specifically identifying it as part of the registration and validation process (i.e. upon successful registration and validation, each community member will be given a unique community identification number that will automatically associate them with their identified community and the “music” string).

DotMusic’s Community definition matches the applied-for string because it allows both commercial and non-commercial stakeholders to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination/exclusion. Given the regulated sector of the community, it is clear that the “Music Community” as defined implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate cohesive and globally-recognized set of standards for the protection of the music community members’ rights with relation to their copyrighted music works around the world.¹⁰

The Berne Convention for the Protection of Literary and Artistic Works¹¹ provides that each of the 168 contracting parties¹² (representing an overwhelming majority of the world’s population) provides automatic protection for music works first published in other countries of the Berne union and for unpublished music works whose authors are citizens of or resident in such other countries.¹³ This means that if a Music Community member’s copyright rights are violated in any other signatory country’s jurisdiction, then the music community member will have the music copyright rights given by that country. Music Community members are clearly aware of the collective Community’s rights, which could not be made possible without these cohesive and globally-recognized set of standards. If such standards were not coherent or enforced then music would not be able to exist in its current form and the industry component of the Music Community sector would not exist. As such, the Community’s *Establishment* and definition is “cohesive” and hence cannot be construed since the Community is a logical alliance of music

¹⁰ http://www.rightsdirect.com/content/rd/en/toolbar/copyright_education/International_Copyright_Basics.html

¹¹ http://www.wipo.int/treaties/en/text.jsp?file_id=283698

¹² http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=15

¹³ <http://www.britannica.com/EBchecked/topic/62482/Berne-Convention>

communities that establish a clearly delineated and organized Community structure that is “closely united” and functions as a “whole”

Further evidence to substantiate the cohesive, symbiotic and overlapping nature of the Community, includes other globally-recognized standards and classification systems, which identify who the individual songwriters, publishers and rights holders are and which songs they are associated with so that Community members are appropriately compensated, regardless of whether the constituent is a commercial, non-commercial or amateur entity. The “music” string is commonly used in classification systems such as ISMN,¹⁴ ISRC,¹⁵ ISWC,¹⁶ ISNI.¹⁷ (Application Answer to Question 20a). For example, if a music entity would like to distribute their music, either commercially or for free, then an ISRC can be assigned to globally identify any specific music work. An ISRC, which facilitates efficient music discovery and community member payment, is constructed from 12 characters representing country, registrant, year of registration and designation (i.e. the serial number assigned by the registrant). With respect to domains, an equivalent system that relates to identifying a specific domain’s registrant and other relevant information pertaining to the domain is WHOIS. Domain registrants are required by ICANN “to provide accurate WHOIS contact data” or else their domain “registration may be suspended or even cancelled”.¹⁸

Without such Music Community “cohesion” and standardized systems functioning in its regulated sector, the Music Community would not be able to create, market and distribute their music. By the same token, fans would not be able to identify the music they are listening to with a specific music artist, regardless of whether the listening activity or behavior is commercial or non-commercial in nature. The socio-economic structure that characterizes “music” as commonly-known today would be non-existent without these organized and delineated elements that commonly define the Community.

¹⁴ The International Standard Music Number (ISMN) is a unique number for the identification of all notated music publications from all over the world. The ISMN is an ISO certified global standard number (ISO 10957:2009). See <http://www.ismn-international.org/whatis.html> and

http://www.iso.org/iso/home/store/catalogue_ics/catalogue_detail_ics.htm?csnumber=43173

¹⁵ The ISRC (International Standard Recording Code) is the international identification system for sound recordings and music video recordings. The ISRC is an ISO certified global standard number (ISO 3901:2001) and is managed by the IFPI. See <http://isrc.ifpi.org>, <https://www.usisrc.org/about/index.html> and http://www.iso.org/iso/catalogue_detail?csnumber=23401

¹⁶ The ISWC (International Standard Musical Work Code) is a unique, permanent and internationally recognized reference number for the identification of musical works. The ISWC has been approved by ISO (International Organization for Standardisation) as a global standard (ISO 15707:2001) and is managed by CISAC. See <http://www.iswc.org/en/faq.html> and http://www.iso.org/iso/catalogue_detail?csnumber=28780

¹⁷ The International Standard Name Identifier (ISNI) is the ISO certified global standard number (ISO 27729) for identifying the millions of contributors to creative works and those active in their distribution. ISNI holds public records of over 8 million identities and 490,000 organizations. See <http://www.isni.org/> and http://www.iso.org/iso/catalogue_detail?csnumber=44292

¹⁸ <https://whois.icann.org/en/about-whois> and <https://www.icann.org/resources/pages/faqs-f0-2012-02-25-en>

iii) International Federations and Organizations Dedicated to Community Functions:

According to ICANN’s Applicant Guidebook (“AGB”)¹⁹: *“With respect to “Delineation” and “Extension,” it should be noted that a community can consist of...a logical alliance of communities (for example, an international federation of national communities of a similar nature... viable as such, provided the requisite awareness and recognition of the community is at hand among the members.”* (AGB, 4-12). The community as defined in the DotMusic application has at least one entity mainly dedicated to the community which has supported DotMusic, which include several “international federation of national communities of a similar nature” relating to music, music coalitions and other relevant and non-negligible music organizations.

One of these entities include the only international federation of national communities relating to government culture agencies and arts councils, which has an integral association with music globally: the International Federation of Arts Councils and Culture Agencies (IFACCA).

IFACCA is the only international federation that represents government culture agencies and arts councils globally. These national communities are governmental institutions that play a pivotal role with respect to music.²⁰ IFACCA’s members cover the majority of music entities globally, regardless of whether they are commercial, non-commercial or amateurs. Government ministry of culture and council agencies related to music cover a majority of the overall community with respect to headcount and geographic reach. The “Size” covered reaches over a hundred million music entities i.e. “considerable size with millions of constituents” per Application Answer to Question 20a.

The string “music” falls under the jurisdiction of each country’s Ministry of Culture governmental agency or arts/music council (emphasis added). The degree of power and influence of government ministry of culture and council agencies with respect to music surpasses any organization type since these agencies (i) provide the majority of funding for music-related activities; (ii) regulate copyright law; and (iii) encompass all the music entities that fall under their country, regardless whether these entities are commercial, non-commercial or amateurs. IFACCA is globally recognized by its strategic partners, such as UNESCO, a United Nations agency representing 195 member states and the European Commission.²¹ The UNESCO strategic partnership²² is relevant, especially since UNESCO founded the International Music Council (the “IMC”) in 1949, which represents over 200 million music constituents from over 150 countries and over 1000 organizations globally.²³

¹⁹ <https://newgtlds.icann.org/en/applicants/agb/guidebook-full-11jan12-en.pdf>

²⁰ http://www.ifacca.org/membership/current_members/

²¹ http://www.ifacca.org/strategic_partners/

²² http://www.ifacca.org/strategic_partners/

²³ <http://www.imc-cim.org/about-imc-separator/who-we-are.html>

Government activities in the clearly delineated and organized “Music Community” include setting statutory royalty rates. For example, in the United States, mechanical royalties are based on a “statutory rate” set by the U.S. Congress. This rate is increased to follow changes in the economy, usually based on the Consumer Price Index. Currently, the mechanical statutory rate is \$0.091 for songs five minutes or less in length or \$.0175 per minute for songs that are over five minutes long.²⁴

Ministries of culture and arts councils (that comprise IFACCA’s membership) support musicians, musical performances, independent music artists, non-commercial musical expression and education in their respective countries. The 165 ministries of culture, arts councils and affiliates that comprise IFACCA’s membership support the “performing arts” and music specifically. Without the financial and logistical support of arts councils and the ministries of culture, the music community would be adversely affected, and in some countries, may not exist in any appreciable manner. For example, the Ministry of Culture 2011 budget for the small country state of Cyprus for culture funding was €34,876,522 with critical support of music activities.²⁵ Other small government Ministries of Culture, such as Albania,²⁶ or government Ministries of Culture and Arts Councils from countries with larger populations, such as India,²⁷ all provide critical support and substantial advocacy for music. Other examples include government institutions collaborating and advocating music through their funded country-based pavilion initiatives at Midem, the world’s largest music conference.²⁸

Government ministries and arts councils provide critical support for the Music Community, including commercial music organizations. By way of example, government ministries’ and arts councils’ substantial connection to and support of “music” is noted in the reports of funding and support for music. Some examples to showcase the degree of power of the IFACCA’s membership towards the string and global and national music are music investment and music funding (Annual reports by governments and councils):

- New Zealand Ministry of Culture has funded significant music projects. Some include the REAL New Zealand Music Tour (\$415,000), the New Zealand String Quartet (\$150,000) and New Zealand Music Commission: (\$1,378,000).²⁹
- The Australian Government/Council For The Arts invested \$51.2 million for the nation’s orchestras; \$21.6 million for opera; \$10.8 million for other music artists and

²⁴ U.S. Copyright Office, <http://www.copyright.gov/carp/m200a.html>

²⁵ 2011 Annual Report for Cyprus Ministry of Culture, Section 1.2 “Music”

(http://www.moec.gov.cy/en/annual_reports/annual_report_2011_en.pdf). Activities include Music Performances in Cyprus (1.2.1) and Abroad (1.2.2), Subsidization of Paphos Aphrodite Festival (1.2.3), Music Publications (1.2.4), Subsidization and Purchases of Digital Records (1.2.5), Promotion for Cypriot musical creativity abroad (1.2.6), Cyprus Symphony Orchestra Foundation (1.2.7), Music Information Centre (1.2.8), Developing Music Education (1.2.9), Organising of the 1st Musicological Symposium (1.2.10) and Musical Festivities for the European Volunteerism Year (1.2.11)

²⁶ http://www.culturalpolicies.net/down/albania_012011.pdf

²⁷ 2010-11 Annual Report from India Ministry of Culture, [http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011\(Eng\).pdf](http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011(Eng).pdf)

²⁸ <http://my.midem.com/en/contact-us/pavilion-representatives/>

²⁹ 2011 Annual Report from New Zealand Ministry of Culture:

[http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20\(D-0448383\).PDF](http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20(D-0448383).PDF)

organizations; \$13.1 million for multi-platform artists and organizations; and \$4 million in miscellaneous funding, including sector building and audience development initiatives and programs.³⁰

- Canada Council for the Arts is Canada’s national, arts funding agency investing \$28 million in its Canada Council Musical Instrument Bank (Page 16) and \$28,156,000 in Music Arts Programs (Page 66).³¹ The Government of Canada also renewed its annual investment of \$27.6 million over five years in the Canada Music Fund.³²
- The United Kingdom Department for Culture and Education (DfE) will fund music education at significant levels: £77 million, £65 million and £60 million will be available in the three years from April 2012.³³
- The United States National Endowment of the Arts has awarded more than \$4 billion to support the arts since its inception³⁴ and has a strong focus on music as outlined in its Strategic Plan³⁵ with Congress requested to provide \$154,465,000 for fiscal year 2014.³⁶
- The National Arts Council of South Africa invested 2,536,131 ZAR in Music and 9,995,000 ZAR in Orchestras and has focused strongly on the “Strengthening of live indigenous music and advocating the revival of the live music circuit in South Africa”³⁷
- The Singapore Arts Council will fund \$10.2 million in the arts under its 2013 Grants Framework, including the Ding Yi Music Company and Siong Leng Musical Association.³⁸
- In 2011, the support for artistic activities by the Arts Council of Finland was €32.4 million of which €4,921,850 was awarded to music.³⁹

Each of IFACCA’s members has a clear association with, and mandate to support the music arts in their countries. In most countries, their ministry of culture/arts council is the largest funder and marketing supporter of the music arts.

³⁰ 2011 Annual Report for the Australia Council for the Arts, http://www.australiacouncil.gov.au/data/assets/pdf_file/0016/142351/Australia-Council-Annual-Report-201112.pdf, Page 28

³¹ 2011 Annual Report for Canada Council for the Arts, http://www.canadacouncil.ca/NR/rdoonlyres/6F7549BB-F4E5-4B8B-95F4-1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf

³² <http://www.pch.gc.ca/eng/1294862453819/1294862453821>

³³ Department for Culture, The Importance of Music, A National Plan for Music Education, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/180973/DFE-00086-2011.pdf, Page 4, 2011

³⁴ 2011 Annual report for the National Endowment of the Arts, <http://www.nea.gov/about/11Annual/2011-NEA-Annual-Report.pdf>, Page 2

³⁵ NEA Strategic Plan 2012-2016, www.arts.gov/about/Budget/NEAStrategicPlan2012-2016.pdf

³⁶ http://www.ifacca.org/national_agency_news/2013/04/10/us-president-requests-154465000-neh-2014/

³⁷ 2010-2011 Annual Report for the National Arts Council South Africa, National Arts Council South Africa, <http://www.nac.org.za/media/publications/AR%2010-11%20NAC.PDF/download>, Page 11. Also Mmino, the South African – Norwegian Education Music Programme, solely funds music projects funding a total of 294 projects. Thirteen projects were allocated funding for a total of R1,680,600 of which R1,381,000 went towards music educational and R299,600 to exchange projects (Page 10)

³⁸ Singapore Arts Council, <http://www.nac.gov.sg/media-centre/news-releases/news-detail?id=c2db15e2-c319-40ec-939c-d58735d0a91c>

³⁹ <http://www.taiteenkeskustoimikunta.fi/documents/10162/31704/TY+tilastotiedote+1+12+.pdf>, Page 1 and Page

Another clear example of an “entity dedicated to the community” with members that cover hundreds of millions of music constituents with formal boundaries is A2IM, the American Association of Independent Music. A2IM has two types of members: U.S independent Label members and Associate members. A2IM membership for Labels and Associates is invoked formally through an application and if accepted would require annual membership dues.⁴⁰

The reach of A2IM Associate⁴¹ membership covers hundreds of millions of entities (i.e. the reach of A2IM’s total membership “geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents – See Application Answer to Question 20a).

Organized and strictly delineated communities related to music that are A2IM members include:

- **Apple iTunes**⁴² – iTunes accounts for 63% of global digital music market⁴³ - a majority – with a registered community of 800 million registered members⁴⁴ available in 119 countries who abide to strict terms of service and boundaries⁴⁵ and have downloaded over 25 billion songs⁴⁶ from iTunes’ catalog of over 43 million songs⁴⁷ covering a global music community, regardless of genre or whether the community entities are amateur, professional, commercial or non-commercial. To add music to iTunes, all music artists must have a formal membership with iTunes via an Apple ID registration, which includes a current credit card on file.⁴⁸
- **Pandora**⁴⁹ – Pandora is the world’s largest streaming music radio with a community of over 250 million registered members.⁵⁰
- **Spotify**⁵¹ – Spotify is the world’s largest music streaming community with over 50 million active registered members in 58 countries and over 30 million songs. The music community uploads 20,000 songs every day.⁵²
- **Vevo**⁵³ – Vevo is the world’s leading all-premium music video community and platform with over 8 billion monthly views globally.⁵⁴

⁴⁰ <http://a2im.org/about-joining/>

⁴¹ <http://a2im.org/groups/tag/associate+members/>

⁴² <http://a2im.org/groups/itunes>

⁴³ <http://appleinsider.com/articles/13/04/16/apples-itunes-rules-digital-music-market-with-63-share>

⁴⁴ <http://www.npr.org/blogs/therecord/2015/01/06/375173595/with-downloads-in-decline-can-itunes-adapt>

⁴⁵ <http://www.apple.com/legal/internet-services/itunes/ww/index.html>

⁴⁶ <http://www.apple.com/pr/library/2013/02/06iTunes-Store-Sets-New-Record-with-25-Billion-Songs-Sold.html>

⁴⁷ <https://www.apple.com/itunes/features/>

⁴⁸ <https://www.apple.com/itunes/working-itunes/sell-content/music-faq.html>

⁴⁹ <http://a2im.org/groups/pandora>

⁵⁰ <http://www.cnet.com/news/like-a-rolling-milestone-pandora-hits-250m-registered-users/> and <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MTkxNTM1fENoaWxkSUQ9LTF8VHlwZT0z&t=1>, Pg.9

⁵¹ <http://a2im.org/groups/spotify>

⁵² <https://press.spotify.com/us/information/>

⁵³ <http://a2im.org/groups/vevo/>

- **Youtube**⁵⁵ – Youtube is the world’s largest music video streaming community with millions of music creators -- amateur, professional, commercial or non-commercial -- and over 1 billion registered members covering all regions globally. 6 billion hours of video is watched every month on Youtube,⁵⁶ of which 38.4% is music-related.⁵⁷
- **ReverbNation**⁵⁸ – ReverbNation⁵⁹ is one of the world’s largest music community and a leading music distributor with over 3.87 million musicians, venues labels and industry professionals covering every country globally. The ReverbNation community grows by over 50,000 artists, bands, labels and industry professionals monthly.
- **BMG**⁶⁰ – BMG is focused on the management of music publishing and recording rights. BMG has an international presence and represents over 2.5 million music rights globally.⁶¹

A2IM also includes members that are associated with global government agencies which exclusively represent substantial music economies and music members, such as France (BureauExport⁶²), China (China Audio Video Association⁶³) and Germany (Initiative Musik).⁶⁴ A2IM also has Affiliate⁶⁵ associations within the global music community. These include Affiliates such as MusicFirst,⁶⁶ the Copyright Alliance,⁶⁷ the Worldwide Independent Network (WIN)⁶⁸ and Merlin.⁶⁹

A2IM also represents a recognized Music Coalition representing the interests of the Global Independent Music Community.⁷⁰ The A2IM Coalition includes Merlin, a global rights agency for the independent label sector, representing over 20,000 labels from 39 countries, Worldwide Independent Network (representing label creators in over 20 countries), Association of Independent Music (representing largest and most respected labels in the world), and IMPALA (Independent Music Companies Association on behalf of over 4,000 independent music companies and national associations across Europe, representing 99% of music actors in Europe which are micro, small and medium sized enterprises.

⁵⁴ <http://www.vevo.com/c/EN/US/about>

⁵⁵ <http://a2im.org/groups/youtube/>

⁵⁶ <https://www.youtube.com/yt/press/statistics.html>

⁵⁷ http://www.researchandmarkets.com/reports/2092499/internet_video_2011_2014_view_share_site_and

⁵⁸ <http://a2im.org/groups/reverb-nation/>

⁵⁹ <http://www.reverbnation.com/about>

⁶⁰ <http://a2im.org/groups/bmg-rights/>

⁶¹ <http://www.bmg.com/category/about-us/history/>

⁶² <http://a2im.org/groups/french-music-export-office>

⁶³ <http://a2im.org/groups/china-audio-video-association-cava>

⁶⁴ <http://a2im.org/groups/initiative-musik-gmbh>

⁶⁵ <http://a2im.org/groups/tag/associate+members/>

⁶⁶ <http://musicfirstcoalition.org/coalition>, The musicFIRST Coalition, with founding members A2IM, RIAA, and Recording Academy represents musicians, artists, managers, music businesses, and performance right advocates.

⁶⁷ <http://www.copyrightalliance.org/members>

⁶⁸ <http://www.winformusic.org>

⁶⁹ <http://www.merlinnetwork.org>

⁷⁰ <https://www.icann.org/en/system/files/correspondence/bengloff-to-chehade-et-al-20aug14-en.pdf> and <https://www.icann.org/en/system/files/correspondence/bengloff-to-crocker-et-al-07mar15-en.pdf>

Cumulatively, A2IM's Label and Associate Membership, A2IM's Affiliates and the A2IM's Global Independent Music Community Coalition, covers a majority of the global music community. Its cumulative membership is in the hundreds of millions of entities with formal boundaries belonging to strictly organized and delineated communities related to music as per the Community Definition and Size (See Application answer to Question 20a).

Another global Music Community Coalition led by the RIAA "on behalf of over 15 national and international trade associations" also expressed its support for .MUSIC to be under a "community" application model, including encouraging statements in support of DotMusic's policies that stated that the coalition "was encouraged to see" that DotMusic "included several measures to deter and address copyright infringement within that TLD." The "coalition members represent the people that write, sing, record, manufacture, distribute and/or license over 80% of the world's music"⁷¹ – a majority of global music.⁷²

Collectively, the DotMusic application received support from the largest coalition of music community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support⁷³ from institutions/organizations representing a majority of the Community addressed. Music -- as commonly-known by the general public and experienced today -- would not be possible without these supporting, non-negligible and relevant organizations that have endorsed DotMusic.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Community Establishment* and *Community Endorsement* from the majority of the global Music Community as defined.

B) Nexus⁷⁴

According to the Applicant Guidebook ("AGB"), to receive the maximum score for Nexus, the applied-for string -- "music" -- must match the name of the community or be a well-known short-form or abbreviation of the community name.

The *Nexus* of the "Music Community" entirely matches the applied-for "music" string because it represents the entire global Music Community as commonly-known and perceived by the general public. This definition allows for all constituents with a requisite awareness of the Community

⁷¹ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.1

⁷² <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.3, Appendix A

⁷³ <http://music.us/supporters>

⁷⁴ See <http://music.us/nexus>

defined to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination. The definition of the Community requires that members have an active, non-tangential relationship with the applied-for string and the requisite awareness of the music community they identify with as part of the registration process. It is clear that the general public will directly associate and equate the string with the Community as defined by DotMusic. There is no possibility of overreaching beyond the definition or allowing unrelated non-music entities to be included as part of the Community.

Community members may register a .MUSIC by either:

- 1) Identifying that they belong to a Music Community Member Organization (“MCMO”); or
- 2) Identifying the community they belong to, which is consistent with the definition of the Community: “the strictly delineated and organized logical alliance of communities of similar nature related to music.”

All Community members are aware of and recognize their inclusion in the defined Community by identifying which clearly defined community they belong to and have an active participation in. The *nexus* of the applied-for string ensures inclusion of the entire global community that the string represents while excluding unrelated-entities not associated with the string. This way there is a clear match and alignment between the “music” sting and the Community defined.

While the exact size of the global Music Community as defined is unknown (there is no empirical evidence providing an exact, finite number because amateur entities are also included in the Community’s definition), it is in the considerable millions as explicitly stated in the DotMusic Application. DotMusic’s definition of the Community and mutually-inclusive Registration Policies ensure that eligible members are only music-related and associated with the string. This is because the string identifies all constituents involved in music. Music-only participation optimizes the relevancy of .MUSIC domains to the string and entirely matches the *nexus* between the string and Community defined. According to DotMusic, the Community *definition, eligibility criteria and content and use* requirements ensure that peripheral industries and entities not related to music are excluded so that the string and the defined Community matches and aligns in a consistent manner consistent with DotMusic’s community-based purpose i.e. only entities with music-related activities are able to register .MUSIC domains.

Membership aligns with the *nexus* of the Community and the string, which is explicitly relevant to music. The string as defined in the application demonstrates uniqueness because it has no other significant meaning beyond identifying the community described in the application. According to DotMusic’s application, any tangential or implicit association with the *nexus* of the Community and the string is not regarded as a delineated membership since it would be considered unclear, dispersed or unbound. Such unclear, dispersed or unbound tangential

relationships with the defined “music” Community and applied-for “music” string would not constitute a qualifying Community membership and would be ineligible for registration.

The inclusion of every music constituent type is paramount to the purpose of the string. Every type of music constituent critically contributes to the function and operation of the music sector within a regulated framework given the symbiotic overlapping nature of the Community as defined and structured. Music would not function as it does today without the participation of all music constituent types which cumulatively match the string with the Community definition.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Nexus*.

Respectfully Submitted,



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EMPLOYMENT

September 2014 - **INSEAD** Fontainebleau, France
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EDUCATION

2008 – Present **The University of Chicago Booth School of Business** Chicago, IL
Joint Ph.D in Business (Economic Sociology) and Sociology (expected 2014)
M.A. in Sociology (2013)
M.B.A. (2014)

1998-2002 **Harvard University** Cambridge, MA
B.A., *cum laude*, in Psychology
Language Citation in Spanish

2000 **Universidad San Pablo, CEU** Madrid, Spain
Spanish language and culture immersion

RESEARCH INTERESTS

Economic sociology, social networks, production of culture, diffusion, status, authenticity, music and the music industry, social media, higher education

PAPERS

Published, In-press

Askin, Noah, Bothner, Matthew S., & Lee, Wonjae. (Forthcoming). "Emergence of Stratification in Small Groups", in *Emerging Trends in the Social and Behavioral Sciences* (eds.) Robert Scott and Stephen Kosslyn, Hoboken, NJ: John Wiley and Sons

Working Papers

"Status-Aspirational Pricing: The "Chivas Regal" Strategy in U.S. Higher Education, 2006-2012" (with Matthew S. Bothner). Revise and resubmit at *Administrative Science Quarterly*.

"Peer Effects in Tournaments for Status: Evidence from Rank Dynamics of U.S. Colleges and Universities" (with Matthew S. Bothner). Under review at *American Journal of Sociology*.

"Cultural Networks And Consumption Dynamics: The Billboard Hot 100 Charts" (Preparing for submission)

Non-Refereed Publications

Askin, Noah and Greg Liegel. 2012. "A (Brief) Look at Economic Sociology Across Academic Settings." *Accounts: Economic Sociology Newsletter*. Spring, 11(2).

Research In Progress, Ongoing

"The (Tangled) Web of Group Affiliations: The Impact of Minority Group Presence on Perceptions of Organizational Status" (In preparation)

"The impact of status on student gender distributions in US higher education" (with Matthew S. Bothner)

HONORS, FELLOWSHIPS

- 2012-13 Oscar Mayer Fellowship, Booth School of Business, University of Chicago
2011-12 Katherine Dusak Miller Fellowship, Booth School of Business, University of Chicago
2009-13 Teaching assistant top evaluation, Executive MBA Program (Chicago, London and Singapore Campuses)
2009 Entrepreneurial Intern Fellowship, Polsky Center for Entrepreneurship
2002 Honors (*cum laude*) in Psychology, Harvard University

INVITED TALKS & CONFERENCE PRESENTATIONS

- Upco. International Conference on Social Informatics (SocInfo2014), Barcelona, Spain
Using Big Data to Understand Consumption Dynamics in Popular Music: Evidence from the Billboard Hot 100
- 2014 European School of Management and Technology (ESMT), Berlin, Germany
The (Tangled) Web of Group Affiliations: The Impact of Minority Group Presence on Perceptions of Organizational Status
- 2014 Academy of Management, Philadelphia, PA
State of the Arts: New Frontiers in the Analysis of Culture and Cultural Organizations (organizer)
Using Big Data to Explain Cultural Innovation: Evidence from Popular Music (presenter)
- 2014 Knowledge Lab at the University of Chicago, Chicago, IL
A New Approach to Studying Production and Consumption Dynamics in Popular Music
- 2013 Academy of Management, Orlando, FL
Status and Self-Presentational Pricing: The “Chivas Regal” Strategy in U.S. Higher Education, 2006-2012
- 2013 European Group for Organizational Studies Colloquium, Montréal, QC
Status and self-presentational pricing: How status affects tuition of U.S. colleges and universities, 2006-2012
- 2013 University of Chicago Social Theory & Evidence Workshop, Chicago, IL
Status and Self-Presentational Pricing: The “Chivas Regal” Strategy in U.S. Higher Education, 2006-2012
- 2012 American Sociology Association Annual Conference, Denver, CO
Peer effects in tournaments for status: Evidence from dynamics in ranks of U.S. colleges and universities
- 2012 Academy of Management, Boston, MA
Status-based Competition and Tournaments for Prestige (Symposium)
- 2012 International Network of Analytical Sociologists, New York, NY
Peer effects in tournaments for prestige: Evidence from dynamics in ranks of U.S. colleges and universities

ACADEMIC AFFILIATIONS

- 2013 – Present Member: European Group on Organizational Studies
2009 – Present Member: American Sociological Association
2010 – Present Member: Academy of Management

SERVICE

- Book Manuscript Review Board for *American Journal of Sociology*
Ad Hoc Reviewer for *American Journal of Sociology*, *Academy of Management Journal*
Reviewer for Academy of Management Annual Conference

UNIVERSITY SERVICE AND OTHER PROFESSIONAL EXPERIENCE

Teaching Assistant

- 2011-13 “Strategic Leadership” with Matthew Bothner. University of Chicago Booth School of Business, London and Singapore Campuses, EMBA Program
- 2012-13 “Designing Strategy for the Global Firm” with Ram Shivakumar. University of Chicago Booth School of Business, EMBA Program
- 2009-14 “Competitive Strategy” with Ram Shivakumar. University of Chicago Booth School of Business, FEMBA, MBA and EMBA Programs
- 2009 “Managing in Organizations” with Nick Epley. University of Chicago Booth School of Business.

Professional Experience

- 2005-07 Regional Manager and Junior Partner, Revolution Prep. Santa Monica, CA & Boston, MA
- 2003-05 Consultant, The Monitor Group. Santa Monica, CA

ADDITIONAL INTERESTS

Spanish language (conversational), international travel, acoustic guitar and piano, live music, distance running, triathlons

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Re: Expert Testimony on (i) Community Establishment; (ii) Nexus; and (iii) Support for DotMusic’s Community-Based Application¹ for .MUSIC (Application ID 1-1115-14110)

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

Please accept this letter that indicates that there is substantive and compelling evidence that the DotMusic application convincingly meets the full criteria under Community Priority Evaluation on the following points: (i) the Music Community’s *Establishment* as defined by DotMusic; (2) the matching *Nexus* between the “music” Community and the “music” string (or top-level domain); and (3) that DotMusic possesses documented *Support* from organizations representing a majority of the global Music Community addressed and defined.

Please see my credentials attached hereto that identify my level of expertise and specialized knowledge with respect to the music community’s organization and delineation.

SUMMARY

DotMusic has established the following:

- 1) Its Community definition recognizes the cohesive, symbiotic and overlapping nature of the global Music Community. The definition includes those associated with commercial and non-commercial creation, performance, marketing and distribution of music;
- 2) “Music Community” members have the requisite awareness and recognition of the interdependency, overlapping and cohesive nature of each “organized community of similar nature that relates to music.” These organized and aligned communities are closely united and make “music” as we know it today. It is this self-awareness and interdependence that gives the “Music Community” its strength. With exponential growth of the Internet, mobile and the Domain Name System (DNS), the “Music Community’s” use and reliance on the Internet to create, market and disseminate music-related content, products, services and activities will continue to grow;
- 3) The “Music Community” functions in a regulated sector with global copyright protections – it is clear that the “community,” as defined, implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate a globally-recognized set of standards for

¹ <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1392>

the protection of the “Music Community” member rights with relation to their copyrighted music works around the world;

4) The “Music” Community -- as defined by DotMusic -- has at least one entity dedicated to the community supporting DotMusic’s application. Such documented *Support* includes several “international federation of national communities of a similar nature,” music coalitions and others that are strongly associated with “music,” which represent a majority of the Community with considerable millions of members worldwide.²

5) The *Nexus* of the “music” Community matches the “music” applied-for string because it represents the entire global Music Community – a community that pre-existed 2007 with a size in the considerable millions of constituents. The “Music Community” definition -- which incorporates the strict fundamental attributes of a closely united Community definition that is “organized” and “delineated” -- ensures that all of its constituent members have a requisite awareness of the community as defined, including both commercial and non-commercial stakeholders, to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination.

6) DotMusic has received support from the largest coalition of Music Community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support³ from institutions/organizations representing a majority of the Community as defined and recognized in the DotMusic application.

There is substantive evidence that DotMusic fulfills the *Nexus, Community Establishment and Support* criteria for the “Music” string. The inclusion and representation of every music constituent type is paramount to the articulated purpose of the string. DotMusic and its application’s global Music Community supporters substantiate that every type of music constituent contributes to the function and operation of the music sector within a regulated framework. The symbiotic nature of the Community as defined and structured means that “Music” would not function as it does today without the participation of all music constituent types that interconnect to match the “music” string with the “music” Community definition.

² <http://music.us/supporters>

³ <http://music.us/supporters>

ASSESSMENT OF COMMUNITY DEFINITION, ESTABLISHMENT AND NEXUS

A) *Music Community Definition, Establishment & Community Endorsement*⁴

DotMusic's definition of the "Music Community" as a "strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music" (See Application, 20a) is factually accurate and representative of the "Music Community." Community characteristics include:

i) An Organized, Cohesive, Interdependent Logically-Allied Community:

The "Music Community" definition covers the regulated, interdependent and cohesive nature of the music sector that exists today. "Music Community" members have the requisite awareness and recognition of the interdependent, overlapping and cohesive nature of each "organized community of similar nature that relates to music" that comprises the "Music Community." Without such cohesiveness and interdependency, the defined "Music" Community matching the applied-for string ("Music") would not be able to function in its regulated sector, a "Music" regulated sector that was publicly recognized by both ICANN and the Government Advisory Committee.⁵

As a result, the Music Community as defined is "closely united" (As per the definition of "cohesion" according to Merriam-Webster dictionary⁶) or "united or form a whole" (As per the definition of the word "cohesion" according to Oxford Dictionaries⁷).

The "Music Community" as defined (a "strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music") establishes that:

- (1) There is an awareness and recognition among its members;
- (2) The organized and delineated logical alliance of communities exists; and
- (3) The Community is "closely united" and "interdependent" (i.e. Each "organized community of similar nature that relates to music" which is part of the "logical alliance of communities that relate to music" is not mutually exclusive).

In short, the applied-for string ("Music") matches the name of the "Music" Community as defined by DotMusic's application. DotMusic's "Music Community" definition accurately represents the common definition of the "Music Community," which is confirmed by Wikipedia.

⁴ See <http://music.us/establishment>

⁵ <https://www.icann.org/en/system/files/bm/briefing-materials-2-05feb14-en.pdf>, Pg.3

⁶ <http://www.merriam-webster.com/dictionary/cohesion>

⁷ http://www.oxforddictionaries.com/us/definition/american_english/cohesion

According to Wikipedia:⁸

Music community is defined as a logical alliance of interdependent communities that are related to music, which include commercial participants...and non-commercial participants...and consists of an “ensemble of practices and institutions that make possible and regulate the production, distribution and consumption of music”...UNESCO identifies the music community as a “community of identity” implying common identifiable characteristics and cohesive attributes such as sharing a music culture, norms and subscribing to common ideals related to music...The music community is not defined as much by demographic indicators such as race, gender, and income level, as it is by common values, cohesive norms and interconnected structures to build a community identity. It refers to music-related individuals and organisations in a shared environment with shared understandings and practices, modes of production and distribution. The shared organisation of collective musical activities, identity and community value is created as result of infrastructure and a shared set of common values...Many studies outline the historical, cultural, and spatial significance of the music community, including how its identity is formed through musical practices. The music community shares a cohesive and interconnected structure of artistic expression, with diverse subcultures and socio-economic interactions...subscribing to common ideals. Under such structured context music consumption becomes possible regardless whether the transaction is commercial and non-commercial.⁹

ii) *An Aware, Pre-Existing and Recognized Community of Considerable Millions Worldwide:*

DotMusic’s definition of the Community covers all Community members associated with the string, each with a requisite awareness of the Community that can be validated through their natural association with a particular music-related community that they clearly identify with. According to DotMusic, all Music Community members must identify their music-related community in order to demonstrate their requisite awareness of the defined Community as part of the .MUSIC registration and validation process.

⁸ Wikipedia is ranked 6th among the ten most popular websites (Alexa, Retrieved March 23, 2015 from <http://www.alexacom/siteinfo/wikipedia.org>) and constitutes the Internet's largest, most frequently updated and popular general reference work (See OECD, OECD Internet Economy Outlook 2012, OECD Publishing, http://www.oecd-ilibrary.org/science-and-technology/oecd-internet-economy-outlook-2012_9789264086463-en,Pg.172) that compares favorably to the accuracy of other encyclopedias (such as the Britannica) according to a 2012 study conducted in partnership with Oxford University (See <http://blog.wikimedia.org/2012/08/02/seven-years-after-nature-pilot-study-compares-wikipedia-favorably-to-other-encyclopedias-in-three-languages>).

⁹ Music Community. In *Wikipedia*. Retrieved March 23, 2015, from https://en.wikipedia.org/wiki/Music_community

According to DotMusic, the Music Community’s geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents (Application Answer to Question 20a).

According to DotMusic, “registrants will be verified using Community-organized, unified “criteria taken from holistic perspective with due regard of Community particularities” that “invoke a formal membership (Application Answer to Question 20a).” The defined Community represents all music-related entities with a clear and straightforward membership with the Community involved in the legal production, performance, promotion, and distribution of music worldwide. According to DotMusic, the Music Community members must have an active, non-tangential relationship with the applied-for string “music” and also have the requisite awareness of the music-related community that they are a part of by specifically identifying it as part of the registration and validation process (i.e. upon successful registration and validation, each community member will be given a unique community identification number that will automatically associate them with their identified community and the “music” string).

DotMusic’s Community definition matches the applied-for string because it allows both commercial and non-commercial stakeholders to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination/exclusion. Given the regulated sector of the community, it is clear that the “Music Community” as defined implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate cohesive and globally-recognized set of standards for the protection of the music community members’ rights with relation to their copyrighted music works around the world.¹⁰

The Berne Convention for the Protection of Literary and Artistic Works¹¹ provides that each of the 168 contracting parties¹² (representing an overwhelming majority of the world’s population) provides automatic protection for music works first published in other countries of the Berne union and for unpublished music works whose authors are citizens of or resident in such other countries.¹³ This means that if a Music Community member’s copyright rights are violated in any other signatory country’s jurisdiction, then the music community member will have the music copyright rights given by that country. Music Community members are clearly aware of the collective Community’s rights, which could not be made possible without these cohesive and globally-recognized set of standards. If such standards were not coherent or enforced then music would not be able to exist in its current form and the industry component of the Music Community sector would not exist. As such, the Community’s *Establishment* and definition is “cohesive” and hence cannot be construed since the Community is a logical alliance of music

¹⁰ http://www.rightsdirect.com/content/rd/en/toolbar/copyright_education/International_Copyright_Basics.html

¹¹ http://www.wipo.int/treaties/en/text.jsp?file_id=283698

¹² http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=15

¹³ <http://www.britannica.com/EBchecked/topic/62482/Berne-Convention>

communities that establish a clearly delineated and organized Community structure that is “closely united” and functions as a “whole”

Further evidence to substantiate the cohesive, symbiotic and overlapping nature of the Community, includes other globally-recognized standards and classification systems, which identify who the individual songwriters, publishers and rights holders are and which songs they are associated with so that Community members are appropriately compensated, regardless of whether the constituent is a commercial, non-commercial or amateur entity. The “music” string is commonly used in classification systems such as ISMN,¹⁴ ISRC,¹⁵ ISWC,¹⁶ ISNI.¹⁷ (Application Answer to Question 20a). For example, if a music entity would like to distribute their music, either commercially or for free, then an ISRC can be assigned to globally identify any specific music work. An ISRC, which facilitates efficient music discovery and community member payment, is constructed from 12 characters representing country, registrant, year of registration and designation (i.e. the serial number assigned by the registrant). With respect to domains, an equivalent system that relates to identifying a specific domain’s registrant and other relevant information pertaining to the domain is WHOIS. Domain registrants are required by ICANN “to provide accurate WHOIS contact data” or else their domain “registration may be suspended or even cancelled”.¹⁸

Without such Music Community “cohesion” and standardized systems functioning in its regulated sector, the Music Community would not be able to create, market and distribute their music. By the same token, fans would not be able to identify the music they are listening to with a specific music artist, regardless of whether the listening activity or behavior is commercial or non-commercial in nature. The socio-economic structure that characterizes “music” as commonly-known today would be non-existent without these organized and delineated elements that commonly define the Community.

¹⁴ The International Standard Music Number (ISMN) is a unique number for the identification of all notated music publications from all over the world. The ISMN is an ISO certified global standard number (ISO 10957:2009). See <http://www.ismn-international.org/whatis.html> and

http://www.iso.org/iso/home/store/catalogue_ics/catalogue_detail_ics.htm?csnumber=43173

¹⁵ The ISRC (International Standard Recording Code) is the international identification system for sound recordings and music video recordings. The ISRC is an ISO certified global standard number (ISO 3901:2001) and is managed by the IFPI. See <http://isrc.ifpi.org>, <https://www.usisrc.org/about/index.html> and http://www.iso.org/iso/catalogue_detail?csnumber=23401

¹⁶ The ISWC (International Standard Musical Work Code) is a unique, permanent and internationally recognized reference number for the identification of musical works. The ISWC has been approved by ISO (International Organization for Standardisation) as a global standard (ISO 15707:2001) and is managed by CISAC. See <http://www.iswc.org/en/faq.html> and http://www.iso.org/iso/catalogue_detail?csnumber=28780

¹⁷ The International Standard Name Identifier (ISNI) is the ISO certified global standard number (ISO 27729) for identifying the millions of contributors to creative works and those active in their distribution. ISNI holds public records of over 8 million identities and 490,000 organizations. See <http://www.isni.org/> and http://www.iso.org/iso/catalogue_detail?csnumber=44292

¹⁸ <https://whois.icann.org/en/about-whois> and <https://www.icann.org/resources/pages/faqs-f0-2012-02-25-en>

iii) International Federations and Organizations Dedicated to Community Functions:

According to ICANN’s Applicant Guidebook (“AGB”)¹⁹: *“With respect to “Delineation” and “Extension,” it should be noted that a community can consist of...a logical alliance of communities (for example, an international federation of national communities of a similar nature... viable as such, provided the requisite awareness and recognition of the community is at hand among the members.”* (AGB, 4-12). The community as defined in the DotMusic application has at least one entity mainly dedicated to the community which has supported DotMusic, which include several “international federation of national communities of a similar nature” relating to music, music coalitions and other relevant and non-negligible music organizations.

One of these entities include the only international federation of national communities relating to government culture agencies and arts councils, which has an integral association with music globally: the International Federation of Arts Councils and Culture Agencies (IFACCA).

IFACCA is the only international federation that represents government culture agencies and arts councils globally. These national communities are governmental institutions that play a pivotal role with respect to music.²⁰ IFACCA’s members cover the majority of music entities globally, regardless of whether they are commercial, non-commercial or amateurs. Government ministry of culture and council agencies related to music cover a majority of the overall community with respect to headcount and geographic reach. The “Size” covered reaches over a hundred million music entities i.e. “considerable size with millions of constituents” per Application Answer to Question 20a.

The string “music” falls under the jurisdiction of each country’s Ministry of Culture governmental agency or arts/music council (emphasis added). The degree of power and influence of government ministry of culture and council agencies with respect to music surpasses any organization type since these agencies (i) provide the majority of funding for music-related activities; (ii) regulate copyright law; and (iii) encompass all the music entities that fall under their country, regardless whether these entities are commercial, non-commercial or amateurs. IFACCA is globally recognized by its strategic partners, such as UNESCO, a United Nations agency representing 195 member states and the European Commission.²¹ The UNESCO strategic partnership²² is relevant, especially since UNESCO founded the International Music Council (the “IMC”) in 1949, which represents over 200 million music constituents from over 150 countries and over 1000 organizations globally.²³

¹⁹ <https://newgtlds.icann.org/en/applicants/agb/guidebook-full-11jan12-en.pdf>

²⁰ http://www.ifacca.org/membership/current_members/

²¹ http://www.ifacca.org/strategic_partners/

²² http://www.ifacca.org/strategic_partners/

²³ <http://www.imc-cim.org/about-imc-separator/who-we-are.html>

Government activities in the clearly delineated and organized “Music Community” include setting statutory royalty rates. For example, in the United States, mechanical royalties are based on a “statutory rate” set by the U.S. Congress. This rate is increased to follow changes in the economy, usually based on the Consumer Price Index. Currently, the mechanical statutory rate is \$0.091 for songs five minutes or less in length or \$.0175 per minute for songs that are over five minutes long.²⁴

Ministries of culture and arts councils (that comprise IFACCA’s membership) support musicians, musical performances, independent music artists, non-commercial musical expression and education in their respective countries. The 165 ministries of culture, arts councils and affiliates that comprise IFACCA’s membership support the “performing arts” and music specifically. Without the financial and logistical support of arts councils and the ministries of culture, the music community would be adversely affected, and in some countries, may not exist in any appreciable manner. For example, the Ministry of Culture 2011 budget for the small country state of Cyprus for culture funding was €34,876,522 with critical support of music activities.²⁵ Other small government Ministries of Culture, such as Albania,²⁶ or government Ministries of Culture and Arts Councils from countries with larger populations, such as India,²⁷ all provide critical support and substantial advocacy for music. Other examples include government institutions collaborating and advocating music through their funded country-based pavilion initiatives at Midem, the world’s largest music conference.²⁸

Government ministries and arts councils provide critical support for the Music Community, including commercial music organizations. By way of example, government ministries’ and arts councils’ substantial connection to and support of “music” is noted in the reports of funding and support for music. Some examples to showcase the degree of power of the IFACCA’s membership towards the string and global and national music are music investment and music funding (Annual reports by governments and councils):

- New Zealand Ministry of Culture has funded significant music projects. Some include the REAL New Zealand Music Tour (\$415,000), the New Zealand String Quartet (\$150,000) and New Zealand Music Commission: (\$1,378,000).²⁹
- The Australian Government/Council For The Arts invested \$51.2 million for the nation’s orchestras; \$21.6 million for opera; \$10.8 million for other music artists and

²⁴ U.S. Copyright Office, <http://www.copyright.gov/carp/m200a.html>

²⁵ 2011 Annual Report for Cyprus Ministry of Culture, Section 1.2 “Music”

(http://www.moec.gov.cy/en/annual_reports/annual_report_2011_en.pdf). Activities include Music Performances in Cyprus (1.2.1) and Abroad (1.2.2), Subsidization of Paphos Aphrodite Festival (1.2.3), Music Publications (1.2.4), Subsidization and Purchases of Digital Records (1.2.5), Promotion for Cypriot musical creativity abroad (1.2.6), Cyprus Symphony Orchestra Foundation (1.2.7), Music Information Centre (1.2.8), Developing Music Education (1.2.9), Organising of the 1st Musicological Symposium (1.2.10) and Musical Festivities for the European Volunteerism Year (1.2.11)

²⁶ http://www.culturalpolicies.net/down/albania_012011.pdf

²⁷ 2010-11 Annual Report from India Ministry of Culture, [http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011\(Eng\).pdf](http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011(Eng).pdf)

²⁸ <http://my.midem.com/en/contact-us/pavilion-representatives/>

²⁹ 2011 Annual Report from New Zealand Ministry of Culture:

[http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20\(D-0448383\).PDF](http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20(D-0448383).PDF)

organizations; \$13.1 million for multi-platform artists and organizations; and \$4 million in miscellaneous funding, including sector building and audience development initiatives and programs.³⁰

- Canada Council for the Arts is Canada’s national, arts funding agency investing \$28 million in its Canada Council Musical Instrument Bank (Page 16) and \$28,156,000 in Music Arts Programs (Page 66).³¹ The Government of Canada also renewed its annual investment of \$27.6 million over five years in the Canada Music Fund.³²
- The United Kingdom Department for Culture and Education (DfE) will fund music education at significant levels: £77 million, £65 million and £60 million will be available in the three years from April 2012.³³
- The United States National Endowment of the Arts has awarded more than \$4 billion to support the arts since its inception³⁴ and has a strong focus on music as outlined in its Strategic Plan³⁵ with Congress requested to provide \$154,465,000 for fiscal year 2014.³⁶
- The National Arts Council of South Africa invested 2,536,131 ZAR in Music and 9,995,000 ZAR in Orchestras and has focused strongly on the “Strengthening of live indigenous music and advocating the revival of the live music circuit in South Africa”³⁷
- The Singapore Arts Council will fund \$10.2 million in the arts under its 2013 Grants Framework, including the Ding Yi Music Company and Siong Leng Musical Association.³⁸
- In 2011, the support for artistic activities by the Arts Council of Finland was €32.4 million of which €4,921,850 was awarded to music.³⁹

Each of IFACCA’s members has a clear association with, and mandate to support the music arts in their countries. In most countries, their ministry of culture/arts council is the largest funder and marketing supporter of the music arts.

³⁰ 2011 Annual Report for the Australia Council for the Arts, http://www.australiacouncil.gov.au/data/assets/pdf_file/0016/142351/Australia-Council-Annual-Report-201112.pdf, Page 28

³¹ 2011 Annual Report for Canada Council for the Arts, http://www.canadacouncil.ca/NR/rdoonlyres/6F7549BB-F4E5-4B8B-95F4-1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf

³² <http://www.pch.gc.ca/eng/1294862453819/1294862453821>

³³ Department for Culture, The Importance of Music, A National Plan for Music Education, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/180973/DFE-00086-2011.pdf, Page 4, 2011

³⁴ 2011 Annual report for the National Endowment of the Arts, <http://www.nea.gov/about/11Annual/2011-NEA-Annual-Report.pdf>, Page 2

³⁵ NEA Strategic Plan 2012-2016, www.arts.gov/about/Budget/NEAStrategicPlan2012-2016.pdf

³⁶ http://www.ifacca.org/national_agency_news/2013/04/10/us-president-requests-154465000-neh-2014/

³⁷ 2010-2011 Annual Report for the National Arts Council South Africa, National Arts Council South Africa, <http://www.nac.org.za/media/publications/AR%2010-11%20NAC.PDF/download>, Page 11. Also Mmino, the South African – Norwegian Education Music Programme, solely funds music projects funding a total of 294 projects. Thirteen projects were allocated funding for a total of R1,680,600 of which R1,381,000 went towards music educational and R299,600 to exchange projects (Page 10)

³⁸ Singapore Arts Council, <http://www.nac.gov.sg/media-centre/news-releases/news-detail?id=c2db15e2-c319-40ec-939c-d58735d0a91c>

³⁹ <http://www.taiteenkeskustoimikunta.fi/documents/10162/31704/TY+tilastotiedote+1+12+.pdf>, Page 1 and Page

Another clear example of an “entity dedicated to the community” with members that cover hundreds of millions of music constituents with formal boundaries is A2IM, the American Association of Independent Music. A2IM has two types of members: U.S independent Label members and Associate members. A2IM membership for Labels and Associates is invoked formally through an application and if accepted would require annual membership dues.⁴⁰

The reach of A2IM Associate⁴¹ membership covers hundreds of millions of entities (i.e. the reach of A2IM’s total membership “geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents – See Application Answer to Question 20a).

Organized and strictly delineated communities related to music that are A2IM members include:

- **Apple iTunes**⁴² – iTunes accounts for 63% of global digital music market⁴³ - a majority – with a registered community of 800 million registered members⁴⁴ available in 119 countries who abide to strict terms of service and boundaries⁴⁵ and have downloaded over 25 billion songs⁴⁶ from iTunes’ catalog of over 43 million songs⁴⁷ covering a global music community, regardless of genre or whether the community entities are amateur, professional, commercial or non-commercial. To add music to iTunes, all music artists must have a formal membership with iTunes via an Apple ID registration, which includes a current credit card on file.⁴⁸
- **Pandora**⁴⁹ – Pandora is the world’s largest streaming music radio with a community of over 250 million registered members.⁵⁰
- **Spotify**⁵¹ – Spotify is the world’s largest music streaming community with over 50 million active registered members in 58 countries and over 30 million songs. The music community uploads 20,000 songs every day.⁵²
- **Vevo**⁵³ – Vevo is the world’s leading all-premium music video community and platform with over 8 billion monthly views globally.⁵⁴

⁴⁰ <http://a2im.org/about-joining/>

⁴¹ <http://a2im.org/groups/tag/associate+members/>

⁴² <http://a2im.org/groups/itunes>

⁴³ <http://appleinsider.com/articles/13/04/16/apples-itunes-rules-digital-music-market-with-63-share>

⁴⁴ <http://www.npr.org/blogs/therecord/2015/01/06/375173595/with-downloads-in-decline-can-itunes-adapt>

⁴⁵ <http://www.apple.com/legal/internet-services/itunes/ww/index.html>

⁴⁶ <http://www.apple.com/pr/library/2013/02/06iTunes-Store-Sets-New-Record-with-25-Billion-Songs-Sold.html>

⁴⁷ <https://www.apple.com/itunes/features/>

⁴⁸ <https://www.apple.com/itunes/working-itunes/sell-content/music-faq.html>

⁴⁹ <http://a2im.org/groups/pandora>

⁵⁰ <http://www.cnet.com/news/like-a-rolling-milestone-pandora-hits-250m-registered-users/> and <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MTkxNTM1fENoaWxkSUQ9LTF8VHlwZT0z&t=1>, Pg.9

⁵¹ <http://a2im.org/groups/spotify>

⁵² <https://press.spotify.com/us/information/>

⁵³ <http://a2im.org/groups/vevo/>

- **Youtube**⁵⁵ – Youtube is the world’s largest music video streaming community with millions of music creators -- amateur, professional, commercial or non-commercial -- and over 1 billion registered members covering all regions globally. 6 billion hours of video is watched every month on Youtube,⁵⁶ of which 38.4% is music-related.⁵⁷
- **ReverbNation**⁵⁸ – ReverbNation⁵⁹ is one of the world’s largest music community and a leading music distributor with over 3.87 million musicians, venues labels and industry professionals covering every country globally. The ReverbNation community grows by over 50,000 artists, bands, labels and industry professionals monthly.
- **BMG**⁶⁰ – BMG is focused on the management of music publishing and recording rights. BMG has an international presence and represents over 2.5 million music rights globally.⁶¹

A2IM also includes members that are associated with global government agencies which exclusively represent substantial music economies and music members, such as France (BureauExport⁶²), China (China Audio Video Association⁶³) and Germany (Initiative Musik).⁶⁴ A2IM also has Affiliate⁶⁵ associations within the global music community. These include Affiliates such as MusicFirst,⁶⁶ the Copyright Alliance,⁶⁷ the Worldwide Independent Network (WIN)⁶⁸ and Merlin.⁶⁹

A2IM also represents a recognized Music Coalition representing the interests of the Global Independent Music Community.⁷⁰ The A2IM Coalition includes Merlin, a global rights agency for the independent label sector, representing over 20,000 labels from 39 countries, Worldwide Independent Network (representing label creators in over 20 countries), Association of Independent Music (representing largest and most respected labels in the world), and IMPALA (Independent Music Companies Association on behalf of over 4,000 independent music companies and national associations across Europe, representing 99% of music actors in Europe which are micro, small and medium sized enterprises.

⁵⁴ <http://www.vevo.com/c/EN/US/about>

⁵⁵ <http://a2im.org/groups/youtube/>

⁵⁶ <https://www.youtube.com/yt/press/statistics.html>

⁵⁷ http://www.researchandmarkets.com/reports/2092499/internet_video_2011_2014_view_share_site_and

⁵⁸ <http://a2im.org/groups/reverb-nation/>

⁵⁹ <http://www.reverbnation.com/about>

⁶⁰ <http://a2im.org/groups/bmg-rights/>

⁶¹ <http://www.bmg.com/category/about-us/history/>

⁶² <http://a2im.org/groups/french-music-export-office>

⁶³ <http://a2im.org/groups/china-audio-video-association-cava>

⁶⁴ <http://a2im.org/groups/initiative-musik-gmbh>

⁶⁵ <http://a2im.org/groups/tag/associate+members/>

⁶⁶ <http://musicfirstcoalition.org/coalition>, The musicFIRST Coalition, with founding members A2IM, RIAA, and Recording Academy represents musicians, artists, managers, music businesses, and performance right advocates.

⁶⁷ <http://www.copyrightalliance.org/members>

⁶⁸ <http://www.winformusic.org>

⁶⁹ <http://www.merlinnetwork.org>

⁷⁰ <https://www.icann.org/en/system/files/correspondence/bengloff-to-chehade-et-al-20aug14-en.pdf> and <https://www.icann.org/en/system/files/correspondence/bengloff-to-crocker-et-al-07mar15-en.pdf>

Cumulatively, A2IM's Label and Associate Membership, A2IM's Affiliates and the A2IM's Global Independent Music Community Coalition, covers a majority of the global music community. Its cumulative membership is in the hundreds of millions of entities with formal boundaries belonging to strictly organized and delineated communities related to music as per the Community Definition and Size (See Application answer to Question 20a).

Another global Music Community Coalition led by the RIAA "on behalf of over 15 national and international trade associations" also expressed its support for .MUSIC to be under a "community" application model, including encouraging statements in support of DotMusic's policies that stated that the coalition "was encouraged to see" that DotMusic "included several measures to deter and address copyright infringement within that TLD." The "coalition members represent the people that write, sing, record, manufacture, distribute and/or license over 80% of the world's music"⁷¹ – a majority of global music.⁷²

Another letter⁷³ sent to ICANN (on April 14th, 2015) by Danielle Aguirre from the NMPA and on behalf of a music publisher and songwriter community coalition representing a majority of the global music publishing community, also expressed "support [for] the .MUSIC community applications because respecting and protecting music rights serves the global music community and the public interest."

Collectively, the DotMusic application received support from the largest coalition of music community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support⁷⁴ from institutions/organizations representing a majority of the Community addressed. Music -- as commonly-known by the general public and experienced today -- would not be possible without these supporting, non-negligible and relevant organizations that have endorsed DotMusic.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Community Establishment* and *Community Endorsement* from the majority of the global Music Community as defined.

⁷¹ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.1

⁷² <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.3, Appendix A

⁷³ <https://www.icann.org/en/system/files/correspondence/aguirre-to-icann-board-eiu-14apr15-en.pdf>

⁷⁴ <http://music.us/supporters>

B) Nexus⁷⁵

According to the Applicant Guidebook (“AGB”), to receive the maximum score for Nexus, the applied-for string -- “music” -- must match the name of the community or be a well-known short-form or abbreviation of the community name.

The *Nexus* of the “Music Community” entirely matches the applied-for “music” string because it represents the entire global Music Community as commonly-known and perceived by the general public. This definition allows for all constituents with a requisite awareness of the Community defined to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination. The definition of the Community requires that members have an active, non-tangential relationship with the applied-for string and the requisite awareness of the music community they identify with as part of the registration process. It is clear that the general public will directly associate and equate the string with the Community as defined by DotMusic. There is no possibility of overreaching beyond the definition or allowing unrelated non-music entities to be included as part of the Community.

Community members may register a .MUSIC by either:

- 1) Identifying that they belong to a Music Community Member Organization (“MCMO”); or
- 2) Identifying the community they belong to, which is consistent with the definition of the Community: “the strictly delineated and organized logical alliance of communities of similar nature related to music.”

All Community members are aware of and recognize their inclusion in the defined Community by identifying which clearly defined community they belong to and have an active participation in. The *nexus* of the applied-for string ensures inclusion of the entire global community that the string represents while excluding unrelated-entities not associated with the string. This way there is a clear match and alignment between the “music” sting and the Community defined.

While the exact size of the global Music Community as defined is unknown (there is no empirical evidence providing an exact, finite number because amateur entities are also included in the Community’s definition), it is in the considerable millions as explicitly stated in the DotMusic Application. DotMusic’s definition of the Community and mutually-inclusive Registration Policies ensure that eligible members are only music-related and associated with the string. This is because the string identifies all constituents involved in music. Music-only participation optimizes the relevancy of .MUSIC domains to the string and entirely matches the *nexus* between the string and Community defined. According to DotMusic, the Community *definition, eligibility* criteria and *content and use* requirements ensure that peripheral industries

⁷⁵ See <http://music.us/nexus>

and entities not related to music are excluded so that the string and the defined Community matches and aligns in a consistent manner consistent with DotMusic's community-based purpose i.e. only entities with music-related activities are able to register .MUSIC domains.

Membership aligns with the *nexus* of the Community and the string, which is explicitly relevant to music. The string as defined in the application demonstrates uniqueness because it has no other significant meaning beyond identifying the community described in the application. According to DotMusic's application, any tangential or implicit association with the *nexus* of the Community and the string is not regarded as a delineated membership since it would be considered unclear, dispersed or unbound. Such unclear, dispersed or unbound tangential relationships with the defined "music" Community and applied-for "music" string would not constitute a qualifying Community membership and would be ineligible for registration.

The inclusion of every music constituent type is paramount to the purpose of the string. Every type of music constituent critically contributes to the function and operation of the music sector within a regulated framework given the symbiotic overlapping nature of the Community as defined and structured. Music would not function as it does today without the participation of all music constituent types which cumulatively match the string with the Community definition.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Nexus*.

Respectfully Submitted,



Signature: Contact Information Redacted Jun 1 '15 ip: 24.131.186.152

Name: Brian E Corner, PhD

Title: Digital Communications Specialist

Organization: The Cedar Cultural Center, Minneapolis

Re: Expert Testimony on (i) Community Establishment; (ii) Nexus; and (iii) Support for DotMusic’s Community-Based Application¹ for .MUSIC (Application ID 1-1115-14110)

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

Please accept this letter that indicates that there is substantive and compelling evidence that the DotMusic application convincingly meets the full criteria under Community Priority Evaluation on the following points: (i) the Music Community’s *Establishment* as defined by DotMusic; (2) the matching *Nexus* between the “music” Community and the “music” string (or top-level domain); and (3) that DotMusic possesses documented *Support* from organizations representing a majority of the global Music Community addressed and defined.

Please see my credentials attached hereto that identify my level of expertise and specialized knowledge with respect to the music community’s organization and delineation.

SUMMARY

DotMusic has established the following:

- 1) Its Community definition recognizes the cohesive, symbiotic and overlapping nature of the global Music Community. The definition includes those associated with commercial and non-commercial creation, performance, marketing and distribution of music;
- 2) “Music Community” members have the requisite awareness and recognition of the interdependency, overlapping and cohesive nature of each “organized community of similar nature that relates to music.” These organized and aligned communities are closely united and make “music” as we know it today. It is this self-awareness and interdependence that gives the “Music Community” its strength. With exponential growth of the Internet, mobile and the Domain Name System (DNS), the “Music Community’s” use and reliance on the Internet to create, market and disseminate music-related content, products, services and activities will continue to grow;
- 3) The “Music Community” functions in a regulated sector with global copyright protections – it is clear that the “community,” as defined, implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate a globally-recognized set of standards for

¹ <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1392>

the protection of the “Music Community” member rights with relation to their copyrighted music works around the world;

4) The “Music” Community -- as defined by DotMusic -- has at least one entity mainly dedicated to the community supporting DotMusic’s application. Such documented *Support* includes several “international federation of national communities of a similar nature,” music coalitions and others that are strongly associated with “music,” which represent a majority of the Community with considerable millions of members worldwide.²

5) The *Nexus* of the “music” Community matches the “music” applied-for string because it represents the entire global Music Community – a community that pre-existed 2007 with a size in the considerable millions of constituents. The “Music Community” definition -- which incorporates the strict fundamental attributes of a closely united Community definition that is “organized” and “delineated” -- ensures that all of its constituent members have a requisite awareness of the community as defined, including both commercial and non-commercial stakeholders, to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination.

6) DotMusic has received support from the largest coalition of Music Community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support³ from institutions/organizations representing a majority of the Community as defined and recognized in the DotMusic application.

There is substantive evidence that DotMusic fulfills the *Nexus, Community Establishment and Support* criteria for the “Music” string. The inclusion and representation of every music constituent type is paramount to the articulated purpose of the string. DotMusic and its application’s global Music Community supporters substantiate that every type of music constituent contributes to the function and operation of the music sector within a regulated framework. The symbiotic nature of the Community as defined and structured means that “Music” would not function as it does today without the participation of all music constituent types that interconnect to match the “music” string with the “music” Community definition.

² <http://music.us/supporters>

³ <http://music.us/supporters>

ASSESSMENT OF COMMUNITY DEFINITION, ESTABLISHMENT AND NEXUS

A) *Music Community Definition, Establishment & Community Endorsement*⁴

DotMusic's definition of the "Music Community" as a "strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music" (See Application, 20a) is factually accurate and representative of the "Music Community." Community characteristics include:

i) An Organized, Cohesive, Interdependent Logically-Allied Community:

The "Music Community" definition covers the regulated, interdependent and cohesive nature of the music sector that exists today. "Music Community" members have the requisite awareness and recognition of the interdependent, overlapping and cohesive nature of each "organized community of similar nature that relates to music" that comprises the "Music Community." Without such cohesiveness and interdependency, the defined "Music" Community matching the applied-for string ("Music") would not be able to function in its regulated sector, a "Music" regulated sector that was publicly recognized by both ICANN and the Government Advisory Committee.⁵

As a result, the Music Community as defined is "closely united" (As per the definition of "cohesion" according to Merriam-Webster dictionary⁶) or "united or form a whole" (As per the definition of the word "cohesion" according to Oxford Dictionaries⁷).

The "Music Community" as defined (a "strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music") establishes that:

- (1) There is an awareness and recognition among its members;
- (2) The organized and delineated logical alliance of communities exists; and
- (3) The Community is "closely united" and "interdependent" (i.e. Each "organized community of similar nature that relates to music" which is part of the "logical alliance of communities that relate to music" is not mutually exclusive).

In short, the applied-for string ("Music") matches the name of the "Music" Community as defined by DotMusic's application. DotMusic's "Music Community" definition accurately represents the common definition of the "Music Community," which is confirmed by Wikipedia.

⁴ See <http://music.us/establishment>

⁵ <https://www.icann.org/en/system/files/bm/briefing-materials-2-05feb14-en.pdf>, Pg.3

⁶ <http://www.merriam-webster.com/dictionary/cohesion>

⁷ http://www.oxforddictionaries.com/us/definition/american_english/cohesion

According to Wikipedia:⁸

Music community is defined as a logical alliance of interdependent communities that are related to music, which include commercial participants...and non-commercial participants...and consists of an “ensemble of practices and institutions that make possible and regulate the production, distribution and consumption of music”...UNESCO identifies the music community as a “community of identity” implying common identifiable characteristics and cohesive attributes such as sharing a music culture, norms and subscribing to common ideals related to music...The music community is not defined as much by demographic indicators such as race, gender, and income level, as it is by common values, cohesive norms and interconnected structures to build a community identity. It refers to music-related individuals and organisations in a shared environment with shared understandings and practices, modes of production and distribution. The shared organisation of collective musical activities, identity and community value is created as result of infrastructure and a shared set of common values...Many studies outline the historical, cultural, and spatial significance of the music community, including how its identity is formed through musical practices. The music community shares a cohesive and interconnected structure of artistic expression, with diverse subcultures and socio-economic interactions...subscribing to common ideals. Under such structured context music consumption becomes possible regardless whether the transaction is commercial and non-commercial.⁹

ii) *An Aware, Pre-Existing and Recognized Community of Considerable Millions Worldwide:*

DotMusic’s definition of the Community covers all Community members associated with the string, each with a requisite awareness of the Community that can be validated through their natural association with a particular music-related community that they clearly identify with. According to DotMusic, all Music Community members must identify their music-related community in order to demonstrate their requisite awareness of the defined Community as part of the .MUSIC registration and validation process.

⁸ Wikipedia is ranked 6th among the ten most popular websites (Alexa, Retrieved March 23, 2015 from <http://www.alexa.com/siteinfo/wikipedia.org>) and constitutes the Internet's largest, most frequently updated and popular general reference work (See OECD, OECD Internet Economy Outlook 2012, OECD Publishing, http://www.oecd-ilibrary.org/science-and-technology/oecd-internet-economy-outlook-2012_9789264086463-en, Pg.172) that compares favorably to the accuracy of other encyclopedias (such as the Britannica) according to a 2012 study conducted in partnership with Oxford University (See <http://blog.wikimedia.org/2012/08/02/seven-years-after-nature-pilot-study-compares-wikipedia-favorably-to-other-encyclopedias-in-three-languages>).

⁹ Music Community. In *Wikipedia*. Retrieved July 6, 2015, from https://en.wikipedia.org/wiki/Music_community

According to DotMusic, the Music Community’s geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents (Application Answer to Question 20a).

According to DotMusic, “registrants will be verified using Community-organized, unified “criteria taken from holistic perspective with due regard of Community particularities” that “invoke a formal membership (Application Answer to Question 20a).” The defined Community represents all music-related entities with a clear and straightforward membership with the Community involved in the legal production, performance, promotion, and distribution of music worldwide. According to DotMusic, the Music Community members must have an active, non-tangential relationship with the applied-for string “music” and also have the requisite awareness of the music-related community that they are a part of by specifically identifying it as part of the registration and validation process (i.e. upon successful registration and validation, each community member will be given a unique community identification number that will automatically associate them with their identified community and the “music” string).

DotMusic’s Community definition matches the applied-for string because it allows both commercial and non-commercial stakeholders to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination/exclusion. Given the regulated sector of the community, it is clear that the “Music Community” as defined implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate cohesive and globally-recognized set of standards for the protection of the music community members’ rights with relation to their copyrighted music works around the world.¹⁰

The Berne Convention for the Protection of Literary and Artistic Works¹¹ provides that each of the 168 contracting parties¹² (representing an overwhelming majority of the world’s population) provides automatic protection for music works first published in other countries of the Berne union and for unpublished music works whose authors are citizens of or resident in such other countries.¹³ This means that if a Music Community member’s copyright rights are violated in any other signatory country’s jurisdiction, then the music community member will have the music copyright rights given by that country. Music Community members are clearly aware of the collective Community’s rights, which could not be made possible without these cohesive and globally-recognized set of standards. If such standards were not coherent or enforced then music would not be able to exist in its current form and the industry component of the Music Community sector would not exist. As such, the Community’s *Establishment* and definition is “cohesive” and hence cannot be construed since the Community is a logical alliance of music

¹⁰ http://www.rightsdirect.com/content/rd/en/toolbar/copyright_education/International_Copyright_Basics.html

¹¹ http://www.wipo.int/treaties/en/text.jsp?file_id=283698

¹² http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=15

¹³ <http://www.britannica.com/EBchecked/topic/62482/Berne-Convention>

communities that establish a clearly delineated and organized Community structure that is “closely united” and functions as a “whole”

Further evidence to substantiate the cohesive, symbiotic and overlapping nature of the Community, includes other globally-recognized standards and classification systems, which identify who the individual songwriters, publishers and rights holders are and which songs they are associated with so that Community members are appropriately compensated, regardless of whether the constituent is a commercial, non-commercial or amateur entity. The “music” string is commonly used in classification systems such as ISMN,¹⁴ ISRC,¹⁵ ISWC,¹⁶ ISNI.¹⁷ (Application Answer to Question 20a). For example, if a music entity would like to distribute their music, either commercially or for free, then an ISRC can be assigned to globally identify any specific music work. An ISRC, which facilitates efficient music discovery and community member payment, is constructed from 12 characters representing country, registrant, year of registration and designation (i.e. the serial number assigned by the registrant). With respect to domains, an equivalent system that relates to identifying a specific domain’s registrant and other relevant information pertaining to the domain is WHOIS. Domain registrants are required by ICANN “to provide accurate WHOIS contact data” or else their domain “registration may be suspended or even cancelled”.¹⁸

Without such Music Community “cohesion” and standardized systems functioning in its regulated sector, the Music Community would not be able to create, market and distribute their music. By the same token, fans would not be able to identify the music they are listening to with a specific music artist, regardless of whether the listening activity or behavior is commercial or non-commercial in nature. The socio-economic structure that characterizes “music” as commonly-known today would be non-existent without these organized and delineated elements that commonly define the Community.

¹⁴ The International Standard Music Number (ISMN) is a unique number for the identification of all notated music publications from all over the world. The ISMN is an ISO certified global standard number (ISO 10957:2009). See <http://www.ismn-international.org/whatis.html> and

http://www.iso.org/iso/home/store/catalogue_ics/catalogue_detail_ics.htm?csnumber=43173

¹⁵ The ISRC (International Standard Recording Code) is the international identification system for sound recordings and music video recordings. The ISRC is an ISO certified global standard number (ISO 3901:2001) and is managed by the IFPI. See <http://isrc.ifpi.org>, <https://www.usisrc.org/about/index.html> and http://www.iso.org/iso/catalogue_detail?csnumber=23401

¹⁶ The ISWC (International Standard Musical Work Code) is a unique, permanent and internationally recognized reference number for the identification of musical works. The ISWC has been approved by ISO (International Organization for Standardisation) as a global standard (ISO 15707:2001) and is managed by CISAC. See <http://www.iswc.org/en/faq.html> and http://www.iso.org/iso/catalogue_detail?csnumber=28780

¹⁷ The International Standard Name Identifier (ISNI) is the ISO certified global standard number (ISO 27729) for identifying the millions of contributors to creative works and those active in their distribution. ISNI holds public records of over 8 million identities and 490,000 organizations. See <http://www.isni.org/> and http://www.iso.org/iso/catalogue_detail?csnumber=44292

¹⁸ <https://whois.icann.org/en/about-whois> and <https://www.icann.org/resources/pages/faqs-f0-2012-02-25-en>

iii) *International Federations and Organizations mainly Dedicated to the Community:*

According to ICANN's Applicant Guidebook ("AGB")¹⁹: *"With respect to "Delineation" and "Extension," it should be noted that a community can consist of...a logical alliance of communities (for example, an international federation of national communities of a similar nature... viable as such, provided the requisite awareness and recognition of the community is at hand among the members." (AGB, 4-12). The community as defined in the DotMusic application has at least one entity mainly²⁰ dedicated to the community which has supported DotMusic, which include several "international federation of national communities of a similar nature" relating to music, music coalitions and other relevant and non-negligible music organizations.*

One of these entities include the only international federation of national communities relating to government culture agencies and arts councils, which has an integral association with music globally: the International Federation of Arts Councils and Culture Agencies (IFACCA).

IFACCA is the only international federation that represents government culture agencies and arts councils globally. These national communities are governmental institutions that play a pivotal role with respect to music.²¹ IFACCA's members cover the majority of music entities globally, regardless of whether they are commercial, non-commercial or amateurs. Government ministry of culture and council agencies related to music cover a majority of the overall community with respect to headcount and geographic reach. The "Size" covered reaches over a hundred million music entities i.e. "considerable size with millions of constituents" per Application Answer to Question 20a.

The string "music" falls under the jurisdiction of each country's Ministry of Culture governmental agency or arts/music council (emphasis added). The degree of power and

¹⁹ <https://newgtlds.icann.org/en/applicants/agb/guidebook-full-11jan12-en.pdf>

²⁰ Per the Oxford and Merriam Webster dictionaries, the word "mainly" is defined as "*more than anything else*" (See <http://www.oxforddictionaries.com/definition/english/mainly> and <http://www.merriam-webster.com/dictionary/mainly> respectively). According to DotMusic, the string .MUSIC relates to the Community "by representing all constituents involved in music creation, production and distribution" (Application Answer to Question 20d). Supporting organizations related to that string that are "mainly" dedicated to the Community and its activities, include the International Federation of Arts Councils and Culture Agencies (IFACCA) representing government culture ministries and arts councils, the International Federation of Musicians (FIM) representing musicians globally, the International Federation of Phonographic Industry (IFPI) representing the recording industry worldwide, the International Confederation of Music Publishers (ICPM) representing the voice of global music publishing, the International Association of Music Information Centres (IAMIC), the American Association of Independent Music (A2IM), whose associate members represent a majority of music consumed, the Independent Music Worldwide Independent Network (WIN) representing independent music worldwide, the International Society for Music Education (ISME) the premiere international organization representing music education, and many others (See support at <http://music.us/supporters> and <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails:downloadattachment/142588?t:ac=1392>).

²¹ http://www.ifacca.org/membership/current_members/

influence of government ministry of culture and council agencies with respect to music surpasses any organization type since these agencies (i) provide the majority of funding for music-related activities; (ii) regulate copyright law; and (iii) encompass all the music entities that fall under their country, regardless whether these entities are commercial, non-commercial or amateurs. IFACCA is globally recognized by its strategic partners, such as UNESCO, a United Nations agency representing 195 member states and the European Commission.²² The UNESCO strategic partnership²³ is relevant, especially since UNESCO founded the International Music Council (the “IMC”) in 1949, which represents over 200 million music constituents from over 150 countries and over 1000 organizations globally.²⁴

Government activities in the clearly delineated and organized “Music Community” include setting statutory royalty rates. For example, in the United States, mechanical royalties are based on a “statutory rate” set by the U.S. Congress. This rate is increased to follow changes in the economy, usually based on the Consumer Price Index. Currently, the mechanical statutory rate is \$0.091 for songs five minutes or less in length or \$.0175 per minute for songs that are over five minutes long.²⁵

Ministries of culture and arts councils (that comprise IFACCA’s membership) support musicians, musical performances, independent music artists, non-commercial musical expression and education in their respective countries. The 165 ministries of culture, arts councils and affiliates that comprise IFACCA’s membership support the “performing arts” and music specifically. Without the financial and logistical support of arts councils and the ministries of culture, the music community would be adversely affected, and in some countries, may not exist in any appreciable manner. For example, the Ministry of Culture 2011 budget for the small country state of Cyprus for culture funding was €34,876,522 with critical support of music activities.²⁶ Other small government Ministries of Culture, such as Albania,²⁷ or government Ministries of Culture and Arts Councils from countries with larger populations, such as India,²⁸ all provide critical support and substantial advocacy for music. Other examples include government institutions collaborating and advocating music through their funded country-based pavilion initiatives at Midem, the world’s largest music conference.²⁹

²² http://www.ifacca.org/strategic_partners/

²³ http://www.ifacca.org/strategic_partners/

²⁴ <http://www.imc-cim.org/about-imc-separator/who-we-are.html>

²⁵ U.S Copyright Office, <http://www.copyright.gov/carp/m200a.html>

²⁶ 2011 Annual Report for Cyprus Ministry of Culture, Section 1.2 “Music”

(http://www.moec.gov.cy/en/annual_reports/annual_report_2011_en.pdf). Activities include Music Performances in Cyprus (1.2.1) and Abroad (1.2.2), Subsidization of Paphos Aphrodite Festival (1.2.3), Music Publications (1.2.4), Subsidization and Purchases of Digital Records (1.2.5), Promotion for Cypriot musical creativity abroad (1.2.6), Cyprus Symphony Orchestra Foundation (1.2.7), Music Information Centre (1.2.8), Developing Music Education (1.2.9), Organising of the 1st Musicological Symposium (1.2.10) and Musical Festivities for the European Volunteerism Year (1.2.11)

²⁷ http://www.culturalpolicies.net/down/albania_012011.pdf

²⁸ 2010-11 Annual Report from India Ministry of Culture, [http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011\(Eng\).pdf](http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011(Eng).pdf)

²⁹ <http://my.midem.com/en/contact-us/pavilion-representatives/>

Government ministries and arts councils provide critical support for the Music Community, including commercial music organizations. By way of example, government ministries' and arts councils' substantial connection to and support of "music" is noted in the reports of funding and support for music. Some examples to showcase the degree of power of the IFACCA's membership towards the string and global and national music are music investment and music funding (Annual reports by governments and councils):

- New Zealand Ministry of Culture has funded significant music projects. Some include the REAL New Zealand Music Tour (\$415,000), the New Zealand String Quartet (\$150,000) and New Zealand Music Commission: (\$1,378,000).³⁰
- The Australian Government/Council For The Arts invested \$51.2 million for the nation's orchestras; \$21.6 million for opera; \$10.8 million for other music artists and organizations; \$13.1 million for multi-platform artists and organizations; and \$4 million in miscellaneous funding, including sector building and audience development initiatives and programs.³¹
- Canada Council for the Arts is Canada's national, arts funding agency investing \$28 million in its Canada Council Musical Instrument Bank (Page 16) and \$28,156,000 in Music Arts Programs (Page 66).³² The Government of Canada also renewed its annual investment of \$27.6 million over five years in the Canada Music Fund.³³
- The United Kingdom Department for Culture and Education (DfE) will fund music education at significant levels: £77 million, £65 million and £60 million will be available in the three years from April 2012.³⁴
- The United States National Endowment of the Arts has awarded more than \$4 billion to support the arts since its inception³⁵ and has a strong focus on music as outlined in its Strategic Plan³⁶ with Congress requested to provide \$154,465,000 for fiscal year 2014.³⁷
- The National Arts Council of South Africa invested 2,536,131 ZAR in Music and 9,995,000 ZAR in Orchestras and has focused strongly on the "Strengthening of live indigenous music and advocating the revival of the live music circuit in South Africa"³⁸

³⁰ 2011 Annual Report from New Zealand Ministry of Culture:

[http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20\(D-0448383\).PDF](http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20(D-0448383).PDF)

³¹ 2011 Annual Report for the Australia Council for the Arts,

http://www.australiacouncil.gov.au/data/assets/pdf_file/0016/142351/Australia-Council-Annual-Report-201112.pdf, Page 28

³² 2011 Annual Report for Canada Council for the Arts, [http://www.canadacouncil.ca/NR/rdoonlyres/6F7549BB-F4E5-4B8B-95F4-](http://www.canadacouncil.ca/NR/rdoonlyres/6F7549BB-F4E5-4B8B-95F4-1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf)

[1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf](http://www.pch.gc.ca/eng/1294862453819/1294862453821)

³³ <http://www.pch.gc.ca/eng/1294862453819/1294862453821>

³⁴ Department for Culture, The Importance of Music, A National Plan for Music Education,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/180973/DFE-00086-2011.pdf, Page 4, 2011

³⁵ 2011 Annual report for the National Endowment of the Arts, <http://www.nea.gov/about/11Annual/2011-NEA-Annual-Report.pdf>, Page 2

³⁶ NEA Strategic Plan 2012-2016, www.arts.gov/about/Budget/NEAStrategicPlan2012-2016.pdf

³⁷ http://www.ifacca.org/national_agency_news/2013/04/10/us-president-requests-154465000-neh-2014/

³⁸ 2010-2011 Annual Report for the National Arts Council South Africa, National Arts Council South Africa, <http://www.nac.org.za/media/publications/AR%2010-11%20NAC.PDF/download>, Page 11. Also Mmino, the South African – Norwegian Education Music Programme, solely funds music projects funding a total of 294 projects. Thirteen projects were allocated funding for a total of R1,680,600 of which R1,381,000 went towards music educational and R299,600 to exchange projects (Page 10)

- The Singapore Arts Council will fund \$10.2 million in the arts under its 2013 Grants Framework, including the Ding Yi Music Company and Siong Leng Musical Association.³⁹
- In 2011, the support for artistic activities by the Arts Council of Finland was €32.4 million of which €4,921,850 was awarded to music.⁴⁰

Each of IFACCA’s members has a clear association with, and mandate to support the music arts in their countries. In most countries, their ministry of culture/arts council is the largest funder and marketing supporter of the music arts.

Another clear example of an “entity *mainly* dedicated to the community” with members that cover hundreds of millions of music constituents with formal boundaries is A2IM, the American Association of Independent Music. A2IM has two types of members: U.S independent Label members and Associate members. A2IM membership for Labels and Associates is invoked formally through an application and if accepted would require annual membership dues.⁴¹

The reach of A2IM Associate⁴² membership covers hundreds of millions of entities (i.e. the reach of A2IM’s total membership “geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents – See Application Answer to Question 20a).

Organized and strictly delineated communities related to music that are A2IM members include:

- **Apple iTunes**⁴³ – iTunes accounts for 63% of global digital music market⁴⁴ - a majority – with a registered community of 800 million registered members⁴⁵ available in 119 countries who abide to strict terms of service and boundaries⁴⁶ and have downloaded over 25 billion songs⁴⁷ from iTunes’ catalog of over 43 million songs⁴⁸ covering a global music community, regardless of genre or whether the community entities are amateur, professional, commercial or non-commercial. To add music to iTunes, all music artists must have a formal membership with iTunes via an Apple ID registration, which includes a current credit card on file.⁴⁹

³⁹ Singapore Arts Council, <http://www.nac.gov.sg/media-centre/news-releases/news-detail?id=c2db15e2-c319-40ec-939c-d58735d0a91c>

⁴⁰ <http://www.taiteenkeskustoimikunta.fi/documents/10162/31704/TY+tilastotiedote+1+12+.pdf>, Page 1 and Page 23

⁴¹ <http://a2im.org/about-joining/>

⁴² <http://a2im.org/groups/tag/associate+members/>

⁴³ <http://a2im.org/groups/itunes>

⁴⁴ <http://appleinsider.com/articles/13/04/16/apples-itunes-rules-digital-music-market-with-63-share>

⁴⁵ <http://www.npr.org/blogs/therecord/2015/01/06/375173595/with-downloads-in-decline-can-itunes-adapt>

⁴⁶ <http://www.apple.com/legal/internet-services/itunes/ww/index.html>

⁴⁷ <http://www.apple.com/pr/library/2013/02/06iTunes-Store-Sets-New-Record-with-25-Billion-Songs-Sold.html>

⁴⁸ <https://www.apple.com/itunes/features/>

⁴⁹ <https://www.apple.com/itunes/working-itunes/sell-content/music-faq.html>

- **Pandora**⁵⁰ – Pandora is the world’s largest streaming music radio with a community of over 250 million registered members.⁵¹
- **Spotify**⁵² – Spotify is the world’s largest music streaming community with over 50 million active registered members in 58 countries and over 30 million songs. The music community uploads 20,000 songs every day.⁵³
- **Vevo**⁵⁴ – Vevo is the world’s leading all-premium music video community and platform with over 8 billion monthly views globally.⁵⁵
- **Youtube**⁵⁶ – Youtube is the world’s largest music video streaming community with millions of music creators -- amateur, professional, commercial or non-commercial -- and over 1 billion registered members covering all regions globally. 6 billion hours of video is watched every month on Youtube,⁵⁷ of which 38.4% is music-related.⁵⁸
- **Reverbnation**⁵⁹ – Reverbnation⁶⁰ is one of the world’s largest music community and a leading music distributor with over 3.87 million musicians, venues labels and industry professionals covering every country globally. The Reverbnation community grows by over 50,000 artists, bands, labels and industry professionals monthly.
- **BMG**⁶¹ – BMG is focused on the management of music publishing and recording rights. BMG has an international presence and represents over 2.5 million music rights globally.⁶²

A2IM also includes members that are associated with global government agencies which exclusively represent substantial music economies and music members, such as France (BureauExport⁶³), China (China Audio Video Association⁶⁴) and Germany (Initiative Musik).⁶⁵ A2IM also has Affiliate⁶⁶ associations within the global music community. These include Affiliates such as MusicFirst,⁶⁷ the Copyright Alliance,⁶⁸ the Worldwide Independent Network (WIN)⁶⁹ and Merlin.⁷⁰

⁵⁰ <http://a2im.org/groups/pandora>

⁵¹ <http://www.cnet.com/news/like-a-rolling-milestone-pandora-hits-250m-registered-users/> and <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MTkxNTM1fENoaWxkSUQ9LTF8VHlwZT0z&t=1>, Pg.9

⁵² <http://a2im.org/groups/spotify>

⁵³ <https://press.spotify.com/us/information/>

⁵⁴ <http://a2im.org/groups/vevo/>

⁵⁵ <http://www.vevo.com/c/EN/US/about>

⁵⁶ <http://a2im.org/groups/youtube/>

⁵⁷ <https://www.youtube.com/yt/press/statistics.html>

⁵⁸ http://www.researchandmarkets.com/reports/2092499/internet_video_2011_2014_view_share_site_and

⁵⁹ <http://a2im.org/groups/reverb-nation/>

⁶⁰ <http://www.reverbnation.com/about>

⁶¹ <http://a2im.org/groups/bmg-rights/>

⁶² <http://www.bmg.com/category/about-us/history/>

⁶³ <http://a2im.org/groups/french-music-export-office>

⁶⁴ <http://a2im.org/groups/china-audio-video-association-cava>

⁶⁵ <http://a2im.org/groups/initiative-musik-gmbh>

⁶⁶ <http://a2im.org/groups/tag/associate+members/>

⁶⁷ <http://musicfirstcoalition.org/coalition>, The musicFIRST Coalition, with founding members A2IM, RIAA, and Recording Academy represents musicians, artists, managers, music businesses, and performance right advocates.

⁶⁸ <http://www.copyrightalliance.org/members>

⁶⁹ <http://www.winformusic.org>

A2IM also represents a recognized Music Coalition representing the interests of the Global Independent Music Community.⁷¹ The A2IM Coalition includes Merlin, a global rights agency for the independent label sector, representing over 20,000 labels from 39 countries, Worldwide Independent Network (representing label creators in over 20 countries), Association of Independent Music (representing largest and most respected labels in the world), and IMPALA (Independent Music Companies Association on behalf of over 4,000 independent music companies and national associations across Europe, representing 99% of music actors in Europe which are micro, small and medium sized enterprises).

Cumulatively, A2IM's Label and Associate Membership, A2IM's Affiliates and the A2IM's Global Independent Music Community Coalition, covers a majority of the global music community. Its cumulative membership is in the hundreds of millions of entities with formal boundaries belonging to strictly organized and delineated communities related to music as per the Community Definition and Size (See Application answer to Question 20a).

The IFPI is another entity *mainly* dedicated to the Community. The IFPI is the only organization that represents the interests of the recording industry worldwide. It is the "voice of the recording industry worldwide"⁷² whose members⁷³ – major and independent companies -- represent a majority of all commercial music consumed globally. For example, the RIAA, an IFPI national group member,⁷⁴ represents "approximately 85% of all legitimate recorded music produced and sold in the United States,"⁷⁵ the world's largest music market with 30% global market share.⁷⁶ Formed in 1933, the IFPI's mission was to "represent the interests of the recording industry worldwide in all fora."

Another global Music Community Coalition led by the RIAA "on behalf of over 15 national and international trade associations" also expressed its support for .MUSIC to be under a "community" application model, including encouraging statements in support of DotMusic's policies that stated that the coalition "was encouraged to see" that DotMusic "included several measures to deter and address copyright infringement within that TLD." The "coalition members represent the people that write, sing, record, manufacture, distribute and/or license over 80% of the world's music"⁷⁷ – a majority of global music.⁷⁸

⁷⁰ <http://www.merlinnetwork.org>

⁷¹ <https://www.icann.org/en/system/files/correspondence/bengloff-to-chehade-et-al-20aug14-en.pdf> and <https://www.icann.org/en/system/files/correspondence/bengloff-to-crocker-et-al-07mar15-en.pdf>

⁷² <http://www.ifpi.org/about.php>

⁷³ <http://www.ifpi.org/our-members.php>

⁷⁴ <http://www.ifpi.org/national-groups.php>

⁷⁵ <http://www.riaa.com/faq.php>

⁷⁶ <http://www.statista.com/topics/1639/music/>

⁷⁷ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.1

⁷⁸ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.3, Appendix A

Another letter⁷⁹ sent to ICANN (on April 14th, 2015) by Danielle Aguirre from the NMPA and on behalf of a music publisher and songwriter community coalition representing a majority of the global music publishing community, also expressed “support [for] the .MUSIC community applications because respecting and protecting music rights serves the global music community and the public interest.”

Collectively, the DotMusic application received support from the largest coalition of music community member organizations ever assembled to support a cause representing over 95% of music consumed globally.⁸⁰ Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support⁸¹ from institutions/organizations representing a majority of the Community addressed. Music -- as commonly-known by the general public and experienced today -- would not be possible without these supporting, non-negligible and relevant organizations that have endorsed DotMusic.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Community Establishment* and *Community Endorsement* from the majority of the global Music Community as defined.

B) Nexus⁸²

According to the Applicant Guidebook (“AGB”), to receive the maximum score for Nexus, the applied-for string -- “music” -- must match the name of the community or be a well-known short-form or abbreviation of the community name.

The *Nexus* of the “Music Community” entirely matches the applied-for “music” string because it represents the entire global Music Community as commonly-known and perceived by the general public. This definition allows for all constituents with a requisite awareness of the Community defined to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination. The definition of the Community requires that members have an active, non-tangential relationship with the applied-for string and the requisite awareness of the music community they identify with as part of the registration process. It is clear that the general public will directly associate and equate the string with the Community as defined by DotMusic. There is no possibility of overreaching beyond the definition or allowing unrelated non-music

⁷⁹ <https://www.icann.org/en/system/files/correspondence/aguirre-to-icann-board-ciu-14apr15-en.pdf>

⁸⁰ See <http://music.us/supporters>, <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/downloadattachment/142588?t:ac=1392>, Bloomberg BNA at http://music.us/RIAA_Backs_DotMusic.pdf Pg.1, and <http://diffuser.fm/will-dot-music-domains-make-the-internet-better/>

⁸¹ <http://music.us/supporters>

⁸² See <http://music.us/nexus>

entities to be included as part of the Community. Community members may register a .MUSIC by either:

- 1) Identifying that they belong to a Music Community Member Organization (“MCMO”); or
- 2) Identifying the community they belong to, which is consistent with the definition of the Community: “the strictly delineated and organized logical alliance of communities of similar nature related to music.”

All Community members are aware of and recognize their inclusion in the defined Community by identifying which clearly defined community they belong to and have an active participation in. The *nexus* of the applied-for string ensures inclusion of the entire global community that the string represents while excluding unrelated-entities not associated with the string. This way there is a clear match and alignment between the “music” sting and the Community defined.

While the exact size of the global Music Community as defined is unknown (there is no empirical evidence providing an exact, finite number because amateur entities are also included in the Community’s definition), it is in the considerable millions as explicitly stated in the DotMusic Application. DotMusic’s definition of the Community and mutually-inclusive Registration Policies ensure that eligible members are only music-related and associated with the string. This is because the string identifies all constituents involved in music. Music-only participation optimizes the relevancy of .MUSIC domains to the string and entirely matches the *nexus* between the string and Community defined. According to DotMusic, the Community *definition, eligibility* criteria and *content and use* requirements ensure that peripheral industries and entities not related to music are excluded so that the string and the defined Community matches and aligns in a consistent manner consistent with DotMusic’s community-based purpose i.e. only entities with music-related activities are able to register .MUSIC domains.

Membership aligns with the *nexus* of the Community and the string, which is explicitly relevant to music. The string as defined in the application demonstrates uniqueness because it has no other significant meaning beyond identifying the community described in the application. According to DotMusic’s application, any tangential or implicit association with the *nexus* of the Community and the string is not regarded as a delineated membership since it would be considered unclear, dispersed or unbound. Such unclear, dispersed or unbound tangential relationships with the defined “music” Community and applied-for “music” string would not constitute a qualifying Community membership and would be ineligible for registration. Every type of music constituent critically contributes to the function and operation of the music sector within a regulated framework⁸³ given the symbiotic overlapping nature of the Community as

⁸³ ICANN has disclosed that the string .MUSIC is a sensitive string operating in a regulated sector. ICANN also accepted Government Advisory Committee (GAC) advice for safeguards to protect the Music Community and the public interest (See <https://icann.org/en/system/files/correspondence/crocker-to-dryden-3-29oct13-en.pdf> Pg.7)

defined and structured. Music would not function as it does today without the participation of all music constituent types which cumulatively match the string with the Community definition.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Nexus*.

Respectfully Submitted,

Signature:

A handwritten signature in blue ink, appearing to read 'C. Tibbels', followed by a long horizontal line extending to the right.

Name:

Chantelle Tibbels, PhD

Title:

Sociologist

Organization:

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About Dr. Chauntelle Tibbals

EDUCATION

PhD – Sociology, University of Texas at Austin (UT), 2010

M.A. – Sociology, California State University at Northridge (CSUN), 2003

B.S. – Physiological Science & Sociology, University of California at Los Angeles (UCLA), 2000

AREAS OF SOCIOLOGICAL SPECIALIZATION

Dr. Chauntelle Tibbals has written expository essays, research reviews, and opinion pieces published in the *Encyclopedia of Gender & Society*, *Gender & Society*, *Women's Studies International Forum*, and the *Los Angeles Daily Journal* (among others).

Dr. Chauntelle Tibbals is an [embedded public sociologist](#). This means my sociology is out in the world, a product of ongoing interactions with ever-evolving communities and subcultures. (see [here](#) for more)

Gender, Sexualities, Work & Organizations, Qualitative Research Methods, Media & New Media, Popular Culture

Work and insights have been cited in and/or referred to by Slate, KPCC (NPR), NBC News, CNN, VICE, TIME, and BloombergWest (among many others).

SELECTED SCHOLARLY PUBLICATIONS

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- [VICE Noisey](#)
- [VICE UK](#)
- [YourTango](#)

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Re: Expert Testimony on (i) Community Establishment; (ii) Nexus; and (iii) Support for DotMusic’s Community-Based Application¹ for .MUSIC (Application ID 1-1115-14110)

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

Please accept this letter that indicates that there is substantive and compelling evidence that the DotMusic application convincingly meets the full criteria under Community Priority Evaluation on the following points: (i) the Music Community’s *Establishment* as defined by DotMusic; (ii) the matching *Nexus* between the “music” Community and the “music” string (or top-level domain); and (iii) that DotMusic possesses documented *Support* from organizations representing a majority of the global Music Community addressed and defined.

Please see my credentials attached hereto that identify my level of expertise and specialized knowledge with respect to the music community’s organization and delineation.

SUMMARY

DotMusic has established the following:

- 1) Its Community definition recognizes the cohesive, symbiotic and overlapping nature of the global Music Community. The definition includes those associated with commercial and non-commercial creation, performance, marketing and distribution of music;
- 2) “Music Community” members have the requisite awareness and recognition of the interdependency, overlapping and cohesive nature of each “organized community of similar nature that relates to music.” These organized and aligned communities are closely united and make “music” as we know it today. It is this self-awareness and interdependence that gives the “Music Community” its strength. With exponential growth of the Internet, mobile and the Domain Name System (DNS), the “Music Community’s” use and reliance on the Internet to create, market and disseminate music-related content, products, services and activities will continue to grow;
- 3) The “Music Community” functions in a regulated sector with global copyright protections – it is clear that the “community,” as defined, implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate a globally-recognized set of standards for

¹ <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1392>

the protection of the “Music Community” member rights with relation to their copyrighted music works around the world;

4) The “Music” Community -- as defined by DotMusic -- has at least one entity mainly dedicated to the community supporting DotMusic’s application. Such documented *Support* includes several “international federation of national communities of a similar nature,” music coalitions and others that are strongly associated with “music,” which represent a majority of the Community with considerable millions of members worldwide.²

5) The *Nexus* of the “music” Community matches the “music” applied-for string because it represents the entire global Music Community – a community that pre-existed 2007 with a size in the considerable millions of constituents. The “Music Community” definition -- which incorporates the strict fundamental attributes of a closely united Community definition that is “organized” and “delineated” -- ensures that all of its constituent members have a requisite awareness of the community as defined, including both commercial and non-commercial stakeholders, to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination.

6) DotMusic has received support from the largest coalition of Music Community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support³ from institutions/organizations representing a majority of the Community as defined and recognized in the DotMusic application.

There is substantive evidence that DotMusic fulfills the *Nexus, Community Establishment and Support* criteria for the “Music” string. The inclusion and representation of every music constituent type is paramount to the articulated purpose of the string. DotMusic and its application’s global Music Community supporters substantiate that every type of music constituent contributes to the function and operation of the music sector within a regulated framework. The symbiotic nature of the Community as defined and structured means that “Music” would not function as it does today without the participation of all music constituent types that interconnect to match the “music” string with the “music” Community definition.

² <http://music.us/supporters>

³ <http://music.us/supporters>

ASSESSMENT OF COMMUNITY DEFINITION, ESTABLISHMENT AND NEXUS

A) *Music Community Definition, Establishment & Community Endorsement*⁴

DotMusic's definition of the "Music Community" as a "strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music" (See Application Answer to Question 20a) is factually accurate and representative of the "Music Community." Community characteristics include:

i) An Organized, Cohesive, Interdependent Logically-Allied Community:

The "Music Community" definition covers the regulated, interdependent and cohesive nature of the music sector that exists today. "Music Community" members have the requisite awareness and recognition of the interdependent, overlapping and cohesive nature of each "organized community of similar nature that relates to music" that comprises the "Music Community." Without such cohesiveness and interdependency, the defined "Music" Community matching the applied-for string ("Music") would not be able to function in its regulated sector. "Music" is a regulated sector comprised of a logical alliance of interdependent communities relating to music with organized practices and institutions that enable and regulate the production, distribution and consumption of music that was publicly recognized by both ICANN and the Government Advisory Committee⁵

As a result, the Music Community as defined is "closely united" (As per the definition of "cohesion" according to Merriam-Webster dictionary⁶) or "united or form a whole" (As per the definition of the word "cohesion" according to Oxford Dictionaries⁷).

DotMusic's application follows unified principles that the entire Community subscribes to, such as: creating a trusted identifier and safe haven for music consumption, protecting musicians' rights and intellectual property, fighting copyright infringement/piracy, supporting fair compensation and music education, and following a multi-stakeholder approach of representation of all types of global music constituents without discrimination (See Application Answers to 18).

The "Music Community" as defined (a "strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music") establishes that:

- (1) There is an awareness and recognition among its members;

⁴ See <http://music.us/establishment>

⁵ <https://www.icann.org/en/system/files/bm/briefing-materials-2-05feb14-en.pdf>, Pg.3

⁶ <http://www.merriam-webster.com/dictionary/cohesion>

⁷ http://www.oxforddictionaries.com/us/definition/american_english/cohesion

- (2) The organized and delineated logical alliance of communities exists; and
- (3) The Community is “closely united” and “interdependent” (i.e. Each “organized community of similar nature that relates to music” which is part of the “logical alliance of communities that relate to music” is not mutually exclusive).

In short, the applied-for string (“Music”) matches the name of the “Music” Community as defined by DotMusic’s application. DotMusic’s “Music Community” definition accurately represents the common definition of the “Music Community,” which is confirmed by Wikipedia.

According to Wikipedia:⁸

Music community is defined as a logical alliance of interdependent communities that are related to music, which include commercial participants...and non-commercial participants...and consists of an “ensemble of practices and institutions that make possible and regulate the production, distribution and consumption of music”...UNESCO identifies the music community as a “community of identity” implying common identifiable characteristics and cohesive attributes such as sharing a music culture, norms and subscribing to common ideals related to music...The music community is not defined as much by demographic indicators such as race, gender, and income level, as it is by common values, cohesive norms and interconnected structures to build a community identity. It refers to music-related individuals and organisations in a shared environment with shared understandings and practices, modes of production and distribution. The shared organisation of collective musical activities, identity and community value is created as result of infrastructure and a shared set of common values...Many studies outline the historical, cultural, and spatial significance of the music community, including how its identity is formed through musical practices. The music community shares a cohesive and interconnected structure of artistic expression, with diverse subcultures and socio-economic interactions...subscribing to common ideals. Under such structured context music consumption becomes possible regardless whether the transaction is commercial and non-commercial.⁹

⁸ Wikipedia is ranked 6th among the ten most popular websites (Alexa, Retrieved March 23, 2015 from <http://www.alexa.com/siteinfo/wikipedia.org>) and constitutes the Internet's largest, most frequently updated and popular general reference work (See OECD, OECD Internet Economy Outlook 2012, OECD Publishing, http://www.oecd-ilibrary.org/science-and-technology/oecd-internet-economy-outlook-2012_9789264086463-en, Pg.172) that compares favorably to the accuracy of other encyclopedias (such as the Britannica) according to a 2012 study conducted in partnership with Oxford University (See <http://blog.wikimedia.org/2012/08/02/seven-years-after-nature-pilot-study-compares-wikipedia-favorably-to-other-encyclopedias-in-three-languages>).

⁹ Music Community. In *Wikipedia*. Retrieved July 6, 2015, from https://en.wikipedia.org/wiki/Music_community

ii) An Aware, Pre-Existing and Recognized Community of Considerable Millions Worldwide:

DotMusic's definition of the Community covers all Community members associated with the string, each with a requisite awareness of the Community that can be validated through their natural association with a particular music-related community that they clearly identify with. According to DotMusic, all Music Community members must identify their music-related community in order to demonstrate their requisite awareness of the defined Community as part of the .MUSIC registration and validation process.

According to DotMusic, the Music Community's geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents (Application Answer to Question 20a).

According to DotMusic, "registrants will be verified using Community-organized, unified "criteria taken from holistic perspective with due regard of Community particularities" that "invoke a formal membership (Application Answer to Question 20a)." The defined Community represents all music-related entities with a clear and straightforward membership with the Community involved in the legal production, performance, promotion, and distribution of music worldwide. According to DotMusic, the Music Community members must have an active, non-tangential relationship with the applied-for string "music" and also have the requisite awareness of the music-related community that they are a part of by specifically identifying it as part of the registration and validation process (i.e. upon successful registration and validation, each community member will be given a unique community identification number that will automatically associate them with their identified community and the "music" string).

DotMusic's Community definition matches the applied-for string because it allows both commercial and non-commercial stakeholders to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination/exclusion. Given the regulated sector of the community, it is clear that the "Music Community" as defined implies "more of cohesion than a mere commonality of interest" with an "awareness and recognition of a community among its members." Several international treaties mandate cohesive and globally-recognized set of standards for the protection of the music community members' rights with relation to their copyrighted music works around the world.¹⁰

The Berne Convention for the Protection of Literary and Artistic Works¹¹ provides that each of the 168 contracting parties¹² (representing an overwhelming majority of the world's population) provides automatic protection for music works first published in other countries of the Berne union and for unpublished music works whose authors are citizens of or resident in such other

¹⁰ http://www.rightsdirect.com/content/rd/en/toolbar/copyright_education/International_Copyright_Basics.html

¹¹ http://www.wipo.int/treaties/en/text.jsp?file_id=283698

¹² http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=15

countries.¹³ This means that if a Music Community member's copyright rights are violated in any other signatory country's jurisdiction, then the music community member will have the music copyright rights given by that country. Music Community members are clearly aware of the collective Community's rights, which could not be made possible without these cohesive and globally-recognized set of standards. If such standards were not coherent or enforced then music would not be able to exist in its current form and the industry component of the Music Community sector would not exist. As such, the Community's *Establishment* and definition is "cohesive" and hence cannot be construed since the Community is a logical alliance of music communities that establish a clearly delineated and organized Community structure that is "closely united" and functions as a "whole"

Further evidence to substantiate the cohesive, symbiotic and overlapping nature of the Community, includes other globally-recognized standards and classification systems, which identify who the individual songwriters, publishers and rights holders are and which songs they are associated with so that Community members are appropriately compensated, regardless of whether the constituent is a commercial, non-commercial or amateur entity. The "music" string is commonly used in classification systems such as ISMN,¹⁴ ISRC,¹⁵ ISWC,¹⁶ ISNI.¹⁷ (Application Answer to Question 20a). For example, if a music entity would like to distribute their music, either commercially or for free, then an ISRC can be assigned to globally identify any specific music work. An ISRC, which facilitates efficient music discovery and community member payment, is constructed from 12 characters representing country, registrant, year of registration and designation (i.e. the serial number assigned by the registrant). With respect to domains, an equivalent system that relates to identifying a specific domain's registrant and other relevant information pertaining to the domain is WHOIS. Domain registrants are required by ICANN "to provide accurate WHOIS contact data" or else their domain "registration may be suspended or even cancelled".¹⁸

¹³ <http://www.britannica.com/EBchecked/topic/62482/Berne-Convention>

¹⁴ The International Standard Music Number (ISMN) is a unique number for the identification of all notated music publications from all over the world. The ISMN is an ISO certified global standard number (ISO 10957:2009). See <http://www.ismn-international.org/whatis.html> and http://www.iso.org/iso/home/store/catalogue_ics/catalogue_detail_ics.htm?csnumber=43173

¹⁵ The ISRC (International Standard Recording Code) is the international identification system for sound recordings and music video recordings. The ISRC is an ISO certified global standard number (ISO 3901:2001) and is managed by the IFPI. See <http://isrc.ifpi.org>, <https://www.usisrc.org/about/index.html> and http://www.iso.org/iso/catalogue_detail?csnumber=23401

¹⁶ The ISWC (International Standard Musical Work Code) is a unique, permanent and internationally recognized reference number for the identification of musical works. The ISWC has been approved by ISO (International Organization for Standardisation) as a global standard (ISO 15707:2001) and is managed by CISAC. See <http://www.iswc.org/en/faq.html> and http://www.iso.org/iso/catalogue_detail?csnumber=28780

¹⁷ The International Standard Name Identifier (ISNI) is the ISO certified global standard number (ISO 27729) for identifying the millions of contributors to creative works and those active in their distribution. ISNI holds public records of over 8 million identities and 490,000 organizations. See <http://www.isni.org/> and http://www.iso.org/iso/catalogue_detail?csnumber=44292

¹⁸ <https://whois.icann.org/en/about-whois> and <https://www.icann.org/resources/pages/faqs-f0-2012-02-25-en>

Without such Music Community “cohesion” and standardized systems functioning in its regulated sector, the Music Community would not be able to create, market and distribute their music. By the same token, fans would not be able to identify the music they are listening to with a specific music artist, regardless of whether the listening activity or behavior is commercial or non-commercial in nature. The socio-economic structure that characterizes “music” as commonly-known today would be non-existent without these organized and delineated elements that commonly define the Community.

iii) *International Federations and Organizations mainly Dedicated to the Community:*

According to ICANN’s Applicant Guidebook (“AGB”)¹⁹: “*With respect to “Delineation” and “Extension,” it should be noted that a community can consist of...a logical alliance of communities (for example, an international federation of national communities of a similar nature... viable as such, provided the requisite awareness and recognition of the community is at hand among the members.*” (AGB, 4-12). The community as defined in the DotMusic application has at least one entity *mainly*²⁰ dedicated to the community which has supported DotMusic, which include several “international federation of national communities of a similar nature” relating to music, music coalitions and other relevant and non-negligible music organizations.

One of these entities include the only international federation of national communities relating to government culture agencies and arts councils, which has an integral association with music globally: the International Federation of Arts Councils and Culture Agencies (IFACCA).

IFACCA is the only international federation that represents government culture agencies and arts councils globally. These national communities are governmental institutions that play a pivotal

¹⁹ <https://newgtlds.icann.org/en/applicants/agb/guidebook-full-11jan12-en.pdf>

²⁰ Per the Oxford and Merriam Webster dictionaries, the word “mainly” is defined as “*more than anything else*” (See <http://www.oxforddictionaries.com/definition/english/mainly> and <http://www.merriam-webster.com/dictionary/mainly> respectively). According to DotMusic, the string .MUSIC relates to the Community “by representing all constituents involved in music creation, production and distribution” (Application Answer to Question 20d). Supporting organizations related to that string that are “mainly” dedicated to the Community and its activities, include the International Federation of Arts Councils and Culture Agencies (IFACCA) representing government culture ministries and arts councils, the International Federation of Musicians (FIM) representing musicians globally, the International Federation of Phonographic Industry (IFPI) representing the recording industry worldwide, the International Confederation of Music Publishers (ICPM) representing the voice of global music publishing, the International Association of Music Information Centres (IAMIC), the American Association of Independent Music (A2IM), whose associate members represent a majority of music consumed, the Independent Music Worldwide Independent Network (WIN) representing independent music worldwide, the International Society for Music Education (ISME) the premiere international organization representing music education, and many others (See support at <http://music.us/supporters> and <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails:downloadattachment/142588?t:ac=1392>).

role with respect to music.²¹ IFACCA's members cover the majority of music entities globally, regardless of whether they are commercial, non-commercial or amateurs. Government ministry of culture and council agencies related to music cover a majority of the overall community with respect to headcount and geographic reach. The "Size" covered reaches over a hundred million music entities i.e. "considerable size with millions of constituents" per Application Answer to Question 20a.

The string "music" falls under the jurisdiction of each country's Ministry of Culture governmental agency or arts/music council (emphasis added). The degree of power and influence of government ministry of culture and council agencies with respect to music surpasses any organization type since these agencies (i) provide the majority of funding for music-related activities; (ii) regulate copyright law; and (iii) encompass all the music entities that fall under their country, regardless whether these entities are commercial, non-commercial or amateurs. IFACCA is globally recognized by its strategic partners, such as UNESCO, a United Nations agency representing 195 member states and the European Commission.²² The UNESCO strategic partnership²³ is relevant, especially since UNESCO founded the International Music Council (the "IMC") in 1949, which represents over 200 million music constituents from over 150 countries and over 1000 organizations globally.²⁴

Government activities in the clearly delineated and organized "Music Community" include setting statutory royalty rates. For example, in the United States, mechanical royalties are based on a "statutory rate" set by the U.S. Congress. This rate is increased to follow changes in the economy, usually based on the Consumer Price Index. Currently, the mechanical statutory rate is \$0.091 for songs five minutes or less in length or \$.0175 per minute for songs that are over five minutes long.²⁵

Ministries of culture and arts councils (that comprise IFACCA's membership) support musicians, musical performances, independent music artists, non-commercial musical expression and education in their respective countries. The 165 ministries of culture, arts councils and affiliates that comprise IFACCA's membership support the "performing arts" and music specifically. Without the financial and logistical support of arts councils and the ministries of culture, the music community would be adversely affected, and in some countries, may not exist in any appreciable manner. For example, the Ministry of Culture 2011 budget for the small country state of Cyprus for culture funding was €34,876,522 with critical support of music activities.²⁶ Other small government Ministries of Culture, such as Albania,²⁷ or government

²¹ http://www.ifacca.org/membership/current_members/

²² http://www.ifacca.org/strategic_partners/

²³ http://www.ifacca.org/strategic_partners/

²⁴ <http://www.imc-cim.org/about-imc-separator/who-we-are.html>

²⁵ U.S Copyright Office, <http://www.copyright.gov/carp/m200a.html>

²⁶ 2011 Annual Report for Cyprus Ministry of Culture, Section 1.2 "Music"

(http://www.moec.gov.cy/en/annual_reports/annual_report_2011_en.pdf). Activities include Music Performances in Cyprus (1.2.1) and Abroad (1.2.2), Subsidization of Paphos Aphrodite Festival (1.2.3), Music Publications (1.2.4), Subsidization and Purchases of Digital Records (1.2.5), Promotion for Cypriot musical creativity abroad (1.2.6),

Ministries of Culture and Arts Councils from countries with larger populations, such as India,²⁸ all provide critical support and substantial advocacy for music. Other examples include government institutions collaborating and advocating music through their funded country-based pavilion initiatives at Midem, the world's largest music conference.²⁹

Government ministries and arts councils provide critical support for the Music Community, including commercial music organizations. By way of example, government ministries' and arts councils' substantial connection to and support of "music" is noted in the reports of funding and support for music. Some examples to showcase the degree of power of the IFACCA's membership towards the string and global and national music are music investment and music funding (Annual reports by governments and councils):

- New Zealand Ministry of Culture has funded significant music projects. Some include the REAL New Zealand Music Tour (\$415,000), the New Zealand String Quartet (\$150,000) and New Zealand Music Commission: (\$1,378,000).³⁰
- The Australian Government/Council For The Arts invested \$51.2 million for the nation's orchestras; \$21.6 million for opera; \$10.8 million for other music artists and organizations; \$13.1 million for multi-platform artists and organizations; and \$4 million in miscellaneous funding, including sector building and audience development initiatives and programs.³¹
- Canada Council for the Arts is Canada's national, arts funding agency investing \$28 million in its Canada Council Musical Instrument Bank (Page 16) and \$28,156,000 in Music Arts Programs (Page 66).³² The Government of Canada also renewed its annual investment of \$27.6 million over five years in the Canada Music Fund.³³
- The United Kingdom Department for Culture and Education (DfE) will fund music education at significant levels: £77 million, £65 million and £60 million will be available in the three years from April 2012.³⁴

Cyprus Symphony Orchestra Foundation (1.2.7), Music Information Centre (1.2.8), Developing Music Education (1.2.9), Organising of the 1st Musicological Symposium (1.2.10) and Musical Festivities for the European Volunteerism Year (1.2.11)

²⁷ http://www.culturalpolicies.net/down/albania_012011.pdf

²⁸ 2010-11 Annual Report from India Ministry of Culture, [http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011\(Eng\).pdf](http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011(Eng).pdf)

²⁹ <http://my.midem.com/en/contact-us/pavilion-representatives/>

³⁰ 2011 Annual Report from New Zealand Ministry of Culture:

[http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20\(D-0448383\).PDF](http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20(D-0448383).PDF)

³¹ 2011 Annual Report for the Australia Council for the Arts,

http://www.australiacouncil.gov.au/data/assets/pdf_file/0016/142351/Australia-Council-Annual-Report-201112.pdf, Page 28

³² 2011 Annual Report for Canada Council for the Arts, [http://www.canadacouncil.ca/NR/rdonlyres/6F7549BB-F4E5-4B8B-95F4-](http://www.canadacouncil.ca/NR/rdonlyres/6F7549BB-F4E5-4B8B-95F4-1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf)

[1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf](http://www.canadacouncil.ca/NR/rdonlyres/6F7549BB-F4E5-4B8B-95F4-1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf)

³³ <http://www.pch.gc.ca/eng/1294862453819/1294862453821>

³⁴ Department for Culture, The Importance of Music, A National Plan for Music Education,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/180973/DFE-00086-2011.pdf, Page 4, 2011

- The United States National Endowment of the Arts has awarded more than \$4 billion to support the arts since its inception³⁵ and has a strong focus on music as outlined in its Strategic Plan³⁶ with Congress requested to provide \$154,465,000 for fiscal year 2014.³⁷
- The National Arts Council of South Africa invested 2,536,131 ZAR in Music and 9,995,000 ZAR in Orchestras and has focused strongly on the “Strengthening of live indigenous music and advocating the revival of the live music circuit in South Africa”³⁸
- The Singapore Arts Council will fund \$10.2 million in the arts under its 2013 Grants Framework, including the Ding Yi Music Company and Siong Leng Musical Association.³⁹
- In 2011, the support for artistic activities by the Arts Council of Finland was €32.4 million of which €4,921,850 was awarded to music.⁴⁰

Each of IFACCA’s members has a clear association with, and mandate to support the music arts in their countries. In most countries, their ministry of culture/arts council is the largest funder and marketing supporter of the music arts.

The IFPI is another entity *mainly* dedicated to the Community. The IFPI is the only organization that represents the interests of the recording industry worldwide. It is the “voice of the recording industry worldwide”⁴¹ whose members⁴² – major and independent companies -- represent a majority of all commercial music consumed globally. For example, the RIAA, an IFPI national group member,⁴³ represents “approximately 85% of all legitimate recorded music produced and sold in the United States,”⁴⁴ the world’s largest music market with 30% global market share.⁴⁵ Formed in 1933, the IFPI’s mission was to “represent the interests of the recording industry worldwide in all fora.”

³⁵ 2011 Annual report for the National Endowment of the Arts, <http://www.nea.gov/about/11Annual/2011-NEA-Annual-Report.pdf>, Page 2

³⁶ NEA Strategic Plan 2012-2016, www.arts.gov/about/Budget/NEAStrategicPlan2012-2016.pdf

³⁷ http://www.ifacca.org/national_agency_news/2013/04/10/us-president-requests-154465000-neh-2014/

³⁸ 2010-2011 Annual Report for the National Arts Council South Africa, National Arts Council South Africa, <http://www.nac.org.za/media/publications/AR%2010-11%20NAC.PDF/download>, Page 11. Also Mmino, the South African – Norwegian Education Music Programme, solely funds music projects funding a total of 294 projects. Thirteen projects were allocated funding for a total of R1,680,600 of which R1,381,000 went towards music educational and R299,600 to exchange projects (Page 10)

³⁹ Singapore Arts Council, <http://www.nac.gov.sg/media-centre/news-releases/news-detail?id=c2db15e2-c319-40ec-939c-d58735d0a91c>

⁴⁰ <http://www.taiteenkeskustoimikunta.fi/documents/10162/31704/TY+tilastotiedote+1+12+.pdf>, Page 1 and Page 23

⁴¹ <http://www.ifpi.org/about.php>

⁴² <http://www.ifpi.org/our-members.php>

⁴³ <http://www.ifpi.org/national-groups.php>

⁴⁴ <http://www.riaa.com/faq.php>

⁴⁵ <http://www.statista.com/topics/1639/music/>

Another clear example of an “entity *mainly* dedicated to the community” with members that cover hundreds of millions of music constituents with formal boundaries is A2IM, the American Association of Independent Music. A2IM has two types of members: U.S independent Label members and Associate members. A2IM membership for Labels and Associates is invoked formally through an application and if accepted would require annual membership dues.⁴⁶

The reach of A2IM Associate⁴⁷ membership covers hundreds of millions of entities (i.e. the reach of A2IM’s total membership “geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents – See Application Answer to Question 20a).

Organized and strictly delineated communities related to music that are A2IM members include:

- **Apple iTunes**⁴⁸ – iTunes accounts for 63% of global digital music market⁴⁹ - a majority – with a registered community of 800 million registered members⁵⁰ available in 119 countries who abide to strict terms of service and boundaries⁵¹ and have downloaded over 25 billion songs⁵² from iTunes’ catalog of over 43 million songs⁵³ covering a global music community, regardless of genre or whether the community entities are amateur, professional, commercial or non-commercial. To add music to iTunes, all music artists must have a formal membership with iTunes via an Apple ID registration, which includes a current credit card on file.⁵⁴
- **Pandora**⁵⁵ – Pandora is the world’s largest streaming music radio with a community of over 250 million registered members.⁵⁶
- **Spotify**⁵⁷ – Spotify is the world’s largest music streaming community with over 50 million active registered members in 58 countries and over 30 million songs. The music community uploads 20,000 songs every day.⁵⁸
- **Vevo**⁵⁹ – Vevo is the world’s leading all-premium music video community and platform with over 8 billion monthly views globally.⁶⁰

⁴⁶ <http://a2im.org/about-joining/>

⁴⁷ <http://a2im.org/groups/tag/associate+members/>

⁴⁸ <http://a2im.org/groups/itunes>

⁴⁹ <http://appleinsider.com/articles/13/04/16/apples-itunes-rules-digital-music-market-with-63-share>

⁵⁰ <http://www.npr.org/blogs/therecord/2015/01/06/375173595/with-downloads-in-decline-can-itunes-adapt>

⁵¹ <http://www.apple.com/legal/internet-services/itunes/ww/index.html>

⁵² <http://www.apple.com/pr/library/2013/02/06iTunes-Store-Sets-New-Record-with-25-Billion-Songs-Sold.html>

⁵³ <https://www.apple.com/itunes/features/>

⁵⁴ <https://www.apple.com/itunes/working-itunes/sell-content/music-faq.html>

⁵⁵ <http://a2im.org/groups/pandora>

⁵⁶ <http://www.cnet.com/news/like-a-rolling-milestone-pandora-hits-250m-registered-users/> and <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MTkxNTM1fENoaWxkSUQ9LTF8VHlwZT0z&t=1>, Pg.9

⁵⁷ <http://a2im.org/groups/spotify>

⁵⁸ <https://press.spotify.com/us/information/>

⁵⁹ <http://a2im.org/groups/vevo/>

- **Youtube**⁶¹ – Youtube is the world’s largest music video streaming community with millions of music creators -- amateur, professional, commercial or non-commercial -- and over 1 billion registered members covering all regions globally. 6 billion hours of video is watched every month on Youtube,⁶² of which 38.4% is music-related.⁶³
- **Reverbnation**⁶⁴ – Reverbnation⁶⁵ is one of the world’s largest music community and a leading music distributor with over 3.87 million musicians, venues labels and industry professionals covering every country globally. The Reverbnation community grows by over 50,000 artists, bands, labels and industry professionals monthly.
- **BMG**⁶⁶ – BMG is focused on the management of music publishing and recording rights. BMG has an international presence and represents over 2.5 million music rights globally.⁶⁷

A2IM also includes members that are associated with global government agencies which exclusively represent substantial music economies and music members, such as France (BureauExport⁶⁸), China (China Audio Video Association⁶⁹) and Germany (Initiative Musik).⁷⁰ A2IM also has Affiliate⁷¹ associations within the global music community. These include Affiliates such as MusicFirst,⁷² the Copyright Alliance,⁷³ the Worldwide Independent Network (WIN)⁷⁴ and Merlin.⁷⁵

A2IM also represents a recognized Music Coalition representing the interests of the Global Independent Music Community.⁷⁶ The A2IM Coalition includes Merlin, a global rights agency for the independent label sector, representing over 20,000 labels from 39 countries, Worldwide Independent Network (representing label creators in over 20 countries), Association of Independent Music (representing largest and most respected labels in the world), and IMPALA (Independent Music Companies Association on behalf of over 4,000 independent music companies and national associations across Europe, representing 99% of music actors in Europe which are micro, small and medium sized enterprises).

⁶⁰ <http://www.vevo.com/c/EN/US/about>

⁶¹ <http://a2im.org/groups/youtube/>

⁶² <https://www.youtube.com/yt/press/statistics.html>

⁶³ http://www.researchandmarkets.com/reports/2092499/internet_video_2011_2014_view_share_site_and

⁶⁴ <http://a2im.org/groups/reverb-nation/>

⁶⁵ <http://www.reverbnation.com/about>

⁶⁶ <http://a2im.org/groups/bmg-rights/>

⁶⁷ <http://www.bmg.com/category/about-us/history/>

⁶⁸ <http://a2im.org/groups/french-music-export-office>

⁶⁹ <http://a2im.org/groups/china-audio-video-association-cava>

⁷⁰ <http://a2im.org/groups/initiative-musik-gmbh>

⁷¹ <http://a2im.org/groups/tag/associate+members/>

⁷² <http://musicfirstcoalition.org/coalition>, The musicFIRST Coalition, with founding members A2IM, RIAA, and Recording Academy represents musicians, artists, managers, music businesses, and performance right advocates.

⁷³ <http://www.copyrightalliance.org/members>

⁷⁴ <http://www.winformusic.org>

⁷⁵ <http://www.merlinnetwork.org>

⁷⁶ <https://www.icann.org/en/system/files/correspondence/bengloff-to-chehade-et-al-20aug14-en.pdf> and <https://www.icann.org/en/system/files/correspondence/bengloff-to-crocker-et-al-07mar15-en.pdf>

Cumulatively, A2IM's Label and Associate Membership, A2IM's Affiliates and the A2IM's Global Independent Music Community Coalition, covers a majority of the global music community. Its cumulative membership is in the hundreds of millions of entities with formal boundaries belonging to strictly organized and delineated communities related to music as per the Community Definition and Size (See Application answer to Question 20a).

Another global Music Community Coalition led by the RIAA “on behalf of over 15 national and international trade associations” also expressed its support for .MUSIC to be under a “community” application model, including encouraging statements in support of DotMusic’s policies that stated that the coalition “was encouraged to see” that DotMusic “included several measures to deter and address copyright infringement within that TLD.” The “coalition members represent the people that write, sing, record, manufacture, distribute and/or license over 80% of the world’s music”⁷⁷ – a majority of global music.⁷⁸

Another letter⁷⁹ sent to ICANN (on April 14th, 2015) by Danielle Aguirre from the NMPA and on behalf of a music publisher and songwriter community coalition representing a majority of the global music publishing community, also expressed “support [for] the .MUSIC community applications because respecting and protecting music rights serves the global music community and the public interest.”

The International Music Products Association, NAMM, is another globally-recognized and relevant group of non-negligible size that has supported DotMusic.⁸⁰ NAMM, formed in 1901, is *mainly* dedicated to the global music community by representing the international music products industry and community, with globally-recognized members and exhibitors that include Yamaha, Roland, Sennheiser, Sony, Fender, Harman, Kawai, Shure, Steinway, Audio-Technica, AKAI, Gibson, Peavey, Korg, AKG, Selmer, JBL, Alesis, Ibanez, AVID, Casio, DW, Sabian, Pearl, Zildjian, Martin, Ludwig, Marshall and others.^{81 82} Every amateur and professional musician worldwide uses music products manufactured and distributed by NAMM’s members. Without these musical instruments and products, music as we know it today would not be created or produced. NAMM and its trade shows power the \$17 billion global music products industry serving as a hub for the global music community wanting to seek out the newest innovations in musical products, recording technology, sound and lighting. NAMM’s mission is “to strengthen

⁷⁷ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.1

⁷⁸ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.3, Appendix A

⁷⁹ <https://www.icann.org/en/system/files/correspondence/aguirre-to-icann-board-eiu-14apr15-en.pdf>

⁸⁰ http://music.us/letters/NAMM_International_Music_Products_Association.pdf

⁸¹ https://www.namm.org/files/showdir/ExhibitorList_WN15.xls

⁸² <http://www.musictrades.com/global.html>

the music products industry and promote the pleasures and benefits of making music.”⁸³ NAMM also hosts the NAMM Show, the world's largest event for the music products industry.

Collectively, the DotMusic application received support from the largest coalition of music community member organizations ever assembled to support a cause representing over 95% of music consumed globally.⁸⁴ Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support⁸⁵ from institutions/organizations representing a majority of the Community addressed. Music -- as commonly-known by the general public and experienced today -- would not be possible without these supporting, non-negligible and relevant organizations that have endorsed DotMusic.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Community Establishment* and *Community Endorsement* from the majority of the global Music Community as defined.

B) Nexus⁸⁶

According to the Applicant Guidebook (“AGB”), to receive the maximum score for Nexus, the applied-for string -- “music” -- must match the name of the community or be a well-known short-form or abbreviation of the community name.

The *Nexus* of the “Music Community” entirely matches the applied-for “music” string because it represents the entire global Music Community as commonly-known and perceived by the general public. This definition allows for all constituents with a requisite awareness of the Community defined to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination. The definition of the Community requires that members have an active, non-tangential relationship with the applied-for string and the requisite awareness of the music community they identify with as part of the registration process. It is clear that the general public will directly associate and equate the string with the Community as defined by DotMusic. There is no possibility of overreaching beyond the definition or allowing unrelated non-music entities to be included as part of the Community. Community members may register a .MUSIC by either:

⁸³ <https://www.namm.org/about>

⁸⁴ See <http://music.us/supporters>, <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/downloadattachment/142588?t:ac=1392>, Bloomberg BNA at http://music.us/RIAA_Backs_DotMusic.pdf Pg.1, and <http://diffuser.fm/will-dot-music-domains-make-the-internet-better/>

⁸⁵ <http://music.us/supporters>

⁸⁶ See <http://music.us/nexus>

- 1) Identifying that they belong to a Music Community Member Organization (“MCMO”); or
- 2) Identifying the community they belong to, which is consistent with the definition of the Community: “the strictly delineated and organized logical alliance of communities of similar nature related to music.”

All Community members are aware of and recognize their inclusion in the defined Community by identifying which clearly defined community they belong to and have an active participation in. The *nexus* of the applied-for string ensures inclusion of the entire global community that the string represents while excluding unrelated-entities not associated with the string. This way there is a clear match and alignment between the “music” sting and the Community defined.

While the exact size of the global Music Community as defined is unknown (there is no empirical evidence providing an exact, finite number because amateur entities are also included in the Community’s definition), it is in the considerable millions as explicitly stated in the DotMusic Application. DotMusic’s definition of the Community and mutually-inclusive Registration Policies ensure that eligible members are only music-related and associated with the string. This is because the string identifies all constituents involved in music. Music-only participation optimizes the relevancy of .MUSIC domains to the string and entirely matches the *nexus* between the string and Community defined. According to DotMusic, the Community *definition, eligibility* criteria and *content and use* requirements ensure that peripheral industries and entities not related to music are excluded so that the string and the defined Community matches and aligns in a consistent manner consistent with DotMusic’s community-based purpose i.e. only entities with music-related activities are able to register .MUSIC domains.

Membership aligns with the *nexus* of the Community and the string, which is explicitly relevant to music. The string as defined in the application demonstrates uniqueness because it has no other significant meaning beyond identifying the community described in the application. According to DotMusic’s application, any tangential or implicit association with the *nexus* of the Community and the string is not regarded as a delineated membership since it would be considered unclear, dispersed or unbound. Such unclear, dispersed or unbound tangential relationships with the defined “music” Community and applied-for “music” string would not constitute a qualifying Community membership and would be ineligible for registration. Every type of music constituent critically contributes to the function and operation of the music sector within a regulated framework⁸⁷ given the symbiotic overlapping nature of the Community as defined and structured. Music would not function as it does today without the participation of all music constituent types which cumulatively match the string with the Community definition.

⁸⁷ ICANN has disclosed that the string .MUSIC is a sensitive string operating in a regulated sector. ICANN also accepted Government Advisory Committee (GAC) advice for safeguards to protect the Music Community and the public interest (See <https://icann.org/en/system/files/correspondence/crocker-to-dryden-3-29oct13-en.pdf> Pg.7)

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Nexus*.

Respectfully Submitted,



Signature:

Contact Information Redacted Aug 11 '15 ip: 92.193.40.64

Name: Daniel James Wolf

Title: PhD Ethnomusicology, Wesleyan University

Organization: Material Press, Frankfurt am Main

Dr. Daniel James Wolf

Education

BA (Music), UC Santa Cruz

MA (World Music)

PhD (Ethnomusicology), Wesleyan University

Biography

Daniel James Wolf (born September 13, 1961 in Upland, California) is an American composer of serious music and a music scholar.

Wolf studied composition study with Gordon Mumma, Alvin Lucier, and La Monte Young, as well as musical tunings with Erv Wilson and Douglas Leedy and ethnomusicology. BA University of California Santa Cruz, MA, PhD, Wesleyan University. Important contacts with Lou Harrison, John Cage, Walter Zimmermann. Managing Editor of *Xenharmonikon*, 1985-89. Based in Europe from 1989, he is known as a member of the "Material" group of composers, along with Hauke Harder, Markus Trunk.

Wolf's compositions apply an experimental approach to musical materials, with a special interest in intonation, yet often display a surface that playfully - if accidentally - recalls historical musics. Major works include *The White Canoe*, an opera seria for handpuppets to the libretto by Edward Gorey and four string quartets.

Three distinct streams combine to form Wolf's oeuvre. Wolf makes sound installations, experimental concert works based on sound structures mostly free from historical associations, and experimental concert works based on reifying the tradition of European art music (or other world musics, particular Javanese gamelan) and then performing operations on its internal principles. The following remarks pertain to this last body of work.

Composer Wolf identifies with the experimental music tradition--especially its American West Coast manifestation-- spiritually, intellectually and personally. Nevertheless, in that portion of his work where his choice of musical materials and forms derive from common practice harmony and counterpoint, he might, to some, suggest a conservative neoclassicist. Where neoclassicism means pursuing classical ideals with novel sonic resources, Wolf's actually employs the reverse tactic -- he virtuosically explores reasonably familiar classical or neoclassical materials with no a priori commitment to received ideals.

He jokingly calls his method "dysfunctional harmony." A metaphor might help explain his meaning. Imagine the principles of common practice music as carried by some genetic code subject to mutations. Either intuitively or methodically, Wolf mutates certain genes and produces harmony or counterpoint that systematically engages our historical understanding but still undermines our expectations. In the long run biological mutations either prove

adaptive (and proliferate) or maladaptive (and disappear), but when the sport first appears, it holds only its strangeness, orthogonal to any world of value.

In this respect Wolf has deeply internalized the experimental ethos. Typical composers employ trial and error as they search for some effect, while strict aleatoric composers, after Cage, perform trials and simply accept the effect. Wolf performs Cageian experiments, mostly in his head, with or without the aid of chance procedures, but in doing so nevertheless engages musical functionality though without making a fetish of it.

While Wolf's tendency towards small forms and quiescent gestures often tickles a listener's notions of the musically elegant, his mutated materials make for music that must fall just shy of received standards of elegance. Much of the power of his music derives from a tension that dwells in the negative space between the forms Wolf actually achieves and the engaged listener's induced desire for a perfectly elegant idealization.

Rather than a post-modernist's theatrical pastiche and cold irony, Wolf's detente with the great tradition has a tragic aspect. One might compare Wolf's engagement with the past to that of the uncompromising realist in literature, drama or the visual arts, one who takes on the practices of the great tradition but rejects the hegemonic repression encoded in naive heroicism and idealization.

He has written extensively about modern and experimental music, systematic musicology, and speculative music theory. Extensive critical and theoretical writings on musical intonation and speculative music theory, especially the interaction between tuning systems and tonal musics, 20th century and American experimental music, ancient Greek and Hellenistic music, mannerism, Viennese classicism, Southeast Asian musics. Organology. Ethnomusicological fieldwork in central Mexico, Ireland, Suriname, central Java, Germany and southern California.

Other Experience

Member of the Gravity Resisters' Pension Fund Orchestra, 1980-present.

Editor, XENHARMONIKON (a journal of new music and intonation systems), 1985-89.

Curator, Folk Music Center Museum, Claremont (1979-89)

Music Curator, Real Art Ways, Hartford, CT (1985-86)

Guest Curator, Ontario (California) Museum of History and Art (1989).

Research Assistant to Prof. John Hajdu (J.-B. Lully: Sacred Motets).

Teaching Assistant to Profs. Linda Burman-Hall (theory and musicianship), Neely Bruce (music history survey), and David McAllester (ethnomusicology).

Studied Gamelan with Undang Sumarna, Sumarsam, I.M. Harjito, Ki Suhardi, Heri Djajasumadi, and Oemartopo. Instructor, Javanese Gamelan, Museum für Volkerkunde,

Frankfurt. Member, Gamelan Orchestras WACANA BUDAYA, Frankfurt, and TOPANG BANG, Budapest.

Websites:

https://en.wikipedia.org/wiki/Daniel_James_Wolf

<http://home.snafu.de/djwolf/vitae.htm#Vitae>

Re: Expert Testimony on (i) Community Establishment; (ii) Nexus; and (iii) Support for DotMusic’s Community-Based Application¹ for .MUSIC (Application ID 1-1115-14110)

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

Please accept this letter that indicates that there is substantive and compelling evidence that the DotMusic application convincingly meets the full criteria under Community Priority Evaluation on the following points: (i) the Music Community’s *Establishment* as defined by DotMusic; (ii) the matching *Nexus* between the “music” Community and the “music” string (or top-level domain); and (iii) that DotMusic possesses documented *Support* from organizations representing a majority of the global Music Community addressed and defined.

Please see my credentials attached hereto that identify my level of expertise and specialized knowledge with respect to the music community’s organization and delineation.

SUMMARY

DotMusic has established the following:

- 1) Its Community definition recognizes the cohesive, symbiotic and overlapping nature of the global Music Community. The definition includes those associated with commercial and non-commercial creation, performance, marketing and distribution of music;
- 2) “Music Community” members have the requisite awareness and recognition of the interdependency, overlapping and cohesive nature of each “organized community of similar nature that relates to music.” These organized and aligned communities are closely united and make “music” as we know it today. It is this self-awareness and interdependence that gives the “Music Community” its strength. With exponential growth of the Internet, mobile and the Domain Name System (DNS), the “Music Community’s” use and reliance on the Internet to create, market and disseminate music-related content, products, services and activities will continue to grow;
- 3) The “Music Community” functions in a regulated sector with global copyright protections – it is clear that the “community,” as defined, implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate a globally-recognized set of standards for

¹ <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1392>

the protection of the “Music Community” member rights with relation to their copyrighted music works around the world;

4) The “Music” Community -- as defined by DotMusic -- has at least one entity mainly dedicated to the community supporting DotMusic’s application. Such documented *Support* includes several “international federation of national communities of a similar nature,” music coalitions and others that are strongly associated with “music,” which represent a majority of the Community with considerable millions of members worldwide.²

5) The *Nexus* of the “music” Community matches the “music” applied-for string because it represents the entire global Music Community – a community that pre-existed 2007 with a size in the considerable millions of constituents. The “Music Community” definition -- which incorporates the strict fundamental attributes of a closely united Community definition that is “organized” and “delineated” -- ensures that all of its constituent members have a requisite awareness of the community as defined, including both commercial and non-commercial stakeholders, to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination.

6) DotMusic has received support from the largest coalition of Music Community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support³ from institutions/organizations representing a majority of the Community as defined and recognized in the DotMusic application.

There is substantive evidence that DotMusic fulfills the *Nexus, Community Establishment and Support* criteria for the “Music” string. The inclusion and representation of every music constituent type is paramount to the articulated purpose of the string. DotMusic and its application’s global Music Community supporters substantiate that every type of music constituent contributes to the function and operation of the music sector within a regulated framework. The symbiotic nature of the Community as defined and structured means that “Music” would not function as it does today without the participation of all music constituent types that interconnect to match the “music” string with the “music” Community definition.

² <http://music.us/supporters>

³ <http://music.us/supporters>

ASSESSMENT OF COMMUNITY DEFINITION, ESTABLISHMENT AND NEXUS

A) *Music Community Definition, Establishment & Community Endorsement*⁴

DotMusic’s definition of the “Music Community” as a “strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music” (See Application Answer to Question 20a) is factually accurate and representative of the “Music Community.” Community characteristics include:

i) An Organized, Cohesive, Interdependent Logically-Allied Community:

The “Music Community” definition covers the regulated, interdependent and cohesive nature of the music sector that exists today. “Music Community” members have the requisite awareness and recognition of the interdependent, overlapping and cohesive nature of each “organized community of similar nature that relates to music” that comprises the “Music Community.” Without such cohesiveness and interdependency, the defined “Music” Community matching the applied-for string (“Music”) would not be able to function in its regulated sector. “Music” is a regulated sector comprised of a logical alliance of interdependent communities relating to music with organized practices and institutions that enable and regulate the production, distribution and consumption of music that was publicly recognized by both ICANN and the Government Advisory Committee⁵

As a result, the Music Community as defined is “closely united” (As per the definition of “cohesion” according to Merriam-Webster dictionary⁶) or “united or form a whole” (As per the definition of the word “cohesion” according to Oxford Dictionaries⁷).

DotMusic’s application follows unified principles that the entire Community subscribes to, such as: creating a trusted identifier and safe haven for music consumption, protecting musicians’ rights and intellectual property, fighting copyright infringement/piracy, supporting fair compensation and music education, and following a multi-stakeholder approach of representation of all types of global music constituents without discrimination (See Application Answers to 18).

The “Music Community” as defined (a “strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music”) establishes that:

- (1) There is an awareness and recognition among its members;

⁴ See <http://music.us/establishment>

⁵ <https://www.icann.org/en/system/files/bm/briefing-materials-2-05feb14-en.pdf>, Pg.3

⁶ <http://www.merriam-webster.com/dictionary/cohesion>

⁷ http://www.oxforddictionaries.com/us/definition/american_english/cohesion

- (2) The organized and delineated logical alliance of communities exists; and
- (3) The Community is “closely united” and “interdependent” (i.e. Each “organized community of similar nature that relates to music” which is part of the “logical alliance of communities that relate to music” is not mutually exclusive).

In short, the applied-for string (“Music”) matches the name of the “Music” Community as defined by DotMusic’s application. DotMusic’s “Music Community” definition accurately represents the common definition of the “Music Community,” which is confirmed by Wikipedia.

According to Wikipedia:⁸

Music community is defined as a logical alliance of interdependent communities that are related to music, which include commercial participants...and non-commercial participants...and consists of an “ensemble of practices and institutions that make possible and regulate the production, distribution and consumption of music”...UNESCO identifies the music community as a “community of identity” implying common identifiable characteristics and cohesive attributes such as sharing a music culture, norms and subscribing to common ideals related to music...The music community is not defined as much by demographic indicators such as race, gender, and income level, as it is by common values, cohesive norms and interconnected structures to build a community identity. It refers to music-related individuals and organisations in a shared environment with shared understandings and practices, modes of production and distribution. The shared organisation of collective musical activities, identity and community value is created as result of infrastructure and a shared set of common values...Many studies outline the historical, cultural, and spatial significance of the music community, including how its identity is formed through musical practices. The music community shares a cohesive and interconnected structure of artistic expression, with diverse subcultures and socio-economic interactions...subscribing to common ideals. Under such structured context music consumption becomes possible regardless whether the transaction is commercial and non-commercial.⁹

⁸ Wikipedia is ranked 6th among the ten most popular websites (Alexa, Retrieved March 23, 2015 from <http://www.alexacom/siteinfo/wikipedia.org>) and constitutes the Internet's largest, most frequently updated and popular general reference work (See OECD, OECD Internet Economy Outlook 2012, OECD Publishing, http://www.oecd-ilibrary.org/science-and-technology/oecd-internet-economy-outlook-2012_9789264086463-en, Pg.172) that compares favorably to the accuracy of other encyclopedias (such as the Britannica) according to a 2012 study conducted in partnership with Oxford University (See <http://blog.wikimedia.org/2012/08/02/seven-years-after-nature-pilot-study-compares-wikipedia-favorably-to-other-encyclopedias-in-three-languages>).

⁹ Music Community. In *Wikipedia*. Retrieved July 6, 2015, from https://en.wikipedia.org/wiki/Music_community

ii) An Aware, Pre-Existing and Recognized Community of Considerable Millions Worldwide:

DotMusic's definition of the Community covers all Community members associated with the string, each with a requisite awareness of the Community that can be validated through their natural association with a particular music-related community that they clearly identify with. According to DotMusic, all Music Community members must identify their music-related community in order to demonstrate their requisite awareness of the defined Community as part of the .MUSIC registration and validation process.

According to DotMusic, the Music Community's geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents (Application Answer to Question 20a).

According to DotMusic, "registrants will be verified using Community-organized, unified "criteria taken from holistic perspective with due regard of Community particularities" that "invoke a formal membership (Application Answer to Question 20a)." The defined Community represents all music-related entities with a clear and straightforward membership with the Community involved in the legal production, performance, promotion, and distribution of music worldwide. According to DotMusic, the Music Community members must have an active, non-tangential relationship with the applied-for string "music" and also have the requisite awareness of the music-related community that they are a part of by specifically identifying it as part of the registration and validation process (i.e. upon successful registration and validation, each community member will be given a unique community identification number that will automatically associate them with their identified community and the "music" string).

DotMusic's Community definition matches the applied-for string because it allows both commercial and non-commercial stakeholders to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination/exclusion. Given the regulated sector of the community, it is clear that the "Music Community" as defined implies "more of cohesion than a mere commonality of interest" with an "awareness and recognition of a community among its members." Several international treaties mandate cohesive and globally-recognized set of standards for the protection of the music community members' rights with relation to their copyrighted music works around the world.¹⁰

The Berne Convention for the Protection of Literary and Artistic Works¹¹ provides that each of the 168 contracting parties¹² (representing an overwhelming majority of the world's population) provides automatic protection for music works first published in other countries of the Berne union and for unpublished music works whose authors are citizens of or resident in such other

¹⁰ http://www.rightsdirect.com/content/rd/en/toolbar/copyright_education/International_Copyright_Basics.html

¹¹ http://www.wipo.int/treaties/en/text.jsp?file_id=283698

¹² http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=15

countries.¹³ This means that if a Music Community member's copyright rights are violated in any other signatory country's jurisdiction, then the music community member will have the music copyright rights given by that country. Music Community members are clearly aware of the collective Community's rights, which could not be made possible without these cohesive and globally-recognized set of standards. If such standards were not coherent or enforced then music would not be able to exist in its current form and the industry component of the Music Community sector would not exist. As such, the Community's *Establishment* and definition is "cohesive" and hence cannot be construed since the Community is a logical alliance of music communities that establish a clearly delineated and organized Community structure that is "closely united" and functions as a "whole"

Further evidence to substantiate the cohesive, symbiotic and overlapping nature of the Community, includes other globally-recognized standards and classification systems, which identify who the individual songwriters, publishers and rights holders are and which songs they are associated with so that Community members are appropriately compensated, regardless of whether the constituent is a commercial, non-commercial or amateur entity. The "music" string is commonly used in classification systems such as ISMN,¹⁴ ISRC,¹⁵ ISWC,¹⁶ ISNI.¹⁷ (Application Answer to Question 20a). For example, if a music entity would like to distribute their music, either commercially or for free, then an ISRC can be assigned to globally identify any specific music work. An ISRC, which facilitates efficient music discovery and community member payment, is constructed from 12 characters representing country, registrant, year of registration and designation (i.e. the serial number assigned by the registrant). With respect to domains, an equivalent system that relates to identifying a specific domain's registrant and other relevant information pertaining to the domain is WHOIS. Domain registrants are required by ICANN "to provide accurate WHOIS contact data" or else their domain "registration may be suspended or even cancelled".¹⁸

¹³ <http://www.britannica.com/EBchecked/topic/62482/Berne-Convention>

¹⁴ The International Standard Music Number (ISMN) is a unique number for the identification of all notated music publications from all over the world. The ISMN is an ISO certified global standard number (ISO 10957:2009). See <http://www.ismn-international.org/whatis.html> and http://www.iso.org/iso/home/store/catalogue_ics/catalogue_detail_ics.htm?csnumber=43173

¹⁵ The ISRC (International Standard Recording Code) is the international identification system for sound recordings and music video recordings. The ISRC is an ISO certified global standard number (ISO 3901:2001) and is managed by the IFPI. See <http://isrc.ifpi.org>, <https://www.usisrc.org/about/index.html> and http://www.iso.org/iso/catalogue_detail?csnumber=23401

¹⁶ The ISWC (International Standard Musical Work Code) is a unique, permanent and internationally recognized reference number for the identification of musical works. The ISWC has been approved by ISO (International Organization for Standardisation) as a global standard (ISO 15707:2001) and is managed by CISAC. See <http://www.iswc.org/en/faq.html> and http://www.iso.org/iso/catalogue_detail?csnumber=28780

¹⁷ The International Standard Name Identifier (ISNI) is the ISO certified global standard number (ISO 27729) for identifying the millions of contributors to creative works and those active in their distribution. ISNI holds public records of over 8 million identities and 490,000 organizations. See <http://www.isni.org/> and http://www.iso.org/iso/catalogue_detail?csnumber=44292

¹⁸ <https://whois.icann.org/en/about-whois> and <https://www.icann.org/resources/pages/faqs-f0-2012-02-25-en>

Without such Music Community “cohesion” and standardized systems functioning in its regulated sector, the Music Community would not be able to create, market and distribute their music. By the same token, fans would not be able to identify the music they are listening to with a specific music artist, regardless of whether the listening activity or behavior is commercial or non-commercial in nature. The socio-economic structure that characterizes “music” as commonly-known today would be non-existent without these organized and delineated elements that commonly define the Community.

iii) *International Federations and Organizations mainly Dedicated to the Community:*

According to ICANN’s Applicant Guidebook (“AGB”)¹⁹: “*With respect to “Delineation” and “Extension,” it should be noted that a community can consist of...a logical alliance of communities (for example, an international federation of national communities of a similar nature... viable as such, provided the requisite awareness and recognition of the community is at hand among the members.*” (AGB, 4-12). The community as defined in the DotMusic application has at least one entity *mainly*²⁰ dedicated to the community which has supported DotMusic, which include several “international federation of national communities of a similar nature” relating to music, music coalitions and other relevant and non-negligible music organizations.

One of these entities include the only international federation of national communities relating to government culture agencies and arts councils, which has an integral association with music globally: the International Federation of Arts Councils and Culture Agencies (IFACCA).

IFACCA is the only international federation that represents government culture agencies and arts councils globally. These national communities are governmental institutions that play a pivotal

¹⁹ <https://newgtlds.icann.org/en/applicants/agb/guidebook-full-11jan12-en.pdf>

²⁰ Per the Oxford and Merriam Webster dictionaries, the word “mainly” is defined as “*more than anything else*” (See <http://www.oxforddictionaries.com/definition/english/mainly> and <http://www.merriam-webster.com/dictionary/mainly> respectively). According to DotMusic, the string .MUSIC relates to the Community “by representing all constituents involved in music creation, production and distribution” (Application Answer to Question 20d). Supporting organizations related to that string that are “mainly” dedicated to the Community and its activities, include the International Federation of Arts Councils and Culture Agencies (IFACCA) representing government culture ministries and arts councils, the International Federation of Musicians (FIM) representing musicians globally, the International Federation of Phonographic Industry (IFPI) representing the recording industry worldwide, the International Confederation of Music Publishers (ICPM) representing the voice of global music publishing, the International Association of Music Information Centres (IAMIC), the American Association of Independent Music (A2IM), whose associate members represent a majority of music consumed, the Independent Music Worldwide Independent Network (WIN) representing independent music worldwide, the International Society for Music Education (ISME) the premiere international organization representing music education, and many others (See support at <http://music.us/supporters> and <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails:downloadattachment/142588?t:ac=1392>).

role with respect to music.²¹ IFACCA's members cover the majority of music entities globally, regardless of whether they are commercial, non-commercial or amateurs. Government ministry of culture and council agencies related to music cover a majority of the overall community with respect to headcount and geographic reach. The "Size" covered reaches over a hundred million music entities i.e. "considerable size with millions of constituents" per Application Answer to Question 20a.

The string "music" falls under the jurisdiction of each country's Ministry of Culture governmental agency or arts/music council (emphasis added). The degree of power and influence of government ministry of culture and council agencies with respect to music surpasses any organization type since these agencies (i) provide the majority of funding for music-related activities; (ii) regulate copyright law; and (iii) encompass all the music entities that fall under their country, regardless whether these entities are commercial, non-commercial or amateurs. IFACCA is globally recognized by its strategic partners, such as UNESCO, a United Nations agency representing 195 member states and the European Commission.²² The UNESCO strategic partnership²³ is relevant, especially since UNESCO founded the International Music Council (the "IMC") in 1949, which represents over 200 million music constituents from over 150 countries and over 1000 organizations globally.²⁴

Government activities in the clearly delineated and organized "Music Community" include setting statutory royalty rates. For example, in the United States, mechanical royalties are based on a "statutory rate" set by the U.S. Congress. This rate is increased to follow changes in the economy, usually based on the Consumer Price Index. Currently, the mechanical statutory rate is \$0.091 for songs five minutes or less in length or \$.0175 per minute for songs that are over five minutes long.²⁵

Ministries of culture and arts councils (that comprise IFACCA's membership) support musicians, musical performances, independent music artists, non-commercial musical expression and education in their respective countries. The 165 ministries of culture, arts councils and affiliates that comprise IFACCA's membership support the "performing arts" and music specifically. Without the financial and logistical support of arts councils and the ministries of culture, the music community would be adversely affected, and in some countries, may not exist in any appreciable manner. For example, the Ministry of Culture 2011 budget for the small country state of Cyprus for culture funding was €34,876,522 with critical support of music activities.²⁶ Other small government Ministries of Culture, such as Albania,²⁷ or government

²¹ http://www.ifacca.org/membership/current_members/

²² http://www.ifacca.org/strategic_partners/

²³ http://www.ifacca.org/strategic_partners/

²⁴ <http://www.imc-cim.org/about-imc-separator/who-we-are.html>

²⁵ U.S Copyright Office, <http://www.copyright.gov/carp/m200a.html>

²⁶ 2011 Annual Report for Cyprus Ministry of Culture, Section 1.2 "Music"

(http://www.moec.gov.cy/en/annual_reports/annual_report_2011_en.pdf). Activities include Music Performances in Cyprus (1.2.1) and Abroad (1.2.2), Subsidization of Paphos Aphrodite Festival (1.2.3), Music Publications (1.2.4), Subsidization and Purchases of Digital Records (1.2.5), Promotion for Cypriot musical creativity abroad (1.2.6),

Ministries of Culture and Arts Councils from countries with larger populations, such as India,²⁸ all provide critical support and substantial advocacy for music. Other examples include government institutions collaborating and advocating music through their funded country-based pavilion initiatives at Midem, the world's largest music conference.²⁹

Government ministries and arts councils provide critical support for the Music Community, including commercial music organizations. By way of example, government ministries' and arts councils' substantial connection to and support of "music" is noted in the reports of funding and support for music. Some examples to showcase the degree of power of the IFACCA's membership towards the string and global and national music are music investment and music funding (Annual reports by governments and councils):

- New Zealand Ministry of Culture has funded significant music projects. Some include the REAL New Zealand Music Tour (\$415,000), the New Zealand String Quartet (\$150,000) and New Zealand Music Commission: (\$1,378,000).³⁰
- The Australian Government/Council For The Arts invested \$51.2 million for the nation's orchestras; \$21.6 million for opera; \$10.8 million for other music artists and organizations; \$13.1 million for multi-platform artists and organizations; and \$4 million in miscellaneous funding, including sector building and audience development initiatives and programs.³¹
- Canada Council for the Arts is Canada's national, arts funding agency investing \$28 million in its Canada Council Musical Instrument Bank (Page 16) and \$28,156,000 in Music Arts Programs (Page 66).³² The Government of Canada also renewed its annual investment of \$27.6 million over five years in the Canada Music Fund.³³
- The United Kingdom Department for Culture and Education (DfE) will fund music education at significant levels: £77 million, £65 million and £60 million will be available in the three years from April 2012.³⁴

Cyprus Symphony Orchestra Foundation (1.2.7), Music Information Centre (1.2.8), Developing Music Education (1.2.9), Organising of the 1st Musicological Symposium (1.2.10) and Musical Festivities for the European Volunteerism Year (1.2.11)

²⁷ http://www.culturalpolicies.net/down/albania_012011.pdf

²⁸ 2010-11 Annual Report from India Ministry of Culture, [http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011\(Eng\).pdf](http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011(Eng).pdf)

²⁹ <http://my.midem.com/en/contact-us/pavilion-representatives/>

³⁰ 2011 Annual Report from New Zealand Ministry of Culture:

[http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20\(D-0448383\).PDF](http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20(D-0448383).PDF)

³¹ 2011 Annual Report for the Australia Council for the Arts,

http://www.australiacouncil.gov.au/data/assets/pdf_file/0016/142351/Australia-Council-Annual-Report-201112.pdf, Page 28

³² 2011 Annual Report for Canada Council for the Arts, [http://www.canadacouncil.ca/NR/rdonlyres/6F7549BB-F4E5-4B8B-95F4-](http://www.canadacouncil.ca/NR/rdonlyres/6F7549BB-F4E5-4B8B-95F4-1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf)

[1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf](http://www.canadacouncil.ca/NR/rdonlyres/6F7549BB-F4E5-4B8B-95F4-1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf)

³³ <http://www.pch.gc.ca/eng/1294862453819/1294862453821>

³⁴ Department for Culture, The Importance of Music, A National Plan for Music Education,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/180973/DFE-00086-2011.pdf, Page 4, 2011

- The United States National Endowment of the Arts has awarded more than \$4 billion to support the arts since its inception³⁵ and has a strong focus on music as outlined in its Strategic Plan³⁶ with Congress requested to provide \$154,465,000 for fiscal year 2014.³⁷
- The National Arts Council of South Africa invested 2,536,131 ZAR in Music and 9,995,000 ZAR in Orchestras and has focused strongly on the “Strengthening of live indigenous music and advocating the revival of the live music circuit in South Africa”³⁸
- The Singapore Arts Council will fund \$10.2 million in the arts under its 2013 Grants Framework, including the Ding Yi Music Company and Siong Leng Musical Association.³⁹
- In 2011, the support for artistic activities by the Arts Council of Finland was €32.4 million of which €4,921,850 was awarded to music.⁴⁰

Each of IFACCA’s members has a clear association with, and mandate to support the music arts in their countries. In most countries, their ministry of culture/arts council is the largest funder and marketing supporter of the music arts.

The IFPI is another entity *mainly* dedicated to the Community. The IFPI is the only organization that represents the interests of the recording industry worldwide. It is the “voice of the recording industry worldwide”⁴¹ whose members⁴² – major and independent companies -- represent a majority of all commercial music consumed globally. For example, the RIAA, an IFPI national group member,⁴³ represents “approximately 85% of all legitimate recorded music produced and sold in the United States,”⁴⁴ the world’s largest music market with 30% global market share.⁴⁵ Formed in 1933, the IFPI’s mission was to “represent the interests of the recording industry worldwide in all fora.”

³⁵ 2011 Annual report for the National Endowment of the Arts, <http://www.nea.gov/about/11Annual/2011-NEA-Annual-Report.pdf>, Page 2

³⁶ NEA Strategic Plan 2012-2016, www.arts.gov/about/Budget/NEAStrategicPlan2012-2016.pdf

³⁷ http://www.ifacca.org/national_agency_news/2013/04/10/us-president-requests-154465000-neh-2014/

³⁸ 2010-2011 Annual Report for the National Arts Council South Africa, National Arts Council South Africa, <http://www.nac.org.za/media/publications/AR%2010-11%20NAC.PDF/download>, Page 11. Also Mmino, the South African – Norwegian Education Music Programme, solely funds music projects funding a total of 294 projects. Thirteen projects were allocated funding for a total of R1,680,600 of which R1,381,000 went towards music educational and R299,600 to exchange projects (Page 10)

³⁹ Singapore Arts Council, <http://www.nac.gov.sg/media-centre/news-releases/news-detail?id=c2db15e2-c319-40ec-939c-d58735d0a91c>

⁴⁰ <http://www.taiteenkeskustoimikunta.fi/documents/10162/31704/TY+tilastotiedote+1+12+.pdf>, Page 1 and Page

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⁴¹ <http://www.ifpi.org/about.php>

⁴² <http://www.ifpi.org/our-members.php>

⁴³ <http://www.ifpi.org/national-groups.php>

⁴⁴ <http://www.riaa.com/faq.php>

⁴⁵ <http://www.statista.com/topics/1639/music/>

Another clear example of an “entity *mainly* dedicated to the community” with members that cover hundreds of millions of music constituents with formal boundaries is A2IM, the American Association of Independent Music. A2IM has two types of members: U.S independent Label members and Associate members. A2IM membership for Labels and Associates is invoked formally through an application and if accepted would require annual membership dues.⁴⁶

The reach of A2IM Associate⁴⁷ membership covers hundreds of millions of entities (i.e. the reach of A2IM’s total membership “geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents – See Application Answer to Question 20a).

Organized and strictly delineated communities related to music that are A2IM members include:

- **Apple iTunes**⁴⁸ – iTunes accounts for 63% of global digital music market⁴⁹ - a majority – with a registered community of 800 million registered members⁵⁰ available in 119 countries who abide to strict terms of service and boundaries⁵¹ and have downloaded over 25 billion songs⁵² from iTunes’ catalog of over 43 million songs⁵³ covering a global music community, regardless of genre or whether the community entities are amateur, professional, commercial or non-commercial. To add music to iTunes, all music artists must have a formal membership with iTunes via an Apple ID registration, which includes a current credit card on file.⁵⁴
- **Pandora**⁵⁵ – Pandora is the world’s largest streaming music radio with a community of over 250 million registered members.⁵⁶
- **Spotify**⁵⁷ – Spotify is the world’s largest music streaming community with over 50 million active registered members in 58 countries and over 30 million songs. The music community uploads 20,000 songs every day.⁵⁸
- **Vevo**⁵⁹ – Vevo is the world’s leading all-premium music video community and platform with over 8 billion monthly views globally.⁶⁰

⁴⁶ <http://a2im.org/about-joining/>

⁴⁷ <http://a2im.org/groups/tag/associate+members/>

⁴⁸ <http://a2im.org/groups/itunes>

⁴⁹ <http://appleinsider.com/articles/13/04/16/apples-itunes-rules-digital-music-market-with-63-share>

⁵⁰ <http://www.npr.org/blogs/therecord/2015/01/06/375173595/with-downloads-in-decline-can-itunes-adapt>

⁵¹ <http://www.apple.com/legal/internet-services/itunes/ww/index.html>

⁵² <http://www.apple.com/pr/library/2013/02/06iTunes-Store-Sets-New-Record-with-25-Billion-Songs-Sold.html>

⁵³ <https://www.apple.com/itunes/features/>

⁵⁴ <https://www.apple.com/itunes/working-itunes/sell-content/music-faq.html>

⁵⁵ <http://a2im.org/groups/pandora>

⁵⁶ <http://www.cnet.com/news/like-a-rolling-milestone-pandora-hits-250m-registered-users/> and <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MTkxNTM1fENoaWxkSUQ9LTF8VHlwZT0z&t=1>, Pg.9

⁵⁷ <http://a2im.org/groups/spotify>

⁵⁸ <https://press.spotify.com/us/information/>

⁵⁹ <http://a2im.org/groups/vevo/>

- **Youtube**⁶¹ – Youtube is the world’s largest music video streaming community with millions of music creators -- amateur, professional, commercial or non-commercial -- and over 1 billion registered members covering all regions globally. 6 billion hours of video is watched every month on Youtube,⁶² of which 38.4% is music-related.⁶³
- **ReverbNation**⁶⁴ – ReverbNation⁶⁵ is one of the world’s largest music community and a leading music distributor with over 3.87 million musicians, venues labels and industry professionals covering every country globally. The ReverbNation community grows by over 50,000 artists, bands, labels and industry professionals monthly.
- **BMG**⁶⁶ – BMG is focused on the management of music publishing and recording rights. BMG has an international presence and represents over 2.5 million music rights globally.⁶⁷

A2IM also includes members that are associated with global government agencies which exclusively represent substantial music economies and music members, such as France (BureauExport⁶⁸), China (China Audio Video Association⁶⁹) and Germany (Initiative Musik).⁷⁰ A2IM also has Affiliate⁷¹ associations within the global music community. These include Affiliates such as MusicFirst,⁷² the Copyright Alliance,⁷³ the Worldwide Independent Network (WIN)⁷⁴ and Merlin.⁷⁵

A2IM also represents a recognized Music Coalition representing the interests of the Global Independent Music Community.⁷⁶ The A2IM Coalition includes Merlin, a global rights agency for the independent label sector, representing over 20,000 labels from 39 countries, Worldwide Independent Network (representing label creators in over 20 countries), Association of Independent Music (representing largest and most respected labels in the world), and IMPALA (Independent Music Companies Association on behalf of over 4,000 independent music companies and national associations across Europe, representing 99% of music actors in Europe which are micro, small and medium sized enterprises).

⁶⁰ <http://www.vevo.com/c/EN/US/about>

⁶¹ <http://a2im.org/groups/youtube/>

⁶² <https://www.youtube.com/yt/press/statistics.html>

⁶³ http://www.researchandmarkets.com/reports/2092499/internet_video_2011_2014_view_share_site_and

⁶⁴ <http://a2im.org/groups/reverb-nation/>

⁶⁵ <http://www.reverbnation.com/about>

⁶⁶ <http://a2im.org/groups/bmg-rights/>

⁶⁷ <http://www.bmg.com/category/about-us/history/>

⁶⁸ <http://a2im.org/groups/french-music-export-office>

⁶⁹ <http://a2im.org/groups/china-audio-video-association-cava>

⁷⁰ <http://a2im.org/groups/initiative-musik-gmbh>

⁷¹ <http://a2im.org/groups/tag/associate+members/>

⁷² <http://musicfirstcoalition.org/coalition>, The musicFIRST Coalition, with founding members A2IM, RIAA, and Recording Academy represents musicians, artists, managers, music businesses, and performance right advocates.

⁷³ <http://www.copyrightalliance.org/members>

⁷⁴ <http://www.winformusic.org>

⁷⁵ <http://www.merlinnetwork.org>

⁷⁶ <https://www.icann.org/en/system/files/correspondence/bengloff-to-chehade-et-al-20aug14-en.pdf> and <https://www.icann.org/en/system/files/correspondence/bengloff-to-crocker-et-al-07mar15-en.pdf>

Cumulatively, A2IM's Label and Associate Membership, A2IM's Affiliates and the A2IM's Global Independent Music Community Coalition, covers a majority of the global music community. Its cumulative membership is in the hundreds of millions of entities with formal boundaries belonging to strictly organized and delineated communities related to music as per the Community Definition and Size (See Application answer to Question 20a).

Another global Music Community Coalition led by the RIAA “on behalf of over 15 national and international trade associations” also expressed its support for .MUSIC to be under a “community” application model, including encouraging statements in support of DotMusic’s policies that stated that the coalition “was encouraged to see” that DotMusic “included several measures to deter and address copyright infringement within that TLD.” The “coalition members represent the people that write, sing, record, manufacture, distribute and/or license over 80% of the world’s music”⁷⁷ – a majority of global music.⁷⁸

Another letter⁷⁹ sent to ICANN (on April 14th, 2015) by Danielle Aguirre from the NMPA and on behalf of a music publisher and songwriter community coalition representing a majority of the global music publishing community, also expressed “support [for] the .MUSIC community applications because respecting and protecting music rights serves the global music community and the public interest.”

The International Music Products Association, NAMM, is another globally-recognized and relevant group of non-negligible size that has supported DotMusic.⁸⁰ NAMM, formed in 1901, is *mainly* dedicated to the global music community by representing the international music products industry and community, with globally-recognized members and exhibitors that include Yamaha, Roland, Sennheiser, Sony, Fender, Harman, Kawai, Shure, Steinway, Audio-Technica, AKAI, Gibson, Peavey, Korg, AKG, Selmer, JBL, Alesis, Ibanez, AVID, Casio, DW, Sabian, Pearl, Zildjian, Martin, Ludwig, Marshall and others.^{81 82} Every amateur and professional musician worldwide uses music products manufactured and distributed by NAMM’s members. Without these musical instruments and products, music as we know it today would not be created or produced. NAMM and its trade shows power the \$17 billion global music products industry serving as a hub for the global music community wanting to seek out the newest innovations in musical products, recording technology, sound and lighting. NAMM’s mission is “to strengthen

⁷⁷ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.1

⁷⁸ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.3, Appendix A

⁷⁹ <https://www.icann.org/en/system/files/correspondence/aguirre-to-icann-board-eiu-14apr15-en.pdf>

⁸⁰ http://music.us/letters/NAMM_International_Music_Products_Association.pdf

⁸¹ https://www.namm.org/files/showdir/ExhibitorList_WN15.xls

⁸² <http://www.musictrades.com/global.html>

the music products industry and promote the pleasures and benefits of making music.”⁸³ NAMM also hosts the NAMM Show, the world's largest event for the music products industry.

Collectively, the DotMusic application received support from the largest coalition of music community member organizations ever assembled to support a cause representing over 95% of music consumed globally.⁸⁴ Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support⁸⁵ from institutions/organizations representing a majority of the Community addressed. Music -- as commonly-known by the general public and experienced today -- would not be possible without these supporting, non-negligible and relevant organizations that have endorsed DotMusic.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Community Establishment* and *Community Endorsement* from the majority of the global Music Community as defined.

B) Nexus⁸⁶

According to the Applicant Guidebook (“AGB”), to receive the maximum score for Nexus, the applied-for string -- “music” -- must match the name of the community or be a well-known short-form or abbreviation of the community name.

The *Nexus* of the “Music Community” entirely matches the applied-for “music” string because it represents the entire global Music Community as commonly-known and perceived by the general public. This definition allows for all constituents with a requisite awareness of the Community defined to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination. The definition of the Community requires that members have an active, non-tangential relationship with the applied-for string and the requisite awareness of the music community they identify with as part of the registration process. It is clear that the general public will directly associate and equate the string with the Community as defined by DotMusic. There is no possibility of overreaching beyond the definition or allowing unrelated non-music entities to be included as part of the Community. Community members may register a .MUSIC by either:

⁸³ <https://www.namm.org/about>

⁸⁴ See <http://music.us/supporters>, <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/downloadattachment/142588?t:ac=1392>, Bloomberg BNA at http://music.us/RIAA_Backs_DotMusic.pdf Pg.1, and <http://diffuser.fm/will-dot-music-domains-make-the-internet-better/>

⁸⁵ <http://music.us/supporters>

⁸⁶ See <http://music.us/nexus>

- 1) Identifying that they belong to a Music Community Member Organization (“MCMO”); or
- 2) Identifying the community they belong to, which is consistent with the definition of the Community: “the strictly delineated and organized logical alliance of communities of similar nature related to music.”

All Community members are aware of and recognize their inclusion in the defined Community by identifying which clearly defined community they belong to and have an active participation in. The *nexus* of the applied-for string ensures inclusion of the entire global community that the string represents while excluding unrelated-entities not associated with the string. This way there is a clear match and alignment between the “music” sting and the Community defined.

While the exact size of the global Music Community as defined is unknown (there is no empirical evidence providing an exact, finite number because amateur entities are also included in the Community’s definition), it is in the considerable millions as explicitly stated in the DotMusic Application. DotMusic’s definition of the Community and mutually-inclusive Registration Policies ensure that eligible members are only music-related and associated with the string. This is because the string identifies all constituents involved in music. Music-only participation optimizes the relevancy of .MUSIC domains to the string and entirely matches the *nexus* between the string and Community defined. According to DotMusic, the Community *definition, eligibility* criteria and *content and use* requirements ensure that peripheral industries and entities not related to music are excluded so that the string and the defined Community matches and aligns in a consistent manner consistent with DotMusic’s community-based purpose i.e. only entities with music-related activities are able to register .MUSIC domains.

Membership aligns with the *nexus* of the Community and the string, which is explicitly relevant to music. The string as defined in the application demonstrates uniqueness because it has no other significant meaning beyond identifying the community described in the application. According to DotMusic’s application, any tangential or implicit association with the *nexus* of the Community and the string is not regarded as a delineated membership since it would be considered unclear, dispersed or unbound. Such unclear, dispersed or unbound tangential relationships with the defined “music” Community and applied-for “music” string would not constitute a qualifying Community membership and would be ineligible for registration. Every type of music constituent critically contributes to the function and operation of the music sector within a regulated framework⁸⁷ given the symbiotic overlapping nature of the Community as defined and structured. Music would not function as it does today without the participation of all music constituent types which cumulatively match the string with the Community definition.

⁸⁷ ICANN has disclosed that the string .MUSIC is a sensitive string operating in a regulated sector. ICANN also accepted Government Advisory Committee (GAC) advice for safeguards to protect the Music Community and the public interest (See <https://icann.org/en/system/files/correspondence/crocker-to-dryden-3-29oct13-en.pdf> Pg.7)

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Nexus*.

Respectfully Submitted,

David Michael Ramirez II, Ph.D.

Contact Information Redacted Aug 10 '15 ip: 24.18.238.102

Signature:

Name: Dr. David Michael Ramirez II

Title: Ph.D.

Organization: Independent Researcher

Re: Expert Testimony on (i) Community Establishment; (ii) Nexus; and (iii) Support for DotMusic’s Community-Based Application¹ for .MUSIC (Application ID 1-1115-14110)

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

Please accept this letter that indicates that there is substantive and compelling evidence that the DotMusic application convincingly meets the full criteria under Community Priority Evaluation on the following points: (i) the Music Community’s *Establishment* as defined by DotMusic; (2) the matching *Nexus* between the “music” Community and the “music” string (or top-level domain); and (3) that DotMusic possesses documented *Support* from organizations representing a majority of the global Music Community addressed and defined.

Please see my credentials attached hereto that identify my level of expertise and specialized knowledge with respect to the music community’s organization and delineation.

SUMMARY

DotMusic has established the following:

- 1) Its Community definition recognizes the cohesive, symbiotic and overlapping nature of the global Music Community. The definition includes those associated with commercial and non-commercial creation, performance, marketing and distribution of music;
- 2) “Music Community” members have the requisite awareness and recognition of the interdependency, overlapping and cohesive nature of each “organized community of similar nature that relates to music.” These organized and aligned communities are closely united and make “music” as we know it today. It is this self-awareness and interdependence that gives the “Music Community” its strength. With exponential growth of the Internet, mobile and the Domain Name System (DNS), the “Music Community’s” use and reliance on the Internet to create, market and disseminate music-related content, products, services and activities will continue to grow;
- 3) The “Music Community” functions in a regulated sector with global copyright protections – it is clear that the “community,” as defined, implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate a globally-recognized set of standards for

¹ <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1392>

the protection of the “Music Community” member rights with relation to their copyrighted music works around the world;

4) The “Music” Community -- as defined by DotMusic -- has at least one entity dedicated to the community supporting DotMusic’s application. Such documented *Support* includes several “international federation of national communities of a similar nature,” music coalitions and others that are strongly associated with “music,” which represent a majority of the Community with considerable millions of members worldwide.²

5) The *Nexus* of the “music” Community matches the “music” applied-for string because it represents the entire global Music Community – a community that pre-existed 2007 with a size in the considerable millions of constituents. The “Music Community” definition -- which incorporates the strict fundamental attributes of a closely united Community definition that is “organized” and “delineated” -- ensures that all of its constituent members have a requisite awareness of the community as defined, including both commercial and non-commercial stakeholders, to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination.

6) DotMusic has received support from the largest coalition of Music Community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support³ from institutions/organizations representing a majority of the Community as defined and recognized in the DotMusic application.

There is substantive evidence that DotMusic fulfills the *Nexus, Community Establishment and Support* criteria for the “Music” string. The inclusion and representation of every music constituent type is paramount to the articulated purpose of the string. DotMusic and its application’s global Music Community supporters substantiate that every type of music constituent contributes to the function and operation of the music sector within a regulated framework. The symbiotic nature of the Community as defined and structured means that “Music” would not function as it does today without the participation of all music constituent types that interconnect to match the “music” string with the “music” Community definition.

² <http://music.us/supporters>

³ <http://music.us/supporters>

ASSESSMENT OF COMMUNITY DEFINITION, ESTABLISHMENT AND NEXUS

A) *Music Community Definition, Establishment & Community Endorsement*⁴

DotMusic's definition of the "Music Community" as a "strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music" (See Application, 20a) is factually accurate and representative of the "Music Community." Community characteristics include:

i) An Organized, Cohesive, Interdependent Logically-Allied Community:

The "Music Community" definition covers the regulated, interdependent and cohesive nature of the music sector that exists today. "Music Community" members have the requisite awareness and recognition of the interdependent, overlapping and cohesive nature of each "organized community of similar nature that relates to music" that comprises the "Music Community." Without such cohesiveness and interdependency, the defined "Music" Community matching the applied-for string ("Music") would not be able to function in its regulated sector, a "Music" regulated sector that was publicly recognized by both ICANN and the Government Advisory Committee.⁵

As a result, the Music Community as defined is "closely united" (As per the definition of "cohesion" according to Merriam-Webster dictionary⁶) or "united or form a whole" (As per the definition of the word "cohesion" according to Oxford Dictionaries⁷).

The "Music Community" as defined (a "strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music") establishes that:

- (1) There is an awareness and recognition among its members;
- (2) The organized and delineated logical alliance of communities exists; and
- (3) The Community is "closely united" and "interdependent" (i.e. Each "organized community of similar nature that relates to music" which is part of the "logical alliance of communities that relate to music" is not mutually exclusive).

In short, the applied-for string ("Music") matches the name of the "Music" Community as defined by DotMusic's application. DotMusic's "Music Community" definition accurately represents the common definition of the "Music Community," which is confirmed by Wikipedia.

⁴ See <http://music.us/establishment>

⁵ <https://www.icann.org/en/system/files/bm/briefing-materials-2-05feb14-en.pdf>, Pg.3

⁶ <http://www.merriam-webster.com/dictionary/cohesion>

⁷ http://www.oxforddictionaries.com/us/definition/american_english/cohesion

According to Wikipedia:⁸

Music community is defined as a logical alliance of interdependent communities that are related to music, which include commercial participants...and non-commercial participants...and consists of an “ensemble of practices and institutions that make possible and regulate the production, distribution and consumption of music”...UNESCO identifies the music community as a “community of identity” implying common identifiable characteristics and cohesive attributes such as sharing a music culture, norms and subscribing to common ideals related to music...The music community is not defined as much by demographic indicators such as race, gender, and income level, as it is by common values, cohesive norms and interconnected structures to build a community identity. It refers to music-related individuals and organisations in a shared environment with shared understandings and practices, modes of production and distribution. The shared organisation of collective musical activities, identity and community value is created as result of infrastructure and a shared set of common values...Many studies outline the historical, cultural, and spatial significance of the music community, including how its identity is formed through musical practices. The music community shares a cohesive and interconnected structure of artistic expression, with diverse subcultures and socio-economic interactions...subscribing to common ideals. Under such structured context music consumption becomes possible regardless whether the transaction is commercial and non-commercial.⁹

ii) *An Aware, Pre-Existing and Recognized Community of Considerable Millions Worldwide:*

DotMusic’s definition of the Community covers all Community members associated with the string, each with a requisite awareness of the Community that can be validated through their natural association with a particular music-related community that they clearly identify with. According to DotMusic, all Music Community members must identify their music-related community in order to demonstrate their requisite awareness of the defined Community as part of the .MUSIC registration and validation process.

⁸ Wikipedia is ranked 6th among the ten most popular websites (Alexa, Retrieved March 23, 2015 from <http://www.alexacom/siteinfo/wikipedia.org>) and constitutes the Internet's largest, most frequently updated and popular general reference work (See OECD, OECD Internet Economy Outlook 2012, OECD Publishing, http://www.oecd-ilibrary.org/science-and-technology/oecd-internet-economy-outlook-2012_9789264086463-en,Pg.172) that compares favorably to the accuracy of other encyclopedias (such as the Britannica) according to a 2012 study conducted in partnership with Oxford University (See <http://blog.wikimedia.org/2012/08/02/seven-years-after-nature-pilot-study-compares-wikipedia-favorably-to-other-encyclopedias-in-three-languages>).

⁹ Music Community. In *Wikipedia*. Retrieved March 23, 2015, from https://en.wikipedia.org/wiki/Music_community

According to DotMusic, the Music Community’s geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents (Application Answer to Question 20a).

According to DotMusic, “registrants will be verified using Community-organized, unified “criteria taken from holistic perspective with due regard of Community particularities” that “invoke a formal membership (Application Answer to Question 20a).” The defined Community represents all music-related entities with a clear and straightforward membership with the Community involved in the legal production, performance, promotion, and distribution of music worldwide. According to DotMusic, the Music Community members must have an active, non-tangential relationship with the applied-for string “music” and also have the requisite awareness of the music-related community that they are a part of by specifically identifying it as part of the registration and validation process (i.e. upon successful registration and validation, each community member will be given a unique community identification number that will automatically associate them with their identified community and the “music” string).

DotMusic’s Community definition matches the applied-for string because it allows both commercial and non-commercial stakeholders to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination/exclusion. Given the regulated sector of the community, it is clear that the “Music Community” as defined implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate cohesive and globally-recognized set of standards for the protection of the music community members’ rights with relation to their copyrighted music works around the world.¹⁰

The Berne Convention for the Protection of Literary and Artistic Works¹¹ provides that each of the 168 contracting parties¹² (representing an overwhelming majority of the world’s population) provides automatic protection for music works first published in other countries of the Berne union and for unpublished music works whose authors are citizens of or resident in such other countries.¹³ This means that if a Music Community member’s copyright rights are violated in any other signatory country’s jurisdiction, then the music community member will have the music copyright rights given by that country. Music Community members are clearly aware of the collective Community’s rights, which could not be made possible without these cohesive and globally-recognized set of standards. If such standards were not coherent or enforced then music would not be able to exist in its current form and the industry component of the Music Community sector would not exist. As such, the Community’s *Establishment* and definition is “cohesive” and hence cannot be construed since the Community is a logical alliance of music

¹⁰ http://www.rightsdirect.com/content/rd/en/toolbar/copyright_education/International_Copyright_Basics.html

¹¹ http://www.wipo.int/treaties/en/text.jsp?file_id=283698

¹² http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=15

¹³ <http://www.britannica.com/EBchecked/topic/62482/Berne-Convention>

communities that establish a clearly delineated and organized Community structure that is “closely united” and functions as a “whole”

Further evidence to substantiate the cohesive, symbiotic and overlapping nature of the Community, includes other globally-recognized standards and classification systems, which identify who the individual songwriters, publishers and rights holders are and which songs they are associated with so that Community members are appropriately compensated, regardless of whether the constituent is a commercial, non-commercial or amateur entity. The “music” string is commonly used in classification systems such as ISMN,¹⁴ ISRC,¹⁵ ISWC,¹⁶ ISNI.¹⁷ (Application Answer to Question 20a). For example, if a music entity would like to distribute their music, either commercially or for free, then an ISRC can be assigned to globally identify any specific music work. An ISRC, which facilitates efficient music discovery and community member payment, is constructed from 12 characters representing country, registrant, year of registration and designation (i.e. the serial number assigned by the registrant). With respect to domains, an equivalent system that relates to identifying a specific domain’s registrant and other relevant information pertaining to the domain is WHOIS. Domain registrants are required by ICANN “to provide accurate WHOIS contact data” or else their domain “registration may be suspended or even cancelled”.¹⁸

Without such Music Community “cohesion” and standardized systems functioning in its regulated sector, the Music Community would not be able to create, market and distribute their music. By the same token, fans would not be able to identify the music they are listening to with a specific music artist, regardless of whether the listening activity or behavior is commercial or non-commercial in nature. The socio-economic structure that characterizes “music” as commonly-known today would be non-existent without these organized and delineated elements that commonly define the Community.

¹⁴ The International Standard Music Number (ISMN) is a unique number for the identification of all notated music publications from all over the world. The ISMN is an ISO certified global standard number (ISO 10957:2009). See <http://www.ismn-international.org/whatis.html> and

http://www.iso.org/iso/home/store/catalogue_ics/catalogue_detail_ics.htm?csnumber=43173

¹⁵ The ISRC (International Standard Recording Code) is the international identification system for sound recordings and music video recordings. The ISRC is an ISO certified global standard number (ISO 3901:2001) and is managed by the IFPI. See <http://isrc.ifpi.org>, <https://www.usisrc.org/about/index.html> and http://www.iso.org/iso/catalogue_detail?csnumber=23401

¹⁶ The ISWC (International Standard Musical Work Code) is a unique, permanent and internationally recognized reference number for the identification of musical works. The ISWC has been approved by ISO (International Organization for Standardisation) as a global standard (ISO 15707:2001) and is managed by CISAC. See <http://www.iswc.org/en/faq.html> and http://www.iso.org/iso/catalogue_detail?csnumber=28780

¹⁷ The International Standard Name Identifier (ISNI) is the ISO certified global standard number (ISO 27729) for identifying the millions of contributors to creative works and those active in their distribution. ISNI holds public records of over 8 million identities and 490,000 organizations. See <http://www.isni.org/> and http://www.iso.org/iso/catalogue_detail?csnumber=44292

¹⁸ <https://whois.icann.org/en/about-whois> and <https://www.icann.org/resources/pages/faqs-f0-2012-02-25-en>

iii) International Federations and Organizations Dedicated to Community Functions:

According to ICANN’s Applicant Guidebook (“AGB”)¹⁹: *“With respect to “Delineation” and “Extension,” it should be noted that a community can consist of...a logical alliance of communities (for example, an international federation of national communities of a similar nature... viable as such, provided the requisite awareness and recognition of the community is at hand among the members.”* (AGB, 4-12). The community as defined in the DotMusic application has at least one entity mainly dedicated to the community which has supported DotMusic, which include several “international federation of national communities of a similar nature” relating to music, music coalitions and other relevant and non-negligible music organizations.

One of these entities include the only international federation of national communities relating to government culture agencies and arts councils, which has an integral association with music globally: the International Federation of Arts Councils and Culture Agencies (IFACCA).

IFACCA is the only international federation that represents government culture agencies and arts councils globally. These national communities are governmental institutions that play a pivotal role with respect to music.²⁰ IFACCA’s members cover the majority of music entities globally, regardless of whether they are commercial, non-commercial or amateurs. Government ministry of culture and council agencies related to music cover a majority of the overall community with respect to headcount and geographic reach. The “Size” covered reaches over a hundred million music entities i.e. “considerable size with millions of constituents” per Application Answer to Question 20a.

The string “music” falls under the jurisdiction of each country’s Ministry of Culture governmental agency or arts/music council (emphasis added). The degree of power and influence of government ministry of culture and council agencies with respect to music surpasses any organization type since these agencies (i) provide the majority of funding for music-related activities; (ii) regulate copyright law; and (iii) encompass all the music entities that fall under their country, regardless whether these entities are commercial, non-commercial or amateurs. IFACCA is globally recognized by its strategic partners, such as UNESCO, a United Nations agency representing 195 member states and the European Commission.²¹ The UNESCO strategic partnership²² is relevant, especially since UNESCO founded the International Music Council (the “IMC”) in 1949, which represents over 200 million music constituents from over 150 countries and over 1000 organizations globally.²³

¹⁹ <https://newgtlds.icann.org/en/applicants/agb/guidebook-full-11jan12-en.pdf>

²⁰ http://www.ifacca.org/membership/current_members/

²¹ http://www.ifacca.org/strategic_partners/

²² http://www.ifacca.org/strategic_partners/

²³ <http://www.imc-cim.org/about-imc-separator/who-we-are.html>

Government activities in the clearly delineated and organized “Music Community” include setting statutory royalty rates. For example, in the United States, mechanical royalties are based on a “statutory rate” set by the U.S. Congress. This rate is increased to follow changes in the economy, usually based on the Consumer Price Index. Currently, the mechanical statutory rate is \$0.091 for songs five minutes or less in length or \$.0175 per minute for songs that are over five minutes long.²⁴

Ministries of culture and arts councils (that comprise IFACCA’s membership) support musicians, musical performances, independent music artists, non-commercial musical expression and education in their respective countries. The 165 ministries of culture, arts councils and affiliates that comprise IFACCA’s membership support the “performing arts” and music specifically. Without the financial and logistical support of arts councils and the ministries of culture, the music community would be adversely affected, and in some countries, may not exist in any appreciable manner. For example, the Ministry of Culture 2011 budget for the small country state of Cyprus for culture funding was €34,876,522 with critical support of music activities.²⁵ Other small government Ministries of Culture, such as Albania,²⁶ or government Ministries of Culture and Arts Councils from countries with larger populations, such as India,²⁷ all provide critical support and substantial advocacy for music. Other examples include government institutions collaborating and advocating music through their funded country-based pavilion initiatives at Midem, the world’s largest music conference.²⁸

Government ministries and arts councils provide critical support for the Music Community, including commercial music organizations. By way of example, government ministries’ and arts councils’ substantial connection to and support of “music” is noted in the reports of funding and support for music. Some examples to showcase the degree of power of the IFACCA’s membership towards the string and global and national music are music investment and music funding (Annual reports by governments and councils):

- New Zealand Ministry of Culture has funded significant music projects. Some include the REAL New Zealand Music Tour (\$415,000), the New Zealand String Quartet (\$150,000) and New Zealand Music Commission: (\$1,378,000).²⁹
- The Australian Government/Council For The Arts invested \$51.2 million for the nation’s orchestras; \$21.6 million for opera; \$10.8 million for other music artists and

²⁴ U.S. Copyright Office, <http://www.copyright.gov/carp/m200a.html>

²⁵ 2011 Annual Report for Cyprus Ministry of Culture, Section 1.2 “Music”

(http://www.moec.gov.cy/en/annual_reports/annual_report_2011_en.pdf). Activities include Music Performances in Cyprus (1.2.1) and Abroad (1.2.2), Subsidization of Paphos Aphrodite Festival (1.2.3), Music Publications (1.2.4), Subsidization and Purchases of Digital Records (1.2.5), Promotion for Cypriot musical creativity abroad (1.2.6), Cyprus Symphony Orchestra Foundation (1.2.7), Music Information Centre (1.2.8), Developing Music Education (1.2.9), Organising of the 1st Musicological Symposium (1.2.10) and Musical Festivities for the European Volunteerism Year (1.2.11)

²⁶ http://www.culturalpolicies.net/down/albania_012011.pdf

²⁷ 2010-11 Annual Report from India Ministry of Culture, [http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011\(Eng\).pdf](http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011(Eng).pdf)

²⁸ <http://my.midem.com/en/contact-us/pavilion-representatives/>

²⁹ 2011 Annual Report from New Zealand Ministry of Culture:

[http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20\(D-0448383\).PDF](http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20(D-0448383).PDF)

organizations; \$13.1 million for multi-platform artists and organizations; and \$4 million in miscellaneous funding, including sector building and audience development initiatives and programs.³⁰

- Canada Council for the Arts is Canada’s national, arts funding agency investing \$28 million in its Canada Council Musical Instrument Bank (Page 16) and \$28,156,000 in Music Arts Programs (Page 66).³¹ The Government of Canada also renewed its annual investment of \$27.6 million over five years in the Canada Music Fund.³²
- The United Kingdom Department for Culture and Education (DfE) will fund music education at significant levels: £77 million, £65 million and £60 million will be available in the three years from April 2012.³³
- The United States National Endowment of the Arts has awarded more than \$4 billion to support the arts since its inception³⁴ and has a strong focus on music as outlined in its Strategic Plan³⁵ with Congress requested to provide \$154,465,000 for fiscal year 2014.³⁶
- The National Arts Council of South Africa invested 2,536,131 ZAR in Music and 9,995,000 ZAR in Orchestras and has focused strongly on the “Strengthening of live indigenous music and advocating the revival of the live music circuit in South Africa”³⁷
- The Singapore Arts Council will fund \$10.2 million in the arts under its 2013 Grants Framework, including the Ding Yi Music Company and Siong Leng Musical Association.³⁸
- In 2011, the support for artistic activities by the Arts Council of Finland was €32.4 million of which €4,921,850 was awarded to music.³⁹

Each of IFACCA’s members has a clear association with, and mandate to support the music arts in their countries. In most countries, their ministry of culture/arts council is the largest funder and marketing supporter of the music arts.

³⁰ 2011 Annual Report for the Australia Council for the Arts, http://www.australiacouncil.gov.au/data/assets/pdf_file/0016/142351/Australia-Council-Annual-Report-201112.pdf, Page 28

³¹ 2011 Annual Report for Canada Council for the Arts, http://www.canadacouncil.ca/NR/rdoonlyres/6F7549BB-F4E5-4B8B-95F4-1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf

³² <http://www.pch.gc.ca/eng/1294862453819/1294862453821>

³³ Department for Culture, The Importance of Music, A National Plan for Music Education, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/180973/DFE-00086-2011.pdf, Page 4, 2011

³⁴ 2011 Annual report for the National Endowment of the Arts, <http://www.nea.gov/about/11Annual/2011-NEA-Annual-Report.pdf>, Page 2

³⁵ NEA Strategic Plan 2012-2016, www.arts.gov/about/Budget/NEAStrategicPlan2012-2016.pdf

³⁶ http://www.ifacca.org/national_agency_news/2013/04/10/us-president-requests-154465000-neh-2014/

³⁷ 2010-2011 Annual Report for the National Arts Council South Africa, National Arts Council South Africa, <http://www.nac.org.za/media/publications/AR%2010-11%20NAC.PDF/download>, Page 11. Also Mmino, the South African – Norwegian Education Music Programme, solely funds music projects funding a total of 294 projects. Thirteen projects were allocated funding for a total of R1,680,600 of which R1,381,000 went towards music educational and R299,600 to exchange projects (Page 10)

³⁸ Singapore Arts Council, <http://www.nac.gov.sg/media-centre/news-releases/news-detail?id=c2db15e2-c319-40ec-939c-d58735d0a91c>

³⁹ <http://www.taiteenkeskustoimikunta.fi/documents/10162/31704/TY+tilastotiedote+1+12+.pdf>, Page 1 and Page

Another clear example of an “entity dedicated to the community” with members that cover hundreds of millions of music constituents with formal boundaries is A2IM, the American Association of Independent Music. A2IM has two types of members: U.S independent Label members and Associate members. A2IM membership for Labels and Associates is invoked formally through an application and if accepted would require annual membership dues.⁴⁰

The reach of A2IM Associate⁴¹ membership covers hundreds of millions of entities (i.e. the reach of A2IM’s total membership “geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents – See Application Answer to Question 20a).

Organized and strictly delineated communities related to music that are A2IM members include:

- **Apple iTunes**⁴² – iTunes accounts for 63% of global digital music market⁴³ - a majority – with a registered community of 800 million registered members⁴⁴ available in 119 countries who abide to strict terms of service and boundaries⁴⁵ and have downloaded over 25 billion songs⁴⁶ from iTunes’ catalog of over 43 million songs⁴⁷ covering a global music community, regardless of genre or whether the community entities are amateur, professional, commercial or non-commercial. To add music to iTunes, all music artists must have a formal membership with iTunes via an Apple ID registration, which includes a current credit card on file.⁴⁸
- **Pandora**⁴⁹ – Pandora is the world’s largest streaming music radio with a community of over 250 million registered members.⁵⁰
- **Spotify**⁵¹ – Spotify is the world’s largest music streaming community with over 50 million active registered members in 58 countries and over 30 million songs. The music community uploads 20,000 songs every day.⁵²
- **Vevo**⁵³ – Vevo is the world’s leading all-premium music video community and platform with over 8 billion monthly views globally.⁵⁴

⁴⁰ <http://a2im.org/about-joining/>

⁴¹ <http://a2im.org/groups/tag/associate+members/>

⁴² <http://a2im.org/groups/itunes>

⁴³ <http://appleinsider.com/articles/13/04/16/apples-itunes-rules-digital-music-market-with-63-share>

⁴⁴ <http://www.npr.org/blogs/therecord/2015/01/06/375173595/with-downloads-in-decline-can-itunes-adapt>

⁴⁵ <http://www.apple.com/legal/internet-services/itunes/ww/index.html>

⁴⁶ <http://www.apple.com/pr/library/2013/02/06iTunes-Store-Sets-New-Record-with-25-Billion-Songs-Sold.html>

⁴⁷ <https://www.apple.com/itunes/features/>

⁴⁸ <https://www.apple.com/itunes/working-itunes/sell-content/music-faq.html>

⁴⁹ <http://a2im.org/groups/pandora>

⁵⁰ <http://www.cnet.com/news/like-a-rolling-milestone-pandora-hits-250m-registered-users/> and <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MTkxNTM1fENoaWxkSUQ9LTF8VHlwZT0z&t=1>, Pg.9

⁵¹ <http://a2im.org/groups/spotify>

⁵² <https://press.spotify.com/us/information/>

⁵³ <http://a2im.org/groups/vevo/>

- **Youtube**⁵⁵ – Youtube is the world’s largest music video streaming community with millions of music creators -- amateur, professional, commercial or non-commercial -- and over 1 billion registered members covering all regions globally. 6 billion hours of video is watched every month on Youtube,⁵⁶ of which 38.4% is music-related.⁵⁷
- **Reverbnation**⁵⁸ – Reverbnation⁵⁹ is one of the world’s largest music community and a leading music distributor with over 3.87 million musicians, venues labels and industry professionals covering every country globally. The Reverbnation community grows by over 50,000 artists, bands, labels and industry professionals monthly.
- **BMG**⁶⁰ – BMG is focused on the management of music publishing and recording rights. BMG has an international presence and represents over 2.5 million music rights globally.⁶¹

A2IM also includes members that are associated with global government agencies which exclusively represent substantial music economies and music members, such as France (BureauExport⁶²), China (China Audio Video Association⁶³) and Germany (Initiative Musik).⁶⁴ A2IM also has Affiliate⁶⁵ associations within the global music community. These include Affiliates such as MusicFirst,⁶⁶ the Copyright Alliance,⁶⁷ the Worldwide Independent Network (WIN)⁶⁸ and Merlin.⁶⁹

A2IM also represents a recognized Music Coalition representing the interests of the Global Independent Music Community.⁷⁰ The A2IM Coalition includes Merlin, a global rights agency for the independent label sector, representing over 20,000 labels from 39 countries, Worldwide Independent Network (representing label creators in over 20 countries), Association of Independent Music (representing largest and most respected labels in the world), and IMPALA (Independent Music Companies Association on behalf of over 4,000 independent music companies and national associations across Europe, representing 99% of music actors in Europe which are micro, small and medium sized enterprises.

⁵⁴ <http://www.vevo.com/c/EN/US/about>

⁵⁵ <http://a2im.org/groups/youtube/>

⁵⁶ <https://www.youtube.com/yt/press/statistics.html>

⁵⁷ http://www.researchandmarkets.com/reports/2092499/internet_video_2011_2014_view_share_site_and

⁵⁸ <http://a2im.org/groups/reverb-nation/>

⁵⁹ <http://www.reverbnation.com/about>

⁶⁰ <http://a2im.org/groups/bmg-rights/>

⁶¹ <http://www.bmg.com/category/about-us/history/>

⁶² <http://a2im.org/groups/french-music-export-office>

⁶³ <http://a2im.org/groups/china-audio-video-association-cava>

⁶⁴ <http://a2im.org/groups/initiative-musik-gmbh>

⁶⁵ <http://a2im.org/groups/tag/associate+members/>

⁶⁶ <http://musicfirstcoalition.org/coalition>, The musicFIRST Coalition, with founding members A2IM, RIAA, and Recording Academy represents musicians, artists, managers, music businesses, and performance right advocates.

⁶⁷ <http://www.copyrightalliance.org/members>

⁶⁸ <http://www.winformusic.org>

⁶⁹ <http://www.merlinnetwork.org>

⁷⁰ <https://www.icann.org/en/system/files/correspondence/bengloff-to-chehade-et-al-20aug14-en.pdf> and <https://www.icann.org/en/system/files/correspondence/bengloff-to-crocker-et-al-07mar15-en.pdf>

Cumulatively, A2IM's Label and Associate Membership, A2IM's Affiliates and the A2IM's Global Independent Music Community Coalition, covers a majority of the global music community. Its cumulative membership is in the hundreds of millions of entities with formal boundaries belonging to strictly organized and delineated communities related to music as per the Community Definition and Size (See Application answer to Question 20a).

Another global Music Community Coalition led by the RIAA "on behalf of over 15 national and international trade associations" also expressed its support for .MUSIC to be under a "community" application model, including encouraging statements in support of DotMusic's policies that stated that the coalition "was encouraged to see" that DotMusic "included several measures to deter and address copyright infringement within that TLD." The "coalition members represent the people that write, sing, record, manufacture, distribute and/or license over 80% of the world's music"⁷¹ – a majority of global music.⁷²

Another letter⁷³ sent to ICANN (on April 14th, 2015) by Danielle Aguirre from the NMPA and on behalf of a music publisher and songwriter community coalition representing a majority of the global music publishing community, also expressed "support [for] the .MUSIC community applications because respecting and protecting music rights serves the global music community and the public interest."

Collectively, the DotMusic application received support from the largest coalition of music community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support⁷⁴ from institutions/organizations representing a majority of the Community addressed. Music -- as commonly-known by the general public and experienced today -- would not be possible without these supporting, non-negligible and relevant organizations that have endorsed DotMusic.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Community Establishment* and *Community Endorsement* from the majority of the global Music Community as defined.

⁷¹ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.1

⁷² <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.3, Appendix A

⁷³ <https://www.icann.org/en/system/files/correspondence/aguirre-to-icann-board-eiu-14apr15-en.pdf>

⁷⁴ <http://music.us/supporters>

B) Nexus⁷⁵

According to the Applicant Guidebook (“AGB”), to receive the maximum score for Nexus, the applied-for string -- “music” -- must match the name of the community or be a well-known short-form or abbreviation of the community name.

The *Nexus* of the “Music Community” entirely matches the applied-for “music” string because it represents the entire global Music Community as commonly-known and perceived by the general public. This definition allows for all constituents with a requisite awareness of the Community defined to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination. The definition of the Community requires that members have an active, non-tangential relationship with the applied-for string and the requisite awareness of the music community they identify with as part of the registration process. It is clear that the general public will directly associate and equate the string with the Community as defined by DotMusic. There is no possibility of overreaching beyond the definition or allowing unrelated non-music entities to be included as part of the Community.

Community members may register a .MUSIC by either:

- 1) Identifying that they belong to a Music Community Member Organization (“MCMO”); or
- 2) Identifying the community they belong to, which is consistent with the definition of the Community: “the strictly delineated and organized logical alliance of communities of similar nature related to music.”

All Community members are aware of and recognize their inclusion in the defined Community by identifying which clearly defined community they belong to and have an active participation in. The *nexus* of the applied-for string ensures inclusion of the entire global community that the string represents while excluding unrelated-entities not associated with the string. This way there is a clear match and alignment between the “music” sting and the Community defined.

While the exact size of the global Music Community as defined is unknown (there is no empirical evidence providing an exact, finite number because amateur entities are also included in the Community’s definition), it is in the considerable millions as explicitly stated in the DotMusic Application. DotMusic’s definition of the Community and mutually-inclusive Registration Policies ensure that eligible members are only music-related and associated with the string. This is because the string identifies all constituents involved in music. Music-only participation optimizes the relevancy of .MUSIC domains to the string and entirely matches the *nexus* between the string and Community defined. According to DotMusic, the Community *definition, eligibility* criteria and *content and use* requirements ensure that peripheral industries

⁷⁵ See <http://music.us/nexus>

and entities not related to music are excluded so that the string and the defined Community matches and aligns in a consistent manner consistent with DotMusic’s community-based purpose i.e. only entities with music-related activities are able to register .MUSIC domains.

Membership aligns with the *nexus* of the Community and the string, which is explicitly relevant to music. The string as defined in the application demonstrates uniqueness because it has no other significant meaning beyond identifying the community described in the application. According to DotMusic’s application, any tangential or implicit association with the *nexus* of the Community and the string is not regarded as a delineated membership since it would be considered unclear, dispersed or unbound. Such unclear, dispersed or unbound tangential relationships with the defined “music” Community and applied-for “music” string would not constitute a qualifying Community membership and would be ineligible for registration.

The inclusion of every music constituent type is paramount to the purpose of the string. Every type of music constituent critically contributes to the function and operation of the music sector within a regulated framework given the symbiotic overlapping nature of the Community as defined and structured. Music would not function as it does today without the participation of all music constituent types which cumulatively match the string with the Community definition.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Nexus*.

Respectfully Submitted,

Deborah L. Vietze, Ph.D.

Signature:

Contact Information Redacted Jun 2 '15 ip: 74.102.35.40

Name: Deborah L. Vietze, Ph.D.

Title: Professor of Psychology

Organization: City University of New York, New York City

Re: Expert Testimony on (i) Community Establishment; (ii) Nexus; and (iii) Support for DotMusic’s Community-Based Application¹ for .MUSIC (Application ID 1-1115-14110)

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

Please accept this letter that indicates that there is substantive and compelling evidence that the DotMusic application convincingly meets the full criteria under Community Priority Evaluation on the following points: (i) the Music Community’s *Establishment* as defined by DotMusic; (ii) the matching *Nexus* between the “music” Community and the “music” string (or top-level domain); and (iii) that DotMusic possesses documented *Support* from organizations representing a majority of the global Music Community addressed and defined.

Please see my credentials attached hereto that identify my level of expertise and specialized knowledge with respect to the music community’s organization and delineation.

SUMMARY

DotMusic has established the following:

- 1) Its Community definition recognizes the cohesive, symbiotic and overlapping nature of the global Music Community. The definition includes those associated with commercial and non-commercial creation, performance, marketing and distribution of music;
- 2) “Music Community” members have the requisite awareness and recognition of the interdependency, overlapping and cohesive nature of each “organized community of similar nature that relates to music.” These organized and aligned communities are closely united and make “music” as we know it today. It is this self-awareness and interdependence that gives the “Music Community” its strength. With exponential growth of the Internet, mobile and the Domain Name System (DNS), the “Music Community’s” use and reliance on the Internet to create, market and disseminate music-related content, products, services and activities will continue to grow;
- 3) The “Music Community” functions in a regulated sector with global copyright protections – it is clear that the “community,” as defined, implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate a globally-recognized set of standards for

¹ <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1392>

the protection of the “Music Community” member rights with relation to their copyrighted music works around the world;

4) The “Music” Community -- as defined by DotMusic -- has at least one entity mainly dedicated to the community supporting DotMusic’s application. Such documented *Support* includes several “international federation of national communities of a similar nature,” music coalitions and others that are strongly associated with “music,” which represent a majority of the Community with considerable millions of members worldwide.²

5) The *Nexus* of the “music” Community matches the “music” applied-for string because it represents the entire global Music Community – a community that pre-existed 2007 with a size in the considerable millions of constituents. The “Music Community” definition -- which incorporates the strict fundamental attributes of a closely united Community definition that is “organized” and “delineated” -- ensures that all of its constituent members have a requisite awareness of the community as defined, including both commercial and non-commercial stakeholders, to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination.

6) DotMusic has received support from the largest coalition of Music Community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support³ from institutions/organizations representing a majority of the Community as defined and recognized in the DotMusic application.

There is substantive evidence that DotMusic fulfills the *Nexus, Community Establishment and Support* criteria for the “Music” string. The inclusion and representation of every music constituent type is paramount to the articulated purpose of the string. DotMusic and its application’s global Music Community supporters substantiate that every type of music constituent contributes to the function and operation of the music sector within a regulated framework. The symbiotic nature of the Community as defined and structured means that “Music” would not function as it does today without the participation of all music constituent types that interconnect to match the “music” string with the “music” Community definition.

² <http://music.us/supporters>

³ <http://music.us/supporters>

ASSESSMENT OF COMMUNITY DEFINITION, ESTABLISHMENT AND NEXUS

A) *Music Community Definition, Establishment & Community Endorsement*⁴

DotMusic’s definition of the “Music Community” as a “strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music” (See Application Answer to Question 20a) is factually accurate and representative of the “Music Community.” Community characteristics include:

i) An Organized, Cohesive, Interdependent Logically-Allied Community:

The “Music Community” definition covers the regulated, interdependent and cohesive nature of the music sector that exists today. “Music Community” members have the requisite awareness and recognition of the interdependent, overlapping and cohesive nature of each “organized community of similar nature that relates to music” that comprises the “Music Community.” Without such cohesiveness and interdependency, the defined “Music” Community matching the applied-for string (“Music”) would not be able to function in its regulated sector. “Music” is a regulated sector comprised of a logical alliance of interdependent communities relating to music with organized practices and institutions that enable and regulate the production, distribution and consumption of music that was publicly recognized by both ICANN and the Government Advisory Committee⁵

As a result, the Music Community as defined is “closely united” (As per the definition of “cohesion” according to Merriam-Webster dictionary⁶) or “united or form a whole” (As per the definition of the word “cohesion” according to Oxford Dictionaries⁷).

DotMusic’s application follows unified principles that the entire Community subscribes to, such as: creating a trusted identifier and safe haven for music consumption, protecting musicians’ rights and intellectual property, fighting copyright infringement/piracy, supporting fair compensation and music education, and following a multi-stakeholder approach of representation of all types of global music constituents without discrimination (See Application Answers to 18).

The “Music Community” as defined (a “strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music”) establishes that:

- (1) There is an awareness and recognition among its members;

⁴ See <http://music.us/establishment>

⁵ <https://www.icann.org/en/system/files/bm/briefing-materials-2-05feb14-en.pdf>, Pg.3

⁶ <http://www.merriam-webster.com/dictionary/cohesion>

⁷ http://www.oxforddictionaries.com/us/definition/american_english/cohesion

- (2) The organized and delineated logical alliance of communities exists; and
- (3) The Community is “closely united” and “interdependent” (i.e. Each “organized community of similar nature that relates to music” which is part of the “logical alliance of communities that relate to music” is not mutually exclusive).

In short, the applied-for string (“Music”) matches the name of the “Music” Community as defined by DotMusic’s application. DotMusic’s “Music Community” definition accurately represents the common definition of the “Music Community,” which is confirmed by Wikipedia.

According to Wikipedia:⁸

Music community is defined as a logical alliance of interdependent communities that are related to music, which include commercial participants...and non-commercial participants...and consists of an “ensemble of practices and institutions that make possible and regulate the production, distribution and consumption of music”...UNESCO identifies the music community as a “community of identity” implying common identifiable characteristics and cohesive attributes such as sharing a music culture, norms and subscribing to common ideals related to music...The music community is not defined as much by demographic indicators such as race, gender, and income level, as it is by common values, cohesive norms and interconnected structures to build a community identity. It refers to music-related individuals and organisations in a shared environment with shared understandings and practices, modes of production and distribution. The shared organisation of collective musical activities, identity and community value is created as result of infrastructure and a shared set of common values...Many studies outline the historical, cultural, and spatial significance of the music community, including how its identity is formed through musical practices. The music community shares a cohesive and interconnected structure of artistic expression, with diverse subcultures and socio-economic interactions...subscribing to common ideals. Under such structured context music consumption becomes possible regardless whether the transaction is commercial and non-commercial.⁹

⁸ Wikipedia is ranked 6th among the ten most popular websites (Alexa, Retrieved March 23, 2015 from <http://www.alexacom/siteinfo/wikipedia.org>) and constitutes the Internet's largest, most frequently updated and popular general reference work (See OECD, OECD Internet Economy Outlook 2012, OECD Publishing, http://www.oecd-ilibrary.org/science-and-technology/oecd-internet-economy-outlook-2012_9789264086463-en, Pg.172) that compares favorably to the accuracy of other encyclopedias (such as the Britannica) according to a 2012 study conducted in partnership with Oxford University (See <http://blog.wikimedia.org/2012/08/02/seven-years-after-nature-pilot-study-compares-wikipedia-favorably-to-other-encyclopedias-in-three-languages>).

⁹ Music Community. In *Wikipedia*. Retrieved July 6, 2015, from https://en.wikipedia.org/wiki/Music_community

ii) An Aware, Pre-Existing and Recognized Community of Considerable Millions Worldwide:

DotMusic's definition of the Community covers all Community members associated with the string, each with a requisite awareness of the Community that can be validated through their natural association with a particular music-related community that they clearly identify with. According to DotMusic, all Music Community members must identify their music-related community in order to demonstrate their requisite awareness of the defined Community as part of the .MUSIC registration and validation process.

According to DotMusic, the Music Community's geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents (Application Answer to Question 20a).

According to DotMusic, "registrants will be verified using Community-organized, unified "criteria taken from holistic perspective with due regard of Community particularities" that "invoke a formal membership (Application Answer to Question 20a)." The defined Community represents all music-related entities with a clear and straightforward membership with the Community involved in the legal production, performance, promotion, and distribution of music worldwide. According to DotMusic, the Music Community members must have an active, non-tangential relationship with the applied-for string "music" and also have the requisite awareness of the music-related community that they are a part of by specifically identifying it as part of the registration and validation process (i.e. upon successful registration and validation, each community member will be given a unique community identification number that will automatically associate them with their identified community and the "music" string).

DotMusic's Community definition matches the applied-for string because it allows both commercial and non-commercial stakeholders to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination/exclusion. Given the regulated sector of the community, it is clear that the "Music Community" as defined implies "more of cohesion than a mere commonality of interest" with an "awareness and recognition of a community among its members." Several international treaties mandate cohesive and globally-recognized set of standards for the protection of the music community members' rights with relation to their copyrighted music works around the world.¹⁰

The Berne Convention for the Protection of Literary and Artistic Works¹¹ provides that each of the 168 contracting parties¹² (representing an overwhelming majority of the world's population) provides automatic protection for music works first published in other countries of the Berne union and for unpublished music works whose authors are citizens of or resident in such other

¹⁰ http://www.rightsdirect.com/content/rd/en/toolbar/copyright_education/International_Copyright_Basics.html

¹¹ http://www.wipo.int/treaties/en/text.jsp?file_id=283698

¹² http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=15

countries.¹³ This means that if a Music Community member’s copyright rights are violated in any other signatory country’s jurisdiction, then the music community member will have the music copyright rights given by that country. Music Community members are clearly aware of the collective Community’s rights, which could not be made possible without these cohesive and globally-recognized set of standards. If such standards were not coherent or enforced then music would not be able to exist in its current form and the industry component of the Music Community sector would not exist. As such, the Community’s *Establishment* and definition is “cohesive” and hence cannot be construed since the Community is a logical alliance of music communities that establish a clearly delineated and organized Community structure that is “closely united” and functions as a “whole”

Further evidence to substantiate the cohesive, symbiotic and overlapping nature of the Community, includes other globally-recognized standards and classification systems, which identify who the individual songwriters, publishers and rights holders are and which songs they are associated with so that Community members are appropriately compensated, regardless of whether the constituent is a commercial, non-commercial or amateur entity. The “music” string is commonly used in classification systems such as ISMN,¹⁴ ISRC,¹⁵ ISWC,¹⁶ ISNI.¹⁷ (Application Answer to Question 20a). For example, if a music entity would like to distribute their music, either commercially or for free, then an ISRC can be assigned to globally identify any specific music work. An ISRC, which facilitates efficient music discovery and community member payment, is constructed from 12 characters representing country, registrant, year of registration and designation (i.e. the serial number assigned by the registrant). With respect to domains, an equivalent system that relates to identifying a specific domain’s registrant and other relevant information pertaining to the domain is WHOIS. Domain registrants are required by ICANN “to provide accurate WHOIS contact data” or else their domain “registration may be suspended or even cancelled”.¹⁸

¹³ <http://www.britannica.com/EBchecked/topic/62482/Berne-Convention>

¹⁴ The International Standard Music Number (ISMN) is a unique number for the identification of all notated music publications from all over the world. The ISMN is an ISO certified global standard number (ISO 10957:2009). See <http://www.ismn-international.org/whatis.html> and http://www.iso.org/iso/home/store/catalogue_ics/catalogue_detail_ics.htm?csnumber=43173

¹⁵ The ISRC (International Standard Recording Code) is the international identification system for sound recordings and music video recordings. The ISRC is an ISO certified global standard number (ISO 3901:2001) and is managed by the IFPI. See <http://isrc.ifpi.org>, <https://www.usisrc.org/about/index.html> and http://www.iso.org/iso/catalogue_detail?csnumber=23401

¹⁶ The ISWC (International Standard Musical Work Code) is a unique, permanent and internationally recognized reference number for the identification of musical works. The ISWC has been approved by ISO (International Organization for Standardisation) as a global standard (ISO 15707:2001) and is managed by CISAC. See <http://www.iswc.org/en/faq.html> and http://www.iso.org/iso/catalogue_detail?csnumber=28780

¹⁷ The International Standard Name Identifier (ISNI) is the ISO certified global standard number (ISO 27729) for identifying the millions of contributors to creative works and those active in their distribution. ISNI holds public records of over 8 million identities and 490,000 organizations. See <http://www.isni.org/> and http://www.iso.org/iso/catalogue_detail?csnumber=44292

¹⁸ <https://whois.icann.org/en/about-whois> and <https://www.icann.org/resources/pages/faqs-f0-2012-02-25-en>

Without such Music Community “cohesion” and standardized systems functioning in its regulated sector, the Music Community would not be able to create, market and distribute their music. By the same token, fans would not be able to identify the music they are listening to with a specific music artist, regardless of whether the listening activity or behavior is commercial or non-commercial in nature. The socio-economic structure that characterizes “music” as commonly-known today would be non-existent without these organized and delineated elements that commonly define the Community.

iii) *International Federations and Organizations mainly Dedicated to the Community:*

According to ICANN’s Applicant Guidebook (“AGB”)¹⁹: “*With respect to “Delineation” and “Extension,” it should be noted that a community can consist of...a logical alliance of communities (for example, an international federation of national communities of a similar nature... viable as such, provided the requisite awareness and recognition of the community is at hand among the members.*” (AGB, 4-12). The community as defined in the DotMusic application has at least one entity *mainly*²⁰ dedicated to the community which has supported DotMusic, which include several “international federation of national communities of a similar nature” relating to music, music coalitions and other relevant and non-negligible music organizations.

One of these entities include the only international federation of national communities relating to government culture agencies and arts councils, which has an integral association with music globally: the International Federation of Arts Councils and Culture Agencies (IFACCA).

IFACCA is the only international federation that represents government culture agencies and arts councils globally. These national communities are governmental institutions that play a pivotal

¹⁹ <https://newgtlds.icann.org/en/applicants/agb/guidebook-full-11jan12-en.pdf>

²⁰ Per the Oxford and Merriam Webster dictionaries, the word “mainly” is defined as “*more than anything else*” (See <http://www.oxforddictionaries.com/definition/english/mainly> and <http://www.merriam-webster.com/dictionary/mainly> respectively). According to DotMusic, the string .MUSIC relates to the Community “by representing all constituents involved in music creation, production and distribution” (Application Answer to Question 20d). Supporting organizations related to that string that are “mainly” dedicated to the Community and its activities, include the International Federation of Arts Councils and Culture Agencies (IFACCA) representing government culture ministries and arts councils, the International Federation of Musicians (FIM) representing musicians globally, the International Federation of Phonographic Industry (IFPI) representing the recording industry worldwide, the International Confederation of Music Publishers (ICPM) representing the voice of global music publishing, the International Association of Music Information Centres (IAMIC), the American Association of Independent Music (A2IM), whose associate members represent a majority of music consumed, the Independent Music Worldwide Independent Network (WIN) representing independent music worldwide, the International Society for Music Education (ISME) the premiere international organization representing music education, and many others (See support at <http://music.us/supporters> and <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails:downloadattachment/142588?t:ac=1392>).

role with respect to music.²¹ IFACCA's members cover the majority of music entities globally, regardless of whether they are commercial, non-commercial or amateurs. Government ministry of culture and council agencies related to music cover a majority of the overall community with respect to headcount and geographic reach. The "Size" covered reaches over a hundred million music entities i.e. "considerable size with millions of constituents" per Application Answer to Question 20a.

The string "music" falls under the jurisdiction of each country's Ministry of Culture governmental agency or arts/music council (emphasis added). The degree of power and influence of government ministry of culture and council agencies with respect to music surpasses any organization type since these agencies (i) provide the majority of funding for music-related activities; (ii) regulate copyright law; and (iii) encompass all the music entities that fall under their country, regardless whether these entities are commercial, non-commercial or amateurs. IFACCA is globally recognized by its strategic partners, such as UNESCO, a United Nations agency representing 195 member states and the European Commission.²² The UNESCO strategic partnership²³ is relevant, especially since UNESCO founded the International Music Council (the "IMC") in 1949, which represents over 200 million music constituents from over 150 countries and over 1000 organizations globally.²⁴

Government activities in the clearly delineated and organized "Music Community" include setting statutory royalty rates. For example, in the United States, mechanical royalties are based on a "statutory rate" set by the U.S. Congress. This rate is increased to follow changes in the economy, usually based on the Consumer Price Index. Currently, the mechanical statutory rate is \$0.091 for songs five minutes or less in length or \$.0175 per minute for songs that are over five minutes long.²⁵

Ministries of culture and arts councils (that comprise IFACCA's membership) support musicians, musical performances, independent music artists, non-commercial musical expression and education in their respective countries. The 165 ministries of culture, arts councils and affiliates that comprise IFACCA's membership support the "performing arts" and music specifically. Without the financial and logistical support of arts councils and the ministries of culture, the music community would be adversely affected, and in some countries, may not exist in any appreciable manner. For example, the Ministry of Culture 2011 budget for the small country state of Cyprus for culture funding was €34,876,522 with critical support of music activities.²⁶ Other small government Ministries of Culture, such as Albania,²⁷ or government

²¹ http://www.ifacca.org/membership/current_members/

²² http://www.ifacca.org/strategic_partners/

²³ http://www.ifacca.org/strategic_partners/

²⁴ <http://www.imc-cim.org/about-imc-separator/who-we-are.html>

²⁵ U.S Copyright Office, <http://www.copyright.gov/carp/m200a.html>

²⁶ 2011 Annual Report for Cyprus Ministry of Culture, Section 1.2 "Music"

(http://www.moec.gov.cy/en/annual_reports/annual_report_2011_en.pdf). Activities include Music Performances in Cyprus (1.2.1) and Abroad (1.2.2), Subsidization of Paphos Aphrodite Festival (1.2.3), Music Publications (1.2.4), Subsidization and Purchases of Digital Records (1.2.5), Promotion for Cypriot musical creativity abroad (1.2.6),

Ministries of Culture and Arts Councils from countries with larger populations, such as India,²⁸ all provide critical support and substantial advocacy for music. Other examples include government institutions collaborating and advocating music through their funded country-based pavilion initiatives at Midem, the world's largest music conference.²⁹

Government ministries and arts councils provide critical support for the Music Community, including commercial music organizations. By way of example, government ministries' and arts councils' substantial connection to and support of "music" is noted in the reports of funding and support for music. Some examples to showcase the degree of power of the IFACCA's membership towards the string and global and national music are music investment and music funding (Annual reports by governments and councils):

- New Zealand Ministry of Culture has funded significant music projects. Some include the REAL New Zealand Music Tour (\$415,000), the New Zealand String Quartet (\$150,000) and New Zealand Music Commission: (\$1,378,000).³⁰
- The Australian Government/Council For The Arts invested \$51.2 million for the nation's orchestras; \$21.6 million for opera; \$10.8 million for other music artists and organizations; \$13.1 million for multi-platform artists and organizations; and \$4 million in miscellaneous funding, including sector building and audience development initiatives and programs.³¹
- Canada Council for the Arts is Canada's national, arts funding agency investing \$28 million in its Canada Council Musical Instrument Bank (Page 16) and \$28,156,000 in Music Arts Programs (Page 66).³² The Government of Canada also renewed its annual investment of \$27.6 million over five years in the Canada Music Fund.³³
- The United Kingdom Department for Culture and Education (DfE) will fund music education at significant levels: £77 million, £65 million and £60 million will be available in the three years from April 2012.³⁴

Cyprus Symphony Orchestra Foundation (1.2.7), Music Information Centre (1.2.8), Developing Music Education (1.2.9), Organising of the 1st Musicological Symposium (1.2.10) and Musical Festivities for the European Volunteerism Year (1.2.11)

²⁷ http://www.culturalpolicies.net/down/albania_012011.pdf

²⁸ 2010-11 Annual Report from India Ministry of Culture, [http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011\(Eng\).pdf](http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011(Eng).pdf)

²⁹ <http://my.midem.com/en/contact-us/pavilion-representatives/>

³⁰ 2011 Annual Report from New Zealand Ministry of Culture:

[http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20\(D-0448383\).PDF](http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20(D-0448383).PDF)

³¹ 2011 Annual Report for the Australia Council for the Arts,

http://www.australiacouncil.gov.au/data/assets/pdf_file/0016/142351/Australia-Council-Annual-Report-201112.pdf, Page 28

³² 2011 Annual Report for Canada Council for the Arts, [http://www.canadacouncil.ca/NR/rdonlyres/6F7549BB-F4E5-4B8B-95F4-](http://www.canadacouncil.ca/NR/rdonlyres/6F7549BB-F4E5-4B8B-95F4-1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf)

[1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf](http://www.canadacouncil.ca/NR/rdonlyres/6F7549BB-F4E5-4B8B-95F4-1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf)

³³ <http://www.pch.gc.ca/eng/1294862453819/1294862453821>

³⁴ Department for Culture, The Importance of Music, A National Plan for Music Education,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/180973/DFE-00086-2011.pdf, Page 4, 2011

- The United States National Endowment of the Arts has awarded more than \$4 billion to support the arts since its inception³⁵ and has a strong focus on music as outlined in its Strategic Plan³⁶ with Congress requested to provide \$154,465,000 for fiscal year 2014.³⁷
- The National Arts Council of South Africa invested 2,536,131 ZAR in Music and 9,995,000 ZAR in Orchestras and has focused strongly on the “Strengthening of live indigenous music and advocating the revival of the live music circuit in South Africa”³⁸
- The Singapore Arts Council will fund \$10.2 million in the arts under its 2013 Grants Framework, including the Ding Yi Music Company and Siong Leng Musical Association.³⁹
- In 2011, the support for artistic activities by the Arts Council of Finland was €32.4 million of which €4,921,850 was awarded to music.⁴⁰

Each of IFACCA’s members has a clear association with, and mandate to support the music arts in their countries. In most countries, their ministry of culture/arts council is the largest funder and marketing supporter of the music arts.

The IFPI is another entity *mainly* dedicated to the Community. The IFPI is the only organization that represents the interests of the recording industry worldwide. It is the “voice of the recording industry worldwide”⁴¹ whose members⁴² – major and independent companies -- represent a majority of all commercial music consumed globally. For example, the RIAA, an IFPI national group member,⁴³ represents “approximately 85% of all legitimate recorded music produced and sold in the United States,”⁴⁴ the world’s largest music market with 30% global market share.⁴⁵ Formed in 1933, the IFPI’s mission was to “represent the interests of the recording industry worldwide in all fora.”

³⁵ 2011 Annual report for the National Endowment of the Arts, <http://www.nea.gov/about/11Annual/2011-NEA-Annual-Report.pdf>, Page 2

³⁶ NEA Strategic Plan 2012-2016, www.arts.gov/about/Budget/NEAStrategicPlan2012-2016.pdf

³⁷ http://www.ifacca.org/national_agency_news/2013/04/10/us-president-requests-154465000-neh-2014/

³⁸ 2010-2011 Annual Report for the National Arts Council South Africa, National Arts Council South Africa, <http://www.nac.org.za/media/publications/AR%2010-11%20NAC.PDF/download>, Page 11. Also Mmino, the South African – Norwegian Education Music Programme, solely funds music projects funding a total of 294 projects. Thirteen projects were allocated funding for a total of R1,680,600 of which R1,381,000 went towards music educational and R299,600 to exchange projects (Page 10)

³⁹ Singapore Arts Council, <http://www.nac.gov.sg/media-centre/news-releases/news-detail?id=c2db15e2-c319-40ec-939c-d58735d0a91c>

⁴⁰ <http://www.taiteenkeskustoimikunta.fi/documents/10162/31704/TY+tilastotiedote+1+12+.pdf>, Page 1 and Page 23

⁴¹ <http://www.ifpi.org/about.php>

⁴² <http://www.ifpi.org/our-members.php>

⁴³ <http://www.ifpi.org/national-groups.php>

⁴⁴ <http://www.riaa.com/faq.php>

⁴⁵ <http://www.statista.com/topics/1639/music/>

Another clear example of an “entity *mainly* dedicated to the community” with members that cover hundreds of millions of music constituents with formal boundaries is A2IM, the American Association of Independent Music. A2IM has two types of members: U.S independent Label members and Associate members. A2IM membership for Labels and Associates is invoked formally through an application and if accepted would require annual membership dues.⁴⁶

The reach of A2IM Associate⁴⁷ membership covers hundreds of millions of entities (i.e. the reach of A2IM’s total membership “geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents – See Application Answer to Question 20a).

Organized and strictly delineated communities related to music that are A2IM members include:

- **Apple iTunes**⁴⁸ – iTunes accounts for 63% of global digital music market⁴⁹ - a majority – with a registered community of 800 million registered members⁵⁰ available in 119 countries who abide to strict terms of service and boundaries⁵¹ and have downloaded over 25 billion songs⁵² from iTunes’ catalog of over 43 million songs⁵³ covering a global music community, regardless of genre or whether the community entities are amateur, professional, commercial or non-commercial. To add music to iTunes, all music artists must have a formal membership with iTunes via an Apple ID registration, which includes a current credit card on file.⁵⁴
- **Pandora**⁵⁵ – Pandora is the world’s largest streaming music radio with a community of over 250 million registered members.⁵⁶
- **Spotify**⁵⁷ – Spotify is the world’s largest music streaming community with over 50 million active registered members in 58 countries and over 30 million songs. The music community uploads 20,000 songs every day.⁵⁸
- **Vevo**⁵⁹ – Vevo is the world’s leading all-premium music video community and platform with over 8 billion monthly views globally.⁶⁰

⁴⁶ <http://a2im.org/about-joining/>

⁴⁷ <http://a2im.org/groups/tag/associate+members/>

⁴⁸ <http://a2im.org/groups/itunes>

⁴⁹ <http://appleinsider.com/articles/13/04/16/apples-itunes-rules-digital-music-market-with-63-share>

⁵⁰ <http://www.npr.org/blogs/therecord/2015/01/06/375173595/with-downloads-in-decline-can-itunes-adapt>

⁵¹ <http://www.apple.com/legal/internet-services/itunes/ww/index.html>

⁵² <http://www.apple.com/pr/library/2013/02/06iTunes-Store-Sets-New-Record-with-25-Billion-Songs-Sold.html>

⁵³ <https://www.apple.com/itunes/features/>

⁵⁴ <https://www.apple.com/itunes/working-itunes/sell-content/music-faq.html>

⁵⁵ <http://a2im.org/groups/pandora>

⁵⁶ <http://www.cnet.com/news/like-a-rolling-milestone-pandora-hits-250m-registered-users/> and <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MTkxNTM1fENoaWxkSUQ9LTF8VHlwZT0z&t=1>, Pg.9

⁵⁷ <http://a2im.org/groups/spotify>

⁵⁸ <https://press.spotify.com/us/information/>

⁵⁹ <http://a2im.org/groups/vevo/>

- **Youtube**⁶¹ – Youtube is the world’s largest music video streaming community with millions of music creators -- amateur, professional, commercial or non-commercial -- and over 1 billion registered members covering all regions globally. 6 billion hours of video is watched every month on Youtube,⁶² of which 38.4% is music-related.⁶³
- **ReverbNation**⁶⁴ – ReverbNation⁶⁵ is one of the world’s largest music community and a leading music distributor with over 3.87 million musicians, venues labels and industry professionals covering every country globally. The ReverbNation community grows by over 50,000 artists, bands, labels and industry professionals monthly.
- **BMG**⁶⁶ – BMG is focused on the management of music publishing and recording rights. BMG has an international presence and represents over 2.5 million music rights globally.⁶⁷

A2IM also includes members that are associated with global government agencies which exclusively represent substantial music economies and music members, such as France (BureauExport⁶⁸), China (China Audio Video Association⁶⁹) and Germany (Initiative Musik).⁷⁰ A2IM also has Affiliate⁷¹ associations within the global music community. These include Affiliates such as MusicFirst,⁷² the Copyright Alliance,⁷³ the Worldwide Independent Network (WIN)⁷⁴ and Merlin.⁷⁵

A2IM also represents a recognized Music Coalition representing the interests of the Global Independent Music Community.⁷⁶ The A2IM Coalition includes Merlin, a global rights agency for the independent label sector, representing over 20,000 labels from 39 countries, Worldwide Independent Network (representing label creators in over 20 countries), Association of Independent Music (representing largest and most respected labels in the world), and IMPALA (Independent Music Companies Association on behalf of over 4,000 independent music companies and national associations across Europe, representing 99% of music actors in Europe which are micro, small and medium sized enterprises.

⁶⁰ <http://www.vevo.com/c/EN/US/about>

⁶¹ <http://a2im.org/groups/youtube/>

⁶² <https://www.youtube.com/yt/press/statistics.html>

⁶³ http://www.researchandmarkets.com/reports/2092499/internet_video_2011_2014_view_share_site_and

⁶⁴ <http://a2im.org/groups/reverb-nation/>

⁶⁵ <http://www.reverbnation.com/about>

⁶⁶ <http://a2im.org/groups/bmg-rights/>

⁶⁷ <http://www.bmg.com/category/about-us/history/>

⁶⁸ <http://a2im.org/groups/french-music-export-office>

⁶⁹ <http://a2im.org/groups/china-audio-video-association-cava>

⁷⁰ <http://a2im.org/groups/initiative-musik-gmbh>

⁷¹ <http://a2im.org/groups/tag/associate+members/>

⁷² <http://musicfirstcoalition.org/coalition>, The musicFIRST Coalition, with founding members A2IM, RIAA, and Recording Academy represents musicians, artists, managers, music businesses, and performance right advocates.

⁷³ <http://www.copyrightalliance.org/members>

⁷⁴ <http://www.winformusic.org>

⁷⁵ <http://www.merlinnetwork.org>

⁷⁶ <https://www.icann.org/en/system/files/correspondence/bengloff-to-chehade-et-al-20aug14-en.pdf> and <https://www.icann.org/en/system/files/correspondence/bengloff-to-crocker-et-al-07mar15-en.pdf>

Cumulatively, A2IM's Label and Associate Membership, A2IM's Affiliates and the A2IM's Global Independent Music Community Coalition, covers a majority of the global music community. Its cumulative membership is in the hundreds of millions of entities with formal boundaries belonging to strictly organized and delineated communities related to music as per the Community Definition and Size (See Application answer to Question 20a).

Another global Music Community Coalition led by the RIAA “on behalf of over 15 national and international trade associations” also expressed its support for .MUSIC to be under a “community” application model, including encouraging statements in support of DotMusic’s policies that stated that the coalition “was encouraged to see” that DotMusic “included several measures to deter and address copyright infringement within that TLD.” The “coalition members represent the people that write, sing, record, manufacture, distribute and/or license over 80% of the world’s music”⁷⁷ – a majority of global music.⁷⁸

Another letter⁷⁹ sent to ICANN (on April 14th, 2015) by Danielle Aguirre from the NMPA and on behalf of a music publisher and songwriter community coalition representing a majority of the global music publishing community, also expressed “support [for] the .MUSIC community applications because respecting and protecting music rights serves the global music community and the public interest.”

The International Music Products Association, NAMM, is another globally-recognized and relevant group of non-negligible size that has supported DotMusic.⁸⁰ NAMM, formed in 1901, is *mainly* dedicated to the global music community by representing the international music products industry and community, with globally-recognized members and exhibitors that include Yamaha, Roland, Sennheiser, Sony, Fender, Harman, Kawai, Shure, Steinway, Audio-Technica, AKAI, Gibson, Peavey, Korg, AKG, Selmer, JBL, Alesis, Ibanez, AVID, Casio, DW, Sabian, Pearl, Zildjian, Martin, Ludwig, Marshall and others.^{81 82} Every amateur and professional musician worldwide uses music products manufactured and distributed by NAMM’s members. Without these musical instruments and products, music as we know it today would not be created or produced. NAMM and its trade shows power the \$17 billion global music products industry serving as a hub for the global music community wanting to seek out the newest innovations in musical products, recording technology, sound and lighting. NAMM’s mission is “to strengthen

⁷⁷ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.1

⁷⁸ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.3, Appendix A

⁷⁹ <https://www.icann.org/en/system/files/correspondence/aguirre-to-icann-board-eiu-14apr15-en.pdf>

⁸⁰ http://music.us/letters/NAMM_International_Music_Products_Association.pdf

⁸¹ https://www.namm.org/files/showdir/ExhibitorList_WN15.xls

⁸² <http://www.musictrades.com/global.html>

the music products industry and promote the pleasures and benefits of making music.”⁸³ NAMM also hosts the NAMM Show, the world's largest event for the music products industry.

Collectively, the DotMusic application received support from the largest coalition of music community member organizations ever assembled to support a cause representing over 95% of music consumed globally.⁸⁴ Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support⁸⁵ from institutions/organizations representing a majority of the Community addressed. Music -- as commonly-known by the general public and experienced today -- would not be possible without these supporting, non-negligible and relevant organizations that have endorsed DotMusic.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Community Establishment* and *Community Endorsement* from the majority of the global Music Community as defined.

B) Nexus⁸⁶

According to the Applicant Guidebook (“AGB”), to receive the maximum score for Nexus, the applied-for string -- “music” -- must match the name of the community or be a well-known short-form or abbreviation of the community name.

The *Nexus* of the “Music Community” entirely matches the applied-for “music” string because it represents the entire global Music Community as commonly-known and perceived by the general public. This definition allows for all constituents with a requisite awareness of the Community defined to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination. The definition of the Community requires that members have an active, non-tangential relationship with the applied-for string and the requisite awareness of the music community they identify with as part of the registration process. It is clear that the general public will directly associate and equate the string with the Community as defined by DotMusic. There is no possibility of overreaching beyond the definition or allowing unrelated non-music entities to be included as part of the Community. Community members may register a .MUSIC by either:

⁸³ <https://www.namm.org/about>

⁸⁴ See <http://music.us/supporters>, <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/downloadattachment/142588?t:ac=1392>, Bloomberg BNA at http://music.us/RIAA_Backs_DotMusic.pdf Pg.1, and <http://diffuser.fm/will-dot-music-domains-make-the-internet-better/>

⁸⁵ <http://music.us/supporters>

⁸⁶ See <http://music.us/nexus>

- 1) Identifying that they belong to a Music Community Member Organization (“MCMO”); or
- 2) Identifying the community they belong to, which is consistent with the definition of the Community: “the strictly delineated and organized logical alliance of communities of similar nature related to music.”

All Community members are aware of and recognize their inclusion in the defined Community by identifying which clearly defined community they belong to and have an active participation in. The *nexus* of the applied-for string ensures inclusion of the entire global community that the string represents while excluding unrelated-entities not associated with the string. This way there is a clear match and alignment between the “music” sting and the Community defined.

While the exact size of the global Music Community as defined is unknown (there is no empirical evidence providing an exact, finite number because amateur entities are also included in the Community’s definition), it is in the considerable millions as explicitly stated in the DotMusic Application. DotMusic’s definition of the Community and mutually-inclusive Registration Policies ensure that eligible members are only music-related and associated with the string. This is because the string identifies all constituents involved in music. Music-only participation optimizes the relevancy of .MUSIC domains to the string and entirely matches the *nexus* between the string and Community defined. According to DotMusic, the Community *definition, eligibility* criteria and *content and use* requirements ensure that peripheral industries and entities not related to music are excluded so that the string and the defined Community matches and aligns in a consistent manner consistent with DotMusic’s community-based purpose i.e. only entities with music-related activities are able to register .MUSIC domains.

Membership aligns with the *nexus* of the Community and the string, which is explicitly relevant to music. The string as defined in the application demonstrates uniqueness because it has no other significant meaning beyond identifying the community described in the application. According to DotMusic’s application, any tangential or implicit association with the *nexus* of the Community and the string is not regarded as a delineated membership since it would be considered unclear, dispersed or unbound. Such unclear, dispersed or unbound tangential relationships with the defined “music” Community and applied-for “music” string would not constitute a qualifying Community membership and would be ineligible for registration. Every type of music constituent critically contributes to the function and operation of the music sector within a regulated framework⁸⁷ given the symbiotic overlapping nature of the Community as defined and structured. Music would not function as it does today without the participation of all music constituent types which cumulatively match the string with the Community definition.

⁸⁷ ICANN has disclosed that the string .MUSIC is a sensitive string operating in a regulated sector. ICANN also accepted Government Advisory Committee (GAC) advice for safeguards to protect the Music Community and the public interest (See <https://icann.org/en/system/files/correspondence/crocker-to-dryden-3-29oct13-en.pdf> Pg.7)

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Nexus*.

Respectfully Submitted,

Dimitrios Vatakis

Signature:

Contact Information Redacted Aug 4 '15 ip: 149.142.103.147

Name: Dimitrios Vatakis PhD

Title: Assistant Professor

Organization: David Geffen School, UCLA

Re: Expert Testimony on (i) Community Establishment; (ii) Nexus; and (iii) Support for DotMusic’s Community-Based Application¹ for .MUSIC (Application ID 1-1115-14110)

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

Please accept this letter that indicates that there is substantive and compelling evidence that the DotMusic application convincingly meets the full criteria under Community Priority Evaluation on the following points: (i) the Music Community’s *Establishment* as defined by DotMusic; (2) the matching *Nexus* between the “music” Community and the “music” string (or top-level domain); and (3) that DotMusic possesses documented *Support* from organizations representing a majority of the global Music Community addressed and defined.

Please see my credentials attached hereto that identify my level of expertise and specialized knowledge with respect to the music community’s organization and delineation.

SUMMARY

DotMusic has established the following:

- 1) Its Community definition recognizes the cohesive, symbiotic and overlapping nature of the global Music Community. The definition includes those associated with commercial and non-commercial creation, performance, marketing and distribution of music;
- 2) “Music Community” members have the requisite awareness and recognition of the interdependency, overlapping and cohesive nature of each “organized community of similar nature that relates to music.” These organized and aligned communities are closely united and make “music” as we know it today. It is this self-awareness and interdependence that gives the “Music Community” its strength. With exponential growth of the Internet, mobile and the Domain Name System (DNS), the “Music Community’s” use and reliance on the Internet to create, market and disseminate music-related content, products, services and activities will continue to grow;
- 3) The “Music Community” functions in a regulated sector with global copyright protections – it is clear that the “community,” as defined, implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate a globally-recognized set of standards for

¹ <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1392>

the protection of the “Music Community” member rights with relation to their copyrighted music works around the world;

4) The “Music” Community -- as defined by DotMusic -- has at least one entity mainly dedicated to the community supporting DotMusic’s application. Such documented *Support* includes several “international federation of national communities of a similar nature,” music coalitions and others that are strongly associated with “music,” which represent a majority of the Community with considerable millions of members worldwide.²

5) The *Nexus* of the “music” Community matches the “music” applied-for string because it represents the entire global Music Community – a community that pre-existed 2007 with a size in the considerable millions of constituents. The “Music Community” definition -- which incorporates the strict fundamental attributes of a closely united Community definition that is “organized” and “delineated” -- ensures that all of its constituent members have a requisite awareness of the community as defined, including both commercial and non-commercial stakeholders, to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination.

6) DotMusic has received support from the largest coalition of Music Community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support³ from institutions/organizations representing a majority of the Community as defined and recognized in the DotMusic application.

There is substantive evidence that DotMusic fulfills the *Nexus, Community Establishment and Support* criteria for the “Music” string. The inclusion and representation of every music constituent type is paramount to the articulated purpose of the string. DotMusic and its application’s global Music Community supporters substantiate that every type of music constituent contributes to the function and operation of the music sector within a regulated framework. The symbiotic nature of the Community as defined and structured means that “Music” would not function as it does today without the participation of all music constituent types that interconnect to match the “music” string with the “music” Community definition.

² <http://music.us/supporters>

³ <http://music.us/supporters>

ASSESSMENT OF COMMUNITY DEFINITION, ESTABLISHMENT AND NEXUS

A) *Music Community Definition, Establishment & Community Endorsement*⁴

DotMusic’s definition of the “Music Community” as a “strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music” (See Application, 20a) is factually accurate and representative of the “Music Community.” Community characteristics include:

i) An Organized, Cohesive, Interdependent Logically-Allied Community:

The “Music Community” definition covers the regulated, interdependent and cohesive nature of the music sector that exists today. “Music Community” members have the requisite awareness and recognition of the interdependent, overlapping and cohesive nature of each “organized community of similar nature that relates to music” that comprises the “Music Community.” Without such cohesiveness and interdependency, the defined “Music” Community matching the applied-for string (“Music”) would not be able to function in its regulated sector, a “Music” regulated sector that was publicly recognized by both ICANN and the Government Advisory Committee.⁵

As a result, the Music Community as defined is “closely united” (As per the definition of “cohesion” according to Merriam-Webster dictionary⁶) or “united or form a whole” (As per the definition of the word “cohesion” according to Oxford Dictionaries⁷).

The “Music Community” as defined (a “strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music”) establishes that:

- (1) There is an awareness and recognition among its members;
- (2) The organized and delineated logical alliance of communities exists; and
- (3) The Community is “closely united” and “interdependent” (i.e. Each “organized community of similar nature that relates to music” which is part of the “logical alliance of communities that relate to music” is not mutually exclusive).

In short, the applied-for string (“Music”) matches the name of the “Music” Community as defined by DotMusic’s application. DotMusic’s “Music Community” definition accurately represents the common definition of the “Music Community,” which is confirmed by Wikipedia.

⁴ See <http://music.us/establishment>

⁵ <https://www.icann.org/en/system/files/bm/briefing-materials-2-05feb14-en.pdf>, Pg.3

⁶ <http://www.merriam-webster.com/dictionary/cohesion>

⁷ http://www.oxforddictionaries.com/us/definition/american_english/cohesion

According to Wikipedia:⁸

Music community is defined as a logical alliance of interdependent communities that are related to music, which include commercial participants...and non-commercial participants...and consists of an “ensemble of practices and institutions that make possible and regulate the production, distribution and consumption of music”...UNESCO identifies the music community as a “community of identity” implying common identifiable characteristics and cohesive attributes such as sharing a music culture, norms and subscribing to common ideals related to music...The music community is not defined as much by demographic indicators such as race, gender, and income level, as it is by common values, cohesive norms and interconnected structures to build a community identity. It refers to music-related individuals and organisations in a shared environment with shared understandings and practices, modes of production and distribution. The shared organisation of collective musical activities, identity and community value is created as result of infrastructure and a shared set of common values...Many studies outline the historical, cultural, and spatial significance of the music community, including how its identity is formed through musical practices. The music community shares a cohesive and interconnected structure of artistic expression, with diverse subcultures and socio-economic interactions...subscribing to common ideals. Under such structured context music consumption becomes possible regardless whether the transaction is commercial and non-commercial.⁹

ii) *An Aware, Pre-Existing and Recognized Community of Considerable Millions Worldwide:*

DotMusic’s definition of the Community covers all Community members associated with the string, each with a requisite awareness of the Community that can be validated through their natural association with a particular music-related community that they clearly identify with. According to DotMusic, all Music Community members must identify their music-related community in order to demonstrate their requisite awareness of the defined Community as part of the .MUSIC registration and validation process.

⁸ Wikipedia is ranked 6th among the ten most popular websites (Alexa, Retrieved March 23, 2015 from <http://www.alexacom/siteinfo/wikipedia.org>) and constitutes the Internet's largest, most frequently updated and popular general reference work (See OECD, OECD Internet Economy Outlook 2012, OECD Publishing, http://www.oecd-ilibrary.org/science-and-technology/oecd-internet-economy-outlook-2012_9789264086463-en, Pg.172) that compares favorably to the accuracy of other encyclopedias (such as the Britannica) according to a 2012 study conducted in partnership with Oxford University (See <http://blog.wikimedia.org/2012/08/02/seven-years-after-nature-pilot-study-compares-wikipedia-favorably-to-other-encyclopedias-in-three-languages>).

⁹ Music Community. In *Wikipedia*. Retrieved July 6, 2015, from https://en.wikipedia.org/wiki/Music_community

According to DotMusic, the Music Community’s geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents (Application Answer to Question 20a).

According to DotMusic, “registrants will be verified using Community-organized, unified “criteria taken from holistic perspective with due regard of Community particularities” that “invoke a formal membership (Application Answer to Question 20a).” The defined Community represents all music-related entities with a clear and straightforward membership with the Community involved in the legal production, performance, promotion, and distribution of music worldwide. According to DotMusic, the Music Community members must have an active, non-tangential relationship with the applied-for string “music” and also have the requisite awareness of the music-related community that they are a part of by specifically identifying it as part of the registration and validation process (i.e. upon successful registration and validation, each community member will be given a unique community identification number that will automatically associate them with their identified community and the “music” string).

DotMusic’s Community definition matches the applied-for string because it allows both commercial and non-commercial stakeholders to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination/exclusion. Given the regulated sector of the community, it is clear that the “Music Community” as defined implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate cohesive and globally-recognized set of standards for the protection of the music community members’ rights with relation to their copyrighted music works around the world.¹⁰

The Berne Convention for the Protection of Literary and Artistic Works¹¹ provides that each of the 168 contracting parties¹² (representing an overwhelming majority of the world’s population) provides automatic protection for music works first published in other countries of the Berne union and for unpublished music works whose authors are citizens of or resident in such other countries.¹³ This means that if a Music Community member’s copyright rights are violated in any other signatory country’s jurisdiction, then the music community member will have the music copyright rights given by that country. Music Community members are clearly aware of the collective Community’s rights, which could not be made possible without these cohesive and globally-recognized set of standards. If such standards were not coherent or enforced then music would not be able to exist in its current form and the industry component of the Music Community sector would not exist. As such, the Community’s *Establishment* and definition is “cohesive” and hence cannot be construed since the Community is a logical alliance of music

¹⁰ http://www.rightsdirect.com/content/rd/en/toolbar/copyright_education/International_Copyright_Basics.html

¹¹ http://www.wipo.int/treaties/en/text.jsp?file_id=283698

¹² http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=15

¹³ <http://www.britannica.com/EBchecked/topic/62482/Berne-Convention>

communities that establish a clearly delineated and organized Community structure that is “closely united” and functions as a “whole”

Further evidence to substantiate the cohesive, symbiotic and overlapping nature of the Community, includes other globally-recognized standards and classification systems, which identify who the individual songwriters, publishers and rights holders are and which songs they are associated with so that Community members are appropriately compensated, regardless of whether the constituent is a commercial, non-commercial or amateur entity. The “music” string is commonly used in classification systems such as ISMN,¹⁴ ISRC,¹⁵ ISWC,¹⁶ ISNI.¹⁷ (Application Answer to Question 20a). For example, if a music entity would like to distribute their music, either commercially or for free, then an ISRC can be assigned to globally identify any specific music work. An ISRC, which facilitates efficient music discovery and community member payment, is constructed from 12 characters representing country, registrant, year of registration and designation (i.e. the serial number assigned by the registrant). With respect to domains, an equivalent system that relates to identifying a specific domain’s registrant and other relevant information pertaining to the domain is WHOIS. Domain registrants are required by ICANN “to provide accurate WHOIS contact data” or else their domain “registration may be suspended or even cancelled”.¹⁸

Without such Music Community “cohesion” and standardized systems functioning in its regulated sector, the Music Community would not be able to create, market and distribute their music. By the same token, fans would not be able to identify the music they are listening to with a specific music artist, regardless of whether the listening activity or behavior is commercial or non-commercial in nature. The socio-economic structure that characterizes “music” as commonly-known today would be non-existent without these organized and delineated elements that commonly define the Community.

¹⁴ The International Standard Music Number (ISMN) is a unique number for the identification of all notated music publications from all over the world. The ISMN is an ISO certified global standard number (ISO 10957:2009). See <http://www.ismn-international.org/whatis.html> and

http://www.iso.org/iso/home/store/catalogue_ics/catalogue_detail_ics.htm?csnumber=43173

¹⁵ The ISRC (International Standard Recording Code) is the international identification system for sound recordings and music video recordings. The ISRC is an ISO certified global standard number (ISO 3901:2001) and is managed by the IFPI. See <http://isrc.ifpi.org>, <https://www.usisrc.org/about/index.html> and http://www.iso.org/iso/catalogue_detail?csnumber=23401

¹⁶ The ISWC (International Standard Musical Work Code) is a unique, permanent and internationally recognized reference number for the identification of musical works. The ISWC has been approved by ISO (International Organization for Standardisation) as a global standard (ISO 15707:2001) and is managed by CISAC. See <http://www.iswc.org/en/faq.html> and http://www.iso.org/iso/catalogue_detail?csnumber=28780

¹⁷ The International Standard Name Identifier (ISNI) is the ISO certified global standard number (ISO 27729) for identifying the millions of contributors to creative works and those active in their distribution. ISNI holds public records of over 8 million identities and 490,000 organizations. See <http://www.isni.org/> and http://www.iso.org/iso/catalogue_detail?csnumber=44292

¹⁸ <https://whois.icann.org/en/about-whois> and <https://www.icann.org/resources/pages/faqs-f0-2012-02-25-en>

iii) *International Federations and Organizations mainly Dedicated to the Community:*

According to ICANN's Applicant Guidebook ("AGB")¹⁹: *"With respect to "Delineation" and "Extension," it should be noted that a community can consist of...a logical alliance of communities (for example, an international federation of national communities of a similar nature... viable as such, provided the requisite awareness and recognition of the community is at hand among the members."* (AGB, 4-12). The community as defined in the DotMusic application has at least one entity mainly²⁰ dedicated to the community which has supported DotMusic, which include several "international federation of national communities of a similar nature" relating to music, music coalitions and other relevant and non-negligible music organizations.

One of these entities include the only international federation of national communities relating to government culture agencies and arts councils, which has an integral association with music globally: the International Federation of Arts Councils and Culture Agencies (IFACCA).

IFACCA is the only international federation that represents government culture agencies and arts councils globally. These national communities are governmental institutions that play a pivotal role with respect to music.²¹ IFACCA's members cover the majority of music entities globally, regardless of whether they are commercial, non-commercial or amateurs. Government ministry of culture and council agencies related to music cover a majority of the overall community with respect to headcount and geographic reach. The "Size" covered reaches over a hundred million music entities i.e. "considerable size with millions of constituents" per Application Answer to Question 20a.

The string "music" falls under the jurisdiction of each country's Ministry of Culture governmental agency or arts/music council (emphasis added). The degree of power and

¹⁹ <https://newgtlds.icann.org/en/applicants/agb/guidebook-full-11jan12-en.pdf>

²⁰ Per the Oxford and Merriam Webster dictionaries, the word "mainly" is defined as "*more than anything else*" (See <http://www.oxforddictionaries.com/definition/english/mainly> and <http://www.merriam-webster.com/dictionary/mainly> respectively). According to DotMusic, the string .MUSIC relates to the Community "by representing all constituents involved in music creation, production and distribution" (Application Answer to Question 20d). Supporting organizations related to that string that are "mainly" dedicated to the Community and its activities, include the International Federation of Arts Councils and Culture Agencies (IFACCA) representing government culture ministries and arts councils, the International Federation of Musicians (FIM) representing musicians globally, the International Federation of Phonographic Industry (IFPI) representing the recording industry worldwide, the International Confederation of Music Publishers (ICPM) representing the voice of global music publishing, the International Association of Music Information Centres (IAMIC), the American Association of Independent Music (A2IM), whose associate members represent a majority of music consumed, the Independent Music Worldwide Independent Network (WIN) representing independent music worldwide, the International Society for Music Education (ISME) the premiere international organization representing music education, and many others (See support at <http://music.us/supporters> and <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails:downloadattachment/142588?t:ac=1392>).

²¹ http://www.ifacca.org/membership/current_members/

influence of government ministry of culture and council agencies with respect to music surpasses any organization type since these agencies (i) provide the majority of funding for music-related activities; (ii) regulate copyright law; and (iii) encompass all the music entities that fall under their country, regardless whether these entities are commercial, non-commercial or amateurs. IFACCA is globally recognized by its strategic partners, such as UNESCO, a United Nations agency representing 195 member states and the European Commission.²² The UNESCO strategic partnership²³ is relevant, especially since UNESCO founded the International Music Council (the “IMC”) in 1949, which represents over 200 million music constituents from over 150 countries and over 1000 organizations globally.²⁴

Government activities in the clearly delineated and organized “Music Community” include setting statutory royalty rates. For example, in the United States, mechanical royalties are based on a "statutory rate" set by the U.S. Congress. This rate is increased to follow changes in the economy, usually based on the Consumer Price Index. Currently, the mechanical statutory rate is \$0.091 for songs five minutes or less in length or \$.0175 per minute for songs that are over five minutes long.²⁵

Ministries of culture and arts councils (that comprise IFACCA’s membership) support musicians, musical performances, independent music artists, non-commercial musical expression and education in their respective countries. The 165 ministries of culture, arts councils and affiliates that comprise IFACCA’s membership support the “performing arts” and music specifically. Without the financial and logistical support of arts councils and the ministries of culture, the music community would be adversely affected, and in some countries, may not exist in any appreciable manner. For example, the Ministry of Culture 2011 budget for the small country state of Cyprus for culture funding was €34,876,522 with critical support of music activities.²⁶ Other small government Ministries of Culture, such as Albania,²⁷ or government Ministries of Culture and Arts Councils from countries with larger populations, such as India,²⁸ all provide critical support and substantial advocacy for music. Other examples include government institutions collaborating and advocating music through their funded country-based pavilion initiatives at Midem, the world’s largest music conference.²⁹

²² http://www.ifacca.org/strategic_partners/

²³ http://www.ifacca.org/strategic_partners/

²⁴ <http://www.imc-cim.org/about-imc-separator/who-we-are.html>

²⁵ U.S Copyright Office, <http://www.copyright.gov/carp/m200a.html>

²⁶ 2011 Annual Report for Cyprus Ministry of Culture, Section 1.2 “Music”

(http://www.moec.gov.cy/en/annual_reports/annual_report_2011_en.pdf). Activities include Music Performances in Cyprus (1.2.1) and Abroad (1.2.2), Subsidization of Paphos Aphrodite Festival (1.2.3), Music Publications (1.2.4), Subsidization and Purchases of Digital Records (1.2.5), Promotion for Cypriot musical creativity abroad (1.2.6), Cyprus Symphony Orchestra Foundation (1.2.7), Music Information Centre (1.2.8), Developing Music Education (1.2.9), Organising of the 1st Musicological Symposium (1.2.10) and Musical Festivities for the European Volunteerism Year (1.2.11)

²⁷ http://www.culturalpolicies.net/down/albania_012011.pdf

²⁸ 2010-11 Annual Report from India Ministry of Culture, [http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011\(Eng\).pdf](http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011(Eng).pdf)

²⁹ <http://my.midem.com/en/contact-us/pavilion-representatives/>

Government ministries and arts councils provide critical support for the Music Community, including commercial music organizations. By way of example, government ministries' and arts councils' substantial connection to and support of "music" is noted in the reports of funding and support for music. Some examples to showcase the degree of power of the IFACCA's membership towards the string and global and national music are music investment and music funding (Annual reports by governments and councils):

- New Zealand Ministry of Culture has funded significant music projects. Some include the REAL New Zealand Music Tour (\$415,000), the New Zealand String Quartet (\$150,000) and New Zealand Music Commission: (\$1,378,000).³⁰
- The Australian Government/Council For The Arts invested \$51.2 million for the nation's orchestras; \$21.6 million for opera; \$10.8 million for other music artists and organizations; \$13.1 million for multi-platform artists and organizations; and \$4 million in miscellaneous funding, including sector building and audience development initiatives and programs.³¹
- Canada Council for the Arts is Canada's national, arts funding agency investing \$28 million in its Canada Council Musical Instrument Bank (Page 16) and \$28,156,000 in Music Arts Programs (Page 66).³² The Government of Canada also renewed its annual investment of \$27.6 million over five years in the Canada Music Fund.³³
- The United Kingdom Department for Culture and Education (DfE) will fund music education at significant levels: £77 million, £65 million and £60 million will be available in the three years from April 2012.³⁴
- The United States National Endowment of the Arts has awarded more than \$4 billion to support the arts since its inception³⁵ and has a strong focus on music as outlined in its Strategic Plan³⁶ with Congress requested to provide \$154,465,000 for fiscal year 2014.³⁷
- The National Arts Council of South Africa invested 2,536,131 ZAR in Music and 9,995,000 ZAR in Orchestras and has focused strongly on the "Strengthening of live indigenous music and advocating the revival of the live music circuit in South Africa"³⁸

³⁰ 2011 Annual Report from New Zealand Ministry of Culture:

[http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20\(D-0448383\).PDF](http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20(D-0448383).PDF)

³¹ 2011 Annual Report for the Australia Council for the Arts,

http://www.australiacouncil.gov.au/data/assets/pdf_file/0016/142351/Australia-Council-Annual-Report-201112.pdf, Page 28

³² 2011 Annual Report for Canada Council for the Arts, [http://www.canadacouncil.ca/NR/rdoonlyres/6F7549BB-F4E5-4B8B-95F4-](http://www.canadacouncil.ca/NR/rdoonlyres/6F7549BB-F4E5-4B8B-95F4-1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf)

[1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf](http://www.pch.gc.ca/eng/1294862453819/1294862453821)

³³ <http://www.pch.gc.ca/eng/1294862453819/1294862453821>

³⁴ Department for Culture, The Importance of Music, A National Plan for Music Education,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/180973/DFE-00086-2011.pdf, Page 4, 2011

³⁵ 2011 Annual report for the National Endowment of the Arts, <http://www.nea.gov/about/11Annual/2011-NEA-Annual-Report.pdf>, Page 2

³⁶ NEA Strategic Plan 2012-2016, www.arts.gov/about/Budget/NEAStrategicPlan2012-2016.pdf

³⁷ http://www.ifacca.org/national_agency_news/2013/04/10/us-president-requests-154465000-neh-2014/

³⁸ 2010-2011 Annual Report for the National Arts Council South Africa, National Arts Council South Africa, <http://www.nac.org.za/media/publications/AR%2010-11%20NAC.PDF/download>, Page 11. Also Mmino, the South African – Norwegian Education Music Programme, solely funds music projects funding a total of 294 projects. Thirteen projects were allocated funding for a total of R1,680,600 of which R1,381,000 went towards music educational and R299,600 to exchange projects (Page 10)

- The Singapore Arts Council will fund \$10.2 million in the arts under its 2013 Grants Framework, including the Ding Yi Music Company and Siong Leng Musical Association.³⁹
- In 2011, the support for artistic activities by the Arts Council of Finland was €32.4 million of which €4,921,850 was awarded to music.⁴⁰

Each of IFACCA’s members has a clear association with, and mandate to support the music arts in their countries. In most countries, their ministry of culture/arts council is the largest funder and marketing supporter of the music arts.

Another clear example of an “entity *mainly* dedicated to the community” with members that cover hundreds of millions of music constituents with formal boundaries is A2IM, the American Association of Independent Music. A2IM has two types of members: U.S independent Label members and Associate members. A2IM membership for Labels and Associates is invoked formally through an application and if accepted would require annual membership dues.⁴¹

The reach of A2IM Associate⁴² membership covers hundreds of millions of entities (i.e. the reach of A2IM’s total membership “geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents – See Application Answer to Question 20a).

Organized and strictly delineated communities related to music that are A2IM members include:

- **Apple iTunes**⁴³ – iTunes accounts for 63% of global digital music market⁴⁴ - a majority – with a registered community of 800 million registered members⁴⁵ available in 119 countries who abide to strict terms of service and boundaries⁴⁶ and have downloaded over 25 billion songs⁴⁷ from iTunes’ catalog of over 43 million songs⁴⁸ covering a global music community, regardless of genre or whether the community entities are amateur, professional, commercial or non-commercial. To add music to iTunes, all music artists must have a formal membership with iTunes via an Apple ID registration, which includes a current credit card on file.⁴⁹

³⁹ Singapore Arts Council, <http://www.nac.gov.sg/media-centre/news-releases/news-detail?id=c2db15e2-c319-40ec-939c-d58735d0a91c>

⁴⁰ <http://www.taiteenkeskustoimikunta.fi/documents/10162/31704/TY+tilastotiedote+1+12+.pdf>, Page 1 and Page

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⁴¹ <http://a2im.org/about-joining/>

⁴² <http://a2im.org/groups/tag/associate+members/>

⁴³ <http://a2im.org/groups/itunes>

⁴⁴ <http://appleinsider.com/articles/13/04/16/apples-itunes-rules-digital-music-market-with-63-share>

⁴⁵ <http://www.npr.org/blogs/therecord/2015/01/06/375173595/with-downloads-in-decline-can-itunes-adapt>

⁴⁶ <http://www.apple.com/legal/internet-services/itunes/ww/index.html>

⁴⁷ <http://www.apple.com/pr/library/2013/02/06iTunes-Store-Sets-New-Record-with-25-Billion-Songs-Sold.html>

⁴⁸ <https://www.apple.com/itunes/features/>

⁴⁹ <https://www.apple.com/itunes/working-itunes/sell-content/music-faq.html>

- **Pandora**⁵⁰ – Pandora is the world’s largest streaming music radio with a community of over 250 million registered members.⁵¹
- **Spotify**⁵² – Spotify is the world’s largest music streaming community with over 50 million active registered members in 58 countries and over 30 million songs. The music community uploads 20,000 songs every day.⁵³
- **Vevo**⁵⁴ – Vevo is the world’s leading all-premium music video community and platform with over 8 billion monthly views globally.⁵⁵
- **Youtube**⁵⁶ – Youtube is the world’s largest music video streaming community with millions of music creators -- amateur, professional, commercial or non-commercial -- and over 1 billion registered members covering all regions globally. 6 billion hours of video is watched every month on Youtube,⁵⁷ of which 38.4% is music-related.⁵⁸
- **Reverbnation**⁵⁹ – Reverbnation⁶⁰ is one of the world’s largest music community and a leading music distributor with over 3.87 million musicians, venues labels and industry professionals covering every country globally. The Reverbnation community grows by over 50,000 artists, bands, labels and industry professionals monthly.
- **BMG**⁶¹ – BMG is focused on the management of music publishing and recording rights. BMG has an international presence and represents over 2.5 million music rights globally.⁶²

A2IM also includes members that are associated with global government agencies which exclusively represent substantial music economies and music members, such as France (BureauExport⁶³), China (China Audio Video Association⁶⁴) and Germany (Initiative Musik).⁶⁵ A2IM also has Affiliate⁶⁶ associations within the global music community. These include Affiliates such as MusicFirst,⁶⁷ the Copyright Alliance,⁶⁸ the Worldwide Independent Network (WIN)⁶⁹ and Merlin.⁷⁰

⁵⁰ <http://a2im.org/groups/pandora>

⁵¹ <http://www.cnet.com/news/like-a-rolling-milestone-pandora-hits-250m-registered-users/> and <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MTkxNTM1fENoaWxkSUQ9LTF8VHlwZT0z&t=1>, Pg.9

⁵² <http://a2im.org/groups/spotify>

⁵³ <https://press.spotify.com/us/information/>

⁵⁴ <http://a2im.org/groups/vevo/>

⁵⁵ <http://www.vevo.com/c/EN/US/about>

⁵⁶ <http://a2im.org/groups/youtube/>

⁵⁷ <https://www.youtube.com/yt/press/statistics.html>

⁵⁸ http://www.researchandmarkets.com/reports/2092499/internet_video_2011_2014_view_share_site_and

⁵⁹ <http://a2im.org/groups/reverb-nation/>

⁶⁰ <http://www.reverbnation.com/about>

⁶¹ <http://a2im.org/groups/bmg-rights/>

⁶² <http://www.bmg.com/category/about-us/history/>

⁶³ <http://a2im.org/groups/french-music-export-office>

⁶⁴ <http://a2im.org/groups/china-audio-video-association-cava>

⁶⁵ <http://a2im.org/groups/initiative-musik-gmbh>

⁶⁶ <http://a2im.org/groups/tag/associate+members/>

⁶⁷ <http://musicfirstcoalition.org/coalition>, The musicFIRST Coalition, with founding members A2IM, RIAA, and Recording Academy represents musicians, artists, managers, music businesses, and performance right advocates.

⁶⁸ <http://www.copyrightalliance.org/members>

⁶⁹ <http://www.winformusic.org>

A2IM also represents a recognized Music Coalition representing the interests of the Global Independent Music Community.⁷¹ The A2IM Coalition includes Merlin, a global rights agency for the independent label sector, representing over 20,000 labels from 39 countries, Worldwide Independent Network (representing label creators in over 20 countries), Association of Independent Music (representing largest and most respected labels in the world), and IMPALA (Independent Music Companies Association on behalf of over 4,000 independent music companies and national associations across Europe, representing 99% of music actors in Europe which are micro, small and medium sized enterprises).

Cumulatively, A2IM's Label and Associate Membership, A2IM's Affiliates and the A2IM's Global Independent Music Community Coalition, covers a majority of the global music community. Its cumulative membership is in the hundreds of millions of entities with formal boundaries belonging to strictly organized and delineated communities related to music as per the Community Definition and Size (See Application answer to Question 20a).

The IFPI is another entity *mainly* dedicated to the Community. The IFPI is the only organization that represents the interests of the recording industry worldwide. It is the "voice of the recording industry worldwide"⁷² whose members⁷³ – major and independent companies -- represent a majority of all commercial music consumed globally. For example, the RIAA, an IFPI national group member,⁷⁴ represents "approximately 85% of all legitimate recorded music produced and sold in the United States,"⁷⁵ the world's largest music market with 30% global market share.⁷⁶ Formed in 1933, the IFPI's mission was to "represent the interests of the recording industry worldwide in all fora."

Another global Music Community Coalition led by the RIAA "on behalf of over 15 national and international trade associations" also expressed its support for .MUSIC to be under a "community" application model, including encouraging statements in support of DotMusic's policies that stated that the coalition "was encouraged to see" that DotMusic "included several measures to deter and address copyright infringement within that TLD." The "coalition members represent the people that write, sing, record, manufacture, distribute and/or license over 80% of the world's music"⁷⁷ – a majority of global music.⁷⁸

⁷⁰ <http://www.merlinnetwork.org>

⁷¹ <https://www.icann.org/en/system/files/correspondence/bengloff-to-chehade-et-al-20aug14-en.pdf> and <https://www.icann.org/en/system/files/correspondence/bengloff-to-crocker-et-al-07mar15-en.pdf>

⁷² <http://www.ifpi.org/about.php>

⁷³ <http://www.ifpi.org/our-members.php>

⁷⁴ <http://www.ifpi.org/national-groups.php>

⁷⁵ <http://www.riaa.com/faq.php>

⁷⁶ <http://www.statista.com/topics/1639/music/>

⁷⁷ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.1

⁷⁸ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.3, Appendix A

Another letter⁷⁹ sent to ICANN (on April 14th, 2015) by Danielle Aguirre from the NMPA and on behalf of a music publisher and songwriter community coalition representing a majority of the global music publishing community, also expressed “support [for] the .MUSIC community applications because respecting and protecting music rights serves the global music community and the public interest.”

Collectively, the DotMusic application received support from the largest coalition of music community member organizations ever assembled to support a cause representing over 95% of music consumed globally.⁸⁰ Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support⁸¹ from institutions/organizations representing a majority of the Community addressed. Music -- as commonly-known by the general public and experienced today -- would not be possible without these supporting, non-negligible and relevant organizations that have endorsed DotMusic.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Community Establishment* and *Community Endorsement* from the majority of the global Music Community as defined.

B) Nexus⁸²

According to the Applicant Guidebook (“AGB”), to receive the maximum score for Nexus, the applied-for string -- “music” -- must match the name of the community or be a well-known short-form or abbreviation of the community name.

The *Nexus* of the “Music Community” entirely matches the applied-for “music” string because it represents the entire global Music Community as commonly-known and perceived by the general public. This definition allows for all constituents with a requisite awareness of the Community defined to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination. The definition of the Community requires that members have an active, non-tangential relationship with the applied-for string and the requisite awareness of the music community they identify with as part of the registration process. It is clear that the general public will directly associate and equate the string with the Community as defined by DotMusic. There is no possibility of overreaching beyond the definition or allowing unrelated non-music

⁷⁹ <https://www.icann.org/en/system/files/correspondence/aguirre-to-icann-board-ciu-14apr15-en.pdf>

⁸⁰ See <http://music.us/supporters>, <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/downloadattachment/142588?t:ac=1392>, Bloomberg BNA at http://music.us/RIAA_Backs_DotMusic.pdf Pg.1, and <http://diffuser.fm/will-dot-music-domains-make-the-internet-better/>

⁸¹ <http://music.us/supporters>

⁸² See <http://music.us/nexus>

entities to be included as part of the Community. Community members may register a .MUSIC by either:

- 1) Identifying that they belong to a Music Community Member Organization (“MCMO”); or
- 2) Identifying the community they belong to, which is consistent with the definition of the Community: “the strictly delineated and organized logical alliance of communities of similar nature related to music.”

All Community members are aware of and recognize their inclusion in the defined Community by identifying which clearly defined community they belong to and have an active participation in. The *nexus* of the applied-for string ensures inclusion of the entire global community that the string represents while excluding unrelated-entities not associated with the string. This way there is a clear match and alignment between the “music” sting and the Community defined.

While the exact size of the global Music Community as defined is unknown (there is no empirical evidence providing an exact, finite number because amateur entities are also included in the Community’s definition), it is in the considerable millions as explicitly stated in the DotMusic Application. DotMusic’s definition of the Community and mutually-inclusive Registration Policies ensure that eligible members are only music-related and associated with the string. This is because the string identifies all constituents involved in music. Music-only participation optimizes the relevancy of .MUSIC domains to the string and entirely matches the *nexus* between the string and Community defined. According to DotMusic, the Community *definition, eligibility* criteria and *content and use* requirements ensure that peripheral industries and entities not related to music are excluded so that the string and the defined Community matches and aligns in a consistent manner consistent with DotMusic’s community-based purpose i.e. only entities with music-related activities are able to register .MUSIC domains.

Membership aligns with the *nexus* of the Community and the string, which is explicitly relevant to music. The string as defined in the application demonstrates uniqueness because it has no other significant meaning beyond identifying the community described in the application. According to DotMusic’s application, any tangential or implicit association with the *nexus* of the Community and the string is not regarded as a delineated membership since it would be considered unclear, dispersed or unbound. Such unclear, dispersed or unbound tangential relationships with the defined “music” Community and applied-for “music” string would not constitute a qualifying Community membership and would be ineligible for registration. Every type of music constituent critically contributes to the function and operation of the music sector within a regulated framework⁸³ given the symbiotic overlapping nature of the Community as

⁸³ ICANN has disclosed that the string .MUSIC is a sensitive string operating in a regulated sector. ICANN also accepted Government Advisory Committee (GAC) advice for safeguards to protect the Music Community and the public interest (See <https://icann.org/en/system/files/correspondence/crocker-to-dryden-3-29oct13-en.pdf> Pg.7)

defined and structured. Music would not function as it does today without the participation of all music constituent types which cumulatively match the string with the Community definition.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Nexus*.

Respectfully Submitted,

Dr. D. Constantinou

Contact Information Redacted Jul 22 '15 ip: 100.39.2.83

Signature:

Name: Dr. Dimitris Constantinou

Title: Entrepreneur

Organization: Easy Group LLC

Re: Expert Testimony on (i) Community Establishment; (ii) Nexus; and (iii) Support for DotMusic’s Community-Based Application¹ for .MUSIC (Application ID 1-1115-14110)

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

Please accept this letter that indicates that there is substantive and compelling evidence that the DotMusic application convincingly meets the full criteria under Community Priority Evaluation on the following points: (i) the Music Community’s *Establishment* as defined by DotMusic; (ii) the matching *Nexus* between the “music” Community and the “music” string (or top-level domain); and (iii) that DotMusic possesses documented *Support* from organizations representing a majority of the global Music Community addressed and defined.

Please see my credentials attached hereto that identify my level of expertise and specialized knowledge with respect to the music community’s organization and delineation.

SUMMARY

DotMusic has established the following:

- 1) Its Community definition recognizes the cohesive, symbiotic and overlapping nature of the global Music Community. The definition includes those associated with commercial and non-commercial creation, performance, marketing and distribution of music;
- 2) “Music Community” members have the requisite awareness and recognition of the interdependency, overlapping and cohesive nature of each “organized community of similar nature that relates to music.” These organized and aligned communities are closely united and make “music” as we know it today. It is this self-awareness and interdependence that gives the “Music Community” its strength. With exponential growth of the Internet, mobile and the Domain Name System (DNS), the “Music Community’s” use and reliance on the Internet to create, market and disseminate music-related content, products, services and activities will continue to grow;
- 3) The “Music Community” functions in a regulated sector with global copyright protections – it is clear that the “community,” as defined, implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate a globally-recognized set of standards for

¹ <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1392>

the protection of the “Music Community” member rights with relation to their copyrighted music works around the world;

4) The “Music” Community -- as defined by DotMusic -- has at least one entity mainly dedicated to the community supporting DotMusic’s application. Such documented *Support* includes several “international federation of national communities of a similar nature,” music coalitions and others that are strongly associated with “music,” which represent a majority of the Community with considerable millions of members worldwide.²

5) The *Nexus* of the “music” Community matches the “music” applied-for string because it represents the entire global Music Community – a community that pre-existed 2007 with a size in the considerable millions of constituents. The “Music Community” definition -- which incorporates the strict fundamental attributes of a closely united Community definition that is “organized” and “delineated” -- ensures that all of its constituent members have a requisite awareness of the community as defined, including both commercial and non-commercial stakeholders, to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination.

6) DotMusic has received support from the largest coalition of Music Community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support³ from institutions/organizations representing a majority of the Community as defined and recognized in the DotMusic application.

There is substantive evidence that DotMusic fulfills the *Nexus, Community Establishment and Support* criteria for the “Music” string. The inclusion and representation of every music constituent type is paramount to the articulated purpose of the string. DotMusic and its application’s global Music Community supporters substantiate that every type of music constituent contributes to the function and operation of the music sector within a regulated framework. The symbiotic nature of the Community as defined and structured means that “Music” would not function as it does today without the participation of all music constituent types that interconnect to match the “music” string with the “music” Community definition.

² <http://music.us/supporters>

³ <http://music.us/supporters>

ASSESSMENT OF COMMUNITY DEFINITION, ESTABLISHMENT AND NEXUS

A) *Music Community Definition, Establishment & Community Endorsement*⁴

DotMusic's definition of the "Music Community" as a "strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music" (See Application Answer to Question 20a) is factually accurate and representative of the "Music Community." Community characteristics include:

i) An Organized, Cohesive, Interdependent Logically-Allied Community:

The "Music Community" definition covers the regulated, interdependent and cohesive nature of the music sector that exists today. "Music Community" members have the requisite awareness and recognition of the interdependent, overlapping and cohesive nature of each "organized community of similar nature that relates to music" that comprises the "Music Community." Without such cohesiveness and interdependency, the defined "Music" Community matching the applied-for string ("Music") would not be able to function in its regulated sector. "Music" is a regulated sector comprised of a logical alliance of interdependent communities relating to music with organized practices and institutions that enable and regulate the production, distribution and consumption of music that was publicly recognized by both ICANN and the Government Advisory Committee⁵

As a result, the Music Community as defined is "closely united" (As per the definition of "cohesion" according to Merriam-Webster dictionary⁶) or "united or form a whole" (As per the definition of the word "cohesion" according to Oxford Dictionaries⁷).

DotMusic's application follows unified principles that the entire Community subscribes to, such as: creating a trusted identifier and safe haven for music consumption, protecting musicians' rights and intellectual property, fighting copyright infringement/piracy, supporting fair compensation and music education, and following a multi-stakeholder approach of representation of all types of global music constituents without discrimination (See Application Answers to 18).

The "Music Community" as defined (a "strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music") establishes that:

- (1) There is an awareness and recognition among its members;

⁴ See <http://music.us/establishment>

⁵ <https://www.icann.org/en/system/files/bm/briefing-materials-2-05feb14-en.pdf>, Pg.3

⁶ <http://www.merriam-webster.com/dictionary/cohesion>

⁷ http://www.oxforddictionaries.com/us/definition/american_english/cohesion

- (2) The organized and delineated logical alliance of communities exists; and
- (3) The Community is “closely united” and “interdependent” (i.e. Each “organized community of similar nature that relates to music” which is part of the “logical alliance of communities that relate to music” is not mutually exclusive).

In short, the applied-for string (“Music”) matches the name of the “Music” Community as defined by DotMusic’s application. DotMusic’s “Music Community” definition accurately represents the common definition of the “Music Community,” which is confirmed by Wikipedia.

According to Wikipedia:⁸

*Music community is defined as a logical alliance of interdependent communities that are related to music, which include commercial participants...and non-commercial participants...and consists of an “ensemble of practices and institutions that make possible and regulate the production, distribution and consumption of music”...UNESCO identifies the music community as a “community of identity” implying common identifiable characteristics and cohesive attributes such as sharing a music culture, norms and subscribing to common ideals related to music...The music community is not defined as much by demographic indicators such as race, gender, and income level, as it is by common values, cohesive norms and interconnected structures to build a community identity. It refers to music-related individuals and organisations in a shared environment with shared understandings and practices, modes of production and distribution. The shared organisation of collective musical activities, identity and community value is created as result of infrastructure and a shared set of common values...Many studies outline the historical, cultural, and spatial significance of the music community, including how its identity is formed through musical practices. The music community shares a cohesive and interconnected structure of artistic expression, with diverse subcultures and socio-economic interactions...subscribing to common ideals. Under such structured context music consumption becomes possible regardless whether the transaction is commercial and non-commercial.*⁹

⁸ Wikipedia is ranked 6th among the ten most popular websites (Alexa, Retrieved March 23, 2015 from <http://www.alexacom/siteinfo/wikipedia.org>) and constitutes the Internet's largest, most frequently updated and popular general reference work (See OECD, OECD Internet Economy Outlook 2012, OECD Publishing, http://www.oecd-ilibrary.org/science-and-technology/oecd-internet-economy-outlook-2012_9789264086463-en, Pg.172) that compares favorably to the accuracy of other encyclopedias (such as the Britannica) according to a 2012 study conducted in partnership with Oxford University (See <http://blog.wikimedia.org/2012/08/02/seven-years-after-nature-pilot-study-compares-wikipedia-favorably-to-other-encyclopedias-in-three-languages>).

⁹ Music Community. In *Wikipedia*. Retrieved July 6, 2015, from https://en.wikipedia.org/wiki/Music_community

ii) An Aware, Pre-Existing and Recognized Community of Considerable Millions Worldwide:

DotMusic's definition of the Community covers all Community members associated with the string, each with a requisite awareness of the Community that can be validated through their natural association with a particular music-related community that they clearly identify with. According to DotMusic, all Music Community members must identify their music-related community in order to demonstrate their requisite awareness of the defined Community as part of the .MUSIC registration and validation process.

According to DotMusic, the Music Community's geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents (Application Answer to Question 20a).

According to DotMusic, "registrants will be verified using Community-organized, unified "criteria taken from holistic perspective with due regard of Community particularities" that "invoke a formal membership (Application Answer to Question 20a)." The defined Community represents all music-related entities with a clear and straightforward membership with the Community involved in the legal production, performance, promotion, and distribution of music worldwide. According to DotMusic, the Music Community members must have an active, non-tangential relationship with the applied-for string "music" and also have the requisite awareness of the music-related community that they are a part of by specifically identifying it as part of the registration and validation process (i.e. upon successful registration and validation, each community member will be given a unique community identification number that will automatically associate them with their identified community and the "music" string).

DotMusic's Community definition matches the applied-for string because it allows both commercial and non-commercial stakeholders to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination/exclusion. Given the regulated sector of the community, it is clear that the "Music Community" as defined implies "more of cohesion than a mere commonality of interest" with an "awareness and recognition of a community among its members." Several international treaties mandate cohesive and globally-recognized set of standards for the protection of the music community members' rights with relation to their copyrighted music works around the world.¹⁰

The Berne Convention for the Protection of Literary and Artistic Works¹¹ provides that each of the 168 contracting parties¹² (representing an overwhelming majority of the world's population) provides automatic protection for music works first published in other countries of the Berne union and for unpublished music works whose authors are citizens of or resident in such other

¹⁰ http://www.rightsdirect.com/content/rd/en/toolbar/copyright_education/International_Copyright_Basics.html

¹¹ http://www.wipo.int/treaties/en/text.jsp?file_id=283698

¹² http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=15

countries.¹³ This means that if a Music Community member's copyright rights are violated in any other signatory country's jurisdiction, then the music community member will have the music copyright rights given by that country. Music Community members are clearly aware of the collective Community's rights, which could not be made possible without these cohesive and globally-recognized set of standards. If such standards were not coherent or enforced then music would not be able to exist in its current form and the industry component of the Music Community sector would not exist. As such, the Community's *Establishment* and definition is "cohesive" and hence cannot be construed since the Community is a logical alliance of music communities that establish a clearly delineated and organized Community structure that is "closely united" and functions as a "whole"

Further evidence to substantiate the cohesive, symbiotic and overlapping nature of the Community, includes other globally-recognized standards and classification systems, which identify who the individual songwriters, publishers and rights holders are and which songs they are associated with so that Community members are appropriately compensated, regardless of whether the constituent is a commercial, non-commercial or amateur entity. The "music" string is commonly used in classification systems such as ISMN,¹⁴ ISRC,¹⁵ ISWC,¹⁶ ISNI.¹⁷ (Application Answer to Question 20a). For example, if a music entity would like to distribute their music, either commercially or for free, then an ISRC can be assigned to globally identify any specific music work. An ISRC, which facilitates efficient music discovery and community member payment, is constructed from 12 characters representing country, registrant, year of registration and designation (i.e. the serial number assigned by the registrant). With respect to domains, an equivalent system that relates to identifying a specific domain's registrant and other relevant information pertaining to the domain is WHOIS. Domain registrants are required by ICANN "to provide accurate WHOIS contact data" or else their domain "registration may be suspended or even cancelled".¹⁸

¹³ <http://www.britannica.com/EBchecked/topic/62482/Berne-Convention>

¹⁴ The International Standard Music Number (ISMN) is a unique number for the identification of all notated music publications from all over the world. The ISMN is an ISO certified global standard number (ISO 10957:2009). See <http://www.ismn-international.org/whatis.html> and http://www.iso.org/iso/home/store/catalogue_ics/catalogue_detail_ics.htm?csnumber=43173

¹⁵ The ISRC (International Standard Recording Code) is the international identification system for sound recordings and music video recordings. The ISRC is an ISO certified global standard number (ISO 3901:2001) and is managed by the IFPI. See <http://isrc.ifpi.org>, <https://www.usisrc.org/about/index.html> and http://www.iso.org/iso/catalogue_detail?csnumber=23401

¹⁶ The ISWC (International Standard Musical Work Code) is a unique, permanent and internationally recognized reference number for the identification of musical works. The ISWC has been approved by ISO (International Organization for Standardisation) as a global standard (ISO 15707:2001) and is managed by CISAC. See <http://www.iswc.org/en/faq.html> and http://www.iso.org/iso/catalogue_detail?csnumber=28780

¹⁷ The International Standard Name Identifier (ISNI) is the ISO certified global standard number (ISO 27729) for identifying the millions of contributors to creative works and those active in their distribution. ISNI holds public records of over 8 million identities and 490,000 organizations. See <http://www.isni.org/> and http://www.iso.org/iso/catalogue_detail?csnumber=44292

¹⁸ <https://whois.icann.org/en/about-whois> and <https://www.icann.org/resources/pages/faqs-f0-2012-02-25-en>

Without such Music Community “cohesion” and standardized systems functioning in its regulated sector, the Music Community would not be able to create, market and distribute their music. By the same token, fans would not be able to identify the music they are listening to with a specific music artist, regardless of whether the listening activity or behavior is commercial or non-commercial in nature. The socio-economic structure that characterizes “music” as commonly-known today would be non-existent without these organized and delineated elements that commonly define the Community.

iii) *International Federations and Organizations mainly Dedicated to the Community:*

According to ICANN’s Applicant Guidebook (“AGB”)¹⁹: *“With respect to “Delineation” and “Extension,” it should be noted that a community can consist of...a logical alliance of communities (for example, an international federation of national communities of a similar nature... viable as such, provided the requisite awareness and recognition of the community is at hand among the members.”* (AGB, 4-12). The community as defined in the DotMusic application has at least one entity *mainly*²⁰ dedicated to the community which has supported DotMusic, which include several “international federation of national communities of a similar nature” relating to music, music coalitions and other relevant and non-negligible music organizations.

One of these entities include the only international federation of national communities relating to government culture agencies and arts councils, which has an integral association with music globally: the International Federation of Arts Councils and Culture Agencies (IFACCA).

IFACCA is the only international federation that represents government culture agencies and arts councils globally. These national communities are governmental institutions that play a pivotal

¹⁹ <https://newgtlds.icann.org/en/applicants/agb/guidebook-full-11jan12-en.pdf>

²⁰ Per the Oxford and Merriam Webster dictionaries, the word “mainly” is defined as “*more than anything else*” (See <http://www.oxforddictionaries.com/definition/english/mainly> and <http://www.merriam-webster.com/dictionary/mainly> respectively). According to DotMusic, the string .MUSIC relates to the Community “by representing all constituents involved in music creation, production and distribution” (Application Answer to Question 20d). Supporting organizations related to that string that are “mainly” dedicated to the Community and its activities, include the International Federation of Arts Councils and Culture Agencies (IFACCA) representing government culture ministries and arts councils, the International Federation of Musicians (FIM) representing musicians globally, the International Federation of Phonographic Industry (IFPI) representing the recording industry worldwide, the International Confederation of Music Publishers (ICPM) representing the voice of global music publishing, the International Association of Music Information Centres (IAMIC), the American Association of Independent Music (A2IM), whose associate members represent a majority of music consumed, the Independent Music Worldwide Independent Network (WIN) representing independent music worldwide, the International Society for Music Education (ISME) the premiere international organization representing music education, and many others (See support at <http://music.us/supporters> and <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails:downloadattachment/142588?t:ac=1392>).

role with respect to music.²¹ IFACCA's members cover the majority of music entities globally, regardless of whether they are commercial, non-commercial or amateurs. Government ministry of culture and council agencies related to music cover a majority of the overall community with respect to headcount and geographic reach. The "Size" covered reaches over a hundred million music entities i.e. "considerable size with millions of constituents" per Application Answer to Question 20a.

The string "music" falls under the jurisdiction of each country's Ministry of Culture governmental agency or arts/music council (emphasis added). The degree of power and influence of government ministry of culture and council agencies with respect to music surpasses any organization type since these agencies (i) provide the majority of funding for music-related activities; (ii) regulate copyright law; and (iii) encompass all the music entities that fall under their country, regardless whether these entities are commercial, non-commercial or amateurs. IFACCA is globally recognized by its strategic partners, such as UNESCO, a United Nations agency representing 195 member states and the European Commission.²² The UNESCO strategic partnership²³ is relevant, especially since UNESCO founded the International Music Council (the "IMC") in 1949, which represents over 200 million music constituents from over 150 countries and over 1000 organizations globally.²⁴

Government activities in the clearly delineated and organized "Music Community" include setting statutory royalty rates. For example, in the United States, mechanical royalties are based on a "statutory rate" set by the U.S. Congress. This rate is increased to follow changes in the economy, usually based on the Consumer Price Index. Currently, the mechanical statutory rate is \$0.091 for songs five minutes or less in length or \$.0175 per minute for songs that are over five minutes long.²⁵

Ministries of culture and arts councils (that comprise IFACCA's membership) support musicians, musical performances, independent music artists, non-commercial musical expression and education in their respective countries. The 165 ministries of culture, arts councils and affiliates that comprise IFACCA's membership support the "performing arts" and music specifically. Without the financial and logistical support of arts councils and the ministries of culture, the music community would be adversely affected, and in some countries, may not exist in any appreciable manner. For example, the Ministry of Culture 2011 budget for the small country state of Cyprus for culture funding was €34,876,522 with critical support of music activities.²⁶ Other small government Ministries of Culture, such as Albania,²⁷ or government

²¹ http://www.ifacca.org/membership/current_members/

²² http://www.ifacca.org/strategic_partners/

²³ http://www.ifacca.org/strategic_partners/

²⁴ <http://www.imc-cim.org/about-imc-separator/who-we-are.html>

²⁵ U.S Copyright Office, <http://www.copyright.gov/carp/m200a.html>

²⁶ 2011 Annual Report for Cyprus Ministry of Culture, Section 1.2 "Music"

(http://www.moec.gov.cy/en/annual_reports/annual_report_2011_en.pdf). Activities include Music Performances in Cyprus (1.2.1) and Abroad (1.2.2), Subsidization of Paphos Aphrodite Festival (1.2.3), Music Publications (1.2.4), Subsidization and Purchases of Digital Records (1.2.5), Promotion for Cypriot musical creativity abroad (1.2.6),

Ministries of Culture and Arts Councils from countries with larger populations, such as India,²⁸ all provide critical support and substantial advocacy for music. Other examples include government institutions collaborating and advocating music through their funded country-based pavilion initiatives at Midem, the world's largest music conference.²⁹

Government ministries and arts councils provide critical support for the Music Community, including commercial music organizations. By way of example, government ministries' and arts councils' substantial connection to and support of "music" is noted in the reports of funding and support for music. Some examples to showcase the degree of power of the IFACCA's membership towards the string and global and national music are music investment and music funding (Annual reports by governments and councils):

- New Zealand Ministry of Culture has funded significant music projects. Some include the REAL New Zealand Music Tour (\$415,000), the New Zealand String Quartet (\$150,000) and New Zealand Music Commission: (\$1,378,000).³⁰
- The Australian Government/Council For The Arts invested \$51.2 million for the nation's orchestras; \$21.6 million for opera; \$10.8 million for other music artists and organizations; \$13.1 million for multi-platform artists and organizations; and \$4 million in miscellaneous funding, including sector building and audience development initiatives and programs.³¹
- Canada Council for the Arts is Canada's national, arts funding agency investing \$28 million in its Canada Council Musical Instrument Bank (Page 16) and \$28,156,000 in Music Arts Programs (Page 66).³² The Government of Canada also renewed its annual investment of \$27.6 million over five years in the Canada Music Fund.³³
- The United Kingdom Department for Culture and Education (DfE) will fund music education at significant levels: £77 million, £65 million and £60 million will be available in the three years from April 2012.³⁴

Cyprus Symphony Orchestra Foundation (1.2.7), Music Information Centre (1.2.8), Developing Music Education (1.2.9), Organising of the 1st Musicological Symposium (1.2.10) and Musical Festivities for the European Volunteerism Year (1.2.11)

²⁷ http://www.culturalpolicies.net/down/albania_012011.pdf

²⁸ 2010-11 Annual Report from India Ministry of Culture, [http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011\(Eng\).pdf](http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011(Eng).pdf)

²⁹ <http://my.midem.com/en/contact-us/pavilion-representatives/>

³⁰ 2011 Annual Report from New Zealand Ministry of Culture:

[http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20\(D-0448383\).PDF](http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20(D-0448383).PDF)

³¹ 2011 Annual Report for the Australia Council for the Arts,

http://www.australiacouncil.gov.au/data/assets/pdf_file/0016/142351/Australia-Council-Annual-Report-201112.pdf, Page 28

³² 2011 Annual Report for Canada Council for the Arts, [http://www.canadacouncil.ca/NR/rdonlyres/6F7549BB-F4E5-4B8B-95F4-](http://www.canadacouncil.ca/NR/rdonlyres/6F7549BB-F4E5-4B8B-95F4-1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf)

[1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf](http://www.canadacouncil.ca/NR/rdonlyres/6F7549BB-F4E5-4B8B-95F4-1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf)

³³ <http://www.pch.gc.ca/eng/1294862453819/1294862453821>

³⁴ Department for Culture, The Importance of Music, A National Plan for Music Education,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/180973/DFE-00086-2011.pdf, Page 4, 2011

- The United States National Endowment of the Arts has awarded more than \$4 billion to support the arts since its inception³⁵ and has a strong focus on music as outlined in its Strategic Plan³⁶ with Congress requested to provide \$154,465,000 for fiscal year 2014.³⁷
- The National Arts Council of South Africa invested 2,536,131 ZAR in Music and 9,995,000 ZAR in Orchestras and has focused strongly on the “Strengthening of live indigenous music and advocating the revival of the live music circuit in South Africa”³⁸
- The Singapore Arts Council will fund \$10.2 million in the arts under its 2013 Grants Framework, including the Ding Yi Music Company and Siong Leng Musical Association.³⁹
- In 2011, the support for artistic activities by the Arts Council of Finland was €32.4 million of which €4,921,850 was awarded to music.⁴⁰

Each of IFACCA’s members has a clear association with, and mandate to support the music arts in their countries. In most countries, their ministry of culture/arts council is the largest funder and marketing supporter of the music arts.

The IFPI is another entity *mainly* dedicated to the Community. The IFPI is the only organization that represents the interests of the recording industry worldwide. It is the “voice of the recording industry worldwide”⁴¹ whose members⁴² – major and independent companies -- represent a majority of all commercial music consumed globally. For example, the RIAA, an IFPI national group member,⁴³ represents “approximately 85% of all legitimate recorded music produced and sold in the United States,”⁴⁴ the world’s largest music market with 30% global market share.⁴⁵ Formed in 1933, the IFPI’s mission was to “represent the interests of the recording industry worldwide in all fora.”

³⁵ 2011 Annual report for the National Endowment of the Arts, <http://www.nea.gov/about/11Annual/2011-NEA-Annual-Report.pdf>, Page 2

³⁶ NEA Strategic Plan 2012-2016, www.arts.gov/about/Budget/NEAStrategicPlan2012-2016.pdf

³⁷ http://www.ifacca.org/national_agency_news/2013/04/10/us-president-requests-154465000-neh-2014/

³⁸ 2010-2011 Annual Report for the National Arts Council South Africa, National Arts Council South Africa, <http://www.nac.org.za/media/publications/AR%2010-11%20NAC.PDF/download>, Page 11. Also Mmino, the South African – Norwegian Education Music Programme, solely funds music projects funding a total of 294 projects. Thirteen projects were allocated funding for a total of R1,680,600 of which R1,381,000 went towards music educational and R299,600 to exchange projects (Page 10)

³⁹ Singapore Arts Council, <http://www.nac.gov.sg/media-centre/news-releases/news-detail?id=c2db15e2-c319-40ec-939c-d58735d0a91c>

⁴⁰ <http://www.taiteenkeskustoimikunta.fi/documents/10162/31704/TY+tilastotiedote+1+12+.pdf>, Page 1 and Page 23

⁴¹ <http://www.ifpi.org/about.php>

⁴² <http://www.ifpi.org/our-members.php>

⁴³ <http://www.ifpi.org/national-groups.php>

⁴⁴ <http://www.riaa.com/faq.php>

⁴⁵ <http://www.statista.com/topics/1639/music/>

Another clear example of an “entity *mainly* dedicated to the community” with members that cover hundreds of millions of music constituents with formal boundaries is A2IM, the American Association of Independent Music. A2IM has two types of members: U.S independent Label members and Associate members. A2IM membership for Labels and Associates is invoked formally through an application and if accepted would require annual membership dues.⁴⁶

The reach of A2IM Associate⁴⁷ membership covers hundreds of millions of entities (i.e. the reach of A2IM’s total membership “geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents – See Application Answer to Question 20a).

Organized and strictly delineated communities related to music that are A2IM members include:

- **Apple iTunes**⁴⁸ – iTunes accounts for 63% of global digital music market⁴⁹ - a majority – with a registered community of 800 million registered members⁵⁰ available in 119 countries who abide to strict terms of service and boundaries⁵¹ and have downloaded over 25 billion songs⁵² from iTunes’ catalog of over 43 million songs⁵³ covering a global music community, regardless of genre or whether the community entities are amateur, professional, commercial or non-commercial. To add music to iTunes, all music artists must have a formal membership with iTunes via an Apple ID registration, which includes a current credit card on file.⁵⁴
- **Pandora**⁵⁵ – Pandora is the world’s largest streaming music radio with a community of over 250 million registered members.⁵⁶
- **Spotify**⁵⁷ – Spotify is the world’s largest music streaming community with over 50 million active registered members in 58 countries and over 30 million songs. The music community uploads 20,000 songs every day.⁵⁸
- **Vevo**⁵⁹ – Vevo is the world’s leading all-premium music video community and platform with over 8 billion monthly views globally.⁶⁰

⁴⁶ <http://a2im.org/about-joining/>

⁴⁷ <http://a2im.org/groups/tag/associate+members/>

⁴⁸ <http://a2im.org/groups/itunes>

⁴⁹ <http://appleinsider.com/articles/13/04/16/apples-itunes-rules-digital-music-market-with-63-share>

⁵⁰ <http://www.npr.org/blogs/therecord/2015/01/06/375173595/with-downloads-in-decline-can-itunes-adapt>

⁵¹ <http://www.apple.com/legal/internet-services/itunes/ww/index.html>

⁵² <http://www.apple.com/pr/library/2013/02/06iTunes-Store-Sets-New-Record-with-25-Billion-Songs-Sold.html>

⁵³ <https://www.apple.com/itunes/features/>

⁵⁴ <https://www.apple.com/itunes/working-itunes/sell-content/music-faq.html>

⁵⁵ <http://a2im.org/groups/pandora>

⁵⁶ <http://www.cnet.com/news/like-a-rolling-milestone-pandora-hits-250m-registered-users/> and <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MTkxNTM1fENoaWxkSUQ9LTF8VHlwZT0z&t=1>, Pg.9

⁵⁷ <http://a2im.org/groups/spotify>

⁵⁸ <https://press.spotify.com/us/information/>

⁵⁹ <http://a2im.org/groups/vevo/>

- **Youtube**⁶¹ – Youtube is the world’s largest music video streaming community with millions of music creators -- amateur, professional, commercial or non-commercial -- and over 1 billion registered members covering all regions globally. 6 billion hours of video is watched every month on Youtube,⁶² of which 38.4% is music-related.⁶³
- **ReverbNation**⁶⁴ – ReverbNation⁶⁵ is one of the world’s largest music community and a leading music distributor with over 3.87 million musicians, venues labels and industry professionals covering every country globally. The ReverbNation community grows by over 50,000 artists, bands, labels and industry professionals monthly.
- **BMG**⁶⁶ – BMG is focused on the management of music publishing and recording rights. BMG has an international presence and represents over 2.5 million music rights globally.⁶⁷

A2IM also includes members that are associated with global government agencies which exclusively represent substantial music economies and music members, such as France (BureauExport⁶⁸), China (China Audio Video Association⁶⁹) and Germany (Initiative Musik).⁷⁰ A2IM also has Affiliate⁷¹ associations within the global music community. These include Affiliates such as MusicFirst,⁷² the Copyright Alliance,⁷³ the Worldwide Independent Network (WIN)⁷⁴ and Merlin.⁷⁵

A2IM also represents a recognized Music Coalition representing the interests of the Global Independent Music Community.⁷⁶ The A2IM Coalition includes Merlin, a global rights agency for the independent label sector, representing over 20,000 labels from 39 countries, Worldwide Independent Network (representing label creators in over 20 countries), Association of Independent Music (representing largest and most respected labels in the world), and IMPALA (Independent Music Companies Association on behalf of over 4,000 independent music companies and national associations across Europe, representing 99% of music actors in Europe which are micro, small and medium sized enterprises.

⁶⁰ <http://www.vevo.com/c/EN/US/about>

⁶¹ <http://a2im.org/groups/youtube/>

⁶² <https://www.youtube.com/yt/press/statistics.html>

⁶³ http://www.researchandmarkets.com/reports/2092499/internet_video_2011_2014_view_share_site_and

⁶⁴ <http://a2im.org/groups/reverb-nation/>

⁶⁵ <http://www.reverbnation.com/about>

⁶⁶ <http://a2im.org/groups/bmg-rights/>

⁶⁷ <http://www.bmg.com/category/about-us/history/>

⁶⁸ <http://a2im.org/groups/french-music-export-office>

⁶⁹ <http://a2im.org/groups/china-audio-video-association-cava>

⁷⁰ <http://a2im.org/groups/initiative-musik-gmbh>

⁷¹ <http://a2im.org/groups/tag/associate+members/>

⁷² <http://musicfirstcoalition.org/coalition>, The musicFIRST Coalition, with founding members A2IM, RIAA, and Recording Academy represents musicians, artists, managers, music businesses, and performance right advocates.

⁷³ <http://www.copyrightalliance.org/members>

⁷⁴ <http://www.winformusic.org>

⁷⁵ <http://www.merlinnetwork.org>

⁷⁶ <https://www.icann.org/en/system/files/correspondence/bengloff-to-chehade-et-al-20aug14-en.pdf> and <https://www.icann.org/en/system/files/correspondence/bengloff-to-crocker-et-al-07mar15-en.pdf>

Cumulatively, A2IM's Label and Associate Membership, A2IM's Affiliates and the A2IM's Global Independent Music Community Coalition, covers a majority of the global music community. Its cumulative membership is in the hundreds of millions of entities with formal boundaries belonging to strictly organized and delineated communities related to music as per the Community Definition and Size (See Application answer to Question 20a).

Another global Music Community Coalition led by the RIAA “on behalf of over 15 national and international trade associations” also expressed its support for .MUSIC to be under a “community” application model, including encouraging statements in support of DotMusic’s policies that stated that the coalition “was encouraged to see” that DotMusic “included several measures to deter and address copyright infringement within that TLD.” The “coalition members represent the people that write, sing, record, manufacture, distribute and/or license over 80% of the world’s music”⁷⁷ – a majority of global music.⁷⁸

Another letter⁷⁹ sent to ICANN (on April 14th, 2015) by Danielle Aguirre from the NMPA and on behalf of a music publisher and songwriter community coalition representing a majority of the global music publishing community, also expressed “support [for] the .MUSIC community applications because respecting and protecting music rights serves the global music community and the public interest.”

The International Music Products Association, NAMM, is another globally-recognized and relevant group of non-negligible size that has supported DotMusic.⁸⁰ NAMM, formed in 1901, is *mainly* dedicated to the global music community by representing the international music products industry and community, with globally-recognized members and exhibitors that include Yamaha, Roland, Sennheiser, Sony, Fender, Harman, Kawai, Shure, Steinway, Audio-Technica, AKAI, Gibson, Peavey, Korg, AKG, Selmer, JBL, Alesis, Ibanez, AVID, Casio, DW, Sabian, Pearl, Zildjian, Martin, Ludwig, Marshall and others.^{81 82} Every amateur and professional musician worldwide uses music products manufactured and distributed by NAMM’s members. Without these musical instruments and products, music as we know it today would not be created or produced. NAMM and its trade shows power the \$17 billion global music products industry serving as a hub for the global music community wanting to seek out the newest innovations in musical products, recording technology, sound and lighting. NAMM’s mission is “to strengthen

⁷⁷ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.1

⁷⁸ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.3, Appendix A

⁷⁹ <https://www.icann.org/en/system/files/correspondence/aguirre-to-icann-board-eiu-14apr15-en.pdf>

⁸⁰ http://music.us/letters/NAMM_International_Music_Products_Association.pdf

⁸¹ https://www.namm.org/files/showdir/ExhibitorList_WN15.xls

⁸² <http://www.musictrades.com/global.html>

the music products industry and promote the pleasures and benefits of making music.”⁸³ NAMM also hosts the NAMM Show, the world's largest event for the music products industry.

Collectively, the DotMusic application received support from the largest coalition of music community member organizations ever assembled to support a cause representing over 95% of music consumed globally.⁸⁴ Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support⁸⁵ from institutions/organizations representing a majority of the Community addressed. Music -- as commonly-known by the general public and experienced today -- would not be possible without these supporting, non-negligible and relevant organizations that have endorsed DotMusic.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Community Establishment* and *Community Endorsement* from the majority of the global Music Community as defined.

B) Nexus⁸⁶

According to the Applicant Guidebook (“AGB”), to receive the maximum score for Nexus, the applied-for string -- “music” -- must match the name of the community or be a well-known short-form or abbreviation of the community name.

The *Nexus* of the “Music Community” entirely matches the applied-for “music” string because it represents the entire global Music Community as commonly-known and perceived by the general public. This definition allows for all constituents with a requisite awareness of the Community defined to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination. The definition of the Community requires that members have an active, non-tangential relationship with the applied-for string and the requisite awareness of the music community they identify with as part of the registration process. It is clear that the general public will directly associate and equate the string with the Community as defined by DotMusic. There is no possibility of overreaching beyond the definition or allowing unrelated non-music entities to be included as part of the Community. Community members may register a .MUSIC by either:

⁸³ <https://www.namm.org/about>

⁸⁴ See <http://music.us/supporters>, <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/downloadattachment/142588?t:ac=1392>, Bloomberg BNA at http://music.us/RIAA_Backs_DotMusic.pdf Pg.1, and <http://diffuser.fm/will-dot-music-domains-make-the-internet-better/>

⁸⁵ <http://music.us/supporters>

⁸⁶ See <http://music.us/nexus>

- 1) Identifying that they belong to a Music Community Member Organization (“MCMO”); or
- 2) Identifying the community they belong to, which is consistent with the definition of the Community: “the strictly delineated and organized logical alliance of communities of similar nature related to music.”

All Community members are aware of and recognize their inclusion in the defined Community by identifying which clearly defined community they belong to and have an active participation in. The *nexus* of the applied-for string ensures inclusion of the entire global community that the string represents while excluding unrelated-entities not associated with the string. This way there is a clear match and alignment between the “music” sting and the Community defined.

While the exact size of the global Music Community as defined is unknown (there is no empirical evidence providing an exact, finite number because amateur entities are also included in the Community’s definition), it is in the considerable millions as explicitly stated in the DotMusic Application. DotMusic’s definition of the Community and mutually-inclusive Registration Policies ensure that eligible members are only music-related and associated with the string. This is because the string identifies all constituents involved in music. Music-only participation optimizes the relevancy of .MUSIC domains to the string and entirely matches the *nexus* between the string and Community defined. According to DotMusic, the Community *definition, eligibility* criteria and *content and use* requirements ensure that peripheral industries and entities not related to music are excluded so that the string and the defined Community matches and aligns in a consistent manner consistent with DotMusic’s community-based purpose i.e. only entities with music-related activities are able to register .MUSIC domains.

Membership aligns with the *nexus* of the Community and the string, which is explicitly relevant to music. The string as defined in the application demonstrates uniqueness because it has no other significant meaning beyond identifying the community described in the application. According to DotMusic’s application, any tangential or implicit association with the *nexus* of the Community and the string is not regarded as a delineated membership since it would be considered unclear, dispersed or unbound. Such unclear, dispersed or unbound tangential relationships with the defined “music” Community and applied-for “music” string would not constitute a qualifying Community membership and would be ineligible for registration. Every type of music constituent critically contributes to the function and operation of the music sector within a regulated framework⁸⁷ given the symbiotic overlapping nature of the Community as defined and structured. Music would not function as it does today without the participation of all music constituent types which cumulatively match the string with the Community definition.

⁸⁷ ICANN has disclosed that the string .MUSIC is a sensitive string operating in a regulated sector. ICANN also accepted Government Advisory Committee (GAC) advice for safeguards to protect the Music Community and the public interest (See <https://icann.org/en/system/files/correspondence/crocker-to-dryden-3-29oct13-en.pdf> Pg.7)

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Nexus*.

Respectfully Submitted,



Signature:

Contact Information Redacted , Aug 10 '15 ip: 174.21.169.174

Name: Dr. Eric W. Vogt

Title: Professor

Organization: Seattle Pacific University

Dr. Eric William Vogt

Date of hire: September, 2001. Hired at Associate rank (six years at rank)
Tenured: February, 2006. Promoted to Professor rank: September, 2008

Education

1988 University of Missouri, PhD, Romance Languages (Golden Age Spanish literature, Baroque Art and Latin)
Dissertation: A Critical Edition of Antonio Hurtado de Mendoza's *Ni callarlo ni decirlo*.
1983 University of Missouri, MA, Spanish Literature (with specialization in Literary Translation)
1977 University of Hawaii, BA, Spanish
1973 Punahou Academy, Honolulu, Hawaii

Certifications

1997 ACTFL Oral Proficiency Rating (OPI) in Spanish: Superior.
1993 American Translators Association. Certified technical translator, English-to-Spanish
1991 *Diploma del Español como Lengua Extranjera*, Nivel Superior

Academic Employment

2008-present Full Professor of Spanish, Seattle Pacific University, Seattle, Washington
2001-2008 Associate Professor of Spanish, Medieval, Renaissance and Golden Age Literature, Seattle Pacific University, Seattle, Washington
1996-2001 Assistant Professor of Spanish, Thunderbird, The American Graduate School of International Management, Glendale, Arizona
1995-1996 Visiting Assistant Professor, University of North Dakota, Grand Forks, North Dakota
1992-1995 Teacher, *Bienvenidos* Program for gifted Elementary-Secondary Immigrants, Arlington, Virginia (part-time volunteer, mentor)
1989-1993 Assistant Professor of Spanish, Howard University, Washington, DC
1981-1988 Graduate Teaching Assistant, University of Missouri, Columbia, Missouri
1987-1988 Lecturer, Stephens College, Columbia, Missouri

Teaching Experience & Curricular Design (SPU & elsewhere)

Spanish/English Subject Matter Expert (SME) with TST™ for Training, Testing & Certification of Analytic Linguists, to be employed in Investigative Surveillance Operations: monitoring, transcription and translation of oral intercepted communications. (Being reviewed by the Council on Standards Development, of the International Association for Continuing Education and Training, for accreditation at the Master's degree level). Includes, among providing niche-specific skills, linguistic analysis of nearly 24 subdialects of New World Spanish (morphological, syntactical, phonological and lexical) as training for recognition purposes.

All levels of language (SPN 1101-1103, 2000-level and various 3000-level courses)

Spanish for Special Purposes: Nursing and International Business Communication.

Golden Age and Medieval Age Spanish literature courses (SPN 3105 & 3106)

Latin American Literature Capstone: *Cien años de soledad* and other themes (SPN 4899)

Translation (EUR 4254). Principles and Practices; workshop format.

UCOR 1000: General Education course involving Art History.

Publications: Books, Print and Online

The Complete Poetry of Saint Teresa of Avila. Edition and Translation. New Orleans: University Press of the South, 2nd Edition, 2015. Expanded and updated select bibliography, additional introductory section, updated preface.

- McGraw-Hill's 500 Spanish Questions: Ace Your College Exams.* McGraw-Hill Tradebook Division, 2012.
- Practice Makes Perfect: Spanish Spanish Problem Solver Up Close.* McGraw-Hill Tradebook Division, 2012.
- Practice Makes Perfect: Spanish Irregular Verbs Up Close.* McGraw-Hill Tradebook Division, 2010.
- Perfect Phrases in Spanish for Confident Travel to Mexico: The No Faux-Pas Phrasebook for the Perfect Trip.* McGraw-Hill Tradebook Division, 2009.
- Practice Makes Perfect: The Spanish Subjunctive Up Close.* McGraw-Hill Tradebook Division, 2008.
- Practice Makes Perfect: Spanish Pronouns Up Close.* McGraw-Hill Tradebook Division, 2008.
- Practice Makes Perfect: Spanish Past-Tense Verbs Up Close.* McGraw-Hill Tradebooks, 2008.
- Obras Completas de Cristóbal Galán, Vols. VII-XI.* Baron, John H. & Eric W. Vogt, eds. Ottawa: The Institute of Mediaeval Music, 2002-2007.
- La fábula de Polifemo y Galatea*, by Góngora y Argote, Luis. Original calligraphy; *online* edition, with notes, sound files, art; grammar and other exercises, a guide for teachers and students of language and literature, and links to related sites. With technical collaboration of, and scholarly input from, Fred Jehle, Purdue University, Lafayette, IN, 1997, at: www.ipfw.edu/cm1/jehle/web/poesia/polifemo.htm
- The Complete Poetry of Saint Teresa of Avila.* Edition and Translation. New Orleans: University Press of the South, 1996 (proposal to Dr. Alain Saint-Saëns, editor of this academic press, accepted in 1995). Forward by H.E. Cardinal Jaime L. Sin, Republic of Philippines.
- Ni callarlo ni decirlo*, by Hurtado de Mendoza, Don Antonio. Critical edition. Ciudad Juárez: Universidad Autónoma de Ciudad Juárez, 1992 (invited to submit proposal by UACJ's board; only author granted a sole volume in this Mexican, four-volume series celebrating the "Quincentennial of the Encounter of Two Worlds"). This scholarly work involved a complete reworking of the thesis and was done in Spanish.
- College-at-Home Spanish.* 2 Vols. Columbia, Missouri: University of Missouri, 1985. Co-authors: Victor Durán and Jill Briseño (invited by MU's Continuing Education to create the materials for this course).

Publications: Articles, Print and Online

- "Hablemos de modelos sociales.", Online, in *Especiales > Comentarios* (i.e., "op-ed"), *Radio Habana Cuba* (RHC), official radio station, founded April 16, 1961 as the official radio voice of the Partido Comunista de Cuba. Reviewed by Pedro Otero, Station editor-in-chief and uploaded February 20, 2015.*
- "Vínculos bíblicos herméticos: Cien años de soledad y el "Real Arte'." *La Revista de Estudios Colombianos.* July, 2007, Vol. 31, pp. 7-23.*
- Three entries in the *Encyclopedia of Christian Literature*: Ramón Llull, Marcilio Ficino and Giovanni Pico de Mirandola (scheduled for publication in 2007 by Hendrickson.) Invited publication.
- "Diego Hurtado de Mendoza." *Dictionary of Literary Biography: Sixteenth-Century Spanish Writers.* Gregory B. Kaplan, ed. Columbia, SC: Brucoli Clark Layman, Vol. 318, 2006. Invited publication.
- "John Wesley's Sephardic Portion: Psalm 63." *Methodist History*, July 2005.*
- "After me cometh a builder": Kipling's Masonic *Ludibrium* in *The Palace* (1902). *The Kipling Journal*, London, Vol. 78, No. 311, September, 2004.*
- "The Curious Case of Hermetic Graffiti in Valladolid Cathedral ms. 40/8." *Esoterica* Vol. V. E. Lansing: Michigan State University, 2003 (Online at: www.esoteric.msu.edu).*
- "A Fast Track to Cultural Understanding: Literature in Translation." *The Journal of Language for International Business.* Glendale, AZ: Thunderbird, The American Graduate School of International Management, Vol. 9, no.1, 1998, 10-27.*
- "Desire and Decorum in the Twentieth Century Colombian Novel." *Hispanic Issues.* Minneapolis: University of Minnesota, 1992 (invited publication, in collaboration with Eduardo Jaramillo-Zuloaga of Denison University).
- "Intérpretes dentro del texto en la dramaturgia de Lope de Vega y Shakespeare" *Lienzo*, Vol. XII, 1991, 95-104. Lima, Peru: Universidad de Lima.*

* refereed

Publications: Reviews

- "Fact or Fiction." A book review of Dan Brown's *The Da Vinci Code for Response*, Seattle Pacific University, 2004 (<http://www.spu.edu/depts/uc/response/spring2k4/bookfilm/expanded.html>).
- Samuelsson-Brown, Geoffrey. *A Practical Guide for Translators.* 3rd. rev. ed. Clevedon, England: Multilingual Matters, 1998. *Modern Language Journal*, 2000 (invited).

O'Hagan, Minako. *The Coming Industry of Teletranslation*. Clevedon, England: Multilingual Matters, 1996.
The Journal of Language for International Business, 8, 2, 1997 (invited).

Publications: Creative Writing

- “New and Improved or Authentic?” *Potomac Review*. Vol. 2, no. 3. Potomac Review: Washington, DC, 1995, 50-54.
- “Get a Profession!” *Potomac Review*. Vol. 2, no. 2. Potomac Review: Washington, DC, 1995 3-7.
- “‘Minor’ Arts?” *Potomac Review*. Vol. 2, no. 1. Potomac Review: Washington, DC, 1995, 18-25.
- “Time, Poetry, Painting, Space and Sculpture.” *Potomac Review*. Vol. 1, no. 4. Potomac Review: Washington, DC, 1994, 75-80.
- “The Emperor's New Clothes, or ‘What is Poetry Anyway?’” *Potomac Review*. Vol. 1, no. 3. Potomac Review: Washington, DC, 1994, 3-11.
- “To Christopher Columbus.” Translation of a poem by Neo-Latin Renaissance poet Janus Vitalis Panormitanus (1485-1560), *Order of the Sons of Italy News*: Worcester, MA, 1989.
- “‘To Get a Good Job, Get a Good Education’.” Poem, *American Poetry Anthology*, Vol. IX, no. 4, 131, 1989.
- “Fat, Dumb and Happy.” Poem, *American Poetry Anthology*, Vol. IX, no. 4, 131, 1989.
- “Lemon Road.” Poem, *American Poetry Anthology*, Vol. IX, no. 5, 127, 1990.
- “Corporate Spectacles.” Poem, *American Poetry Anthology*, Vol. IX, no. 5, 127, 1990.
- “Christmas Shopping.” Poem, *Waif's Messenger*, a newsletter of the Mercy Boy's Home: Chicago, 1988.

Papers and Presentations

- “Ruins as Metaphors of Time: Christian Neo-Stoicism in Sonnets by Quevedo, Góngora and Du Bellay”, NACFLA annual meeting held at Point Loma Nazarene, March, 2009.
- “Wesley’s Sephardic ‘Portion’: Psalm 63”, NACFLA annual meeting held at Trinity Christian College, April 2005.*
- “Juan Ruiz, el Arçipreste de Hita’s *El libro de buen amor*.” *The First Annual Medieval Studies Symposium of the Puget Sound Roundtable*, Seattle Pacific University, January 2004.
- “The *Vanitas* Theme: Teaching for Devotion, Using Golden Age Spanish Sonnets and Scripture-Inspired Art.” NACFLA annual meeting held at Azusa Pacific University, April 2003.
- “Awakening Motivation through Organization: A Model for an Upper-Level Business Spanish Course.” Thunderbird-Eastern Michigan University Annual Conference on Language, Communication and Global Management, Scottsdale, Arizona, April 6, 2000.*
- “Translation: The Lifeblood of Technology Transfer.” AATSP annual meeting, Denver, CO, August 2, 1999.*
- “TurboVerb™: Jet Fuel for Conjugating Spanish Verbs.” Southwest Conference on Language Teaching (SWCOLT) annual meeting, Tempe, AZ, April 23, 1998.
- “Unraveling the Subjunctive in Spanish.” SWCOLT annual meeting, Tempe, AZ, April 23, 1998.
- “The Formal and Informal Education of a Technical Translator.” Eastern Michigan University Annual Conference on Language for International Business, April 17, 1997.*
- “‘Now we see through a glass, darkly’: Translating the Mystical Poetry of St Teresa of Avila.” Linguistic Circle of Manitoba & North Dakota annual meeting, Minot, North Dakota, 1995.*
- “Meeting the Translation Needs of Bloodbanking: The Computer Solution.” *American Association of Blood Banks* annual meeting, Miami, Florida, 1993.*
- “The Use of Translation in the Teaching of Language and Literature and as a Scholarly Pursuit”, Foreign Language Teaching Symposium, Howard University, Washington, DC, 1989.
- “El papel de las Estefanías en *La discreta enamorada* de Lope de Vega,” *Golden Age Spanish Drama Symposium* annual meeting, El Paso, Texas, 1984.*

* Refereed

Professional Conferences Attended

- 2009 The Spanish Subjunctive: A Truly Classical Approach, Reborn.” Washington Association of Foreign Language Teachers (WAFLT), Oct. 8-10, Spokane, WA.
- 2007 ATA Annual Conference, Oct. 31-Nov. 3, 2007, San Francisco.

- 2007 Three-day ATA-sponsored Translation Workshop, Beaverton, Oregon, July 2007.
 2007 *Translation Principles and Practice*, ATA-sponsored 18-hour workshop, Tigard, Oregon, July 10-12.

Other Scholarly Activity

- 2009 Selected by the Editorial Board of *Presses Universitaires Internationales* to be a Series Editor for Spanish Studies.
 2003 Refereed article for *Esoterica*, Michigan State University's online peer-reviewed journal.
 2003 Provided expertise regarding an article by Kenneth Kinkor, director of the *Expedition Whydah Sea-Lab & Learning Center* (Provincetown, MA), whose explorations and discoveries of pirate wrecks have been featured on *Discovery Channel* and in *National Geographic* (May, 1988).
 1998-2001 Editor, *The Journal of Language for International Business*, Thunderbird, The American Graduate School of International Management (AGSIM).
 1994 Graduate level seminar on Technical Writing and Translation for corporate and federal organizations, George Washington University, Washington, DC.
 1993-1994 United Nations North American Task Force. Participated in annual conferences in DC and NY about management of technical lexicons in high-volume electronic databases.
 1992-1995 Seminars, in the United States and Puerto Rico, on editorial processes and the use of cutting-edge translation software for lexical database management (*Globalink, Inc.*).

Service: University (SPU & elsewhere)

- 2015 - present Serving on Faculty Affairs Council, Seattle Pacific University
 2003-2010 Provided access to scholarship funds to SPU students, resulting in tens-of-thousands of dollars of financial aid (not loans - gifts) over those years.
 2006-2009 Served on Faculty Status Committee, Seattle Pacific University
 2006 Helped secure a \$5,000 annual Fellowship for the Graduate Program in Organizational Psychology, Seattle Pacific University. Discontinued after 2010.
 2005 Presented "Anecdotes About and (Mis) Adventures in Apprenticeship from the Middle Ages Through Colonial America" at the Alumni retreat at Camp Casey.
 2005 Served as committee member for doctoral dissertation, "Time Perspective, Acculturation, and Psychological Well-being in Mexican Americans," Heather Romero, School of Psychology, Family & Community, Seattle Pacific University
 2005 Mentored male student as part of Campus Ministries program.
 2005 Faculty sponsor of Spanish Club.
 2005 Organized, in collaboration with Dr. Patrick McDonald, *The Second Annual Medieval Studies Symposium of the Puget Sound Roundtable*, held in January, 2004 at Seattle Pacific University, adding Cappella Romana to the list of events for an evening concert at First Free Methodist Church.
 2004 Organized, in collaboration with Drs. Owen Ewald and Patrick McDonald, *The First Annual Medieval Studies Symposium of the Puget Sound Roundtable*, held in January, 2004 at Seattle Pacific University.
 2004 Panel member in discussion of Dan Brown's *The Da Vinci Code*, at Seattle Pacific University, with Drs. Rob Wall, Alberto Ferreiro and Randy Maddox.
 2003-2006 Elected to three-year term on the Undergraduate Policies and Evaluation Committee (UPEC), Seattle Pacific University.
 2003 Guest lecture about the Crusades and the Military-Religious Orders in Doug Durasoff's Christianity and World Politics class.
 2002-2007 Humanities Award Coordinator, Seattle Pacific University
 2002-2010 Regularly assisted in Premiere, now Early Registration, for incoming students.
 2002-2005 Participated in one interview committee for faculty candidate and regularly for Pre-med students.
 2002 Led devotional for faculty senate and presented at Faculty Retreat.
 2000-2001 Web designer for Thunderbird Language Institute
 1999-2000 Faculty Senator-at-Large, AGSIM.
 1997-2001 Advisor, instructor, Tai Chi Club, AGSIM.

1996-1997 Member, Career Services Internship, Scholarship, Curricular Initiative Committees, AGSIM.
1997 Director of Spanish Language Program, AGSIM Guadalajara Program in Jalisco, Mexico.

Service: Departmental

2015 Working with Dr. Robert Baah on proposal for an M.A. in Spanish Literature program.
2015 Working with Dr. Robert Baah to create course, Spanish for Medical Professionals.
2003-2010 Coordinated Oral Proficiency Interviews with the American Council of Teachers of Foreign Languages.
2001-2010 Participated in European Symposia.
2004 Assisted in revision of Placement Exam, Seattle Pacific University
1998 Coordinator, Level III Language classes, AGSIM.
1990-1991 Director, Undergraduate Language Courses, Howard University (HU), responsible also for design of Advanced Placement Spanish courses for high schools and honors program for college junior and seniors majoring in Romance Languages.
1990-1991 Chairman or Member: Undergraduate Studies, Curricular Development, Study Abroad, and Library Acquisitions committees, HU.
1985 Assisted course directors with administrative details of Romance Languages courses, University of Missouri-Columbia Summer School.

Service: Extra-Institutional

2010 - present Content Matter Expert (SME) for ProTrans, a private company specializing in elite translation and translation training for public and private sector. Accredited in 2015 by IACET (International Association for Continuing Education and Training).
2009 Editorial consultant in an ITT bid to supply COMINT expertise and support to a Latin American country.
2006 Panel member in discussion of Dan Brown's *The Da Vinci Code*, at Bellevue Presbyterian Church.
2003 Served as consultant to State of Washington Professional Educator Standards Board regarding ETS test for Spanish teachers, recommended by Frank Kline, School of Education, Seattle Pacific University.
2001-2006 Member, Editorial Board of *The Journal of Language for International Business (JOLIB)*, published by The American Graduate School of International Business (Thunderbird), Glendale, AZ.
1999 Served on Board of Reviewers for New Visions in Foreign Language Resource Center, Iowa State University, Ames, Iowa.
1998 Executive Board Member, the Arizona Language Association. Represented Maricopa County.
1991-2 Designed, taught courses for medical, fire and rescue, police and others. Howard University adult programs.

Community Involvement

2013 Joined St. Anne Parish, Queen Anne, to endeavor to prepare daughter for First Communion. Also attend other parishes in region (Spanish-speaking).
2001-2012 Fundraising for Queen Anne Help Line, help supply balls for local youth sports teams.
1993 Guest lecturer, Gonzaga High School, Washington, D.C., on Dante Alighieri and Petrarch.
1993 Special Olympics, Washington, DC. Donated time to the event and private Spanish lessons

Professional Affiliations -- Current

1993-Present American Translators Association (Active Associate Member).

Honors, Awards and Distinctions

- 1995 Recognized by Elizabeth Dole for Best Ideas and Practices Program, The American National Red Cross, National Headquarters, Washington, DC
- 1994 Named by Elizabeth Dole as one of the Top Ten Employees in the Nation, The American National Red Cross, National Headquarters, Washington, DC - for development and administration of Blood Services in-house translation operations.
- 1986 Eta Sigma Phi, *National Classical Honor Society*
- 1982 Chancellor's Award for Excellence In Teaching, University of Missouri-Columbia
- 1976 Sigma Delta Pi, *National Spanish Honor Society*. University of Hawai'i-Manoa; President of Beta Chapter, University of Missouri-Columbia, 1984-1986

Re: Expert Testimony on (i) Community Establishment; (ii) Nexus; and (iii) Support for DotMusic’s Community-Based Application¹ for .MUSIC (Application ID 1-1115-14110)

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

Please accept this letter that indicates that there is substantive and compelling evidence that the DotMusic application convincingly meets the full criteria under Community Priority Evaluation on the following points: (i) the Music Community’s *Establishment* as defined by DotMusic; (2) the matching *Nexus* between the “music” Community and the “music” string (or top-level domain); and (3) that DotMusic possesses documented *Support* from organizations representing a majority of the global Music Community addressed and defined.

Please see my credentials attached hereto that identify my level of expertise and specialized knowledge with respect to the music community’s organization and delineation.

SUMMARY

DotMusic has established the following:

- 1) Its Community definition recognizes the cohesive, symbiotic and overlapping nature of the global Music Community. The definition includes those associated with commercial and non-commercial creation, performance, marketing and distribution of music;
- 2) “Music Community” members have the requisite awareness and recognition of the interdependency, overlapping and cohesive nature of each “organized community of similar nature that relates to music.” These organized and aligned communities are closely united and make “music” as we know it today. It is this self-awareness and interdependence that gives the “Music Community” its strength. With exponential growth of the Internet, mobile and the Domain Name System (DNS), the “Music Community’s” use and reliance on the Internet to create, market and disseminate music-related content, products, services and activities will continue to grow;
- 3) The “Music Community” functions in a regulated sector with global copyright protections – it is clear that the “community,” as defined, implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate a globally-recognized set of standards for

¹ <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1392>

the protection of the “Music Community” member rights with relation to their copyrighted music works around the world;

4) The “Music” Community -- as defined by DotMusic -- has at least one entity dedicated to the community supporting DotMusic’s application. Such documented *Support* includes several “international federation of national communities of a similar nature,” music coalitions and others that are strongly associated with “music,” which represent a majority of the Community with considerable millions of members worldwide.²

5) The *Nexus* of the “music” Community matches the “music” applied-for string because it represents the entire global Music Community – a community that pre-existed 2007 with a size in the considerable millions of constituents. The “Music Community” definition -- which incorporates the strict fundamental attributes of a closely united Community definition that is “organized” and “delineated” -- ensures that all of its constituent members have a requisite awareness of the community as defined, including both commercial and non-commercial stakeholders, to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination.

6) DotMusic has received support from the largest coalition of Music Community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support³ from institutions/organizations representing a majority of the Community as defined and recognized in the DotMusic application.

There is substantive evidence that DotMusic fulfills the *Nexus, Community Establishment and Support* criteria for the “Music” string. The inclusion and representation of every music constituent type is paramount to the articulated purpose of the string. DotMusic and its application’s global Music Community supporters substantiate that every type of music constituent contributes to the function and operation of the music sector within a regulated framework. The symbiotic nature of the Community as defined and structured means that “Music” would not function as it does today without the participation of all music constituent types that interconnect to match the “music” string with the “music” Community definition.

² <http://music.us/supporters>

³ <http://music.us/supporters>

ASSESSMENT OF COMMUNITY DEFINITION, ESTABLISHMENT AND NEXUS

A) *Music Community Definition, Establishment & Community Endorsement*⁴

DotMusic’s definition of the “Music Community” as a “strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music” (See Application, 20a) is factually accurate and representative of the “Music Community.” Community characteristics include:

i) An Organized, Cohesive, Interdependent Logically-Allied Community:

The “Music Community” definition covers the regulated, interdependent and cohesive nature of the music sector that exists today. “Music Community” members have the requisite awareness and recognition of the interdependent, overlapping and cohesive nature of each “organized community of similar nature that relates to music” that comprises the “Music Community.” Without such cohesiveness and interdependency, the defined “Music” Community matching the applied-for string (“Music”) would not be able to function in its regulated sector, a “Music” regulated sector that was publicly recognized by both ICANN and the Government Advisory Committee.⁵

As a result, the Music Community as defined is “closely united” (As per the definition of “cohesion” according to Merriam-Webster dictionary⁶) or “united or form a whole” (As per the definition of the word “cohesion” according to Oxford Dictionaries⁷).

The “Music Community” as defined (a “strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music”) establishes that:

- (1) There is an awareness and recognition among its members;
- (2) The organized and delineated logical alliance of communities exists; and
- (3) The Community is “closely united” and “interdependent” (i.e. Each “organized community of similar nature that relates to music” which is part of the “logical alliance of communities that relate to music” is not mutually exclusive).

In short, the applied-for string (“Music”) matches the name of the “Music” Community as defined by DotMusic’s application. DotMusic’s “Music Community” definition accurately represents the common definition of the “Music Community,” which is confirmed by Wikipedia.

⁴ See <http://music.us/establishment>

⁵ <https://www.icann.org/en/system/files/bm/briefing-materials-2-05feb14-en.pdf>, Pg.3

⁶ <http://www.merriam-webster.com/dictionary/cohesion>

⁷ http://www.oxforddictionaries.com/us/definition/american_english/cohesion

According to Wikipedia:⁸

Music community is defined as a logical alliance of interdependent communities that are related to music, which include commercial participants...and non-commercial participants...and consists of an “ensemble of practices and institutions that make possible and regulate the production, distribution and consumption of music”...UNESCO identifies the music community as a “community of identity” implying common identifiable characteristics and cohesive attributes such as sharing a music culture, norms and subscribing to common ideals related to music...The music community is not defined as much by demographic indicators such as race, gender, and income level, as it is by common values, cohesive norms and interconnected structures to build a community identity. It refers to music-related individuals and organisations in a shared environment with shared understandings and practices, modes of production and distribution. The shared organisation of collective musical activities, identity and community value is created as result of infrastructure and a shared set of common values...Many studies outline the historical, cultural, and spatial significance of the music community, including how its identity is formed through musical practices. The music community shares a cohesive and interconnected structure of artistic expression, with diverse subcultures and socio-economic interactions...subscribing to common ideals. Under such structured context music consumption becomes possible regardless whether the transaction is commercial and non-commercial.⁹

ii) *An Aware, Pre-Existing and Recognized Community of Considerable Millions Worldwide:*

DotMusic’s definition of the Community covers all Community members associated with the string, each with a requisite awareness of the Community that can be validated through their natural association with a particular music-related community that they clearly identify with. According to DotMusic, all Music Community members must identify their music-related community in order to demonstrate their requisite awareness of the defined Community as part of the .MUSIC registration and validation process.

⁸ Wikipedia is ranked 6th among the ten most popular websites (Alexa, Retrieved March 23, 2015 from <http://www.alexacom/siteinfo/wikipedia.org>) and constitutes the Internet's largest, most frequently updated and popular general reference work (See OECD, OECD Internet Economy Outlook 2012, OECD Publishing, http://www.oecd-ilibrary.org/science-and-technology/oecd-internet-economy-outlook-2012_9789264086463-en,Pg.172) that compares favorably to the accuracy of other encyclopedias (such as the Britannica) according to a 2012 study conducted in partnership with Oxford University (See <http://blog.wikimedia.org/2012/08/02/seven-years-after-nature-pilot-study-compares-wikipedia-favorably-to-other-encyclopedias-in-three-languages>).

⁹ Music Community. In *Wikipedia*. Retrieved March 23, 2015, from https://en.wikipedia.org/wiki/Music_community

According to DotMusic, the Music Community’s geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents (Application Answer to Question 20a).

According to DotMusic, “registrants will be verified using Community-organized, unified “criteria taken from holistic perspective with due regard of Community particularities” that “invoke a formal membership (Application Answer to Question 20a).” The defined Community represents all music-related entities with a clear and straightforward membership with the Community involved in the legal production, performance, promotion, and distribution of music worldwide. According to DotMusic, the Music Community members must have an active, non-tangential relationship with the applied-for string “music” and also have the requisite awareness of the music-related community that they are a part of by specifically identifying it as part of the registration and validation process (i.e. upon successful registration and validation, each community member will be given a unique community identification number that will automatically associate them with their identified community and the “music” string).

DotMusic’s Community definition matches the applied-for string because it allows both commercial and non-commercial stakeholders to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination/exclusion. Given the regulated sector of the community, it is clear that the “Music Community” as defined implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate cohesive and globally-recognized set of standards for the protection of the music community members’ rights with relation to their copyrighted music works around the world.¹⁰

The Berne Convention for the Protection of Literary and Artistic Works¹¹ provides that each of the 168 contracting parties¹² (representing an overwhelming majority of the world’s population) provides automatic protection for music works first published in other countries of the Berne union and for unpublished music works whose authors are citizens of or resident in such other countries.¹³ This means that if a Music Community member’s copyright rights are violated in any other signatory country’s jurisdiction, then the music community member will have the music copyright rights given by that country. Music Community members are clearly aware of the collective Community’s rights, which could not be made possible without these cohesive and globally-recognized set of standards. If such standards were not coherent or enforced then music would not be able to exist in its current form and the industry component of the Music Community sector would not exist. As such, the Community’s *Establishment* and definition is “cohesive” and hence cannot be construed since the Community is a logical alliance of music

¹⁰ http://www.rightsdirect.com/content/rd/en/toolbar/copyright_education/International_Copyright_Basics.html

¹¹ http://www.wipo.int/treaties/en/text.jsp?file_id=283698

¹² http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=15

¹³ <http://www.britannica.com/EBchecked/topic/62482/Berne-Convention>

communities that establish a clearly delineated and organized Community structure that is “closely united” and functions as a “whole”

Further evidence to substantiate the cohesive, symbiotic and overlapping nature of the Community, includes other globally-recognized standards and classification systems, which identify who the individual songwriters, publishers and rights holders are and which songs they are associated with so that Community members are appropriately compensated, regardless of whether the constituent is a commercial, non-commercial or amateur entity. The “music” string is commonly used in classification systems such as ISMN,¹⁴ ISRC,¹⁵ ISWC,¹⁶ ISNI.¹⁷ (Application Answer to Question 20a). For example, if a music entity would like to distribute their music, either commercially or for free, then an ISRC can be assigned to globally identify any specific music work. An ISRC, which facilitates efficient music discovery and community member payment, is constructed from 12 characters representing country, registrant, year of registration and designation (i.e. the serial number assigned by the registrant). With respect to domains, an equivalent system that relates to identifying a specific domain’s registrant and other relevant information pertaining to the domain is WHOIS. Domain registrants are required by ICANN “to provide accurate WHOIS contact data” or else their domain “registration may be suspended or even cancelled”.¹⁸

Without such Music Community “cohesion” and standardized systems functioning in its regulated sector, the Music Community would not be able to create, market and distribute their music. By the same token, fans would not be able to identify the music they are listening to with a specific music artist, regardless of whether the listening activity or behavior is commercial or non-commercial in nature. The socio-economic structure that characterizes “music” as commonly-known today would be non-existent without these organized and delineated elements that commonly define the Community.

¹⁴ The International Standard Music Number (ISMN) is a unique number for the identification of all notated music publications from all over the world. The ISMN is an ISO certified global standard number (ISO 10957:2009). See <http://www.ismn-international.org/whatis.html> and

http://www.iso.org/iso/home/store/catalogue_ics/catalogue_detail_ics.htm?csnumber=43173

¹⁵ The ISRC (International Standard Recording Code) is the international identification system for sound recordings and music video recordings. The ISRC is an ISO certified global standard number (ISO 3901:2001) and is managed by the IFPI. See <http://isrc.ifpi.org>, <https://www.usisrc.org/about/index.html> and http://www.iso.org/iso/catalogue_detail?csnumber=23401

¹⁶ The ISWC (International Standard Musical Work Code) is a unique, permanent and internationally recognized reference number for the identification of musical works. The ISWC has been approved by ISO (International Organization for Standardisation) as a global standard (ISO 15707:2001) and is managed by CISAC. See <http://www.iswc.org/en/faq.html> and http://www.iso.org/iso/catalogue_detail?csnumber=28780

¹⁷ The International Standard Name Identifier (ISNI) is the ISO certified global standard number (ISO 27729) for identifying the millions of contributors to creative works and those active in their distribution. ISNI holds public records of over 8 million identities and 490,000 organizations. See <http://www.isni.org/> and http://www.iso.org/iso/catalogue_detail?csnumber=44292

¹⁸ <https://whois.icann.org/en/about-whois> and <https://www.icann.org/resources/pages/faqs-f0-2012-02-25-en>

iii) International Federations and Organizations Dedicated to Community Functions:

According to ICANN's Applicant Guidebook ("AGB")¹⁹: *"With respect to "Delineation" and "Extension," it should be noted that a community can consist of...a logical alliance of communities (for example, an international federation of national communities of a similar nature... viable as such, provided the requisite awareness and recognition of the community is at hand among the members."* (AGB, 4-12). The community as defined in the DotMusic application has at least one entity mainly dedicated to the community which has supported DotMusic, which include several "international federation of national communities of a similar nature" relating to music, music coalitions and other relevant and non-negligible music organizations.

One of these entities include the only international federation of national communities relating to government culture agencies and arts councils, which has an integral association with music globally: the International Federation of Arts Councils and Culture Agencies (IFACCA).

IFACCA is the only international federation that represents government culture agencies and arts councils globally. These national communities are governmental institutions that play a pivotal role with respect to music.²⁰ IFACCA's members cover the majority of music entities globally, regardless of whether they are commercial, non-commercial or amateurs. Government ministry of culture and council agencies related to music cover a majority of the overall community with respect to headcount and geographic reach. The "Size" covered reaches over a hundred million music entities i.e. "considerable size with millions of constituents" per Application Answer to Question 20a.

The string "music" falls under the jurisdiction of each country's Ministry of Culture governmental agency or arts/music council (emphasis added). The degree of power and influence of government ministry of culture and council agencies with respect to music surpasses any organization type since these agencies (i) provide the majority of funding for music-related activities; (ii) regulate copyright law; and (iii) encompass all the music entities that fall under their country, regardless whether these entities are commercial, non-commercial or amateurs. IFACCA is globally recognized by its strategic partners, such as UNESCO, a United Nations agency representing 195 member states and the European Commission.²¹ The UNESCO strategic partnership²² is relevant, especially since UNESCO founded the International Music Council (the "IMC") in 1949, which represents over 200 million music constituents from over 150 countries and over 1000 organizations globally.²³

¹⁹ <https://newgtlds.icann.org/en/applicants/agb/guidebook-full-11jan12-en.pdf>

²⁰ http://www.ifacca.org/membership/current_members/

²¹ http://www.ifacca.org/strategic_partners/

²² http://www.ifacca.org/strategic_partners/

²³ <http://www.imc-cim.org/about-imc-separator/who-we-are.html>

Government activities in the clearly delineated and organized “Music Community” include setting statutory royalty rates. For example, in the United States, mechanical royalties are based on a “statutory rate” set by the U.S. Congress. This rate is increased to follow changes in the economy, usually based on the Consumer Price Index. Currently, the mechanical statutory rate is \$0.091 for songs five minutes or less in length or \$.0175 per minute for songs that are over five minutes long.²⁴

Ministries of culture and arts councils (that comprise IFACCA’s membership) support musicians, musical performances, independent music artists, non-commercial musical expression and education in their respective countries. The 165 ministries of culture, arts councils and affiliates that comprise IFACCA’s membership support the “performing arts” and music specifically. Without the financial and logistical support of arts councils and the ministries of culture, the music community would be adversely affected, and in some countries, may not exist in any appreciable manner. For example, the Ministry of Culture 2011 budget for the small country state of Cyprus for culture funding was €34,876,522 with critical support of music activities.²⁵ Other small government Ministries of Culture, such as Albania,²⁶ or government Ministries of Culture and Arts Councils from countries with larger populations, such as India,²⁷ all provide critical support and substantial advocacy for music. Other examples include government institutions collaborating and advocating music through their funded country-based pavilion initiatives at Midem, the world’s largest music conference.²⁸

Government ministries and arts councils provide critical support for the Music Community, including commercial music organizations. By way of example, government ministries’ and arts councils’ substantial connection to and support of “music” is noted in the reports of funding and support for music. Some examples to showcase the degree of power of the IFACCA’s membership towards the string and global and national music are music investment and music funding (Annual reports by governments and councils):

- New Zealand Ministry of Culture has funded significant music projects. Some include the REAL New Zealand Music Tour (\$415,000), the New Zealand String Quartet (\$150,000) and New Zealand Music Commission: (\$1,378,000).²⁹
- The Australian Government/Council For The Arts invested \$51.2 million for the nation’s orchestras; \$21.6 million for opera; \$10.8 million for other music artists and

²⁴ U.S Copyright Office, <http://www.copyright.gov/carp/m200a.html>

²⁵ 2011 Annual Report for Cyprus Ministry of Culture, Section 1.2 “Music”

(http://www.moec.gov.cy/en/annual_reports/annual_report_2011_en.pdf). Activities include Music Performances in Cyprus (1.2.1) and Abroad (1.2.2), Subsidization of Paphos Aphrodite Festival (1.2.3), Music Publications (1.2.4), Subsidization and Purchases of Digital Records (1.2.5), Promotion for Cypriot musical creativity abroad (1.2.6), Cyprus Symphony Orchestra Foundation (1.2.7), Music Information Centre (1.2.8), Developing Music Education (1.2.9), Organising of the 1st Musicological Symposium (1.2.10) and Musical Festivities for the European Volunteerism Year (1.2.11)

²⁶ http://www.culturalpolicies.net/down/albania_012011.pdf

²⁷ 2010-11 Annual Report from India Ministry of Culture, [http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011\(Eng\).pdf](http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011(Eng).pdf)

²⁸ <http://my.midem.com/en/contact-us/pavilion-representatives/>

²⁹ 2011 Annual Report from New Zealand Ministry of Culture:

[http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20\(D-0448383\).PDF](http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20(D-0448383).PDF)

organizations; \$13.1 million for multi-platform artists and organizations; and \$4 million in miscellaneous funding, including sector building and audience development initiatives and programs.³⁰

- Canada Council for the Arts is Canada’s national, arts funding agency investing \$28 million in its Canada Council Musical Instrument Bank (Page 16) and \$28,156,000 in Music Arts Programs (Page 66).³¹ The Government of Canada also renewed its annual investment of \$27.6 million over five years in the Canada Music Fund.³²
- The United Kingdom Department for Culture and Education (DfE) will fund music education at significant levels: £77 million, £65 million and £60 million will be available in the three years from April 2012.³³
- The United States National Endowment of the Arts has awarded more than \$4 billion to support the arts since its inception³⁴ and has a strong focus on music as outlined in its Strategic Plan³⁵ with Congress requested to provide \$154,465,000 for fiscal year 2014.³⁶
- The National Arts Council of South Africa invested 2,536,131 ZAR in Music and 9,995,000 ZAR in Orchestras and has focused strongly on the “Strengthening of live indigenous music and advocating the revival of the live music circuit in South Africa”³⁷
- The Singapore Arts Council will fund \$10.2 million in the arts under its 2013 Grants Framework, including the Ding Yi Music Company and Siong Leng Musical Association.³⁸
- In 2011, the support for artistic activities by the Arts Council of Finland was €32.4 million of which €4,921,850 was awarded to music.³⁹

Each of IFACCA’s members has a clear association with, and mandate to support the music arts in their countries. In most countries, their ministry of culture/arts council is the largest funder and marketing supporter of the music arts.

³⁰ 2011 Annual Report for the Australia Council for the Arts, http://www.australiacouncil.gov.au/data/assets/pdf_file/0016/142351/Australia-Council-Annual-Report-201112.pdf, Page 28

³¹ 2011 Annual Report for Canada Council for the Arts, http://www.canadacouncil.ca/NR/rdoonlyres/6F7549BB-F4E5-4B8B-95F4-1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf

³² <http://www.pch.gc.ca/eng/1294862453819/1294862453821>

³³ Department for Culture, The Importance of Music, A National Plan for Music Education, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/180973/DFE-00086-2011.pdf, Page 4, 2011

³⁴ 2011 Annual report for the National Endowment of the Arts, <http://www.nea.gov/about/11Annual/2011-NEA-Annual-Report.pdf>, Page 2

³⁵ NEA Strategic Plan 2012-2016, www.arts.gov/about/Budget/NEAStrategicPlan2012-2016.pdf

³⁶ http://www.ifacca.org/national_agency_news/2013/04/10/us-president-requests-154465000-neh-2014/

³⁷ 2010-2011 Annual Report for the National Arts Council South Africa, National Arts Council South Africa, <http://www.nac.org.za/media/publications/AR%2010-11%20NAC.PDF/download>, Page 11. Also Mmino, the South African – Norwegian Education Music Programme, solely funds music projects funding a total of 294 projects. Thirteen projects were allocated funding for a total of R1,680,600 of which R1,381,000 went towards music educational and R299,600 to exchange projects (Page 10)

³⁸ Singapore Arts Council, <http://www.nac.gov.sg/media-centre/news-releases/news-detail?id=c2db15e2-c319-40ec-939c-d58735d0a91c>

³⁹ <http://www.taiteenkeskustoimikunta.fi/documents/10162/31704/TY+tilastotiedote+1+12+.pdf>, Page 1 and Page

Another clear example of an “entity dedicated to the community” with members that cover hundreds of millions of music constituents with formal boundaries is A2IM, the American Association of Independent Music. A2IM has two types of members: U.S independent Label members and Associate members. A2IM membership for Labels and Associates is invoked formally through an application and if accepted would require annual membership dues.⁴⁰

The reach of A2IM Associate⁴¹ membership covers hundreds of millions of entities (i.e. the reach of A2IM’s total membership “geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents – See Application Answer to Question 20a).

Organized and strictly delineated communities related to music that are A2IM members include:

- **Apple iTunes**⁴² – iTunes accounts for 63% of global digital music market⁴³ - a majority – with a registered community of 800 million registered members⁴⁴ available in 119 countries who abide to strict terms of service and boundaries⁴⁵ and have downloaded over 25 billion songs⁴⁶ from iTunes’ catalog of over 43 million songs⁴⁷ covering a global music community, regardless of genre or whether the community entities are amateur, professional, commercial or non-commercial. To add music to iTunes, all music artists must have a formal membership with iTunes via an Apple ID registration, which includes a current credit card on file.⁴⁸
- **Pandora**⁴⁹ – Pandora is the world’s largest streaming music radio with a community of over 250 million registered members.⁵⁰
- **Spotify**⁵¹ – Spotify is the world’s largest music streaming community with over 50 million active registered members in 58 countries and over 30 million songs. The music community uploads 20,000 songs every day.⁵²
- **Vevo**⁵³ – Vevo is the world’s leading all-premium music video community and platform with over 8 billion monthly views globally.⁵⁴

⁴⁰ <http://a2im.org/about-joining/>

⁴¹ <http://a2im.org/groups/tag/associate+members/>

⁴² <http://a2im.org/groups/itunes>

⁴³ <http://appleinsider.com/articles/13/04/16/apples-itunes-rules-digital-music-market-with-63-share>

⁴⁴ <http://www.npr.org/blogs/therecord/2015/01/06/375173595/with-downloads-in-decline-can-itunes-adapt>

⁴⁵ <http://www.apple.com/legal/internet-services/itunes/ww/index.html>

⁴⁶ <http://www.apple.com/pr/library/2013/02/06iTunes-Store-Sets-New-Record-with-25-Billion-Songs-Sold.html>

⁴⁷ <https://www.apple.com/itunes/features/>

⁴⁸ <https://www.apple.com/itunes/working-itunes/sell-content/music-faq.html>

⁴⁹ <http://a2im.org/groups/pandora>

⁵⁰ <http://www.cnet.com/news/like-a-rolling-milestone-pandora-hits-250m-registered-users/> and <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MTkxNTM1fENoaWxkSUQ9LTF8VHlwZT0z&t=1>, Pg.9

⁵¹ <http://a2im.org/groups/spotify>

⁵² <https://press.spotify.com/us/information/>

⁵³ <http://a2im.org/groups/vevo/>

- **Youtube**⁵⁵ – Youtube is the world’s largest music video streaming community with millions of music creators -- amateur, professional, commercial or non-commercial -- and over 1 billion registered members covering all regions globally. 6 billion hours of video is watched every month on Youtube,⁵⁶ of which 38.4% is music-related.⁵⁷
- **ReverbNation**⁵⁸ – ReverbNation⁵⁹ is one of the world’s largest music community and a leading music distributor with over 3.87 million musicians, venues labels and industry professionals covering every country globally. The ReverbNation community grows by over 50,000 artists, bands, labels and industry professionals monthly.
- **BMG**⁶⁰ – BMG is focused on the management of music publishing and recording rights. BMG has an international presence and represents over 2.5 million music rights globally.⁶¹

A2IM also includes members that are associated with global government agencies which exclusively represent substantial music economies and music members, such as France (BureauExport⁶²), China (China Audio Video Association⁶³) and Germany (Initiative Musik).⁶⁴ A2IM also has Affiliate⁶⁵ associations within the global music community. These include Affiliates such as MusicFirst,⁶⁶ the Copyright Alliance,⁶⁷ the Worldwide Independent Network (WIN)⁶⁸ and Merlin.⁶⁹

A2IM also represents a recognized Music Coalition representing the interests of the Global Independent Music Community.⁷⁰ The A2IM Coalition includes Merlin, a global rights agency for the independent label sector, representing over 20,000 labels from 39 countries, Worldwide Independent Network (representing label creators in over 20 countries), Association of Independent Music (representing largest and most respected labels in the world), and IMPALA (Independent Music Companies Association on behalf of over 4,000 independent music companies and national associations across Europe, representing 99% of music actors in Europe which are micro, small and medium sized enterprises.

⁵⁴ <http://www.vevo.com/c/EN/US/about>

⁵⁵ <http://a2im.org/groups/youtube/>

⁵⁶ <https://www.youtube.com/yt/press/statistics.html>

⁵⁷ http://www.researchandmarkets.com/reports/2092499/internet_video_2011_2014_view_share_site_and

⁵⁸ <http://a2im.org/groups/reverb-nation/>

⁵⁹ <http://www.reverbnation.com/about>

⁶⁰ <http://a2im.org/groups/bmg-rights/>

⁶¹ <http://www.bmg.com/category/about-us/history/>

⁶² <http://a2im.org/groups/french-music-export-office>

⁶³ <http://a2im.org/groups/china-audio-video-association-cava>

⁶⁴ <http://a2im.org/groups/initiative-musik-gmbh>

⁶⁵ <http://a2im.org/groups/tag/associate+members/>

⁶⁶ <http://musicfirstcoalition.org/coalition>, The musicFIRST Coalition, with founding members A2IM, RIAA, and Recording Academy represents musicians, artists, managers, music businesses, and performance right advocates.

⁶⁷ <http://www.copyrightalliance.org/members>

⁶⁸ <http://www.winformusic.org>

⁶⁹ <http://www.merlinnetwork.org>

⁷⁰ <https://www.icann.org/en/system/files/correspondence/bengloff-to-chehade-et-al-20aug14-en.pdf> and <https://www.icann.org/en/system/files/correspondence/bengloff-to-crocker-et-al-07mar15-en.pdf>

Cumulatively, A2IM's Label and Associate Membership, A2IM's Affiliates and the A2IM's Global Independent Music Community Coalition, covers a majority of the global music community. Its cumulative membership is in the hundreds of millions of entities with formal boundaries belonging to strictly organized and delineated communities related to music as per the Community Definition and Size (See Application answer to Question 20a).

Another global Music Community Coalition led by the RIAA "on behalf of over 15 national and international trade associations" also expressed its support for .MUSIC to be under a "community" application model, including encouraging statements in support of DotMusic's policies that stated that the coalition "was encouraged to see" that DotMusic "included several measures to deter and address copyright infringement within that TLD." The "coalition members represent the people that write, sing, record, manufacture, distribute and/or license over 80% of the world's music"⁷¹ – a majority of global music.⁷²

Collectively, the DotMusic application received support from the largest coalition of music community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support⁷³ from institutions/organizations representing a majority of the Community addressed. Music -- as commonly-known by the general public and experienced today -- would not be possible without these supporting, non-negligible and relevant organizations that have endorsed DotMusic.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Community Establishment* and *Community Endorsement* from the majority of the global Music Community as defined.

B) Nexus⁷⁴

According to the Applicant Guidebook ("AGB"), to receive the maximum score for Nexus, the applied-for string -- "music" -- must match the name of the community or be a well-known short-form or abbreviation of the community name.

The *Nexus* of the "Music Community" entirely matches the applied-for "music" string because it represents the entire global Music Community as commonly-known and perceived by the general public. This definition allows for all constituents with a requisite awareness of the Community

⁷¹ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.1

⁷² <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.3, Appendix A

⁷³ <http://music.us/supporters>

⁷⁴ See <http://music.us/nexus>

defined to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination. The definition of the Community requires that members have an active, non-tangential relationship with the applied-for string and the requisite awareness of the music community they identify with as part of the registration process. It is clear that the general public will directly associate and equate the string with the Community as defined by DotMusic. There is no possibility of overreaching beyond the definition or allowing unrelated non-music entities to be included as part of the Community.

Community members may register a .MUSIC by either:

- 1) Identifying that they belong to a Music Community Member Organization (“MCMO”); or
- 2) Identifying the community they belong to, which is consistent with the definition of the Community: “the strictly delineated and organized logical alliance of communities of similar nature related to music.”

All Community members are aware of and recognize their inclusion in the defined Community by identifying which clearly defined community they belong to and have an active participation in. The *nexus* of the applied-for string ensures inclusion of the entire global community that the string represents while excluding unrelated-entities not associated with the string. This way there is a clear match and alignment between the “music” sting and the Community defined.

While the exact size of the global Music Community as defined is unknown (there is no empirical evidence providing an exact, finite number because amateur entities are also included in the Community’s definition), it is in the considerable millions as explicitly stated in the DotMusic Application. DotMusic’s definition of the Community and mutually-inclusive Registration Policies ensure that eligible members are only music-related and associated with the string. This is because the string identifies all constituents involved in music. Music-only participation optimizes the relevancy of .MUSIC domains to the string and entirely matches the *nexus* between the string and Community defined. According to DotMusic, the Community *definition, eligibility criteria and content and use* requirements ensure that peripheral industries and entities not related to music are excluded so that the string and the defined Community matches and aligns in a consistent manner consistent with DotMusic’s community-based purpose i.e. only entities with music-related activities are able to register .MUSIC domains.

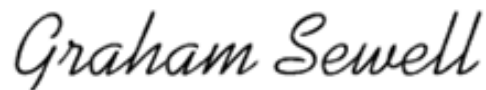
Membership aligns with the *nexus* of the Community and the string, which is explicitly relevant to music. The string as defined in the application demonstrates uniqueness because it has no other significant meaning beyond identifying the community described in the application. According to DotMusic’s application, any tangential or implicit association with the *nexus* of the Community and the string is not regarded as a delineated membership since it would be considered unclear, dispersed or unbound. Such unclear, dispersed or unbound tangential

relationships with the defined “music” Community and applied-for “music” string would not constitute a qualifying Community membership and would be ineligible for registration.

The inclusion of every music constituent type is paramount to the purpose of the string. Every type of music constituent critically contributes to the function and operation of the music sector within a regulated framework given the symbiotic overlapping nature of the Community as defined and structured. Music would not function as it does today without the participation of all music constituent types which cumulatively match the string with the Community definition.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Nexus*.

Respectfully Submitted,



Signature:

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- Strategy development processes
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Re: Expert Testimony on (i) Community Establishment; (ii) Nexus; and (iii) Support for DotMusic’s Community-Based Application¹ for .MUSIC (Application ID 1-1115-14110)

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

Please accept this letter that indicates that there is substantive and compelling evidence that the DotMusic application convincingly meets the full criteria under Community Priority Evaluation on the following points: (i) the Music Community’s *Establishment* as defined by DotMusic; (2) the matching *Nexus* between the “music” Community and the “music” string (or top-level domain); and (3) that DotMusic possesses documented *Support* from organizations representing a majority of the global Music Community addressed and defined.

Please see my credentials attached hereto that identify my level of expertise and specialized knowledge with respect to the music community’s organization and delineation.

SUMMARY

DotMusic has established the following:

- 1) Its Community definition recognizes the cohesive, symbiotic and overlapping nature of the global Music Community. The definition includes those associated with commercial and non-commercial creation, performance, marketing and distribution of music;
- 2) “Music Community” members have the requisite awareness and recognition of the interdependency, overlapping and cohesive nature of each “organized community of similar nature that relates to music.” These organized and aligned communities are closely united and make “music” as we know it today. It is this self-awareness and interdependence that gives the “Music Community” its strength. With exponential growth of the Internet, mobile and the Domain Name System (DNS), the “Music Community’s” use and reliance on the Internet to create, market and disseminate music-related content, products, services and activities will continue to grow;
- 3) The “Music Community” functions in a regulated sector with global copyright protections – it is clear that the “community,” as defined, implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate a globally-recognized set of standards for

¹ <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1392>

the protection of the “Music Community” member rights with relation to their copyrighted music works around the world;

4) The “Music” Community -- as defined by DotMusic -- has at least one entity dedicated to the community supporting DotMusic’s application. Such documented *Support* includes several “international federation of national communities of a similar nature,” music coalitions and others that are strongly associated with “music,” which represent a majority of the Community with considerable millions of members worldwide.²

5) The *Nexus* of the “music” Community matches the “music” applied-for string because it represents the entire global Music Community – a community that pre-existed 2007 with a size in the considerable millions of constituents. The “Music Community” definition -- which incorporates the strict fundamental attributes of a closely united Community definition that is “organized” and “delineated” -- ensures that all of its constituent members have a requisite awareness of the community as defined, including both commercial and non-commercial stakeholders, to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination.

6) DotMusic has received support from the largest coalition of Music Community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support³ from institutions/organizations representing a majority of the Community as defined and recognized in the DotMusic application.

There is substantive evidence that DotMusic fulfills the *Nexus, Community Establishment and Support* criteria for the “Music” string. The inclusion and representation of every music constituent type is paramount to the articulated purpose of the string. DotMusic and its application’s global Music Community supporters substantiate that every type of music constituent contributes to the function and operation of the music sector within a regulated framework. The symbiotic nature of the Community as defined and structured means that “Music” would not function as it does today without the participation of all music constituent types that interconnect to match the “music” string with the “music” Community definition.

² <http://music.us/supporters>

³ <http://music.us/supporters>

ASSESSMENT OF COMMUNITY DEFINITION, ESTABLISHMENT AND NEXUS

A) *Music Community Definition, Establishment & Community Endorsement*⁴

DotMusic’s definition of the “Music Community” as a “strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music” (See Application, 20a) is factually accurate and representative of the “Music Community.” Community characteristics include:

i) An Organized, Cohesive, Interdependent Logically-Allied Community:

The “Music Community” definition covers the regulated, interdependent and cohesive nature of the music sector that exists today. “Music Community” members have the requisite awareness and recognition of the interdependent, overlapping and cohesive nature of each “organized community of similar nature that relates to music” that comprises the “Music Community.” Without such cohesiveness and interdependency, the defined “Music” Community matching the applied-for string (“Music”) would not be able to function in its regulated sector, a “Music” regulated sector that was publicly recognized by both ICANN and the Government Advisory Committee.⁵

As a result, the Music Community as defined is “closely united” (As per the definition of “cohesion” according to Merriam-Webster dictionary⁶) or “united or form a whole” (As per the definition of the word “cohesion” according to Oxford Dictionaries⁷).

The “Music Community” as defined (a “strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music”) establishes that:

- (1) There is an awareness and recognition among its members;
- (2) The organized and delineated logical alliance of communities exists; and
- (3) The Community is “closely united” and “interdependent” (i.e. Each “organized community of similar nature that relates to music” which is part of the “logical alliance of communities that relate to music” is not mutually exclusive).

In short, the applied-for string (“Music”) matches the name of the “Music” Community as defined by DotMusic’s application. DotMusic’s “Music Community” definition accurately represents the common definition of the “Music Community,” which is confirmed by Wikipedia.

⁴ See <http://music.us/establishment>

⁵ <https://www.icann.org/en/system/files/bm/briefing-materials-2-05feb14-en.pdf>, Pg.3

⁶ <http://www.merriam-webster.com/dictionary/cohesion>

⁷ http://www.oxforddictionaries.com/us/definition/american_english/cohesion

According to Wikipedia:⁸

Music community is defined as a logical alliance of interdependent communities that are related to music, which include commercial participants...and non-commercial participants...and consists of an “ensemble of practices and institutions that make possible and regulate the production, distribution and consumption of music”...UNESCO identifies the music community as a “community of identity” implying common identifiable characteristics and cohesive attributes such as sharing a music culture, norms and subscribing to common ideals related to music...The music community is not defined as much by demographic indicators such as race, gender, and income level, as it is by common values, cohesive norms and interconnected structures to build a community identity. It refers to music-related individuals and organisations in a shared environment with shared understandings and practices, modes of production and distribution. The shared organisation of collective musical activities, identity and community value is created as result of infrastructure and a shared set of common values...Many studies outline the historical, cultural, and spatial significance of the music community, including how its identity is formed through musical practices. The music community shares a cohesive and interconnected structure of artistic expression, with diverse subcultures and socio-economic interactions...subscribing to common ideals. Under such structured context music consumption becomes possible regardless whether the transaction is commercial and non-commercial.⁹

ii) *An Aware, Pre-Existing and Recognized Community of Considerable Millions Worldwide:*

DotMusic’s definition of the Community covers all Community members associated with the string, each with a requisite awareness of the Community that can be validated through their natural association with a particular music-related community that they clearly identify with. According to DotMusic, all Music Community members must identify their music-related community in order to demonstrate their requisite awareness of the defined Community as part of the .MUSIC registration and validation process.

⁸ Wikipedia is ranked 6th among the ten most popular websites (Alexa, Retrieved March 23, 2015 from <http://www.alexacom/siteinfo/wikipedia.org>) and constitutes the Internet's largest, most frequently updated and popular general reference work (See OECD, OECD Internet Economy Outlook 2012, OECD Publishing, http://www.oecd-ilibrary.org/science-and-technology/oecd-internet-economy-outlook-2012_9789264086463-en,Pg.172) that compares favorably to the accuracy of other encyclopedias (such as the Britannica) according to a 2012 study conducted in partnership with Oxford University (See <http://blog.wikimedia.org/2012/08/02/seven-years-after-nature-pilot-study-compares-wikipedia-favorably-to-other-encyclopedias-in-three-languages>).

⁹ Music Community. In *Wikipedia*. Retrieved March 23, 2015, from https://en.wikipedia.org/wiki/Music_community

According to DotMusic, the Music Community’s geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents (Application Answer to Question 20a).

According to DotMusic, “registrants will be verified using Community-organized, unified “criteria taken from holistic perspective with due regard of Community particularities” that “invoke a formal membership (Application Answer to Question 20a).” The defined Community represents all music-related entities with a clear and straightforward membership with the Community involved in the legal production, performance, promotion, and distribution of music worldwide. According to DotMusic, the Music Community members must have an active, non-tangential relationship with the applied-for string “music” and also have the requisite awareness of the music-related community that they are a part of by specifically identifying it as part of the registration and validation process (i.e. upon successful registration and validation, each community member will be given a unique community identification number that will automatically associate them with their identified community and the “music” string).

DotMusic’s Community definition matches the applied-for string because it allows both commercial and non-commercial stakeholders to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination/exclusion. Given the regulated sector of the community, it is clear that the “Music Community” as defined implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate cohesive and globally-recognized set of standards for the protection of the music community members’ rights with relation to their copyrighted music works around the world.¹⁰

The Berne Convention for the Protection of Literary and Artistic Works¹¹ provides that each of the 168 contracting parties¹² (representing an overwhelming majority of the world’s population) provides automatic protection for music works first published in other countries of the Berne union and for unpublished music works whose authors are citizens of or resident in such other countries.¹³ This means that if a Music Community member’s copyright rights are violated in any other signatory country’s jurisdiction, then the music community member will have the music copyright rights given by that country. Music Community members are clearly aware of the collective Community’s rights, which could not be made possible without these cohesive and globally-recognized set of standards. If such standards were not coherent or enforced then music would not be able to exist in its current form and the industry component of the Music Community sector would not exist. As such, the Community’s *Establishment* and definition is “cohesive” and hence cannot be construed since the Community is a logical alliance of music

¹⁰ http://www.rightsdirect.com/content/rd/en/toolbar/copyright_education/International_Copyright_Basics.html

¹¹ http://www.wipo.int/treaties/en/text.jsp?file_id=283698

¹² http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=15

¹³ <http://www.britannica.com/EBchecked/topic/62482/Berne-Convention>

communities that establish a clearly delineated and organized Community structure that is “closely united” and functions as a “whole”

Further evidence to substantiate the cohesive, symbiotic and overlapping nature of the Community, includes other globally-recognized standards and classification systems, which identify who the individual songwriters, publishers and rights holders are and which songs they are associated with so that Community members are appropriately compensated, regardless of whether the constituent is a commercial, non-commercial or amateur entity. The “music” string is commonly used in classification systems such as ISMN,¹⁴ ISRC,¹⁵ ISWC,¹⁶ ISNI.¹⁷ (Application Answer to Question 20a). For example, if a music entity would like to distribute their music, either commercially or for free, then an ISRC can be assigned to globally identify any specific music work. An ISRC, which facilitates efficient music discovery and community member payment, is constructed from 12 characters representing country, registrant, year of registration and designation (i.e. the serial number assigned by the registrant). With respect to domains, an equivalent system that relates to identifying a specific domain’s registrant and other relevant information pertaining to the domain is WHOIS. Domain registrants are required by ICANN “to provide accurate WHOIS contact data” or else their domain “registration may be suspended or even cancelled”.¹⁸

Without such Music Community “cohesion” and standardized systems functioning in its regulated sector, the Music Community would not be able to create, market and distribute their music. By the same token, fans would not be able to identify the music they are listening to with a specific music artist, regardless of whether the listening activity or behavior is commercial or non-commercial in nature. The socio-economic structure that characterizes “music” as commonly-known today would be non-existent without these organized and delineated elements that commonly define the Community.

¹⁴ The International Standard Music Number (ISMN) is a unique number for the identification of all notated music publications from all over the world. The ISMN is an ISO certified global standard number (ISO 10957:2009). See <http://www.ismn-international.org/whatis.html> and

http://www.iso.org/iso/home/store/catalogue_ics/catalogue_detail_ics.htm?csnumber=43173

¹⁵ The ISRC (International Standard Recording Code) is the international identification system for sound recordings and music video recordings. The ISRC is an ISO certified global standard number (ISO 3901:2001) and is managed by the IFPI. See <http://isrc.ifpi.org>, <https://www.usisrc.org/about/index.html> and http://www.iso.org/iso/catalogue_detail?csnumber=23401

¹⁶ The ISWC (International Standard Musical Work Code) is a unique, permanent and internationally recognized reference number for the identification of musical works. The ISWC has been approved by ISO (International Organization for Standardisation) as a global standard (ISO 15707:2001) and is managed by CISAC. See <http://www.iswc.org/en/faq.html> and http://www.iso.org/iso/catalogue_detail?csnumber=28780

¹⁷ The International Standard Name Identifier (ISNI) is the ISO certified global standard number (ISO 27729) for identifying the millions of contributors to creative works and those active in their distribution. ISNI holds public records of over 8 million identities and 490,000 organizations. See <http://www.isni.org/> and http://www.iso.org/iso/catalogue_detail?csnumber=44292

¹⁸ <https://whois.icann.org/en/about-whois> and <https://www.icann.org/resources/pages/faqs-f0-2012-02-25-en>

iii) International Federations and Organizations Dedicated to Community Functions:

According to ICANN's Applicant Guidebook ("AGB")¹⁹: *"With respect to "Delineation" and "Extension," it should be noted that a community can consist of...a logical alliance of communities (for example, an international federation of national communities of a similar nature... viable as such, provided the requisite awareness and recognition of the community is at hand among the members."* (AGB, 4-12). The community as defined in the DotMusic application has at least one entity mainly dedicated to the community which has supported DotMusic, which include several "international federation of national communities of a similar nature" relating to music, music coalitions and other relevant and non-negligible music organizations.

One of these entities include the only international federation of national communities relating to government culture agencies and arts councils, which has an integral association with music globally: the International Federation of Arts Councils and Culture Agencies (IFACCA).

IFACCA is the only international federation that represents government culture agencies and arts councils globally. These national communities are governmental institutions that play a pivotal role with respect to music.²⁰ IFACCA's members cover the majority of music entities globally, regardless of whether they are commercial, non-commercial or amateurs. Government ministry of culture and council agencies related to music cover a majority of the overall community with respect to headcount and geographic reach. The "Size" covered reaches over a hundred million music entities i.e. "considerable size with millions of constituents" per Application Answer to Question 20a.

The string "music" falls under the jurisdiction of each country's Ministry of Culture governmental agency or arts/music council (emphasis added). The degree of power and influence of government ministry of culture and council agencies with respect to music surpasses any organization type since these agencies (i) provide the majority of funding for music-related activities; (ii) regulate copyright law; and (iii) encompass all the music entities that fall under their country, regardless whether these entities are commercial, non-commercial or amateurs. IFACCA is globally recognized by its strategic partners, such as UNESCO, a United Nations agency representing 195 member states and the European Commission.²¹ The UNESCO strategic partnership²² is relevant, especially since UNESCO founded the International Music Council (the "IMC") in 1949, which represents over 200 million music constituents from over 150 countries and over 1000 organizations globally.²³

¹⁹ <https://newgtlds.icann.org/en/applicants/agb/guidebook-full-11jan12-en.pdf>

²⁰ http://www.ifacca.org/membership/current_members/

²¹ http://www.ifacca.org/strategic_partners/

²² http://www.ifacca.org/strategic_partners/

²³ <http://www.imc-cim.org/about-imc-separator/who-we-are.html>

Government activities in the clearly delineated and organized “Music Community” include setting statutory royalty rates. For example, in the United States, mechanical royalties are based on a “statutory rate” set by the U.S. Congress. This rate is increased to follow changes in the economy, usually based on the Consumer Price Index. Currently, the mechanical statutory rate is \$0.091 for songs five minutes or less in length or \$.0175 per minute for songs that are over five minutes long.²⁴

Ministries of culture and arts councils (that comprise IFACCA’s membership) support musicians, musical performances, independent music artists, non-commercial musical expression and education in their respective countries. The 165 ministries of culture, arts councils and affiliates that comprise IFACCA’s membership support the “performing arts” and music specifically. Without the financial and logistical support of arts councils and the ministries of culture, the music community would be adversely affected, and in some countries, may not exist in any appreciable manner. For example, the Ministry of Culture 2011 budget for the small country state of Cyprus for culture funding was €34,876,522 with critical support of music activities.²⁵ Other small government Ministries of Culture, such as Albania,²⁶ or government Ministries of Culture and Arts Councils from countries with larger populations, such as India,²⁷ all provide critical support and substantial advocacy for music. Other examples include government institutions collaborating and advocating music through their funded country-based pavilion initiatives at Midem, the world’s largest music conference.²⁸

Government ministries and arts councils provide critical support for the Music Community, including commercial music organizations. By way of example, government ministries’ and arts councils’ substantial connection to and support of “music” is noted in the reports of funding and support for music. Some examples to showcase the degree of power of the IFACCA’s membership towards the string and global and national music are music investment and music funding (Annual reports by governments and councils):

- New Zealand Ministry of Culture has funded significant music projects. Some include the REAL New Zealand Music Tour (\$415,000), the New Zealand String Quartet (\$150,000) and New Zealand Music Commission: (\$1,378,000).²⁹
- The Australian Government/Council For The Arts invested \$51.2 million for the nation’s orchestras; \$21.6 million for opera; \$10.8 million for other music artists and

²⁴ U.S. Copyright Office, <http://www.copyright.gov/carp/m200a.html>

²⁵ 2011 Annual Report for Cyprus Ministry of Culture, Section 1.2 “Music”

(http://www.moec.gov.cy/en/annual_reports/annual_report_2011_en.pdf). Activities include Music Performances in Cyprus (1.2.1) and Abroad (1.2.2), Subsidization of Paphos Aphrodite Festival (1.2.3), Music Publications (1.2.4), Subsidization and Purchases of Digital Records (1.2.5), Promotion for Cypriot musical creativity abroad (1.2.6), Cyprus Symphony Orchestra Foundation (1.2.7), Music Information Centre (1.2.8), Developing Music Education (1.2.9), Organising of the 1st Musicological Symposium (1.2.10) and Musical Festivities for the European Volunteerism Year (1.2.11)

²⁶ http://www.culturalpolicies.net/down/albania_012011.pdf

²⁷ 2010-11 Annual Report from India Ministry of Culture, [http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011\(Eng\).pdf](http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011(Eng).pdf)

²⁸ <http://my.midem.com/en/contact-us/pavilion-representatives/>

²⁹ 2011 Annual Report from New Zealand Ministry of Culture:

[http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20\(D-0448383\).PDF](http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20(D-0448383).PDF)

organizations; \$13.1 million for multi-platform artists and organizations; and \$4 million in miscellaneous funding, including sector building and audience development initiatives and programs.³⁰

- Canada Council for the Arts is Canada’s national, arts funding agency investing \$28 million in its Canada Council Musical Instrument Bank (Page 16) and \$28,156,000 in Music Arts Programs (Page 66).³¹ The Government of Canada also renewed its annual investment of \$27.6 million over five years in the Canada Music Fund.³²
- The United Kingdom Department for Culture and Education (DfE) will fund music education at significant levels: £77 million, £65 million and £60 million will be available in the three years from April 2012.³³
- The United States National Endowment of the Arts has awarded more than \$4 billion to support the arts since its inception³⁴ and has a strong focus on music as outlined in its Strategic Plan³⁵ with Congress requested to provide \$154,465,000 for fiscal year 2014.³⁶
- The National Arts Council of South Africa invested 2,536,131 ZAR in Music and 9,995,000 ZAR in Orchestras and has focused strongly on the “Strengthening of live indigenous music and advocating the revival of the live music circuit in South Africa”³⁷
- The Singapore Arts Council will fund \$10.2 million in the arts under its 2013 Grants Framework, including the Ding Yi Music Company and Siong Leng Musical Association.³⁸
- In 2011, the support for artistic activities by the Arts Council of Finland was €32.4 million of which €4,921,850 was awarded to music.³⁹

Each of IFACCA’s members has a clear association with, and mandate to support the music arts in their countries. In most countries, their ministry of culture/arts council is the largest funder and marketing supporter of the music arts.

³⁰ 2011 Annual Report for the Australia Council for the Arts, http://www.australiacouncil.gov.au/data/assets/pdf_file/0016/142351/Australia-Council-Annual-Report-201112.pdf, Page 28

³¹ 2011 Annual Report for Canada Council for the Arts, http://www.canadacouncil.ca/NR/rdoonlyres/6F7549BB-F4E5-4B8B-95F4-1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf

³² <http://www.pch.gc.ca/eng/1294862453819/1294862453821>

³³ Department for Culture, The Importance of Music, A National Plan for Music Education, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/180973/DFE-00086-2011.pdf, Page 4, 2011

³⁴ 2011 Annual report for the National Endowment of the Arts, <http://www.nea.gov/about/11Annual/2011-NEA-Annual-Report.pdf>, Page 2

³⁵ NEA Strategic Plan 2012-2016, www.arts.gov/about/Budget/NEAStrategicPlan2012-2016.pdf

³⁶ http://www.ifacca.org/national_agency_news/2013/04/10/us-president-requests-154465000-neh-2014/

³⁷ 2010-2011 Annual Report for the National Arts Council South Africa, National Arts Council South Africa, <http://www.nac.org.za/media/publications/AR%2010-11%20NAC.PDF/download>, Page 11. Also Mmino, the South African – Norwegian Education Music Programme, solely funds music projects funding a total of 294 projects. Thirteen projects were allocated funding for a total of R1,680,600 of which R1,381,000 went towards music educational and R299,600 to exchange projects (Page 10)

³⁸ Singapore Arts Council, <http://www.nac.gov.sg/media-centre/news-releases/news-detail?id=c2db15e2-c319-40ec-939c-d58735d0a91c>

³⁹ <http://www.taiteenkeskustoimikunta.fi/documents/10162/31704/TY+tilastotiedote+1+12+.pdf>, Page 1 and Page

Another clear example of an “entity dedicated to the community” with members that cover hundreds of millions of music constituents with formal boundaries is A2IM, the American Association of Independent Music. A2IM has two types of members: U.S independent Label members and Associate members. A2IM membership for Labels and Associates is invoked formally through an application and if accepted would require annual membership dues.⁴⁰

The reach of A2IM Associate⁴¹ membership covers hundreds of millions of entities (i.e. the reach of A2IM’s total membership “geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents – See Application Answer to Question 20a).

Organized and strictly delineated communities related to music that are A2IM members include:

- **Apple iTunes**⁴² – iTunes accounts for 63% of global digital music market⁴³ - a majority – with a registered community of 800 million registered members⁴⁴ available in 119 countries who abide to strict terms of service and boundaries⁴⁵ and have downloaded over 25 billion songs⁴⁶ from iTunes’ catalog of over 43 million songs⁴⁷ covering a global music community, regardless of genre or whether the community entities are amateur, professional, commercial or non-commercial. To add music to iTunes, all music artists must have a formal membership with iTunes via an Apple ID registration, which includes a current credit card on file.⁴⁸
- **Pandora**⁴⁹ – Pandora is the world’s largest streaming music radio with a community of over 250 million registered members.⁵⁰
- **Spotify**⁵¹ – Spotify is the world’s largest music streaming community with over 50 million active registered members in 58 countries and over 30 million songs. The music community uploads 20,000 songs every day.⁵²
- **Vevo**⁵³ – Vevo is the world’s leading all-premium music video community and platform with over 8 billion monthly views globally.⁵⁴

⁴⁰ <http://a2im.org/about-joining/>

⁴¹ <http://a2im.org/groups/tag/associate+members/>

⁴² <http://a2im.org/groups/itunes>

⁴³ <http://appleinsider.com/articles/13/04/16/apples-itunes-rules-digital-music-market-with-63-share>

⁴⁴ <http://www.npr.org/blogs/therecord/2015/01/06/375173595/with-downloads-in-decline-can-itunes-adapt>

⁴⁵ <http://www.apple.com/legal/internet-services/itunes/ww/index.html>

⁴⁶ <http://www.apple.com/pr/library/2013/02/06iTunes-Store-Sets-New-Record-with-25-Billion-Songs-Sold.html>

⁴⁷ <https://www.apple.com/itunes/features/>

⁴⁸ <https://www.apple.com/itunes/working-itunes/sell-content/music-faq.html>

⁴⁹ <http://a2im.org/groups/pandora>

⁵⁰ <http://www.cnet.com/news/like-a-rolling-milestone-pandora-hits-250m-registered-users/> and <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MTkxNTM1fENoaWxkSUQ9LTF8VHlwZT0z&t=1>, Pg.9

⁵¹ <http://a2im.org/groups/spotify>

⁵² <https://press.spotify.com/us/information/>

⁵³ <http://a2im.org/groups/vevo/>

- **Youtube**⁵⁵ – Youtube is the world’s largest music video streaming community with millions of music creators -- amateur, professional, commercial or non-commercial -- and over 1 billion registered members covering all regions globally. 6 billion hours of video is watched every month on Youtube,⁵⁶ of which 38.4% is music-related.⁵⁷
- **ReverbNation**⁵⁸ – ReverbNation⁵⁹ is one of the world’s largest music community and a leading music distributor with over 3.87 million musicians, venues labels and industry professionals covering every country globally. The ReverbNation community grows by over 50,000 artists, bands, labels and industry professionals monthly.
- **BMG**⁶⁰ – BMG is focused on the management of music publishing and recording rights. BMG has an international presence and represents over 2.5 million music rights globally.⁶¹

A2IM also includes members that are associated with global government agencies which exclusively represent substantial music economies and music members, such as France (BureauExport⁶²), China (China Audio Video Association⁶³) and Germany (Initiative Musik).⁶⁴ A2IM also has Affiliate⁶⁵ associations within the global music community. These include Affiliates such as MusicFirst,⁶⁶ the Copyright Alliance,⁶⁷ the Worldwide Independent Network (WIN)⁶⁸ and Merlin.⁶⁹

A2IM also represents a recognized Music Coalition representing the interests of the Global Independent Music Community.⁷⁰ The A2IM Coalition includes Merlin, a global rights agency for the independent label sector, representing over 20,000 labels from 39 countries, Worldwide Independent Network (representing label creators in over 20 countries), Association of Independent Music (representing largest and most respected labels in the world), and IMPALA (Independent Music Companies Association on behalf of over 4,000 independent music companies and national associations across Europe, representing 99% of music actors in Europe which are micro, small and medium sized enterprises.

⁵⁴ <http://www.vevo.com/c/EN/US/about>

⁵⁵ <http://a2im.org/groups/youtube/>

⁵⁶ <https://www.youtube.com/yt/press/statistics.html>

⁵⁷ http://www.researchandmarkets.com/reports/2092499/internet_video_2011_2014_view_share_site_and

⁵⁸ <http://a2im.org/groups/reverb-nation/>

⁵⁹ <http://www.reverbnation.com/about>

⁶⁰ <http://a2im.org/groups/bmg-rights/>

⁶¹ <http://www.bmg.com/category/about-us/history/>

⁶² <http://a2im.org/groups/french-music-export-office>

⁶³ <http://a2im.org/groups/china-audio-video-association-cava>

⁶⁴ <http://a2im.org/groups/initiative-musik-gmbh>

⁶⁵ <http://a2im.org/groups/tag/associate+members/>

⁶⁶ <http://musicfirstcoalition.org/coalition>, The musicFIRST Coalition, with founding members A2IM, RIAA, and Recording Academy represents musicians, artists, managers, music businesses, and performance right advocates.

⁶⁷ <http://www.copyrightalliance.org/members>

⁶⁸ <http://www.winformusic.org>

⁶⁹ <http://www.merlinnetwork.org>

⁷⁰ <https://www.icann.org/en/system/files/correspondence/bengloff-to-chehade-et-al-20aug14-en.pdf> and <https://www.icann.org/en/system/files/correspondence/bengloff-to-crocker-et-al-07mar15-en.pdf>

Cumulatively, A2IM's Label and Associate Membership, A2IM's Affiliates and the A2IM's Global Independent Music Community Coalition, covers a majority of the global music community. Its cumulative membership is in the hundreds of millions of entities with formal boundaries belonging to strictly organized and delineated communities related to music as per the Community Definition and Size (See Application answer to Question 20a).

Another global Music Community Coalition led by the RIAA "on behalf of over 15 national and international trade associations" also expressed its support for .MUSIC to be under a "community" application model, including encouraging statements in support of DotMusic's policies that stated that the coalition "was encouraged to see" that DotMusic "included several measures to deter and address copyright infringement within that TLD." The "coalition members represent the people that write, sing, record, manufacture, distribute and/or license over 80% of the world's music"⁷¹ – a majority of global music.⁷²

Another letter⁷³ sent to ICANN (on April 14th, 2015) by Danielle Aguirre from the NMPA and on behalf of a music publisher and songwriter community coalition representing a majority of the global music publishing community, also expressed "support [for] the .MUSIC community applications because respecting and protecting music rights serves the global music community and the public interest."

Collectively, the DotMusic application received support from the largest coalition of music community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support⁷⁴ from institutions/organizations representing a majority of the Community addressed. Music -- as commonly-known by the general public and experienced today -- would not be possible without these supporting, non-negligible and relevant organizations that have endorsed DotMusic.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Community Establishment* and *Community Endorsement* from the majority of the global Music Community as defined.

⁷¹ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.1

⁷² <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.3, Appendix A

⁷³ <https://www.icann.org/en/system/files/correspondence/aguirre-to-icann-board-eiu-14apr15-en.pdf>

⁷⁴ <http://music.us/supporters>

B) Nexus⁷⁵

According to the Applicant Guidebook (“AGB”), to receive the maximum score for Nexus, the applied-for string -- “music” -- must match the name of the community or be a well-known short-form or abbreviation of the community name.

The *Nexus* of the “Music Community” entirely matches the applied-for “music” string because it represents the entire global Music Community as commonly-known and perceived by the general public. This definition allows for all constituents with a requisite awareness of the Community defined to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination. The definition of the Community requires that members have an active, non-tangential relationship with the applied-for string and the requisite awareness of the music community they identify with as part of the registration process. It is clear that the general public will directly associate and equate the string with the Community as defined by DotMusic. There is no possibility of overreaching beyond the definition or allowing unrelated non-music entities to be included as part of the Community.

Community members may register a .MUSIC by either:

- 1) Identifying that they belong to a Music Community Member Organization (“MCMO”); or
- 2) Identifying the community they belong to, which is consistent with the definition of the Community: “the strictly delineated and organized logical alliance of communities of similar nature related to music.”

All Community members are aware of and recognize their inclusion in the defined Community by identifying which clearly defined community they belong to and have an active participation in. The *nexus* of the applied-for string ensures inclusion of the entire global community that the string represents while excluding unrelated-entities not associated with the string. This way there is a clear match and alignment between the “music” sting and the Community defined.

While the exact size of the global Music Community as defined is unknown (there is no empirical evidence providing an exact, finite number because amateur entities are also included in the Community’s definition), it is in the considerable millions as explicitly stated in the DotMusic Application. DotMusic’s definition of the Community and mutually-inclusive Registration Policies ensure that eligible members are only music-related and associated with the string. This is because the string identifies all constituents involved in music. Music-only participation optimizes the relevancy of .MUSIC domains to the string and entirely matches the *nexus* between the string and Community defined. According to DotMusic, the Community *definition, eligibility* criteria and *content and use* requirements ensure that peripheral industries

⁷⁵ See <http://music.us/nexus>

and entities not related to music are excluded so that the string and the defined Community matches and aligns in a consistent manner consistent with DotMusic’s community-based purpose i.e. only entities with music-related activities are able to register .MUSIC domains.

Membership aligns with the *nexus* of the Community and the string, which is explicitly relevant to music. The string as defined in the application demonstrates uniqueness because it has no other significant meaning beyond identifying the community described in the application. According to DotMusic’s application, any tangential or implicit association with the *nexus* of the Community and the string is not regarded as a delineated membership since it would be considered unclear, dispersed or unbound. Such unclear, dispersed or unbound tangential relationships with the defined “music” Community and applied-for “music” string would not constitute a qualifying Community membership and would be ineligible for registration.

The inclusion of every music constituent type is paramount to the purpose of the string. Every type of music constituent critically contributes to the function and operation of the music sector within a regulated framework given the symbiotic overlapping nature of the Community as defined and structured. Music would not function as it does today without the participation of all music constituent types which cumulatively match the string with the Community definition.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Nexus*.

Respectfully Submitted,

Signature: 
Contact Information Redacted May 27 '15 ip: 151.230.66.113

Name: Jeremy Silver

Title: Dr

Organization: Mediaclarity Digital Limited

Re: Expert Testimony on (i) Community Establishment; (ii) Nexus; and (iii) Support for DotMusic's Community-Based Application¹ for .MUSIC (Application ID 1-1115-14110)

To ICANN and the Economist Intelligence Unit ("EIU"):

Please accept this letter as an indication of my professional opinion that there is compelling evidence for DotMusic's application to convincingly meet the full criteria under Community Priority Evaluation on the following points: (1) the Music Community's *Establishment* as defined by DotMusic; (2) the matching Nexus between the "music" Community and the "music" string (or top-level domain); and (3) that DotMusic possesses documented *Support* from organizations representing the global Music Community addressed and defined.

Please also find below the analysis of the DotMusic application pertaining to the Community Priority Evaluation criteria, and on which my assessment is based. The analysis is consistent with key findings in my research field of organization studies that focus specifically on matters relating to community (see for example: Glynn, 2008;² Marquis, Glynn & Davis, 2007;³ Marquis, Lounsbury & Greenwood, 2011;⁴ Schneiberg & Lounsbury, 2008;⁵ Thornton, Ocasio & Lounsbury, 2012).⁶ My credentials are attached below this analysis to identify my level of expertise and specialized knowledge with respect to the music community's organization and delineation.

¹<https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1392>

² Glynn, M. A. (2008). Configuring the Field of Play: How Hosting the Olympic Games Impacts Civic Community. *Journal of Management Studies*, 45(6), 1117-1146

³ Marquis, C., Glynn, M. A., & Davis, G. F. (2007). Community Isomorphism and Corporate Social Action. *The Academy of Management Review*, 32(3), 925-945

⁴ Marquis, C., Lounsbury, M., & Greenwood, R. (2011). Introduction: Community as an Institutional Order and a Type of Organizing. *Research in the Sociology of Organizations*, 33, ix-xxvii.

⁵ Schneiberg, M., & Lounsbury, M. (2008). Social movements and institutional analysis. In R. Greenwood, C. Oliver, R. Suddaby & K. Sahlin (Eds.), *The SAGE Handbook of Organizational Institutionalism* (pp. 650-672). Los Angeles: SAGE.

⁶ Thornton, P. H., Ocasio, W., & Lounsbury, M. (2012). *The institutional logics perspective: A New Approach to Culture, Structure and Process*. Oxford: Oxford University Press.

SUMMARY

DotMusic has established the following:

- 1) Its Community definition recognizes the cohesive, symbiotic and overlapping nature of the global Music Community. The definition includes those associated with commercial and non-commercial creation, performance, marketing and distribution of music;
- 2) "Music Community" members have the requisite awareness and recognition of the interdependency, overlapping and cohesive nature of each "organized community of similar nature that relates to music." These organized and aligned communities are closely united and make "music" as we know it today. It is this self-awareness and interdependence that gives the "Music Community" its strength. With exponential growth of the Internet, mobile and the Domain Name System (DNS), the "Music Community's" use and reliance on the Internet to create, market and disseminate music-related content, products, services and activities will continue to grow;
- 3) The "Music Community" functions in a regulated sector with global copyright protections – it is clear that the "community," as defined, implies "more of cohesion than a mere commonality of interest" with an "awareness and recognition of a community among its members." Several international treaties mandate a globally-recognized set of standards for the protection of the "Music Community" member rights with relation to their copyrighted music works around the world;
- 4) The "Music" Community -- as defined by DotMusic - - has at least one entity dedicated to the community supporting DotMusic's application. Such documented *Support* includes several "international federation of national communities of a similar nature," music coalitions and others that are strongly associated with "music," which represent a majority of the Community with considerable millions of members worldwide.⁷
- 5) The Nexus of the "music" Community matches the "music" applied-for string because it represents the entire global Music Community – a community that pre-existed 2007 with a size in the considerable millions of constituents. The "Music Community" definition -- which incorporates the strict fundamental attributes of

⁷ <http://music.us/supporters>

a closely united Community definition that is "organized" and "delineated" -- ensures that all of its constituent members have a requisite awareness of the community as defined, including both commercial and non-commercial stakeholders, to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination.

6) DotMusic has received support from the largest coalition of Music Community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support⁸ from institutions/organizations representing this Community.

There is substantive evidence that DotMusic fulfils the *Nexus, Community Establishment and Support* criteria for the "Music" string. The inclusion and representation of every music constituent type is paramount to the articulated purpose of the string. DotMusic and its application's global Music Community supporters substantiate that every type of music constituent contributes to the function and operation of the music sector within a regulated framework. The symbiotic nature of the Community as defined and structured means that "Music" would not function as it does today without the participation of all music constituent types that interconnect to match the "music" string with the "music" Community definition.

ASSESSMENT OF COMMUNITY DEFINITION, ESTABLISHMENT AND NEXUS

A) Music Community Definition, Establishment & Community Endorsement⁹

DotMusic's definition of the "Music Community" as a "strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music" (See Application, 20a) is factually accurate and representative of the "Music Community." Community characteristics include:

i) An Organized, Cohesive, Interdependent Logically-Allied Community:

The "Music Community" definition covers the regulated, interdependent and cohesive nature of the music sector

⁸ <http://music.us/supporters>

⁹ See <http://music.us/establishment>

that exists today. "Music Community" members have the requisite awareness and recognition of the interdependent, overlapping and cohesive nature of each "organized community of similar nature that relates to music" that comprises the "Music Community." Without such cohesiveness and interdependency, the defined "Music" Community matching the applied-for string ("Music") would not be able to function in its regulated sector, a "Music" regulated sector that was publicly recognized by both ICANN and the Government Advisory Committee.¹⁰

As a result, the Music Community as defined is "closely united" (As per the definition of "cohesion" according to Merriam-Webster dictionary¹¹) or "united or form a whole" (As per the definition of the word "cohesion" according to Oxford Dictionaries¹²).

The "Music Community" as defined (a "strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music") establishes that:

- (1) There is an awareness and recognition among its members;
- (2) The organized and delineated logical alliance of communities exists; and
- (3) The Community is "closely united" and "interdependent" (i.e. Each "organized community of similar nature that relates to music" which is part of the "logical alliance of communities that relate to music" is not mutually exclusive).

In short, the applied-for string ("Music") matches the name of the "Music" Community as defined by DotMusic's application. DotMusic's "Music Community" definition accurately represents the common definition of the "Music Community," which is confirmed by Wikipedia.

According to Wikipedia:¹³

¹⁰ <https://www.icann.org/en/system/files/bm/briefing-materials-2-05feb14-en.pdf>, Pg.3

¹¹ <http://www.merriam-webster.com/dictionary/cohesion>

¹²

http://www.oxforddictionaries.com/us/definition/american_english/cohesion

¹³ Wikipedia is ranked 6th among the ten most popular websites (Alexa, Retrieved March 23, 2015 from <http://www.alexa.com/siteinfo/wikipedia.org>) and constitutes the Internet's largest, most frequently updated and popular general reference work (See OECD, OECD Internet Economy Outlook 2012, OECD Publishing, http://www.oecd-ilibrary.org/science-and-technology/oecd-internet-economy-outlook-2012_9789264086463-en,Pg.172) that compares favorably to the accuracy of other encyclopedias (such as the Britannica) according to a 2012 study

Music community is defined as a logical alliance of interdependent communities that are related to music, which include commercial participants...and non-commercial participants...and consists of an "ensemble of practices and institutions that make possible and regulate the production, distribution and consumption of music"...UNESCO identifies the music community as a "community of identity" implying common identifiable characteristics and cohesive attributes such as sharing a music culture, norms and subscribing to common ideals related to music...The music community is not defined as much by demographic indicators such as race, gender, and income level, as it is by common values, cohesive norms and interconnected structures to build a community identity. It refers to music-related individuals and organisations in a shared environment with shared understandings and practices, modes of production and distribution. The shared organisation of collective musical activities, identity and community value is created as result of infrastructure and a shared set of common values...Many studies outline the historical, cultural, and spatial significance of the music community, including how its identity is formed through musical practices. The music community shares a cohesive and interconnected structure of artistic expression, with diverse subcultures and socio-economic interactions...subscribing to common ideals. Under such structured context music consumption becomes possible regardless whether the transaction is commercial and non-commercial.¹⁴

ii) An Aware, Pre-Existing and Recognized Community of Considerable Millions Worldwide:

DotMusic's definition of the Community covers all Community members associated with the string, each with a requisite awareness of the Community that can be validated through their natural association with a particular music-related community that they clearly identify with. According to DotMusic, all Music Community members must identify their music-related community in order to

conducted in partnership with Oxford University (See <http://blog.wikimedia.org/2012/08/02/seven-years-after-nature-pilot-study-compares-wikipedia-favorably-to-other-encyclopedias-in-three-languages>).

¹⁴ Music Community. In Wikipedia. Retrieved March 23, 2015, from https://en.wikipedia.org/wiki/Music_community

demonstrate their requisite awareness of the defined Community as part of the .MUSIC registration and validation process.

According to DotMusic, the Music Community's geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents (Application Answer to Question 20a). According to DotMusic, "registrants will be verified using Community-organized, unified "criteria taken from holistic perspective with due regard of Community particularities" that "invoke a formal membership (Application Answer to Question 20a)." The defined Community represents all music-related entities with a clear and straightforward membership with the Community involved in the legal production, performance, promotion, and distribution of music worldwide. According to DotMusic, the Music Community members must have an active, non-tangential relationship with the applied-for string "music" and also have the requisite awareness of the music-related community that they are a part of by specifically identifying it as part of the registration and validation process (i.e. upon successful registration and validation, each community member will be given a unique community identification number that will automatically associate them with their identified community and the "music" string).

DotMusic's Community definition matches the applied-for string because it allows both commercial and non-commercial stakeholders to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination/exclusion. Given the regulated sector of the community, it is clear that the "Music Community" as defined implies "more of cohesion than a mere commonality of interest" with an "awareness and recognition of a community among its members." Several international treaties mandate cohesive and globally-recognized set of standards for the protection of the music community members' rights with relation to their copyrighted music works around the world.¹⁵

The Berne Convention for the Protection of Literary and Artistic Works¹⁶ provides that each of the 168 contracting

¹⁵

http://www.rightsdirect.com/content/rd/en/toolbar/copyright_education/International_Copyright_Basics.html

¹⁶ http://www.wipo.int/treaties/en/text.jsp?file_id=283698

parties¹⁷ (representing an overwhelming majority of the world's population) provides automatic protection for music works first published in other countries of the Berne union and for unpublished music works whose authors are citizens of or resident in such other countries.¹⁸ This means that if a Music Community member's copyright rights are violated in any other signatory country's jurisdiction, then the music community member will have the music copyright rights given by that country. Music Community members are clearly aware of the collective Community's rights, which could not be made possible without these cohesive and globally-recognized set of standards. If such standards were not coherent or enforced then music would not be able to exist in its current form and the industry component of the Music Community sector would not exist. As such, the Community's *Establishment* and definition is "cohesive" and hence cannot be construed since the Community is a logical alliance of music communities that establish a clearly delineated and organized Community structure that is "closely united" and functions as a "whole"

Further evidence to substantiate the cohesive, symbiotic and overlapping nature of the Community, includes other globally-recognized standards and classification systems, which identify who the individual songwriters, publishers and rights holders are and which songs they are associated with so that Community members are appropriately compensated, regardless of whether the constituent is a commercial, non-commercial or amateur entity. The "music" string is commonly used in classification systems such as ISMN,¹⁹ ISRC,²⁰ ISWC,²¹ ISNI.²² (Application Answer to

¹⁷

http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=15

¹⁸ <http://www.britannica.com/EBchecked/topic/62482/Berne-Convention>

¹⁹ The International Standard Music Number (ISMN) is a unique number for the identification of all notated music publications from all over the world. The ISMN is an ISO certified global standard number (ISO 10957:2009). See <http://www.ismn-international.org/whatis.html> and http://www.iso.org/iso/home/store/catalogue_ics/catalogue_detail_ics.htm?csnumber=43173

²⁰ The ISRC (International Standard Recording Code) is the international identification system for sound recordings and music video recordings. The ISRC is an ISO certified global standard number (ISO 3901:2001) and is managed by the IFPI. See <http://isrc.ifpi.org>, <https://www.usisrc.org/about/index.html> and http://www.iso.org/iso/catalogue_detail?csnumber=23401

²¹ The ISWC (International Standard Musical Work Code) is a unique, permanent and internationally recognized reference number for the identification of musical works. The ISWC has been approved by ISO

Question 20a). For example, if a music entity would like to distribute their music, either commercially or for free, then an ISRC can be assigned to globally identify any specific music work. An ISRC, which facilitates efficient music discovery and community member payment, is constructed from 12 characters representing country, registrant, year of registration and designation (i.e. the serial number assigned by the registrant). With respect to domains, an equivalent system that relates to identifying a specific domain's registrant and other relevant information pertaining to the domain is WHOIS. Domain registrants are required by ICANN "to provide accurate WHOIS contact data" or else their domain "registration may be suspended or even cancelled".²³

Without such Music Community "cohesion" and standardized systems functioning in its regulated sector, the Music Community would not be able to create, market and distribute their music. By the same token, fans would not be able to identify the music they are listening to with a specific music artist, regardless of whether the listening activity or behavior is commercial or non-commercial in nature. The socio-economic structure that characterizes "music" as commonly-known today would be non-existent without these organized and delineated elements that commonly define the Community.

iii) International Federations and Organizations Dedicated to Community Functions:

According to ICANN's Applicant Guidebook ("AGB")²⁴: "With respect to "Delineation" and "Extension," it should be noted that a community can consist of...a logical alliance of communities (for example, an international federation of national communities of a similar nature... viable as such,

(International Organization for Standardisation) as a global standard (ISO 15707:2001) and is managed by CISAC. See <http://www.iswc.org/en/faq.html> and

http://www.iso.org/iso/catalogue_detail?csnumber=28780

²² The International Standard Name Identifier (ISNI) is the ISO certified global standard number (ISO 27729) for identifying the millions of contributors to creative works and those active in their distribution. ISNI holds public records of over 8 million identities and 490,000 organizations. See <http://www.isni.org/> and

http://www.iso.org/iso/catalogue_detail?csnumber=44292

²³ <https://whois.icann.org/en/about-whois> and <https://www.icann.org/resources/pages/faqs-f0-2012-02-25-en>

²⁴ <https://newgtlds.icann.org/en/applicants/agb/guidebook-full-11jan12-en.pdf>

provided the requisite awareness and recognition of the community is at hand among the members." (AGB, 4-12). The community as defined in the DotMusic application has at least one entity mainly dedicated to the community which has supported DotMusic, which include several "international federation of national communities of a similar nature" relating to music, music coalitions and other relevant and non-negligible music organizations.

One of these entities include the only international federation of national communities relating to government culture agencies and arts councils, which has an integral association with music globally: the International Federation of Arts Councils and Culture Agencies (IFACCA).

IFACCA is the only international federation that represents government culture agencies and arts councils globally. These national communities are governmental institutions that play a pivotal role with respect to music.²⁵ IFACCA's members cover the majority of music entities globally, regardless of whether they are commercial, non-commercial or amateurs. Government ministry of culture and council agencies related to music cover a majority of the overall community with respect to headcount and geographic reach. The "Size" covered reaches over a hundred million music entities i.e. "considerable size with millions of constituents" per Application Answer to Question 20a.

The string "music" falls under the jurisdiction of each country's Ministry of Culture governmental agency or arts/music council (emphasis added). The degree of power and influence of government ministry of culture and council agencies with respect to music surpasses any organization type since these agencies (i) provide the majority of funding for music-related activities; (ii) regulate copyright law; and (iii) encompass all the music entities that fall under their country, regardless whether these entities are commercial, non-commercial or amateurs. IFACCA is globally recognized by its strategic partners, such as UNESCO, a United Nations agency representing 195 member states and the European Commission.²⁶ The UNESCO strategic partnership²⁷ is relevant, especially since UNESCO founded the International Music Council (the "IMC") in 1949, which represents over 200 million

²⁵ http://www.ifacca.org/membership/current_members/

²⁶ http://www.ifacca.org/strategic_partners/

²⁷ http://www.ifacca.org/strategic_partners/

music constituents from over 150 countries and over 1000 organizations globally.²⁸

Government activities in the clearly delineated and organized "Music Community" include setting statutory royalty rates. For example, in the United States, mechanical royalties are based on a "statutory rate" set by the U.S. Congress. This rate is increased to follow changes in the economy, usually based on the Consumer Price Index. Currently, the mechanical statutory rate is \$0.091 for songs five minutes or less in length or \$.0175 per minute for songs that are over five minutes long.²⁹

Ministries of culture and arts councils (that comprise IFACCA's membership) support musicians, musical performances, independent music artists, non-commercial musical expression and education in their respective countries. The 165 ministries of culture, arts councils and affiliates that comprise IFACCA's membership support the "performing arts" and music specifically. Without the financial and logistical support of arts councils and the ministries of culture, the music community would be adversely affected, and in some countries, may not exist in any appreciable manner. For example, the Ministry of Culture 2011 budget for the small country state of Cyprus for culture funding was €34,876,522 with critical support of music activities.³⁰ Other small government Ministries of Culture, such as Albania,³¹ or government Ministries of Culture and Arts Councils from countries with larger populations, such as India,³² all provide critical support and substantial advocacy for music. Other examples include government institutions collaborating and advocating music through their funded

²⁸ <http://www.imc-cim.org/about-imc-separator/who-we-are.html>

²⁹ U.S Copyright Office, <http://www.copyright.gov/carp/m200a.html>

³⁰ 2011 Annual Report for Cyprus Ministry of Culture, Section 1.2 "Music" (http://www.moec.gov.cy/en/annual_reports/annual_report_2011_en.pdf). Activities include Music Performances in Cyprus (1.2.1) and Abroad (1.2.2), Subsidization of Paphos Aphrodite Festival (1.2.3), Music Publications (1.2.4), Subsidization and Purchases of Digital Records (1.2.5), Promotion for Cypriot musical creativity abroad (1.2.6), Cyprus Symphony Orchestra Foundation (1.2.7), Music Information Centre (1.2.8), Developing Music Education (1.2.9), Organising of the 1st Musicological Symposium (1.2.10) and Musical Festivities for the European Volunteerism Year (1.2.11)

³¹ http://www.culturalpolicies.net/down/albania_012011.pdf

³² 2010-11 Annual Report from India Ministry of Culture, [http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011\(Eng\).pdf](http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011(Eng).pdf)

country-based pavilion initiatives at Midem, the world's largest music conference.³³

Government ministries and arts councils provide critical support for the Music Community, including commercial music organizations. By way of example, government ministries' and arts councils' substantial connection to and support of "music" is noted in the reports of funding and support for music. Some examples to showcase the degree of power of the IFACCA's membership towards the string and global and national music are music investment and music funding (Annual reports by governments and councils):

- New Zealand Ministry of Culture has funded significant music projects. Some include the REAL New Zealand Music Tour (\$415,000), the New Zealand String Quartet (\$150,000) and New Zealand Music Commission: (\$1,378,000).³⁴
- The Australian Government/Council For The Arts invested \$51.2 million for the nation's orchestras; \$21.6 million for opera; \$10.8 million for other music artists and organizations; \$13.1 million for multi-platform artists and organizations; and \$4 million in miscellaneous funding, including sector building and audience development initiatives and programs.³⁵
- Canada Council for the Arts is Canada's national, arts funding agency investing \$28 million in its Canada Council Musical Instrument Bank (Page 16) and \$28,156,000 in Music Arts Programs (Page 66).³⁶ The Government of Canada also renewed its annual investment of \$27.6 million over five years in the Canada Music Fund.³⁷
- The United Kingdom Department for Culture and Education (DfE) will fund music education at

³³ <http://my.midem.com/en/contact-us/pavilion-representatives/>

³⁴ 2011 Annual Report from New Zealand Ministry of Culture: [http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20\(D-0448383\).PDF](http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20(D-0448383).PDF)

³⁵ 2011 Annual Report for the Australia Council for the Arts, http://www.australiacouncil.gov.au/_data/assets/pdf_file/0016/142351/Australia-Council-Annual-Report-201112.pdf, Page 28

³⁶ 2011 Annual Report for Canada Council for the Arts, http://www.canadacouncil.ca/NR/rdonlyres/6F7549BB-F4E5-4B8B-95F4-1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf

³⁷ <http://www.pch.gc.ca/eng/1294862453819/1294862453821>

significant levels: £77 million, £65 million and £60 million will be available in the three years from April 2012.³⁸

- The United States National Endowment of the Arts has awarded more than \$4 billion to support the arts since its inception³⁹ and has a strong focus on music as outlined in its Strategic Plan⁴⁰ with Congress requested to provide \$154,465,000 for fiscal year 2014.⁴¹
- The National Arts Council of South Africa invested 2,536,131 ZAR in Music and 9,995,000 ZAR in Orchestras and has focused strongly on the "Strengthening of live indigenous music and advocating the revival of the live music circuit in South Africa"⁴²
- The Singapore Arts Council will fund \$10.2 million in the arts under its 2013 Grants Framework, including the Ding Yi Music Company and Siong Leng Musical Association.⁴³
- In 2011, the support for artistic activities by the Arts Council of Finland was €32.4 million of which €4,921,850 was awarded to music.⁴⁴

Each of IFACCA's members has a clear association with, and mandate to support the music arts in their countries. In most countries, their ministry of culture/arts council is the largest funder and marketing supporter of the music arts.

³⁸ Department for Culture, The Importance of Music, A National Plan for Music Education, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/180973/DFE-00086-2011.pdf, Page 4, 2011

³⁹ 2011 Annual report for the National Endowment of the Arts, <http://www.nea.gov/about/11Annual/2011-NEA-Annual-Report.pdf>, Page 2

⁴⁰ NEA Strategic Plan 2012-2016, www.arts.gov/about/Budget/NEAstrategicPlan2012-2016.pdf

⁴¹ http://www.ifacca.org/national_agency_news/2013/04/10/us-president-requests-154465000-neh-2014/

⁴² 2010-2011 Annual Report for the National Arts Council South Africa, National Arts Council South Africa, <http://www.nac.org.za/media/publications/AR%2010-11%20NAC.PDF/download>, Page 11. Also Mmino, the South African – Norwegian Education Music Programme, solely funds music projects funding a total of 294 projects. Thirteen projects were allocated funding for a total of R1,680,600 of which R1,381,000 went towards music educational and R299,600 to exchange projects (Page 10)

⁴³ Singapore Arts Council, <http://www.nac.gov.sg/media-centre/news-releases/news-detail?id=c2db15e2-c319-40ec-939c-d58735d0a91c>

⁴⁴ <http://www.taiteenkeskustoimikunta.fi/documents/10162/31704/TY+tilastotiedote+1+12+.pdf>, Page 1 and Page 23

Another clear example of an "entity dedicated to the community" with members that cover hundreds of millions of music constituents with formal boundaries is A2IM, the American Association of Independent Music. A2IM has two types of members: U.S independent Label members and Associate members. A2IM membership for Labels and Associates is invoked formally through an application and if accepted would require annual membership dues.⁴⁵

The reach of A2IM Associate⁴⁶ membership covers hundreds of millions of entities (i.e. the reach of A2IM's total membership "geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents – See Application Answer to Question 20a).

Organized and strictly delineated communities related to music that are A2IM members include:

- **Apple iTunes**⁴⁷ – iTunes accounts for 63% of global digital music market⁴⁸ - a majority – with a registered community of 800 million registered members ⁴⁹ available in 119 countries who abide to strict terms of service and boundaries⁵⁰ and have downloaded over 25 billion songs⁵¹ from iTunes' catalog of over 43 million songs ⁵² covering a global music community, regardless of genre or whether the community entities are amateur, professional, commercial or non-commercial. To add music to iTunes, all music artists must have a formal membership with iTunes via an Apple ID registration, which includes a current credit card on file.⁵³

⁴⁵ <http://a2im.org/about-joining/>

⁴⁶ <http://a2im.org/groups/tag/associate+members/>

⁴⁷ <http://a2im.org/groups/itunes>

⁴⁸ <http://appleinsider.com/articles/13/04/16/apples-itunes-rules-digital-music-market-with-63-share>

⁴⁹ <http://www.npr.org/blogs/therecord/2015/01/06/375173595/with-downloads-in-decline-can-itunes-adapt>

⁵⁰ <http://www.apple.com/legal/internet-services/itunes/ww/index.html>

⁵¹ <http://www.apple.com/pr/library/2013/02/06iTunes-Store-Sets-New-Record-with-25-Billion-Songs-Sold.html>

⁵² <https://www.apple.com/itunes/features/>

⁵³ <https://www.apple.com/itunes/working-itunes/sell-content/music-faq.html>

- **Pandora**⁵⁴ – Pandora is the world's largest streaming music radio with a community of over 250 million registered members.⁵⁵
- **Spotify**⁵⁶ – Spotify is the world's largest music streaming community with over 50 million active registered members in 58 countries and over 30 million songs. The music community uploads 20,000 songs every day.⁵⁷
- **Vevo**⁵⁸ – Vevo is the world's leading all-premium music video community and platform with over 8 billion monthly views globally.⁵⁹
- **Youtube**⁶⁰ – Youtube is the world's largest music video streaming community with millions of music creators -- amateur, professional, commercial or non-commercial -- and over 1 billion registered members covering all regions globally. 6 billion hours of video is watched every month on Youtube,⁶¹ of which 38.4% is music-related.⁶²
- **Reverbnation**⁶³ – Reverbnation⁶⁴ is one of the world's largest music community and a leading music distributor with over 3.87 million musicians, venues labels and industry professionals covering every country globally. The Reverbnation community grows by over 50,000 artists, bands, labels and industry professionals monthly.

⁵⁴ <http://a2im.org/groups/pandora>

⁵⁵ <http://www.cnet.com/news/like-a-rolling-milestone-pandora-hits-250m-registered-users/> and <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MTkxNTM1FENoaWxkSUQ9LTF8VHIwZT0z&t=1>, Pg.9

⁵⁶ <http://a2im.org/groups/spotify>

⁵⁷ <https://press.spotify.com/us/information/>

⁵⁸ <http://a2im.org/groups/vevo/>

⁵⁹ <http://www.vevo.com/c/EN/US/about>

⁶⁰ <http://a2im.org/groups/youtube/>

⁶¹ <https://www.youtube.com/yl/press/statistics.html>

⁶²

http://www.researchandmarkets.com/reports/2092499/internet_video_2011_2014_view_share_site_and

⁶³ <http://a2im.org/groups/reverb-nation/>

⁶⁴ <http://www.reverbnation.com/about>

- **BMG**⁶⁵ – BMG is focused on the management of music publishing and recording rights. BMG has an international presence and represents over 2.5 million music rights globally.⁶⁶

A2IM also includes members that are associated with global government agencies which exclusively represent substantial music economies and music members, such as France (BureauExport ⁶⁷), China (China Audio Video Association⁶⁸) and Germany (Initiative Musik).⁶⁹ A2IM also has Affiliate ⁷⁰ associations within the global music community. These include Affiliates such as MusicFirst,⁷¹ the Copyright Alliance,⁷² the Worldwide Independent Network (WIN)⁷³ and Merlin.⁷⁴

A2IM also represents a recognized Music Coalition representing the interests of the Global Independent Music Community.⁷⁵ The A2IM Coalition includes Merlin, a global rights agency for the independent label sector, representing over 20,000 labels from 39 countries, Worldwide Independent Network (representing label creators in over 20 countries), Association of Independent Music (representing largest and most respected labels in the world), and IMPALA (Independent Music Companies Association on behalf of over 4,000 independent music companies and national associations across Europe, representing 99% of music actors in Europe which are micro, small and medium sized enterprises.

⁶⁵ <http://a2im.org/groups/bmg-rights/>

⁶⁶ <http://www.bmg.com/category/about-us/history/>

⁶⁷ <http://a2im.org/groups/french-music-export-office>

⁶⁸ <http://a2im.org/groups/china-audio-video-association-cava>

⁶⁹ <http://a2im.org/groups/initiative-musik-gmbh>

⁷⁰ <http://a2im.org/groups/tag/associate+members/>

⁷¹ <http://musicfirstcoalition.org/coalition>, **The musicFIRST Coalition**, with founding members A2IM, RIAA, and Recording Academy represents musicians, artists, managers, music businesses, and performance right advocates.

⁷² <http://www.copyrightalliance.org/members>

⁷³ <http://www.winformusic.org>

⁷⁴ <http://www.merlinnetwork.org>

⁷⁵ <https://www.icann.org/en/system/files/correspondence/bengloff-to-chehade-et-al-20aug14-en.pdf> and

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

Cumulatively, A2IM's Label and Associate Membership, A2IM's Affiliates and the A2IM's Global Independent Music Community Coalition, covers a majority of the global music community. Its cumulative membership is in the hundreds of millions of entities with formal boundaries belonging to strictly organized and delineated communities related to music as per the Community Definition and Size (See Application answer to Question 20a).

Another global Music Community Coalition led by the RIAA "on behalf of over 15 national and international trade associations" also expressed its support for .MUSIC to be under a "community" application model, including encouraging statements in support of DotMusic's policies that stated that the coalition "was encouraged to see" that DotMusic "included several measures to deter and address copyright infringement within that TLD." The "coalition members represent the people that write, sing, record, manufacture, distribute and/or license over 80% of the world's music"⁷⁶ – a majority of global music.⁷⁷

Collectively, the DotMusic application received support from the largest coalition of music community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support ⁷⁸ from institutions/organizations representing a majority of the Community addressed. Music -- as commonly-known by the general public and experienced today -- would not be possible without these supporting, non-negligible and relevant organizations that have endorsed DotMusic.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfils the criteria for *Community Establishment* and *Community Endorsement* from the majority of the global Music Community as defined.

⁷⁶ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.1

⁷⁷ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.3, Appendix A

⁷⁸ <http://music.us/supporters>

B) Nexus⁷⁹

According to the Applicant Guidebook ("AGB"), to receive the maximum score for Nexus, the applied-for string -- "music" -- must match the name of the community or be a well-known short-form or abbreviation of the community name.

The Nexus of the "Music Community" entirely matches the applied-for "music" string because it represents the entire global Music Community as commonly-known and perceived by the general public. This definition allows for all constituents with a requisite awareness of the Community defined to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination. The definition of the Community requires that members have an active, non-tangential relationship with the applied-for string and the requisite awareness of the music community they identify with as part of the registration process. It is clear that the general public will directly associate and equate the string with the Community as defined by DotMusic. There is no possibility of overreaching beyond the definition or allowing unrelated non-music entities to be included as part of the Community.

Community members may register a .MUSIC by either:

- 1) Identifying that they belong to a Music Community Member Organization ("MCMO"); or
- 2) Identifying the community they belong to, which is consistent with the definition of the Community: "the strictly delineated and organized logical alliance of communities of similar nature related to music."

All Community members are aware of and recognize their inclusion in the defined Community by identifying which clearly defined community they belong to and have an active participation in. The nexus of the applied-for string ensures inclusion of the entire global community that the string represents while excluding unrelated-entities not associated with the string. This way there is a clear match and alignment between the "music" string and the Community defined.

While the exact size of the global Music Community as defined is unknown (there is no empirical evidence providing an exact, finite number because amateur entities are also included in the Community's definition), it is in the considerable millions as explicitly stated in the DotMusic Application. DotMusic's definition of the Community and

⁷⁹ See <http://music.us/nexus>

mutually-inclusive Registration Policies ensure that eligible members are only music-related and associated with the string. This is because the string identifies all constituents involved in music. Music-only participation optimizes the relevancy of .MUSIC domains to the string and entirely matches the *nexus* between the string and Community defined. According to DotMusic, the *Community definition, eligibility criteria and content and use requirements* ensure that peripheral industries and entities not related to music are excluded so that the string and the defined Community matches and aligns in a consistent manner consistent with DotMusic's community-based purpose i.e. only entities with music-related activities are able to register .MUSIC domains.

Membership aligns with the *nexus* of the Community and the string, which is explicitly relevant to music. The string as defined in the application demonstrates uniqueness because it has no other significant meaning beyond identifying the community described in the application. According to DotMusic's application, any tangential or implicit association with the *nexus* of the Community and the string is not regarded as a delineated membership since it would be considered unclear, dispersed or unbound. Such unclear, dispersed or unbound tangential relationships with the defined "music" Community and applied-for "music" string would not constitute a qualifying Community membership and would be ineligible for registration.

The inclusion of every music constituent type is paramount to the purpose of the string. Every type of music constituent critically contributes to the function and operation of the music sector within a regulated framework given the symbiotic overlapping nature of the Community as defined and structured. Music would not function as it does today without the participation of all music constituent types which cumulatively match the string with the Community definition.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfils the criteria for Nexus.

Respectfully Submitted,

Signature: _____



Date & Place: Melbourne, April 20th, 2015

Relevant expertise for .MUSIC

I have written a peer-reviewed publications as well as a PhD on the workings of the popular music industry, focusing on how value is created, attributed and appropriated. My research has been used to examine (potential) forms of market abuse in the field of popular music. Funded by the US Social Science Research Council, I have teamed up with advocacy groups such as the Future of Music Coalition in an attempt to devise a research instrument that could help curb corruption in the music industry by identifying distinct diffusion patterns that indicated bribery (together with my colleagues Gabriel Rossman at UCLA and Ming Ming Chiu at Perdue University). This study appeared in *Sociological Methodology*. In another instance, UC Berkeley Professor David Teece, the pioneering scholar behind the influential *Dynamic Capabilities Approach*, used my study as an expert account on the functioning of the music industry in the ground-breaking trial on copyright and the Internet (among the litigants were *Napster*, *MTV*, *Apple*, *RIAA*, *Yahool*, *Sony*, *AOL*, and others). This trial redefined the regulation of online markets and the boundaries of copyright. This study that appeared in the *Journal of Management Studies*.

See: <http://www.loc.gov/crb/proceedings/2006-3/riaa-ex-o-103-dp.pdf>

I am currently researching the history of electronic music on grant that I received from Konrad Boehmer, former Chairman of BUMA/STEMRA, the Dutch music copyright association.

I have convened numerous academic workshops and colloquia on the workings of markets at the major international conferences in the field of management and organization studies.

Abridged Resume - Joeri Merijn Mol

Academic Qualifications

- 2006 Ph.D. in Management Science, Groningen University, the Netherlands.
'Non-Random Exchange; Value, Uncertainty and Strategy in the Market for Popular Music'
1st prize in 'Best PhD-Paper Competition', SOM Research School, Groningen University
- 1999-2001 Postgraduate Academic Exchange Program, Hitotsubashi University, Tokyo
- 1998 MSc. in Economics (with Distinction), Erasmus University, the Netherlands

Academic Affiliations

- 2012-present Senior Lecturer, Department of Management, University of Melbourne
- 2005-2012 Lecturer, Department of Management, University of Melbourne
- 2005-present Visiting Scholar, Department of Management, Groningen University
- 2005 Visiting Scholar, Sol. C. Snider Entrepreneurial Research Center, the Wharton School
- 2003 Visiting Scholar, Institute of Innovation Research, Hitotsubashi University
- 2001-2005 Sessional Lecturer, Department of Management, Groningen University
- 1999-2001 Visiting Researcher, Institute of Innovation Research, Hitotsubashi University

Professional Leadership

- 2013-present Co-director, Centre for the study of Organization Society and Markets (COSM)
- 2011-present Editorial Board, *Journal of Management Studies (Financial Times 45 Journal)*
- 2013-present Editorial Board, *Organization Studies (Financial Times 45 Journal)*
- 2011-present Editorial Board, *European Management Review*
- 2011-present Steering Committee, *Charisma* (<http://www.charisma-network.net>)

2015. Convenor, Space: valuation, and evaluation, ordering, and pricing in organizations, societies and markets, Asian Pacific Group for Organization Studies (APROS) in collaboration with Nick de Weydenthal, Robin Canniford and Marc Lenglet (EBS Paris).

2013. Convenor, Track "Cultural Economies and Economic Cultures in the Organization of Markets", European Group for Organization Studies (EGOS) held in Montreal, July 2013, in collaboration with Liz McFall (Open U) and Steven Kahl (U Chicago)

2012. Convenor, Track "Markets in the Making: Observing, Measuring and Performing Economic Exchange", European Group for Organization Studies (EGOS) held in Helsinki, July 2012, in collaboration with Liz McFall (Open U) and Steven Kahl (U Chicago)

2011. Convenor, Track "Constructing Categories: Meaning and Framing in Organizational Fields", European Group for Organization Studies (EGOS) held in Gothenburg, July 2011, in collaboration with Peer Fiss (UC Davis) and Mark Kennedy (UC Davis)

2010. Chair, Understanding Interorganizational Learning, OMT-Division Session, Academy of Management (AOM), Atlanta.

2009. Convenor, Track "From Market to Industry Categories: The Institutionalization of Competitive Arenas", European Group for Organization Studies (EGOS), Barcelona, July 2009, in collaboration with Hans Pennings (Wharton) and Filippo Wezel (Lugano)

2008. Convenor, Track "Classifying Organizational Variation", European Group for Organization Studies (EGOS) Amsterdam, July 2008, in collaboration with Hans Pennings (Wharton) and Filippo Wezel (Lugano)

2007. Organizer, Symposium "Classifying Organizational Variation", in collaboration Filippo Wezel (Lugano), OMT/BPS/TIM Divisions, Academy of Management (AOM) Conference, Philadelphia.

2006. Chair, Understanding What Makes Organizations Legitimate, OMT-Division Session, Academy of Management (AOM), Atlanta.

Publications

Peer-Reviewed Publications

2014. Hill, Tim, Caniford, Robin, & Mol, Joeri, Non-Representational Marketing Theory. Marketing Theory. 14(4): 377-394

2013. Quintane, Eric, Pattison, Philippa, Robins, Garry, & Mol, Joeri. Short-Term and Long-Term Stability in Organizational Networks: Temporal Structures of Project Teams. Social Networks. Vol 35(4): 528-540.

2013. Quintane, Eric, Pattison, Philippa, Robins, Garry, & Mol, Joeri. Short-term and long-term stability in electronic communication networks. Academy of Management Best Papers Proceedings.

- AOM 2103 Runner-up Best Paper Award (OCIS Division)

2012. Mol, J.M., Chiu, M.M., & Wijnberg, N.M. Love Me Tender: New Entry in Popular Music. Journal of Organizational Change Management. Vol. 25 (1):88 – 120.

2011. Mol, J.M. & Wijnberg, N.M. From Resources to Value and Back: Competition between and within Organizations. British Journal of Management. 22 (1):77-95.

2008. Rossman, G., Chiu, M.M., Mol, J.M. Modeling Diffusion of Multiple Innovations via Multilevel Diffusion Curves: Payola in Pop Music Radio. Sociological Methodology, 38 (1): 201-230.

2007. Mol, J.M. & Wijnberg, N.M. Competition, Selection and Authenticity; Payola and the Advent of Rock and Roll. Journal of Economic Issues, 61, 3, 1-14.

2005. Mol, J.M., Wijnberg, N.M. & Carroll, Charles. Value Chain Envy: Explaining New Entry and Vertical Integration in Popular Music. Journal of Management Studies, 42 (2): 251-276.

Book

2006. Mol, J.M. Non-Random Exchange; Value, Uncertainty and Strategy in the Market for Popular Music. Ridderkerk: Labyrinth Publishers.

Book Chapters

2003. Mol, J.M. Prior Research on Small Firm Networks. In Toshihiro Nishiguchi (Ed.) *Small-Firm Networks; Rent Analysis and International Comparison (Chushokigyoneffowaku)*: 25-59. Tokyo: Yuhikaku.

2003. Mol, J.M. Think Small First; The UK Industrial Policy on Small Business Support Systems. In Toshihiro Nishiguchi (Ed.) *Small-Firm Networks; Rent Analysis and International Comparison (Chushokigyoneffowaku)*: 223-240. Tokyo: Yuhikaku.

2003. Mol, J.M. Venturing Scholarly Knowledge; The Case of the Oxfordshire BioBusiness Centre. In Toshihiro Nishiguchi (Ed.) *Small-Firm Networks; Rent Analysis and International Comparison (Chushokigyoneffowaku)*: 265-278. Tokyo: Yuhikaku.

2003. Mol, J.M. Venturing Complementary Knowledge; Rejuvenating Twente's Old Industrial Structures. In Toshihiro Nishiguchi (Ed.) *Small-Firm Networks; Rent Analysis and International Comparison (Chushokigyoneffowaku)*: 279-291. Tokyo: Yuhikaku.

Case Studies

2015. Mol, Joeri & Quintane, Eric. The Final Count Down: Sony BPE'S Organisational Restructuring In Times of Europe's Economic Integration. In McShane, Olekals, Newman and Travaglione *Organisational Behaviour*. North Ryde: McGraw-Hill.

2012. Mol, Joeri & Quintane, Eric. Payola Scandal at Sony Music. In Steven McShane, Mara Olekans & Tony Travaglione. *Organizational Behavior: Emerging Knowledge. Global Insights*: 32. North Ryde: McGraw-Hill.

2012. Quintane, Eric & Mol, Joeri Sony's Move into Music. In Steven McShane, Mara Olekans & Tony Travaglione. *Organizational Behavior: Emerging Knowledge. Global Insights*: 504-505. North Ryde: McGraw-Hill.

2012. Ashkanasy, Shawn, Mol, Joeri & Quintane, Eric. Innovating Sony's Killzone: Respawn or Missing in Action. In Steven McShane, Mara Olekans & Tony Travaglione. Organizational Behavior: Emerging Knowledge. Global Insights: 237-238. North Ryde: McGraw-Hill.

2012. Mol, J.M. & Quintane, Eric. The Creation of Sony. In Steven McShane, Mara Olekans & Tony Travaglione. Organizational Behavior: Emerging Knowledge. Global Insights: 408. North Ryde: McGraw-Hill.



Re: Expert Testimony on (i) Community Establishment; (ii) Nexus; and (iii) Support for DotMusic's Community-Based Application¹ for .MUSIC (Application ID 1-1115-14110)

Dear ICANN and Economist Intelligence Unit ("EIU"):

Please accept this letter that indicates that there is substantive and compelling evidence that the DotMusic application convincingly meets the full criteria under Community Priority Evaluation on the following points: (i) the Music Community's *Establishment* as defined by DotMusic; (2) the matching *Nexus* between the "music" Community and the "music" string (or top-level domain); and (3) that DotMusic possesses documented *Support* from organizations representing a majority of the global Music Community addressed and defined.

Please see my credentials attached hereto that identify my level of expertise and specialized knowledge with respect to the music community's organization and delineation.

SUMMARY

DotMusic has established the following:

- 1) Its Community definition recognizes the cohesive, symbiotic and overlapping nature of the global Music Community. The definition includes those associated with commercial and non-commercial creation, performance, marketing and distribution of music;
- 2) "Music Community" members have the requisite awareness and recognition of the interdependency, overlapping and cohesive nature of each "organized community of similar nature that relates to music." These organized and aligned communities are closely united and make "music" as we know it today. It is this self-awareness and interdependence that gives the "Music Community" its strength. With exponential growth of the Internet, mobile and the Domain Name System (DNS), the "Music Community's" use and reliance on the Internet to create, market and disseminate music-related content, products, services and activities will continue to grow;

¹ <https://gtdresult.icann.org/application-result/applicationstatus/applicationdetails/1392>

3) The "Music Community" functions in a regulated sector with global copyright protections – it is clear that the "community," as defined, implies "more of cohesion than a mere commonality of interest" with an "awareness and recognition of a community among its members." Several international treaties mandate a globally-recognized set of standards for the protection of the "Music Community" member rights with relation to their copyrighted music works around the world;

4) The "Music" Community -- as defined by DotMusic -- has at least one entity dedicated to the community supporting DotMusic's application. Such documented *Support* includes several "international federation of national communities of a similar nature," music coalitions and others that are strongly associated with "music," which represent a majority of the Community with considerable millions of members worldwide.²

5) The *Nexus* of the "music" Community matches the "music" applied-for string because it represents the entire global Music Community – a community that pre-existed 2007 with a size in the considerable millions of constituents. The "Music Community" definition -- which incorporates the strict fundamental attributes of a closely united Community definition that is "organized" and "delineated" -- ensures that all of its constituent members have a requisite awareness of the community as defined, including both commercial and non-commercial stakeholders, to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination.

6) DotMusic has received support from the largest coalition of Music Community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support³ from institutions/organizations representing a majority of the Community as defined and recognized in the DotMusic application.

There is substantive evidence that DotMusic fulfills the *Nexus, Community Establishment and Support* criteria for the "Music" string. The inclusion and representation of every music constituent type is paramount to the articulated purpose of the string. DotMusic and its application's global Music Community supporters substantiate that every type of music constituent contributes to the function and operation of the music sector within a regulated framework. The symbiotic nature of the Community as defined and structured means that

² <http://music.us/supporters>

³ <http://music.us/supporters>

(3) The Community is “closely united” and “interdependent” (i.e. Each “organized community of similar nature that relates to music” which is part of the “logical alliance of communities that relate to music” is not mutually exclusive).

In short, the applied-for string (“Music”) matches the name of the “Music” Community as defined by DotMusic’s application. DotMusic’s “Music Community” definition accurately represents the common definition of the “Music Community,” which is confirmed by Wikipedia.

According to Wikipedia:⁸

*Music community is defined as a logical alliance of interdependent communities that are related to music, which include commercial participants...and non-commercial participants...and consists of an “ensemble of practices and institutions that make possible and regulate the production, distribution and consumption of music”...UNESCO identifies the music community as a “community of identity” implying common identifiable characteristics and cohesive attributes such as sharing a music culture, norms and subscribing to common ideals related to music...The music community is not defined as much by demographic indicators such as race, gender, and income level, as it is by common values, cohesive norms and interconnected structures to build a community identity. It refers to music-related individuals and organisations in a shared environment with shared understandings and practices, modes of production and distribution. The shared organisation of collective musical activities, identity and community value is created as result of infrastructure and a shared set of common values...Many studies outline the historical, cultural, and spatial significance of the music community, including how its identity is formed through musical practices. The music community shares a cohesive and interconnected structure of artistic expression, with diverse subcultures and socio-economic interactions...subscribing to common ideals. Under such structured context music consumption becomes possible regardless whether the transaction is commercial and non-commercial.*⁹

ii) *An Aware, Pre-Existing and Recognized Community of Considerable Millions Worldwide:*

⁸ Wikipedia is ranked 6th among the ten most popular websites (Alexa, Retrieved March 23, 2015 from <http://www.alexa.com/siteinfo/wikipedia.org>) and constitutes the Internet's largest, most frequently updated and popular general reference work (See OECD, OECD Internet Economy Outlook 2012, OECD Publishing, http://www.oecd-ilibrary.org/science-and-technology/oecd-internet-economy-outlook-2012_9789264086463-en,Pg.172) that compares favorably to the accuracy of other encyclopedias (such as the Britannica) according to a 2012 study conducted in partnership with Oxford University (See <http://blog.wikimedia.org/2012/08/02/seven-years-after-nature-pilot-study-compares-wikipedia-favorably-to-other-encyclopedias-in-three-languages>).

⁹ Music Community. In *Wikipedia*. Retrieved March 23, 2015, from https://en.wikipedia.org/wiki/Music_community

DotMusic's definition of the Community covers all Community members associated with the string, each with a requisite awareness of the Community that can be validated through their natural association with a particular music-related community that they clearly identify with. According to DotMusic, all Music Community members must identify their music-related community in order to demonstrate their requisite awareness of the defined Community as part of the .MUSIC registration and validation process.

According to DotMusic, the Music Community's geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents (Application Answer to Question 20a).

According to DotMusic, "registrants will be verified using Community-organized, unified "criteria taken from holistic perspective with due regard of Community particularities" that "invoke a formal membership (Application Answer to Question 20a)." The defined Community represents all music-related entities with a clear and straightforward membership with the Community involved in the legal production, performance, promotion, and distribution of music worldwide. According to DotMusic, the Music Community members must have an active, non-tangential relationship with the applied-for string "music" and also have the requisite awareness of the music-related community that they are a part of by specifically identifying it as part of the registration and validation process (i.e. upon successful registration and validation, each community member will be given a unique community identification number that will automatically associate them with their identified community and the "music" string).

DotMusic's Community definition matches the applied-for string because it allows both commercial and non-commercial stakeholders to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination/exclusion. Given the regulated sector of the community, it is clear that the "Music Community" as defined implies "more of cohesion than a mere commonality of interest" with an "awareness and recognition of a community among its members." Several international treaties mandate cohesive and globally-recognized set of standards for the protection of the music community members' rights with relation to their copyrighted music works around the world.¹⁰

The Berne Convention for the Protection of Literary and Artistic Works¹¹ provides that each of the 168 contracting parties¹² (representing an overwhelming majority of the world's population) provides automatic protection for music works first published in other countries of the Berne union and for unpublished music works whose authors are citizens of or resident in such other countries.¹³ This means that if a Music Community member's copyright rights are violated in

¹⁰ http://www.rightsdirect.com/content/id/en/toolbar/copyright_education/International_Copyright_Basics.html

¹¹ http://www.wipo.int/treaties/en/text.jsp?file_id=283698

¹² http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=15

¹³ <http://www.britannica.com/EBchecked/topic/62482/Berne-Convention>

“Music” would not function as it does today without the participation of all music constituent types that interconnect to match the “music” string with the “music” Community definition.

ASSESSMENT OF COMMUNITY DEFINITION, ESTABLISHMENT AND NEXUS

A) Music Community Definition, Establishment & Community Endorsement⁴

DotMusic’s definition of the “Music Community” as a “strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music” (See Application, 20a) is factually accurate and representative of the “Music Community.” Community characteristics include:

i) An Organized, Cohesive, Interdependent Logically-Allied Community:

The “Music Community” definition covers the regulated, interdependent and cohesive nature of the music sector that exists today. “Music Community” members have the requisite awareness and recognition of the interdependent, overlapping and cohesive nature of each “organized community of similar nature that relates to music” that comprises the “Music Community.” Without such cohesiveness and interdependency, the defined “Music” Community matching the applied-for string (“Music”) would not be able to function in its regulated sector, a “Music” regulated sector that was publicly recognized by both ICANN and the Government Advisory Committee.⁵

As a result, the Music Community as defined is “closely united” (As per the definition of “cohesion” according to Merriam-Webster dictionary⁶) or “united or form a whole” (As per the definition of the word “cohesion” according to Oxford Dictionaries⁷).

The “Music Community” as defined (a “strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music”) establishes that:

- (1) There is an awareness and recognition among its members;
- (2) The organized and delineated logical alliance of communities exists; and

⁴ See <http://music.us/establishment>

⁵ https://www.icann.org/en/system/files/bm_briefing-materials-2-05feb14-en.pdf, Pg.3

⁶ <http://www.merriam-webster.com/dictionary/cohesion>

⁷ http://www.oxforddictionaries.com/us/definition/american_english/cohesion

any other signatory country's jurisdiction, then the music community member will have the music copyright rights given by that country. Music Community members are clearly aware of the collective Community's rights, which could not be made possible without these cohesive and globally-recognized set of standards. If such standards were not coherent or enforced then music would not be able to exist in its current form and the industry component of the Music Community sector would not exist. As such, the Community's *Establishment* and definition is "cohesive" and hence cannot be construed since the Community is a logical alliance of music communities that establish a clearly delineated and organized Community structure that is "closely united" and functions as a "whole"

Further evidence to substantiate the cohesive, symbiotic and overlapping nature of the Community, includes other globally-recognized standards and classification systems, which identify who the individual songwriters, publishers and rights holders are and which songs they are associated with so that Community members are appropriately compensated, regardless of whether the constituent is a commercial, non-commercial or amateur entity. The "music" string is commonly used in classification systems such as ISMN,¹⁴ ISRC,¹⁵ ISWC,¹⁶ ISNI¹⁷ (Application Answer to Question 20a). For example, if a music entity would like to distribute their music, either commercially or for free, then an ISRC can be assigned to globally identify any specific music work. An ISRC, which facilitates efficient music discovery and community member payment, is constructed from 12 characters representing country, registrant, year of registration and designation (i.e. the serial number assigned by the registrant). With respect to domains, an equivalent system that relates to identifying a specific domain's registrant and other relevant information pertaining to the domain is WHOIS. Domain registrants are required by ICANN "to provide accurate WHOIS contact data" or else their domain "registration may be suspended or even cancelled".¹⁸

Without such Music Community "cohesion" and standardized systems functioning in its regulated sector, the Music Community would not be able to create, market and distribute their

¹⁴ The International Standard Music Number (ISMN) is a unique number for the identification of all notated music publications from all over the world. The ISMN is an ISO certified global standard number (ISO 10957:2009). See <http://www.ismn-international.org/what-is.htm> and

http://www.iso.org/iso/home/store/catalogue_ics/catalogue_detail_ics.htm?csnumber=43173

¹⁵ The ISRC (International Standard Recording Code) is the international identification system for sound recordings and music video recordings. The ISRC is an ISO certified global standard number (ISO 3901:2001) and is managed by the IFPI. See <http://isrc.ifpi.org>, <https://www.usisrc.org/about/index.html> and http://www.iso.org/iso/catalogue_detail?csnumber=23401

¹⁶ The ISWC (International Standard Musical Work Code) is a unique, permanent and internationally recognized reference number for the identification of musical works. The ISWC has been approved by ISO (International Organization for Standardisation) as a global standard (ISO 15707:2001) and is managed by CISAC. See <http://www.iswc.org/en/faq.html> and http://www.iso.org/iso/catalogue_detail?csnumber=28780

¹⁷ The International Standard Name Identifier (ISNI) is the ISO certified global standard number (ISO 27729) for identifying the millions of contributors to creative works and those active in their distribution. ISNI holds public records of over 8 million identities and 490,000 organizations. See <http://www.isni.org> and http://www.iso.org/iso/catalogue_detail?csnumber=44292

¹⁸ <https://whois.icann.org/en/about/whois> and <https://www.icann.org/resources/pages/faqs-00-2012-02-25-en>

IFACCA is globally recognized by its strategic partners, such as UNESCO, a United Nations agency representing 195 member states and the European Commission.²¹ The UNESCO strategic partnership²² is relevant, especially since UNESCO founded the International Music Council (the "IMC") in 1949, which represents over 200 million music constituents from over 150 countries and over 1000 organizations globally.²³

Government activities in the clearly delineated and organized "Music Community" include setting statutory royalty rates. For example, in the United States, mechanical royalties are based on a "statutory rate" set by the U.S. Congress. This rate is increased to follow changes in the economy, usually based on the Consumer Price Index. Currently, the mechanical statutory rate is \$0.091 for songs five minutes or less in length or \$.0175 per minute for songs that are over five minutes long.²⁴

Ministries of culture and arts councils (that comprise IFACCA's membership) support musicians, musical performances, independent music artists, non-commercial musical expression and education in their respective countries. The 165 ministries of culture, arts councils and affiliates that comprise IFACCA's membership support the "performing arts" and music specifically. Without the financial and logistical support of arts councils and the ministries of culture, the music community would be adversely affected, and in some countries, may not exist in any appreciable manner. For example, the Ministry of Culture 2011 budget for the small country state of Cyprus for culture funding was €34,876,522 with critical support of music activities.²⁵ Other small government Ministries of Culture, such as Albania,²⁶ or government Ministries of Culture and Arts Councils from countries with larger populations, such as India,²⁷ all provide critical support and substantial advocacy for music. Other examples include government institutions collaborating and advocating music through their funded country-based pavilion initiatives at Midem, the world's largest music conference.²⁸

Government ministries and arts councils provide critical support for the Music Community, including commercial music organizations. By way of example, government ministries' and arts councils' substantial connection to and support of "music" is noted in the reports of funding and support for music. Some examples to showcase the degree of power of the IFACCA's

²¹ http://www.ifacca.org/strategic_partners

²² http://www.ifacca.org/strategic_partners

²³ <http://www.imc-cim.org/about-imc-separator-who-we-are.html>

²⁴ U.S. Copyright Office, <http://www.copyright.gov/carp/m200a.html>

²⁵ 2011 Annual Report for Cyprus Ministry of Culture, Section 1.2 "Music"

(http://www.moccc.gov.cy/en/annual_reports/annual_report_2011_en.pdf). Activities include Music Performances in Cyprus (1.2.1) and Abroad (1.2.2), Subsidization of Paphos Aphrodite Festival (1.2.3), Music Publications (1.2.4), Subsidization and Purchases of Digital Records (1.2.5), Promotion for Cypriot musical creativity abroad (1.2.6), Cyprus Symphony Orchestra Foundation (1.2.7), Music Information Centre (1.2.8), Developing Music Education (1.2.9), Organising of the 1st Musicological Symposium (1.2.10) and Musical Festivities for the European Volunteerism Year (1.2.11)

²⁶ http://www.culturalpolicies.net/down/albania_012011.pdf

²⁷ 2010-11 Annual Report from India Ministry of Culture, [http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011\(1\).og.pdf](http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011(1).og.pdf)

²⁸ <http://mx.midem.com/en/contact-us/pavilion-representatives>

membership towards the string and global and national music are music investment and music funding (Annual reports by governments and councils):

- New Zealand Ministry of Culture has funded significant music projects. Some include the REAL New Zealand Music Tour (\$415,000), the New Zealand String Quartet (\$150,000) and New Zealand Music Commission: (\$1,378,000).²⁹
- The Australian Government/Council For The Arts invested \$51.2 million for the nation's orchestras; \$21.6 million for opera; \$10.8 million for other music artists and organizations; \$13.1 million for multi-platform artists and organizations; and \$4 million in miscellaneous funding, including sector building and audience development initiatives and programs.³⁰
- Canada Council for the Arts is Canada's national, arts funding agency investing \$28 million in its Canada Council Musical Instrument Bank (Page 16) and \$28,156,000 in Music Arts Programs (Page 66).³¹ The Government of Canada also renewed its annual investment of \$27.6 million over five years in the Canada Music Fund.³²
- The United Kingdom Department for Culture and Education (DfE) will fund music education at significant levels: £77 million, £65 million and £60 million will be available in the three years from April 2012.³³
- The United States National Endowment of the Arts has awarded more than \$4 billion to support the arts since its inception³⁴ and has a strong focus on music as outlined in its Strategic Plan³⁵ with Congress requested to provide \$154,465,000 for fiscal year 2014.³⁶
- The National Arts Council of South Africa invested 2,536,131 ZAR in Music and 9,995,000 ZAR in Orchestras and has focused strongly on the "Strengthening of live indigenous music and advocating the revival of the live music circuit in South Africa"³⁷
- The Singapore Arts Council will fund \$10.2 million in the arts under its 2013 Grants Framework, including the Ding Yi Music Company and Siong Leng Musical Association.³⁸

²⁹ 2011 Annual Report from New Zealand Ministry of Culture:

[http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20\(D-0448383\).PDF](http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20(D-0448383).PDF)

³⁰ 2011 Annual Report for the Australia Council for the Arts.

http://www.austlii.org.au/au/other/dfat/data/assets/pdf_file/0016/142351/Australia-Council-Annual-Report-201112.pdf, Page 28

³¹ 2011 Annual Report for Canada Council for the Arts, [http://www.canadacouncil.ca/NR/rdonlyres/617549BB-F4E5-4B8B-9514-](http://www.canadacouncil.ca/NR/rdonlyres/617549BB-F4E5-4B8B-9514-1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf)

[1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf](http://www.canadacouncil.ca/NR/rdonlyres/617549BB-F4E5-4B8B-9514-1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf)

³² <http://www.pch.gc.ca/eng/1294862453819/1294862453821>

³³ Department for Culture, The Importance of Music, A National Plan for Music Education,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/180973/DFE-00086-2011.pdf, Page 4, 2011

³⁴ 2011 Annual report for the National Endowment of the Arts, <http://www.nea.gov/about/11Annual/2011-NEA-Annual-Report.pdf>, Page 2

³⁵ NEA Strategic Plan 2012-2016, www.arts.gov/about/Budget/NEAstrategicPlan2012-2016.pdf

³⁶ http://www.itacca.org/national_agency_news/2013/04/10/us-president-requests-154465000-neh-2014

³⁷ 2010-2011 Annual Report for the National Arts Council South Africa, National Arts Council South Africa, http://www.nac.org.za/media/publications_AR%2010-11%20NAC_PDF download, Page 11. Also Mmino, the South African – Norwegian Education Music Programme, solely funds music projects funding a total of 294 projects. Thirteen projects were allocated funding for a total of R1,680,600 of which R1,381,000 went towards music educational and R299,600 to exchange projects (Page 10)

music. By the same token, fans would not be able to identify the music they are listening to with a specific music artist, regardless of whether the listening activity or behavior is commercial or non-commercial in nature. The socio-economic structure that characterizes “music” as commonly-known today would be non-existent without these organized and delineated elements that commonly define the Community.

iii) International Federations and Organizations Dedicated to Community Functions:

According to ICANN’s Applicant Guidebook (“AGB”)¹⁹: “*With respect to “Delineation” and “Extension,” it should be noted that a community can consist of...a logical alliance of communities (for example, an international federation of national communities of a similar nature... viable as such, provided the requisite awareness and recognition of the community is at hand among the members.*” (AGB, 4-12). The community as defined in the DotMusic application has at least one entity mainly dedicated to the community which has supported DotMusic, which include several “international federation of national communities of a similar nature” relating to music, music coalitions and other relevant and non-negligible music organizations.

One of these entities include the only international federation of national communities relating to government culture agencies and arts councils, which has an integral association with music globally: the International Federation of Arts Councils and Culture Agencies (IFACCA).

IFACCA is the only international federation that represents government culture agencies and arts councils globally. These national communities are governmental institutions that play a pivotal role with respect to music.²⁰ IFACCA’s members cover the majority of music entities globally, regardless of whether they are commercial, non-commercial or amateurs. Government ministry of culture and council agencies related to music cover a majority of the overall community with respect to headcount and geographic reach. The “Size” covered reaches over a hundred million music entities i.e. “considerable size with millions of constituents” per Application Answer to Question 20a.

The string “music” falls under the jurisdiction of each country’s Ministry of Culture governmental agency or arts/music council (emphasis added). The degree of power and influence of government ministry of culture and council agencies with respect to music surpasses any organization type since these agencies (i) provide the majority of funding for music-related activities; (ii) regulate copyright law; and (iii) encompass all the music entities that fall under their country, regardless whether these entities are commercial, non-commercial or amateurs.

¹⁹ <https://newgtlds.icann.org/en/applicants/agb/guidebook-full-11jan12-en.pdf>

²⁰ http://www.ifacca.org/membership/current_members

- In 2011, the support for artistic activities by the Arts Council of Finland was €32.4 million of which €4,921,850 was awarded to music.³⁹

Each of IFACCA's members has a clear association with, and mandate to support the music arts in their countries. In most countries, their ministry of culture/arts council is the largest funder and marketing supporter of the music arts.

Another clear example of an "entity dedicated to the community" with members that cover hundreds of millions of music constituents with formal boundaries is A2IM, the American Association of Independent Music. A2IM has two types of members: U.S independent Label members and Associate members. A2IM membership for Labels and Associates is invoked formally through an application and if accepted would require annual membership dues.⁴⁰

The reach of A2IM Associate⁴¹ membership covers hundreds of millions of entities (i.e. the reach of A2IM's total membership "geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents – See Application Answer to Question 20a).

Organized and strictly delineated communities related to music that are A2IM members include:

- **Apple iTunes**⁴² – iTunes accounts for 63% of global digital music market⁴³ - a majority – with a registered community of 800 million registered members⁴⁴ available in 119 countries who abide to strict terms of service and boundaries⁴⁵ and have downloaded over 25 billion songs⁴⁶ from iTunes' catalog of over 43 million songs⁴⁷ covering a global music community, regardless of genre or whether the community entities are amateur, professional, commercial or non-commercial. To add music to iTunes, all music artists must have a formal membership with iTunes via an Apple ID registration, which includes a current credit card on file.⁴⁸
- **Pandora**⁴⁹ – Pandora is the world's largest streaming music radio with a community of over 250 million registered members.⁵⁰

³⁸ Singapore Arts Council, <http://www.nac.gov.sg/media-centre/news-releases/news-detail?id=c2db15e2-c319-40ec-939c-d58735d0a91c>

³⁹ http://www.taiteenkeskustoimikunta.fi/documents/10162_31704_TY%20ilastoiedote_1.12_.pdf, Page 1 and Page 23

⁴⁰ <http://a2im.org/about-joining>

⁴¹ <http://a2im.org/groups/tag/associate+members>

⁴² <http://a2im.org/groups/itunes>

⁴³ <http://appleinsider.com/articles/13/04/16/apples-itunes-rules-digital-music-market-with-63-share>

⁴⁴ <http://www.npr.org/blogs/therecord/2015/01/06/375173595-with-downloads-in-decline-can-itunes-adapt>

⁴⁵ <http://www.apple.com/legal/internet-services/itunes/ww/index.html>

⁴⁶ <http://www.apple.com/pr/library/2013/02/06/iTunes-Store-Sets-New-Record-with-25-Billion-Songs-Sold.html>

⁴⁷ <https://www.apple.com/itunes/features>

⁴⁸ <https://www.apple.com/itunes/working-itunes/self-content/music-faq.html>

⁴⁹ <http://a2im.org/groups/pandora>

A2IM also represents a recognized Music Coalition representing the interests of the Global Independent Music Community.⁷⁰ The A2IM Coalition includes Merlin, a global rights agency for the independent label sector, representing over 20,000 labels from 39 countries, Worldwide Independent Network (representing label creators in over 20 countries), Association of Independent Music (representing largest and most respected labels in the world), and IMPALA (Independent Music Companies Association on behalf of over 4,000 independent music companies and national associations across Europe, representing 99% of music actors in Europe which are micro, small and medium sized enterprises.

Cumulatively, A2IM's Label and Associate Membership, A2IM's Affiliates and the A2IM's Global Independent Music Community Coalition, covers a majority of the global music community. Its cumulative membership is in the hundreds of millions of entities with formal boundaries belonging to strictly organized and delineated communities related to music as per the Community Definition and Size (See Application answer to Question 20a).

Another global Music Community Coalition led by the RIAA "on behalf of over 15 national and international trade associations" also expressed its support for .MUSIC to be under a "community" application model, including encouraging statements in support of DotMusic's policies that stated that the coalition "was encouraged to see" that DotMusic "included several measures to deter and address copyright infringement within that TLD." The "coalition members represent the people that write, sing, record, manufacture, distribute and/or license over 80% of the world's music"⁷¹ – a majority of global music.⁷²

Collectively, the DotMusic application received support from the largest coalition of music community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support⁷³ from institutions/organizations representing a majority of the Community addressed. Music -- as commonly-known by the general public and experienced today -- would not be possible without these supporting, non-negligible and relevant organizations that have endorsed DotMusic.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Community Establishment* and *Community Endorsement* from the majority of the global Music Community as defined.

⁷⁰ https://www.icann.org/en/system/files/correspondence_benclouff-to-chehade-et-al-20aug11-en.pdf and https://www.icann.org/en/system/files/correspondence_benclouff-to-crocker-et-al-07mar15-en.pdf

⁷¹ https://www.icann.org/en/system/files/correspondence_riaa-to-icann-05mar15-en.pdf, Pg.1

⁷² https://www.icann.org/en/system/files/correspondence_riaa-to-icann-05mar15-en.pdf, Pg.3, Appendix A

⁷³ <http://music.us/supporters>

- **Spotify**⁵¹ – Spotify is the world’s largest music streaming community with over 50 million active registered members in 58 countries and over 30 million songs. The music community uploads 20,000 songs every day.⁵²
- **Vevo**⁵³ – Vevo is the world’s leading all-premium music video community and platform with over 8 billion monthly views globally.⁵⁴
- **Youtube**⁵⁵ – Youtube is the world’s largest music video streaming community with millions of music creators -- amateur, professional, commercial or non-commercial -- and over 1 billion registered members covering all regions globally. 6 billion hours of video is watched every month on Youtube,⁵⁶ of which 38.4% is music-related.⁵⁷
- **Reverbnation**⁵⁸ – Reverbnation⁵⁹ is one of the world’s largest music community and a leading music distributor with over 3.87 million musicians, venues labels and industry professionals covering every country globally. The Reverbnation community grows by over 50,000 artists, bands, labels and industry professionals monthly.
- **BMG**⁶⁰ – BMG is focused on the management of music publishing and recording rights. BMG has an international presence and represents over 2.5 million music rights globally.⁶¹

A2IM also includes members that are associated with global government agencies which exclusively represent substantial music economies and music members, such as France (BureauExport⁶²), China (China Audio Video Association⁶³) and Germany (Initiative Musik).⁶⁴ A2IM also has Affiliate⁶⁵ associations within the global music community. These include Affiliates such as MusicFirst,⁶⁶ the Copyright Alliance,⁶⁷ the Worldwide Independent Network (WIN)⁶⁸ and Merlin.⁶⁹

⁵⁰ <http://www.cnet.com/news/like-a-rolling-milestone-pandora-hits-250m-registered-users> and http://phy.corporate-ir.net/ExternalFile?item_UGFyZW50SUQ9MTkxNTM1LNoaWxkSUQ9LTFBVBHlw.ZT0z&f=1, Pg 9

⁵¹ <http://a2im.org/groups/spotify>

⁵² <https://press.spotify.com/us/information>

⁵³ <http://a2im.org/groups/vevo>

⁵⁴ http://www.vevo.com/c/EN_US/about

⁵⁵ <http://a2im.org/groups/youtube>

⁵⁶ <https://www.youtube.com/yt/press/statistics.html>

⁵⁷ http://www.researchandmarkets.com/reports/2092499/internet_video_2011_2014_view_share_site_and

⁵⁸ <http://a2im.org/groups/reverb-nation>

⁵⁹ <http://www.reverbnation.com/about>

⁶⁰ <http://a2im.org/groups/bmg-rights>

⁶¹ <http://www.bmg.com/category/about-us/history>

⁶² <http://a2im.org/groups/french-music-export-office>

⁶³ <http://a2im.org/groups/china-audio-video-association-cava>

⁶⁴ <http://a2im.org/groups/initiative-musik-gmbh>

⁶⁵ <http://a2im.org/groups/tag/associate-members>

⁶⁶ <http://musicfirstcoalition.org/coalition>, The musicFIRST Coalition, with founding members A2IM, RIAA, and Recording Academy represents musicians, artists, managers, music businesses, and performance right advocates.

⁶⁷ <http://www.copyrightalliance.org/members>

⁶⁸ <http://www.winformusic.org>

⁶⁹ <http://www.merlinnetwork.org>

B) Nexus⁷⁴

According to the Applicant Guidebook (“AGB”), to receive the maximum score for Nexus, the applied-for string -- “music” -- must match the name of the community or be a well-known short-form or abbreviation of the community name.

The *Nexus* of the “Music Community” entirely matches the applied-for “music” string because it represents the entire global Music Community as commonly-known and perceived by the general public. This definition allows for all constituents with a requisite awareness of the Community defined to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination. The definition of the Community requires that members have an active, non-tangential relationship with the applied-for string and the requisite awareness of the music community they identify with as part of the registration process. It is clear that the general public will directly associate and equate the string with the Community as defined by DotMusic. There is no possibility of overreaching beyond the definition or allowing unrelated non-music entities to be included as part of the Community.

Community members may register a .MUSIC by either:

- 1) Identifying that they belong to a Music Community Member Organization (“MCMO”); or
- 2) Identifying the community they belong to, which is consistent with the definition of the Community: “the strictly delineated and organized logical alliance of communities of similar nature related to music.”

All Community members are aware of and recognize their inclusion in the defined Community by identifying which clearly defined community they belong to and have an active participation in. The *nexus* of the applied-for string ensures inclusion of the entire global community that the string represents while excluding unrelated-entities not associated with the string. This way there is a clear match and alignment between the “music” sting and the Community defined.

While the exact size of the global Music Community as defined is unknown (there is no empirical evidence providing an exact, finite number because amateur entities are also included in the Community’s definition), it is in the considerable millions as explicitly stated in the DotMusic Application. DotMusic’s definition of the Community and mutually-inclusive Registration Policies ensure that eligible members are only music-related and associated with the string. This is because the string identifies all constituents involved in music. Music-only participation optimizes the relevancy of .MUSIC domains to the string and entirely matches the *nexus* between the string and Community defined. According to DotMusic, the Community *definition, eligibility criteria and content and use* requirements ensure that peripheral industries

⁷⁴ See <http://music.us.nexus>

and entities not related to music are excluded so that the string and the defined Community matches and aligns in a consistent manner consistent with DotMusic's community-based purpose i.e. only entities with music-related activities are able to register .MUSIC domains.

Membership aligns with the *nexus* of the Community and the string, which is explicitly relevant to music. The string as defined in the application demonstrates uniqueness because it has no other significant meaning beyond identifying the community described in the application. According to DotMusic's application, any tangential or implicit association with the *nexus* of the Community and the string is not regarded as a delineated membership since it would be considered unclear, dispersed or unbound. Such unclear, dispersed or unbound tangential relationships with the defined "music" Community and applied-for "music" string would not constitute a qualifying Community membership and would be ineligible for registration.

The inclusion of every music constituent type is paramount to the purpose of the string. Every type of music constituent critically contributes to the function and operation of the music sector within a regulated framework given the symbiotic overlapping nature of the Community as defined and structured. Music would not function as it does today without the participation of all music constituent types which cumulatively match the string with the Community definition.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Nexus*.

Respectfully Submitted,

Signature: _____



Date: April 14, 2015

Name: John Snyder

Title: Chair, Department of Music Industry Studies

Organization: Loyola University New Orleans

About the Expert: See attached CV and Biography

John Snyder

John Snyder grew up playing piano and trumpet and attended the University of North Carolina at Greensboro on several music scholarships. In college he booked his band on a Caribbean, North Atlantic, European, North African tour one summer and a tour of Japan, Taiwan, the Philippines, and the Pacific Islands the next.

As a music and video producer Snyder has produced hundreds of recordings and CD reissues and compilations. Recordings he has produced have received 32 Grammy nominations and 5 Grammys. In addition, Snyder has held positions at the upper levels of many major recording companies. As the assistant to the president of CTI Records, Creed Taylor, Snyder oversaw legal and business affairs, publishing, manufacturing, distribution, and artists and repertoire operations.

Under the tutelage of Herb Alpert, he served as director of Horizon Jazz Series for A&M Records. Snyder later served as director of jazz production for Atlantic Records under the guidance of Ahmet and Nesuhi Ertegun; his responsibilities included production, manufacturing, promotion, publicity, and marketing. Snyder opened his own record company, Artists House, in 1977, releasing recordings by Ornette Coleman, Gil Evans, Chet Baker, Andrew Hill, Thad Jones & Mel Lewis, and Paul Desmond, among others.

Snyder has degrees in music education and law from the University of North Carolina, and is currently a member of the New York Bar. As a member of the New York Chapter of The National Academy of Recording Arts and Sciences (NARAS), he served on the Board of Governors, the Education Committee, the Jazz Committee, and the Grammy in the Schools Committee, among others.

As an artist manager, Snyder managed Chet Baker, Gerry Mulligan, Jim Hall, Gil Evans, Ornette Coleman, and Art Pepper, among others. As a music producer Snyder produced records with Etta James, Dave Brubeck, Count Basie Orchestra, George Shearing, Sun Ra, Cecil Taylor, Gerry Mulligan, Chet Baker, Dizzy Gillespie, Art Blakey, Derck Trucks, Mavis Staples, James Cotton, Junior Wells, the Muddy Waters Band, Charles Brown, Honeyboy Edwards, Robert Lockwood, Jr., and Gatemouth Brown, among others. He also recorded Eric Clapton, Paul Simon, Shirley Caesar, Buddy Guy, Santana, Bonnie Raitt, Bobby Womack, Dr. John, Wynona Judd, Stevie Wonder, Gregg Allman, and Isaac Hayes.

Snyder has been on the faculty of the Loyola University New Orleans College of Music and Fine Arts faculty since 2004 where he is the Conrad N. Hilton Eminent Scholar in Music Industry Studies and Chair of the Department of Music Industry Studies. He is also Project Director for the Center of Music and Arts Entrepreneurship (www.cfmae.org) and co-founder of the artist health and wellness initiative, Athletes and the Arts (www.athletesandthearts.com).

Snyder is also President of Artists House Foundation (<http://www.artistshousemusic.org/>) that was funded by Herb Alpert (1.6 million dollars) to help musicians and music entrepreneurs create sustainable careers.

Snyder was appointed to the New Mexico Music Commission, for which he wrote the enabling legislation, by Governor Bill Richardson and appointed to the Louisiana Music Commission by Governor Kathleen Blanco and Governor Bobby Jindal.

JOHN SNYDER – Curriculum Vitae

WORK EXPERIENCE

2004-2014 **Loyola University, New Orleans, Louisiana**
Conrad N. Hilton Eminent Scholar in Music Industry Studies

Professor, Chair of the Department of Music Industry Studies
 Director of the Center for Music and Arts Entrepreneurship

- Responsible for 300 students and 15 faculty, including curriculum development, expanding production facilities, and expanding the nature and reach of the Department.
- Created student company program – The Entrepreneurial Unit (EU) Program (six student-run, for-profit companies).
- Administered several federal grants, supervised a staff of 5, supervised the expenditure of almost 1.5 million dollars to train students, create “content”, build websites, and broadcast programming (www.cfmae.org).
- Founded the campus-wide initiative, The Year of the Writer (www.yearofthewriter.com); published a book of faculty and student essays, “Secret Trespasses”.
- Founded the health and wellness national initiative, Athletes and the Arts and built a website for it (www.athletesandthearts in conjunction with the Performing Arts Medical Association and the American College of Sports Medicine, among others. Conducted a pain/exercise survey for all instrumental students in the College of Music & Fine Arts, fall 2014.
- Responsible for the production and webcasting of various campus productions and events, including those from the Walker Percy Center for Writing and Publishing, The Center for the Study of New Orleans, and various concerts, operas and other productions from the College of Music and Fine Arts.
- Responsible for establishing a relationship between the College of Music and Fine Arts and the Louisiana State Museum, New Orleans in respect of internships and performance opportunities.
- Wrote and built a website to brand Loyola University (<http://thecreativeuniversity.us/>), summer 2013.
- Responsible for developing new, interdisciplinary degrees in Filmmaking and Popular and Commercial music (summer 2014) and for redeveloping the curriculum for Music Industry degrees (<http://loyolamediaarts.info/>).
- Responsible for building and producing the content for a new website for the Department of Film and Music Industry Studies (<http://creativeprofessions.org/>)

- 2002-2014** **Artists House Foundation, New Orleans, Louisiana**
President (501 (c) 3 educational foundation)
- Produced the NYU Jazz Master Class Series (Cecil Taylor, Barry Harris, Hank Jones, Clark Terry, Jimmy Heath, Percy Heath, Benny Golson, Teo Macero, Kenny Werner, Phil Woods, Toots Thielemans) – raised over \$500,000 to do this. Produced a trumpet instructional DVD at Juilliard with Warren Vache, “The Art of the Trumpet”.
 - Created the website www.artistshousemusic.org and produced thousands of hours of interview and seminar content concerning the business, legal, pedagogical and technological aspects of the music world. This site is visited by more than 50,000 people a month, has over 150,000 monthly viewers on its YouTube channel, and over 58,000 Twitter followers.
 - Began the master class series, “Louisiana Masters” (Clarence “Gatemouth” Brown) at Loyola in 2005.
 - CD and DVD Producer of legendary artists Gerry Mulligan, Bob Brookmeyer, among others.
 - Built and wrote a free online course for musicians and music entrepreneurs (summer 2013); currently has over 3600 students (<https://www.udemy.com/bandasbusiness/>).
- 2001-2002** **Fairfield University, Fairfield, Connecticut**
Adjunct Instructor
- Taught a three hour, once a week course to over a hundred students, “The Music Business”.
- 2002-2003** **University of North Carolina, Greensboro, North Carolina**
Visiting Instructor
- Taught two courses: “Music Production” and “Careers in Music”
- 1987-2014** **John Snyder Productions, New York, New York; Norwalk, Connecticut; New Orleans, Louisiana**
Independent Music Producer, Member of New York Bar
- Produced over 300 recordings for A&M Records, Island Records, Music Masters, PolyGram, Telarc International, RCA Records, Private Music, Columbia Records, Landside Records, Concord Records, Verve, GRP Records, Island Records, Novus Records, House of Blues, V-2 Records, Evidence Records, Rounder Records, Surrounded By Entertainment, King Records, among others. I continue to produce music in the local community and occasionally on the national level. List attached.
 - Produced thirty-two Grammy nominated recordings, five of which won Grammys.
 - Produced over 400 reissue recordings and compilations on CD for GRP Records, A&M Records, RCA Records, Concord Records, Sony Music, Columbia Records, among others.

- Artist Management - Hiram Bullock, Gerry Mulligan, Jim Hall, Chet Baker.
- Publishing – President of Saben Music; managed Mulligan Publishing.
- NARAS Board of Governors, NYC Education Committee, NYU Grammy in the Schools Committee, Jazz Selection Committee.
- DVD Producer (Bobby Short, Etta James, Bob Brookmeyer, Warren Vache, Gerry Mulligan).
- Audio Book Producer for the John Templeton Foundation.

1985-1987 **Atlantic Records, New York, New York**
Director of Jazz Production

- Production/Packaging - produced new recordings and reissues, including preparation of the 12 volume, "Atlantic Jazz"; supervised all album packaging.
- Grammy nominee.
- Director of the Jazz Department - responsible for promotion, publicity, and marketing efforts; managed staff of four.

1977-1983 **Artists House Recording Company, New York, New York**
Owner/President

- Production/Packaging - produced new recordings, supervised album packaging, developed label image.
- Grammy nominee, winner of various jazz polls, New York Art Directors Club winner.
- Sales/Marketing - established network of U.S. distributors and international licensees; direct-mail marketing.
- Artist Management - Gil Evans, Jim Hall, Art Pepper, Chet Baker, Ornette Coleman; produced tours of U.S., Europe, and Japan.
- Legal/Business Affairs - arranged for capitalization and international licensing agreements; managed staff of ten; NARAS Board of Governors.

1975-1977 **A&M Records, New York, New York**
Founder/Director of Horizon Jazz Series

- Production/Packaging - produced new recordings, supervised album packaging, developed label image.
- Grammy nominee, Grammy winner, winner of various jazz polls, New York Art Directors Club winner.
- Legal/Business Affairs - responsible for contract negotiations, supervised international licensees for Horizon; managed staff of four.

1973-1975 **CTI Records, New York, New York**
Assistant to President (Creed Taylor)

- Artists and Repertoire - planned recording projects; co-produced concert tours of U.S. and Japan.
- Manufacturing/Distribution - supervised manufacturing operations; supplied product to U.S. distributors and international licensees.
- Publishing - administered publishing subsidiaries; editor, Don Sebesky's textbook "The Recording Arranger".
- Legal/Business Affairs - in-house counsel; managed all contract negotiations and recording commitments.

1963-1973 **Professional Musician**
Trumpet

- Organized and led entertainment troupes for successful tours of the Caribbean, Newfoundland, Iceland, the United Kingdom, Europe, North Africa, Japan, Taiwan, the Philippines, Guam, Midway, Okinawa, Hawaii (during summers and holidays in college).
- Organized and managed band as college sophomore to play weekend engagements in the local area.
- Performed in touring shows, circuses, hockey games, night-club acts, churches, etc.

EDUCATION

1970-1973 **University of North Carolina, School of Law, Chapel Hill**
Juris Doctor

1966-1970 **University of North Carolina, School of Music, Greensboro**
Bachelor of Music Education, Magna Cum Laude

- Cone Music Scholarship, School of Music Scholarship, University Honors Scholarship.
- Member of School of Music Curriculum Committee (only student member).
- President of University Concert Band and Symphony Orchestra.
- Leader of music group, "The Eleventh Hour", including local tours, backing up national touring acts, and tours of Europe, Northern Africa, and the Far East during the summers while attending UNC-G.

PRODUCTIONS

1975-2014 See attached

Re: Expert Testimony on (i) Community Establishment; (ii) Nexus; and (iii) Support for DotMusic’s Community-Based Application¹ for .MUSIC (Application ID 1-1115-14110)

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

Please accept this letter that indicates that there is substantive and compelling evidence that the DotMusic application convincingly meets the full criteria under Community Priority Evaluation on the following points: (i) the Music Community’s *Establishment* as defined by DotMusic; (ii) the matching *Nexus* between the “music” Community and the “music” string (or top-level domain); and (iii) that DotMusic possesses documented *Support* from organizations representing a majority of the global Music Community addressed and defined.

Please see my credentials attached hereto that identify my level of expertise and specialized knowledge with respect to the music community’s organization and delineation.

SUMMARY

DotMusic has established the following:

- 1) Its Community definition recognizes the cohesive, symbiotic and overlapping nature of the global Music Community. The definition includes those associated with commercial and non-commercial creation, performance, marketing and distribution of music;
- 2) “Music Community” members have the requisite awareness and recognition of the interdependency, overlapping and cohesive nature of each “organized community of similar nature that relates to music.” These organized and aligned communities are closely united and make “music” as we know it today. It is this self-awareness and interdependence that gives the “Music Community” its strength. With exponential growth of the Internet, mobile and the Domain Name System (DNS), the “Music Community’s” use and reliance on the Internet to create, market and disseminate music-related content, products, services and activities will continue to grow;
- 3) The “Music Community” functions in a regulated sector with global copyright protections – it is clear that the “community,” as defined, implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate a globally-recognized set of standards for

¹ <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1392>

the protection of the “Music Community” member rights with relation to their copyrighted music works around the world;

4) The “Music” Community -- as defined by DotMusic -- has at least one entity mainly dedicated to the community supporting DotMusic’s application. Such documented *Support* includes several “international federation of national communities of a similar nature,” music coalitions and others that are strongly associated with “music,” which represent a majority of the Community with considerable millions of members worldwide.²

5) The *Nexus* of the “music” Community matches the “music” applied-for string because it represents the entire global Music Community – a community that pre-existed 2007 with a size in the considerable millions of constituents. The “Music Community” definition -- which incorporates the strict fundamental attributes of a closely united Community definition that is “organized” and “delineated” -- ensures that all of its constituent members have a requisite awareness of the community as defined, including both commercial and non-commercial stakeholders, to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination.

6) DotMusic has received support from the largest coalition of Music Community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support³ from institutions/organizations representing a majority of the Community as defined and recognized in the DotMusic application.

There is substantive evidence that DotMusic fulfills the *Nexus, Community Establishment and Support* criteria for the “Music” string. The inclusion and representation of every music constituent type is paramount to the articulated purpose of the string. DotMusic and its application’s global Music Community supporters substantiate that every type of music constituent contributes to the function and operation of the music sector within a regulated framework. The symbiotic nature of the Community as defined and structured means that “Music” would not function as it does today without the participation of all music constituent types that interconnect to match the “music” string with the “music” Community definition.

² <http://music.us/supporters>

³ <http://music.us/supporters>

ASSESSMENT OF COMMUNITY DEFINITION, ESTABLISHMENT AND NEXUS

A) *Music Community Definition, Establishment & Community Endorsement*⁴

DotMusic’s definition of the “Music Community” as a “strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music” (See Application Answer to Question 20a) is factually accurate and representative of the “Music Community.” Community characteristics include:

i) An Organized, Cohesive, Interdependent Logically-Allied Community:

The “Music Community” definition covers the regulated, interdependent and cohesive nature of the music sector that exists today. “Music Community” members have the requisite awareness and recognition of the interdependent, overlapping and cohesive nature of each “organized community of similar nature that relates to music” that comprises the “Music Community.” Without such cohesiveness and interdependency, the defined “Music” Community matching the applied-for string (“Music”) would not be able to function in its regulated sector. “Music” is a regulated sector comprised of a logical alliance of interdependent communities relating to music with organized practices and institutions that enable and regulate the production, distribution and consumption of music that was publicly recognized by both ICANN and the Government Advisory Committee⁵

As a result, the Music Community as defined is “closely united” (As per the definition of “cohesion” according to Merriam-Webster dictionary⁶) or “united or form a whole” (As per the definition of the word “cohesion” according to Oxford Dictionaries⁷).

DotMusic’s application follows unified principles that the entire Community subscribes to, such as: creating a trusted identifier and safe haven for music consumption, protecting musicians’ rights and intellectual property, fighting copyright infringement/piracy, supporting fair compensation and music education, and following a multi-stakeholder approach of representation of all types of global music constituents without discrimination (See Application Answers to 18).

The “Music Community” as defined (a “strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music”) establishes that:

- (1) There is an awareness and recognition among its members;

⁴ See <http://music.us/establishment>

⁵ <https://www.icann.org/en/system/files/bm/briefing-materials-2-05feb14-en.pdf>, Pg.3

⁶ <http://www.merriam-webster.com/dictionary/cohesion>

⁷ http://www.oxforddictionaries.com/us/definition/american_english/cohesion

- (2) The organized and delineated logical alliance of communities exists; and
- (3) The Community is “closely united” and “interdependent” (i.e. Each “organized community of similar nature that relates to music” which is part of the “logical alliance of communities that relate to music” is not mutually exclusive).

In short, the applied-for string (“Music”) matches the name of the “Music” Community as defined by DotMusic’s application. DotMusic’s “Music Community” definition accurately represents the common definition of the “Music Community,” which is confirmed by Wikipedia.

According to Wikipedia:⁸

*Music community is defined as a logical alliance of interdependent communities that are related to music, which include commercial participants...and non-commercial participants...and consists of an “ensemble of practices and institutions that make possible and regulate the production, distribution and consumption of music”...UNESCO identifies the music community as a “community of identity” implying common identifiable characteristics and cohesive attributes such as sharing a music culture, norms and subscribing to common ideals related to music...The music community is not defined as much by demographic indicators such as race, gender, and income level, as it is by common values, cohesive norms and interconnected structures to build a community identity. It refers to music-related individuals and organisations in a shared environment with shared understandings and practices, modes of production and distribution. The shared organisation of collective musical activities, identity and community value is created as result of infrastructure and a shared set of common values...Many studies outline the historical, cultural, and spatial significance of the music community, including how its identity is formed through musical practices. The music community shares a cohesive and interconnected structure of artistic expression, with diverse subcultures and socio-economic interactions...subscribing to common ideals. Under such structured context music consumption becomes possible regardless whether the transaction is commercial and non-commercial.*⁹

⁸ Wikipedia is ranked 6th among the ten most popular websites (Alexa, Retrieved March 23, 2015 from <http://www.alexacom/siteinfo/wikipedia.org>) and constitutes the Internet's largest, most frequently updated and popular general reference work (See OECD, OECD Internet Economy Outlook 2012, OECD Publishing, http://www.oecd-ilibrary.org/science-and-technology/oecd-internet-economy-outlook-2012_9789264086463-en, Pg.172) that compares favorably to the accuracy of other encyclopedias (such as the Britannica) according to a 2012 study conducted in partnership with Oxford University (See <http://blog.wikimedia.org/2012/08/02/seven-years-after-nature-pilot-study-compares-wikipedia-favorably-to-other-encyclopedias-in-three-languages>).

⁹ Music Community. In *Wikipedia*. Retrieved July 6, 2015, from https://en.wikipedia.org/wiki/Music_community

ii) An Aware, Pre-Existing and Recognized Community of Considerable Millions Worldwide:

DotMusic's definition of the Community covers all Community members associated with the string, each with a requisite awareness of the Community that can be validated through their natural association with a particular music-related community that they clearly identify with. According to DotMusic, all Music Community members must identify their music-related community in order to demonstrate their requisite awareness of the defined Community as part of the .MUSIC registration and validation process.

According to DotMusic, the Music Community's geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents (Application Answer to Question 20a).

According to DotMusic, "registrants will be verified using Community-organized, unified "criteria taken from holistic perspective with due regard of Community particularities" that "invoke a formal membership (Application Answer to Question 20a)." The defined Community represents all music-related entities with a clear and straightforward membership with the Community involved in the legal production, performance, promotion, and distribution of music worldwide. According to DotMusic, the Music Community members must have an active, non-tangential relationship with the applied-for string "music" and also have the requisite awareness of the music-related community that they are a part of by specifically identifying it as part of the registration and validation process (i.e. upon successful registration and validation, each community member will be given a unique community identification number that will automatically associate them with their identified community and the "music" string).

DotMusic's Community definition matches the applied-for string because it allows both commercial and non-commercial stakeholders to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination/exclusion. Given the regulated sector of the community, it is clear that the "Music Community" as defined implies "more of cohesion than a mere commonality of interest" with an "awareness and recognition of a community among its members." Several international treaties mandate cohesive and globally-recognized set of standards for the protection of the music community members' rights with relation to their copyrighted music works around the world.¹⁰

The Berne Convention for the Protection of Literary and Artistic Works¹¹ provides that each of the 168 contracting parties¹² (representing an overwhelming majority of the world's population) provides automatic protection for music works first published in other countries of the Berne union and for unpublished music works whose authors are citizens of or resident in such other

¹⁰ http://www.rightsdirect.com/content/rd/en/toolbar/copyright_education/International_Copyright_Basics.html

¹¹ http://www.wipo.int/treaties/en/text.jsp?file_id=283698

¹² http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=15

countries.¹³ This means that if a Music Community member’s copyright rights are violated in any other signatory country’s jurisdiction, then the music community member will have the music copyright rights given by that country. Music Community members are clearly aware of the collective Community’s rights, which could not be made possible without these cohesive and globally-recognized set of standards. If such standards were not coherent or enforced then music would not be able to exist in its current form and the industry component of the Music Community sector would not exist. As such, the Community’s *Establishment* and definition is “cohesive” and hence cannot be construed since the Community is a logical alliance of music communities that establish a clearly delineated and organized Community structure that is “closely united” and functions as a “whole”

Further evidence to substantiate the cohesive, symbiotic and overlapping nature of the Community, includes other globally-recognized standards and classification systems, which identify who the individual songwriters, publishers and rights holders are and which songs they are associated with so that Community members are appropriately compensated, regardless of whether the constituent is a commercial, non-commercial or amateur entity. The “music” string is commonly used in classification systems such as ISMN,¹⁴ ISRC,¹⁵ ISWC,¹⁶ ISNI.¹⁷ (Application Answer to Question 20a). For example, if a music entity would like to distribute their music, either commercially or for free, then an ISRC can be assigned to globally identify any specific music work. An ISRC, which facilitates efficient music discovery and community member payment, is constructed from 12 characters representing country, registrant, year of registration and designation (i.e. the serial number assigned by the registrant). With respect to domains, an equivalent system that relates to identifying a specific domain’s registrant and other relevant information pertaining to the domain is WHOIS. Domain registrants are required by ICANN “to provide accurate WHOIS contact data” or else their domain “registration may be suspended or even cancelled”.¹⁸

¹³ <http://www.britannica.com/EBchecked/topic/62482/Berne-Convention>

¹⁴ The International Standard Music Number (ISMN) is a unique number for the identification of all notated music publications from all over the world. The ISMN is an ISO certified global standard number (ISO 10957:2009). See <http://www.ismn-international.org/whatis.html> and http://www.iso.org/iso/home/store/catalogue_ics/catalogue_detail_ics.htm?csnumber=43173

¹⁵ The ISRC (International Standard Recording Code) is the international identification system for sound recordings and music video recordings. The ISRC is an ISO certified global standard number (ISO 3901:2001) and is managed by the IFPI. See <http://isrc.ifpi.org>, <https://www.usisrc.org/about/index.html> and http://www.iso.org/iso/catalogue_detail?csnumber=23401

¹⁶ The ISWC (International Standard Musical Work Code) is a unique, permanent and internationally recognized reference number for the identification of musical works. The ISWC has been approved by ISO (International Organization for Standardisation) as a global standard (ISO 15707:2001) and is managed by CISAC. See <http://www.iswc.org/en/faq.html> and http://www.iso.org/iso/catalogue_detail?csnumber=28780

¹⁷ The International Standard Name Identifier (ISNI) is the ISO certified global standard number (ISO 27729) for identifying the millions of contributors to creative works and those active in their distribution. ISNI holds public records of over 8 million identities and 490,000 organizations. See <http://www.isni.org/> and http://www.iso.org/iso/catalogue_detail?csnumber=44292

¹⁸ <https://whois.icann.org/en/about-whois> and <https://www.icann.org/resources/pages/faqs-f0-2012-02-25-en>

Without such Music Community “cohesion” and standardized systems functioning in its regulated sector, the Music Community would not be able to create, market and distribute their music. By the same token, fans would not be able to identify the music they are listening to with a specific music artist, regardless of whether the listening activity or behavior is commercial or non-commercial in nature. The socio-economic structure that characterizes “music” as commonly-known today would be non-existent without these organized and delineated elements that commonly define the Community.

iii) *International Federations and Organizations mainly Dedicated to the Community:*

According to ICANN’s Applicant Guidebook (“AGB”)¹⁹: “*With respect to “Delineation” and “Extension,” it should be noted that a community can consist of...a logical alliance of communities (for example, an international federation of national communities of a similar nature... viable as such, provided the requisite awareness and recognition of the community is at hand among the members.*” (AGB, 4-12). The community as defined in the DotMusic application has at least one entity *mainly*²⁰ dedicated to the community which has supported DotMusic, which include several “international federation of national communities of a similar nature” relating to music, music coalitions and other relevant and non-negligible music organizations.

One of these entities include the only international federation of national communities relating to government culture agencies and arts councils, which has an integral association with music globally: the International Federation of Arts Councils and Culture Agencies (IFACCA).

IFACCA is the only international federation that represents government culture agencies and arts councils globally. These national communities are governmental institutions that play a pivotal

¹⁹ <https://newgtlds.icann.org/en/applicants/agb/guidebook-full-11jan12-en.pdf>

²⁰ Per the Oxford and Merriam Webster dictionaries, the word “mainly” is defined as “*more than anything else*” (See <http://www.oxforddictionaries.com/definition/english/mainly> and <http://www.merriam-webster.com/dictionary/mainly> respectively). According to DotMusic, the string .MUSIC relates to the Community “by representing all constituents involved in music creation, production and distribution” (Application Answer to Question 20d). Supporting organizations related to that string that are “mainly” dedicated to the Community and its activities, include the International Federation of Arts Councils and Culture Agencies (IFACCA) representing government culture ministries and arts councils, the International Federation of Musicians (FIM) representing musicians globally, the International Federation of Phonographic Industry (IFPI) representing the recording industry worldwide, the International Confederation of Music Publishers (ICPM) representing the voice of global music publishing, the International Association of Music Information Centres (IAMIC), the American Association of Independent Music (A2IM), whose associate members represent a majority of music consumed, the Independent Music Worldwide Independent Network (WIN) representing independent music worldwide, the International Society for Music Education (ISME) the premiere international organization representing music education, and many others (See support at <http://music.us/supporters> and <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails:downloadattachment/142588?t:ac=1392>).

role with respect to music.²¹ IFACCA's members cover the majority of music entities globally, regardless of whether they are commercial, non-commercial or amateurs. Government ministry of culture and council agencies related to music cover a majority of the overall community with respect to headcount and geographic reach. The "Size" covered reaches over a hundred million music entities i.e. "considerable size with millions of constituents" per Application Answer to Question 20a.

The string "music" falls under the jurisdiction of each country's Ministry of Culture governmental agency or arts/music council (emphasis added). The degree of power and influence of government ministry of culture and council agencies with respect to music surpasses any organization type since these agencies (i) provide the majority of funding for music-related activities; (ii) regulate copyright law; and (iii) encompass all the music entities that fall under their country, regardless whether these entities are commercial, non-commercial or amateurs. IFACCA is globally recognized by its strategic partners, such as UNESCO, a United Nations agency representing 195 member states and the European Commission.²² The UNESCO strategic partnership²³ is relevant, especially since UNESCO founded the International Music Council (the "IMC") in 1949, which represents over 200 million music constituents from over 150 countries and over 1000 organizations globally.²⁴

Government activities in the clearly delineated and organized "Music Community" include setting statutory royalty rates. For example, in the United States, mechanical royalties are based on a "statutory rate" set by the U.S. Congress. This rate is increased to follow changes in the economy, usually based on the Consumer Price Index. Currently, the mechanical statutory rate is \$0.091 for songs five minutes or less in length or \$.0175 per minute for songs that are over five minutes long.²⁵

Ministries of culture and arts councils (that comprise IFACCA's membership) support musicians, musical performances, independent music artists, non-commercial musical expression and education in their respective countries. The 165 ministries of culture, arts councils and affiliates that comprise IFACCA's membership support the "performing arts" and music specifically. Without the financial and logistical support of arts councils and the ministries of culture, the music community would be adversely affected, and in some countries, may not exist in any appreciable manner. For example, the Ministry of Culture 2011 budget for the small country state of Cyprus for culture funding was €34,876,522 with critical support of music activities.²⁶ Other small government Ministries of Culture, such as Albania,²⁷ or government

²¹ http://www.ifacca.org/membership/current_members/

²² http://www.ifacca.org/strategic_partners/

²³ http://www.ifacca.org/strategic_partners/

²⁴ <http://www.imc-cim.org/about-imc-separator/who-we-are.html>

²⁵ U.S Copyright Office, <http://www.copyright.gov/carp/m200a.html>

²⁶ 2011 Annual Report for Cyprus Ministry of Culture, Section 1.2 "Music"

(http://www.moec.gov.cy/en/annual_reports/annual_report_2011_en.pdf). Activities include Music Performances in Cyprus (1.2.1) and Abroad (1.2.2), Subsidization of Paphos Aphrodite Festival (1.2.3), Music Publications (1.2.4), Subsidization and Purchases of Digital Records (1.2.5), Promotion for Cypriot musical creativity abroad (1.2.6),

Ministries of Culture and Arts Councils from countries with larger populations, such as India,²⁸ all provide critical support and substantial advocacy for music. Other examples include government institutions collaborating and advocating music through their funded country-based pavilion initiatives at Midem, the world's largest music conference.²⁹

Government ministries and arts councils provide critical support for the Music Community, including commercial music organizations. By way of example, government ministries' and arts councils' substantial connection to and support of "music" is noted in the reports of funding and support for music. Some examples to showcase the degree of power of the IFACCA's membership towards the string and global and national music are music investment and music funding (Annual reports by governments and councils):

- New Zealand Ministry of Culture has funded significant music projects. Some include the REAL New Zealand Music Tour (\$415,000), the New Zealand String Quartet (\$150,000) and New Zealand Music Commission: (\$1,378,000).³⁰
- The Australian Government/Council For The Arts invested \$51.2 million for the nation's orchestras; \$21.6 million for opera; \$10.8 million for other music artists and organizations; \$13.1 million for multi-platform artists and organizations; and \$4 million in miscellaneous funding, including sector building and audience development initiatives and programs.³¹
- Canada Council for the Arts is Canada's national, arts funding agency investing \$28 million in its Canada Council Musical Instrument Bank (Page 16) and \$28,156,000 in Music Arts Programs (Page 66).³² The Government of Canada also renewed its annual investment of \$27.6 million over five years in the Canada Music Fund.³³
- The United Kingdom Department for Culture and Education (DfE) will fund music education at significant levels: £77 million, £65 million and £60 million will be available in the three years from April 2012.³⁴

Cyprus Symphony Orchestra Foundation (1.2.7), Music Information Centre (1.2.8), Developing Music Education (1.2.9), Organising of the 1st Musicological Symposium (1.2.10) and Musical Festivities for the European Volunteerism Year (1.2.11)

²⁷ http://www.culturalpolicies.net/down/albania_012011.pdf

²⁸ 2010-11 Annual Report from India Ministry of Culture, [http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011\(Eng\).pdf](http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011(Eng).pdf)

²⁹ <http://my.midem.com/en/contact-us/pavilion-representatives/>

³⁰ 2011 Annual Report from New Zealand Ministry of Culture:

[http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20\(D-0448383\).PDF](http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20(D-0448383).PDF)

³¹ 2011 Annual Report for the Australia Council for the Arts,

http://www.australiacouncil.gov.au/data/assets/pdf_file/0016/142351/Australia-Council-Annual-Report-201112.pdf, Page 28

³² 2011 Annual Report for Canada Council for the Arts, [http://www.canadacouncil.ca/NR/rdonlyres/6F7549BB-F4E5-4B8B-95F4-](http://www.canadacouncil.ca/NR/rdonlyres/6F7549BB-F4E5-4B8B-95F4-1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf)

[1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf](http://www.canadacouncil.ca/NR/rdonlyres/6F7549BB-F4E5-4B8B-95F4-1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf)

³³ <http://www.pch.gc.ca/eng/1294862453819/1294862453821>

³⁴ Department for Culture, The Importance of Music, A National Plan for Music Education,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/180973/DFE-00086-2011.pdf, Page 4, 2011

- The United States National Endowment of the Arts has awarded more than \$4 billion to support the arts since its inception³⁵ and has a strong focus on music as outlined in its Strategic Plan³⁶ with Congress requested to provide \$154,465,000 for fiscal year 2014.³⁷
- The National Arts Council of South Africa invested 2,536,131 ZAR in Music and 9,995,000 ZAR in Orchestras and has focused strongly on the “Strengthening of live indigenous music and advocating the revival of the live music circuit in South Africa”³⁸
- The Singapore Arts Council will fund \$10.2 million in the arts under its 2013 Grants Framework, including the Ding Yi Music Company and Siong Leng Musical Association.³⁹
- In 2011, the support for artistic activities by the Arts Council of Finland was €32.4 million of which €4,921,850 was awarded to music.⁴⁰

Each of IFACCA’s members has a clear association with, and mandate to support the music arts in their countries. In most countries, their ministry of culture/arts council is the largest funder and marketing supporter of the music arts.

The IFPI is another entity *mainly* dedicated to the Community. The IFPI is the only organization that represents the interests of the recording industry worldwide. It is the “voice of the recording industry worldwide”⁴¹ whose members⁴² – major and independent companies -- represent a majority of all commercial music consumed globally. For example, the RIAA, an IFPI national group member,⁴³ represents “approximately 85% of all legitimate recorded music produced and sold in the United States,”⁴⁴ the world’s largest music market with 30% global market share.⁴⁵ Formed in 1933, the IFPI’s mission was to “represent the interests of the recording industry worldwide in all fora.”

³⁵ 2011 Annual report for the National Endowment of the Arts, <http://www.nea.gov/about/11Annual/2011-NEA-Annual-Report.pdf>, Page 2

³⁶ NEA Strategic Plan 2012-2016, www.arts.gov/about/Budget/NEAStrategicPlan2012-2016.pdf

³⁷ http://www.ifacca.org/national_agency_news/2013/04/10/us-president-requests-154465000-neh-2014/

³⁸ 2010-2011 Annual Report for the National Arts Council South Africa, National Arts Council South Africa, <http://www.nac.org.za/media/publications/AR%2010-11%20NAC.PDF/download>, Page 11. Also Mmino, the South African – Norwegian Education Music Programme, solely funds music projects funding a total of 294 projects. Thirteen projects were allocated funding for a total of R1,680,600 of which R1,381,000 went towards music educational and R299,600 to exchange projects (Page 10)

³⁹ Singapore Arts Council, <http://www.nac.gov.sg/media-centre/news-releases/news-detail?id=c2db15e2-c319-40ec-939c-d58735d0a91c>

⁴⁰ <http://www.taiteenkeskustoimikunta.fi/documents/10162/31704/TY+tilastotiedote+1+12+.pdf>, Page 1 and Page 23

⁴¹ <http://www.ifpi.org/about.php>

⁴² <http://www.ifpi.org/our-members.php>

⁴³ <http://www.ifpi.org/national-groups.php>

⁴⁴ <http://www.riaa.com/faq.php>

⁴⁵ <http://www.statista.com/topics/1639/music/>

Another clear example of an “entity *mainly* dedicated to the community” with members that cover hundreds of millions of music constituents with formal boundaries is A2IM, the American Association of Independent Music. A2IM has two types of members: U.S independent Label members and Associate members. A2IM membership for Labels and Associates is invoked formally through an application and if accepted would require annual membership dues.⁴⁶

The reach of A2IM Associate⁴⁷ membership covers hundreds of millions of entities (i.e. the reach of A2IM’s total membership “geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents – See Application Answer to Question 20a).

Organized and strictly delineated communities related to music that are A2IM members include:

- **Apple iTunes**⁴⁸ – iTunes accounts for 63% of global digital music market⁴⁹ - a majority – with a registered community of 800 million registered members⁵⁰ available in 119 countries who abide to strict terms of service and boundaries⁵¹ and have downloaded over 25 billion songs⁵² from iTunes’ catalog of over 43 million songs⁵³ covering a global music community, regardless of genre or whether the community entities are amateur, professional, commercial or non-commercial. To add music to iTunes, all music artists must have a formal membership with iTunes via an Apple ID registration, which includes a current credit card on file.⁵⁴
- **Pandora**⁵⁵ – Pandora is the world’s largest streaming music radio with a community of over 250 million registered members.⁵⁶
- **Spotify**⁵⁷ – Spotify is the world’s largest music streaming community with over 50 million active registered members in 58 countries and over 30 million songs. The music community uploads 20,000 songs every day.⁵⁸
- **Vevo**⁵⁹ – Vevo is the world’s leading all-premium music video community and platform with over 8 billion monthly views globally.⁶⁰

⁴⁶ <http://a2im.org/about-joining/>

⁴⁷ <http://a2im.org/groups/tag/associate+members/>

⁴⁸ <http://a2im.org/groups/itunes>

⁴⁹ <http://appleinsider.com/articles/13/04/16/apples-itunes-rules-digital-music-market-with-63-share>

⁵⁰ <http://www.npr.org/blogs/therecord/2015/01/06/375173595/with-downloads-in-decline-can-itunes-adapt>

⁵¹ <http://www.apple.com/legal/internet-services/itunes/ww/index.html>

⁵² <http://www.apple.com/pr/library/2013/02/06iTunes-Store-Sets-New-Record-with-25-Billion-Songs-Sold.html>

⁵³ <https://www.apple.com/itunes/features/>

⁵⁴ <https://www.apple.com/itunes/working-itunes/sell-content/music-faq.html>

⁵⁵ <http://a2im.org/groups/pandora>

⁵⁶ <http://www.cnet.com/news/like-a-rolling-milestone-pandora-hits-250m-registered-users/> and <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MTkxNTM1fENoaWxkSUQ9LTF8VHlwZT0z&t=1>, Pg.9

⁵⁷ <http://a2im.org/groups/spotify>

⁵⁸ <https://press.spotify.com/us/information/>

⁵⁹ <http://a2im.org/groups/vevo/>

- **Youtube**⁶¹ – Youtube is the world’s largest music video streaming community with millions of music creators -- amateur, professional, commercial or non-commercial -- and over 1 billion registered members covering all regions globally. 6 billion hours of video is watched every month on Youtube,⁶² of which 38.4% is music-related.⁶³
- **ReverbNation**⁶⁴ – ReverbNation⁶⁵ is one of the world’s largest music community and a leading music distributor with over 3.87 million musicians, venues labels and industry professionals covering every country globally. The ReverbNation community grows by over 50,000 artists, bands, labels and industry professionals monthly.
- **BMG**⁶⁶ – BMG is focused on the management of music publishing and recording rights. BMG has an international presence and represents over 2.5 million music rights globally.⁶⁷

A2IM also includes members that are associated with global government agencies which exclusively represent substantial music economies and music members, such as France (BureauExport⁶⁸), China (China Audio Video Association⁶⁹) and Germany (Initiative Musik).⁷⁰ A2IM also has Affiliate⁷¹ associations within the global music community. These include Affiliates such as MusicFirst,⁷² the Copyright Alliance,⁷³ the Worldwide Independent Network (WIN)⁷⁴ and Merlin.⁷⁵

A2IM also represents a recognized Music Coalition representing the interests of the Global Independent Music Community.⁷⁶ The A2IM Coalition includes Merlin, a global rights agency for the independent label sector, representing over 20,000 labels from 39 countries, Worldwide Independent Network (representing label creators in over 20 countries), Association of Independent Music (representing largest and most respected labels in the world), and IMPALA (Independent Music Companies Association on behalf of over 4,000 independent music companies and national associations across Europe, representing 99% of music actors in Europe which are micro, small and medium sized enterprises.

⁶⁰ <http://www.vevo.com/c/EN/US/about>

⁶¹ <http://a2im.org/groups/youtube/>

⁶² <https://www.youtube.com/yt/press/statistics.html>

⁶³ http://www.researchandmarkets.com/reports/2092499/internet_video_2011_2014_view_share_site_and

⁶⁴ <http://a2im.org/groups/reverb-nation/>

⁶⁵ <http://www.reverbnation.com/about>

⁶⁶ <http://a2im.org/groups/bmg-rights/>

⁶⁷ <http://www.bmg.com/category/about-us/history/>

⁶⁸ <http://a2im.org/groups/french-music-export-office>

⁶⁹ <http://a2im.org/groups/china-audio-video-association-cava>

⁷⁰ <http://a2im.org/groups/initiative-musik-gmbh>

⁷¹ <http://a2im.org/groups/tag/associate+members/>

⁷² <http://musicfirstcoalition.org/coalition>, The musicFIRST Coalition, with founding members A2IM, RIAA, and Recording Academy represents musicians, artists, managers, music businesses, and performance right advocates.

⁷³ <http://www.copyrightalliance.org/members>

⁷⁴ <http://www.winformusic.org>

⁷⁵ <http://www.merlinnetwork.org>

⁷⁶ <https://www.icann.org/en/system/files/correspondence/bengloff-to-chehade-et-al-20aug14-en.pdf> and <https://www.icann.org/en/system/files/correspondence/bengloff-to-crocker-et-al-07mar15-en.pdf>

Cumulatively, A2IM's Label and Associate Membership, A2IM's Affiliates and the A2IM's Global Independent Music Community Coalition, covers a majority of the global music community. Its cumulative membership is in the hundreds of millions of entities with formal boundaries belonging to strictly organized and delineated communities related to music as per the Community Definition and Size (See Application answer to Question 20a).

Another global Music Community Coalition led by the RIAA “on behalf of over 15 national and international trade associations” also expressed its support for .MUSIC to be under a “community” application model, including encouraging statements in support of DotMusic’s policies that stated that the coalition “was encouraged to see” that DotMusic “included several measures to deter and address copyright infringement within that TLD.” The “coalition members represent the people that write, sing, record, manufacture, distribute and/or license over 80% of the world’s music”⁷⁷ – a majority of global music.⁷⁸

Another letter⁷⁹ sent to ICANN (on April 14th, 2015) by Danielle Aguirre from the NMPA and on behalf of a music publisher and songwriter community coalition representing a majority of the global music publishing community, also expressed “support [for] the .MUSIC community applications because respecting and protecting music rights serves the global music community and the public interest.”

The International Music Products Association, NAMM, is another globally-recognized and relevant group of non-negligible size that has supported DotMusic.⁸⁰ NAMM, formed in 1901, is *mainly* dedicated to the global music community by representing the international music products industry and community, with globally-recognized members and exhibitors that include Yamaha, Roland, Sennheiser, Sony, Fender, Harman, Kawai, Shure, Steinway, Audio-Technica, AKAI, Gibson, Peavey, Korg, AKG, Selmer, JBL, Alesis, Ibanez, AVID, Casio, DW, Sabian, Pearl, Zildjian, Martin, Ludwig, Marshall and others.^{81 82} Every amateur and professional musician worldwide uses music products manufactured and distributed by NAMM’s members. Without these musical instruments and products, music as we know it today would not be created or produced. NAMM and its trade shows power the \$17 billion global music products industry serving as a hub for the global music community wanting to seek out the newest innovations in musical products, recording technology, sound and lighting. NAMM’s mission is “to strengthen

⁷⁷ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.1

⁷⁸ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.3, Appendix A

⁷⁹ <https://www.icann.org/en/system/files/correspondence/aguirre-to-icann-board-eiu-14apr15-en.pdf>

⁸⁰ http://music.us/letters/NAMM_International_Music_Products_Association.pdf

⁸¹ https://www.namm.org/files/showdir/ExhibitorList_WN15.xls

⁸² <http://www.musictrades.com/global.html>

the music products industry and promote the pleasures and benefits of making music.”⁸³ NAMM also hosts the NAMM Show, the world's largest event for the music products industry.

Collectively, the DotMusic application received support from the largest coalition of music community member organizations ever assembled to support a cause representing over 95% of music consumed globally.⁸⁴ Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support⁸⁵ from institutions/organizations representing a majority of the Community addressed. Music -- as commonly-known by the general public and experienced today -- would not be possible without these supporting, non-negligible and relevant organizations that have endorsed DotMusic.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Community Establishment* and *Community Endorsement* from the majority of the global Music Community as defined.

B) Nexus⁸⁶

According to the Applicant Guidebook (“AGB”), to receive the maximum score for Nexus, the applied-for string -- “music” -- must match the name of the community or be a well-known short-form or abbreviation of the community name.

The *Nexus* of the “Music Community” entirely matches the applied-for “music” string because it represents the entire global Music Community as commonly-known and perceived by the general public. This definition allows for all constituents with a requisite awareness of the Community defined to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination. The definition of the Community requires that members have an active, non-tangential relationship with the applied-for string and the requisite awareness of the music community they identify with as part of the registration process. It is clear that the general public will directly associate and equate the string with the Community as defined by DotMusic. There is no possibility of overreaching beyond the definition or allowing unrelated non-music entities to be included as part of the Community. Community members may register a .MUSIC by either:

⁸³ <https://www.namm.org/about>

⁸⁴ See <http://music.us/supporters>, <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/downloadattachment/142588?t:ac=1392>, Bloomberg BNA at http://music.us/RIAA_Backs_DotMusic.pdf Pg.1, and <http://diffuser.fm/will-dot-music-domains-make-the-internet-better/>

⁸⁵ <http://music.us/supporters>

⁸⁶ See <http://music.us/nexus>

- 1) Identifying that they belong to a Music Community Member Organization (“MCMO”); or
- 2) Identifying the community they belong to, which is consistent with the definition of the Community: “the strictly delineated and organized logical alliance of communities of similar nature related to music.”

All Community members are aware of and recognize their inclusion in the defined Community by identifying which clearly defined community they belong to and have an active participation in. The *nexus* of the applied-for string ensures inclusion of the entire global community that the string represents while excluding unrelated-entities not associated with the string. This way there is a clear match and alignment between the “music” sting and the Community defined.

While the exact size of the global Music Community as defined is unknown (there is no empirical evidence providing an exact, finite number because amateur entities are also included in the Community’s definition), it is in the considerable millions as explicitly stated in the DotMusic Application. DotMusic’s definition of the Community and mutually-inclusive Registration Policies ensure that eligible members are only music-related and associated with the string. This is because the string identifies all constituents involved in music. Music-only participation optimizes the relevancy of .MUSIC domains to the string and entirely matches the *nexus* between the string and Community defined. According to DotMusic, the Community *definition, eligibility* criteria and *content and use* requirements ensure that peripheral industries and entities not related to music are excluded so that the string and the defined Community matches and aligns in a consistent manner consistent with DotMusic’s community-based purpose i.e. only entities with music-related activities are able to register .MUSIC domains.

Membership aligns with the *nexus* of the Community and the string, which is explicitly relevant to music. The string as defined in the application demonstrates uniqueness because it has no other significant meaning beyond identifying the community described in the application. According to DotMusic’s application, any tangential or implicit association with the *nexus* of the Community and the string is not regarded as a delineated membership since it would be considered unclear, dispersed or unbound. Such unclear, dispersed or unbound tangential relationships with the defined “music” Community and applied-for “music” string would not constitute a qualifying Community membership and would be ineligible for registration. Every type of music constituent critically contributes to the function and operation of the music sector within a regulated framework⁸⁷ given the symbiotic overlapping nature of the Community as defined and structured. Music would not function as it does today without the participation of all music constituent types which cumulatively match the string with the Community definition.

⁸⁷ ICANN has disclosed that the string .MUSIC is a sensitive string operating in a regulated sector. ICANN also accepted Government Advisory Committee (GAC) advice for safeguards to protect the Music Community and the public interest (See <https://icann.org/en/system/files/correspondence/crocker-to-dryden-3-29oct13-en.pdf> Pg.7)

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Nexus*.

Respectfully Submitted,

Jordi Bonada Sanjaume

Signature:

Contact Information Redacted Aug 5 '15 ip: 81.154.234.25

Name: Jordi Bonada Sanjaume

Title: PhD

Organization: Music Technology Group, Universitat Pompeu Fabra

Dr Jordi Bonada Sanjaume

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Departament de Tecnologies de la Informació i les Comunicacions
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08018 Barcelona
Contact Information Redacted



ACADEMIC BACKGROUND

- 2009 **PhD in Computer Science and Digital Communication**, Universitat Pompeu Fabra. **European Doctorate**. Title: "*Voice Processing and Synthesis by Performance Sampling and Spectral Models*". Supervisor: Dr. Xavier Serra.
- 2002 **Master in Computer Science and Digital Communication**, Universitat Pompeu Fabra. Title: "*Audio Time-Scale Modification in the Context of Professional Post-Production*". Supervisor: Dr. Xavier Serra.
- 1997 **Telecommunication Engineering**, Universitat Politècnica de Catalunya. Final Engineering Project: "*Desenvolupament d'un entorn gràfic per a l'anàlisi, transformació i síntesi de sons mitjançant models espectrals*", Supervisors: Dr. Climent Nadeu, Dr., Xavier Serra.
- 1981-1997 **Music studies** in the Conservatorio Isaac Albéniz, Girona. Composition studies in Alois Haba School, Barcelona.

PROFESSIONAL EXPERIENCE

- Since 1998 Researcher and project manager in the Music Technology Group, Universitat Pompeu Fabra, Barcelona.
- Since 2011 Cofounder of Voctro Labs, S.L., Spin-Off of the Universitat Pompeu Fabra, Barcelona.
- 2010 Visiting researcher, Centre for Interdisciplinary Research on Music Media and Technology (CIRMMT), McGill University, Montreal, Canada, from May to August, under the supervision of Dr. Catherine Guastavino.
- 2003 Visiting researcher, Royal Institute of Technology (KTH), Stockholm, from June to August, funded by MOSART EU project IST-215244, under the supervision of Dr. Johan Sundberg.
- 2001 Software License Agreement of a polyphonic audio time-scaling software to the Universitat Pompeu Fabra, with the obligation to sublicense it to Yamaha Corporation.

TEACHING EXPERIENCE

- 2010-2011 Universitat Pompeu Fabra, Department of Information and Communication Technologies, Associated Professor, *Digital Speech Processing* course, Audiovisual Systems Engineering.
- 2011 Teacher of the program *Introduction to research: Estades d'Estiu de Ciència*, Science for young people (Joves i Ciència) E2C3, Caixa Catalunya.
- 2009 Positive evaluation as a PhD Professor (*Professor Lector*), Agency for the Quality of the University System in Catalonia (AQU).
- 2009 Teacher of the program *Introduction to research: Estades d'Estiu de Ciència*, Science for young people (Joves i Ciència) E2C3, Caixa Catalunya.
- 1999-2001 Universitat Pompeu Fabra, Department of Information and Communication Technologies, Associated Professor, *Audio Signal Processing* course, Computer Science Engineering.
- 1996-1998 Secondary education teacher at the *Escola de Formació Professional d'Imatge i So*, Barcelona.

PhD Thesis Supervised

- Musevic, S., September 2013. "*Non-Stationary and High-Resolution Sinusoidal Analysis*". PhD program in Information, Communication and Audiovisuals Technologies, DTIC, Universitat Pompeu Fabra, Barcelona.

PhD Thesis under Supervision

- Umbert, M., expected defense in 2015. "*Expressive Control of Singing Voice Synthesis*". PhD program in Information, Communication and Audiovisuals Technologies, DTIC, Universitat Pompeu Fabra, Barcelona.

- Coleman, G., expected defense in 2015. "Audio Transformation by Descriptors". PhD program in Information, Communication and Audiovisuals Technologies, DTIC, Universitat Pompeu Fabra, Barcelona.

Final Project and Master Thesis Supervised

- Floría, H., 2013, "*Expressive speech synthesis for a Radio DJ using Vocaloid and HMMs*", Master Thesis SMC-DTIC, Universitat Pompeu Fabra, Barcelona.
- Jewalikar, V., 2013, "*Improving automatic phonetic segmentation for creating singing voice synthesizer corpora*", Master Thesis SMC-DTIC, Universitat Pompeu Fabra, Barcelona.
- Aldana, L., 2012, "*Speaking Nature: Strategies for Generating Credible Utterances of Nature Elements or Phenomena*", Master Thesis SMC-DTIC, Universitat Pompeu Fabra, Barcelona.
- Freixes, M., 2012, "*Rapaloid: Adapting an Existing Framework for Emotional Speech Prosody Generation*", Master Thesis SMC-DTIC, Universitat Pompeu Fabra, Barcelona.
- Bucci, A., 2011, "*Digital Equalization of the Electric Violin: Method for Obtaining Acoustic Violin Body Frequency Response based on Machine Bowing*", Master Thesis SMC-DTIC, Universitat Pompeu Fabra, Barcelona.
- Roig, C., 2011, "*Vocal Riffs Library for Vocaloid 3*", Master Thesis SMC-DTIC, Universitat Pompeu Fabra, Barcelona.
- Umbert, M., 2010, "*Emotional Speech Synthesis for a Radio DJ: Corpus Design and Expression Modeling*", Master Thesis SMC-DTIC, Universitat Pompeu Fabra, Barcelona.
- Comajuncosas, J.M, 2010, "*Expressive Breath Modeling*", Master Thesis SMC-DTIC, Universitat Pompeu Fabra, Barcelona.
- Musevic, S., 2009, "*Non-Stationary Sinusoidal Analysis*", Master Thesis SMC-DTIC, Universitat Pompeu Fabra, Barcelona.
- Pantazis, V., 2009, "*Extraction and Processing of Auditory Streams as Tracks from a Stereo Mix*", Master Thesis TICMA, Universitat Pompeu Fabra, Barcelona.
- Stamatopoulos, C., 2009, "*Harmonic Audio Object Processing in Time Domain*", Master Thesis SMC-DTIC, Universitat Pompeu Fabra, Barcelona.
- Huber, S., 2009, "*Harmonic Audio Object Processing in Frequency Domain*", Master Thesis SMC-DTIC, Universitat Pompeu Fabra, Barcelona.
- Caverivière, B., "*Audio Content Retrieval Using a Query-by-Imitation System*", Master S&T - mention Informatique, École Doctorale de Mathématiques et Informatique, Bordeaux, France.
- Nieto, O., 2008, "*Voice Transformation for Extreme Vocal Effects*", Master Thesis TICMA, Universitat Pompeu Fabra, Barcelona.
- Merchán, F., 2008, "*Expressive Characterization of Flamenco Singing*", Master Thesis TICMA, Universitat Pompeu Fabra, Barcelona.
- Pretel, C., 2006, "*Diagnóstico GRBAS a partir de una señal de voz*", Final Engineering Project, Universitat Pompeu Fabra, Barcelona.
- Vinyes, M., 2005, "*Auditory Stream Separation in Commercial Music Productions: Implementation of a Real-Time Method based on Pan Location*", Final Engineering Project, Telecommunication Engineering and Mathematics, Universitat Politècnica de Catalunya, Barcelona.
- Alonso, M., 2004, "*Model d'Expressivitat Emocional per a un Sintetitzador de Veu Cantada*", Final Engineering Project, Computer Science, Universitat Pompeu Fabra, Barcelona.

Member of the following PhD Juries

- Van der Schaar, M., 2010, "*An Acoustic Bio-Metric for Sperm Whales*", PhD Thesis, Automàtica, Robòtica i Visió Program, Universitat Politècnica de Catalunya.

GRANTS AND PRIZES

- June 2013 National Commendation for Invention award given by the *Japan Institute of Invention and Innovation (JIII)* for the invention of original and natural singing voice synthesis technology disclosed in the patent No.4153220.
- Sept. 2012 *Premi del Consell social de la Universitat Pompeu Fabra a la transferència del Coneixement*. Prize awarded by the Social Council of the Universitat Pompeu Fabra to the excellent track-record in technology transfer.
- April 2011 Second prize of the VALORTEC contest on Business Initiatives organized by ACCIÓ (www.acc10.cat) to the *Voctro Labs Spin-Off Company Initiative*.
- April 2011 Prize awarded by the *Centre Internacional de Negocis de Catalunya (CINC)* to the *Voctro Labs Spin-Off Company Initiative*.

- Sept. 2010 *Premi del Consell social de la Universitat Pompeu Fabra a la transferència del Coneixement*. Prize awarded by the Social Council of the Universitat Pompeu Fabra in the category of PhD thesis with big knowledge transfer potential.
- June 2007 Rosina Ribalta Prize, by EPSON Foundation, to the best PhD Project on Information Technology and Communications. The EPSON foundation awards the quality and methodology of the projects, their social and scientific interest and the merits of the candidate.
- 5-8/2003 Research grant at Royal Institute of Technology (KTH), granted by MOSART EU Project, IST-215244.
- 1997-1998 Student grant for the project "Audio Morphing", granted by Duy SA.

FINANCED PROJECTS

DATES	TITLE AND ROLE IN THE PROJECT	FINANCING ENTITY
4/2007-3/2014	<i>Singing Voice Synthesis</i> (seven one-year projects) Researcher and team manager	Yamaha Corp, Japan
4/2010-9/2012	<i>Monet</i> Researcher and team manager	Yamaha Corp, Japan
4/2009-3/2010	<i>MinusOne</i> Researcher and team manager	Yamaha Corp, Japan
01/2008-12/2010	<i>SAME (Sound And Music For Everyone Everyday Everywhere Everyway)</i> IST-FP7-ICT-39221 Research and development	European Commission
01/2008-12/2010	<i>SALERO (Semantic Audiovisual Entertainment Reusable Objects)</i> IST-FP6-027122 Research and development	European Commission
2009-2010	<i>Vericast Optimization</i> Research and development	BMAT Licensing, Spain
1/2009-6/2009	Exposition installation: " <i>La Veu dels Neanderthals</i> " Researcher and team manager	Fundació La Caixa - CosmoCaixa, Spain
2009	<i>KaleiVoiceCope</i> voice transformation installation for the exposition " <i>Les Veus de la Mediterrània</i> " Development	Can Quintana Museu de la Mediterrània, Spain
1/2008-7/2008	<i>Skore - A Singing Voice Performance Rating System</i> Researcher and team manager	BMAT Licensing, Spain
4/2006-3/2008	<i>Violin Performer</i> Researcher and team manager	Yamaha Corp, Japan
2006-2007	<i>Playable Audio</i> Researcher	Yamaha Corp, Japan
2007	Voice transformation installation for the exposition: " <i>Números!</i> " Development and team manager	Fundació La Caixa - CosmoCaixa, Spain
2005-2006	<i>ComboVox - Voice Processing plug-in</i> Research and development	Pinnacle Systems, USA
12/2003-12/2006	<i>Semantic-HIFI</i> IST-2003-507913 Research and development	European Commission

1999-2006	<i>Daisy - A Singing Voice Synthesizer</i> (seven one-year projects) Researcher and team manager	Yamaha Corp, Japan
2003-2004	<i>(Enhanced Singing Performance Rating + Enhanced Sound Shift Operator)</i> Researcher and team manager	Yamaha Corp, Japan
2002-2004	<i>VoiceFX - A Singing Voice Processor</i> Researcher and team manager	Yamaha Corp, Japan
28/12/2000-27/12/2003	TABASCO (<i>Content based Audio Transformations</i>). TIC 2000-1904- C02 Research and development	Spanish Ministry of Science and Technology
01/11/2001-31/10/2003	Open Drama. IST-2000-28197 Research and development	European Commission
2001-2002	<i>Time Machine - High Quality Time-Scaling of Polyphonic Audio</i> Researcher and team manager	Yamaha Corp, Japan
01/02/2000-31/10/2001	RAA (<i>Recognition and Analysis of Audio</i>). IST-1999-12585 Research and development	European Commission
1997-1999	<i>Voice Morphing System for Impersonating in Karaoke</i> Researcher and team manager	Yamaha Corp, Japan

PATENTS

PRIORITY DATE AND NUMBER	INVENTORS, TITLE, PATENT NUMBER AND DESIGNATED STATES	APPLICANT
15/4/2013 JP2013000084579	Keijiro, S., Bonada, J. <i>Singing Synthesizing Database Generation Device, and Pitch Curve Generation Device</i> Patent pending JP	Yamaha Corp
10/1/2013 JP2013164584	Janer, J., Marxer, R., Bonada, J., Kazunobu, K. <i>Acoustic Processor</i> Patent pending JP	Yamaha Corp
21/6/2012 JP2012-139455 US20140006018	Bonada, J., Merlijn Blaauw, Yuji Hisaminato <i>Voice Synthesis Apparatus: Voice Quality Modification by Spectral Morphing</i> Patent pending JP, US	Yamaha Corp
7/6/2012 JP2012-129798	Bonada, J., Merlijn Blaauw, Makoto Tachibana <i>Voice Synthesis Apparatus: Phase Model</i> Patent pending JP	Yamaha Corp
18/5/2012 JP2012-115065 US20130311189	Bonada, J., Villavicencio, F. <i>Voice Synthesis Apparatus: Spectral Transformation Compensation for Probabilistic Envelope Conversion</i> Patent pending JP, US	Yamaha Corp
14/5/2012	Bonada, J., Merlijn Blaauw, Makoto Tachibana	Yamaha Corp

JP2012-110359 EP2530671	<i>Voice Synthesis Apparatus: Unit Interpolation</i> Patent pending JP, Europe	
28/10/2010	Bonada, J., Janer, J., Marxer, R., Umeyama, Y., Kondo, K., Garcia, F. <i>Technique for Estimating Particular Audio Component</i> Patent pending JP, US, AL, AT, BE, BG, CH, CY, CZ, DE, DK, EE, ES, FI, FR, GB, GR, HR, HU, IE, IS, IT, LI, LT, LU, LV, MC, MK, MT, NL, NO, PL, PT, RO, RS, SE, SI, SK, SM, TR	Yamaha Corp
02/07/2009 JP20090157527	Keijiro, S., Bonada, J. <i>Apparatus and method for creating singing synthesizing database, and pitch curve generation apparatus and method</i> Patent pending JP, US	Yamaha Corp
02/07/2009 JP20090157531	Keijiro, S., Bonada, J. <i>Apparatus and method for creating singing synthesizing database, and pitch curve generation apparatus and method</i> Patent pending JP, US	Yamaha Corp
08/12/2008 JP20080312209	Kenmochi, H., Bonada, J. <i>Chorus Synthesizer, Chorus Synthesizing Method and Program</i> Patent pending JP	Yamaha Corp
06/02/2008 US20080026977	Janer, J., Bonada, J., de Boer, M., Loscos, A. <i>Audio Recording Analysis and Rating</i> Patent pending US	Universitat Pompeu Fabra, BMAT Licensing SL
10/10/2007 JP20070264052	Streich, S., Bonada, J., Samuel, R. <i>Elementary Piece Retrieving Device and Program</i> US7812240 JP,US	Yamaha Corp
09/10/2007 JP20070263253	Fujishima, T., de Boer, M., Bonada, J., Samuel, R., de Jong, F., Streich, S. <i>Music Piece Processing Device and Program</i> Patent pending JP	Yamaha Corp
25/09/2007 JP20070246610	Fujishima, T., de Boer, M., Bonada, J., Samuel, R., de Jong, F., Streich, S. <i>Music Piece Processing Device and Program</i> Patent pending JP	Yamaha Corp
13/09/2007 US20070900902	Bonada, J. <i>Audio Signal Transforming</i> Patent pending US	Universitat Pompeu Fabra
16/11/2007 US20070946860P US20070970109P US20070988714P	Gómez, E., Herrera, P., Cano, P., Janer, J., Serra, J., Bonada, J., El-Hajj Shadi, W., Aussenac, T., Holmbert, G. <i>Music Similarity Systems and Methods Using Descriptors</i> Patent pending US	Universitat Pompeu Fabra
30/03/2007 JP20070092185	Fujishima, T., Arimoto, K., Ong; B.S., Streich, S., Bonada, J., de Boer, M. <i>Sound Conversion Apparatus and Program</i> JP4544258 JP	Yamaha Corp
09/01/2007 JP20070001058	Fujishima, T., Bonada, J., de Boer, M. <i>Tone Processing Apparatus and Method</i> US7750228	Yamaha Corp

	JP, US, AT, BE, BG, CH, CY, CZ, DE, DK, EE, ES, FI, FR, GB, GR, HR, HU, IE, IS, IT, LI, LT, LU, LV, MC, MT, NL, NO, PL, PT, RO, SE, SI, SK, TR, AL, BA, MK, RS	
19/05/2006 JP20060139911	Oshita, H., Kenmochi, H., Bonada, J., Loscos, A. <i>Voice Processor and Program</i> Patent pending JP	Yamaha Corp
27/10/2004 JP20040311637	Fujishima, T., Bonada, J. <i>Pitch Shifting Apparatus</i> US7490035 JP, US, AT, BE, BG, CH, CY, CZ, DE, DK, EE, ES, FI, FR, GB, GR, HU, IE, IS, IT, LI, LT, LU, LV, MC, NL, PL, PT, RO, SE, SI, SK, TR	Yamaha Corp
04/03/2006 JP20060058771	Kenmochi, H., Bonada, J., Loscos, A. <i>Singing Synthesis Device and Program</i> Patent pending JP	Yamaha Corp
21/06/2006 JP20060171331	Kenmochi, H., Yoshioka, Y., Bonada, J. <i>Singing Synthesizer, Singing Synthesizing Method, and Program for Singing Synthesis</i> Patent pending JP	Yamaha Corp
09/03/2001 JP20010067258	Hisaminato, Y., Bonada, J. <i>Voice Synthesizing Apparatus</i> US7065489 JP, US, AT, BE, CH, CY, DE, DK, ES, FI, FR, GB, GR, IE, IT, LI, LU, MC, NL, PT, SE, TR, AL, LT, LV, MK, RO, SI	Yamaha Corp
28/12/2000 JP20000401041	Kenmochi, H., Serra, X., Bonada, J. <i>Singing Voice Synthesizing Apparatus, Singing Voice Synthesizing Method, and Program for Realizing Singing Voice Synthesizing Method</i> US7016841 JP, US, AT, BE, CH, CY, DE, DK, ES, FI, FR, GB, GR, IE, IT, LI, LU, MC, NL, PT, SE, TR, AL, LT, LV, MK, RO, SI	Yamaha Corp
26/05/2006 JP20060146868	Fujishima, T., Bonada, J., Loscos, A., Mayor, O. <i>Device, Method, and Program for Processing Sound Signal</i> JP4367437 JP	Yamaha Corp
30/05/2005 JP20050157758	Kenmochi, H., Bonada, J., Loscos, A. <i>Device and Program for Synthesizing Singing</i> JP4432834 JP	Yamaha Corp
26/05/2005 JP20050154738	Fujishima, T., Loscos, A., Bonada, J., Mayor, O. <i>Sound Signal Processing Apparatus, Sound Signal Processing Method and Sound Signal Processing Program</i> Patent pending JP, US, AT, BE, BG, CH, CY, CZ, DE, DK, EE, ES, FI, FR, GB, GR, HU, IE, IS, IT, LI, LT, LU, LV, MC, NL, PL, PT, RO, SE, SI, SK, TR, AL, BA, HR, MK, YU	Yamaha Corp
10/03/2005 JP20050067907	Kenmochi, H., Yoshioka, Y., Bonada, J. <i>Voice Processor and Program</i> Patent pending JP, US, AT, BE, BG, CH, CY, CZ, DE, DK, EE, ES, FI, FR, GB, GR, HU, IE, IS, IT, LI, LT, LU, LV, MC, NL, PL, PT, RO, SE, SI, SK, TR, AL, BA, HR, MK, YU	Yamaha Corp
02/02/2005 JP20050026855	Kenmochi, H., Bonada, J. <i>Voice Synthesizer and Program</i> EP1688912 JP, US, AT, BE, BG, CH, CY, CZ, DE, DK, EE, ES, FI, FR, GB, GR,	Yamaha Corp

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15/12/2005 JP20050361612	Fujishima, T., Sekine, S., Kamiya, S., Bonada, J., Fabig, L., Mayor, O., Loscos, A. <i>Device, Method, and Program for Deciding Voice Quality</i> JP4432893 JP	Yamaha Corp
21/11/2005 JP20050336272	Hisaminato, Y., Bonada, J. <i>Voice Synthesizer</i> JP4353174 JP	Yamaha Corp
09/03/2001 JP20010067257	Yoshioka, Y., Bonada, J. <i>Device, Method, and Program for Analyzing and Synthesizing Voice</i> JP3711880 JP, US, AT, BE, CH, CY, DE, DK, ES, FI, FR, GB, GR, IE, IT, LI, LU, MC, NL, PT, SE, TR, AL, LT, LV, MK, RO, SI	Yamaha Corp
28/04/2005 JP20050132799	Yoshioka, Y., Bonada, J. <i>Voice Analysis and Synthesizing Apparatus, Method and Program</i> JP4349316 JP	Yamaha Corp
19/11/2004 JP20040336224	Kenmochi, H., Bonada, J. <i>Aparatus for and Program of Processing Audio Signal</i> Patent pending JP, US, DE, GB	Yamaha Corp
18/10/2004 JP20040302795	Kenmochi, H., Serra, X., Bonada, J. <i>Singing Synthesizer</i> JP3985814 JP	Yamaha Corp
21/10/1999 JP19990300268	Yoshioka, Y., Serra, X., Schiementz, M., Bonada, J. <i>Device and Method for Voice Conversion and Method of Generating Dictionary for Voice Conversion</i> JP4430174 JP, US	Yamaha Corp
27/02/2002 JP20020052006	Kenmochi, H., Bonada, J., Loscos, A. <i>Singing Voice Synthesizing Method</i> US6992245 JP, US, AT, BE, BG, CH, CY, CZ, DE, DK, EE, ES, FI, FR, GB, GR, HU, IE, IT, LI, LU, MC, NL, PT, RO, SE, SI, SK, TR, AL, LT, LV, MK	Yamaha Corp
28/02/2002 JP20020054487	Kenmochi, H., Yoshioka, Y., Bonada, J. <i>Singing Voice Synthesizing Apparatus, Singing Voice Synthesizing Method and Program for Singing Voice Synthesizing</i> US7135636 JP, US	Yamaha Corp
12/08/2002 JP20020235039	Kenmochi, H., Bonada, J. <i>Apparatus and Method for Chorus Synthesis and Program</i> JP4304934 JP	Yamaha Corp
09/08/2002 JP20020233085	Kondo, K., Bonada, J. <i>Device, Method, and Program for Time-Base Companding of Audio Signal</i> JP3858784 JP	Yamaha Corp
13/09/2001 JP20010278292	Bonada, J., Hisaminato, Y. <i>Sound Source Waveform Generator, Voice Synthesizer, Sound Source Waveform Generation Method and Program</i> JP3967571 JP	Yamaha Corp
22/12/1999	Kawashima, T., Schiementz, M., Bonada, J.	Yamaha Corp

JP19990365271	<i>Device and Method for Voice Conversion</i> JP4509273 JP	
21/10/1999 JP19990300275	Kayama, H., Serra, X., Bonada, J. <i>Device and Method for Aural Signal Processing</i> JP4455701 JP	Yamaha Corp, Universitat Pompeu Fabra
21/10/1999 JP19990300270	Kondo, T., Loscos, A., Cano, P., Bonada, J. <i>Device and Method for Adding Harmony Sound</i> Patent pending JP	Yamaha Corp, Universitat Pompeu Fabra
21/10/1999 JP19990300269	Yoshioka, Y., Bonada, J. <i>Signal Analyzer and Singal Analysis Method</i> JP4286405 JP	Yamaha Corp, Universitat Pompeu Fabra
21/10/1999 JP19990300267	Kawashima, T., Serra, X., Bonada, J. <i>Device and Method for Processing Musical Sound</i> JP3802293 JP	Yamaha Corp, Universitat Pompeu Fabra
16/06/1998 JP19980169045	Yoshioka, Y., Bonada, J. <i>Voice Transforming Device, Voice Transforming Method and Storage Medium which Records Voice Transforming Program</i> JP3706249 JP, US, AT, BE, CH, CY, DE, DK, ES, FI, FR, GB, GR, IE, IT, LI, LU, MC, NL, PT, SE, AL, LT, LV, MK, RO, SI	Yamaha Corp

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PhD Dissertation

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- Umbert, M., Bonada, J., Blaauw, M., "Generating Singing Voice Expression Contours Based on Unit Selection", Stockholm Music Acoustics Conference (SMAC), pp. 315-320, Stockholm, Sweden, 2013.
- Umbert, M., Bonada, J., Blaauw, M., "Systematic Database Creation for Expressive Singing Voice Synthesis", 8th ISCA Speech Synthesis Workshop (SSW8), pp. 213-216, Barcelona, Spain, 2013.
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- Bonada, J., Blaauw, M., "Generation of Growl-Type Voice Qualities by Spectral Morphing", Proceedings of the IEEE International Conference on Acoustics, Speech, and Signal Processing (ICASSP), Vancouver, Canada, 2013.
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- Gómez, E., Guastavino, C., Gómez, F., Bonada, J., "Analyzing Melodic Similarity Judgments in Flamenco a Cappella Singing", Proceedings of the International Conference on Music Perception and Cognition, Thessaloniki, Greece, 2012.
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- Mayor, O., Bonada, J., Janer, J., "Audio Transformation Technologies Applied to Video-Games", AES 41st International Conference: Audio for Games, London, UK, February 2011.
- Villavicencio, F., Bonada, J., "Applying Voice Conversion to Concatenative Singing-Voice Synthesis", INTERSPEECH, Chiba, Japan, pp. 2162-2165, 2010.
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 - Bonada, J., "Modeling Harmonic Phases at Glottal Closure Instants", Proceedings of the 12th International Conference on Digital Audio Effects, Como, Italy, 2009.
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 - Gómez, E., Bonada, J., "Automatic Melodic Transcription of Flamenco Singing", Proceedings of Fourth Conference on Interdisciplinary Musicology (CIM08), Thessaloniki, Greece, 2008.
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 - Perez, A., Bonada, J., Maestre, E., Guaus, E., Blaauw, M., "Combining Performance Actions with Spectral Models for Violin Sound Transformation", Proceedings of 19th International Congress on Acoustics, Madrid, Spain, 2007.
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 - Bonada, J., "Esophageal Voice Enhancement by Modeling Radiated Pulses in Frequency Domain", Proceedings of 121st Convention of the Audio Engineering Society. San Francisco, CA, USA, 2006.
 - Bonada, J., M. Blaauw, A. Loscos, and H. Kenmochi. "Unison: A Choir Singing Synthesizer", Proceedings of 121st Convention of the Audio Engineering Society. San Francisco, CA, USA, 2006.
 - Bonada, J., A. Loscos, and M. Blaauw. "Improvements to a Sample-Concatenation Based Singing Voice Synthesizer," Proceeding of the 121st AES Convention. San Francisco, USA, October, 2006.
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 - Janer, J., J. Bonada, and S. Jordà, "Groovator - an implementation of real-time rhythm transformations", Proceedings of 121st Convention of the Audio Engineering Society. San Francisco, CA, USA, 2006.
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 - Vinyes, M., J. Bonada, and A. Loscos, "Demixing Commercial Music Productions via Human-Assisted Time-Frequency Masking", Proceedings of the 120st Convention of the Audio Engineering Society, Paris, France, 2006.
 - Bonada, J. "Voice Solo to Unison Choir Transformation", Proceedings of 118th Audio Engineering Society Convention. Barcelona, Spain, 2005.
 - Gómez, E., and J. Bonada, "Tonality visualization of polyphonic audio", Proceedings of the International Computer Music Conference. Barcelona, Spain, 2005.
 - Bonada, J., "High Quality Voice Transformations based on Modeling Radiated Voice Pulses in Frequency Domain", Proceedings of the 7th Int. Conference on Digital Audio Effects. Naples, Italy, October, 2004.
 - Loscos, A., and J. Bonada, "Emulating Rough And Growl Voice in Spectral Domain", Proceedings of 7th International Conference on Digital Audio Effects. Naples, Italy, October, 2004.
 - Bonada, J., A. Loscos, and H. Kenmochi, "Sample-based Singing Voice Synthesizer by Spectral Concatenation", Proceedings of the Stockholm Music Acoustics Conference. Stockholm, Sweden, 2003.

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- Gouyon, F., L. Fabig, and J. Bonada, "*Rhythmic expressiveness transformations of audio recordings: swing modifications*", Proceedings of 6th International Conference on Digital Audio Effects. London, UK, 2003.
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- Bonada, J., O. Celma, A. Loscos, J. Ortola, and X. Serra, "*Singing Voice Synthesis Combining Excitation plus Resonance and Sinusoidal plus Residual Models*", Proceedings of International Computer Music Conference. Havana, Cuba, 2001.
- Bonada, J., A. Loscos, P. Cano, X. Serra, and H. Kenmochi, "*Spectral Approach to the Modeling of the Singing Voice*", Proceedings of the 111th AES Convention. New York, USA, September, 2001.
- Bonada, J., "*Automatic Technique in Frequency Domain for Near-Lossless Time-Scale Modification of Audio*", Proceedings of the International Computer Music Conference. Berlin, Germany, 2000.
- de Boer, M., J. Bonada, P. Cano, A. Loscos, and X. Serra, "*Singing Voice Impersonator Application for PC*", Proceedings of International Computer Music Conference. Berlin, Germany, 2000.
- de Boer, M., J. Bonada, and X. Serra, "*Using the Sound Description Interchange Format within the SMS Applications*", Proceedings of International Computer Music Conference. Berlin, Germany, 2000.
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- Loscos, A., P. Cano, and J. Bonada, "*Low-Delay Singing Voice Alignment to Text*", Proceedings of International Computer Music Conference. Beijing, China, 1999.
- Amatriain, X., J. Bonada, and X. Serra, "*METRIX: A Musical Data Definition Language and Data Structure for a Spectral Modeling Based Synthesizer*", Proceedings of COST G6 Conference on Digital Audio Effects. Barcelona, Spain, 1998.
- Herrera, P., and J. Bonada, "*Vibrato Extraction and Parameterization in the Spectral Modeling Synthesis framework*", Proceedings of COST G6 Conference on Digital Audio Effects. Barcelona, Spain, 1998.
- Serra, X., and J. Bonada, "*Sound Transformations Based on the SMS High Level Attributes*", Proceedings of COST G6 Conference on Digital Audio Effects. Barcelona, Spain, 1998.
- Serra, X., J. Bonada, P. Herrera, and R. Loureiro, "*Integrating Complementary Spectral Models in the Design of a Musical Synthesizer*", Proceedings of International Computer Music Conference. Thessaloniki, Greece, 1997.

Invited Presentations

- Bonada, J., "*Vocaloid: A Success Story?*", 9th Pan-European Voice Conference (PEVOC9), Marseille, France, September, 2011.
- Bonada, J., "*Aplicaciones Informáticas para la música: Sistemas de recomendación musical y*
- Bonada, J. and Gómez, E., "*Aplicaciones Informáticas para la música: Sistemas de recomendación musical y procesado de voz cantada*", V Jornadas Imaginática, Computer Science Engineering School, University of Seville, March, 2009.
- Bonada, J., "*Análisis y Procesado de Canto*", II Seminario de Ciencia Computacional y Flamenco, Escuela Superior de Ingenieros, Sevilla, April, 2008.
- Bonada, J., "*Singing Voice Analysis, Processing and Synthesis*", Research Seminar, La Salle, Universitat Ramon Llull, April, 2006.
- Bonada, J., Loscos, A., Jordà, S., "*Música i Tecnologia*", Cicle de Conferències del Cosmocaixa, Barcelona, December, 2004.
- Bonada, J., "*Canvi de Tempo i Síntesi de veu*", Sonology Seminar, Escola Superior de Música de Catalunya, ESMUC, April, 2005.
- Bonada, J., "*Singing Voice Synthesis*", Audio Days Seminar organized by the AES Finnish Section, Helsinki, May, 2004.
- Several seminars in different European and Asiatic institutions: AIST (*Advanced Industrial Science and Technology, Japan*), Yamaha Corporation (*Hamamatsu, Japan*), Helsinki University of Technology TKK (*Department of Electrical and Communications Engineering Laboratory of Acoustics and Audio Signal Processing, Espoo, Finland*), Tampere University of Technology (*Institute of Signal Processing, Tampere, Finland*), KTH (*Royal Institute of Technology, Stockholm, Sweden*), OFAI (*Austrian Research Institute for Artificial Intelligence, Vienna, Austria*).

OTHER RELEVANT SCIENTIFIC COLLABORATIONS

The multidisciplinary aspect of Dr. Bonada's research has been emphasized with several collaborations with researchers of different fields:

- Dr. Henkan Honing, University of Amsterdam, on rhythm perception, providing time-scale modifications of audio excerpts.
- Dr. Pascal Belin, McGill University, on gender perception, providing morph between voice recordings.
- Dr. Michel André, Universitat Politècnica de Catalunya, on the analysis of sperm whale sounds, developing algorithms and tools to assist the analysis.
- Dr. Paul Vershure and Dr. Jonatas Manzolli, Universitat Pompeu Fabra, on music therapy research, designing and providing a vowel synthesizer.
- Dr. Catherine Guastavino, McGill University, on melodic similarity perception, providing tools for melodic transcription and synthesis.

It is also worth to highlight the collaboration with the Sant Pau Hospital in Barcelona supervising a Master Thesis that focused on the GRBAS diagnosis from voice signals.

SCIENTIFIC SERVICES

- Member of the Evaluation Committee of the European Course for Musical Composition and Technologies (ECMCT), Leonardo da Vinci Programme, European Commission, October 2006 - June 2007
- Reviewer of International Journals: *IEEE Signal Processing Magazine (IEEE-SPM)*, *IEEE Transactions on Audio, Speech and Language Processing (IEEE-TASLP)*, *Computer Music Journal (CMJ)*, *Journal of Interdisciplinary Music Studies (JIMS)*
- Reviewer for Conferences in Sound and Music Computing: *International Computer Music Conference (ICMC)*, *Digital Audio Effects (DAFX)*, *Audio Engineering Society (AES)*
- Member of the program committee of the 12th *International Digital Audio Effects Conference (DAFx-2009)*
- Session chair in *MAVEBA-03 (Firenze)* and *AES-05 (Barcelona)* international conferences

DISSEMINATION IN MEDIA

Dr. Bonada's research and its application have appeared in different media along the past years (see mtg.upf.edu/news/media for more details).

- Newspaper articles on *The New York Times*, *El Periódico*, *La Vanguardia*, *El País*, *El Punt*, *El Mercantil Valenciano*, *Gaceta Universitaria*.
- TV news on US (ABC) and Spain (TVE, TVE2, TV3, Tele5, Antena 3).
- TV programs (*Redes* on TVE2, *Punt Omega* and *QueQuiCom* on TV3).
- Spanish TV show *Operación Triunfo*, a singing contest where the participants used a software tool to display in real-time relevant parameters of their performance.
- Moto GP broadcasting, where a signal analysis algorithm was used to estimate and display in real-time the engines' rpm.
- Radio interviews in *Catalunya Radio*, *Catalunya Cultura*, *Cadena Ser*, *iCat FM*.
- Magazines: *Electronic Musician*, *Producción Audio*, *Teclado Total*, *TimeOut*, *Expansión*.

It is worth to highlight the celebration and appearance on several media of the ten-year anniversary celebration of the collaboration between the Music Technology Group (MTG) of the Universitat Pompeu Fabra (UPF) and the Japanese company Yamaha Corp., with the presence of the rector of the UPF and the general director of Yamaha Corp.

MISCELLANEOUS

- Languages: Spanish, Catalan (mother tongue), fluent English
- Hobbies: music (piano player), nature, hiking, swimming
- Co-founder of the spin-off company *Barcelona Music and Audio Technologies, S.L. (BMAT)*
- Married, two sons born in 2007 and 2011
- Born on 25/03/1973

REFEREES

- Dr. Xavier Serra, Professor and head of the Music Technology Group from the Departament de Tecnologies de la Informació i les Comunicacions of the Universitat Pompeu Fabra, Barcelona, Spain, xavier.serra@upf.edu
- Dr. Udo Zölzer, Professor and head of the Department of Signal Processing and Communications at the Helmut Schmidt University - University of the Federal Armed Forces in Hamburg, Germany, udo.zoelzer@hsu-hamburg.de

- Dr. Vesa Valimaki, Professor at the Department of Signal Processing and Acoustics, in the School of Electrical Engineering of the Aalto University, Espoo, Finland, *vesa.valimaki@tkk.fi*
- Hideki Kenmochi, Corporate Research & Development Center, Yamaha Corporation, Japan, *kenmochi@beat.yamaha.co.jp*
- Dr. Johan Sundberg, emeritus Professor at the Royal Institute of Technology, Stockholm, Sweden, *jsu@csc.kth.se*
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Re: Expert Testimony on (i) Community Establishment; (ii) Nexus; and (iii) Support for DotMusic’s Community-Based Application¹ for .MUSIC (Application ID 1-1115-14110)

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

Please accept this letter that indicates that there is substantive and compelling evidence that the DotMusic application convincingly meets the full criteria under Community Priority Evaluation on the following points: (i) the Music Community’s *Establishment* as defined by DotMusic; (ii) the matching *Nexus* between the “music” Community and the “music” string (or top-level domain); and (iii) that DotMusic possesses documented *Support* from organizations representing a majority of the global Music Community addressed and defined.

Please see my credentials attached hereto that identify my level of expertise and specialized knowledge with respect to the music community’s organization and delineation.

SUMMARY

DotMusic has established the following:

- 1) Its Community definition recognizes the cohesive, symbiotic and overlapping nature of the global Music Community. The definition includes those associated with commercial and non-commercial creation, performance, marketing and distribution of music;
- 2) “Music Community” members have the requisite awareness and recognition of the interdependency, overlapping and cohesive nature of each “organized community of similar nature that relates to music.” These organized and aligned communities are closely united and make “music” as we know it today. It is this self-awareness and interdependence that gives the “Music Community” its strength. With exponential growth of the Internet, mobile and the Domain Name System (DNS), the “Music Community’s” use and reliance on the Internet to create, market and disseminate music-related content, products, services and activities will continue to grow;
- 3) The “Music Community” functions in a regulated sector with global copyright protections – it is clear that the “community,” as defined, implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate a globally-recognized set of standards for

¹ <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1392>

the protection of the “Music Community” member rights with relation to their copyrighted music works around the world;

4) The “Music” Community -- as defined by DotMusic -- has at least one entity mainly dedicated to the community supporting DotMusic’s application. Such documented *Support* includes several “international federation of national communities of a similar nature,” music coalitions and others that are strongly associated with “music,” which represent a majority of the Community with considerable millions of members worldwide.²

5) The *Nexus* of the “music” Community matches the “music” applied-for string because it represents the entire global Music Community – a community that pre-existed 2007 with a size in the considerable millions of constituents. The “Music Community” definition -- which incorporates the strict fundamental attributes of a closely united Community definition that is “organized” and “delineated” -- ensures that all of its constituent members have a requisite awareness of the community as defined, including both commercial and non-commercial stakeholders, to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination.

6) DotMusic has received support from the largest coalition of Music Community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support³ from institutions/organizations representing a majority of the Community as defined and recognized in the DotMusic application.

There is substantive evidence that DotMusic fulfills the *Nexus, Community Establishment and Support* criteria for the “Music” string. The inclusion and representation of every music constituent type is paramount to the articulated purpose of the string. DotMusic and its application’s global Music Community supporters substantiate that every type of music constituent contributes to the function and operation of the music sector within a regulated framework. The symbiotic nature of the Community as defined and structured means that “Music” would not function as it does today without the participation of all music constituent types that interconnect to match the “music” string with the “music” Community definition.

² <http://music.us/supporters>

³ <http://music.us/supporters>

ASSESSMENT OF COMMUNITY DEFINITION, ESTABLISHMENT AND NEXUS

A) *Music Community Definition, Establishment & Community Endorsement*⁴

DotMusic's definition of the "Music Community" as a "strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music" (See Application Answer to Question 20a) is factually accurate and representative of the "Music Community." Community characteristics include:

i) An Organized, Cohesive, Interdependent Logically-Allied Community:

The "Music Community" definition covers the regulated, interdependent and cohesive nature of the music sector that exists today. "Music Community" members have the requisite awareness and recognition of the interdependent, overlapping and cohesive nature of each "organized community of similar nature that relates to music" that comprises the "Music Community." Without such cohesiveness and interdependency, the defined "Music" Community matching the applied-for string ("Music") would not be able to function in its regulated sector. "Music" is a regulated sector comprised of a logical alliance of interdependent communities relating to music with organized practices and institutions that enable and regulate the production, distribution and consumption of music that was publicly recognized by both ICANN and the Government Advisory Committee⁵

As a result, the Music Community as defined is "closely united" (As per the definition of "cohesion" according to Merriam-Webster dictionary⁶) or "united or form a whole" (As per the definition of the word "cohesion" according to Oxford Dictionaries⁷).

DotMusic's application follows unified principles that the entire Community subscribes to, such as: creating a trusted identifier and safe haven for music consumption, protecting musicians' rights and intellectual property, fighting copyright infringement/piracy, supporting fair compensation and music education, and following a multi-stakeholder approach of representation of all types of global music constituents without discrimination (See Application Answers to 18).

The "Music Community" as defined (a "strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music") establishes that:

- (1) There is an awareness and recognition among its members;

⁴ See <http://music.us/establishment>

⁵ <https://www.icann.org/en/system/files/bm/briefing-materials-2-05feb14-en.pdf>, Pg.3

⁶ <http://www.merriam-webster.com/dictionary/cohesion>

⁷ http://www.oxforddictionaries.com/us/definition/american_english/cohesion

- (2) The organized and delineated logical alliance of communities exists; and
- (3) The Community is “closely united” and “interdependent” (i.e. Each “organized community of similar nature that relates to music” which is part of the “logical alliance of communities that relate to music” is not mutually exclusive).

In short, the applied-for string (“Music”) matches the name of the “Music” Community as defined by DotMusic’s application. DotMusic’s “Music Community” definition accurately represents the common definition of the “Music Community,” which is confirmed by Wikipedia.

According to Wikipedia:⁸

Music community is defined as a logical alliance of interdependent communities that are related to music, which include commercial participants...and non-commercial participants...and consists of an “ensemble of practices and institutions that make possible and regulate the production, distribution and consumption of music”...UNESCO identifies the music community as a “community of identity” implying common identifiable characteristics and cohesive attributes such as sharing a music culture, norms and subscribing to common ideals related to music...The music community is not defined as much by demographic indicators such as race, gender, and income level, as it is by common values, cohesive norms and interconnected structures to build a community identity. It refers to music-related individuals and organisations in a shared environment with shared understandings and practices, modes of production and distribution. The shared organisation of collective musical activities, identity and community value is created as result of infrastructure and a shared set of common values...Many studies outline the historical, cultural, and spatial significance of the music community, including how its identity is formed through musical practices. The music community shares a cohesive and interconnected structure of artistic expression, with diverse subcultures and socio-economic interactions...subscribing to common ideals. Under such structured context music consumption becomes possible regardless whether the transaction is commercial and non-commercial.⁹

⁸ Wikipedia is ranked 6th among the ten most popular websites (Alexa, Retrieved March 23, 2015 from <http://www.alexa.com/siteinfo/wikipedia.org>) and constitutes the Internet's largest, most frequently updated and popular general reference work (See OECD, OECD Internet Economy Outlook 2012, OECD Publishing, http://www.oecd-ilibrary.org/science-and-technology/oecd-internet-economy-outlook-2012_9789264086463-en, Pg.172) that compares favorably to the accuracy of other encyclopedias (such as the Britannica) according to a 2012 study conducted in partnership with Oxford University (See <http://blog.wikimedia.org/2012/08/02/seven-years-after-nature-pilot-study-compares-wikipedia-favorably-to-other-encyclopedias-in-three-languages>).

⁹ Music Community. In *Wikipedia*. Retrieved July 6, 2015, from https://en.wikipedia.org/wiki/Music_community

ii) An Aware, Pre-Existing and Recognized Community of Considerable Millions Worldwide:

DotMusic's definition of the Community covers all Community members associated with the string, each with a requisite awareness of the Community that can be validated through their natural association with a particular music-related community that they clearly identify with. According to DotMusic, all Music Community members must identify their music-related community in order to demonstrate their requisite awareness of the defined Community as part of the .MUSIC registration and validation process.

According to DotMusic, the Music Community's geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents (Application Answer to Question 20a).

According to DotMusic, "registrants will be verified using Community-organized, unified "criteria taken from holistic perspective with due regard of Community particularities" that "invoke a formal membership (Application Answer to Question 20a)." The defined Community represents all music-related entities with a clear and straightforward membership with the Community involved in the legal production, performance, promotion, and distribution of music worldwide. According to DotMusic, the Music Community members must have an active, non-tangential relationship with the applied-for string "music" and also have the requisite awareness of the music-related community that they are a part of by specifically identifying it as part of the registration and validation process (i.e. upon successful registration and validation, each community member will be given a unique community identification number that will automatically associate them with their identified community and the "music" string).

DotMusic's Community definition matches the applied-for string because it allows both commercial and non-commercial stakeholders to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination/exclusion. Given the regulated sector of the community, it is clear that the "Music Community" as defined implies "more of cohesion than a mere commonality of interest" with an "awareness and recognition of a community among its members." Several international treaties mandate cohesive and globally-recognized set of standards for the protection of the music community members' rights with relation to their copyrighted music works around the world.¹⁰

The Berne Convention for the Protection of Literary and Artistic Works¹¹ provides that each of the 168 contracting parties¹² (representing an overwhelming majority of the world's population) provides automatic protection for music works first published in other countries of the Berne union and for unpublished music works whose authors are citizens of or resident in such other

¹⁰ http://www.rightsdirect.com/content/rd/en/toolbar/copyright_education/International_Copyright_Basics.html

¹¹ http://www.wipo.int/treaties/en/text.jsp?file_id=283698

¹² http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=15

countries.¹³ This means that if a Music Community member's copyright rights are violated in any other signatory country's jurisdiction, then the music community member will have the music copyright rights given by that country. Music Community members are clearly aware of the collective Community's rights, which could not be made possible without these cohesive and globally-recognized set of standards. If such standards were not coherent or enforced then music would not be able to exist in its current form and the industry component of the Music Community sector would not exist. As such, the Community's *Establishment* and definition is "cohesive" and hence cannot be construed since the Community is a logical alliance of music communities that establish a clearly delineated and organized Community structure that is "closely united" and functions as a "whole"

Further evidence to substantiate the cohesive, symbiotic and overlapping nature of the Community, includes other globally-recognized standards and classification systems, which identify who the individual songwriters, publishers and rights holders are and which songs they are associated with so that Community members are appropriately compensated, regardless of whether the constituent is a commercial, non-commercial or amateur entity. The "music" string is commonly used in classification systems such as ISMN,¹⁴ ISRC,¹⁵ ISWC,¹⁶ ISNI.¹⁷ (Application Answer to Question 20a). For example, if a music entity would like to distribute their music, either commercially or for free, then an ISRC can be assigned to globally identify any specific music work. An ISRC, which facilitates efficient music discovery and community member payment, is constructed from 12 characters representing country, registrant, year of registration and designation (i.e. the serial number assigned by the registrant). With respect to domains, an equivalent system that relates to identifying a specific domain's registrant and other relevant information pertaining to the domain is WHOIS. Domain registrants are required by ICANN "to provide accurate WHOIS contact data" or else their domain "registration may be suspended or even cancelled".¹⁸

¹³ <http://www.britannica.com/EBchecked/topic/62482/Berne-Convention>

¹⁴ The International Standard Music Number (ISMN) is a unique number for the identification of all notated music publications from all over the world. The ISMN is an ISO certified global standard number (ISO 10957:2009). See <http://www.ismn-international.org/whatis.html> and http://www.iso.org/iso/home/store/catalogue_ics/catalogue_detail_ics.htm?csnumber=43173

¹⁵ The ISRC (International Standard Recording Code) is the international identification system for sound recordings and music video recordings. The ISRC is an ISO certified global standard number (ISO 3901:2001) and is managed by the IFPI. See <http://isrc.ifpi.org>, <https://www.usisrc.org/about/index.html> and http://www.iso.org/iso/catalogue_detail?csnumber=23401

¹⁶ The ISWC (International Standard Musical Work Code) is a unique, permanent and internationally recognized reference number for the identification of musical works. The ISWC has been approved by ISO (International Organization for Standardisation) as a global standard (ISO 15707:2001) and is managed by CISAC. See <http://www.iswc.org/en/faq.html> and http://www.iso.org/iso/catalogue_detail?csnumber=28780

¹⁷ The International Standard Name Identifier (ISNI) is the ISO certified global standard number (ISO 27729) for identifying the millions of contributors to creative works and those active in their distribution. ISNI holds public records of over 8 million identities and 490,000 organizations. See <http://www.isni.org/> and http://www.iso.org/iso/catalogue_detail?csnumber=44292

¹⁸ <https://whois.icann.org/en/about-whois> and <https://www.icann.org/resources/pages/faqs-f0-2012-02-25-en>

Without such Music Community “cohesion” and standardized systems functioning in its regulated sector, the Music Community would not be able to create, market and distribute their music. By the same token, fans would not be able to identify the music they are listening to with a specific music artist, regardless of whether the listening activity or behavior is commercial or non-commercial in nature. The socio-economic structure that characterizes “music” as commonly-known today would be non-existent without these organized and delineated elements that commonly define the Community.

iii) *International Federations and Organizations mainly Dedicated to the Community:*

According to ICANN’s Applicant Guidebook (“AGB”)¹⁹: *“With respect to “Delineation” and “Extension,” it should be noted that a community can consist of...a logical alliance of communities (for example, an international federation of national communities of a similar nature... viable as such, provided the requisite awareness and recognition of the community is at hand among the members.”* (AGB, 4-12). The community as defined in the DotMusic application has at least one entity *mainly*²⁰ dedicated to the community which has supported DotMusic, which include several “international federation of national communities of a similar nature” relating to music, music coalitions and other relevant and non-negligible music organizations.

One of these entities include the only international federation of national communities relating to government culture agencies and arts councils, which has an integral association with music globally: the International Federation of Arts Councils and Culture Agencies (IFACCA).

IFACCA is the only international federation that represents government culture agencies and arts councils globally. These national communities are governmental institutions that play a pivotal

¹⁹ <https://newgtlds.icann.org/en/applicants/agb/guidebook-full-11jan12-en.pdf>

²⁰ Per the Oxford and Merriam Webster dictionaries, the word “mainly” is defined as “*more than anything else*” (See <http://www.oxforddictionaries.com/definition/english/mainly> and <http://www.merriam-webster.com/dictionary/mainly> respectively). According to DotMusic, the string .MUSIC relates to the Community “by representing all constituents involved in music creation, production and distribution” (Application Answer to Question 20d). Supporting organizations related to that string that are “mainly” dedicated to the Community and its activities, include the International Federation of Arts Councils and Culture Agencies (IFACCA) representing government culture ministries and arts councils, the International Federation of Musicians (FIM) representing musicians globally, the International Federation of Phonographic Industry (IFPI) representing the recording industry worldwide, the International Confederation of Music Publishers (ICPM) representing the voice of global music publishing, the International Association of Music Information Centres (IAMIC), the American Association of Independent Music (A2IM), whose associate members represent a majority of music consumed, the Independent Music Worldwide Independent Network (WIN) representing independent music worldwide, the International Society for Music Education (ISME) the premiere international organization representing music education, and many others (See support at <http://music.us/supporters> and <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails:downloadattachment/142588?t:ac=1392>).

role with respect to music.²¹ IFACCA's members cover the majority of music entities globally, regardless of whether they are commercial, non-commercial or amateurs. Government ministry of culture and council agencies related to music cover a majority of the overall community with respect to headcount and geographic reach. The "Size" covered reaches over a hundred million music entities i.e. "considerable size with millions of constituents" per Application Answer to Question 20a.

The string "music" falls under the jurisdiction of each country's Ministry of Culture governmental agency or arts/music council (emphasis added). The degree of power and influence of government ministry of culture and council agencies with respect to music surpasses any organization type since these agencies (i) provide the majority of funding for music-related activities; (ii) regulate copyright law; and (iii) encompass all the music entities that fall under their country, regardless whether these entities are commercial, non-commercial or amateurs. IFACCA is globally recognized by its strategic partners, such as UNESCO, a United Nations agency representing 195 member states and the European Commission.²² The UNESCO strategic partnership²³ is relevant, especially since UNESCO founded the International Music Council (the "IMC") in 1949, which represents over 200 million music constituents from over 150 countries and over 1000 organizations globally.²⁴

Government activities in the clearly delineated and organized "Music Community" include setting statutory royalty rates. For example, in the United States, mechanical royalties are based on a "statutory rate" set by the U.S. Congress. This rate is increased to follow changes in the economy, usually based on the Consumer Price Index. Currently, the mechanical statutory rate is \$0.091 for songs five minutes or less in length or \$.0175 per minute for songs that are over five minutes long.²⁵

Ministries of culture and arts councils (that comprise IFACCA's membership) support musicians, musical performances, independent music artists, non-commercial musical expression and education in their respective countries. The 165 ministries of culture, arts councils and affiliates that comprise IFACCA's membership support the "performing arts" and music specifically. Without the financial and logistical support of arts councils and the ministries of culture, the music community would be adversely affected, and in some countries, may not exist in any appreciable manner. For example, the Ministry of Culture 2011 budget for the small country state of Cyprus for culture funding was €34,876,522 with critical support of music activities.²⁶ Other small government Ministries of Culture, such as Albania,²⁷ or government

²¹ http://www.ifacca.org/membership/current_members/

²² http://www.ifacca.org/strategic_partners/

²³ http://www.ifacca.org/strategic_partners/

²⁴ <http://www.imc-cim.org/about-imc-separator/who-we-are.html>

²⁵ U.S Copyright Office, <http://www.copyright.gov/carp/m200a.html>

²⁶ 2011 Annual Report for Cyprus Ministry of Culture, Section 1.2 "Music"

(http://www.moec.gov.cy/en/annual_reports/annual_report_2011_en.pdf). Activities include Music Performances in Cyprus (1.2.1) and Abroad (1.2.2), Subsidization of Paphos Aphrodite Festival (1.2.3), Music Publications (1.2.4), Subsidization and Purchases of Digital Records (1.2.5), Promotion for Cypriot musical creativity abroad (1.2.6),

Ministries of Culture and Arts Councils from countries with larger populations, such as India,²⁸ all provide critical support and substantial advocacy for music. Other examples include government institutions collaborating and advocating music through their funded country-based pavilion initiatives at Midem, the world's largest music conference.²⁹

Government ministries and arts councils provide critical support for the Music Community, including commercial music organizations. By way of example, government ministries' and arts councils' substantial connection to and support of "music" is noted in the reports of funding and support for music. Some examples to showcase the degree of power of the IFACCA's membership towards the string and global and national music are music investment and music funding (Annual reports by governments and councils):

- New Zealand Ministry of Culture has funded significant music projects. Some include the REAL New Zealand Music Tour (\$415,000), the New Zealand String Quartet (\$150,000) and New Zealand Music Commission: (\$1,378,000).³⁰
- The Australian Government/Council For The Arts invested \$51.2 million for the nation's orchestras; \$21.6 million for opera; \$10.8 million for other music artists and organizations; \$13.1 million for multi-platform artists and organizations; and \$4 million in miscellaneous funding, including sector building and audience development initiatives and programs.³¹
- Canada Council for the Arts is Canada's national, arts funding agency investing \$28 million in its Canada Council Musical Instrument Bank (Page 16) and \$28,156,000 in Music Arts Programs (Page 66).³² The Government of Canada also renewed its annual investment of \$27.6 million over five years in the Canada Music Fund.³³
- The United Kingdom Department for Culture and Education (DfE) will fund music education at significant levels: £77 million, £65 million and £60 million will be available in the three years from April 2012.³⁴

Cyprus Symphony Orchestra Foundation (1.2.7), Music Information Centre (1.2.8), Developing Music Education (1.2.9), Organising of the 1st Musicological Symposium (1.2.10) and Musical Festivities for the European Volunteerism Year (1.2.11)

²⁷ http://www.culturalpolicies.net/down/albania_012011.pdf

²⁸ 2010-11 Annual Report from India Ministry of Culture, [http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011\(Eng\).pdf](http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011(Eng).pdf)

²⁹ <http://my.midem.com/en/contact-us/pavilion-representatives/>

³⁰ 2011 Annual Report from New Zealand Ministry of Culture:

[http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20\(D-0448383\).PDF](http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20(D-0448383).PDF)

³¹ 2011 Annual Report for the Australia Council for the Arts,

http://www.australiacouncil.gov.au/data/assets/pdf_file/0016/142351/Australia-Council-Annual-Report-201112.pdf, Page 28

³² 2011 Annual Report for Canada Council for the Arts, [http://www.canadacouncil.ca/NR/rdonlyres/6F7549BB-F4E5-4B8B-95F4-](http://www.canadacouncil.ca/NR/rdonlyres/6F7549BB-F4E5-4B8B-95F4-1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf)

[1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf](http://www.canadacouncil.ca/NR/rdonlyres/6F7549BB-F4E5-4B8B-95F4-1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf)

³³ <http://www.pch.gc.ca/eng/1294862453819/1294862453821>

³⁴ Department for Culture, The Importance of Music, A National Plan for Music Education,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/180973/DFE-00086-2011.pdf, Page 4, 2011

- The United States National Endowment of the Arts has awarded more than \$4 billion to support the arts since its inception³⁵ and has a strong focus on music as outlined in its Strategic Plan³⁶ with Congress requested to provide \$154,465,000 for fiscal year 2014.³⁷
- The National Arts Council of South Africa invested 2,536,131 ZAR in Music and 9,995,000 ZAR in Orchestras and has focused strongly on the “Strengthening of live indigenous music and advocating the revival of the live music circuit in South Africa”³⁸
- The Singapore Arts Council will fund \$10.2 million in the arts under its 2013 Grants Framework, including the Ding Yi Music Company and Siong Leng Musical Association.³⁹
- In 2011, the support for artistic activities by the Arts Council of Finland was €32.4 million of which €4,921,850 was awarded to music.⁴⁰

Each of IFACCA’s members has a clear association with, and mandate to support the music arts in their countries. In most countries, their ministry of culture/arts council is the largest funder and marketing supporter of the music arts.

The IFPI is another entity *mainly* dedicated to the Community. The IFPI is the only organization that represents the interests of the recording industry worldwide. It is the “voice of the recording industry worldwide”⁴¹ whose members⁴² – major and independent companies -- represent a majority of all commercial music consumed globally. For example, the RIAA, an IFPI national group member,⁴³ represents “approximately 85% of all legitimate recorded music produced and sold in the United States,”⁴⁴ the world’s largest music market with 30% global market share.⁴⁵ Formed in 1933, the IFPI’s mission was to “represent the interests of the recording industry worldwide in all fora.”

³⁵ 2011 Annual report for the National Endowment of the Arts, <http://www.nea.gov/about/11Annual/2011-NEA-Annual-Report.pdf>, Page 2

³⁶ NEA Strategic Plan 2012-2016, www.arts.gov/about/Budget/NEAStrategicPlan2012-2016.pdf

³⁷ http://www.ifacca.org/national_agency_news/2013/04/10/us-president-requests-154465000-neh-2014/

³⁸ 2010-2011 Annual Report for the National Arts Council South Africa, National Arts Council South Africa, <http://www.nac.org.za/media/publications/AR%2010-11%20NAC.PDF/download>, Page 11. Also Mmino, the South African – Norwegian Education Music Programme, solely funds music projects funding a total of 294 projects. Thirteen projects were allocated funding for a total of R1,680,600 of which R1,381,000 went towards music educational and R299,600 to exchange projects (Page 10)

³⁹ Singapore Arts Council, <http://www.nac.gov.sg/media-centre/news-releases/news-detail?id=c2db15e2-c319-40ec-939c-d58735d0a91c>

⁴⁰ <http://www.taiteenkeskustoimikunta.fi/documents/10162/31704/TY+tilastotiedote+1+12+.pdf>, Page 1 and Page 23

⁴¹ <http://www.ifpi.org/about.php>

⁴² <http://www.ifpi.org/our-members.php>

⁴³ <http://www.ifpi.org/national-groups.php>

⁴⁴ <http://www.riaa.com/faq.php>

⁴⁵ <http://www.statista.com/topics/1639/music/>

Another clear example of an “entity *mainly* dedicated to the community” with members that cover hundreds of millions of music constituents with formal boundaries is A2IM, the American Association of Independent Music. A2IM has two types of members: U.S independent Label members and Associate members. A2IM membership for Labels and Associates is invoked formally through an application and if accepted would require annual membership dues.⁴⁶

The reach of A2IM Associate⁴⁷ membership covers hundreds of millions of entities (i.e. the reach of A2IM’s total membership “geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents – See Application Answer to Question 20a).

Organized and strictly delineated communities related to music that are A2IM members include:

- **Apple iTunes**⁴⁸ – iTunes accounts for 63% of global digital music market⁴⁹ - a majority – with a registered community of 800 million registered members⁵⁰ available in 119 countries who abide to strict terms of service and boundaries⁵¹ and have downloaded over 25 billion songs⁵² from iTunes’ catalog of over 43 million songs⁵³ covering a global music community, regardless of genre or whether the community entities are amateur, professional, commercial or non-commercial. To add music to iTunes, all music artists must have a formal membership with iTunes via an Apple ID registration, which includes a current credit card on file.⁵⁴
- **Pandora**⁵⁵ – Pandora is the world’s largest streaming music radio with a community of over 250 million registered members.⁵⁶
- **Spotify**⁵⁷ – Spotify is the world’s largest music streaming community with over 50 million active registered members in 58 countries and over 30 million songs. The music community uploads 20,000 songs every day.⁵⁸
- **Vevo**⁵⁹ – Vevo is the world’s leading all-premium music video community and platform with over 8 billion monthly views globally.⁶⁰

⁴⁶ <http://a2im.org/about-joining/>

⁴⁷ <http://a2im.org/groups/tag/associate+members/>

⁴⁸ <http://a2im.org/groups/itunes>

⁴⁹ <http://appleinsider.com/articles/13/04/16/apples-itunes-rules-digital-music-market-with-63-share>

⁵⁰ <http://www.npr.org/blogs/therecord/2015/01/06/375173595/with-downloads-in-decline-can-itunes-adapt>

⁵¹ <http://www.apple.com/legal/internet-services/itunes/ww/index.html>

⁵² <http://www.apple.com/pr/library/2013/02/06iTunes-Store-Sets-New-Record-with-25-Billion-Songs-Sold.html>

⁵³ <https://www.apple.com/itunes/features/>

⁵⁴ <https://www.apple.com/itunes/working-itunes/sell-content/music-faq.html>

⁵⁵ <http://a2im.org/groups/pandora>

⁵⁶ <http://www.cnet.com/news/like-a-rolling-milestone-pandora-hits-250m-registered-users/> and <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MTkxNTM1fENoaWxkSUQ9LTF8VHlwZT0z&t=1>, Pg.9

⁵⁷ <http://a2im.org/groups/spotify>

⁵⁸ <https://press.spotify.com/us/information/>

⁵⁹ <http://a2im.org/groups/vevo/>

- **Youtube**⁶¹ – Youtube is the world’s largest music video streaming community with millions of music creators -- amateur, professional, commercial or non-commercial -- and over 1 billion registered members covering all regions globally. 6 billion hours of video is watched every month on Youtube,⁶² of which 38.4% is music-related.⁶³
- **ReverbNation**⁶⁴ – ReverbNation⁶⁵ is one of the world’s largest music community and a leading music distributor with over 3.87 million musicians, venues labels and industry professionals covering every country globally. The ReverbNation community grows by over 50,000 artists, bands, labels and industry professionals monthly.
- **BMG**⁶⁶ – BMG is focused on the management of music publishing and recording rights. BMG has an international presence and represents over 2.5 million music rights globally.⁶⁷

A2IM also includes members that are associated with global government agencies which exclusively represent substantial music economies and music members, such as France (BureauExport⁶⁸), China (China Audio Video Association⁶⁹) and Germany (Initiative Musik).⁷⁰ A2IM also has Affiliate⁷¹ associations within the global music community. These include Affiliates such as MusicFirst,⁷² the Copyright Alliance,⁷³ the Worldwide Independent Network (WIN)⁷⁴ and Merlin.⁷⁵

A2IM also represents a recognized Music Coalition representing the interests of the Global Independent Music Community.⁷⁶ The A2IM Coalition includes Merlin, a global rights agency for the independent label sector, representing over 20,000 labels from 39 countries, Worldwide Independent Network (representing label creators in over 20 countries), Association of Independent Music (representing largest and most respected labels in the world), and IMPALA (Independent Music Companies Association on behalf of over 4,000 independent music companies and national associations across Europe, representing 99% of music actors in Europe which are micro, small and medium sized enterprises.

⁶⁰ <http://www.vevo.com/c/EN/US/about>

⁶¹ <http://a2im.org/groups/youtube/>

⁶² <https://www.youtube.com/yt/press/statistics.html>

⁶³ http://www.researchandmarkets.com/reports/2092499/internet_video_2011_2014_view_share_site_and

⁶⁴ <http://a2im.org/groups/reverb-nation/>

⁶⁵ <http://www.reverbnation.com/about>

⁶⁶ <http://a2im.org/groups/bmg-rights/>

⁶⁷ <http://www.bmg.com/category/about-us/history/>

⁶⁸ <http://a2im.org/groups/french-music-export-office>

⁶⁹ <http://a2im.org/groups/china-audio-video-association-cava>

⁷⁰ <http://a2im.org/groups/initiative-musik-gmbh>

⁷¹ <http://a2im.org/groups/tag/associate+members/>

⁷² <http://musicfirstcoalition.org/coalition>, The musicFIRST Coalition, with founding members A2IM, RIAA, and Recording Academy represents musicians, artists, managers, music businesses, and performance right advocates.

⁷³ <http://www.copyrightalliance.org/members>

⁷⁴ <http://www.winformusic.org>

⁷⁵ <http://www.merlinnetwork.org>

⁷⁶ <https://www.icann.org/en/system/files/correspondence/bengloff-to-chehade-et-al-20aug14-en.pdf> and <https://www.icann.org/en/system/files/correspondence/bengloff-to-crocker-et-al-07mar15-en.pdf>

Cumulatively, A2IM's Label and Associate Membership, A2IM's Affiliates and the A2IM's Global Independent Music Community Coalition, covers a majority of the global music community. Its cumulative membership is in the hundreds of millions of entities with formal boundaries belonging to strictly organized and delineated communities related to music as per the Community Definition and Size (See Application answer to Question 20a).

Another global Music Community Coalition led by the RIAA “on behalf of over 15 national and international trade associations” also expressed its support for .MUSIC to be under a “community” application model, including encouraging statements in support of DotMusic’s policies that stated that the coalition “was encouraged to see” that DotMusic “included several measures to deter and address copyright infringement within that TLD.” The “coalition members represent the people that write, sing, record, manufacture, distribute and/or license over 80% of the world’s music”⁷⁷ – a majority of global music.⁷⁸

Another letter⁷⁹ sent to ICANN (on April 14th, 2015) by Danielle Aguirre from the NMPA and on behalf of a music publisher and songwriter community coalition representing a majority of the global music publishing community, also expressed “support [for] the .MUSIC community applications because respecting and protecting music rights serves the global music community and the public interest.”

The International Music Products Association, NAMM, is another globally-recognized and relevant group of non-negligible size that has supported DotMusic.⁸⁰ NAMM, formed in 1901, is *mainly* dedicated to the global music community by representing the international music products industry and community, with globally-recognized members and exhibitors that include Yamaha, Roland, Sennheiser, Sony, Fender, Harman, Kawai, Shure, Steinway, Audio-Technica, AKAI, Gibson, Peavey, Korg, AKG, Selmer, JBL, Alesis, Ibanez, AVID, Casio, DW, Sabian, Pearl, Zildjian, Martin, Ludwig, Marshall and others.^{81 82} Every amateur and professional musician worldwide uses music products manufactured and distributed by NAMM’s members. Without these musical instruments and products, music as we know it today would not be created or produced. NAMM and its trade shows power the \$17 billion global music products industry serving as a hub for the global music community wanting to seek out the newest innovations in musical products, recording technology, sound and lighting. NAMM’s mission is “to strengthen

⁷⁷ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.1

⁷⁸ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.3, Appendix A

⁷⁹ <https://www.icann.org/en/system/files/correspondence/aguirre-to-icann-board-eiu-14apr15-en.pdf>

⁸⁰ http://music.us/letters/NAMM_International_Music_Products_Association.pdf

⁸¹ https://www.namm.org/files/showdir/ExhibitorList_WN15.xls

⁸² <http://www.musictrades.com/global.html>

the music products industry and promote the pleasures and benefits of making music.”⁸³ NAMM also hosts the NAMM Show, the world's largest event for the music products industry.

Collectively, the DotMusic application received support from the largest coalition of music community member organizations ever assembled to support a cause representing over 95% of music consumed globally.⁸⁴ Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support⁸⁵ from institutions/organizations representing a majority of the Community addressed. Music -- as commonly-known by the general public and experienced today -- would not be possible without these supporting, non-negligible and relevant organizations that have endorsed DotMusic.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Community Establishment* and *Community Endorsement* from the majority of the global Music Community as defined.

B) Nexus⁸⁶

According to the Applicant Guidebook (“AGB”), to receive the maximum score for Nexus, the applied-for string -- “music” -- must match the name of the community or be a well-known short-form or abbreviation of the community name.

The *Nexus* of the “Music Community” entirely matches the applied-for “music” string because it represents the entire global Music Community as commonly-known and perceived by the general public. This definition allows for all constituents with a requisite awareness of the Community defined to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination. The definition of the Community requires that members have an active, non-tangential relationship with the applied-for string and the requisite awareness of the music community they identify with as part of the registration process. It is clear that the general public will directly associate and equate the string with the Community as defined by DotMusic. There is no possibility of overreaching beyond the definition or allowing unrelated non-music entities to be included as part of the Community. Community members may register a .MUSIC by either:

⁸³ <https://www.namm.org/about>

⁸⁴ See <http://music.us/supporters>, <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/downloadattachment/142588?t:ac=1392>, Bloomberg BNA at http://music.us/RIAA_Backs_DotMusic.pdf Pg.1, and <http://diffuser.fm/will-dot-music-domains-make-the-internet-better/>

⁸⁵ <http://music.us/supporters>

⁸⁶ See <http://music.us/nexus>

- 1) Identifying that they belong to a Music Community Member Organization (“MCMO”); or
- 2) Identifying the community they belong to, which is consistent with the definition of the Community: “the strictly delineated and organized logical alliance of communities of similar nature related to music.”

All Community members are aware of and recognize their inclusion in the defined Community by identifying which clearly defined community they belong to and have an active participation in. The *nexus* of the applied-for string ensures inclusion of the entire global community that the string represents while excluding unrelated-entities not associated with the string. This way there is a clear match and alignment between the “music” sting and the Community defined.

While the exact size of the global Music Community as defined is unknown (there is no empirical evidence providing an exact, finite number because amateur entities are also included in the Community’s definition), it is in the considerable millions as explicitly stated in the DotMusic Application. DotMusic’s definition of the Community and mutually-inclusive Registration Policies ensure that eligible members are only music-related and associated with the string. This is because the string identifies all constituents involved in music. Music-only participation optimizes the relevancy of .MUSIC domains to the string and entirely matches the *nexus* between the string and Community defined. According to DotMusic, the Community *definition, eligibility* criteria and *content and use* requirements ensure that peripheral industries and entities not related to music are excluded so that the string and the defined Community matches and aligns in a consistent manner consistent with DotMusic’s community-based purpose i.e. only entities with music-related activities are able to register .MUSIC domains.

Membership aligns with the *nexus* of the Community and the string, which is explicitly relevant to music. The string as defined in the application demonstrates uniqueness because it has no other significant meaning beyond identifying the community described in the application. According to DotMusic’s application, any tangential or implicit association with the *nexus* of the Community and the string is not regarded as a delineated membership since it would be considered unclear, dispersed or unbound. Such unclear, dispersed or unbound tangential relationships with the defined “music” Community and applied-for “music” string would not constitute a qualifying Community membership and would be ineligible for registration. Every type of music constituent critically contributes to the function and operation of the music sector within a regulated framework⁸⁷ given the symbiotic overlapping nature of the Community as defined and structured. Music would not function as it does today without the participation of all music constituent types which cumulatively match the string with the Community definition.

⁸⁷ ICANN has disclosed that the string .MUSIC is a sensitive string operating in a regulated sector. ICANN also accepted Government Advisory Committee (GAC) advice for safeguards to protect the Music Community and the public interest (See <https://icann.org/en/system/files/correspondence/crocker-to-dryden-3-29oct13-en.pdf> Pg.7)

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Nexus*.

Respectfully Submitted,

Signature: 
Contact Information Redacted Aug 6 '15 ip: 84.89.157.108

Name: Jordi Janer, Ph.D

Title: Cofounder

Organization: Voctro Labs (Barcelona)

Jordi Janer, PhD

Jordi Janer is an audio technologist who works as Senior Researcher at the Music Technology Group of the Universitat Pompeu Fabra (MTG-UPF) in Barcelona.

Graduated in Electronic Engineering (2000), he worked as DSP engineer at Creamware GmbH, (Germany, 2000-2003), designing and developing audio effects and virtual synthesizers. He joined later the MTG-UPF, where he obtained the PhD degree in 2008 on voice interaction. His academic experience includes visiting research stays at McGill University (Canada, 2005) and at Northwestern University (USA, 2009).

His activity as a researcher and project manager involved various publicly-funded research projects (2004-2013), and industrial joint-research collaborations with Yamaha Corp. (Japan). He is coauthor of 11 patents and more than 30 scientific publications. In 2011 he cofounded Voctro Labs (See <http://www.voctrolabs.com>), a spin-off company specialized on voice processing solutions for the audiovisual media industry.

Education

Ph.D, Computer Science and Digital Communication (2002-2008)
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For more publications, see <http://mtg.upf.edu/biblio/author/Janer>

Re: Expert Testimony on (i) Community Establishment; (ii) Nexus; and (iii) Support for DotMusic’s Community-Based Application¹ for .MUSIC (Application ID 1-1115-14110)

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

Please accept this letter that indicates that there is substantive and compelling evidence that the DotMusic application convincingly meets the full criteria under Community Priority Evaluation on the following points: (i) the Music Community’s *Establishment* as defined by DotMusic; (2) the matching *Nexus* between the “music” Community and the “music” string (or top-level domain); and (3) that DotMusic possesses documented *Support* from organizations representing a majority of the global Music Community addressed and defined.

Please see my credentials attached hereto that identify my level of expertise and specialized knowledge with respect to the music community’s organization and delineation.

SUMMARY

DotMusic has established the following:

- 1) Its Community definition recognizes the cohesive, symbiotic and overlapping nature of the global Music Community. The definition includes those associated with commercial and non-commercial creation, performance, marketing and distribution of music;
- 2) “Music Community” members have the requisite awareness and recognition of the interdependency, overlapping and cohesive nature of each “organized community of similar nature that relates to music.” These organized and aligned communities are closely united and make “music” as we know it today. It is this self-awareness and interdependence that gives the “Music Community” its strength. With exponential growth of the Internet, mobile and the Domain Name System (DNS), the “Music Community’s” use and reliance on the Internet to create, market and disseminate music-related content, products, services and activities will continue to grow;
- 3) The “Music Community” functions in a regulated sector with global copyright protections – it is clear that the “community,” as defined, implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate a globally-recognized set of standards for

¹ <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1392>

the protection of the “Music Community” member rights with relation to their copyrighted music works around the world;

4) The “Music” Community -- as defined by DotMusic -- has at least one entity dedicated to the community supporting DotMusic’s application. Such documented *Support* includes several “international federation of national communities of a similar nature,” music coalitions and others that are strongly associated with “music,” which represent a majority of the Community with considerable millions of members worldwide.²

5) The *Nexus* of the “music” Community matches the “music” applied-for string because it represents the entire global Music Community – a community that pre-existed 2007 with a size in the considerable millions of constituents. The “Music Community” definition -- which incorporates the strict fundamental attributes of a closely united Community definition that is “organized” and “delineated” -- ensures that all of its constituent members have a requisite awareness of the community as defined, including both commercial and non-commercial stakeholders, to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination.

6) DotMusic has received support from the largest coalition of Music Community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support³ from institutions/organizations representing a majority of the Community as defined and recognized in the DotMusic application.

There is substantive evidence that DotMusic fulfills the *Nexus, Community Establishment and Support* criteria for the “Music” string. The inclusion and representation of every music constituent type is paramount to the articulated purpose of the string. DotMusic and its application’s global Music Community supporters substantiate that every type of music constituent contributes to the function and operation of the music sector within a regulated framework. The symbiotic nature of the Community as defined and structured means that “Music” would not function as it does today without the participation of all music constituent types that interconnect to match the “music” string with the “music” Community definition.

² <http://music.us/supporters>

³ <http://music.us/supporters>

ASSESSMENT OF COMMUNITY DEFINITION, ESTABLISHMENT AND NEXUS

A) *Music Community Definition, Establishment & Community Endorsement*⁴

DotMusic’s definition of the “Music Community” as a “strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music” (See Application, 20a) is factually accurate and representative of the “Music Community.” Community characteristics include:

i) An Organized, Cohesive, Interdependent Logically-Allied Community:

The “Music Community” definition covers the regulated, interdependent and cohesive nature of the music sector that exists today. “Music Community” members have the requisite awareness and recognition of the interdependent, overlapping and cohesive nature of each “organized community of similar nature that relates to music” that comprises the “Music Community.” Without such cohesiveness and interdependency, the defined “Music” Community matching the applied-for string (“Music”) would not be able to function in its regulated sector, a “Music” regulated sector that was publicly recognized by both ICANN and the Government Advisory Committee.⁵

As a result, the Music Community as defined is “closely united” (As per the definition of “cohesion” according to Merriam-Webster dictionary⁶) or “united or form a whole” (As per the definition of the word “cohesion” according to Oxford Dictionaries⁷).

The “Music Community” as defined (a “strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music”) establishes that:

- (1) There is an awareness and recognition among its members;
- (2) The organized and delineated logical alliance of communities exists; and
- (3) The Community is “closely united” and “interdependent” (i.e. Each “organized community of similar nature that relates to music” which is part of the “logical alliance of communities that relate to music” is not mutually exclusive).

In short, the applied-for string (“Music”) matches the name of the “Music” Community as defined by DotMusic’s application. DotMusic’s “Music Community” definition accurately represents the common definition of the “Music Community,” which is confirmed by Wikipedia.

⁴ See <http://music.us/establishment>

⁵ <https://www.icann.org/en/system/files/bm/briefing-materials-2-05feb14-en.pdf>, Pg.3

⁶ <http://www.merriam-webster.com/dictionary/cohesion>

⁷ http://www.oxforddictionaries.com/us/definition/american_english/cohesion

According to Wikipedia:⁸

Music community is defined as a logical alliance of interdependent communities that are related to music, which include commercial participants...and non-commercial participants...and consists of an “ensemble of practices and institutions that make possible and regulate the production, distribution and consumption of music”...UNESCO identifies the music community as a “community of identity” implying common identifiable characteristics and cohesive attributes such as sharing a music culture, norms and subscribing to common ideals related to music...The music community is not defined as much by demographic indicators such as race, gender, and income level, as it is by common values, cohesive norms and interconnected structures to build a community identity. It refers to music-related individuals and organisations in a shared environment with shared understandings and practices, modes of production and distribution. The shared organisation of collective musical activities, identity and community value is created as result of infrastructure and a shared set of common values...Many studies outline the historical, cultural, and spatial significance of the music community, including how its identity is formed through musical practices. The music community shares a cohesive and interconnected structure of artistic expression, with diverse subcultures and socio-economic interactions...subscribing to common ideals. Under such structured context music consumption becomes possible regardless whether the transaction is commercial and non-commercial.⁹

ii) *An Aware, Pre-Existing and Recognized Community of Considerable Millions Worldwide:*

DotMusic’s definition of the Community covers all Community members associated with the string, each with a requisite awareness of the Community that can be validated through their natural association with a particular music-related community that they clearly identify with. According to DotMusic, all Music Community members must identify their music-related community in order to demonstrate their requisite awareness of the defined Community as part of the .MUSIC registration and validation process.

⁸ Wikipedia is ranked 6th among the ten most popular websites (Alexa, Retrieved March 23, 2015 from <http://www.alexacom/siteinfo/wikipedia.org>) and constitutes the Internet's largest, most frequently updated and popular general reference work (See OECD, OECD Internet Economy Outlook 2012, OECD Publishing, http://www.oecd-ilibrary.org/science-and-technology/oecd-internet-economy-outlook-2012_9789264086463-en,Pg.172) that compares favorably to the accuracy of other encyclopedias (such as the Britannica) according to a 2012 study conducted in partnership with Oxford University (See <http://blog.wikimedia.org/2012/08/02/seven-years-after-nature-pilot-study-compares-wikipedia-favorably-to-other-encyclopedias-in-three-languages>).

⁹ Music Community. In *Wikipedia*. Retrieved March 23, 2015, from https://en.wikipedia.org/wiki/Music_community

According to DotMusic, the Music Community’s geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents (Application Answer to Question 20a).

According to DotMusic, “registrants will be verified using Community-organized, unified “criteria taken from holistic perspective with due regard of Community particularities” that “invoke a formal membership (Application Answer to Question 20a).” The defined Community represents all music-related entities with a clear and straightforward membership with the Community involved in the legal production, performance, promotion, and distribution of music worldwide. According to DotMusic, the Music Community members must have an active, non-tangential relationship with the applied-for string “music” and also have the requisite awareness of the music-related community that they are a part of by specifically identifying it as part of the registration and validation process (i.e. upon successful registration and validation, each community member will be given a unique community identification number that will automatically associate them with their identified community and the “music” string).

DotMusic’s Community definition matches the applied-for string because it allows both commercial and non-commercial stakeholders to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination/exclusion. Given the regulated sector of the community, it is clear that the “Music Community” as defined implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate cohesive and globally-recognized set of standards for the protection of the music community members’ rights with relation to their copyrighted music works around the world.¹⁰

The Berne Convention for the Protection of Literary and Artistic Works¹¹ provides that each of the 168 contracting parties¹² (representing an overwhelming majority of the world’s population) provides automatic protection for music works first published in other countries of the Berne union and for unpublished music works whose authors are citizens of or resident in such other countries.¹³ This means that if a Music Community member’s copyright rights are violated in any other signatory country’s jurisdiction, then the music community member will have the music copyright rights given by that country. Music Community members are clearly aware of the collective Community’s rights, which could not be made possible without these cohesive and globally-recognized set of standards. If such standards were not coherent or enforced then music would not be able to exist in its current form and the industry component of the Music Community sector would not exist. As such, the Community’s *Establishment* and definition is “cohesive” and hence cannot be construed since the Community is a logical alliance of music

¹⁰ http://www.rightsdirect.com/content/rd/en/toolbar/copyright_education/International_Copyright_Basics.html

¹¹ http://www.wipo.int/treaties/en/text.jsp?file_id=283698

¹² http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=15

¹³ <http://www.britannica.com/EBchecked/topic/62482/Berne-Convention>

communities that establish a clearly delineated and organized Community structure that is “closely united” and functions as a “whole”

Further evidence to substantiate the cohesive, symbiotic and overlapping nature of the Community, includes other globally-recognized standards and classification systems, which identify who the individual songwriters, publishers and rights holders are and which songs they are associated with so that Community members are appropriately compensated, regardless of whether the constituent is a commercial, non-commercial or amateur entity. The “music” string is commonly used in classification systems such as ISMN,¹⁴ ISRC,¹⁵ ISWC,¹⁶ ISNI.¹⁷ (Application Answer to Question 20a). For example, if a music entity would like to distribute their music, either commercially or for free, then an ISRC can be assigned to globally identify any specific music work. An ISRC, which facilitates efficient music discovery and community member payment, is constructed from 12 characters representing country, registrant, year of registration and designation (i.e. the serial number assigned by the registrant). With respect to domains, an equivalent system that relates to identifying a specific domain’s registrant and other relevant information pertaining to the domain is WHOIS. Domain registrants are required by ICANN “to provide accurate WHOIS contact data” or else their domain “registration may be suspended or even cancelled”.¹⁸

Without such Music Community “cohesion” and standardized systems functioning in its regulated sector, the Music Community would not be able to create, market and distribute their music. By the same token, fans would not be able to identify the music they are listening to with a specific music artist, regardless of whether the listening activity or behavior is commercial or non-commercial in nature. The socio-economic structure that characterizes “music” as commonly-known today would be non-existent without these organized and delineated elements that commonly define the Community.

¹⁴ The International Standard Music Number (ISMN) is a unique number for the identification of all notated music publications from all over the world. The ISMN is an ISO certified global standard number (ISO 10957:2009). See <http://www.ismn-international.org/whatis.html> and

http://www.iso.org/iso/home/store/catalogue_ics/catalogue_detail_ics.htm?csnumber=43173

¹⁵ The ISRC (International Standard Recording Code) is the international identification system for sound recordings and music video recordings. The ISRC is an ISO certified global standard number (ISO 3901:2001) and is managed by the IFPI. See <http://isrc.ifpi.org>, <https://www.usisrc.org/about/index.html> and http://www.iso.org/iso/catalogue_detail?csnumber=23401

¹⁶ The ISWC (International Standard Musical Work Code) is a unique, permanent and internationally recognized reference number for the identification of musical works. The ISWC has been approved by ISO (International Organization for Standardisation) as a global standard (ISO 15707:2001) and is managed by CISAC. See <http://www.iswc.org/en/faq.html> and http://www.iso.org/iso/catalogue_detail?csnumber=28780

¹⁷ The International Standard Name Identifier (ISNI) is the ISO certified global standard number (ISO 27729) for identifying the millions of contributors to creative works and those active in their distribution. ISNI holds public records of over 8 million identities and 490,000 organizations. See <http://www.isni.org/> and http://www.iso.org/iso/catalogue_detail?csnumber=44292

¹⁸ <https://whois.icann.org/en/about-whois> and <https://www.icann.org/resources/pages/faqs-f0-2012-02-25-en>

iii) International Federations and Organizations Dedicated to Community Functions:

According to ICANN’s Applicant Guidebook (“AGB”)¹⁹: *“With respect to “Delineation” and “Extension,” it should be noted that a community can consist of...a logical alliance of communities (for example, an international federation of national communities of a similar nature... viable as such, provided the requisite awareness and recognition of the community is at hand among the members.”* (AGB, 4-12). The community as defined in the DotMusic application has at least one entity mainly dedicated to the community which has supported DotMusic, which include several “international federation of national communities of a similar nature” relating to music, music coalitions and other relevant and non-negligible music organizations.

One of these entities include the only international federation of national communities relating to government culture agencies and arts councils, which has an integral association with music globally: the International Federation of Arts Councils and Culture Agencies (IFACCA).

IFACCA is the only international federation that represents government culture agencies and arts councils globally. These national communities are governmental institutions that play a pivotal role with respect to music.²⁰ IFACCA’s members cover the majority of music entities globally, regardless of whether they are commercial, non-commercial or amateurs. Government ministry of culture and council agencies related to music cover a majority of the overall community with respect to headcount and geographic reach. The “Size” covered reaches over a hundred million music entities i.e. “considerable size with millions of constituents” per Application Answer to Question 20a.

The string “music” falls under the jurisdiction of each country’s Ministry of Culture governmental agency or arts/music council (emphasis added). The degree of power and influence of government ministry of culture and council agencies with respect to music surpasses any organization type since these agencies (i) provide the majority of funding for music-related activities; (ii) regulate copyright law; and (iii) encompass all the music entities that fall under their country, regardless whether these entities are commercial, non-commercial or amateurs. IFACCA is globally recognized by its strategic partners, such as UNESCO, a United Nations agency representing 195 member states and the European Commission.²¹ The UNESCO strategic partnership²² is relevant, especially since UNESCO founded the International Music Council (the “IMC”) in 1949, which represents over 200 million music constituents from over 150 countries and over 1000 organizations globally.²³

¹⁹ <https://newgtlds.icann.org/en/applicants/agb/guidebook-full-11jan12-en.pdf>

²⁰ http://www.ifacca.org/membership/current_members/

²¹ http://www.ifacca.org/strategic_partners/

²² http://www.ifacca.org/strategic_partners/

²³ <http://www.imc-cim.org/about-imc-separator/who-we-are.html>

Government activities in the clearly delineated and organized “Music Community” include setting statutory royalty rates. For example, in the United States, mechanical royalties are based on a “statutory rate” set by the U.S. Congress. This rate is increased to follow changes in the economy, usually based on the Consumer Price Index. Currently, the mechanical statutory rate is \$0.091 for songs five minutes or less in length or \$.0175 per minute for songs that are over five minutes long.²⁴

Ministries of culture and arts councils (that comprise IFACCA’s membership) support musicians, musical performances, independent music artists, non-commercial musical expression and education in their respective countries. The 165 ministries of culture, arts councils and affiliates that comprise IFACCA’s membership support the “performing arts” and music specifically. Without the financial and logistical support of arts councils and the ministries of culture, the music community would be adversely affected, and in some countries, may not exist in any appreciable manner. For example, the Ministry of Culture 2011 budget for the small country state of Cyprus for culture funding was €34,876,522 with critical support of music activities.²⁵ Other small government Ministries of Culture, such as Albania,²⁶ or government Ministries of Culture and Arts Councils from countries with larger populations, such as India,²⁷ all provide critical support and substantial advocacy for music. Other examples include government institutions collaborating and advocating music through their funded country-based pavilion initiatives at Midem, the world’s largest music conference.²⁸

Government ministries and arts councils provide critical support for the Music Community, including commercial music organizations. By way of example, government ministries’ and arts councils’ substantial connection to and support of “music” is noted in the reports of funding and support for music. Some examples to showcase the degree of power of the IFACCA’s membership towards the string and global and national music are music investment and music funding (Annual reports by governments and councils):

- New Zealand Ministry of Culture has funded significant music projects. Some include the REAL New Zealand Music Tour (\$415,000), the New Zealand String Quartet (\$150,000) and New Zealand Music Commission: (\$1,378,000).²⁹
- The Australian Government/Council For The Arts invested \$51.2 million for the nation’s orchestras; \$21.6 million for opera; \$10.8 million for other music artists and

²⁴ U.S. Copyright Office, <http://www.copyright.gov/carp/m200a.html>

²⁵ 2011 Annual Report for Cyprus Ministry of Culture, Section 1.2 “Music”

(http://www.moec.gov.cy/en/annual_reports/annual_report_2011_en.pdf). Activities include Music Performances in Cyprus (1.2.1) and Abroad (1.2.2), Subsidization of Paphos Aphrodite Festival (1.2.3), Music Publications (1.2.4), Subsidization and Purchases of Digital Records (1.2.5), Promotion for Cypriot musical creativity abroad (1.2.6), Cyprus Symphony Orchestra Foundation (1.2.7), Music Information Centre (1.2.8), Developing Music Education (1.2.9), Organising of the 1st Musicological Symposium (1.2.10) and Musical Festivities for the European Volunteerism Year (1.2.11)

²⁶ http://www.culturalpolicies.net/down/albania_012011.pdf

²⁷ 2010-11 Annual Report from India Ministry of Culture, [http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011\(Eng\).pdf](http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011(Eng).pdf)

²⁸ <http://my.midem.com/en/contact-us/pavilion-representatives/>

²⁹ 2011 Annual Report from New Zealand Ministry of Culture:

[http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20\(D-0448383\).PDF](http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20(D-0448383).PDF)

organizations; \$13.1 million for multi-platform artists and organizations; and \$4 million in miscellaneous funding, including sector building and audience development initiatives and programs.³⁰

- Canada Council for the Arts is Canada’s national, arts funding agency investing \$28 million in its Canada Council Musical Instrument Bank (Page 16) and \$28,156,000 in Music Arts Programs (Page 66).³¹ The Government of Canada also renewed its annual investment of \$27.6 million over five years in the Canada Music Fund.³²
- The United Kingdom Department for Culture and Education (DfE) will fund music education at significant levels: £77 million, £65 million and £60 million will be available in the three years from April 2012.³³
- The United States National Endowment of the Arts has awarded more than \$4 billion to support the arts since its inception³⁴ and has a strong focus on music as outlined in its Strategic Plan³⁵ with Congress requested to provide \$154,465,000 for fiscal year 2014.³⁶
- The National Arts Council of South Africa invested 2,536,131 ZAR in Music and 9,995,000 ZAR in Orchestras and has focused strongly on the “Strengthening of live indigenous music and advocating the revival of the live music circuit in South Africa”³⁷
- The Singapore Arts Council will fund \$10.2 million in the arts under its 2013 Grants Framework, including the Ding Yi Music Company and Siong Leng Musical Association.³⁸
- In 2011, the support for artistic activities by the Arts Council of Finland was €32.4 million of which €4,921,850 was awarded to music.³⁹

Each of IFACCA’s members has a clear association with, and mandate to support the music arts in their countries. In most countries, their ministry of culture/arts council is the largest funder and marketing supporter of the music arts.

³⁰ 2011 Annual Report for the Australia Council for the Arts, http://www.australiacouncil.gov.au/data/assets/pdf_file/0016/142351/Australia-Council-Annual-Report-201112.pdf, Page 28

³¹ 2011 Annual Report for Canada Council for the Arts, http://www.canadacouncil.ca/NR/rdoonlyres/6F7549BB-F4E5-4B8B-95F4-1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf

³² <http://www.pch.gc.ca/eng/1294862453819/1294862453821>

³³ Department for Culture, The Importance of Music, A National Plan for Music Education, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/180973/DFE-00086-2011.pdf, Page 4, 2011

³⁴ 2011 Annual report for the National Endowment of the Arts, <http://www.nea.gov/about/11Annual/2011-NEA-Annual-Report.pdf>, Page 2

³⁵ NEA Strategic Plan 2012-2016, www.arts.gov/about/Budget/NEAStrategicPlan2012-2016.pdf

³⁶ http://www.ifacca.org/national_agency_news/2013/04/10/us-president-requests-154465000-neh-2014/

³⁷ 2010-2011 Annual Report for the National Arts Council South Africa, National Arts Council South Africa, <http://www.nac.org.za/media/publications/AR%2010-11%20NAC.PDF/download>, Page 11. Also Mmino, the South African – Norwegian Education Music Programme, solely funds music projects funding a total of 294 projects. Thirteen projects were allocated funding for a total of R1,680,600 of which R1,381,000 went towards music educational and R299,600 to exchange projects (Page 10)

³⁸ Singapore Arts Council, <http://www.nac.gov.sg/media-centre/news-releases/news-detail?id=c2db15e2-c319-40ec-939c-d58735d0a91c>

³⁹ <http://www.taiteenkeskustoimikunta.fi/documents/10162/31704/TY+tilastotiedote+1+12+.pdf>, Page 1 and Page

Another clear example of an “entity dedicated to the community” with members that cover hundreds of millions of music constituents with formal boundaries is A2IM, the American Association of Independent Music. A2IM has two types of members: U.S independent Label members and Associate members. A2IM membership for Labels and Associates is invoked formally through an application and if accepted would require annual membership dues.⁴⁰

The reach of A2IM Associate⁴¹ membership covers hundreds of millions of entities (i.e. the reach of A2IM’s total membership “geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents – See Application Answer to Question 20a).

Organized and strictly delineated communities related to music that are A2IM members include:

- **Apple iTunes**⁴² – iTunes accounts for 63% of global digital music market⁴³ - a majority – with a registered community of 800 million registered members⁴⁴ available in 119 countries who abide to strict terms of service and boundaries⁴⁵ and have downloaded over 25 billion songs⁴⁶ from iTunes’ catalog of over 43 million songs⁴⁷ covering a global music community, regardless of genre or whether the community entities are amateur, professional, commercial or non-commercial. To add music to iTunes, all music artists must have a formal membership with iTunes via an Apple ID registration, which includes a current credit card on file.⁴⁸
- **Pandora**⁴⁹ – Pandora is the world’s largest streaming music radio with a community of over 250 million registered members.⁵⁰
- **Spotify**⁵¹ – Spotify is the world’s largest music streaming community with over 50 million active registered members in 58 countries and over 30 million songs. The music community uploads 20,000 songs every day.⁵²
- **Vevo**⁵³ – Vevo is the world’s leading all-premium music video community and platform with over 8 billion monthly views globally.⁵⁴

⁴⁰ <http://a2im.org/about-joining/>

⁴¹ <http://a2im.org/groups/tag/associate+members/>

⁴² <http://a2im.org/groups/itunes>

⁴³ <http://appleinsider.com/articles/13/04/16/apples-itunes-rules-digital-music-market-with-63-share>

⁴⁴ <http://www.npr.org/blogs/therecord/2015/01/06/375173595/with-downloads-in-decline-can-itunes-adapt>

⁴⁵ <http://www.apple.com/legal/internet-services/itunes/ww/index.html>

⁴⁶ <http://www.apple.com/pr/library/2013/02/06iTunes-Store-Sets-New-Record-with-25-Billion-Songs-Sold.html>

⁴⁷ <https://www.apple.com/itunes/features/>

⁴⁸ <https://www.apple.com/itunes/working-itunes/sell-content/music-faq.html>

⁴⁹ <http://a2im.org/groups/pandora>

⁵⁰ <http://www.cnet.com/news/like-a-rolling-milestone-pandora-hits-250m-registered-users/> and <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MTkxNTM1fENoaWxkSUQ9LTF8VHlwZT0z&t=1>, Pg.9

⁵¹ <http://a2im.org/groups/spotify>

⁵² <https://press.spotify.com/us/information/>

⁵³ <http://a2im.org/groups/vevo/>

- **Youtube**⁵⁵ – Youtube is the world’s largest music video streaming community with millions of music creators -- amateur, professional, commercial or non-commercial -- and over 1 billion registered members covering all regions globally. 6 billion hours of video is watched every month on Youtube,⁵⁶ of which 38.4% is music-related.⁵⁷
- **ReverbNation**⁵⁸ – ReverbNation⁵⁹ is one of the world’s largest music community and a leading music distributor with over 3.87 million musicians, venues labels and industry professionals covering every country globally. The ReverbNation community grows by over 50,000 artists, bands, labels and industry professionals monthly.
- **BMG**⁶⁰ – BMG is focused on the management of music publishing and recording rights. BMG has an international presence and represents over 2.5 million music rights globally.⁶¹

A2IM also includes members that are associated with global government agencies which exclusively represent substantial music economies and music members, such as France (BureauExport⁶²), China (China Audio Video Association⁶³) and Germany (Initiative Musik).⁶⁴ A2IM also has Affiliate⁶⁵ associations within the global music community. These include Affiliates such as MusicFirst,⁶⁶ the Copyright Alliance,⁶⁷ the Worldwide Independent Network (WIN)⁶⁸ and Merlin.⁶⁹

A2IM also represents a recognized Music Coalition representing the interests of the Global Independent Music Community.⁷⁰ The A2IM Coalition includes Merlin, a global rights agency for the independent label sector, representing over 20,000 labels from 39 countries, Worldwide Independent Network (representing label creators in over 20 countries), Association of Independent Music (representing largest and most respected labels in the world), and IMPALA (Independent Music Companies Association on behalf of over 4,000 independent music companies and national associations across Europe, representing 99% of music actors in Europe which are micro, small and medium sized enterprises.

⁵⁴ <http://www.vevo.com/c/EN/US/about>

⁵⁵ <http://a2im.org/groups/youtube/>

⁵⁶ <https://www.youtube.com/yt/press/statistics.html>

⁵⁷ http://www.researchandmarkets.com/reports/2092499/internet_video_2011_2014_view_share_site_and

⁵⁸ <http://a2im.org/groups/reverb-nation/>

⁵⁹ <http://www.reverbnation.com/about>

⁶⁰ <http://a2im.org/groups/bmg-rights/>

⁶¹ <http://www.bmg.com/category/about-us/history/>

⁶² <http://a2im.org/groups/french-music-export-office>

⁶³ <http://a2im.org/groups/china-audio-video-association-cava>

⁶⁴ <http://a2im.org/groups/initiative-musik-gmbh>

⁶⁵ <http://a2im.org/groups/tag/associate+members/>

⁶⁶ <http://musicfirstcoalition.org/coalition>, The musicFIRST Coalition, with founding members A2IM, RIAA, and Recording Academy represents musicians, artists, managers, music businesses, and performance right advocates.

⁶⁷ <http://www.copyrightalliance.org/members>

⁶⁸ <http://www.winformusic.org>

⁶⁹ <http://www.merlinnetwork.org>

⁷⁰ <https://www.icann.org/en/system/files/correspondence/bengloff-to-chehade-et-al-20aug14-en.pdf> and <https://www.icann.org/en/system/files/correspondence/bengloff-to-crocker-et-al-07mar15-en.pdf>

Cumulatively, A2IM's Label and Associate Membership, A2IM's Affiliates and the A2IM's Global Independent Music Community Coalition, covers a majority of the global music community. Its cumulative membership is in the hundreds of millions of entities with formal boundaries belonging to strictly organized and delineated communities related to music as per the Community Definition and Size (See Application answer to Question 20a).

Another global Music Community Coalition led by the RIAA "on behalf of over 15 national and international trade associations" also expressed its support for .MUSIC to be under a "community" application model, including encouraging statements in support of DotMusic's policies that stated that the coalition "was encouraged to see" that DotMusic "included several measures to deter and address copyright infringement within that TLD." The "coalition members represent the people that write, sing, record, manufacture, distribute and/or license over 80% of the world's music"⁷¹ – a majority of global music.⁷²

Another letter⁷³ sent to ICANN (on April 14th, 2015) by Danielle Aguirre from the NMPA and on behalf of a music publisher and songwriter community coalition representing a majority of the global music publishing community, also expressed "support [for] the .MUSIC community applications because respecting and protecting music rights serves the global music community and the public interest."

Collectively, the DotMusic application received support from the largest coalition of music community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support⁷⁴ from institutions/organizations representing a majority of the Community addressed. Music -- as commonly-known by the general public and experienced today -- would not be possible without these supporting, non-negligible and relevant organizations that have endorsed DotMusic.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Community Establishment* and *Community Endorsement* from the majority of the global Music Community as defined.

⁷¹ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.1

⁷² <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.3, Appendix A

⁷³ <https://www.icann.org/en/system/files/correspondence/aguirre-to-icann-board-eiu-14apr15-en.pdf>

⁷⁴ <http://music.us/supporters>

B) Nexus⁷⁵

According to the Applicant Guidebook (“AGB”), to receive the maximum score for Nexus, the applied-for string -- “music” -- must match the name of the community or be a well-known short-form or abbreviation of the community name.

The *Nexus* of the “Music Community” entirely matches the applied-for “music” string because it represents the entire global Music Community as commonly-known and perceived by the general public. This definition allows for all constituents with a requisite awareness of the Community defined to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination. The definition of the Community requires that members have an active, non-tangential relationship with the applied-for string and the requisite awareness of the music community they identify with as part of the registration process. It is clear that the general public will directly associate and equate the string with the Community as defined by DotMusic. There is no possibility of overreaching beyond the definition or allowing unrelated non-music entities to be included as part of the Community.

Community members may register a .MUSIC by either:

- 1) Identifying that they belong to a Music Community Member Organization (“MCMO”); or
- 2) Identifying the community they belong to, which is consistent with the definition of the Community: “the strictly delineated and organized logical alliance of communities of similar nature related to music.”

All Community members are aware of and recognize their inclusion in the defined Community by identifying which clearly defined community they belong to and have an active participation in. The *nexus* of the applied-for string ensures inclusion of the entire global community that the string represents while excluding unrelated-entities not associated with the string. This way there is a clear match and alignment between the “music” sting and the Community defined.

While the exact size of the global Music Community as defined is unknown (there is no empirical evidence providing an exact, finite number because amateur entities are also included in the Community’s definition), it is in the considerable millions as explicitly stated in the DotMusic Application. DotMusic’s definition of the Community and mutually-inclusive Registration Policies ensure that eligible members are only music-related and associated with the string. This is because the string identifies all constituents involved in music. Music-only participation optimizes the relevancy of .MUSIC domains to the string and entirely matches the *nexus* between the string and Community defined. According to DotMusic, the Community *definition, eligibility* criteria and *content and use* requirements ensure that peripheral industries

⁷⁵ See <http://music.us/nexus>

and entities not related to music are excluded so that the string and the defined Community matches and aligns in a consistent manner consistent with DotMusic’s community-based purpose i.e. only entities with music-related activities are able to register .MUSIC domains.

Membership aligns with the *nexus* of the Community and the string, which is explicitly relevant to music. The string as defined in the application demonstrates uniqueness because it has no other significant meaning beyond identifying the community described in the application. According to DotMusic’s application, any tangential or implicit association with the *nexus* of the Community and the string is not regarded as a delineated membership since it would be considered unclear, dispersed or unbound. Such unclear, dispersed or unbound tangential relationships with the defined “music” Community and applied-for “music” string would not constitute a qualifying Community membership and would be ineligible for registration.

The inclusion of every music constituent type is paramount to the purpose of the string. Every type of music constituent critically contributes to the function and operation of the music sector within a regulated framework given the symbiotic overlapping nature of the Community as defined and structured. Music would not function as it does today without the participation of all music constituent types which cumulatively match the string with the Community definition.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Nexus*.

Respectfully Submitted,



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EDUCATION

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RESIDENCIES

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PUBLICATIONS

- “Listening with the body: an aesthetics of ritual possession outside of the terreiro.” *Ethnomusicology*. Accepted on Feb. 26, 2015, pending minor revisions.
- “Colombia: Music in history, culture, and geography.” *SAGE Encyclopedia of Ethnomusicology*. Submitted on Jan. 19, 2015.
- 2012 “Orkestra Rumpilezz: Reinventing the Bahian Percussion Universe.” *ICTUS, Journal of the School of Music of the Federal University of Bahia* 13 (1): 6-40.
- 2007 “Notación y Transcripción para el Berimbau Usado en Capoeira” (Notation and Musical Transcription for the Brazilian Berimbau as used in Capoeira). *Revista Ensayos* 13: 157-178. [National University of Colombia]
- 2006 “An Analysis of and Proposed Organization of the Capoeira Song Repertoire.” *Revista Ensayos* 11: 145-170. [National University of Colombia]

PRESENTATIONS

- 2015 “A Colombian Ethnomusicology: Issues, opportunities and challenges of musical research in Colombia.”
Paper presented at the meeting of the Society for Ethnomusicology, North West Chapter, Seattle, WA, 28 Feb.
- 2014 “Orkestra Rumpilezz: The Politics and Pleasures of Music Reception in Bahia.”
Paper presented at the meeting of the Society for Ethnomusicology, North West Chapter, Vancouver, BC, 1 May.
- 2014 “Orkestra Rumpilezz: Big band grooves performing Africanness in Bahia, Brazil.”
Paper presented at the Colloquium Series, School of Music, University of British Columbia, Vancouver, BC, 21, Mar
- 2013 “The Pleasure of Politics and the Politics of Pleasure: An Afro-diasporic Aesthetico-Political Regime.”
Paper co-presented with Kjetil Klette Bøhler at the conference “Music around the Atlantic Rim,” organized by the British Forum for Ethnomusicology and the AHRC Research Networking Project “Atlantic Sounds: Ships and Sailortowns,” Cardiff, Wales, 19 Oct.
- 2013 “Discourses of Musical Africanness in Salvador, Brazil.”
Paper presented at the Social-Academic Forum, Department of Musicology, University of Oslo, Oslo, Norway, 28 Feb.
- 2009 “Periodic Structures in Capoeira Angola Music: Setting the Scene for the *Roda*.”
Paper presented at the 54th annual meeting of the Society for Ethnomusicology, Mexico City, Mexico, 19-22 Nov.

RESEARCH ASSISTANSHIPS

- 2008-2009, 2013 Project “Periodicity in Music.”
Research Assistant. School of Music, University of British Columbia.

SCHOLARSHIPS AND AWARDS

- 2010-2012 Killam Doctoral Scholarship
Killam Trusts - University of British Columbia
- 2010-2013 Joseph-Armand Bombardier Canada Graduate Scholarships Program
(Doctoral Award)
Social Sciences and Humanities Research Council

- 2010-2014 Four Year Doctoral Fellowship
University of British Columbia
- 2011 UBC Student Outstanding Leader Recognition
University of British Columbia
- 2009-2010 Joseph-Armand Bombardier Canada Graduate Scholarships Program
(Masters Award)
Social Sciences and Humanities Research Council.
- 2009-2010 University Graduate Fellowship (Masters Award)
University of British Columbia
- 2008-2009 Entrance Scholarship
University of British Columbia

COMPOSITIONS AND PERFORMANCES

- 2011 “Se Fué Mendoza.”
Composer. A piece for string orchestra, oboe, and clarinet inspired by Colombian *cumbia* and *gaita* music.
Performed on November 21st, 2014 at the Telus Studio Theatre in Vancouver by the UBC Chamber Strings. Available at:
https://www.youtube.com/watch?v=mErTr_W3YuA
- 2010-2011 “Suite Afro-Brasileira.”
Composer. A five-movement suite for jazz big band and Afro-Brazilian percussion inspired by *capoeira angola*, *candomble*, *samba-reggae* and funk.
Co-conductor. Performed by the UBC jazz ensemble, the UBC Capoeira Angola ensemble, and Sambata at the University of British Columbia on April 5, 2011. Available at:
<https://www.youtube.com/watch?v=5aQrWEKfjw>
<https://www.youtube.com/watch?v=LbglARfcgnc>
<https://www.youtube.com/watch?v=6HFjcBmaeJw>
<https://www.youtube.com/watch?v=PWHZ3ZZh4Fg>
<https://www.youtube.com/watch?v=LjzHvRcIHMg>

LANGUAGES

- Spanish (native speaker)
English (fluent)
Portuguese (fluent)
French (read and aural comprehension)

TEACHING EXPERIENCE

- 2014 MUSC 529 Introduction of Ethnomusicology (Graduate Seminar)
 Guest Lecturer. University of British Columbia.
- 2013 MUS 2500/4500 *Aktuell Musikkvitenskap* (Latin American Music,
Interdisciplinary Music Research).
 Co-instructor. University of Oslo.
 Co-conceived and co-designed the syllabus.
- 2011 MUSC 128 Musical Rhythm and Human Experience
 Teaching Assistant. University of British Columbia.
- 2009 MUSC 3106 World Music 1
 Guest Lecturer. Vancouver Community College.

ENSEMBLE DIRECTING

- 2009-2011 UBC Capoeira Angola Ensemble
 Instructor. University of British Columbia.
 Founded and led a Capoeira Angola ensemble at UBC.
- 2009 UBC Berimbau Ensemble
 Instructor. University of British Columbia.
- 2001-2008 Capoeira Angola Ensembles
 Founded, led, and taught Capoeira Angola groups in Managua
(Nicaragua) and San José (Costa Rica).

PROFESSIONAL SERVICE

- 2008-2009 Ethnomusicology search committee, School of Music, University of British
Columbia

PROFESSIONAL DEVELOPMENT

- 2014-15 Workshops taken at the University of British Columbia, Faculty of Graduate
Studies.
 PhD Connections: Effective Supervisory Relationships
 Getting the Word Out: Writing your Research for the Public Sphere
 Foundations of Project Management 1
 Leading with Emotional Intelligence
 Managing Effective Collaborative Research Teams
 Introduction to Interacting with the Media

OTHER RELEVANT EXPERIENCE

- 2009-2010 Simon K. Y. Lee Global Lounge & Resource Centre, Vancouver, BC
Administrative Assistant
Organized film/lecture series, music performances, fundraisers, and gala events
Coordinated and managed the administrative and resource support to over 20 diverse student groups and organizations
- 2007 Casa Canadiense (Canadian NGO based in Managua, Nicaragua)
Coordinator
Managed and coordinated all daily operations of the organization, including fiduciary oversight.
Coordinated a global education program through collaborations with Canadian high school groups and local Nicaraguan counterparts.

WEBSITES

<http://ubc.academia.edu/JuanDiegoDiazMeneses/CurriculumVitae>
<https://www.grad.ubc.ca/campus-community/meet-our-students/diaz-meneses-juan-diego>

Re: Expert Testimony on (i) Community Establishment; (ii) Nexus; and (iii) Support for DotMusic’s Community-Based Application¹ for .MUSIC (Application ID 1-1115-14110)

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

Please accept this letter that indicates that there is substantive and compelling evidence that the DotMusic application convincingly meets the full criteria under Community Priority Evaluation on the following points: (i) the Music Community’s *Establishment* as defined by DotMusic; (2) the matching *Nexus* between the “music” Community and the “music” string (or top-level domain); and (3) that DotMusic possesses documented *Support* from organizations representing a majority of the global Music Community addressed and defined.

Please see my credentials attached hereto that identify my level of expertise and specialized knowledge with respect to the music community’s organization and delineation.

SUMMARY

DotMusic has established the following:

- 1) Its Community definition recognizes the cohesive, symbiotic and overlapping nature of the global Music Community. The definition includes those associated with commercial and non-commercial creation, performance, marketing and distribution of music;
- 2) “Music Community” members have the requisite awareness and recognition of the interdependency, overlapping and cohesive nature of each “organized community of similar nature that relates to music.” These organized and aligned communities are closely united and make “music” as we know it today. It is this self-awareness and interdependence that gives the “Music Community” its strength. With exponential growth of the Internet, mobile and the Domain Name System (DNS), the “Music Community’s” use and reliance on the Internet to create, market and disseminate music-related content, products, services and activities will continue to grow;
- 3) The “Music Community” functions in a regulated sector with global copyright protections – it is clear that the “community,” as defined, implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate a globally-recognized set of standards for

¹ <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1392>

the protection of the “Music Community” member rights with relation to their copyrighted music works around the world;

4) The “Music” Community -- as defined by DotMusic -- has at least one entity dedicated to the community supporting DotMusic’s application. Such documented *Support* includes several “international federation of national communities of a similar nature,” music coalitions and others that are strongly associated with “music,” which represent a majority of the Community with considerable millions of members worldwide.²

5) The *Nexus* of the “music” Community matches the “music” applied-for string because it represents the entire global Music Community – a community that pre-existed 2007 with a size in the considerable millions of constituents. The “Music Community” definition -- which incorporates the strict fundamental attributes of a closely united Community definition that is “organized” and “delineated” -- ensures that all of its constituent members have a requisite awareness of the community as defined, including both commercial and non-commercial stakeholders, to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination.

6) DotMusic has received support from the largest coalition of Music Community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support³ from institutions/organizations representing a majority of the Community as defined and recognized in the DotMusic application.

There is substantive evidence that DotMusic fulfills the *Nexus, Community Establishment and Support* criteria for the “Music” string. The inclusion and representation of every music constituent type is paramount to the articulated purpose of the string. DotMusic and its application’s global Music Community supporters substantiate that every type of music constituent contributes to the function and operation of the music sector within a regulated framework. The symbiotic nature of the Community as defined and structured means that “Music” would not function as it does today without the participation of all music constituent types that interconnect to match the “music” string with the “music” Community definition.

² <http://music.us/supporters>

³ <http://music.us/supporters>

ASSESSMENT OF COMMUNITY DEFINITION, ESTABLISHMENT AND NEXUS

A) *Music Community Definition, Establishment & Community Endorsement*⁴

DotMusic's definition of the "Music Community" as a "strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music" (See Application, 20a) is factually accurate and representative of the "Music Community." Community characteristics include:

i) An Organized, Cohesive, Interdependent Logically-Allied Community:

The "Music Community" definition covers the regulated, interdependent and cohesive nature of the music sector that exists today. "Music Community" members have the requisite awareness and recognition of the interdependent, overlapping and cohesive nature of each "organized community of similar nature that relates to music" that comprises the "Music Community." Without such cohesiveness and interdependency, the defined "Music" Community matching the applied-for string ("Music") would not be able to function in its regulated sector, a "Music" regulated sector that was publicly recognized by both ICANN and the Government Advisory Committee.⁵

As a result, the Music Community as defined is "closely united" (As per the definition of "cohesion" according to Merriam-Webster dictionary⁶) or "united or form a whole" (As per the definition of the word "cohesion" according to Oxford Dictionaries⁷).

The "Music Community" as defined (a "strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music") establishes that:

- (1) There is an awareness and recognition among its members;
- (2) The organized and delineated logical alliance of communities exists; and
- (3) The Community is "closely united" and "interdependent" (i.e. Each "organized community of similar nature that relates to music" which is part of the "logical alliance of communities that relate to music" is not mutually exclusive).

In short, the applied-for string ("Music") matches the name of the "Music" Community as defined by DotMusic's application. DotMusic's "Music Community" definition accurately represents the common definition of the "Music Community," which is confirmed by Wikipedia.

⁴ See <http://music.us/establishment>

⁵ <https://www.icann.org/en/system/files/bm/briefing-materials-2-05feb14-en.pdf>, Pg.3

⁶ <http://www.merriam-webster.com/dictionary/cohesion>

⁷ http://www.oxforddictionaries.com/us/definition/american_english/cohesion

According to Wikipedia:⁸

Music community is defined as a logical alliance of interdependent communities that are related to music, which include commercial participants...and non-commercial participants...and consists of an “ensemble of practices and institutions that make possible and regulate the production, distribution and consumption of music”...UNESCO identifies the music community as a “community of identity” implying common identifiable characteristics and cohesive attributes such as sharing a music culture, norms and subscribing to common ideals related to music...The music community is not defined as much by demographic indicators such as race, gender, and income level, as it is by common values, cohesive norms and interconnected structures to build a community identity. It refers to music-related individuals and organisations in a shared environment with shared understandings and practices, modes of production and distribution. The shared organisation of collective musical activities, identity and community value is created as result of infrastructure and a shared set of common values...Many studies outline the historical, cultural, and spatial significance of the music community, including how its identity is formed through musical practices. The music community shares a cohesive and interconnected structure of artistic expression, with diverse subcultures and socio-economic interactions...subscribing to common ideals. Under such structured context music consumption becomes possible regardless whether the transaction is commercial and non-commercial.⁹

ii) *An Aware, Pre-Existing and Recognized Community of Considerable Millions Worldwide:*

DotMusic’s definition of the Community covers all Community members associated with the string, each with a requisite awareness of the Community that can be validated through their natural association with a particular music-related community that they clearly identify with. According to DotMusic, all Music Community members must identify their music-related community in order to demonstrate their requisite awareness of the defined Community as part of the .MUSIC registration and validation process.

⁸ Wikipedia is ranked 6th among the ten most popular websites (Alexa, Retrieved March 23, 2015 from <http://www.alexacom/siteinfo/wikipedia.org>) and constitutes the Internet's largest, most frequently updated and popular general reference work (See OECD, OECD Internet Economy Outlook 2012, OECD Publishing, http://www.oecd-ilibrary.org/science-and-technology/oecd-internet-economy-outlook-2012_9789264086463-en,Pg.172) that compares favorably to the accuracy of other encyclopedias (such as the Britannica) according to a 2012 study conducted in partnership with Oxford University (See <http://blog.wikimedia.org/2012/08/02/seven-years-after-nature-pilot-study-compares-wikipedia-favorably-to-other-encyclopedias-in-three-languages>).

⁹ Music Community. In *Wikipedia*. Retrieved March 23, 2015, from https://en.wikipedia.org/wiki/Music_community

According to DotMusic, the Music Community’s geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents (Application Answer to Question 20a).

According to DotMusic, “registrants will be verified using Community-organized, unified “criteria taken from holistic perspective with due regard of Community particularities” that “invoke a formal membership (Application Answer to Question 20a).” The defined Community represents all music-related entities with a clear and straightforward membership with the Community involved in the legal production, performance, promotion, and distribution of music worldwide. According to DotMusic, the Music Community members must have an active, non-tangential relationship with the applied-for string “music” and also have the requisite awareness of the music-related community that they are a part of by specifically identifying it as part of the registration and validation process (i.e. upon successful registration and validation, each community member will be given a unique community identification number that will automatically associate them with their identified community and the “music” string).

DotMusic’s Community definition matches the applied-for string because it allows both commercial and non-commercial stakeholders to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination/exclusion. Given the regulated sector of the community, it is clear that the “Music Community” as defined implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate cohesive and globally-recognized set of standards for the protection of the music community members’ rights with relation to their copyrighted music works around the world.¹⁰

The Berne Convention for the Protection of Literary and Artistic Works¹¹ provides that each of the 168 contracting parties¹² (representing an overwhelming majority of the world’s population) provides automatic protection for music works first published in other countries of the Berne union and for unpublished music works whose authors are citizens of or resident in such other countries.¹³ This means that if a Music Community member’s copyright rights are violated in any other signatory country’s jurisdiction, then the music community member will have the music copyright rights given by that country. Music Community members are clearly aware of the collective Community’s rights, which could not be made possible without these cohesive and globally-recognized set of standards. If such standards were not coherent or enforced then music would not be able to exist in its current form and the industry component of the Music Community sector would not exist. As such, the Community’s *Establishment* and definition is “cohesive” and hence cannot be construed since the Community is a logical alliance of music

¹⁰ http://www.rightsdirect.com/content/rd/en/toolbar/copyright_education/International_Copyright_Basics.html

¹¹ http://www.wipo.int/treaties/en/text.jsp?file_id=283698

¹² http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=15

¹³ <http://www.britannica.com/EBchecked/topic/62482/Berne-Convention>

communities that establish a clearly delineated and organized Community structure that is “closely united” and functions as a “whole”

Further evidence to substantiate the cohesive, symbiotic and overlapping nature of the Community, includes other globally-recognized standards and classification systems, which identify who the individual songwriters, publishers and rights holders are and which songs they are associated with so that Community members are appropriately compensated, regardless of whether the constituent is a commercial, non-commercial or amateur entity. The “music” string is commonly used in classification systems such as ISMN,¹⁴ ISRC,¹⁵ ISWC,¹⁶ ISNI.¹⁷ (Application Answer to Question 20a). For example, if a music entity would like to distribute their music, either commercially or for free, then an ISRC can be assigned to globally identify any specific music work. An ISRC, which facilitates efficient music discovery and community member payment, is constructed from 12 characters representing country, registrant, year of registration and designation (i.e. the serial number assigned by the registrant). With respect to domains, an equivalent system that relates to identifying a specific domain’s registrant and other relevant information pertaining to the domain is WHOIS. Domain registrants are required by ICANN “to provide accurate WHOIS contact data” or else their domain “registration may be suspended or even cancelled”.¹⁸

Without such Music Community “cohesion” and standardized systems functioning in its regulated sector, the Music Community would not be able to create, market and distribute their music. By the same token, fans would not be able to identify the music they are listening to with a specific music artist, regardless of whether the listening activity or behavior is commercial or non-commercial in nature. The socio-economic structure that characterizes “music” as commonly-known today would be non-existent without these organized and delineated elements that commonly define the Community.

¹⁴ The International Standard Music Number (ISMN) is a unique number for the identification of all notated music publications from all over the world. The ISMN is an ISO certified global standard number (ISO 10957:2009). See <http://www.ismn-international.org/whatis.html> and

http://www.iso.org/iso/home/store/catalogue_ics/catalogue_detail_ics.htm?csnumber=43173

¹⁵ The ISRC (International Standard Recording Code) is the international identification system for sound recordings and music video recordings. The ISRC is an ISO certified global standard number (ISO 3901:2001) and is managed by the IFPI. See <http://isrc.ifpi.org>, <https://www.usisrc.org/about/index.html> and http://www.iso.org/iso/catalogue_detail?csnumber=23401

¹⁶ The ISWC (International Standard Musical Work Code) is a unique, permanent and internationally recognized reference number for the identification of musical works. The ISWC has been approved by ISO (International Organization for Standardisation) as a global standard (ISO 15707:2001) and is managed by CISAC. See <http://www.iswc.org/en/faq.html> and http://www.iso.org/iso/catalogue_detail?csnumber=28780

¹⁷ The International Standard Name Identifier (ISNI) is the ISO certified global standard number (ISO 27729) for identifying the millions of contributors to creative works and those active in their distribution. ISNI holds public records of over 8 million identities and 490,000 organizations. See <http://www.isni.org/> and http://www.iso.org/iso/catalogue_detail?csnumber=44292

¹⁸ <https://whois.icann.org/en/about-whois> and <https://www.icann.org/resources/pages/faqs-f0-2012-02-25-en>

iii) International Federations and Organizations Dedicated to Community Functions:

According to ICANN’s Applicant Guidebook (“AGB”)¹⁹: *“With respect to “Delineation” and “Extension,” it should be noted that a community can consist of...a logical alliance of communities (for example, an international federation of national communities of a similar nature... viable as such, provided the requisite awareness and recognition of the community is at hand among the members.”* (AGB, 4-12). The community as defined in the DotMusic application has at least one entity mainly dedicated to the community which has supported DotMusic, which include several “international federation of national communities of a similar nature” relating to music, music coalitions and other relevant and non-negligible music organizations.

One of these entities include the only international federation of national communities relating to government culture agencies and arts councils, which has an integral association with music globally: the International Federation of Arts Councils and Culture Agencies (IFACCA).

IFACCA is the only international federation that represents government culture agencies and arts councils globally. These national communities are governmental institutions that play a pivotal role with respect to music.²⁰ IFACCA’s members cover the majority of music entities globally, regardless of whether they are commercial, non-commercial or amateurs. Government ministry of culture and council agencies related to music cover a majority of the overall community with respect to headcount and geographic reach. The “Size” covered reaches over a hundred million music entities i.e. “considerable size with millions of constituents” per Application Answer to Question 20a.

The string “music” falls under the jurisdiction of each country’s Ministry of Culture governmental agency or arts/music council (emphasis added). The degree of power and influence of government ministry of culture and council agencies with respect to music surpasses any organization type since these agencies (i) provide the majority of funding for music-related activities; (ii) regulate copyright law; and (iii) encompass all the music entities that fall under their country, regardless whether these entities are commercial, non-commercial or amateurs. IFACCA is globally recognized by its strategic partners, such as UNESCO, a United Nations agency representing 195 member states and the European Commission.²¹ The UNESCO strategic partnership²² is relevant, especially since UNESCO founded the International Music Council (the “IMC”) in 1949, which represents over 200 million music constituents from over 150 countries and over 1000 organizations globally.²³

¹⁹ <https://newgtlds.icann.org/en/applicants/agb/guidebook-full-11jan12-en.pdf>

²⁰ http://www.ifacca.org/membership/current_members/

²¹ http://www.ifacca.org/strategic_partners/

²² http://www.ifacca.org/strategic_partners/

²³ <http://www.imc-cim.org/about-imc-separator/who-we-are.html>

Government activities in the clearly delineated and organized “Music Community” include setting statutory royalty rates. For example, in the United States, mechanical royalties are based on a “statutory rate” set by the U.S. Congress. This rate is increased to follow changes in the economy, usually based on the Consumer Price Index. Currently, the mechanical statutory rate is \$0.091 for songs five minutes or less in length or \$.0175 per minute for songs that are over five minutes long.²⁴

Ministries of culture and arts councils (that comprise IFACCA’s membership) support musicians, musical performances, independent music artists, non-commercial musical expression and education in their respective countries. The 165 ministries of culture, arts councils and affiliates that comprise IFACCA’s membership support the “performing arts” and music specifically. Without the financial and logistical support of arts councils and the ministries of culture, the music community would be adversely affected, and in some countries, may not exist in any appreciable manner. For example, the Ministry of Culture 2011 budget for the small country state of Cyprus for culture funding was €34,876,522 with critical support of music activities.²⁵ Other small government Ministries of Culture, such as Albania,²⁶ or government Ministries of Culture and Arts Councils from countries with larger populations, such as India,²⁷ all provide critical support and substantial advocacy for music. Other examples include government institutions collaborating and advocating music through their funded country-based pavilion initiatives at Midem, the world’s largest music conference.²⁸

Government ministries and arts councils provide critical support for the Music Community, including commercial music organizations. By way of example, government ministries’ and arts councils’ substantial connection to and support of “music” is noted in the reports of funding and support for music. Some examples to showcase the degree of power of the IFACCA’s membership towards the string and global and national music are music investment and music funding (Annual reports by governments and councils):

- New Zealand Ministry of Culture has funded significant music projects. Some include the REAL New Zealand Music Tour (\$415,000), the New Zealand String Quartet (\$150,000) and New Zealand Music Commission: (\$1,378,000).²⁹
- The Australian Government/Council For The Arts invested \$51.2 million for the nation’s orchestras; \$21.6 million for opera; \$10.8 million for other music artists and

²⁴ U.S. Copyright Office, <http://www.copyright.gov/carp/m200a.html>

²⁵ 2011 Annual Report for Cyprus Ministry of Culture, Section 1.2 “Music”

(http://www.moec.gov.cy/en/annual_reports/annual_report_2011_en.pdf). Activities include Music Performances in Cyprus (1.2.1) and Abroad (1.2.2), Subsidization of Paphos Aphrodite Festival (1.2.3), Music Publications (1.2.4), Subsidization and Purchases of Digital Records (1.2.5), Promotion for Cypriot musical creativity abroad (1.2.6), Cyprus Symphony Orchestra Foundation (1.2.7), Music Information Centre (1.2.8), Developing Music Education (1.2.9), Organising of the 1st Musicological Symposium (1.2.10) and Musical Festivities for the European Volunteerism Year (1.2.11)

²⁶ http://www.culturalpolicies.net/down/albania_012011.pdf

²⁷ 2010-11 Annual Report from India Ministry of Culture, [http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011\(Eng\).pdf](http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011(Eng).pdf)

²⁸ <http://my.midem.com/en/contact-us/pavilion-representatives/>

²⁹ 2011 Annual Report from New Zealand Ministry of Culture:

[http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20\(D-0448383\).PDF](http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20(D-0448383).PDF)

organizations; \$13.1 million for multi-platform artists and organizations; and \$4 million in miscellaneous funding, including sector building and audience development initiatives and programs.³⁰

- Canada Council for the Arts is Canada’s national, arts funding agency investing \$28 million in its Canada Council Musical Instrument Bank (Page 16) and \$28,156,000 in Music Arts Programs (Page 66).³¹ The Government of Canada also renewed its annual investment of \$27.6 million over five years in the Canada Music Fund.³²
- The United Kingdom Department for Culture and Education (DfE) will fund music education at significant levels: £77 million, £65 million and £60 million will be available in the three years from April 2012.³³
- The United States National Endowment of the Arts has awarded more than \$4 billion to support the arts since its inception³⁴ and has a strong focus on music as outlined in its Strategic Plan³⁵ with Congress requested to provide \$154,465,000 for fiscal year 2014.³⁶
- The National Arts Council of South Africa invested 2,536,131 ZAR in Music and 9,995,000 ZAR in Orchestras and has focused strongly on the “Strengthening of live indigenous music and advocating the revival of the live music circuit in South Africa”³⁷
- The Singapore Arts Council will fund \$10.2 million in the arts under its 2013 Grants Framework, including the Ding Yi Music Company and Siong Leng Musical Association.³⁸
- In 2011, the support for artistic activities by the Arts Council of Finland was €32.4 million of which €4,921,850 was awarded to music.³⁹

Each of IFACCA’s members has a clear association with, and mandate to support the music arts in their countries. In most countries, their ministry of culture/arts council is the largest funder and marketing supporter of the music arts.

³⁰ 2011 Annual Report for the Australia Council for the Arts, http://www.australiacouncil.gov.au/data/assets/pdf_file/0016/142351/Australia-Council-Annual-Report-201112.pdf, Page 28

³¹ 2011 Annual Report for Canada Council for the Arts, http://www.canadacouncil.ca/NR/rdoonlyres/6F7549BB-F4E5-4B8B-95F4-1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf

³² <http://www.pch.gc.ca/eng/1294862453819/1294862453821>

³³ Department for Culture, The Importance of Music, A National Plan for Music Education, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/180973/DFE-00086-2011.pdf, Page 4, 2011

³⁴ 2011 Annual report for the National Endowment of the Arts, <http://www.nea.gov/about/11Annual/2011-NEA-Annual-Report.pdf>, Page 2

³⁵ NEA Strategic Plan 2012-2016, www.arts.gov/about/Budget/NEAStrategicPlan2012-2016.pdf

³⁶ http://www.ifacca.org/national_agency_news/2013/04/10/us-president-requests-154465000-neh-2014/

³⁷ 2010-2011 Annual Report for the National Arts Council South Africa, National Arts Council South Africa, <http://www.nac.org.za/media/publications/AR%2010-11%20NAC.PDF/download>, Page 11. Also Mmino, the South African – Norwegian Education Music Programme, solely funds music projects funding a total of 294 projects. Thirteen projects were allocated funding for a total of R1,680,600 of which R1,381,000 went towards music educational and R299,600 to exchange projects (Page 10)

³⁸ Singapore Arts Council, <http://www.nac.gov.sg/media-centre/news-releases/news-detail?id=c2db15e2-c319-40ec-939c-d58735d0a91c>

³⁹ <http://www.taiteenkeskustoimikunta.fi/documents/10162/31704/TY+tilastotiedote+1+12+.pdf>, Page 1 and Page

Another clear example of an “entity dedicated to the community” with members that cover hundreds of millions of music constituents with formal boundaries is A2IM, the American Association of Independent Music. A2IM has two types of members: U.S independent Label members and Associate members. A2IM membership for Labels and Associates is invoked formally through an application and if accepted would require annual membership dues.⁴⁰

The reach of A2IM Associate⁴¹ membership covers hundreds of millions of entities (i.e. the reach of A2IM’s total membership “geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents – See Application Answer to Question 20a).

Organized and strictly delineated communities related to music that are A2IM members include:

- **Apple iTunes**⁴² – iTunes accounts for 63% of global digital music market⁴³ - a majority – with a registered community of 800 million registered members⁴⁴ available in 119 countries who abide to strict terms of service and boundaries⁴⁵ and have downloaded over 25 billion songs⁴⁶ from iTunes’ catalog of over 43 million songs⁴⁷ covering a global music community, regardless of genre or whether the community entities are amateur, professional, commercial or non-commercial. To add music to iTunes, all music artists must have a formal membership with iTunes via an Apple ID registration, which includes a current credit card on file.⁴⁸
- **Pandora**⁴⁹ – Pandora is the world’s largest streaming music radio with a community of over 250 million registered members.⁵⁰
- **Spotify**⁵¹ – Spotify is the world’s largest music streaming community with over 50 million active registered members in 58 countries and over 30 million songs. The music community uploads 20,000 songs every day.⁵²
- **Vevo**⁵³ – Vevo is the world’s leading all-premium music video community and platform with over 8 billion monthly views globally.⁵⁴

⁴⁰ <http://a2im.org/about-joining/>

⁴¹ <http://a2im.org/groups/tag/associate+members/>

⁴² <http://a2im.org/groups/itunes>

⁴³ <http://appleinsider.com/articles/13/04/16/apples-itunes-rules-digital-music-market-with-63-share>

⁴⁴ <http://www.npr.org/blogs/therecord/2015/01/06/375173595/with-downloads-in-decline-can-itunes-adapt>

⁴⁵ <http://www.apple.com/legal/internet-services/itunes/ww/index.html>

⁴⁶ <http://www.apple.com/pr/library/2013/02/06iTunes-Store-Sets-New-Record-with-25-Billion-Songs-Sold.html>

⁴⁷ <https://www.apple.com/itunes/features/>

⁴⁸ <https://www.apple.com/itunes/working-itunes/sell-content/music-faq.html>

⁴⁹ <http://a2im.org/groups/pandora>

⁵⁰ <http://www.cnet.com/news/like-a-rolling-milestone-pandora-hits-250m-registered-users/> and <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MTkxNTM1fENoaWxkSUQ9LTF8VHlwZT0z&t=1>, Pg.9

⁵¹ <http://a2im.org/groups/spotify>

⁵² <https://press.spotify.com/us/information/>

⁵³ <http://a2im.org/groups/vevo/>

- **Youtube**⁵⁵ – Youtube is the world’s largest music video streaming community with millions of music creators -- amateur, professional, commercial or non-commercial -- and over 1 billion registered members covering all regions globally. 6 billion hours of video is watched every month on Youtube,⁵⁶ of which 38.4% is music-related.⁵⁷
- **ReverbNation**⁵⁸ – ReverbNation⁵⁹ is one of the world’s largest music community and a leading music distributor with over 3.87 million musicians, venues labels and industry professionals covering every country globally. The ReverbNation community grows by over 50,000 artists, bands, labels and industry professionals monthly.
- **BMG**⁶⁰ – BMG is focused on the management of music publishing and recording rights. BMG has an international presence and represents over 2.5 million music rights globally.⁶¹

A2IM also includes members that are associated with global government agencies which exclusively represent substantial music economies and music members, such as France (BureauExport⁶²), China (China Audio Video Association⁶³) and Germany (Initiative Musik).⁶⁴ A2IM also has Affiliate⁶⁵ associations within the global music community. These include Affiliates such as MusicFirst,⁶⁶ the Copyright Alliance,⁶⁷ the Worldwide Independent Network (WIN)⁶⁸ and Merlin.⁶⁹

A2IM also represents a recognized Music Coalition representing the interests of the Global Independent Music Community.⁷⁰ The A2IM Coalition includes Merlin, a global rights agency for the independent label sector, representing over 20,000 labels from 39 countries, Worldwide Independent Network (representing label creators in over 20 countries), Association of Independent Music (representing largest and most respected labels in the world), and IMPALA (Independent Music Companies Association on behalf of over 4,000 independent music companies and national associations across Europe, representing 99% of music actors in Europe which are micro, small and medium sized enterprises.

⁵⁴ <http://www.vevo.com/c/EN/US/about>

⁵⁵ <http://a2im.org/groups/youtube/>

⁵⁶ <https://www.youtube.com/yt/press/statistics.html>

⁵⁷ http://www.researchandmarkets.com/reports/2092499/internet_video_2011_2014_view_share_site_and

⁵⁸ <http://a2im.org/groups/reverb-nation/>

⁵⁹ <http://www.reverbnation.com/about>

⁶⁰ <http://a2im.org/groups/bmg-rights/>

⁶¹ <http://www.bmg.com/category/about-us/history/>

⁶² <http://a2im.org/groups/french-music-export-office>

⁶³ <http://a2im.org/groups/china-audio-video-association-cava>

⁶⁴ <http://a2im.org/groups/initiative-musik-gmbh>

⁶⁵ <http://a2im.org/groups/tag/associate+members/>

⁶⁶ <http://musicfirstcoalition.org/coalition>, The musicFIRST Coalition, with founding members A2IM, RIAA, and Recording Academy represents musicians, artists, managers, music businesses, and performance right advocates.

⁶⁷ <http://www.copyrightalliance.org/members>

⁶⁸ <http://www.winformusic.org>

⁶⁹ <http://www.merlinnetwork.org>

⁷⁰ <https://www.icann.org/en/system/files/correspondence/bengloff-to-chehade-et-al-20aug14-en.pdf> and <https://www.icann.org/en/system/files/correspondence/bengloff-to-crocker-et-al-07mar15-en.pdf>

Cumulatively, A2IM's Label and Associate Membership, A2IM's Affiliates and the A2IM's Global Independent Music Community Coalition, covers a majority of the global music community. Its cumulative membership is in the hundreds of millions of entities with formal boundaries belonging to strictly organized and delineated communities related to music as per the Community Definition and Size (See Application answer to Question 20a).

Another global Music Community Coalition led by the RIAA "on behalf of over 15 national and international trade associations" also expressed its support for .MUSIC to be under a "community" application model, including encouraging statements in support of DotMusic's policies that stated that the coalition "was encouraged to see" that DotMusic "included several measures to deter and address copyright infringement within that TLD." The "coalition members represent the people that write, sing, record, manufacture, distribute and/or license over 80% of the world's music"⁷¹ – a majority of global music.⁷²

Another letter⁷³ sent to ICANN (on April 14th, 2015) by Danielle Aguirre from the NMPA and on behalf of a music publisher and songwriter community coalition representing a majority of the global music publishing community, also expressed "support [for] the .MUSIC community applications because respecting and protecting music rights serves the global music community and the public interest."

Collectively, the DotMusic application received support from the largest coalition of music community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support⁷⁴ from institutions/organizations representing a majority of the Community addressed. Music -- as commonly-known by the general public and experienced today -- would not be possible without these supporting, non-negligible and relevant organizations that have endorsed DotMusic.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Community Establishment* and *Community Endorsement* from the majority of the global Music Community as defined.

⁷¹ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.1

⁷² <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.3, Appendix A

⁷³ <https://www.icann.org/en/system/files/correspondence/aguirre-to-icann-board-eiu-14apr15-en.pdf>

⁷⁴ <http://music.us/supporters>

B) Nexus⁷⁵

According to the Applicant Guidebook (“AGB”), to receive the maximum score for Nexus, the applied-for string -- “music” -- must match the name of the community or be a well-known short-form or abbreviation of the community name.

The *Nexus* of the “Music Community” entirely matches the applied-for “music” string because it represents the entire global Music Community as commonly-known and perceived by the general public. This definition allows for all constituents with a requisite awareness of the Community defined to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination. The definition of the Community requires that members have an active, non-tangential relationship with the applied-for string and the requisite awareness of the music community they identify with as part of the registration process. It is clear that the general public will directly associate and equate the string with the Community as defined by DotMusic. There is no possibility of overreaching beyond the definition or allowing unrelated non-music entities to be included as part of the Community.

Community members may register a .MUSIC by either:

- 1) Identifying that they belong to a Music Community Member Organization (“MCMO”); or
- 2) Identifying the community they belong to, which is consistent with the definition of the Community: “the strictly delineated and organized logical alliance of communities of similar nature related to music.”

All Community members are aware of and recognize their inclusion in the defined Community by identifying which clearly defined community they belong to and have an active participation in. The *nexus* of the applied-for string ensures inclusion of the entire global community that the string represents while excluding unrelated-entities not associated with the string. This way there is a clear match and alignment between the “music” sting and the Community defined.

While the exact size of the global Music Community as defined is unknown (there is no empirical evidence providing an exact, finite number because amateur entities are also included in the Community’s definition), it is in the considerable millions as explicitly stated in the DotMusic Application. DotMusic’s definition of the Community and mutually-inclusive Registration Policies ensure that eligible members are only music-related and associated with the string. This is because the string identifies all constituents involved in music. Music-only participation optimizes the relevancy of .MUSIC domains to the string and entirely matches the *nexus* between the string and Community defined. According to DotMusic, the Community *definition, eligibility* criteria and *content and use* requirements ensure that peripheral industries

⁷⁵ See <http://music.us/nexus>

and entities not related to music are excluded so that the string and the defined Community matches and aligns in a consistent manner consistent with DotMusic’s community-based purpose i.e. only entities with music-related activities are able to register .MUSIC domains.

Membership aligns with the *nexus* of the Community and the string, which is explicitly relevant to music. The string as defined in the application demonstrates uniqueness because it has no other significant meaning beyond identifying the community described in the application. According to DotMusic’s application, any tangential or implicit association with the *nexus* of the Community and the string is not regarded as a delineated membership since it would be considered unclear, dispersed or unbound. Such unclear, dispersed or unbound tangential relationships with the defined “music” Community and applied-for “music” string would not constitute a qualifying Community membership and would be ineligible for registration.

The inclusion of every music constituent type is paramount to the purpose of the string. Every type of music constituent critically contributes to the function and operation of the music sector within a regulated framework given the symbiotic overlapping nature of the Community as defined and structured. Music would not function as it does today without the participation of all music constituent types which cumulatively match the string with the Community definition.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Nexus*.

Respectfully Submitted,

Signature: 
Contact Information Redacted Apr '24 '15 ip: 166.171.59.54

Name: Juliane Jones

Title: Juliane Jones, PhD

Organization: The University of British Columbia

About Dr. Juliane Jones

Singer-Songwriter

Ethnomusicologist

PH.D in Ethnomusicology
University of British Columbia

Profile

Singer-songwriter and ethnomusicologist Juliane Jones finds harmony in what seems like self-identity dissonance. “I occupy a middle space – my world is about intersections,” the New York-based songstress explains. Juliane’s father is Welsh, and her mother is from LA. She has lived internationally in five different places and speaks fluent Chinese and French. She is an ethnomusicologist, producer, and songwriter.

Juliane’s new experimental Chinese songwriting project integrates traditional Chinese music genres of *guqin*, *pipa* and *xiao* music, Chinese opera, and Buddhist chant into Western popular music idioms. It pushes the boundaries of performance by blending languages, timbres, and concepts in a way that is conscious of the stakes of translation and appropriation. Based on research begun during a Fulbright fellowship in China, Juliane’s songs and instrumental tracks are a celebration of cultural understanding.

Juliane performs and records music for the screen with leading Chinese instrumentalists around the world. Recent recordings feature pipa virtuoso Zhou Yi, bamboo flute master Miao Yimin, and the acclaimed Chinese opera (*kunqu*) artist Qian Yi.

Education

University of British Columbia Sept 2009-Nov 2014
Ph.D. (Ethnomusicology) November 2014

Royal Holloway University of London Sept 2008-Aug 2009
Mmus Advanced Musical Studies (Composition)

National Taiwan University, ICLP, Taipei, Taiwan June 2008-Aug 2008

The Shanghai Conservatory of Music Aug 2005-July 2006
Advanced Non-degree Student (*Jinxiusheng*)

The University of Chicago Sept 2001-Aug 2005
B.A., East Asian Studies, Minor: Music

Princeton in Beijing, Beijing, China June 2002-Aug 2002

The Taft School, Watertown, Connecticut Diploma, June 2001

L'Ecole Americaine, Rennes, France Sept 1999-June 2000

Dissertation Topic

Contemporary *Kunqu* Composition

Advisor: Dr. Michael Tenzer

Committee members: Dr. Joseph Lam, Dr. Nathan Hesselink,

1) Explores a new subfield of ethnomusicology, the application of ethnography to composition.

2) Investigates the contemporary form of a vitally important historical, operatic musical tradition inscribed on the UNESCO list of intangible heritage in 2001.

3) Is based on two years of fieldwork in Shanghai, China (2005-2007) and follow up trips in 2011 and 2013. Primary research techniques include:

a) Composition lessons with composers in Shanghai and Nanjing.

b) Interviews, both formal and informal.

c) Translation of Chinese composition treatises dating to the sixteenth century and contemporary composition treatises.

d) Analysis of musical scores, live performances, and sound recordings.

Prepared To Teach

The Singer-songwriter (Extensive experience as a producer and performer, General examination field in popular music studies)

Genre and Popular Music (General examination field)

Music in Twentieth Century China (Dissertation specialization)

Rhythm and Human Experience (Teaching assistant under Dr. Michael Tenzer)
Conducted two sections. Prepared class assignments and some course examinations.
Lectured on groove guitar, jazz diffusion, and the origin of music.

Cross-cultural Guitar Studies (General examination field)

Honors and Grants

Vanier Canada Graduate Scholarship Sept 2010-Sept 2013. Recipient for 3 years (\$50,000 per year)

University of British Columbia Graduate fellowship (\$16,000) Sept 2009-Sept 2010

Royal Holloway International Excellence Scholarship September 2008

IIE Fulbright Fellowship, Shanghai, China Aug 2006-June 2007

Asada Eiji BA Thesis Prize, best BA Thesis in East Asian Studies June 2005

University of Chicago Dean's List, 2001-2005

Paper Presentations

“Play the Bluebird”: Open Mics and Writers’ Nights June 2014
in Nashville, Tennessee
American Musicological Society Junior Faculty Symposium

Ethnography and Aesthetic Experience in Contemporary July 2013
Kun Opera Composition
42nd International Council For Traditional Music (UNESCO)
The Shanghai Conservatory, Shanghai, China

Contemporary Kun Opera Composition May 2011
University of Toronto, Music Department

Discography

Peony Dream (Forthcoming, May 2015) Original hybrid pop songs based on *kun* opera melodies. Performed with Ba Ban Chinese Music Society.

The Space Between The Telephone Lines (SoulRxSound, April 2014)
Original songs (Chinese and English versions), co-produced in Nashville, TN.

We Love We Live (SoulRxSound, 2011)
Original songs, co-produced in Nashville, TN.

Upcoming & Recent Performances

SyncSummit, London, England Apr 2015

Joe’s Pub, NYC Mar 2015

Queens Library, Flushing, NYC Sept 2014

Canadian Music Week, Toronto, CA May 2014

Pianos, East Village, NYC (Recurring Performances) Sept 2012-Present

696 Livehouse, Shanghai, China July 2013

Markham Theater, Toronto, Canada May 2013
Nationally Televised on Fairchild TV, Canada

Papers

“Play the Bluebird”: Open Mics and Writers’ Nights in Nashville, Tennessee in *The Singer-Songwriter*

Handbook (Bloomsbury Academic, accepted and forthcoming)

Kunqu Melody: Speech-tone, Melisma Shapes, and Vocal Gestures

“Musical Chinoiserie: *Turandot* and the Assertion of Ambiguity” (awarded best thesis in East Asian Studies at The University of Chicago)

Skills

Languages: Fluent English, French, Mandarin Chinese; Reading knowledge of German and Classical Chinese; Limited proficiency of Japanese

Music Software: Sibelius, Finale, Logic, and Pro Tools

Instruments: Guitar, Piano, Guqin

Website(s)

www.julianejonesmusic.com

<https://www.grad.ubc.ca/campus-community/meet-our-students/jones-juliane>

Re: Expert Testimony on (i) Community Establishment; (ii) Nexus; and (iii) Support for DotMusic’s Community-Based Application¹ for .MUSIC (Application ID 1-1115-14110)

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

Please accept this letter that indicates that there is substantive and compelling evidence that the DotMusic application convincingly meets the full criteria under Community Priority Evaluation on the following points: (i) the Music Community’s *Establishment* as defined by DotMusic; (2) the matching *Nexus* between the “music” Community and the “music” string (or top-level domain); and (3) that DotMusic possesses documented *Support* from organizations representing a majority of the global Music Community addressed and defined.

Please see my credentials attached hereto that identify my level of expertise and specialized knowledge with respect to the music community’s organization and delineation.

SUMMARY

DotMusic has established the following:

- 1) Its Community definition recognizes the cohesive, symbiotic and overlapping nature of the global Music Community. The definition includes those associated with commercial and non-commercial creation, performance, marketing and distribution of music;
- 2) “Music Community” members have the requisite awareness and recognition of the interdependency, overlapping and cohesive nature of each “organized community of similar nature that relates to music.” These organized and aligned communities are closely united and make “music” as we know it today. It is this self-awareness and interdependence that gives the “Music Community” its strength. With exponential growth of the Internet, mobile and the Domain Name System (DNS), the “Music Community’s” use and reliance on the Internet to create, market and disseminate music-related content, products, services and activities will continue to grow;
- 3) The “Music Community” functions in a regulated sector with global copyright protections – it is clear that the “community,” as defined, implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate a globally-recognized set of standards for

¹ <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1392>

the protection of the “Music Community” member rights with relation to their copyrighted music works around the world;

4) The “Music” Community -- as defined by DotMusic -- has at least one entity dedicated to the community supporting DotMusic’s application. Such documented *Support* includes several “international federation of national communities of a similar nature,” music coalitions and others that are strongly associated with “music,” which represent a majority of the Community with considerable millions of members worldwide.²

5) The *Nexus* of the “music” Community matches the “music” applied-for string because it represents the entire global Music Community – a community that pre-existed 2007 with a size in the considerable millions of constituents. The “Music Community” definition -- which incorporates the strict fundamental attributes of a closely united Community definition that is “organized” and “delineated” -- ensures that all of its constituent members have a requisite awareness of the community as defined, including both commercial and non-commercial stakeholders, to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination.

6) DotMusic has received support from the largest coalition of Music Community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support³ from institutions/organizations representing a majority of the Community as defined and recognized in the DotMusic application.

There is substantive evidence that DotMusic fulfills the *Nexus, Community Establishment and Support* criteria for the “Music” string. The inclusion and representation of every music constituent type is paramount to the articulated purpose of the string. DotMusic and its application’s global Music Community supporters substantiate that every type of music constituent contributes to the function and operation of the music sector within a regulated framework. The symbiotic nature of the Community as defined and structured means that “Music” would not function as it does today without the participation of all music constituent types that interconnect to match the “music” string with the “music” Community definition.

² <http://music.us/supporters>

³ <http://music.us/supporters>

ASSESSMENT OF COMMUNITY DEFINITION, ESTABLISHMENT AND NEXUS

A) *Music Community Definition, Establishment & Community Endorsement*⁴

DotMusic’s definition of the “Music Community” as a “strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music” (See Application, 20a) is factually accurate and representative of the “Music Community.” Community characteristics include:

i) An Organized, Cohesive, Interdependent Logically-Allied Community:

The “Music Community” definition covers the regulated, interdependent and cohesive nature of the music sector that exists today. “Music Community” members have the requisite awareness and recognition of the interdependent, overlapping and cohesive nature of each “organized community of similar nature that relates to music” that comprises the “Music Community.” Without such cohesiveness and interdependency, the defined “Music” Community matching the applied-for string (“Music”) would not be able to function in its regulated sector, a “Music” regulated sector that was publicly recognized by both ICANN and the Government Advisory Committee.⁵

As a result, the Music Community as defined is “closely united” (As per the definition of “cohesion” according to Merriam-Webster dictionary⁶) or “united or form a whole” (As per the definition of the word “cohesion” according to Oxford Dictionaries⁷).

The “Music Community” as defined (a “strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music”) establishes that:

- (1) There is an awareness and recognition among its members;
- (2) The organized and delineated logical alliance of communities exists; and
- (3) The Community is “closely united” and “interdependent” (i.e. Each “organized community of similar nature that relates to music” which is part of the “logical alliance of communities that relate to music” is not mutually exclusive).

In short, the applied-for string (“Music”) matches the name of the “Music” Community as defined by DotMusic’s application. DotMusic’s “Music Community” definition accurately represents the common definition of the “Music Community,” which is confirmed by Wikipedia.

⁴ See <http://music.us/establishment>

⁵ <https://www.icann.org/en/system/files/bm/briefing-materials-2-05feb14-en.pdf>, Pg.3

⁶ <http://www.merriam-webster.com/dictionary/cohesion>

⁷ http://www.oxforddictionaries.com/us/definition/american_english/cohesion

According to Wikipedia:⁸

Music community is defined as a logical alliance of interdependent communities that are related to music, which include commercial participants...and non-commercial participants...and consists of an “ensemble of practices and institutions that make possible and regulate the production, distribution and consumption of music”...UNESCO identifies the music community as a “community of identity” implying common identifiable characteristics and cohesive attributes such as sharing a music culture, norms and subscribing to common ideals related to music...The music community is not defined as much by demographic indicators such as race, gender, and income level, as it is by common values, cohesive norms and interconnected structures to build a community identity. It refers to music-related individuals and organisations in a shared environment with shared understandings and practices, modes of production and distribution. The shared organisation of collective musical activities, identity and community value is created as result of infrastructure and a shared set of common values...Many studies outline the historical, cultural, and spatial significance of the music community, including how its identity is formed through musical practices. The music community shares a cohesive and interconnected structure of artistic expression, with diverse subcultures and socio-economic interactions...subscribing to common ideals. Under such structured context music consumption becomes possible regardless whether the transaction is commercial and non-commercial.⁹

ii) *An Aware, Pre-Existing and Recognized Community of Considerable Millions Worldwide:*

DotMusic’s definition of the Community covers all Community members associated with the string, each with a requisite awareness of the Community that can be validated through their natural association with a particular music-related community that they clearly identify with. According to DotMusic, all Music Community members must identify their music-related community in order to demonstrate their requisite awareness of the defined Community as part of the .MUSIC registration and validation process.

⁸ Wikipedia is ranked 6th among the ten most popular websites (Alexa, Retrieved March 23, 2015 from <http://www.alexacom/siteinfo/wikipedia.org>) and constitutes the Internet's largest, most frequently updated and popular general reference work (See OECD, OECD Internet Economy Outlook 2012, OECD Publishing, http://www.oecd-ilibrary.org/science-and-technology/oecd-internet-economy-outlook-2012_9789264086463-en,Pg.172) that compares favorably to the accuracy of other encyclopedias (such as the Britannica) according to a 2012 study conducted in partnership with Oxford University (See <http://blog.wikimedia.org/2012/08/02/seven-years-after-nature-pilot-study-compares-wikipedia-favorably-to-other-encyclopedias-in-three-languages>).

⁹ Music Community. In *Wikipedia*. Retrieved March 23, 2015, from https://en.wikipedia.org/wiki/Music_community

According to DotMusic, the Music Community’s geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents (Application Answer to Question 20a).

According to DotMusic, “registrants will be verified using Community-organized, unified “criteria taken from holistic perspective with due regard of Community particularities” that “invoke a formal membership (Application Answer to Question 20a).” The defined Community represents all music-related entities with a clear and straightforward membership with the Community involved in the legal production, performance, promotion, and distribution of music worldwide. According to DotMusic, the Music Community members must have an active, non-tangential relationship with the applied-for string “music” and also have the requisite awareness of the music-related community that they are a part of by specifically identifying it as part of the registration and validation process (i.e. upon successful registration and validation, each community member will be given a unique community identification number that will automatically associate them with their identified community and the “music” string).

DotMusic’s Community definition matches the applied-for string because it allows both commercial and non-commercial stakeholders to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination/exclusion. Given the regulated sector of the community, it is clear that the “Music Community” as defined implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate cohesive and globally-recognized set of standards for the protection of the music community members’ rights with relation to their copyrighted music works around the world.¹⁰

The Berne Convention for the Protection of Literary and Artistic Works¹¹ provides that each of the 168 contracting parties¹² (representing an overwhelming majority of the world’s population) provides automatic protection for music works first published in other countries of the Berne union and for unpublished music works whose authors are citizens of or resident in such other countries.¹³ This means that if a Music Community member’s copyright rights are violated in any other signatory country’s jurisdiction, then the music community member will have the music copyright rights given by that country. Music Community members are clearly aware of the collective Community’s rights, which could not be made possible without these cohesive and globally-recognized set of standards. If such standards were not coherent or enforced then music would not be able to exist in its current form and the industry component of the Music Community sector would not exist. As such, the Community’s *Establishment* and definition is “cohesive” and hence cannot be construed since the Community is a logical alliance of music

¹⁰ http://www.rightsdirect.com/content/rd/en/toolbar/copyright_education/International_Copyright_Basics.html

¹¹ http://www.wipo.int/treaties/en/text.jsp?file_id=283698

¹² http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=15

¹³ <http://www.britannica.com/EBchecked/topic/62482/Berne-Convention>

communities that establish a clearly delineated and organized Community structure that is “closely united” and functions as a “whole”

Further evidence to substantiate the cohesive, symbiotic and overlapping nature of the Community, includes other globally-recognized standards and classification systems, which identify who the individual songwriters, publishers and rights holders are and which songs they are associated with so that Community members are appropriately compensated, regardless of whether the constituent is a commercial, non-commercial or amateur entity. The “music” string is commonly used in classification systems such as ISMN,¹⁴ ISRC,¹⁵ ISWC,¹⁶ ISNI.¹⁷ (Application Answer to Question 20a). For example, if a music entity would like to distribute their music, either commercially or for free, then an ISRC can be assigned to globally identify any specific music work. An ISRC, which facilitates efficient music discovery and community member payment, is constructed from 12 characters representing country, registrant, year of registration and designation (i.e. the serial number assigned by the registrant). With respect to domains, an equivalent system that relates to identifying a specific domain’s registrant and other relevant information pertaining to the domain is WHOIS. Domain registrants are required by ICANN “to provide accurate WHOIS contact data” or else their domain “registration may be suspended or even cancelled”.¹⁸

Without such Music Community “cohesion” and standardized systems functioning in its regulated sector, the Music Community would not be able to create, market and distribute their music. By the same token, fans would not be able to identify the music they are listening to with a specific music artist, regardless of whether the listening activity or behavior is commercial or non-commercial in nature. The socio-economic structure that characterizes “music” as commonly-known today would be non-existent without these organized and delineated elements that commonly define the Community.

¹⁴ The International Standard Music Number (ISMN) is a unique number for the identification of all notated music publications from all over the world. The ISMN is an ISO certified global standard number (ISO 10957:2009). See <http://www.ismn-international.org/whatis.html> and

http://www.iso.org/iso/home/store/catalogue_ics/catalogue_detail_ics.htm?csnumber=43173

¹⁵ The ISRC (International Standard Recording Code) is the international identification system for sound recordings and music video recordings. The ISRC is an ISO certified global standard number (ISO 3901:2001) and is managed by the IFPI. See <http://isrc.ifpi.org>, <https://www.usisrc.org/about/index.html> and http://www.iso.org/iso/catalogue_detail?csnumber=23401

¹⁶ The ISWC (International Standard Musical Work Code) is a unique, permanent and internationally recognized reference number for the identification of musical works. The ISWC has been approved by ISO (International Organization for Standardisation) as a global standard (ISO 15707:2001) and is managed by CISAC. See <http://www.iswc.org/en/faq.html> and http://www.iso.org/iso/catalogue_detail?csnumber=28780

¹⁷ The International Standard Name Identifier (ISNI) is the ISO certified global standard number (ISO 27729) for identifying the millions of contributors to creative works and those active in their distribution. ISNI holds public records of over 8 million identities and 490,000 organizations. See <http://www.isni.org/> and http://www.iso.org/iso/catalogue_detail?csnumber=44292

¹⁸ <https://whois.icann.org/en/about-whois> and <https://www.icann.org/resources/pages/faqs-f0-2012-02-25-en>

iii) International Federations and Organizations Dedicated to Community Functions:

According to ICANN's Applicant Guidebook ("AGB")¹⁹: *"With respect to "Delineation" and "Extension," it should be noted that a community can consist of...a logical alliance of communities (for example, an international federation of national communities of a similar nature... viable as such, provided the requisite awareness and recognition of the community is at hand among the members."* (AGB, 4-12). The community as defined in the DotMusic application has at least one entity mainly dedicated to the community which has supported DotMusic, which include several "international federation of national communities of a similar nature" relating to music, music coalitions and other relevant and non-negligible music organizations.

One of these entities include the only international federation of national communities relating to government culture agencies and arts councils, which has an integral association with music globally: the International Federation of Arts Councils and Culture Agencies (IFACCA).

IFACCA is the only international federation that represents government culture agencies and arts councils globally. These national communities are governmental institutions that play a pivotal role with respect to music.²⁰ IFACCA's members cover the majority of music entities globally, regardless of whether they are commercial, non-commercial or amateurs. Government ministry of culture and council agencies related to music cover a majority of the overall community with respect to headcount and geographic reach. The "Size" covered reaches over a hundred million music entities i.e. "considerable size with millions of constituents" per Application Answer to Question 20a.

The string "music" falls under the jurisdiction of each country's Ministry of Culture governmental agency or arts/music council (emphasis added). The degree of power and influence of government ministry of culture and council agencies with respect to music surpasses any organization type since these agencies (i) provide the majority of funding for music-related activities; (ii) regulate copyright law; and (iii) encompass all the music entities that fall under their country, regardless whether these entities are commercial, non-commercial or amateurs. IFACCA is globally recognized by its strategic partners, such as UNESCO, a United Nations agency representing 195 member states and the European Commission.²¹ The UNESCO strategic partnership²² is relevant, especially since UNESCO founded the International Music Council (the "IMC") in 1949, which represents over 200 million music constituents from over 150 countries and over 1000 organizations globally.²³

¹⁹ <https://newgtlds.icann.org/en/applicants/agb/guidebook-full-11jan12-en.pdf>

²⁰ http://www.ifacca.org/membership/current_members/

²¹ http://www.ifacca.org/strategic_partners/

²² http://www.ifacca.org/strategic_partners/

²³ <http://www.imc-cim.org/about-imc-separator/who-we-are.html>

Government activities in the clearly delineated and organized “Music Community” include setting statutory royalty rates. For example, in the United States, mechanical royalties are based on a “statutory rate” set by the U.S. Congress. This rate is increased to follow changes in the economy, usually based on the Consumer Price Index. Currently, the mechanical statutory rate is \$0.091 for songs five minutes or less in length or \$.0175 per minute for songs that are over five minutes long.²⁴

Ministries of culture and arts councils (that comprise IFACCA’s membership) support musicians, musical performances, independent music artists, non-commercial musical expression and education in their respective countries. The 165 ministries of culture, arts councils and affiliates that comprise IFACCA’s membership support the “performing arts” and music specifically. Without the financial and logistical support of arts councils and the ministries of culture, the music community would be adversely affected, and in some countries, may not exist in any appreciable manner. For example, the Ministry of Culture 2011 budget for the small country state of Cyprus for culture funding was €34,876,522 with critical support of music activities.²⁵ Other small government Ministries of Culture, such as Albania,²⁶ or government Ministries of Culture and Arts Councils from countries with larger populations, such as India,²⁷ all provide critical support and substantial advocacy for music. Other examples include government institutions collaborating and advocating music through their funded country-based pavilion initiatives at Midem, the world’s largest music conference.²⁸

Government ministries and arts councils provide critical support for the Music Community, including commercial music organizations. By way of example, government ministries’ and arts councils’ substantial connection to and support of “music” is noted in the reports of funding and support for music. Some examples to showcase the degree of power of the IFACCA’s membership towards the string and global and national music are music investment and music funding (Annual reports by governments and councils):

- New Zealand Ministry of Culture has funded significant music projects. Some include the REAL New Zealand Music Tour (\$415,000), the New Zealand String Quartet (\$150,000) and New Zealand Music Commission: (\$1,378,000).²⁹
- The Australian Government/Council For The Arts invested \$51.2 million for the nation’s orchestras; \$21.6 million for opera; \$10.8 million for other music artists and

²⁴ U.S. Copyright Office, <http://www.copyright.gov/carp/m200a.html>

²⁵ 2011 Annual Report for Cyprus Ministry of Culture, Section 1.2 “Music”

(http://www.moec.gov.cy/en/annual_reports/annual_report_2011_en.pdf). Activities include Music Performances in Cyprus (1.2.1) and Abroad (1.2.2), Subsidization of Paphos Aphrodite Festival (1.2.3), Music Publications (1.2.4), Subsidization and Purchases of Digital Records (1.2.5), Promotion for Cypriot musical creativity abroad (1.2.6), Cyprus Symphony Orchestra Foundation (1.2.7), Music Information Centre (1.2.8), Developing Music Education (1.2.9), Organising of the 1st Musicological Symposium (1.2.10) and Musical Festivities for the European Volunteerism Year (1.2.11)

²⁶ http://www.culturalpolicies.net/down/albania_012011.pdf

²⁷ 2010-11 Annual Report from India Ministry of Culture, [http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011\(Eng\).pdf](http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011(Eng).pdf)

²⁸ <http://my.midem.com/en/contact-us/pavilion-representatives/>

²⁹ 2011 Annual Report from New Zealand Ministry of Culture:

[http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20\(D-0448383\).PDF](http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20(D-0448383).PDF)

organizations; \$13.1 million for multi-platform artists and organizations; and \$4 million in miscellaneous funding, including sector building and audience development initiatives and programs.³⁰

- Canada Council for the Arts is Canada’s national, arts funding agency investing \$28 million in its Canada Council Musical Instrument Bank (Page 16) and \$28,156,000 in Music Arts Programs (Page 66).³¹ The Government of Canada also renewed its annual investment of \$27.6 million over five years in the Canada Music Fund.³²
- The United Kingdom Department for Culture and Education (DfE) will fund music education at significant levels: £77 million, £65 million and £60 million will be available in the three years from April 2012.³³
- The United States National Endowment of the Arts has awarded more than \$4 billion to support the arts since its inception³⁴ and has a strong focus on music as outlined in its Strategic Plan³⁵ with Congress requested to provide \$154,465,000 for fiscal year 2014.³⁶
- The National Arts Council of South Africa invested 2,536,131 ZAR in Music and 9,995,000 ZAR in Orchestras and has focused strongly on the “Strengthening of live indigenous music and advocating the revival of the live music circuit in South Africa”³⁷
- The Singapore Arts Council will fund \$10.2 million in the arts under its 2013 Grants Framework, including the Ding Yi Music Company and Siong Leng Musical Association.³⁸
- In 2011, the support for artistic activities by the Arts Council of Finland was €32.4 million of which €4,921,850 was awarded to music.³⁹

Each of IFACCA’s members has a clear association with, and mandate to support the music arts in their countries. In most countries, their ministry of culture/arts council is the largest funder and marketing supporter of the music arts.

³⁰ 2011 Annual Report for the Australia Council for the Arts, http://www.australiacouncil.gov.au/data/assets/pdf_file/0016/142351/Australia-Council-Annual-Report-201112.pdf, Page 28

³¹ 2011 Annual Report for Canada Council for the Arts, http://www.canadacouncil.ca/NR/rdoonlyres/6F7549BB-F4E5-4B8B-95F4-1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf

³² <http://www.pch.gc.ca/eng/1294862453819/1294862453821>

³³ Department for Culture, The Importance of Music, A National Plan for Music Education, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/180973/DFE-00086-2011.pdf, Page 4, 2011

³⁴ 2011 Annual report for the National Endowment of the Arts, <http://www.nea.gov/about/11Annual/2011-NEA-Annual-Report.pdf>, Page 2

³⁵ NEA Strategic Plan 2012-2016, www.arts.gov/about/Budget/NEAStrategicPlan2012-2016.pdf

³⁶ http://www.ifacca.org/national_agency_news/2013/04/10/us-president-requests-154465000-neh-2014/

³⁷ 2010-2011 Annual Report for the National Arts Council South Africa, National Arts Council South Africa, <http://www.nac.org.za/media/publications/AR%2010-11%20NAC.PDF/download>, Page 11. Also Mmino, the South African – Norwegian Education Music Programme, solely funds music projects funding a total of 294 projects. Thirteen projects were allocated funding for a total of R1,680,600 of which R1,381,000 went towards music educational and R299,600 to exchange projects (Page 10)

³⁸ Singapore Arts Council, <http://www.nac.gov.sg/media-centre/news-releases/news-detail?id=c2db15e2-c319-40ec-939c-d58735d0a91c>

³⁹ <http://www.taiteenkeskustoimikunta.fi/documents/10162/31704/TY+tilastotiedote+1+12+.pdf>, Page 1 and Page

Another clear example of an “entity dedicated to the community” with members that cover hundreds of millions of music constituents with formal boundaries is A2IM, the American Association of Independent Music. A2IM has two types of members: U.S independent Label members and Associate members. A2IM membership for Labels and Associates is invoked formally through an application and if accepted would require annual membership dues.⁴⁰

The reach of A2IM Associate⁴¹ membership covers hundreds of millions of entities (i.e. the reach of A2IM’s total membership “geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents – See Application Answer to Question 20a).

Organized and strictly delineated communities related to music that are A2IM members include:

- **Apple iTunes**⁴² – iTunes accounts for 63% of global digital music market⁴³ - a majority – with a registered community of 800 million registered members⁴⁴ available in 119 countries who abide to strict terms of service and boundaries⁴⁵ and have downloaded over 25 billion songs⁴⁶ from iTunes’ catalog of over 43 million songs⁴⁷ covering a global music community, regardless of genre or whether the community entities are amateur, professional, commercial or non-commercial. To add music to iTunes, all music artists must have a formal membership with iTunes via an Apple ID registration, which includes a current credit card on file.⁴⁸
- **Pandora**⁴⁹ – Pandora is the world’s largest streaming music radio with a community of over 250 million registered members.⁵⁰
- **Spotify**⁵¹ – Spotify is the world’s largest music streaming community with over 50 million active registered members in 58 countries and over 30 million songs. The music community uploads 20,000 songs every day.⁵²
- **Vevo**⁵³ – Vevo is the world’s leading all-premium music video community and platform with over 8 billion monthly views globally.⁵⁴

⁴⁰ <http://a2im.org/about-joining/>

⁴¹ <http://a2im.org/groups/tag/associate+members/>

⁴² <http://a2im.org/groups/itunes>

⁴³ <http://appleinsider.com/articles/13/04/16/apples-itunes-rules-digital-music-market-with-63-share>

⁴⁴ <http://www.npr.org/blogs/therecord/2015/01/06/375173595/with-downloads-in-decline-can-itunes-adapt>

⁴⁵ <http://www.apple.com/legal/internet-services/itunes/ww/index.html>

⁴⁶ <http://www.apple.com/pr/library/2013/02/06iTunes-Store-Sets-New-Record-with-25-Billion-Songs-Sold.html>

⁴⁷ <https://www.apple.com/itunes/features/>

⁴⁸ <https://www.apple.com/itunes/working-itunes/sell-content/music-faq.html>

⁴⁹ <http://a2im.org/groups/pandora>

⁵⁰ <http://www.cnet.com/news/like-a-rolling-milestone-pandora-hits-250m-registered-users/> and <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MTkxNTM1fENoaWxkSUQ9LTF8VHlwZT0z&t=1>, Pg.9

⁵¹ <http://a2im.org/groups/spotify>

⁵² <https://press.spotify.com/us/information/>

⁵³ <http://a2im.org/groups/vevo/>

- **Youtube**⁵⁵ – Youtube is the world’s largest music video streaming community with millions of music creators -- amateur, professional, commercial or non-commercial -- and over 1 billion registered members covering all regions globally. 6 billion hours of video is watched every month on Youtube,⁵⁶ of which 38.4% is music-related.⁵⁷
- **ReverbNation**⁵⁸ – ReverbNation⁵⁹ is one of the world’s largest music community and a leading music distributor with over 3.87 million musicians, venues labels and industry professionals covering every country globally. The ReverbNation community grows by over 50,000 artists, bands, labels and industry professionals monthly.
- **BMG**⁶⁰ – BMG is focused on the management of music publishing and recording rights. BMG has an international presence and represents over 2.5 million music rights globally.⁶¹

A2IM also includes members that are associated with global government agencies which exclusively represent substantial music economies and music members, such as France (BureauExport⁶²), China (China Audio Video Association⁶³) and Germany (Initiative Musik).⁶⁴ A2IM also has Affiliate⁶⁵ associations within the global music community. These include Affiliates such as MusicFirst,⁶⁶ the Copyright Alliance,⁶⁷ the Worldwide Independent Network (WIN)⁶⁸ and Merlin.⁶⁹

A2IM also represents a recognized Music Coalition representing the interests of the Global Independent Music Community.⁷⁰ The A2IM Coalition includes Merlin, a global rights agency for the independent label sector, representing over 20,000 labels from 39 countries, Worldwide Independent Network (representing label creators in over 20 countries), Association of Independent Music (representing largest and most respected labels in the world), and IMPALA (Independent Music Companies Association on behalf of over 4,000 independent music companies and national associations across Europe, representing 99% of music actors in Europe which are micro, small and medium sized enterprises.

⁵⁴ <http://www.vevo.com/c/EN/US/about>

⁵⁵ <http://a2im.org/groups/youtube/>

⁵⁶ <https://www.youtube.com/yt/press/statistics.html>

⁵⁷ http://www.researchandmarkets.com/reports/2092499/internet_video_2011_2014_view_share_site_and

⁵⁸ <http://a2im.org/groups/reverb-nation/>

⁵⁹ <http://www.reverbnation.com/about>

⁶⁰ <http://a2im.org/groups/bmg-rights/>

⁶¹ <http://www.bmg.com/category/about-us/history/>

⁶² <http://a2im.org/groups/french-music-export-office>

⁶³ <http://a2im.org/groups/china-audio-video-association-cava>

⁶⁴ <http://a2im.org/groups/initiative-musik-gmbh>

⁶⁵ <http://a2im.org/groups/tag/associate+members/>

⁶⁶ <http://musicfirstcoalition.org/coalition>, The musicFIRST Coalition, with founding members A2IM, RIAA, and Recording Academy represents musicians, artists, managers, music businesses, and performance right advocates.

⁶⁷ <http://www.copyrightalliance.org/members>

⁶⁸ <http://www.winformusic.org>

⁶⁹ <http://www.merlinnetwork.org>

⁷⁰ <https://www.icann.org/en/system/files/correspondence/bengloff-to-chehade-et-al-20aug14-en.pdf> and <https://www.icann.org/en/system/files/correspondence/bengloff-to-crocker-et-al-07mar15-en.pdf>

Cumulatively, A2IM's Label and Associate Membership, A2IM's Affiliates and the A2IM's Global Independent Music Community Coalition, covers a majority of the global music community. Its cumulative membership is in the hundreds of millions of entities with formal boundaries belonging to strictly organized and delineated communities related to music as per the Community Definition and Size (See Application answer to Question 20a).

Another global Music Community Coalition led by the RIAA "on behalf of over 15 national and international trade associations" also expressed its support for .MUSIC to be under a "community" application model, including encouraging statements in support of DotMusic's policies that stated that the coalition "was encouraged to see" that DotMusic "included several measures to deter and address copyright infringement within that TLD." The "coalition members represent the people that write, sing, record, manufacture, distribute and/or license over 80% of the world's music"⁷¹ – a majority of global music.⁷²

Another letter⁷³ sent to ICANN (on April 14th, 2015) by Danielle Aguirre from the NMPA and on behalf of a music publisher and songwriter community coalition representing a majority of the global music publishing community, also expressed "support [for] the .MUSIC community applications because respecting and protecting music rights serves the global music community and the public interest."

Collectively, the DotMusic application received support from the largest coalition of music community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support⁷⁴ from institutions/organizations representing a majority of the Community addressed. Music -- as commonly-known by the general public and experienced today -- would not be possible without these supporting, non-negligible and relevant organizations that have endorsed DotMusic.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Community Establishment* and *Community Endorsement* from the majority of the global Music Community as defined.

⁷¹ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.1

⁷² <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.3, Appendix A

⁷³ <https://www.icann.org/en/system/files/correspondence/aguirre-to-icann-board-eiu-14apr15-en.pdf>

⁷⁴ <http://music.us/supporters>

B) Nexus⁷⁵

According to the Applicant Guidebook (“AGB”), to receive the maximum score for Nexus, the applied-for string -- “music” -- must match the name of the community or be a well-known short-form or abbreviation of the community name.

The *Nexus* of the “Music Community” entirely matches the applied-for “music” string because it represents the entire global Music Community as commonly-known and perceived by the general public. This definition allows for all constituents with a requisite awareness of the Community defined to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination. The definition of the Community requires that members have an active, non-tangential relationship with the applied-for string and the requisite awareness of the music community they identify with as part of the registration process. It is clear that the general public will directly associate and equate the string with the Community as defined by DotMusic. There is no possibility of overreaching beyond the definition or allowing unrelated non-music entities to be included as part of the Community.

Community members may register a .MUSIC by either:

- 1) Identifying that they belong to a Music Community Member Organization (“MCMO”); or
- 2) Identifying the community they belong to, which is consistent with the definition of the Community: “the strictly delineated and organized logical alliance of communities of similar nature related to music.”

All Community members are aware of and recognize their inclusion in the defined Community by identifying which clearly defined community they belong to and have an active participation in. The *nexus* of the applied-for string ensures inclusion of the entire global community that the string represents while excluding unrelated-entities not associated with the string. This way there is a clear match and alignment between the “music” sting and the Community defined.

While the exact size of the global Music Community as defined is unknown (there is no empirical evidence providing an exact, finite number because amateur entities are also included in the Community’s definition), it is in the considerable millions as explicitly stated in the DotMusic Application. DotMusic’s definition of the Community and mutually-inclusive Registration Policies ensure that eligible members are only music-related and associated with the string. This is because the string identifies all constituents involved in music. Music-only participation optimizes the relevancy of .MUSIC domains to the string and entirely matches the *nexus* between the string and Community defined. According to DotMusic, the Community *definition, eligibility* criteria and *content and use* requirements ensure that peripheral industries

⁷⁵ See <http://music.us/nexus>

and entities not related to music are excluded so that the string and the defined Community matches and aligns in a consistent manner consistent with DotMusic's community-based purpose i.e. only entities with music-related activities are able to register .MUSIC domains.

Membership aligns with the *nexus* of the Community and the string, which is explicitly relevant to music. The string as defined in the application demonstrates uniqueness because it has no other significant meaning beyond identifying the community described in the application. According to DotMusic's application, any tangential or implicit association with the *nexus* of the Community and the string is not regarded as a delineated membership since it would be considered unclear, dispersed or unbound. Such unclear, dispersed or unbound tangential relationships with the defined "music" Community and applied-for "music" string would not constitute a qualifying Community membership and would be ineligible for registration.

The inclusion of every music constituent type is paramount to the purpose of the string. Every type of music constituent critically contributes to the function and operation of the music sector within a regulated framework given the symbiotic overlapping nature of the Community as defined and structured. Music would not function as it does today without the participation of all music constituent types which cumulatively match the string with the Community definition.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Nexus*.

Respectfully Submitted,

Signature: 
Contact Information Redacted, Jun 2 '15 ip: 24.230.47.120

Name: Kathryn Fitzgerald, Ph.D.

Title: Customer Insight and Marketing Strategy Consultant

Organization: Met4Marketing

Re: Expert Testimony on (i) Community Establishment; (ii) Nexus; and (iii) Support for DotMusic’s Community-Based Application¹ for .MUSIC (Application ID 1-1115-14110)

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

Please accept this letter that indicates that there is substantive and compelling evidence that the DotMusic application convincingly meets the full criteria under Community Priority Evaluation on the following points: (i) the Music Community’s *Establishment* as defined by DotMusic; (2) the matching *Nexus* between the “music” Community and the “music” string (or top-level domain); and (3) that DotMusic possesses documented *Support* from organizations representing a majority of the global Music Community addressed and defined.

Please see my credentials attached hereto that identify my level of expertise and specialized knowledge with respect to the music community’s organization and delineation.

SUMMARY

DotMusic has established the following:

- 1) Its Community definition recognizes the cohesive, symbiotic and overlapping nature of the global Music Community. The definition includes those associated with commercial and non-commercial creation, performance, marketing and distribution of music;
- 2) “Music Community” members have the requisite awareness and recognition of the interdependency, overlapping and cohesive nature of each “organized community of similar nature that relates to music.” These organized and aligned communities are closely united and make “music” as we know it today. It is this self-awareness and interdependence that gives the “Music Community” its strength. With exponential growth of the Internet, mobile and the Domain Name System (DNS), the “Music Community’s” use and reliance on the Internet to create, market and disseminate music-related content, products, services and activities will continue to grow;
- 3) The “Music Community” functions in a regulated sector with global copyright protections – it is clear that the “community,” as defined, implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate a globally-recognized set of standards for

¹ <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1392>

the protection of the “Music Community” member rights with relation to their copyrighted music works around the world;

4) The “Music” Community -- as defined by DotMusic -- has at least one entity dedicated to the community supporting DotMusic’s application. Such documented *Support* includes several “international federation of national communities of a similar nature,” music coalitions and others that are strongly associated with “music,” which represent a majority of the Community with considerable millions of members worldwide.²

5) The *Nexus* of the “music” Community matches the “music” applied-for string because it represents the entire global Music Community – a community that pre-existed 2007 with a size in the considerable millions of constituents. The “Music Community” definition -- which incorporates the strict fundamental attributes of a closely united Community definition that is “organized” and “delineated” -- ensures that all of its constituent members have a requisite awareness of the community as defined, including both commercial and non-commercial stakeholders, to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination.

6) DotMusic has received support from the largest coalition of Music Community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support³ from institutions/organizations representing a majority of the Community as defined and recognized in the DotMusic application.

There is substantive evidence that DotMusic fulfills the *Nexus, Community Establishment and Support* criteria for the “Music” string. The inclusion and representation of every music constituent type is paramount to the articulated purpose of the string. DotMusic and its application’s global Music Community supporters substantiate that every type of music constituent contributes to the function and operation of the music sector within a regulated framework. The symbiotic nature of the Community as defined and structured means that “Music” would not function as it does today without the participation of all music constituent types that interconnect to match the “music” string with the “music” Community definition.

² <http://music.us/supporters>

³ <http://music.us/supporters>

ASSESSMENT OF COMMUNITY DEFINITION, ESTABLISHMENT AND NEXUS

A) *Music Community Definition, Establishment & Community Endorsement*⁴

DotMusic's definition of the "Music Community" as a "strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music" (See Application, 20a) is factually accurate and representative of the "Music Community." Community characteristics include:

i) An Organized, Cohesive, Interdependent Logically-Allied Community:

The "Music Community" definition covers the regulated, interdependent and cohesive nature of the music sector that exists today. "Music Community" members have the requisite awareness and recognition of the interdependent, overlapping and cohesive nature of each "organized community of similar nature that relates to music" that comprises the "Music Community." Without such cohesiveness and interdependency, the defined "Music" Community matching the applied-for string ("Music") would not be able to function in its regulated sector, a "Music" regulated sector that was publicly recognized by both ICANN and the Government Advisory Committee.⁵

As a result, the Music Community as defined is "closely united" (As per the definition of "cohesion" according to Merriam-Webster dictionary⁶) or "united or form a whole" (As per the definition of the word "cohesion" according to Oxford Dictionaries⁷).

The "Music Community" as defined (a "strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music") establishes that:

- (1) There is an awareness and recognition among its members;
- (2) The organized and delineated logical alliance of communities exists; and
- (3) The Community is "closely united" and "interdependent" (i.e. Each "organized community of similar nature that relates to music" which is part of the "logical alliance of communities that relate to music" is not mutually exclusive).

In short, the applied-for string ("Music") matches the name of the "Music" Community as defined by DotMusic's application. DotMusic's "Music Community" definition accurately represents the common definition of the "Music Community," which is confirmed by Wikipedia.

⁴ See <http://music.us/establishment>

⁵ <https://www.icann.org/en/system/files/bm/briefing-materials-2-05feb14-en.pdf>, Pg.3

⁶ <http://www.merriam-webster.com/dictionary/cohesion>

⁷ http://www.oxforddictionaries.com/us/definition/american_english/cohesion

According to Wikipedia:⁸

Music community is defined as a logical alliance of interdependent communities that are related to music, which include commercial participants...and non-commercial participants...and consists of an “ensemble of practices and institutions that make possible and regulate the production, distribution and consumption of music”...UNESCO identifies the music community as a “community of identity” implying common identifiable characteristics and cohesive attributes such as sharing a music culture, norms and subscribing to common ideals related to music...The music community is not defined as much by demographic indicators such as race, gender, and income level, as it is by common values, cohesive norms and interconnected structures to build a community identity. It refers to music-related individuals and organisations in a shared environment with shared understandings and practices, modes of production and distribution. The shared organisation of collective musical activities, identity and community value is created as result of infrastructure and a shared set of common values...Many studies outline the historical, cultural, and spatial significance of the music community, including how its identity is formed through musical practices. The music community shares a cohesive and interconnected structure of artistic expression, with diverse subcultures and socio-economic interactions...subscribing to common ideals. Under such structured context music consumption becomes possible regardless whether the transaction is commercial and non-commercial.⁹

ii) *An Aware, Pre-Existing and Recognized Community of Considerable Millions Worldwide:*

DotMusic’s definition of the Community covers all Community members associated with the string, each with a requisite awareness of the Community that can be validated through their natural association with a particular music-related community that they clearly identify with. According to DotMusic, all Music Community members must identify their music-related community in order to demonstrate their requisite awareness of the defined Community as part of the .MUSIC registration and validation process.

⁸ Wikipedia is ranked 6th among the ten most popular websites (Alexa, Retrieved March 23, 2015 from <http://www.alexacom/siteinfo/wikipedia.org>) and constitutes the Internet's largest, most frequently updated and popular general reference work (See OECD, OECD Internet Economy Outlook 2012, OECD Publishing, http://www.oecd-ilibrary.org/science-and-technology/oecd-internet-economy-outlook-2012_9789264086463-en,Pg.172) that compares favorably to the accuracy of other encyclopedias (such as the Britannica) according to a 2012 study conducted in partnership with Oxford University (See <http://blog.wikimedia.org/2012/08/02/seven-years-after-nature-pilot-study-compares-wikipedia-favorably-to-other-encyclopedias-in-three-languages>).

⁹ Music Community. In *Wikipedia*. Retrieved March 23, 2015, from https://en.wikipedia.org/wiki/Music_community

According to DotMusic, the Music Community’s geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents (Application Answer to Question 20a).

According to DotMusic, “registrants will be verified using Community-organized, unified “criteria taken from holistic perspective with due regard of Community particularities” that “invoke a formal membership (Application Answer to Question 20a).” The defined Community represents all music-related entities with a clear and straightforward membership with the Community involved in the legal production, performance, promotion, and distribution of music worldwide. According to DotMusic, the Music Community members must have an active, non-tangential relationship with the applied-for string “music” and also have the requisite awareness of the music-related community that they are a part of by specifically identifying it as part of the registration and validation process (i.e. upon successful registration and validation, each community member will be given a unique community identification number that will automatically associate them with their identified community and the “music” string).

DotMusic’s Community definition matches the applied-for string because it allows both commercial and non-commercial stakeholders to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination/exclusion. Given the regulated sector of the community, it is clear that the “Music Community” as defined implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate cohesive and globally-recognized set of standards for the protection of the music community members’ rights with relation to their copyrighted music works around the world.¹⁰

The Berne Convention for the Protection of Literary and Artistic Works¹¹ provides that each of the 168 contracting parties¹² (representing an overwhelming majority of the world’s population) provides automatic protection for music works first published in other countries of the Berne union and for unpublished music works whose authors are citizens of or resident in such other countries.¹³ This means that if a Music Community member’s copyright rights are violated in any other signatory country’s jurisdiction, then the music community member will have the music copyright rights given by that country. Music Community members are clearly aware of the collective Community’s rights, which could not be made possible without these cohesive and globally-recognized set of standards. If such standards were not coherent or enforced then music would not be able to exist in its current form and the industry component of the Music Community sector would not exist. As such, the Community’s *Establishment* and definition is “cohesive” and hence cannot be construed since the Community is a logical alliance of music

¹⁰ http://www.rightsdirect.com/content/rd/en/toolbar/copyright_education/International_Copyright_Basics.html

¹¹ http://www.wipo.int/treaties/en/text.jsp?file_id=283698

¹² http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=15

¹³ <http://www.britannica.com/EBchecked/topic/62482/Berne-Convention>

communities that establish a clearly delineated and organized Community structure that is “closely united” and functions as a “whole”

Further evidence to substantiate the cohesive, symbiotic and overlapping nature of the Community, includes other globally-recognized standards and classification systems, which identify who the individual songwriters, publishers and rights holders are and which songs they are associated with so that Community members are appropriately compensated, regardless of whether the constituent is a commercial, non-commercial or amateur entity. The “music” string is commonly used in classification systems such as ISMN,¹⁴ ISRC,¹⁵ ISWC,¹⁶ ISNI.¹⁷ (Application Answer to Question 20a). For example, if a music entity would like to distribute their music, either commercially or for free, then an ISRC can be assigned to globally identify any specific music work. An ISRC, which facilitates efficient music discovery and community member payment, is constructed from 12 characters representing country, registrant, year of registration and designation (i.e. the serial number assigned by the registrant). With respect to domains, an equivalent system that relates to identifying a specific domain’s registrant and other relevant information pertaining to the domain is WHOIS. Domain registrants are required by ICANN “to provide accurate WHOIS contact data” or else their domain “registration may be suspended or even cancelled”.¹⁸

Without such Music Community “cohesion” and standardized systems functioning in its regulated sector, the Music Community would not be able to create, market and distribute their music. By the same token, fans would not be able to identify the music they are listening to with a specific music artist, regardless of whether the listening activity or behavior is commercial or non-commercial in nature. The socio-economic structure that characterizes “music” as commonly-known today would be non-existent without these organized and delineated elements that commonly define the Community.

¹⁴ The International Standard Music Number (ISMN) is a unique number for the identification of all notated music publications from all over the world. The ISMN is an ISO certified global standard number (ISO 10957:2009). See <http://www.ismn-international.org/whatis.html> and

http://www.iso.org/iso/home/store/catalogue_ics/catalogue_detail_ics.htm?csnumber=43173

¹⁵ The ISRC (International Standard Recording Code) is the international identification system for sound recordings and music video recordings. The ISRC is an ISO certified global standard number (ISO 3901:2001) and is managed by the IFPI. See <http://isrc.ifpi.org>, <https://www.usisrc.org/about/index.html> and http://www.iso.org/iso/catalogue_detail?csnumber=23401

¹⁶ The ISWC (International Standard Musical Work Code) is a unique, permanent and internationally recognized reference number for the identification of musical works. The ISWC has been approved by ISO (International Organization for Standardisation) as a global standard (ISO 15707:2001) and is managed by CISAC. See <http://www.iswc.org/en/faq.html> and http://www.iso.org/iso/catalogue_detail?csnumber=28780

¹⁷ The International Standard Name Identifier (ISNI) is the ISO certified global standard number (ISO 27729) for identifying the millions of contributors to creative works and those active in their distribution. ISNI holds public records of over 8 million identities and 490,000 organizations. See <http://www.isni.org/> and http://www.iso.org/iso/catalogue_detail?csnumber=44292

¹⁸ <https://whois.icann.org/en/about-whois> and <https://www.icann.org/resources/pages/faqs-f0-2012-02-25-en>

iii) International Federations and Organizations Dedicated to Community Functions:

According to ICANN’s Applicant Guidebook (“AGB”)¹⁹: *“With respect to “Delineation” and “Extension,” it should be noted that a community can consist of...a logical alliance of communities (for example, an international federation of national communities of a similar nature... viable as such, provided the requisite awareness and recognition of the community is at hand among the members.”* (AGB, 4-12). The community as defined in the DotMusic application has at least one entity mainly dedicated to the community which has supported DotMusic, which include several “international federation of national communities of a similar nature” relating to music, music coalitions and other relevant and non-negligible music organizations.

One of these entities include the only international federation of national communities relating to government culture agencies and arts councils, which has an integral association with music globally: the International Federation of Arts Councils and Culture Agencies (IFACCA).

IFACCA is the only international federation that represents government culture agencies and arts councils globally. These national communities are governmental institutions that play a pivotal role with respect to music.²⁰ IFACCA’s members cover the majority of music entities globally, regardless of whether they are commercial, non-commercial or amateurs. Government ministry of culture and council agencies related to music cover a majority of the overall community with respect to headcount and geographic reach. The “Size” covered reaches over a hundred million music entities i.e. “considerable size with millions of constituents” per Application Answer to Question 20a.

The string “music” falls under the jurisdiction of each country’s Ministry of Culture governmental agency or arts/music council (emphasis added). The degree of power and influence of government ministry of culture and council agencies with respect to music surpasses any organization type since these agencies (i) provide the majority of funding for music-related activities; (ii) regulate copyright law; and (iii) encompass all the music entities that fall under their country, regardless whether these entities are commercial, non-commercial or amateurs. IFACCA is globally recognized by its strategic partners, such as UNESCO, a United Nations agency representing 195 member states and the European Commission.²¹ The UNESCO strategic partnership²² is relevant, especially since UNESCO founded the International Music Council (the “IMC”) in 1949, which represents over 200 million music constituents from over 150 countries and over 1000 organizations globally.²³

¹⁹ <https://newgtlds.icann.org/en/applicants/agb/guidebook-full-11jan12-en.pdf>

²⁰ http://www.ifacca.org/membership/current_members/

²¹ http://www.ifacca.org/strategic_partners/

²² http://www.ifacca.org/strategic_partners/

²³ <http://www.imc-cim.org/about-imc-separator/who-we-are.html>

Government activities in the clearly delineated and organized “Music Community” include setting statutory royalty rates. For example, in the United States, mechanical royalties are based on a “statutory rate” set by the U.S. Congress. This rate is increased to follow changes in the economy, usually based on the Consumer Price Index. Currently, the mechanical statutory rate is \$0.091 for songs five minutes or less in length or \$.0175 per minute for songs that are over five minutes long.²⁴

Ministries of culture and arts councils (that comprise IFACCA’s membership) support musicians, musical performances, independent music artists, non-commercial musical expression and education in their respective countries. The 165 ministries of culture, arts councils and affiliates that comprise IFACCA’s membership support the “performing arts” and music specifically. Without the financial and logistical support of arts councils and the ministries of culture, the music community would be adversely affected, and in some countries, may not exist in any appreciable manner. For example, the Ministry of Culture 2011 budget for the small country state of Cyprus for culture funding was €34,876,522 with critical support of music activities.²⁵ Other small government Ministries of Culture, such as Albania,²⁶ or government Ministries of Culture and Arts Councils from countries with larger populations, such as India,²⁷ all provide critical support and substantial advocacy for music. Other examples include government institutions collaborating and advocating music through their funded country-based pavilion initiatives at Midem, the world’s largest music conference.²⁸

Government ministries and arts councils provide critical support for the Music Community, including commercial music organizations. By way of example, government ministries’ and arts councils’ substantial connection to and support of “music” is noted in the reports of funding and support for music. Some examples to showcase the degree of power of the IFACCA’s membership towards the string and global and national music are music investment and music funding (Annual reports by governments and councils):

- New Zealand Ministry of Culture has funded significant music projects. Some include the REAL New Zealand Music Tour (\$415,000), the New Zealand String Quartet (\$150,000) and New Zealand Music Commission: (\$1,378,000).²⁹
- The Australian Government/Council For The Arts invested \$51.2 million for the nation’s orchestras; \$21.6 million for opera; \$10.8 million for other music artists and

²⁴ U.S. Copyright Office, <http://www.copyright.gov/carp/m200a.html>

²⁵ 2011 Annual Report for Cyprus Ministry of Culture, Section 1.2 “Music”

(http://www.moec.gov.cy/en/annual_reports/annual_report_2011_en.pdf). Activities include Music Performances in Cyprus (1.2.1) and Abroad (1.2.2), Subsidization of Paphos Aphrodite Festival (1.2.3), Music Publications (1.2.4), Subsidization and Purchases of Digital Records (1.2.5), Promotion for Cypriot musical creativity abroad (1.2.6), Cyprus Symphony Orchestra Foundation (1.2.7), Music Information Centre (1.2.8), Developing Music Education (1.2.9), Organising of the 1st Musicological Symposium (1.2.10) and Musical Festivities for the European Volunteerism Year (1.2.11)

²⁶ http://www.culturalpolicies.net/down/albania_012011.pdf

²⁷ 2010-11 Annual Report from India Ministry of Culture, [http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011\(Eng\).pdf](http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011(Eng).pdf)

²⁸ <http://my.midem.com/en/contact-us/pavilion-representatives/>

²⁹ 2011 Annual Report from New Zealand Ministry of Culture:

[http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20\(D-0448383\).PDF](http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20(D-0448383).PDF)

organizations; \$13.1 million for multi-platform artists and organizations; and \$4 million in miscellaneous funding, including sector building and audience development initiatives and programs.³⁰

- Canada Council for the Arts is Canada’s national, arts funding agency investing \$28 million in its Canada Council Musical Instrument Bank (Page 16) and \$28,156,000 in Music Arts Programs (Page 66).³¹ The Government of Canada also renewed its annual investment of \$27.6 million over five years in the Canada Music Fund.³²
- The United Kingdom Department for Culture and Education (DfE) will fund music education at significant levels: £77 million, £65 million and £60 million will be available in the three years from April 2012.³³
- The United States National Endowment of the Arts has awarded more than \$4 billion to support the arts since its inception³⁴ and has a strong focus on music as outlined in its Strategic Plan³⁵ with Congress requested to provide \$154,465,000 for fiscal year 2014.³⁶
- The National Arts Council of South Africa invested 2,536,131 ZAR in Music and 9,995,000 ZAR in Orchestras and has focused strongly on the “Strengthening of live indigenous music and advocating the revival of the live music circuit in South Africa”³⁷
- The Singapore Arts Council will fund \$10.2 million in the arts under its 2013 Grants Framework, including the Ding Yi Music Company and Siong Leng Musical Association.³⁸
- In 2011, the support for artistic activities by the Arts Council of Finland was €32.4 million of which €4,921,850 was awarded to music.³⁹

Each of IFACCA’s members has a clear association with, and mandate to support the music arts in their countries. In most countries, their ministry of culture/arts council is the largest funder and marketing supporter of the music arts.

³⁰ 2011 Annual Report for the Australia Council for the Arts, http://www.australiacouncil.gov.au/data/assets/pdf_file/0016/142351/Australia-Council-Annual-Report-201112.pdf, Page 28

³¹ 2011 Annual Report for Canada Council for the Arts, http://www.canadacouncil.ca/NR/rdoonlyres/6F7549BB-F4E5-4B8B-95F4-1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf

³² <http://www.pch.gc.ca/eng/1294862453819/1294862453821>

³³ Department for Culture, The Importance of Music, A National Plan for Music Education, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/180973/DFE-00086-2011.pdf, Page 4, 2011

³⁴ 2011 Annual report for the National Endowment of the Arts, <http://www.nea.gov/about/11Annual/2011-NEA-Annual-Report.pdf>, Page 2

³⁵ NEA Strategic Plan 2012-2016, www.arts.gov/about/Budget/NEAStrategicPlan2012-2016.pdf

³⁶ http://www.ifacca.org/national_agency_news/2013/04/10/us-president-requests-154465000-neh-2014/

³⁷ 2010-2011 Annual Report for the National Arts Council South Africa, National Arts Council South Africa, <http://www.nac.org.za/media/publications/AR%2010-11%20NAC.PDF/download>, Page 11. Also Mmino, the South African – Norwegian Education Music Programme, solely funds music projects funding a total of 294 projects. Thirteen projects were allocated funding for a total of R1,680,600 of which R1,381,000 went towards music educational and R299,600 to exchange projects (Page 10)

³⁸ Singapore Arts Council, <http://www.nac.gov.sg/media-centre/news-releases/news-detail?id=c2db15e2-c319-40ec-939c-d58735d0a91c>

³⁹ <http://www.taiteenkeskustoimikunta.fi/documents/10162/31704/TY+tilastotiedote+1+12+.pdf>, Page 1 and Page

Another clear example of an “entity dedicated to the community” with members that cover hundreds of millions of music constituents with formal boundaries is A2IM, the American Association of Independent Music. A2IM has two types of members: U.S independent Label members and Associate members. A2IM membership for Labels and Associates is invoked formally through an application and if accepted would require annual membership dues.⁴⁰

The reach of A2IM Associate⁴¹ membership covers hundreds of millions of entities (i.e. the reach of A2IM’s total membership “geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents – See Application Answer to Question 20a).

Organized and strictly delineated communities related to music that are A2IM members include:

- **Apple iTunes**⁴² – iTunes accounts for 63% of global digital music market⁴³ - a majority – with a registered community of 800 million registered members⁴⁴ available in 119 countries who abide to strict terms of service and boundaries⁴⁵ and have downloaded over 25 billion songs⁴⁶ from iTunes’ catalog of over 43 million songs⁴⁷ covering a global music community, regardless of genre or whether the community entities are amateur, professional, commercial or non-commercial. To add music to iTunes, all music artists must have a formal membership with iTunes via an Apple ID registration, which includes a current credit card on file.⁴⁸
- **Pandora**⁴⁹ – Pandora is the world’s largest streaming music radio with a community of over 250 million registered members.⁵⁰
- **Spotify**⁵¹ – Spotify is the world’s largest music streaming community with over 50 million active registered members in 58 countries and over 30 million songs. The music community uploads 20,000 songs every day.⁵²
- **Vevo**⁵³ – Vevo is the world’s leading all-premium music video community and platform with over 8 billion monthly views globally.⁵⁴

⁴⁰ <http://a2im.org/about-joining/>

⁴¹ <http://a2im.org/groups/tag/associate+members/>

⁴² <http://a2im.org/groups/itunes>

⁴³ <http://appleinsider.com/articles/13/04/16/apples-itunes-rules-digital-music-market-with-63-share>

⁴⁴ <http://www.npr.org/blogs/therecord/2015/01/06/375173595/with-downloads-in-decline-can-itunes-adapt>

⁴⁵ <http://www.apple.com/legal/internet-services/itunes/ww/index.html>

⁴⁶ <http://www.apple.com/pr/library/2013/02/06iTunes-Store-Sets-New-Record-with-25-Billion-Songs-Sold.html>

⁴⁷ <https://www.apple.com/itunes/features/>

⁴⁸ <https://www.apple.com/itunes/working-itunes/sell-content/music-faq.html>

⁴⁹ <http://a2im.org/groups/pandora>

⁵⁰ <http://www.cnet.com/news/like-a-rolling-milestone-pandora-hits-250m-registered-users/> and <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MTkxNTM1fENoaWxkSUQ9LTF8VHlwZT0z&t=1>, Pg.9

⁵¹ <http://a2im.org/groups/spotify>

⁵² <https://press.spotify.com/us/information/>

⁵³ <http://a2im.org/groups/vevo/>

- **Youtube**⁵⁵ – Youtube is the world’s largest music video streaming community with millions of music creators -- amateur, professional, commercial or non-commercial -- and over 1 billion registered members covering all regions globally. 6 billion hours of video is watched every month on Youtube,⁵⁶ of which 38.4% is music-related.⁵⁷
- **Reverbnation**⁵⁸ – Reverbnation⁵⁹ is one of the world’s largest music community and a leading music distributor with over 3.87 million musicians, venues labels and industry professionals covering every country globally. The Reverbnation community grows by over 50,000 artists, bands, labels and industry professionals monthly.
- **BMG**⁶⁰ – BMG is focused on the management of music publishing and recording rights. BMG has an international presence and represents over 2.5 million music rights globally.⁶¹

A2IM also includes members that are associated with global government agencies which exclusively represent substantial music economies and music members, such as France (BureauExport⁶²), China (China Audio Video Association⁶³) and Germany (Initiative Musik).⁶⁴ A2IM also has Affiliate⁶⁵ associations within the global music community. These include Affiliates such as MusicFirst,⁶⁶ the Copyright Alliance,⁶⁷ the Worldwide Independent Network (WIN)⁶⁸ and Merlin.⁶⁹

A2IM also represents a recognized Music Coalition representing the interests of the Global Independent Music Community.⁷⁰ The A2IM Coalition includes Merlin, a global rights agency for the independent label sector, representing over 20,000 labels from 39 countries, Worldwide Independent Network (representing label creators in over 20 countries), Association of Independent Music (representing largest and most respected labels in the world), and IMPALA (Independent Music Companies Association on behalf of over 4,000 independent music companies and national associations across Europe, representing 99% of music actors in Europe which are micro, small and medium sized enterprises.

⁵⁴ <http://www.vevo.com/c/EN/US/about>

⁵⁵ <http://a2im.org/groups/youtube/>

⁵⁶ <https://www.youtube.com/yt/press/statistics.html>

⁵⁷ http://www.researchandmarkets.com/reports/2092499/internet_video_2011_2014_view_share_site_and

⁵⁸ <http://a2im.org/groups/reverb-nation/>

⁵⁹ <http://www.reverbnation.com/about>

⁶⁰ <http://a2im.org/groups/bmg-rights/>

⁶¹ <http://www.bmg.com/category/about-us/history/>

⁶² <http://a2im.org/groups/french-music-export-office>

⁶³ <http://a2im.org/groups/china-audio-video-association-cava>

⁶⁴ <http://a2im.org/groups/initiative-musik-gmbh>

⁶⁵ <http://a2im.org/groups/tag/associate+members/>

⁶⁶ <http://musicfirstcoalition.org/coalition>, The musicFIRST Coalition, with founding members A2IM, RIAA, and Recording Academy represents musicians, artists, managers, music businesses, and performance right advocates.

⁶⁷ <http://www.copyrightalliance.org/members>

⁶⁸ <http://www.winformusic.org>

⁶⁹ <http://www.merlinnetwork.org>

⁷⁰ <https://www.icann.org/en/system/files/correspondence/bengloff-to-chehade-et-al-20aug14-en.pdf> and <https://www.icann.org/en/system/files/correspondence/bengloff-to-crocker-et-al-07mar15-en.pdf>

Cumulatively, A2IM's Label and Associate Membership, A2IM's Affiliates and the A2IM's Global Independent Music Community Coalition, covers a majority of the global music community. Its cumulative membership is in the hundreds of millions of entities with formal boundaries belonging to strictly organized and delineated communities related to music as per the Community Definition and Size (See Application answer to Question 20a).

Another global Music Community Coalition led by the RIAA "on behalf of over 15 national and international trade associations" also expressed its support for .MUSIC to be under a "community" application model, including encouraging statements in support of DotMusic's policies that stated that the coalition "was encouraged to see" that DotMusic "included several measures to deter and address copyright infringement within that TLD." The "coalition members represent the people that write, sing, record, manufacture, distribute and/or license over 80% of the world's music"⁷¹ – a majority of global music.⁷²

Another letter⁷³ sent to ICANN (on April 14th, 2015) by Danielle Aguirre from the NMPA and on behalf of a music publisher and songwriter community coalition representing a majority of the global music publishing community, also expressed "support [for] the .MUSIC community applications because respecting and protecting music rights serves the global music community and the public interest."

Collectively, the DotMusic application received support from the largest coalition of music community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support⁷⁴ from institutions/organizations representing a majority of the Community addressed. Music -- as commonly-known by the general public and experienced today -- would not be possible without these supporting, non-negligible and relevant organizations that have endorsed DotMusic.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Community Establishment* and *Community Endorsement* from the majority of the global Music Community as defined.

⁷¹ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.1

⁷² <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.3, Appendix A

⁷³ <https://www.icann.org/en/system/files/correspondence/aguirre-to-icann-board-eiu-14apr15-en.pdf>

⁷⁴ <http://music.us/supporters>

B) Nexus⁷⁵

According to the Applicant Guidebook (“AGB”), to receive the maximum score for Nexus, the applied-for string -- “music” -- must match the name of the community or be a well-known short-form or abbreviation of the community name.

The *Nexus* of the “Music Community” entirely matches the applied-for “music” string because it represents the entire global Music Community as commonly-known and perceived by the general public. This definition allows for all constituents with a requisite awareness of the Community defined to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination. The definition of the Community requires that members have an active, non-tangential relationship with the applied-for string and the requisite awareness of the music community they identify with as part of the registration process. It is clear that the general public will directly associate and equate the string with the Community as defined by DotMusic. There is no possibility of overreaching beyond the definition or allowing unrelated non-music entities to be included as part of the Community.

Community members may register a .MUSIC by either:

- 1) Identifying that they belong to a Music Community Member Organization (“MCMO”); or
- 2) Identifying the community they belong to, which is consistent with the definition of the Community: “the strictly delineated and organized logical alliance of communities of similar nature related to music.”

All Community members are aware of and recognize their inclusion in the defined Community by identifying which clearly defined community they belong to and have an active participation in. The *nexus* of the applied-for string ensures inclusion of the entire global community that the string represents while excluding unrelated-entities not associated with the string. This way there is a clear match and alignment between the “music” sting and the Community defined.

While the exact size of the global Music Community as defined is unknown (there is no empirical evidence providing an exact, finite number because amateur entities are also included in the Community’s definition), it is in the considerable millions as explicitly stated in the DotMusic Application. DotMusic’s definition of the Community and mutually-inclusive Registration Policies ensure that eligible members are only music-related and associated with the string. This is because the string identifies all constituents involved in music. Music-only participation optimizes the relevancy of .MUSIC domains to the string and entirely matches the *nexus* between the string and Community defined. According to DotMusic, the Community *definition, eligibility* criteria and *content and use* requirements ensure that peripheral industries

⁷⁵ See <http://music.us/nexus>

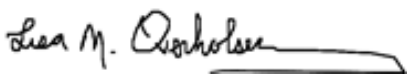
and entities not related to music are excluded so that the string and the defined Community matches and aligns in a consistent manner consistent with DotMusic’s community-based purpose i.e. only entities with music-related activities are able to register .MUSIC domains.

Membership aligns with the *nexus* of the Community and the string, which is explicitly relevant to music. The string as defined in the application demonstrates uniqueness because it has no other significant meaning beyond identifying the community described in the application. According to DotMusic’s application, any tangential or implicit association with the *nexus* of the Community and the string is not regarded as a delineated membership since it would be considered unclear, dispersed or unbound. Such unclear, dispersed or unbound tangential relationships with the defined “music” Community and applied-for “music” string would not constitute a qualifying Community membership and would be ineligible for registration.

The inclusion of every music constituent type is paramount to the purpose of the string. Every type of music constituent critically contributes to the function and operation of the music sector within a regulated framework given the symbiotic overlapping nature of the Community as defined and structured. Music would not function as it does today without the participation of all music constituent types which cumulatively match the string with the Community definition.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Nexus*.

Respectfully Submitted,

Signature: 
Contact Information Redacted Jun 3 '15 ip: 24.171.98.96

Name: Dr. Lisa M. Overholser

Title: Urban Region Community Arts Specialist

Organization: University of Missouri Extension

Background

Urban Region Community Arts Specialist and Director of the St. Louis Storytelling Festival
University of Missouri Extension
December 2014 – Present (7 months) St. Louis, Missouri

Adjunct Instructor
Empire State College
August 2010 – Present (4 years 11 months)

Adjunct Instructor
Albany College
August 2010 – December 2014 (4 years 5 months)

Director of Programs
New York Folklore Society
November 2008 – December 2014 (6 years 2 months) Schenectady, NY

Education

Doctor of Philosophy (PhD), Folklore/Ethnomusicology (major); Musicology (minor)
Indiana University Bloomington

MM, Piano Performance and Music History
The University of Kansas

BM, Piano Performance
University of Missouri-Kansas City

Website(s)

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<http://extension.missouri.edu/Website/DisplayCountyStaff.aspx?C=86818&WID=101>

Re: Expert Testimony on (i) Community Establishment; (ii) Nexus; and (iii) Support for DotMusic’s Community-Based Application¹ for .MUSIC (Application ID 1-1115-14110)

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

Please accept this letter that indicates that there is substantive and compelling evidence that the DotMusic application convincingly meets the full criteria under Community Priority Evaluation on the following points: (i) the Music Community’s *Establishment* as defined by DotMusic; (2) the matching *Nexus* between the “music” Community and the “music” string (or top-level domain); and (3) that DotMusic possesses documented *Support* from organizations representing a majority of the global Music Community addressed and defined.

Please see my credentials attached hereto that identify my level of expertise and specialized knowledge with respect to the music community’s organization and delineation.

SUMMARY

DotMusic has established the following:

- 1) Its Community definition recognizes the cohesive, symbiotic and overlapping nature of the global Music Community. The definition includes those associated with commercial and non-commercial creation, performance, marketing and distribution of music;
- 2) “Music Community” members have the requisite awareness and recognition of the interdependency, overlapping and cohesive nature of each “organized community of similar nature that relates to music.” These organized and aligned communities are closely united and make “music” as we know it today. It is this self-awareness and interdependence that gives the “Music Community” its strength. With exponential growth of the Internet, mobile and the Domain Name System (DNS), the “Music Community’s” use and reliance on the Internet to create, market and disseminate music-related content, products, services and activities will continue to grow;
- 3) The “Music Community” functions in a regulated sector with global copyright protections – it is clear that the “community,” as defined, implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate a globally-recognized set of standards for

¹ <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1392>

the protection of the “Music Community” member rights with relation to their copyrighted music works around the world;

4) The “Music” Community -- as defined by DotMusic -- has at least one entity mainly dedicated to the community supporting DotMusic’s application. Such documented *Support* includes several “international federation of national communities of a similar nature,” music coalitions and others that are strongly associated with “music,” which represent a majority of the Community with considerable millions of members worldwide.²

5) The *Nexus* of the “music” Community matches the “music” applied-for string because it represents the entire global Music Community – a community that pre-existed 2007 with a size in the considerable millions of constituents. The “Music Community” definition -- which incorporates the strict fundamental attributes of a closely united Community definition that is “organized” and “delineated” -- ensures that all of its constituent members have a requisite awareness of the community as defined, including both commercial and non-commercial stakeholders, to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination.

6) DotMusic has received support from the largest coalition of Music Community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support³ from institutions/organizations representing a majority of the Community as defined and recognized in the DotMusic application.

There is substantive evidence that DotMusic fulfills the *Nexus, Community Establishment and Support* criteria for the “Music” string. The inclusion and representation of every music constituent type is paramount to the articulated purpose of the string. DotMusic and its application’s global Music Community supporters substantiate that every type of music constituent contributes to the function and operation of the music sector within a regulated framework. The symbiotic nature of the Community as defined and structured means that “Music” would not function as it does today without the participation of all music constituent types that interconnect to match the “music” string with the “music” Community definition.

² <http://music.us/supporters>

³ <http://music.us/supporters>

ASSESSMENT OF COMMUNITY DEFINITION, ESTABLISHMENT AND NEXUS

A) *Music Community Definition, Establishment & Community Endorsement*⁴

DotMusic’s definition of the “Music Community” as a “strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music” (See Application, 20a) is factually accurate and representative of the “Music Community.” Community characteristics include:

i) An Organized, Cohesive, Interdependent Logically-Allied Community:

The “Music Community” definition covers the regulated, interdependent and cohesive nature of the music sector that exists today. “Music Community” members have the requisite awareness and recognition of the interdependent, overlapping and cohesive nature of each “organized community of similar nature that relates to music” that comprises the “Music Community.” Without such cohesiveness and interdependency, the defined “Music” Community matching the applied-for string (“Music”) would not be able to function in its regulated sector, a “Music” regulated sector that was publicly recognized by both ICANN and the Government Advisory Committee.⁵

As a result, the Music Community as defined is “closely united” (As per the definition of “cohesion” according to Merriam-Webster dictionary⁶) or “united or form a whole” (As per the definition of the word “cohesion” according to Oxford Dictionaries⁷).

The “Music Community” as defined (a “strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music”) establishes that:

- (1) There is an awareness and recognition among its members;
- (2) The organized and delineated logical alliance of communities exists; and
- (3) The Community is “closely united” and “interdependent” (i.e. Each “organized community of similar nature that relates to music” which is part of the “logical alliance of communities that relate to music” is not mutually exclusive).

In short, the applied-for string (“Music”) matches the name of the “Music” Community as defined by DotMusic’s application. DotMusic’s “Music Community” definition accurately represents the common definition of the “Music Community,” which is confirmed by Wikipedia.

⁴ See <http://music.us/establishment>

⁵ <https://www.icann.org/en/system/files/bm/briefing-materials-2-05feb14-en.pdf>, Pg.3

⁶ <http://www.merriam-webster.com/dictionary/cohesion>

⁷ http://www.oxforddictionaries.com/us/definition/american_english/cohesion

According to Wikipedia:⁸

Music community is defined as a logical alliance of interdependent communities that are related to music, which include commercial participants...and non-commercial participants...and consists of an “ensemble of practices and institutions that make possible and regulate the production, distribution and consumption of music”...UNESCO identifies the music community as a “community of identity” implying common identifiable characteristics and cohesive attributes such as sharing a music culture, norms and subscribing to common ideals related to music...The music community is not defined as much by demographic indicators such as race, gender, and income level, as it is by common values, cohesive norms and interconnected structures to build a community identity. It refers to music-related individuals and organisations in a shared environment with shared understandings and practices, modes of production and distribution. The shared organisation of collective musical activities, identity and community value is created as result of infrastructure and a shared set of common values...Many studies outline the historical, cultural, and spatial significance of the music community, including how its identity is formed through musical practices. The music community shares a cohesive and interconnected structure of artistic expression, with diverse subcultures and socio-economic interactions...subscribing to common ideals. Under such structured context music consumption becomes possible regardless whether the transaction is commercial and non-commercial.⁹

ii) *An Aware, Pre-Existing and Recognized Community of Considerable Millions Worldwide:*

DotMusic’s definition of the Community covers all Community members associated with the string, each with a requisite awareness of the Community that can be validated through their natural association with a particular music-related community that they clearly identify with. According to DotMusic, all Music Community members must identify their music-related community in order to demonstrate their requisite awareness of the defined Community as part of the .MUSIC registration and validation process.

⁸ Wikipedia is ranked 6th among the ten most popular websites (Alexa, Retrieved March 23, 2015 from <http://www.alexa.com/siteinfo/wikipedia.org>) and constitutes the Internet's largest, most frequently updated and popular general reference work (See OECD, OECD Internet Economy Outlook 2012, OECD Publishing, http://www.oecd-ilibrary.org/science-and-technology/oecd-internet-economy-outlook-2012_9789264086463-en, Pg.172) that compares favorably to the accuracy of other encyclopedias (such as the Britannica) according to a 2012 study conducted in partnership with Oxford University (See <http://blog.wikimedia.org/2012/08/02/seven-years-after-nature-pilot-study-compares-wikipedia-favorably-to-other-encyclopedias-in-three-languages>).

⁹ Music Community. In *Wikipedia*. Retrieved July 6, 2015, from https://en.wikipedia.org/wiki/Music_community

According to DotMusic, the Music Community’s geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents (Application Answer to Question 20a).

According to DotMusic, “registrants will be verified using Community-organized, unified “criteria taken from holistic perspective with due regard of Community particularities” that “invoke a formal membership (Application Answer to Question 20a).” The defined Community represents all music-related entities with a clear and straightforward membership with the Community involved in the legal production, performance, promotion, and distribution of music worldwide. According to DotMusic, the Music Community members must have an active, non-tangential relationship with the applied-for string “music” and also have the requisite awareness of the music-related community that they are a part of by specifically identifying it as part of the registration and validation process (i.e. upon successful registration and validation, each community member will be given a unique community identification number that will automatically associate them with their identified community and the “music” string).

DotMusic’s Community definition matches the applied-for string because it allows both commercial and non-commercial stakeholders to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination/exclusion. Given the regulated sector of the community, it is clear that the “Music Community” as defined implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate cohesive and globally-recognized set of standards for the protection of the music community members’ rights with relation to their copyrighted music works around the world.¹⁰

The Berne Convention for the Protection of Literary and Artistic Works¹¹ provides that each of the 168 contracting parties¹² (representing an overwhelming majority of the world’s population) provides automatic protection for music works first published in other countries of the Berne union and for unpublished music works whose authors are citizens of or resident in such other countries.¹³ This means that if a Music Community member’s copyright rights are violated in any other signatory country’s jurisdiction, then the music community member will have the music copyright rights given by that country. Music Community members are clearly aware of the collective Community’s rights, which could not be made possible without these cohesive and globally-recognized set of standards. If such standards were not coherent or enforced then music would not be able to exist in its current form and the industry component of the Music Community sector would not exist. As such, the Community’s *Establishment* and definition is “cohesive” and hence cannot be construed since the Community is a logical alliance of music

¹⁰ http://www.rightsdirect.com/content/rd/en/toolbar/copyright_education/International_Copyright_Basics.html

¹¹ http://www.wipo.int/treaties/en/text.jsp?file_id=283698

¹² http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=15

¹³ <http://www.britannica.com/EBchecked/topic/62482/Berne-Convention>

communities that establish a clearly delineated and organized Community structure that is “closely united” and functions as a “whole”

Further evidence to substantiate the cohesive, symbiotic and overlapping nature of the Community, includes other globally-recognized standards and classification systems, which identify who the individual songwriters, publishers and rights holders are and which songs they are associated with so that Community members are appropriately compensated, regardless of whether the constituent is a commercial, non-commercial or amateur entity. The “music” string is commonly used in classification systems such as ISMN,¹⁴ ISRC,¹⁵ ISWC,¹⁶ ISNI.¹⁷ (Application Answer to Question 20a). For example, if a music entity would like to distribute their music, either commercially or for free, then an ISRC can be assigned to globally identify any specific music work. An ISRC, which facilitates efficient music discovery and community member payment, is constructed from 12 characters representing country, registrant, year of registration and designation (i.e. the serial number assigned by the registrant). With respect to domains, an equivalent system that relates to identifying a specific domain’s registrant and other relevant information pertaining to the domain is WHOIS. Domain registrants are required by ICANN “to provide accurate WHOIS contact data” or else their domain “registration may be suspended or even cancelled”.¹⁸

Without such Music Community “cohesion” and standardized systems functioning in its regulated sector, the Music Community would not be able to create, market and distribute their music. By the same token, fans would not be able to identify the music they are listening to with a specific music artist, regardless of whether the listening activity or behavior is commercial or non-commercial in nature. The socio-economic structure that characterizes “music” as commonly-known today would be non-existent without these organized and delineated elements that commonly define the Community.

¹⁴ The International Standard Music Number (ISMN) is a unique number for the identification of all notated music publications from all over the world. The ISMN is an ISO certified global standard number (ISO 10957:2009). See <http://www.ismn-international.org/whatis.html> and

http://www.iso.org/iso/home/store/catalogue_ics/catalogue_detail_ics.htm?csnumber=43173

¹⁵ The ISRC (International Standard Recording Code) is the international identification system for sound recordings and music video recordings. The ISRC is an ISO certified global standard number (ISO 3901:2001) and is managed by the IFPI. See <http://isrc.ifpi.org>, <https://www.usisrc.org/about/index.html> and http://www.iso.org/iso/catalogue_detail?csnumber=23401

¹⁶ The ISWC (International Standard Musical Work Code) is a unique, permanent and internationally recognized reference number for the identification of musical works. The ISWC has been approved by ISO (International Organization for Standardisation) as a global standard (ISO 15707:2001) and is managed by CISAC. See <http://www.iswc.org/en/faq.html> and http://www.iso.org/iso/catalogue_detail?csnumber=28780

¹⁷ The International Standard Name Identifier (ISNI) is the ISO certified global standard number (ISO 27729) for identifying the millions of contributors to creative works and those active in their distribution. ISNI holds public records of over 8 million identities and 490,000 organizations. See <http://www.isni.org/> and http://www.iso.org/iso/catalogue_detail?csnumber=44292

¹⁸ <https://whois.icann.org/en/about-whois> and <https://www.icann.org/resources/pages/faqs-f0-2012-02-25-en>

iii) *International Federations and Organizations mainly Dedicated to the Community:*

According to ICANN's Applicant Guidebook ("AGB")¹⁹: *"With respect to "Delineation" and "Extension," it should be noted that a community can consist of...a logical alliance of communities (for example, an international federation of national communities of a similar nature... viable as such, provided the requisite awareness and recognition of the community is at hand among the members."* (AGB, 4-12). The community as defined in the DotMusic application has at least one entity mainly²⁰ dedicated to the community which has supported DotMusic, which include several "international federation of national communities of a similar nature" relating to music, music coalitions and other relevant and non-negligible music organizations.

One of these entities include the only international federation of national communities relating to government culture agencies and arts councils, which has an integral association with music globally: the International Federation of Arts Councils and Culture Agencies (IFACCA).

IFACCA is the only international federation that represents government culture agencies and arts councils globally. These national communities are governmental institutions that play a pivotal role with respect to music.²¹ IFACCA's members cover the majority of music entities globally, regardless of whether they are commercial, non-commercial or amateurs. Government ministry of culture and council agencies related to music cover a majority of the overall community with respect to headcount and geographic reach. The "Size" covered reaches over a hundred million music entities i.e. "considerable size with millions of constituents" per Application Answer to Question 20a.

The string "music" falls under the jurisdiction of each country's Ministry of Culture governmental agency or arts/music council (emphasis added). The degree of power and

¹⁹ <https://newgtlds.icann.org/en/applicants/agb/guidebook-full-11jan12-en.pdf>

²⁰ Per the Oxford and Merriam Webster dictionaries, the word "mainly" is defined as "*more than anything else*" (See <http://www.oxforddictionaries.com/definition/english/mainly> and <http://www.merriam-webster.com/dictionary/mainly> respectively). According to DotMusic, the string .MUSIC relates to the Community "by representing all constituents involved in music creation, production and distribution" (Application Answer to Question 20d). Supporting organizations related to that string that are "mainly" dedicated to the Community and its activities, include the International Federation of Arts Councils and Culture Agencies (IFACCA) representing government culture ministries and arts councils, the International Federation of Musicians (FIM) representing musicians globally, the International Federation of Phonographic Industry (IFPI) representing the recording industry worldwide, the International Confederation of Music Publishers (ICPM) representing the voice of global music publishing, the International Association of Music Information Centres (IAMIC), the American Association of Independent Music (A2IM), whose associate members represent a majority of music consumed, the Independent Music Worldwide Independent Network (WIN) representing independent music worldwide, the International Society for Music Education (ISME) the premiere international organization representing music education, and many others (See support at <http://music.us/supporters> and <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails:downloadattachment/142588?t:ac=1392>).

²¹ http://www.ifacca.org/membership/current_members/

influence of government ministry of culture and council agencies with respect to music surpasses any organization type since these agencies (i) provide the majority of funding for music-related activities; (ii) regulate copyright law; and (iii) encompass all the music entities that fall under their country, regardless whether these entities are commercial, non-commercial or amateurs. IFACCA is globally recognized by its strategic partners, such as UNESCO, a United Nations agency representing 195 member states and the European Commission.²² The UNESCO strategic partnership²³ is relevant, especially since UNESCO founded the International Music Council (the “IMC”) in 1949, which represents over 200 million music constituents from over 150 countries and over 1000 organizations globally.²⁴

Government activities in the clearly delineated and organized “Music Community” include setting statutory royalty rates. For example, in the United States, mechanical royalties are based on a “statutory rate” set by the U.S. Congress. This rate is increased to follow changes in the economy, usually based on the Consumer Price Index. Currently, the mechanical statutory rate is \$0.091 for songs five minutes or less in length or \$.0175 per minute for songs that are over five minutes long.²⁵

Ministries of culture and arts councils (that comprise IFACCA’s membership) support musicians, musical performances, independent music artists, non-commercial musical expression and education in their respective countries. The 165 ministries of culture, arts councils and affiliates that comprise IFACCA’s membership support the “performing arts” and music specifically. Without the financial and logistical support of arts councils and the ministries of culture, the music community would be adversely affected, and in some countries, may not exist in any appreciable manner. For example, the Ministry of Culture 2011 budget for the small country state of Cyprus for culture funding was €34,876,522 with critical support of music activities.²⁶ Other small government Ministries of Culture, such as Albania,²⁷ or government Ministries of Culture and Arts Councils from countries with larger populations, such as India,²⁸ all provide critical support and substantial advocacy for music. Other examples include government institutions collaborating and advocating music through their funded country-based pavilion initiatives at Midem, the world’s largest music conference.²⁹

²² http://www.ifacca.org/strategic_partners/

²³ http://www.ifacca.org/strategic_partners/

²⁴ <http://www.imc-cim.org/about-imc-separator/who-we-are.html>

²⁵ U.S Copyright Office, <http://www.copyright.gov/carp/m200a.html>

²⁶ 2011 Annual Report for Cyprus Ministry of Culture, Section 1.2 “Music”

(http://www.moec.gov.cy/en/annual_reports/annual_report_2011_en.pdf). Activities include Music Performances in Cyprus (1.2.1) and Abroad (1.2.2), Subsidization of Paphos Aphrodite Festival (1.2.3), Music Publications (1.2.4), Subsidization and Purchases of Digital Records (1.2.5), Promotion for Cypriot musical creativity abroad (1.2.6), Cyprus Symphony Orchestra Foundation (1.2.7), Music Information Centre (1.2.8), Developing Music Education (1.2.9), Organising of the 1st Musicological Symposium (1.2.10) and Musical Festivities for the European Volunteerism Year (1.2.11)

²⁷ http://www.culturalpolicies.net/down/albania_012011.pdf

²⁸ 2010-11 Annual Report from India Ministry of Culture, [http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011\(Eng\).pdf](http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011(Eng).pdf)

²⁹ <http://my.midem.com/en/contact-us/pavilion-representatives/>

Government ministries and arts councils provide critical support for the Music Community, including commercial music organizations. By way of example, government ministries' and arts councils' substantial connection to and support of "music" is noted in the reports of funding and support for music. Some examples to showcase the degree of power of the IFACCA's membership towards the string and global and national music are music investment and music funding (Annual reports by governments and councils):

- New Zealand Ministry of Culture has funded significant music projects. Some include the REAL New Zealand Music Tour (\$415,000), the New Zealand String Quartet (\$150,000) and New Zealand Music Commission: (\$1,378,000).³⁰
- The Australian Government/Council For The Arts invested \$51.2 million for the nation's orchestras; \$21.6 million for opera; \$10.8 million for other music artists and organizations; \$13.1 million for multi-platform artists and organizations; and \$4 million in miscellaneous funding, including sector building and audience development initiatives and programs.³¹
- Canada Council for the Arts is Canada's national, arts funding agency investing \$28 million in its Canada Council Musical Instrument Bank (Page 16) and \$28,156,000 in Music Arts Programs (Page 66).³² The Government of Canada also renewed its annual investment of \$27.6 million over five years in the Canada Music Fund.³³
- The United Kingdom Department for Culture and Education (DfE) will fund music education at significant levels: £77 million, £65 million and £60 million will be available in the three years from April 2012.³⁴
- The United States National Endowment of the Arts has awarded more than \$4 billion to support the arts since its inception³⁵ and has a strong focus on music as outlined in its Strategic Plan³⁶ with Congress requested to provide \$154,465,000 for fiscal year 2014.³⁷
- The National Arts Council of South Africa invested 2,536,131 ZAR in Music and 9,995,000 ZAR in Orchestras and has focused strongly on the "Strengthening of live indigenous music and advocating the revival of the live music circuit in South Africa"³⁸

³⁰ 2011 Annual Report from New Zealand Ministry of Culture:

[http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20\(D-0448383\).PDF](http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20(D-0448383).PDF)

³¹ 2011 Annual Report for the Australia Council for the Arts,

http://www.australiacouncil.gov.au/data/assets/pdf_file/0016/142351/Australia-Council-Annual-Report-201112.pdf, Page 28

³² 2011 Annual Report for Canada Council for the Arts, [http://www.canadacouncil.ca/NR/rdoonlyres/6F7549BB-F4E5-4B8B-95F4-](http://www.canadacouncil.ca/NR/rdoonlyres/6F7549BB-F4E5-4B8B-95F4-1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf)

[1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf](http://www.pch.gc.ca/eng/1294862453819/1294862453821)

³³ <http://www.pch.gc.ca/eng/1294862453819/1294862453821>

³⁴ Department for Culture, The Importance of Music, A National Plan for Music Education,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/180973/DFE-00086-2011.pdf, Page 4, 2011

³⁵ 2011 Annual report for the National Endowment of the Arts, <http://www.nea.gov/about/11Annual/2011-NEA-Annual-Report.pdf>, Page 2

³⁶ NEA Strategic Plan 2012-2016, www.arts.gov/about/Budget/NEAStrategicPlan2012-2016.pdf

³⁷ http://www.ifacca.org/national_agency_news/2013/04/10/us-president-requests-154465000-neh-2014/

³⁸ 2010-2011 Annual Report for the National Arts Council South Africa, National Arts Council South Africa, <http://www.nac.org.za/media/publications/AR%2010-11%20NAC.PDF/download>, Page 11. Also Mmino, the South African – Norwegian Education Music Programme, solely funds music projects funding a total of 294 projects. Thirteen projects were allocated funding for a total of R1,680,600 of which R1,381,000 went towards music educational and R299,600 to exchange projects (Page 10)

- The Singapore Arts Council will fund \$10.2 million in the arts under its 2013 Grants Framework, including the Ding Yi Music Company and Siong Leng Musical Association.³⁹
- In 2011, the support for artistic activities by the Arts Council of Finland was €32.4 million of which €4,921,850 was awarded to music.⁴⁰

Each of IFACCA’s members has a clear association with, and mandate to support the music arts in their countries. In most countries, their ministry of culture/arts council is the largest funder and marketing supporter of the music arts.

Another clear example of an “entity *mainly* dedicated to the community” with members that cover hundreds of millions of music constituents with formal boundaries is A2IM, the American Association of Independent Music. A2IM has two types of members: U.S independent Label members and Associate members. A2IM membership for Labels and Associates is invoked formally through an application and if accepted would require annual membership dues.⁴¹

The reach of A2IM Associate⁴² membership covers hundreds of millions of entities (i.e. the reach of A2IM’s total membership “geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents – See Application Answer to Question 20a).

Organized and strictly delineated communities related to music that are A2IM members include:

- **Apple iTunes**⁴³ – iTunes accounts for 63% of global digital music market⁴⁴ - a majority – with a registered community of 800 million registered members⁴⁵ available in 119 countries who abide to strict terms of service and boundaries⁴⁶ and have downloaded over 25 billion songs⁴⁷ from iTunes’ catalog of over 43 million songs⁴⁸ covering a global music community, regardless of genre or whether the community entities are amateur, professional, commercial or non-commercial. To add music to iTunes, all music artists must have a formal membership with iTunes via an Apple ID registration, which includes a current credit card on file.⁴⁹

³⁹ Singapore Arts Council, <http://www.nac.gov.sg/media-centre/news-releases/news-detail?id=c2db15e2-c319-40ec-939c-d58735d0a91c>

⁴⁰ <http://www.taiteenkeskustoimikunta.fi/documents/10162/31704/TY+tilastotiedote+1+12+.pdf>, Page 1 and Page

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⁴¹ <http://a2im.org/about-joining/>

⁴² <http://a2im.org/groups/tag/associate+members/>

⁴³ <http://a2im.org/groups/itunes>

⁴⁴ <http://appleinsider.com/articles/13/04/16/apples-itunes-rules-digital-music-market-with-63-share>

⁴⁵ <http://www.npr.org/blogs/therecord/2015/01/06/375173595/with-downloads-in-decline-can-itunes-adapt>

⁴⁶ <http://www.apple.com/legal/internet-services/itunes/ww/index.html>

⁴⁷ <http://www.apple.com/pr/library/2013/02/06iTunes-Store-Sets-New-Record-with-25-Billion-Songs-Sold.html>

⁴⁸ <https://www.apple.com/itunes/features/>

⁴⁹ <https://www.apple.com/itunes/working-itunes/sell-content/music-faq.html>

- **Pandora**⁵⁰ – Pandora is the world’s largest streaming music radio with a community of over 250 million registered members.⁵¹
- **Spotify**⁵² – Spotify is the world’s largest music streaming community with over 50 million active registered members in 58 countries and over 30 million songs. The music community uploads 20,000 songs every day.⁵³
- **Vevo**⁵⁴ – Vevo is the world’s leading all-premium music video community and platform with over 8 billion monthly views globally.⁵⁵
- **Youtube**⁵⁶ – Youtube is the world’s largest music video streaming community with millions of music creators -- amateur, professional, commercial or non-commercial -- and over 1 billion registered members covering all regions globally. 6 billion hours of video is watched every month on Youtube,⁵⁷ of which 38.4% is music-related.⁵⁸
- **Reverbnation**⁵⁹ – Reverbnation⁶⁰ is one of the world’s largest music community and a leading music distributor with over 3.87 million musicians, venues labels and industry professionals covering every country globally. The Reverbnation community grows by over 50,000 artists, bands, labels and industry professionals monthly.
- **BMG**⁶¹ – BMG is focused on the management of music publishing and recording rights. BMG has an international presence and represents over 2.5 million music rights globally.⁶²

A2IM also includes members that are associated with global government agencies which exclusively represent substantial music economies and music members, such as France (BureauExport⁶³), China (China Audio Video Association⁶⁴) and Germany (Initiative Musik).⁶⁵ A2IM also has Affiliate⁶⁶ associations within the global music community. These include Affiliates such as MusicFirst,⁶⁷ the Copyright Alliance,⁶⁸ the Worldwide Independent Network (WIN)⁶⁹ and Merlin.⁷⁰

⁵⁰ <http://a2im.org/groups/pandora>

⁵¹ <http://www.cnet.com/news/like-a-rolling-milestone-pandora-hits-250m-registered-users/> and <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MTkxNTM1fENoaWxkSUQ9LTF8VHlwZT0z&t=1>, Pg.9

⁵² <http://a2im.org/groups/spotify>

⁵³ <https://press.spotify.com/us/information/>

⁵⁴ <http://a2im.org/groups/vevo/>

⁵⁵ <http://www.vevo.com/c/EN/US/about>

⁵⁶ <http://a2im.org/groups/youtube/>

⁵⁷ <https://www.youtube.com/yt/press/statistics.html>

⁵⁸ http://www.researchandmarkets.com/reports/2092499/internet_video_2011_2014_view_share_site_and

⁵⁹ <http://a2im.org/groups/reverb-nation/>

⁶⁰ <http://www.reverbnation.com/about>

⁶¹ <http://a2im.org/groups/bmg-rights/>

⁶² <http://www.bmg.com/category/about-us/history/>

⁶³ <http://a2im.org/groups/french-music-export-office>

⁶⁴ <http://a2im.org/groups/china-audio-video-association-cava>

⁶⁵ <http://a2im.org/groups/initiative-musik-gmbh>

⁶⁶ <http://a2im.org/groups/tag/associate+members/>

⁶⁷ <http://musicfirstcoalition.org/coalition>, The musicFIRST Coalition, with founding members A2IM, RIAA, and Recording Academy represents musicians, artists, managers, music businesses, and performance right advocates.

⁶⁸ <http://www.copyrightalliance.org/members>

⁶⁹ <http://www.winformusic.org>

A2IM also represents a recognized Music Coalition representing the interests of the Global Independent Music Community.⁷¹ The A2IM Coalition includes Merlin, a global rights agency for the independent label sector, representing over 20,000 labels from 39 countries, Worldwide Independent Network (representing label creators in over 20 countries), Association of Independent Music (representing largest and most respected labels in the world), and IMPALA (Independent Music Companies Association on behalf of over 4,000 independent music companies and national associations across Europe, representing 99% of music actors in Europe which are micro, small and medium sized enterprises).

Cumulatively, A2IM's Label and Associate Membership, A2IM's Affiliates and the A2IM's Global Independent Music Community Coalition, covers a majority of the global music community. Its cumulative membership is in the hundreds of millions of entities with formal boundaries belonging to strictly organized and delineated communities related to music as per the Community Definition and Size (See Application answer to Question 20a).

The IFPI is another entity *mainly* dedicated to the Community. The IFPI is the only organization that represents the interests of the recording industry worldwide. It is the "voice of the recording industry worldwide"⁷² whose members⁷³ – major and independent companies -- represent a majority of all commercial music consumed globally. For example, the RIAA, an IFPI national group member,⁷⁴ represents "approximately 85% of all legitimate recorded music produced and sold in the United States,"⁷⁵ the world's largest music market with 30% global market share.⁷⁶ Formed in 1933, the IFPI's mission was to "represent the interests of the recording industry worldwide in all fora."

Another global Music Community Coalition led by the RIAA "on behalf of over 15 national and international trade associations" also expressed its support for .MUSIC to be under a "community" application model, including encouraging statements in support of DotMusic's policies that stated that the coalition "was encouraged to see" that DotMusic "included several measures to deter and address copyright infringement within that TLD." The "coalition members represent the people that write, sing, record, manufacture, distribute and/or license over 80% of the world's music"⁷⁷ – a majority of global music.⁷⁸

⁷⁰ <http://www.merlinnetwork.org>

⁷¹ <https://www.icann.org/en/system/files/correspondence/bengloff-to-chehade-et-al-20aug14-en.pdf> and <https://www.icann.org/en/system/files/correspondence/bengloff-to-crocker-et-al-07mar15-en.pdf>

⁷² <http://www.ifpi.org/about.php>

⁷³ <http://www.ifpi.org/our-members.php>

⁷⁴ <http://www.ifpi.org/national-groups.php>

⁷⁵ <http://www.riaa.com/faq.php>

⁷⁶ <http://www.statista.com/topics/1639/music/>

⁷⁷ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.1

⁷⁸ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.3, Appendix A

Another letter⁷⁹ sent to ICANN (on April 14th, 2015) by Danielle Aguirre from the NMPA and on behalf of a music publisher and songwriter community coalition representing a majority of the global music publishing community, also expressed “support [for] the .MUSIC community applications because respecting and protecting music rights serves the global music community and the public interest.”

Collectively, the DotMusic application received support from the largest coalition of music community member organizations ever assembled to support a cause representing over 95% of music consumed globally.⁸⁰ Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support⁸¹ from institutions/organizations representing a majority of the Community addressed. Music -- as commonly-known by the general public and experienced today -- would not be possible without these supporting, non-negligible and relevant organizations that have endorsed DotMusic.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Community Establishment* and *Community Endorsement* from the majority of the global Music Community as defined.

B) Nexus⁸²

According to the Applicant Guidebook (“AGB”), to receive the maximum score for Nexus, the applied-for string -- “music” -- must match the name of the community or be a well-known short-form or abbreviation of the community name.

The *Nexus* of the “Music Community” entirely matches the applied-for “music” string because it represents the entire global Music Community as commonly-known and perceived by the general public. This definition allows for all constituents with a requisite awareness of the Community defined to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination. The definition of the Community requires that members have an active, non-tangential relationship with the applied-for string and the requisite awareness of the music community they identify with as part of the registration process. It is clear that the general public will directly associate and equate the string with the Community as defined by DotMusic. There is no possibility of overreaching beyond the definition or allowing unrelated non-music

⁷⁹ <https://www.icann.org/en/system/files/correspondence/aguirre-to-icann-board-ciu-14apr15-en.pdf>

⁸⁰ See <http://music.us/supporters>, <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/downloadattachment/142588?t:ac=1392>, Bloomberg BNA at http://music.us/RIAA_Backs_DotMusic.pdf Pg.1, and <http://diffuser.fm/will-dot-music-domains-make-the-internet-better/>

⁸¹ <http://music.us/supporters>

⁸² See <http://music.us/nexus>

entities to be included as part of the Community. Community members may register a .MUSIC by either:

- 1) Identifying that they belong to a Music Community Member Organization (“MCMO”); or
- 2) Identifying the community they belong to, which is consistent with the definition of the Community: “the strictly delineated and organized logical alliance of communities of similar nature related to music.”

All Community members are aware of and recognize their inclusion in the defined Community by identifying which clearly defined community they belong to and have an active participation in. The *nexus* of the applied-for string ensures inclusion of the entire global community that the string represents while excluding unrelated-entities not associated with the string. This way there is a clear match and alignment between the “music” sting and the Community defined.

While the exact size of the global Music Community as defined is unknown (there is no empirical evidence providing an exact, finite number because amateur entities are also included in the Community’s definition), it is in the considerable millions as explicitly stated in the DotMusic Application. DotMusic’s definition of the Community and mutually-inclusive Registration Policies ensure that eligible members are only music-related and associated with the string. This is because the string identifies all constituents involved in music. Music-only participation optimizes the relevancy of .MUSIC domains to the string and entirely matches the *nexus* between the string and Community defined. According to DotMusic, the Community *definition, eligibility* criteria and *content and use* requirements ensure that peripheral industries and entities not related to music are excluded so that the string and the defined Community matches and aligns in a consistent manner consistent with DotMusic’s community-based purpose i.e. only entities with music-related activities are able to register .MUSIC domains.

Membership aligns with the *nexus* of the Community and the string, which is explicitly relevant to music. The string as defined in the application demonstrates uniqueness because it has no other significant meaning beyond identifying the community described in the application. According to DotMusic’s application, any tangential or implicit association with the *nexus* of the Community and the string is not regarded as a delineated membership since it would be considered unclear, dispersed or unbound. Such unclear, dispersed or unbound tangential relationships with the defined “music” Community and applied-for “music” string would not constitute a qualifying Community membership and would be ineligible for registration. Every type of music constituent critically contributes to the function and operation of the music sector within a regulated framework⁸³ given the symbiotic overlapping nature of the Community as

⁸³ ICANN has disclosed that the string .MUSIC is a sensitive string operating in a regulated sector. ICANN also accepted Government Advisory Committee (GAC) advice for safeguards to protect the Music Community and the public interest (See <https://icann.org/en/system/files/correspondence/crocker-to-dryden-3-29oct13-en.pdf> Pg.7)

defined and structured. Music would not function as it does today without the participation of all music constituent types which cumulatively match the string with the Community definition.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Nexus*.

Respectfully Submitted,

A handwritten signature in black ink that reads "Luis Manuel Garcia". The signature is written in a cursive style with a large initial 'L' and 'M'.

Signature: Contact Information Redacted Jul 16 '15 ip: 91.65.185.168

Name: Luis-Manuel Garcia

Title: Lecturer /Assistant Professor

Organization: University of Groningen

Curriculum Vitae
LUIS-MANUEL GARCIA

ADDRESSES

Home:

[available upon request]

Work:

Dept. of Arts, Culture and Media (KCM)
University of Groningen
Oude Boteringestraat 34
9712 GK Groningen
Netherlands

Email: [available upon request]

Websites:

<http://www.rug.nl/staff/l.m.garcia/>

<http://lmgmblog.wordpress.com>

<http://www.theluisgarcia.com>

EDUCATION

University of Chicago, Chicago, Illinois

2011 Doctor of Philosophy in Music (Ethnomusicology)

- *Conferral:* August 2011
- *Dissertation:* ““Can You Feel it Too?": Intimacy and Affect at Electronic Dance Music Events in Paris, Chicago, and Berlin.”
- *Committee:* Travis A. Jackson (supervisor), Steven Rings, Lauren Berlant, Kaley Mason

University of Toronto, Toronto, Ontario, Canada

2004 Master of Arts in Music (Musicology)

- *Master's Thesis:* “The Soft Pink Meaning: A Case Study of Close Reading in Electronic Dance Music.”

2002 Bachelor of Music (Music History & Culture)

EMPLOYMENT

University of Groningen, Groningen, Netherlands

2014–Present Assistant Professor of Music, Department of Arts, Culture, and Media

- “Music in Practice: Music Festivals”
- “Popular Music History and Analysis”
- “The Study of Popular Music: Analytical and Theoretical Approaches”
- MA Seminar, “Music and Globalization”

Max Planck Institute for Human Development, Berlin, Germany

2013–2014 Postdoctoral Research Fellow

- *Research Group:* “Felt Communities? Emotions in Europe’s Musical Life”

- *Projects: Book: Together, Somehow: Intimacy, Music, and Affect on the Dance Floor.* // Further ethnographic fieldwork for “The Techno Jetset: Mobility, Tourism, and Class in Berlin’s Electronic Dance Music Scenes”

University of Groningen, Groningen, Netherlands

2012–2013 Substitute Lecturer for Prof. Kristin McGee (Music)

- “The Study of Popular Music: Analytical and Theoretical Approaches”:
 - May 24, 2013: “Disco and Sexuality”
 - March 27, 2013: “Place and Race in Colombian Popular Music”
- MA Seminar: “Globalization and Music”:
 - September 14, 2012: “Cities, Clubs and Party Tourism”
 - September 9, 2012: “Dance Music and Electronica”

Freie Universität, Berlin, Germany

2011–2012 Postdoctoral Research Fellow

- Berlin Program for Advanced German and European Studies
- *Project:* Ethnographic fieldwork for “The Techno Jetset: Mobility, Tourism, and Class in Berlin’s Electronic Dance Music Scenes”

University of Chicago, Department of Music, Chicago, Illinois

2009–2010 Lecturer

- “Nightlives: Music and Nighttime” (MUSI 23910), a self-designed course with the Whiting Teaching Fellowship
- “Music in Western Civilization I” (MUSI 121)

2008 Lecturer

- Co-Lecturer, MA-level “Theories of Gender and Sexuality” (GNDR 314) with Lauren Berlant
- “Music in Western Civilization I & II” (MUSI 121-2)
- “Introduction to World Music” (MUSI 102)

2006 Course Assistant

University of Toronto, Department of Music, Toronto, Ontario, Canada

2002–2004 Teaching Assistant

ADDITIONAL EMPLOYMENT

Ecole nationale des chartes, Paris, France

2008–2009 Enseignant de langue (Language Instructor)

- Taught advanced English to undergraduate and graduate students, with emphasis on academic speaking and writing.

PROFESSIONAL DEVELOPMENT

- 2011 SEM-NEH Summer Institute, “Ethnomusicology and Global Culture”, June 20–July 1
- Society for Ethnomusicology and National Endowment for the Humanities
 - For the development of classroom pedagogy and projects concerning “global culture.”

HONORS AND AWARDS

- 2011 Lise Waxer Student Paper Prize (Popular Music Section), Society for Ethnomusicology (Los Angeles, 2010)
- 2011–2012 Postdoctoral Fellowship, Berlin Program for Advanced German and European Studies, Freie Universität, Berlin.
- 2010–2011 James C. Hormel Dissertation Fellowship in Lesbian and Gay Studies The Center for Gender Studies, University of Chicago.
- 2010 Wadmond Research Fund, University of Chicago.
- 2009 Whiting Teaching Fellowship, University of Chicago.
- 2008–2009 Assistanceship for Alternative Learning Technologies in Paris University of Chicago, College I.T. and Study Abroad Program.
- 2008 Wadmond Research Fund, University of Chicago.
- 2006–2007 Assistanceship for Alternative Learning Technologies in Paris University of Chicago, College I.T. and Study Abroad Program.
- 2006 Cathy Heifetz Memorial Award, University of Chicago.
- 2004–2009 Five-year Century Fellowship, University of Chicago.
- 2003–2004 Ontario Graduate Scholarship, Ontario Ministry of Training.
- 2003–2004 Canada Graduate Scholarship, Social Sciences and Humanities Research Council, Canada.
- 2003–2004 Gordon Cressey Student Leadership Award, University of Toronto.

PROFESSIONAL ACTIVITIES AND SERVICE

- 2015 Stream Organizer, with Dorina M. Buda. Conference: “Affect Theory: Worldings, Tensions, Futures,” at Millersville University, Lancaster, PA,

- October 14–17.
<http://www.affecttheorymu.com/>
- 2014–Present Secretary. *Opleidingcommissie* (program committee), University of Groningen.
- 2013 Conference Organizer and Host. “Resonances: Music, Affect, and the City,” at the Max Planck Institute for Human Development, Berlin, November 7-8.
<https://www.mpib-berlin.mpg.de/en/news/events/resonances-music-affect-and-the-city>
- 2012–Present Foreign Languages Editor. *Dancecult: Journal of Electronic Music Culture*.
- 2010–2011 Production Assistant and Reader. *Dancecult: Journal of Electronic Dance Music Culture*.
- 2006–2011 Founding Member and Co-Coordinator. Affective Publics Workshop, University of Chicago.
- 2010–2011 Program Committee. For the 2011 Meeting of the US chapter of the International Association for the Study of Popular Music (IASPM-US), Cincinnati, Ohio.
- 2010 Session Chair. “Scenes and Communities.” Meeting of the US chapter of the International Association for the Study of Popular Music (IASPM-US), New Orleans, Louisiana, April 10.
- 2010 Session Chair. “The Aesthetic Edge.” Meeting of the US chapter of the International Association for the Study of Popular Music (IASPM-US), New Orleans, Louisiana, April 9.
- 2007–2009 Student Seat Officer. US chapter of the International Association for the Study of Popular Music (IASPM-US).
- 2007–2008 President. Graduate Music Society, University of Chicago.
- 2003–2004 Co-President. Music Graduate Students Association, University of Toronto.
- 2003–2004 Search Committee. Dean of the Faculty of Music, University of Toronto.
- 2002–2003 Representative (Music). Graduate Student Union, University of Toronto.

2001–2002 Search Committee. Ethnomusicology, Faculty of Music, University of Toronto.

PERFORMANCE/CREATIVE ACTIVITIES

2012–Present Co-founder, magazine editor, performer, and essayist. *La Mission* artist collective / record label. www.joinlamission.com

2005–2007 Founder and director. Georgian Vocal Ensemble, University of Chicago.

2004–2006 Vocalist. Early Music Ensemble, University of Chicago.

MEMBERSHIPS

American Anthropological Association
 American Musicological Society
 British Forum for Ethnomusicology
 International Association for the Study of Popular Music
 International Society for Research on Emotion
 Society for Ethnomusicology
 Society for Music Theory

SCHOLARLY PUBLICATIONS

- (submitted) “BerMuDa in Berlin: Techno-Tourism, Music Scenes, and the Scale of Nightlife during the Berlin Music Days Weekend.” *Journal of Popular Music Studies*.
- (in press) “Beats, Flesh, and Grain: Sonic Tactility and Affect in Electronic Dance Music.” *Sound Studies* 1. Projected publication date: **2015**.
- (in press) “Techno-Tourism and Postindustrial Neo-Romanticism in Berlin’s Electronic Dance Music Scenes.” *Tourist Studies*. Projected publication date: **fall 2015/winter 2016**.
- (in press) with D.M. Buda and A. Martini: “Qualitative Tourism Research.” In *The SAGE International Encyclopedia of Travel & Tourism*. SAGE Reference.
- (in press) “Whose Refuge, This House?: The Estrangement of Queers of Color in Electronic Dance Music.” In *The Oxford Handbook of Queerness and Music*, edited by Fred Maus and Sheila Whiteley. Oxford: Oxford University Press.
- 2015 “At Home, I’m a Tourist: Musical Migration and Affective Citizenship in Berlin.” *Journal of Urban Cultural Studies* 2 (1+2).

- 2013 Guest Editor. “Doing Nightlife and EDMC Fieldwork,” Special Issue. *Dancecult: Journal of Electronic Dance Music Culture* 5 (1). <http://dj.dancecult.net/index.php/journal/issue/view/8/showToc>.
- 2013 “Editor's Introduction: Doing Nightlife and EDMC Fieldwork,” in “Doing Nightlife and EDMC Fieldwork,” Special Issue. *Dancecult: Journal of Electronic Dance Music Culture* 5 (1): 3-17. <http://dj.dancecult.net/index.php/journal/article/view/169/186>.
- 2013 “Crowd Solidarity on the Dancefloor in Paris and Berlin,” in *Musical Performance and the Changing City: Postindustrial Contexts in Europe and the United States*, edited by Carsten Wergin and Fabian Holt, 227-255. New York/London: Routledge.
- 2012 *Intense Encounters: Young Men and Trans-Women in Music Videos, Pop Papers*. New York: Feedback Press.
- 2012 “Intense Encounters: Young Men and Trans-Women in Music Videos.” *IASPM-US Blog (International Association for the Study of Popular Music, US Chapter)* Feb 20–22. 3 parts. <http://iaspm-us.net/?p=1660> ; <http://iaspm-us.net/?p=1663> ; <http://iaspm-us.net/?p=1666>.
- 2011 “Pathological Crowds: Affect and Danger in Responses to the Love Parade Disaster at Duisburg.” Special issue on Germany’s Love Parade, *Dancecult: Journal of Electronic Dance Music Culture* 2 (1). <http://dj.dancecult.net/index.php/journal/article/view/66/102>.
- 2010 In *The New Grove Dictionary of American Music*, 2nd ed. (Oxford: Oxford University Press):
 “Benitez, John ‘Jellybean’ ”
 “Sanchez, Roger”
- 2005 “On and On: Repetition as Process and Pleasure in Electronic Dance Music.” *Music Theory Online* 11 (4). <http://www.mtosmt.org/issues/mto.05.11.4/mto.05.11.4.garcia.html>.

TRANSLATIONS

- 2015 Anne Petiau. “Free Parties and Teknivals: Gift-Exchange and Participation on the Margins of the Market and the State.” *Dancecult: Journal of Electronic Dance Music Culture* 7 (1): 116–128. Translation from French by Luis-Manuel Garcia. <https://dj.dancecult.net/index.php/dancecult/article/view/676>

- 2013 Jan-Michael Kühn. "Making A Living In The Berlin House and Techno Scenes." *DJ-Techtools*, May 28. Translation from German by Luis-Manuel Garcia. <http://www.djtechtools.com/?p=30557>.
- 2013 Jan-Michael Kühn. "Focused Ethnography as Research Method: A Case Study of Techno Music Producers in Home-Recording Studios," in "Doing Nightlife and EDMC Fieldwork," Special Issue. *Dancecult: Journal of Electronic Dance Music Culture* 5 (1). Translation from German by Luis-Manuel Garcia. <http://dj.dancecult.net/index.php/journal/article/view/161>.
- 2011 St. John, Graham. "Party, Love and Profit: The Rhythms of the Love Parade (Interview with Wolfgang Sterneck)." *Dancecult: Journal of Electronic Dance Music Culture* 2 (1). Translation from German by Luis-Manuel Garcia. <http://dj.dancecult.net/index.php/journal/article/view/75/101>.

REVIEWS

- 2015 *DJ Culture in the Mix: Power, Technology, and Social Change in Electronic Dance Music* by Bernardo Attias, Anna Gavanas, and Hillegonda Rietveld (New York: Bloomsbury). *World of Music (new series)* 3(2) 151–155.
- 2011 *Rave Culture: The Alteration and Decline of a Philadelphia Music Scene* by Tammy L. Anderson (Philadelphia: Temple University Press, 2009). *The Society for American Music Bulletin* XXXVII (3). <http://american-music.org/publications/bulletin/VolXXXVII3-Fall2011.php>.
- 2007 *Unplayed Melodies: Javanese Gamelan and the Genesis of Music Theory* by Marc Perlman (Berkeley: University of California Press, 2004). *Music Theory Spectrum* 29.2: 247–253.
- 2003 *Music, Body and Desire in Medieval Culture: Hildegard von Bingen to Chaucer* by Bruce W. Holsinger (Stanford: Stanford University Press, 2001). *Discourses in Music* 4 (2).

PUBLIC OUTREACH / KNOWLEDGE TRANSLATION

- 2015 Podcast interview: "RA Exchange: EX.236 Luis-Manuel Garcia." *Resident Advisor*, February 5. <http://www.residentadvisor.net/podcast-episode.aspx?exchange=236>.
- 2015 "Beats, Flesh, and Grain: Sonic Tactility and Affect in Electronic Dance Music." Presentation at the "CTM Education Networking Day," part of the *Club TransMediale* festival, Berlin, Germany, January 30. <http://www.ctm-festival.de/festival-2015/transfer/education-networking-day/>.

- 2014 “A pre-history of the electronic music festival.” *Resident Advisor*, July 14, <http://www.residentadvisor.net/feature.aspx?2104>.
- 2014 “An alternate history of sexuality in club culture.” *Resident Advisor*, January 28, <http://www.residentadvisor.net/feature.aspx?1927>.
- 2013 “GEMA and the threat to German nightlife.” *Resident Advisor*, April 24, <http://www.residentadvisor.net/feature.aspx?1757>.
- 2012 “As The World Turns: Time In Electronic Dance Music.” *Little White Earbuds*, March 28, <http://www.littlewhiteearbuds.com/?p=29612>.
- 2012 “Doing Nightlife Research.” *IASPM-US Blog (International Association for the Study of Popular Music, US Chapter)* Feb 1–3. 3 parts. <http://iaspm-us.net/?p=1476> ; <http://iaspm-us.net/?p=1487> ; <http://iaspm-us.net/?p=1491>.
- 2011 “Clubbing in Chicago.” *Resident Advisor*, November 15, <http://www.residentadvisor.net/feature.aspx?1457>.
- 2010 “Showdown in Spreepark: Minimoo, Bar 25, and the Story Behind Luna Land (Berlin).” *Resident Advisor*, November 26. <http://www.residentadvisor.net/feature.aspx?1272>.

INVITED PRESENTATIONS

- 2015 “Fieldwork Fragments.” Lecture-Discussion at workshop, “All Eyes on Method,” Institute of Experimental Design and Media Cultures, Basel, Switzerland, June 4. <http://www.ixdm.ch/all-eyes-on-method/>.
- 2014 “An/Aesthetics.” Lecture-Performance co-curated with Brandon LaBelle, for “A Matter Theater,” closing conference of “The Anthropocene Project,” Haus der Kulturen der Welt, Berlin, Germany, October 16. http://www.hkw.de/en/programm/projekte/2014/anthropozaenprojekt_ein_bericht/a_matter_theater_1/start_a_matter_theater.php.
- 2014 “Affect Theory.” Lecture given at the Summer School, “Concepts, Language and Beyond: Emotions Between Values and Bodies,” International Max Planck Research School, “Moral Economies of Modern Societies,” Max Planck Institute for Human Development, Berlin, Germany, September 26. <https://www.mpib-berlin.mpg.de/de/aktuelles/veranstaltungen/concepts-language-and-beyond-emotions-between-values-and-bodies-summer-school>.

- 2014 “Liquidarity: Fluid Solidarities in Nightlife Scenes.” Keynote Lecture, public event for *Valuing Electronic Music* project, Open University and King’s College London, UK, June 6.
<http://valuingelectronicmusic.org/2014/11/05/liquidarity-luis-manuel-garcia/>.
- 2014 “At Home I’m a Tourist: Musical Migration and Affective Citizenship in Berlin.” Paper read for “Music Matters Study Day,” Rijksuniversiteit Groningen, Netherlands, May 30.
- 2013 “Feeling Utopian on the Dance Floor: A Very Short History.” Lecture, “Seminar in Musicology,” University College Dublin, Ireland, October 17.
- 2011 “Doing Fieldwork in Electronic Dance Music and Other Nightlife Music Scenes.” Lecture, “Ethnomusicology Seminar,” Prof. Kristin McGee, Rijksuniversiteit Groningen, Groningen, Netherlands, December 9.
- 2011 “Rave comme mouvement sociale; recherches actuelles sur la musique électronique.” Lecture, “Music Sociology Seminar,” Prof. Jonathan Roberge, Université de Québec à Montréal, Canada, November 21.

PRESENTATIONS

- 2015 “Belonging in Feeling: Musical Migration and Affective Citizenship in Berlin’s Electronic Dance Music Scenes.” Paper read at the conference, “Dreams of Germany – Music and (Trans)national Imaginaries in the Modern Era,” held at the German Historical Institute London, UK, Feb 5.
http://www.ghil.ac.uk/dreams_of_germany.html.
- 2014 “Anonym, verkörpert, anders. Queere Angelegenheiten bei der Feldforschung in Techno-Szenen.” Paper read at the “Techno Studies” conference held at the Universität der Künste, Berlin, Germany, December 13.
- 2014 “The Creative Hustle: Surviving Precarity in Berlin’s Electronic Dance Music Scenes.” Paper read at the meeting of the Society for Ethnomusicology (SEM), Pittsburgh, Pennsylvania, November 13.
- 2014 “Bloch and the Musical Aesthetics of Utopia.” Paper read at the conference, “Music, Marxism, and the Frankfurt School,” held at University College Dublin, Ireland, July 4.
- 2014 “At Home I’m a Tourist: Musical Migration and Affective Citizenship in Berlin.” Paper read at the “Urban Soundscapes & Critical Citizenship” conference at the University of Limerick, Ireland, March 27.

- 2014 “The Costs of Being Fluid: Popular Music and the Lubrication of Social Frictions.” Paper read at the meeting of the US chapter of the International Association for the Study of Popular Music (IASPM-US), Chapel Hill, North Carolina, March 14.
- 2013 “ ‘Fairytale need Cash, too’: Utopian Futurities and the Struggle for Urban Space in Berlin.” Paper read at the meeting of the American Anthropological Association (AAA), Chicago, Illinois, November 23.
- 2013 “Consuming Atmospheres and Social Worlds: ‘Techno-Tourismus’ and Post-Tourist Tourism in Berlin’s Electronic Dance Music Scenes.” Paper read at the Touring Consumption conference at Karlshochschule International University, Karlsruhe, Germany, October 26.
- 2013 “Doing Nightlife and EDM Fieldwork.” Paper read at the Nights2013 conference at the University of Padua, Italy, September 26.
- 2013 “BerMuDa in Berlin: Techno-Tourism, Music Scenes, and the Scale of Nightlife during the Berlin Music Days.” Paper read at the meeting of the International Association for the Study of Popular Music (IASPM-Intl), Gijón, Spain, June 27.
- 2013 “Liquidarity: Fluid Solidarities in Nightlife Scenes.” Paper read at the Liquidity ADRI Practice Research Symposium at Middlesex University, London, UK, June 14.
- 2013 “Embedded Diversity: Discrimination, Door Policies, and the Management of Difference at Berlin Nightclubs.” Paper read at “New Post-Migrant Socialities: Rethinking Urban Leisure Publics in the Context of Diversity and Dominance,” the closing conference of the *ERC Project: Migrant Socialities* at Goethe Universität, Frankfurt am Main, Germany, January 26.
- 2012 “Feeling at Home Abroad: The Affective Shape of Expatriate Belonging in the Electronic Dance Music Scenes of Berlin.” Paper read at the meeting of the American Anthropological Association (AAA), San Francisco, California, November 18.
- 2012 “Consuming Atmospheres and Social Worlds: ‘Techno-Tourismus’ and Post-Tourist Tourism in Berlin’s Electronic Dance Music Scenes.” Paper read at the meeting of the Society for Ethnomusicology (SEM), New Orleans, Louisiana, November 3.
- 2012 “The Other Side of the Turntables: Revisiting Performer-Audience Interaction at Electronic Dance Music Events.” Paper read at the meeting of the British Forum for Ethnomusicology (BFE), Durham, UK, March 31.

- 2012 “BerMuDa in Berlin: Techno-Tourism, Music Scenes, and the Scale of Nightlife during the Berlin Music Days Weekend.” Paper read at the meeting of the US chapter of the International Association for the Study of Popular Music (IASPM-US), New York, New York, March 24.
- 2011 “Bouncers and Multiculturalism: Unintegrated Difference and the Political Stakes of Nightlife in Berlin and Paris.” Paper read at the meeting of Benelux chapter of the International Association for the Study of Popular Music (IASPM-BENELUX), Groningen, Netherlands, December 9.
- 2011 “Bouncers and Multiculturalism: Unintegrated Difference and the Political Stakes of Nightlife in Berlin and Paris.” Paper read at the meeting of the American Anthropological Association (AAA), Montréal, Canada, November 16.
- 2011 With Gregory C. Mitchell. “Sex on Several Levels: An Affective Mapping of Queer Heterotopias in Rio de Janeiro and Berlin.” Paper read at the meeting of the Cultural Studies Association, Chicago, Illinois, March 26.
- 2010 “What Happened to the Sex? Thinking Intimacy and Sexuality in Crowds.” Paper read at the meeting of the Gender and Sexualities Studies Workshop of the University of Chicago, Chicago, Illinois, November 30.
- 2010 “Liquid Solidarities: Vague Belonging at Electronic Dance Music Events in Paris, Chicago, and Berlin.” Paper read at the Meeting of the Society for Ethnomusicology (SEM), Los Angeles, California, November 14. (Awarded the **Lise Waxer Student Paper Prize** by the Popular Music Section of SEM in 2011.)
- 2010 “Homo-something: Men Touching Men and Vague Pleasure in Paris Nightclubs.” Paper read at the Meeting of Performance Studies international (PSi), Toronto, Canada, June 9-13.
- 2010 “Dreams of a Gentle Rebirth: Intense Experience and Coming Undone at EDM events in Paris, Berlin, and Chicago.” Paper read at the Meeting of the US chapter of the International Association for the Study of Popular Music (IASPM-US), New Orleans, Louisiana, April 8-11.
- 2010 “Hardening Something: Music, Affect, and the Sense of the Social.” Paper read at the meeting of the New Media Workshop of the University of Chicago, Chicago, Illinois, April 2.
- 2010 “Smooth Experience, Rough Experience.” Paper read at the Joint Meeting of the EthNoise!, Theater and Performance Studies, and Gender and

- Sexualities Workshops of the University of Chicago, Chicago, Illinois, February 8.
- 2008 “You, Me and Vocoder Makes Three: Distortion and Digital Intimacy.” Paper read at the Meeting of the US branch of the International Association for the Study of Popular Music (IASPM-US), Iowa City, Iowa, April 24-27.
- 2007 “Intimacy at the Sonic Surface.” Paper read at the EthNoise! Workshop of the University of Chicago, Chicago, Illinois, November 15.
- 2006 “Vazaleen, Affect and Utopia: Sliding Public Spheres into Private Places.” Paper read at the Meeting of the Society for Ethnomusicology (SEM), Honolulu, Hawaii, November 16-19.
- 2005 “The soft pink meaning(s): multiple readings and the Soft Pink Truth.” Paper read at the Meeting of the International Association for the Study of Popular Music (IASPM-Intl), Rome, Italy, July 25-30.
- 2004 “On and On: Repetition as Process and Pleasure in Electronic Dance Music.” Paper read at the Joint Meeting of the Society for Music Theory (SMT) and the American Musicological Society (AMS), Seattle, Washington, November 13.
- 2004 “Dancing with the Wrong Crowd: Identity and Genre Politics among Electronic Dance Musics.” Paper read at the Meeting of the Society for Ethnomusicology (SEM), Tucson, Arizona, November 5.
- 2003 “Future Music: Discourses of Modernism, Futurism and Intellectualism in Techno.” Paper read at the Music Graduate Students' Association Conference, at University of Toronto, Canada, April 12.

LANGUAGES

Fluent:

French

Spanish

Advanced:

German

Moderate:

Italian

Reading Only / Basic:

Latin

Georgian

Re: Expert Testimony on (i) Community Establishment; (ii) Nexus; and (iii) Support for DotMusic’s Community-Based Application¹ for .MUSIC (Application ID 1-1115-14110)

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

Please accept this letter that indicates that there is substantive and compelling evidence that the DotMusic application convincingly meets the full criteria under Community Priority Evaluation on the following points: (i) the Music Community’s *Establishment* as defined by DotMusic; (ii) the matching *Nexus* between the “music” Community and the “music” string (or top-level domain); and (iii) that DotMusic possesses documented *Support* from organizations representing a majority of the global Music Community addressed and defined.

Please see my credentials attached hereto that identify my level of expertise and specialized knowledge with respect to the music community’s organization and delineation.

SUMMARY

DotMusic has established the following:

- 1) Its Community definition recognizes the cohesive, symbiotic and overlapping nature of the global Music Community. The definition includes those associated with commercial and non-commercial creation, performance, marketing and distribution of music;
- 2) “Music Community” members have the requisite awareness and recognition of the interdependency, overlapping and cohesive nature of each “organized community of similar nature that relates to music.” These organized and aligned communities are closely united and make “music” as we know it today. It is this self-awareness and interdependence that gives the “Music Community” its strength. With exponential growth of the Internet, mobile and the Domain Name System (DNS), the “Music Community’s” use and reliance on the Internet to create, market and disseminate music-related content, products, services and activities will continue to grow;
- 3) The “Music Community” functions in a regulated sector with global copyright protections – it is clear that the “community,” as defined, implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate a globally-recognized set of standards for

¹ <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1392>

the protection of the “Music Community” member rights with relation to their copyrighted music works around the world;

4) The “Music” Community -- as defined by DotMusic -- has at least one entity mainly dedicated to the community supporting DotMusic’s application. Such documented *Support* includes several “international federation of national communities of a similar nature,” music coalitions and others that are strongly associated with “music,” which represent a majority of the Community with considerable millions of members worldwide.²

5) The *Nexus* of the “music” Community matches the “music” applied-for string because it represents the entire global Music Community – a community that pre-existed 2007 with a size in the considerable millions of constituents. The “Music Community” definition -- which incorporates the strict fundamental attributes of a closely united Community definition that is “organized” and “delineated” -- ensures that all of its constituent members have a requisite awareness of the community as defined, including both commercial and non-commercial stakeholders, to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination.

6) DotMusic has received support from the largest coalition of Music Community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support³ from institutions/organizations representing a majority of the Community as defined and recognized in the DotMusic application.

There is substantive evidence that DotMusic fulfills the *Nexus, Community Establishment and Support* criteria for the “Music” string. The inclusion and representation of every music constituent type is paramount to the articulated purpose of the string. DotMusic and its application’s global Music Community supporters substantiate that every type of music constituent contributes to the function and operation of the music sector within a regulated framework. The symbiotic nature of the Community as defined and structured means that “Music” would not function as it does today without the participation of all music constituent types that interconnect to match the “music” string with the “music” Community definition.

² <http://music.us/supporters>

³ <http://music.us/supporters>

ASSESSMENT OF COMMUNITY DEFINITION, ESTABLISHMENT AND NEXUS

A) *Music Community Definition, Establishment & Community Endorsement*⁴

DotMusic’s definition of the “Music Community” as a “strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music” (See Application Answer to Question 20a) is factually accurate and representative of the “Music Community.” Community characteristics include:

i) An Organized, Cohesive, Interdependent Logically-Allied Community:

The “Music Community” definition covers the regulated, interdependent and cohesive nature of the music sector that exists today. “Music Community” members have the requisite awareness and recognition of the interdependent, overlapping and cohesive nature of each “organized community of similar nature that relates to music” that comprises the “Music Community.” Without such cohesiveness and interdependency, the defined “Music” Community matching the applied-for string (“Music”) would not be able to function in its regulated sector. “Music” is a regulated sector comprised of a logical alliance of interdependent communities relating to music with organized practices and institutions that enable and regulate the production, distribution and consumption of music that was publicly recognized by both ICANN and the Government Advisory Committee⁵

As a result, the Music Community as defined is “closely united” (As per the definition of “cohesion” according to Merriam-Webster dictionary⁶) or “united or form a whole” (As per the definition of the word “cohesion” according to Oxford Dictionaries⁷).

DotMusic’s application follows unified principles that the entire Community subscribes to, such as: creating a trusted identifier and safe haven for music consumption, protecting musicians’ rights and intellectual property, fighting copyright infringement/piracy, supporting fair compensation and music education, and following a multi-stakeholder approach of representation of all types of global music constituents without discrimination (See Application Answers to 18).

The “Music Community” as defined (a “strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music”) establishes that:

- (1) There is an awareness and recognition among its members;

⁴ See <http://music.us/establishment>

⁵ <https://www.icann.org/en/system/files/bm/briefing-materials-2-05feb14-en.pdf>, Pg.3

⁶ <http://www.merriam-webster.com/dictionary/cohesion>

⁷ http://www.oxforddictionaries.com/us/definition/american_english/cohesion

- (2) The organized and delineated logical alliance of communities exists; and
- (3) The Community is “closely united” and “interdependent” (i.e. Each “organized community of similar nature that relates to music” which is part of the “logical alliance of communities that relate to music” is not mutually exclusive).

In short, the applied-for string (“Music”) matches the name of the “Music” Community as defined by DotMusic’s application. DotMusic’s “Music Community” definition accurately represents the common definition of the “Music Community,” which is confirmed by Wikipedia.

According to Wikipedia:⁸

*Music community is defined as a logical alliance of interdependent communities that are related to music, which include commercial participants...and non-commercial participants...and consists of an “ensemble of practices and institutions that make possible and regulate the production, distribution and consumption of music”...UNESCO identifies the music community as a “community of identity” implying common identifiable characteristics and cohesive attributes such as sharing a music culture, norms and subscribing to common ideals related to music...The music community is not defined as much by demographic indicators such as race, gender, and income level, as it is by common values, cohesive norms and interconnected structures to build a community identity. It refers to music-related individuals and organisations in a shared environment with shared understandings and practices, modes of production and distribution. The shared organisation of collective musical activities, identity and community value is created as result of infrastructure and a shared set of common values...Many studies outline the historical, cultural, and spatial significance of the music community, including how its identity is formed through musical practices. The music community shares a cohesive and interconnected structure of artistic expression, with diverse subcultures and socio-economic interactions...subscribing to common ideals. Under such structured context music consumption becomes possible regardless whether the transaction is commercial and non-commercial.*⁹

⁸ Wikipedia is ranked 6th among the ten most popular websites (Alexa, Retrieved March 23, 2015 from <http://www.alexacom/siteinfo/wikipedia.org>) and constitutes the Internet's largest, most frequently updated and popular general reference work (See OECD, OECD Internet Economy Outlook 2012, OECD Publishing, http://www.oecd-ilibrary.org/science-and-technology/oecd-internet-economy-outlook-2012_9789264086463-en, Pg.172) that compares favorably to the accuracy of other encyclopedias (such as the Britannica) according to a 2012 study conducted in partnership with Oxford University (See <http://blog.wikimedia.org/2012/08/02/seven-years-after-nature-pilot-study-compares-wikipedia-favorably-to-other-encyclopedias-in-three-languages>).

⁹ Music Community. In *Wikipedia*. Retrieved July 6, 2015, from https://en.wikipedia.org/wiki/Music_community

ii) An Aware, Pre-Existing and Recognized Community of Considerable Millions Worldwide:

DotMusic's definition of the Community covers all Community members associated with the string, each with a requisite awareness of the Community that can be validated through their natural association with a particular music-related community that they clearly identify with. According to DotMusic, all Music Community members must identify their music-related community in order to demonstrate their requisite awareness of the defined Community as part of the .MUSIC registration and validation process.

According to DotMusic, the Music Community's geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents (Application Answer to Question 20a).

According to DotMusic, "registrants will be verified using Community-organized, unified "criteria taken from holistic perspective with due regard of Community particularities" that "invoke a formal membership (Application Answer to Question 20a)." The defined Community represents all music-related entities with a clear and straightforward membership with the Community involved in the legal production, performance, promotion, and distribution of music worldwide. According to DotMusic, the Music Community members must have an active, non-tangential relationship with the applied-for string "music" and also have the requisite awareness of the music-related community that they are a part of by specifically identifying it as part of the registration and validation process (i.e. upon successful registration and validation, each community member will be given a unique community identification number that will automatically associate them with their identified community and the "music" string).

DotMusic's Community definition matches the applied-for string because it allows both commercial and non-commercial stakeholders to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination/exclusion. Given the regulated sector of the community, it is clear that the "Music Community" as defined implies "more of cohesion than a mere commonality of interest" with an "awareness and recognition of a community among its members." Several international treaties mandate cohesive and globally-recognized set of standards for the protection of the music community members' rights with relation to their copyrighted music works around the world.¹⁰

The Berne Convention for the Protection of Literary and Artistic Works¹¹ provides that each of the 168 contracting parties¹² (representing an overwhelming majority of the world's population) provides automatic protection for music works first published in other countries of the Berne union and for unpublished music works whose authors are citizens of or resident in such other

¹⁰ http://www.rightsdirect.com/content/rd/en/toolbar/copyright_education/International_Copyright_Basics.html

¹¹ http://www.wipo.int/treaties/en/text.jsp?file_id=283698

¹² http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=15

countries.¹³ This means that if a Music Community member's copyright rights are violated in any other signatory country's jurisdiction, then the music community member will have the music copyright rights given by that country. Music Community members are clearly aware of the collective Community's rights, which could not be made possible without these cohesive and globally-recognized set of standards. If such standards were not coherent or enforced then music would not be able to exist in its current form and the industry component of the Music Community sector would not exist. As such, the Community's *Establishment* and definition is "cohesive" and hence cannot be construed since the Community is a logical alliance of music communities that establish a clearly delineated and organized Community structure that is "closely united" and functions as a "whole"

Further evidence to substantiate the cohesive, symbiotic and overlapping nature of the Community, includes other globally-recognized standards and classification systems, which identify who the individual songwriters, publishers and rights holders are and which songs they are associated with so that Community members are appropriately compensated, regardless of whether the constituent is a commercial, non-commercial or amateur entity. The "music" string is commonly used in classification systems such as ISMN,¹⁴ ISRC,¹⁵ ISWC,¹⁶ ISNI.¹⁷ (Application Answer to Question 20a). For example, if a music entity would like to distribute their music, either commercially or for free, then an ISRC can be assigned to globally identify any specific music work. An ISRC, which facilitates efficient music discovery and community member payment, is constructed from 12 characters representing country, registrant, year of registration and designation (i.e. the serial number assigned by the registrant). With respect to domains, an equivalent system that relates to identifying a specific domain's registrant and other relevant information pertaining to the domain is WHOIS. Domain registrants are required by ICANN "to provide accurate WHOIS contact data" or else their domain "registration may be suspended or even cancelled".¹⁸

¹³ <http://www.britannica.com/EBchecked/topic/62482/Berne-Convention>

¹⁴ The International Standard Music Number (ISMN) is a unique number for the identification of all notated music publications from all over the world. The ISMN is an ISO certified global standard number (ISO 10957:2009). See <http://www.ismn-international.org/whatis.html> and http://www.iso.org/iso/home/store/catalogue_ics/catalogue_detail_ics.htm?csnumber=43173

¹⁵ The ISRC (International Standard Recording Code) is the international identification system for sound recordings and music video recordings. The ISRC is an ISO certified global standard number (ISO 3901:2001) and is managed by the IFPI. See <http://isrc.ifpi.org>, <https://www.usisrc.org/about/index.html> and http://www.iso.org/iso/catalogue_detail?csnumber=23401

¹⁶ The ISWC (International Standard Musical Work Code) is a unique, permanent and internationally recognized reference number for the identification of musical works. The ISWC has been approved by ISO (International Organization for Standardisation) as a global standard (ISO 15707:2001) and is managed by CISAC. See <http://www.iswc.org/en/faq.html> and http://www.iso.org/iso/catalogue_detail?csnumber=28780

¹⁷ The International Standard Name Identifier (ISNI) is the ISO certified global standard number (ISO 27729) for identifying the millions of contributors to creative works and those active in their distribution. ISNI holds public records of over 8 million identities and 490,000 organizations. See <http://www.isni.org/> and http://www.iso.org/iso/catalogue_detail?csnumber=44292

¹⁸ <https://whois.icann.org/en/about-whois> and <https://www.icann.org/resources/pages/faqs-f0-2012-02-25-en>

Without such Music Community “cohesion” and standardized systems functioning in its regulated sector, the Music Community would not be able to create, market and distribute their music. By the same token, fans would not be able to identify the music they are listening to with a specific music artist, regardless of whether the listening activity or behavior is commercial or non-commercial in nature. The socio-economic structure that characterizes “music” as commonly-known today would be non-existent without these organized and delineated elements that commonly define the Community.

iii) *International Federations and Organizations mainly Dedicated to the Community:*

According to ICANN’s Applicant Guidebook (“AGB”)¹⁹: “*With respect to “Delineation” and “Extension,” it should be noted that a community can consist of...a logical alliance of communities (for example, an international federation of national communities of a similar nature... viable as such, provided the requisite awareness and recognition of the community is at hand among the members.*” (AGB, 4-12). The community as defined in the DotMusic application has at least one entity *mainly*²⁰ dedicated to the community which has supported DotMusic, which include several “international federation of national communities of a similar nature” relating to music, music coalitions and other relevant and non-negligible music organizations.

One of these entities include the only international federation of national communities relating to government culture agencies and arts councils, which has an integral association with music globally: the International Federation of Arts Councils and Culture Agencies (IFACCA).

IFACCA is the only international federation that represents government culture agencies and arts councils globally. These national communities are governmental institutions that play a pivotal

¹⁹ <https://newgtlds.icann.org/en/applicants/agb/guidebook-full-11jan12-en.pdf>

²⁰ Per the Oxford and Merriam Webster dictionaries, the word “mainly” is defined as “*more than anything else*” (See <http://www.oxforddictionaries.com/definition/english/mainly> and <http://www.merriam-webster.com/dictionary/mainly> respectively). According to DotMusic, the string .MUSIC relates to the Community “by representing all constituents involved in music creation, production and distribution” (Application Answer to Question 20d). Supporting organizations related to that string that are “mainly” dedicated to the Community and its activities, include the International Federation of Arts Councils and Culture Agencies (IFACCA) representing government culture ministries and arts councils, the International Federation of Musicians (FIM) representing musicians globally, the International Federation of Phonographic Industry (IFPI) representing the recording industry worldwide, the International Confederation of Music Publishers (ICPM) representing the voice of global music publishing, the International Association of Music Information Centres (IAMIC), the American Association of Independent Music (A2IM), whose associate members represent a majority of music consumed, the Independent Music Worldwide Independent Network (WIN) representing independent music worldwide, the International Society for Music Education (ISME) the premiere international organization representing music education, and many others (See support at <http://music.us/supporters> and <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails:downloadattachment/142588?t:ac=1392>).

role with respect to music.²¹ IFACCA's members cover the majority of music entities globally, regardless of whether they are commercial, non-commercial or amateurs. Government ministry of culture and council agencies related to music cover a majority of the overall community with respect to headcount and geographic reach. The "Size" covered reaches over a hundred million music entities i.e. "considerable size with millions of constituents" per Application Answer to Question 20a.

The string "music" falls under the jurisdiction of each country's Ministry of Culture governmental agency or arts/music council (emphasis added). The degree of power and influence of government ministry of culture and council agencies with respect to music surpasses any organization type since these agencies (i) provide the majority of funding for music-related activities; (ii) regulate copyright law; and (iii) encompass all the music entities that fall under their country, regardless whether these entities are commercial, non-commercial or amateurs. IFACCA is globally recognized by its strategic partners, such as UNESCO, a United Nations agency representing 195 member states and the European Commission.²² The UNESCO strategic partnership²³ is relevant, especially since UNESCO founded the International Music Council (the "IMC") in 1949, which represents over 200 million music constituents from over 150 countries and over 1000 organizations globally.²⁴

Government activities in the clearly delineated and organized "Music Community" include setting statutory royalty rates. For example, in the United States, mechanical royalties are based on a "statutory rate" set by the U.S. Congress. This rate is increased to follow changes in the economy, usually based on the Consumer Price Index. Currently, the mechanical statutory rate is \$0.091 for songs five minutes or less in length or \$.0175 per minute for songs that are over five minutes long.²⁵

Ministries of culture and arts councils (that comprise IFACCA's membership) support musicians, musical performances, independent music artists, non-commercial musical expression and education in their respective countries. The 165 ministries of culture, arts councils and affiliates that comprise IFACCA's membership support the "performing arts" and music specifically. Without the financial and logistical support of arts councils and the ministries of culture, the music community would be adversely affected, and in some countries, may not exist in any appreciable manner. For example, the Ministry of Culture 2011 budget for the small country state of Cyprus for culture funding was €34,876,522 with critical support of music activities.²⁶ Other small government Ministries of Culture, such as Albania,²⁷ or government

²¹ http://www.ifacca.org/membership/current_members/

²² http://www.ifacca.org/strategic_partners/

²³ http://www.ifacca.org/strategic_partners/

²⁴ <http://www.imc-cim.org/about-imc-separator/who-we-are.html>

²⁵ U.S Copyright Office, <http://www.copyright.gov/carp/m200a.html>

²⁶ 2011 Annual Report for Cyprus Ministry of Culture, Section 1.2 "Music"

(http://www.moec.gov.cy/en/annual_reports/annual_report_2011_en.pdf). Activities include Music Performances in Cyprus (1.2.1) and Abroad (1.2.2), Subsidization of Paphos Aphrodite Festival (1.2.3), Music Publications (1.2.4), Subsidization and Purchases of Digital Records (1.2.5), Promotion for Cypriot musical creativity abroad (1.2.6),

Ministries of Culture and Arts Councils from countries with larger populations, such as India,²⁸ all provide critical support and substantial advocacy for music. Other examples include government institutions collaborating and advocating music through their funded country-based pavilion initiatives at Midem, the world's largest music conference.²⁹

Government ministries and arts councils provide critical support for the Music Community, including commercial music organizations. By way of example, government ministries' and arts councils' substantial connection to and support of "music" is noted in the reports of funding and support for music. Some examples to showcase the degree of power of the IFACCA's membership towards the string and global and national music are music investment and music funding (Annual reports by governments and councils):

- New Zealand Ministry of Culture has funded significant music projects. Some include the REAL New Zealand Music Tour (\$415,000), the New Zealand String Quartet (\$150,000) and New Zealand Music Commission: (\$1,378,000).³⁰
- The Australian Government/Council For The Arts invested \$51.2 million for the nation's orchestras; \$21.6 million for opera; \$10.8 million for other music artists and organizations; \$13.1 million for multi-platform artists and organizations; and \$4 million in miscellaneous funding, including sector building and audience development initiatives and programs.³¹
- Canada Council for the Arts is Canada's national, arts funding agency investing \$28 million in its Canada Council Musical Instrument Bank (Page 16) and \$28,156,000 in Music Arts Programs (Page 66).³² The Government of Canada also renewed its annual investment of \$27.6 million over five years in the Canada Music Fund.³³
- The United Kingdom Department for Culture and Education (DfE) will fund music education at significant levels: £77 million, £65 million and £60 million will be available in the three years from April 2012.³⁴

Cyprus Symphony Orchestra Foundation (1.2.7), Music Information Centre (1.2.8), Developing Music Education (1.2.9), Organising of the 1st Musicological Symposium (1.2.10) and Musical Festivities for the European Volunteerism Year (1.2.11)

²⁷ http://www.culturalpolicies.net/down/albania_012011.pdf

²⁸ 2010-11 Annual Report from India Ministry of Culture, [http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011\(Eng\).pdf](http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011(Eng).pdf)

²⁹ <http://my.midem.com/en/contact-us/pavilion-representatives/>

³⁰ 2011 Annual Report from New Zealand Ministry of Culture:

[http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20\(D-0448383\).PDF](http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20(D-0448383).PDF)

³¹ 2011 Annual Report for the Australia Council for the Arts,

http://www.australiacouncil.gov.au/data/assets/pdf_file/0016/142351/Australia-Council-Annual-Report-201112.pdf, Page 28

³² 2011 Annual Report for Canada Council for the Arts, [http://www.canadacouncil.ca/NR/rdonlyres/6F7549BB-F4E5-4B8B-95F4-](http://www.canadacouncil.ca/NR/rdonlyres/6F7549BB-F4E5-4B8B-95F4-1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf)

[1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf](http://www.canadacouncil.ca/NR/rdonlyres/6F7549BB-F4E5-4B8B-95F4-1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf)

³³ <http://www.pch.gc.ca/eng/1294862453819/1294862453821>

³⁴ Department for Culture, The Importance of Music, A National Plan for Music Education,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/180973/DFE-00086-2011.pdf, Page 4, 2011

- The United States National Endowment of the Arts has awarded more than \$4 billion to support the arts since its inception³⁵ and has a strong focus on music as outlined in its Strategic Plan³⁶ with Congress requested to provide \$154,465,000 for fiscal year 2014.³⁷
- The National Arts Council of South Africa invested 2,536,131 ZAR in Music and 9,995,000 ZAR in Orchestras and has focused strongly on the “Strengthening of live indigenous music and advocating the revival of the live music circuit in South Africa”³⁸
- The Singapore Arts Council will fund \$10.2 million in the arts under its 2013 Grants Framework, including the Ding Yi Music Company and Siong Leng Musical Association.³⁹
- In 2011, the support for artistic activities by the Arts Council of Finland was €32.4 million of which €4,921,850 was awarded to music.⁴⁰

Each of IFACCA’s members has a clear association with, and mandate to support the music arts in their countries. In most countries, their ministry of culture/arts council is the largest funder and marketing supporter of the music arts.

The IFPI is another entity *mainly* dedicated to the Community. The IFPI is the only organization that represents the interests of the recording industry worldwide. It is the “voice of the recording industry worldwide”⁴¹ whose members⁴² – major and independent companies -- represent a majority of all commercial music consumed globally. For example, the RIAA, an IFPI national group member,⁴³ represents “approximately 85% of all legitimate recorded music produced and sold in the United States,”⁴⁴ the world’s largest music market with 30% global market share.⁴⁵ Formed in 1933, the IFPI’s mission was to “represent the interests of the recording industry worldwide in all fora.”

³⁵ 2011 Annual report for the National Endowment of the Arts, <http://www.nea.gov/about/11Annual/2011-NEA-Annual-Report.pdf>, Page 2

³⁶ NEA Strategic Plan 2012-2016, www.arts.gov/about/Budget/NEAStrategicPlan2012-2016.pdf

³⁷ http://www.ifacca.org/national_agency_news/2013/04/10/us-president-requests-154465000-neh-2014/

³⁸ 2010-2011 Annual Report for the National Arts Council South Africa, National Arts Council South Africa, <http://www.nac.org.za/media/publications/AR%2010-11%20NAC.PDF/download>, Page 11. Also Mmino, the South African – Norwegian Education Music Programme, solely funds music projects funding a total of 294 projects. Thirteen projects were allocated funding for a total of R1,680,600 of which R1,381,000 went towards music educational and R299,600 to exchange projects (Page 10)

³⁹ Singapore Arts Council, <http://www.nac.gov.sg/media-centre/news-releases/news-detail?id=c2db15e2-c319-40ec-939c-d58735d0a91c>

⁴⁰ <http://www.taiteenkeskustoimikunta.fi/documents/10162/31704/TY+tilastotiedote+1+12+.pdf>, Page 1 and Page 23

⁴¹ <http://www.ifpi.org/about.php>

⁴² <http://www.ifpi.org/our-members.php>

⁴³ <http://www.ifpi.org/national-groups.php>

⁴⁴ <http://www.riaa.com/faq.php>

⁴⁵ <http://www.statista.com/topics/1639/music/>

Another clear example of an “entity *mainly* dedicated to the community” with members that cover hundreds of millions of music constituents with formal boundaries is A2IM, the American Association of Independent Music. A2IM has two types of members: U.S independent Label members and Associate members. A2IM membership for Labels and Associates is invoked formally through an application and if accepted would require annual membership dues.⁴⁶

The reach of A2IM Associate⁴⁷ membership covers hundreds of millions of entities (i.e. the reach of A2IM’s total membership “geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents – See Application Answer to Question 20a).

Organized and strictly delineated communities related to music that are A2IM members include:

- **Apple iTunes**⁴⁸ – iTunes accounts for 63% of global digital music market⁴⁹ - a majority – with a registered community of 800 million registered members⁵⁰ available in 119 countries who abide to strict terms of service and boundaries⁵¹ and have downloaded over 25 billion songs⁵² from iTunes’ catalog of over 43 million songs⁵³ covering a global music community, regardless of genre or whether the community entities are amateur, professional, commercial or non-commercial. To add music to iTunes, all music artists must have a formal membership with iTunes via an Apple ID registration, which includes a current credit card on file.⁵⁴
- **Pandora**⁵⁵ – Pandora is the world’s largest streaming music radio with a community of over 250 million registered members.⁵⁶
- **Spotify**⁵⁷ – Spotify is the world’s largest music streaming community with over 50 million active registered members in 58 countries and over 30 million songs. The music community uploads 20,000 songs every day.⁵⁸
- **Vevo**⁵⁹ – Vevo is the world’s leading all-premium music video community and platform with over 8 billion monthly views globally.⁶⁰

⁴⁶ <http://a2im.org/about-joining/>

⁴⁷ <http://a2im.org/groups/tag/associate+members/>

⁴⁸ <http://a2im.org/groups/itunes>

⁴⁹ <http://appleinsider.com/articles/13/04/16/apples-itunes-rules-digital-music-market-with-63-share>

⁵⁰ <http://www.npr.org/blogs/therecord/2015/01/06/375173595/with-downloads-in-decline-can-itunes-adapt>

⁵¹ <http://www.apple.com/legal/internet-services/itunes/ww/index.html>

⁵² <http://www.apple.com/pr/library/2013/02/06iTunes-Store-Sets-New-Record-with-25-Billion-Songs-Sold.html>

⁵³ <https://www.apple.com/itunes/features/>

⁵⁴ <https://www.apple.com/itunes/working-itunes/sell-content/music-faq.html>

⁵⁵ <http://a2im.org/groups/pandora>

⁵⁶ <http://www.cnet.com/news/like-a-rolling-milestone-pandora-hits-250m-registered-users/> and <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MTkxNTM1fENoaWxkSUQ9LTF8VHlwZT0z&t=1>, Pg.9

⁵⁷ <http://a2im.org/groups/spotify>

⁵⁸ <https://press.spotify.com/us/information/>

⁵⁹ <http://a2im.org/groups/vevo/>

- **Youtube**⁶¹ – Youtube is the world’s largest music video streaming community with millions of music creators -- amateur, professional, commercial or non-commercial -- and over 1 billion registered members covering all regions globally. 6 billion hours of video is watched every month on Youtube,⁶² of which 38.4% is music-related.⁶³
- **ReverbNation**⁶⁴ – ReverbNation⁶⁵ is one of the world’s largest music community and a leading music distributor with over 3.87 million musicians, venues labels and industry professionals covering every country globally. The ReverbNation community grows by over 50,000 artists, bands, labels and industry professionals monthly.
- **BMG**⁶⁶ – BMG is focused on the management of music publishing and recording rights. BMG has an international presence and represents over 2.5 million music rights globally.⁶⁷

A2IM also includes members that are associated with global government agencies which exclusively represent substantial music economies and music members, such as France (BureauExport⁶⁸), China (China Audio Video Association⁶⁹) and Germany (Initiative Musik).⁷⁰ A2IM also has Affiliate⁷¹ associations within the global music community. These include Affiliates such as MusicFirst,⁷² the Copyright Alliance,⁷³ the Worldwide Independent Network (WIN)⁷⁴ and Merlin.⁷⁵

A2IM also represents a recognized Music Coalition representing the interests of the Global Independent Music Community.⁷⁶ The A2IM Coalition includes Merlin, a global rights agency for the independent label sector, representing over 20,000 labels from 39 countries, Worldwide Independent Network (representing label creators in over 20 countries), Association of Independent Music (representing largest and most respected labels in the world), and IMPALA (Independent Music Companies Association on behalf of over 4,000 independent music companies and national associations across Europe, representing 99% of music actors in Europe which are micro, small and medium sized enterprises.

⁶⁰ <http://www.vevo.com/c/EN/US/about>

⁶¹ <http://a2im.org/groups/youtube/>

⁶² <https://www.youtube.com/yt/press/statistics.html>

⁶³ http://www.researchandmarkets.com/reports/2092499/internet_video_2011_2014_view_share_site_and

⁶⁴ <http://a2im.org/groups/reverb-nation/>

⁶⁵ <http://www.reverbnation.com/about>

⁶⁶ <http://a2im.org/groups/bmg-rights/>

⁶⁷ <http://www.bmg.com/category/about-us/history/>

⁶⁸ <http://a2im.org/groups/french-music-export-office>

⁶⁹ <http://a2im.org/groups/china-audio-video-association-cava>

⁷⁰ <http://a2im.org/groups/initiative-musik-gmbh>

⁷¹ <http://a2im.org/groups/tag/associate+members/>

⁷² <http://musicfirstcoalition.org/coalition>, The musicFIRST Coalition, with founding members A2IM, RIAA, and Recording Academy represents musicians, artists, managers, music businesses, and performance right advocates.

⁷³ <http://www.copyrightalliance.org/members>

⁷⁴ <http://www.winformusic.org>

⁷⁵ <http://www.merlinnetwork.org>

⁷⁶ <https://www.icann.org/en/system/files/correspondence/bengloff-to-chehade-et-al-20aug14-en.pdf> and <https://www.icann.org/en/system/files/correspondence/bengloff-to-crocker-et-al-07mar15-en.pdf>

Cumulatively, A2IM's Label and Associate Membership, A2IM's Affiliates and the A2IM's Global Independent Music Community Coalition, covers a majority of the global music community. Its cumulative membership is in the hundreds of millions of entities with formal boundaries belonging to strictly organized and delineated communities related to music as per the Community Definition and Size (See Application answer to Question 20a).

Another global Music Community Coalition led by the RIAA “on behalf of over 15 national and international trade associations” also expressed its support for .MUSIC to be under a “community” application model, including encouraging statements in support of DotMusic’s policies that stated that the coalition “was encouraged to see” that DotMusic “included several measures to deter and address copyright infringement within that TLD.” The “coalition members represent the people that write, sing, record, manufacture, distribute and/or license over 80% of the world’s music”⁷⁷ – a majority of global music.⁷⁸

Another letter⁷⁹ sent to ICANN (on April 14th, 2015) by Danielle Aguirre from the NMPA and on behalf of a music publisher and songwriter community coalition representing a majority of the global music publishing community, also expressed “support [for] the .MUSIC community applications because respecting and protecting music rights serves the global music community and the public interest.”

The International Music Products Association, NAMM, is another globally-recognized and relevant group of non-negligible size that has supported DotMusic.⁸⁰ NAMM, formed in 1901, is *mainly* dedicated to the global music community by representing the international music products industry and community, with globally-recognized members and exhibitors that include Yamaha, Roland, Sennheiser, Sony, Fender, Harman, Kawai, Shure, Steinway, Audio-Technica, AKAI, Gibson, Peavey, Korg, AKG, Selmer, JBL, Alesis, Ibanez, AVID, Casio, DW, Sabian, Pearl, Zildjian, Martin, Ludwig, Marshall and others.^{81 82} Every amateur and professional musician worldwide uses music products manufactured and distributed by NAMM’s members. Without these musical instruments and products, music as we know it today would not be created or produced. NAMM and its trade shows power the \$17 billion global music products industry serving as a hub for the global music community wanting to seek out the newest innovations in musical products, recording technology, sound and lighting. NAMM’s mission is “to strengthen

⁷⁷ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.1

⁷⁸ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.3, Appendix A

⁷⁹ <https://www.icann.org/en/system/files/correspondence/aguirre-to-icann-board-eiu-14apr15-en.pdf>

⁸⁰ http://music.us/letters/NAMM_International_Music_Products_Association.pdf

⁸¹ https://www.namm.org/files/showdir/ExhibitorList_WN15.xls

⁸² <http://www.musictrades.com/global.html>

the music products industry and promote the pleasures and benefits of making music.”⁸³ NAMM also hosts the NAMM Show, the world's largest event for the music products industry.

Collectively, the DotMusic application received support from the largest coalition of music community member organizations ever assembled to support a cause representing over 95% of music consumed globally.⁸⁴ Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support⁸⁵ from institutions/organizations representing a majority of the Community addressed. Music -- as commonly-known by the general public and experienced today -- would not be possible without these supporting, non-negligible and relevant organizations that have endorsed DotMusic.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Community Establishment* and *Community Endorsement* from the majority of the global Music Community as defined.

B) Nexus⁸⁶

According to the Applicant Guidebook (“AGB”), to receive the maximum score for Nexus, the applied-for string -- “music” -- must match the name of the community or be a well-known short-form or abbreviation of the community name.

The *Nexus* of the “Music Community” entirely matches the applied-for “music” string because it represents the entire global Music Community as commonly-known and perceived by the general public. This definition allows for all constituents with a requisite awareness of the Community defined to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination. The definition of the Community requires that members have an active, non-tangential relationship with the applied-for string and the requisite awareness of the music community they identify with as part of the registration process. It is clear that the general public will directly associate and equate the string with the Community as defined by DotMusic. There is no possibility of overreaching beyond the definition or allowing unrelated non-music entities to be included as part of the Community. Community members may register a .MUSIC by either:

⁸³ <https://www.namm.org/about>

⁸⁴ See <http://music.us/supporters>, <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/downloadattachment/142588?t:ac=1392>, Bloomberg BNA at http://music.us/RIAA_Backs_DotMusic.pdf Pg.1, and <http://diffuser.fm/will-dot-music-domains-make-the-internet-better/>

⁸⁵ <http://music.us/supporters>

⁸⁶ See <http://music.us/nexus>

- 1) Identifying that they belong to a Music Community Member Organization (“MCMO”); or
- 2) Identifying the community they belong to, which is consistent with the definition of the Community: “the strictly delineated and organized logical alliance of communities of similar nature related to music.”

All Community members are aware of and recognize their inclusion in the defined Community by identifying which clearly defined community they belong to and have an active participation in. The *nexus* of the applied-for string ensures inclusion of the entire global community that the string represents while excluding unrelated-entities not associated with the string. This way there is a clear match and alignment between the “music” sting and the Community defined.

While the exact size of the global Music Community as defined is unknown (there is no empirical evidence providing an exact, finite number because amateur entities are also included in the Community’s definition), it is in the considerable millions as explicitly stated in the DotMusic Application. DotMusic’s definition of the Community and mutually-inclusive Registration Policies ensure that eligible members are only music-related and associated with the string. This is because the string identifies all constituents involved in music. Music-only participation optimizes the relevancy of .MUSIC domains to the string and entirely matches the *nexus* between the string and Community defined. According to DotMusic, the Community *definition, eligibility* criteria and *content and use* requirements ensure that peripheral industries and entities not related to music are excluded so that the string and the defined Community matches and aligns in a consistent manner consistent with DotMusic’s community-based purpose i.e. only entities with music-related activities are able to register .MUSIC domains.

Membership aligns with the *nexus* of the Community and the string, which is explicitly relevant to music. The string as defined in the application demonstrates uniqueness because it has no other significant meaning beyond identifying the community described in the application. According to DotMusic’s application, any tangential or implicit association with the *nexus* of the Community and the string is not regarded as a delineated membership since it would be considered unclear, dispersed or unbound. Such unclear, dispersed or unbound tangential relationships with the defined “music” Community and applied-for “music” string would not constitute a qualifying Community membership and would be ineligible for registration. Every type of music constituent critically contributes to the function and operation of the music sector within a regulated framework⁸⁷ given the symbiotic overlapping nature of the Community as defined and structured. Music would not function as it does today without the participation of all music constituent types which cumulatively match the string with the Community definition.

⁸⁷ ICANN has disclosed that the string .MUSIC is a sensitive string operating in a regulated sector. ICANN also accepted Government Advisory Committee (GAC) advice for safeguards to protect the Music Community and the public interest (See <https://icann.org/en/system/files/correspondence/crocker-to-dryden-3-29oct13-en.pdf> Pg.7)

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Nexus*.

Respectfully Submitted,

Signature: 
Contact Information Redacted Aug 6 '15 ip: 85.74.206.189

Name: Dr. Manthos Kazantzidis

Title: Computer Science Ph.D. Research and Development

Re: Expert Testimony on (i) Community Establishment; (ii) Nexus; and (iii) Support for DotMusic’s Community-Based Application¹ for .MUSIC (Application ID 1-1115-14110)

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

Please accept this letter that indicates that there is substantive and compelling evidence that the DotMusic application convincingly meets the full criteria under Community Priority Evaluation on the following points: (i) the Music Community’s *Establishment* as defined by DotMusic; (2) the matching *Nexus* between the “music” Community and the “music” string (or top-level domain); and (3) that DotMusic possesses documented *Support* from organizations representing a majority of the global Music Community addressed and defined.

Please see my credentials attached hereto that identify my level of expertise and specialized knowledge with respect to the music community’s organization and delineation.

SUMMARY

DotMusic has established the following:

- 1) Its Community definition recognizes the cohesive, symbiotic and overlapping nature of the global Music Community. The definition includes those associated with commercial and non-commercial creation, performance, marketing and distribution of music;
- 2) “Music Community” members have the requisite awareness and recognition of the interdependency, overlapping and cohesive nature of each “organized community of similar nature that relates to music.” These organized and aligned communities are closely united and make “music” as we know it today. It is this self-awareness and interdependence that gives the “Music Community” its strength. With exponential growth of the Internet, mobile and the Domain Name System (DNS), the “Music Community’s” use and reliance on the Internet to create, market and disseminate music-related content, products, services and activities will continue to grow;
- 3) The “Music Community” functions in a regulated sector with global copyright protections – it is clear that the “community,” as defined, implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate a globally-recognized set of standards for

¹ <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1392>

the protection of the “Music Community” member rights with relation to their copyrighted music works around the world;

4) The “Music” Community -- as defined by DotMusic -- has at least one entity dedicated to the community supporting DotMusic’s application. Such documented *Support* includes several “international federation of national communities of a similar nature,” music coalitions and others that are strongly associated with “music,” which represent a majority of the Community with considerable millions of members worldwide.²

5) The *Nexus* of the “music” Community matches the “music” applied-for string because it represents the entire global Music Community – a community that pre-existed 2007 with a size in the considerable millions of constituents. The “Music Community” definition -- which incorporates the strict fundamental attributes of a closely united Community definition that is “organized” and “delineated” -- ensures that all of its constituent members have a requisite awareness of the community as defined, including both commercial and non-commercial stakeholders, to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination.

6) DotMusic has received support from the largest coalition of Music Community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support³ from institutions/organizations representing a majority of the Community as defined and recognized in the DotMusic application.

There is substantive evidence that DotMusic fulfills the *Nexus, Community Establishment and Support* criteria for the “Music” string. The inclusion and representation of every music constituent type is paramount to the articulated purpose of the string. DotMusic and its application’s global Music Community supporters substantiate that every type of music constituent contributes to the function and operation of the music sector within a regulated framework. The symbiotic nature of the Community as defined and structured means that “Music” would not function as it does today without the participation of all music constituent types that interconnect to match the “music” string with the “music” Community definition.

² <http://music.us/supporters>

³ <http://music.us/supporters>

ASSESSMENT OF COMMUNITY DEFINITION, ESTABLISHMENT AND NEXUS

A) *Music Community Definition, Establishment & Community Endorsement*⁴

DotMusic’s definition of the “Music Community” as a “strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music” (See Application, 20a) is factually accurate and representative of the “Music Community.” Community characteristics include:

i) An Organized, Cohesive, Interdependent Logically-Allied Community:

The “Music Community” definition covers the regulated, interdependent and cohesive nature of the music sector that exists today. “Music Community” members have the requisite awareness and recognition of the interdependent, overlapping and cohesive nature of each “organized community of similar nature that relates to music” that comprises the “Music Community.” Without such cohesiveness and interdependency, the defined “Music” Community matching the applied-for string (“Music”) would not be able to function in its regulated sector, a “Music” regulated sector that was publicly recognized by both ICANN and the Government Advisory Committee.⁵

As a result, the Music Community as defined is “closely united” (As per the definition of “cohesion” according to Merriam-Webster dictionary⁶) or “united or form a whole” (As per the definition of the word “cohesion” according to Oxford Dictionaries⁷).

The “Music Community” as defined (a “strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music”) establishes that:

- (1) There is an awareness and recognition among its members;
- (2) The organized and delineated logical alliance of communities exists; and
- (3) The Community is “closely united” and “interdependent” (i.e. Each “organized community of similar nature that relates to music” which is part of the “logical alliance of communities that relate to music” is not mutually exclusive).

In short, the applied-for string (“Music”) matches the name of the “Music” Community as defined by DotMusic’s application. DotMusic’s “Music Community” definition accurately represents the common definition of the “Music Community,” which is confirmed by Wikipedia.

⁴ See <http://music.us/establishment>

⁵ <https://www.icann.org/en/system/files/bm/briefing-materials-2-05feb14-en.pdf>, Pg.3

⁶ <http://www.merriam-webster.com/dictionary/cohesion>

⁷ http://www.oxforddictionaries.com/us/definition/american_english/cohesion

According to Wikipedia:⁸

Music community is defined as a logical alliance of interdependent communities that are related to music, which include commercial participants...and non-commercial participants...and consists of an “ensemble of practices and institutions that make possible and regulate the production, distribution and consumption of music”...UNESCO identifies the music community as a “community of identity” implying common identifiable characteristics and cohesive attributes such as sharing a music culture, norms and subscribing to common ideals related to music...The music community is not defined as much by demographic indicators such as race, gender, and income level, as it is by common values, cohesive norms and interconnected structures to build a community identity. It refers to music-related individuals and organisations in a shared environment with shared understandings and practices, modes of production and distribution. The shared organisation of collective musical activities, identity and community value is created as result of infrastructure and a shared set of common values...Many studies outline the historical, cultural, and spatial significance of the music community, including how its identity is formed through musical practices. The music community shares a cohesive and interconnected structure of artistic expression, with diverse subcultures and socio-economic interactions...subscribing to common ideals. Under such structured context music consumption becomes possible regardless whether the transaction is commercial and non-commercial.⁹

ii) *An Aware, Pre-Existing and Recognized Community of Considerable Millions Worldwide:*

DotMusic’s definition of the Community covers all Community members associated with the string, each with a requisite awareness of the Community that can be validated through their natural association with a particular music-related community that they clearly identify with. According to DotMusic, all Music Community members must identify their music-related community in order to demonstrate their requisite awareness of the defined Community as part of the .MUSIC registration and validation process.

⁸ Wikipedia is ranked 6th among the ten most popular websites (Alexa, Retrieved March 23, 2015 from <http://www.alexacom/siteinfo/wikipedia.org>) and constitutes the Internet's largest, most frequently updated and popular general reference work (See OECD, OECD Internet Economy Outlook 2012, OECD Publishing, http://www.oecd-ilibrary.org/science-and-technology/oecd-internet-economy-outlook-2012_9789264086463-en,Pg.172) that compares favorably to the accuracy of other encyclopedias (such as the Britannica) according to a 2012 study conducted in partnership with Oxford University (See <http://blog.wikimedia.org/2012/08/02/seven-years-after-nature-pilot-study-compares-wikipedia-favorably-to-other-encyclopedias-in-three-languages>).

⁹ Music Community. In *Wikipedia*. Retrieved March 23, 2015, from https://en.wikipedia.org/wiki/Music_community

According to DotMusic, the Music Community’s geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents (Application Answer to Question 20a).

According to DotMusic, “registrants will be verified using Community-organized, unified “criteria taken from holistic perspective with due regard of Community particularities” that “invoke a formal membership (Application Answer to Question 20a).” The defined Community represents all music-related entities with a clear and straightforward membership with the Community involved in the legal production, performance, promotion, and distribution of music worldwide. According to DotMusic, the Music Community members must have an active, non-tangential relationship with the applied-for string “music” and also have the requisite awareness of the music-related community that they are a part of by specifically identifying it as part of the registration and validation process (i.e. upon successful registration and validation, each community member will be given a unique community identification number that will automatically associate them with their identified community and the “music” string).

DotMusic’s Community definition matches the applied-for string because it allows both commercial and non-commercial stakeholders to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination/exclusion. Given the regulated sector of the community, it is clear that the “Music Community” as defined implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate cohesive and globally-recognized set of standards for the protection of the music community members’ rights with relation to their copyrighted music works around the world.¹⁰

The Berne Convention for the Protection of Literary and Artistic Works¹¹ provides that each of the 168 contracting parties¹² (representing an overwhelming majority of the world’s population) provides automatic protection for music works first published in other countries of the Berne union and for unpublished music works whose authors are citizens of or resident in such other countries.¹³ This means that if a Music Community member’s copyright rights are violated in any other signatory country’s jurisdiction, then the music community member will have the music copyright rights given by that country. Music Community members are clearly aware of the collective Community’s rights, which could not be made possible without these cohesive and globally-recognized set of standards. If such standards were not coherent or enforced then music would not be able to exist in its current form and the industry component of the Music Community sector would not exist. As such, the Community’s *Establishment* and definition is “cohesive” and hence cannot be construed since the Community is a logical alliance of music

¹⁰ http://www.rightsdirect.com/content/rd/en/toolbar/copyright_education/International_Copyright_Basics.html

¹¹ http://www.wipo.int/treaties/en/text.jsp?file_id=283698

¹² http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=15

¹³ <http://www.britannica.com/EBchecked/topic/62482/Berne-Convention>

communities that establish a clearly delineated and organized Community structure that is “closely united” and functions as a “whole”

Further evidence to substantiate the cohesive, symbiotic and overlapping nature of the Community, includes other globally-recognized standards and classification systems, which identify who the individual songwriters, publishers and rights holders are and which songs they are associated with so that Community members are appropriately compensated, regardless of whether the constituent is a commercial, non-commercial or amateur entity. The “music” string is commonly used in classification systems such as ISMN,¹⁴ ISRC,¹⁵ ISWC,¹⁶ ISNI.¹⁷ (Application Answer to Question 20a). For example, if a music entity would like to distribute their music, either commercially or for free, then an ISRC can be assigned to globally identify any specific music work. An ISRC, which facilitates efficient music discovery and community member payment, is constructed from 12 characters representing country, registrant, year of registration and designation (i.e. the serial number assigned by the registrant). With respect to domains, an equivalent system that relates to identifying a specific domain’s registrant and other relevant information pertaining to the domain is WHOIS. Domain registrants are required by ICANN “to provide accurate WHOIS contact data” or else their domain “registration may be suspended or even cancelled”.¹⁸

Without such Music Community “cohesion” and standardized systems functioning in its regulated sector, the Music Community would not be able to create, market and distribute their music. By the same token, fans would not be able to identify the music they are listening to with a specific music artist, regardless of whether the listening activity or behavior is commercial or non-commercial in nature. The socio-economic structure that characterizes “music” as commonly-known today would be non-existent without these organized and delineated elements that commonly define the Community.

¹⁴ The International Standard Music Number (ISMN) is a unique number for the identification of all notated music publications from all over the world. The ISMN is an ISO certified global standard number (ISO 10957:2009). See <http://www.ismn-international.org/whatis.html> and

http://www.iso.org/iso/home/store/catalogue_ics/catalogue_detail_ics.htm?csnumber=43173

¹⁵ The ISRC (International Standard Recording Code) is the international identification system for sound recordings and music video recordings. The ISRC is an ISO certified global standard number (ISO 3901:2001) and is managed by the IFPI. See <http://isrc.ifpi.org>, <https://www.usisrc.org/about/index.html> and http://www.iso.org/iso/catalogue_detail?csnumber=23401

¹⁶ The ISWC (International Standard Musical Work Code) is a unique, permanent and internationally recognized reference number for the identification of musical works. The ISWC has been approved by ISO (International Organization for Standardisation) as a global standard (ISO 15707:2001) and is managed by CISAC. See <http://www.iswc.org/en/faq.html> and http://www.iso.org/iso/catalogue_detail?csnumber=28780

¹⁷ The International Standard Name Identifier (ISNI) is the ISO certified global standard number (ISO 27729) for identifying the millions of contributors to creative works and those active in their distribution. ISNI holds public records of over 8 million identities and 490,000 organizations. See <http://www.isni.org/> and http://www.iso.org/iso/catalogue_detail?csnumber=44292

¹⁸ <https://whois.icann.org/en/about-whois> and <https://www.icann.org/resources/pages/faqs-f0-2012-02-25-en>

iii) International Federations and Organizations Dedicated to Community Functions:

According to ICANN’s Applicant Guidebook (“AGB”)¹⁹: *“With respect to “Delineation” and “Extension,” it should be noted that a community can consist of...a logical alliance of communities (for example, an international federation of national communities of a similar nature... viable as such, provided the requisite awareness and recognition of the community is at hand among the members.”* (AGB, 4-12). The community as defined in the DotMusic application has at least one entity mainly dedicated to the community which has supported DotMusic, which include several “international federation of national communities of a similar nature” relating to music, music coalitions and other relevant and non-negligible music organizations.

One of these entities include the only international federation of national communities relating to government culture agencies and arts councils, which has an integral association with music globally: the International Federation of Arts Councils and Culture Agencies (IFACCA).

IFACCA is the only international federation that represents government culture agencies and arts councils globally. These national communities are governmental institutions that play a pivotal role with respect to music.²⁰ IFACCA’s members cover the majority of music entities globally, regardless of whether they are commercial, non-commercial or amateurs. Government ministry of culture and council agencies related to music cover a majority of the overall community with respect to headcount and geographic reach. The “Size” covered reaches over a hundred million music entities i.e. “considerable size with millions of constituents” per Application Answer to Question 20a.

The string “music” falls under the jurisdiction of each country’s Ministry of Culture governmental agency or arts/music council (emphasis added). The degree of power and influence of government ministry of culture and council agencies with respect to music surpasses any organization type since these agencies (i) provide the majority of funding for music-related activities; (ii) regulate copyright law; and (iii) encompass all the music entities that fall under their country, regardless whether these entities are commercial, non-commercial or amateurs. IFACCA is globally recognized by its strategic partners, such as UNESCO, a United Nations agency representing 195 member states and the European Commission.²¹ The UNESCO strategic partnership²² is relevant, especially since UNESCO founded the International Music Council (the “IMC”) in 1949, which represents over 200 million music constituents from over 150 countries and over 1000 organizations globally.²³

¹⁹ <https://newgtlds.icann.org/en/applicants/agb/guidebook-full-11jan12-en.pdf>

²⁰ http://www.ifacca.org/membership/current_members/

²¹ http://www.ifacca.org/strategic_partners/

²² http://www.ifacca.org/strategic_partners/

²³ <http://www.imc-cim.org/about-imc-separator/who-we-are.html>

Government activities in the clearly delineated and organized “Music Community” include setting statutory royalty rates. For example, in the United States, mechanical royalties are based on a “statutory rate” set by the U.S. Congress. This rate is increased to follow changes in the economy, usually based on the Consumer Price Index. Currently, the mechanical statutory rate is \$0.091 for songs five minutes or less in length or \$.0175 per minute for songs that are over five minutes long.²⁴

Ministries of culture and arts councils (that comprise IFACCA’s membership) support musicians, musical performances, independent music artists, non-commercial musical expression and education in their respective countries. The 165 ministries of culture, arts councils and affiliates that comprise IFACCA’s membership support the “performing arts” and music specifically. Without the financial and logistical support of arts councils and the ministries of culture, the music community would be adversely affected, and in some countries, may not exist in any appreciable manner. For example, the Ministry of Culture 2011 budget for the small country state of Cyprus for culture funding was €34,876,522 with critical support of music activities.²⁵ Other small government Ministries of Culture, such as Albania,²⁶ or government Ministries of Culture and Arts Councils from countries with larger populations, such as India,²⁷ all provide critical support and substantial advocacy for music. Other examples include government institutions collaborating and advocating music through their funded country-based pavilion initiatives at Midem, the world’s largest music conference.²⁸

Government ministries and arts councils provide critical support for the Music Community, including commercial music organizations. By way of example, government ministries’ and arts councils’ substantial connection to and support of “music” is noted in the reports of funding and support for music. Some examples to showcase the degree of power of the IFACCA’s membership towards the string and global and national music are music investment and music funding (Annual reports by governments and councils):

- New Zealand Ministry of Culture has funded significant music projects. Some include the REAL New Zealand Music Tour (\$415,000), the New Zealand String Quartet (\$150,000) and New Zealand Music Commission: (\$1,378,000).²⁹
- The Australian Government/Council For The Arts invested \$51.2 million for the nation’s orchestras; \$21.6 million for opera; \$10.8 million for other music artists and

²⁴ U.S Copyright Office, <http://www.copyright.gov/carp/m200a.html>

²⁵ 2011 Annual Report for Cyprus Ministry of Culture, Section 1.2 “Music”

(http://www.moec.gov.cy/en/annual_reports/annual_report_2011_en.pdf). Activities include Music Performances in Cyprus (1.2.1) and Abroad (1.2.2), Subsidization of Paphos Aphrodite Festival (1.2.3), Music Publications (1.2.4), Subsidization and Purchases of Digital Records (1.2.5), Promotion for Cypriot musical creativity abroad (1.2.6), Cyprus Symphony Orchestra Foundation (1.2.7), Music Information Centre (1.2.8), Developing Music Education (1.2.9), Organising of the 1st Musicological Symposium (1.2.10) and Musical Festivities for the European Volunteerism Year (1.2.11)

²⁶ http://www.culturalpolicies.net/down/albania_012011.pdf

²⁷ 2010-11 Annual Report from India Ministry of Culture, [http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011\(Eng\).pdf](http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011(Eng).pdf)

²⁸ <http://my.midem.com/en/contact-us/pavilion-representatives/>

²⁹ 2011 Annual Report from New Zealand Ministry of Culture:

[http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20\(D-0448383\).PDF](http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20(D-0448383).PDF)

organizations; \$13.1 million for multi-platform artists and organizations; and \$4 million in miscellaneous funding, including sector building and audience development initiatives and programs.³⁰

- Canada Council for the Arts is Canada’s national, arts funding agency investing \$28 million in its Canada Council Musical Instrument Bank (Page 16) and \$28,156,000 in Music Arts Programs (Page 66).³¹ The Government of Canada also renewed its annual investment of \$27.6 million over five years in the Canada Music Fund.³²
- The United Kingdom Department for Culture and Education (DfE) will fund music education at significant levels: £77 million, £65 million and £60 million will be available in the three years from April 2012.³³
- The United States National Endowment of the Arts has awarded more than \$4 billion to support the arts since its inception³⁴ and has a strong focus on music as outlined in its Strategic Plan³⁵ with Congress requested to provide \$154,465,000 for fiscal year 2014.³⁶
- The National Arts Council of South Africa invested 2,536,131 ZAR in Music and 9,995,000 ZAR in Orchestras and has focused strongly on the “Strengthening of live indigenous music and advocating the revival of the live music circuit in South Africa”³⁷
- The Singapore Arts Council will fund \$10.2 million in the arts under its 2013 Grants Framework, including the Ding Yi Music Company and Siong Leng Musical Association.³⁸
- In 2011, the support for artistic activities by the Arts Council of Finland was €32.4 million of which €4,921,850 was awarded to music.³⁹

Each of IFACCA’s members has a clear association with, and mandate to support the music arts in their countries. In most countries, their ministry of culture/arts council is the largest funder and marketing supporter of the music arts.

³⁰ 2011 Annual Report for the Australia Council for the Arts, http://www.australiacouncil.gov.au/data/assets/pdf_file/0016/142351/Australia-Council-Annual-Report-201112.pdf, Page 28

³¹ 2011 Annual Report for Canada Council for the Arts, http://www.canadacouncil.ca/NR/rdoonlyres/6F7549BB-F4E5-4B8B-95F4-1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf

³² <http://www.pch.gc.ca/eng/1294862453819/1294862453821>

³³ Department for Culture, The Importance of Music, A National Plan for Music Education, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/180973/DFE-00086-2011.pdf, Page 4, 2011

³⁴ 2011 Annual report for the National Endowment of the Arts, <http://www.nea.gov/about/11Annual/2011-NEA-Annual-Report.pdf>, Page 2

³⁵ NEA Strategic Plan 2012-2016, www.arts.gov/about/Budget/NEAStrategicPlan2012-2016.pdf

³⁶ http://www.ifacca.org/national_agency_news/2013/04/10/us-president-requests-154465000-neh-2014/

³⁷ 2010-2011 Annual Report for the National Arts Council South Africa, National Arts Council South Africa, <http://www.nac.org.za/media/publications/AR%2010-11%20NAC.PDF/download>, Page 11. Also Mmino, the South African – Norwegian Education Music Programme, solely funds music projects funding a total of 294 projects. Thirteen projects were allocated funding for a total of R1,680,600 of which R1,381,000 went towards music educational and R299,600 to exchange projects (Page 10)

³⁸ Singapore Arts Council, <http://www.nac.gov.sg/media-centre/news-releases/news-detail?id=c2db15e2-c319-40ec-939c-d58735d0a91c>

³⁹ <http://www.taiteenkeskustoimikunta.fi/documents/10162/31704/TY+tilastotiedote+1+12+.pdf>, Page 1 and Page

Another clear example of an “entity dedicated to the community” with members that cover hundreds of millions of music constituents with formal boundaries is A2IM, the American Association of Independent Music. A2IM has two types of members: U.S independent Label members and Associate members. A2IM membership for Labels and Associates is invoked formally through an application and if accepted would require annual membership dues.⁴⁰

The reach of A2IM Associate⁴¹ membership covers hundreds of millions of entities (i.e. the reach of A2IM’s total membership “geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents – See Application Answer to Question 20a).

Organized and strictly delineated communities related to music that are A2IM members include:

- **Apple iTunes**⁴² – iTunes accounts for 63% of global digital music market⁴³ - a majority – with a registered community of 800 million registered members⁴⁴ available in 119 countries who abide to strict terms of service and boundaries⁴⁵ and have downloaded over 25 billion songs⁴⁶ from iTunes’ catalog of over 43 million songs⁴⁷ covering a global music community, regardless of genre or whether the community entities are amateur, professional, commercial or non-commercial. To add music to iTunes, all music artists must have a formal membership with iTunes via an Apple ID registration, which includes a current credit card on file.⁴⁸
- **Pandora**⁴⁹ – Pandora is the world’s largest streaming music radio with a community of over 250 million registered members.⁵⁰
- **Spotify**⁵¹ – Spotify is the world’s largest music streaming community with over 50 million active registered members in 58 countries and over 30 million songs. The music community uploads 20,000 songs every day.⁵²
- **Vevo**⁵³ – Vevo is the world’s leading all-premium music video community and platform with over 8 billion monthly views globally.⁵⁴

⁴⁰ <http://a2im.org/about-joining/>

⁴¹ <http://a2im.org/groups/tag/associate+members/>

⁴² <http://a2im.org/groups/itunes>

⁴³ <http://appleinsider.com/articles/13/04/16/apples-itunes-rules-digital-music-market-with-63-share>

⁴⁴ <http://www.npr.org/blogs/therecord/2015/01/06/375173595/with-downloads-in-decline-can-itunes-adapt>

⁴⁵ <http://www.apple.com/legal/internet-services/itunes/ww/index.html>

⁴⁶ <http://www.apple.com/pr/library/2013/02/06iTunes-Store-Sets-New-Record-with-25-Billion-Songs-Sold.html>

⁴⁷ <https://www.apple.com/itunes/features/>

⁴⁸ <https://www.apple.com/itunes/working-itunes/sell-content/music-faq.html>

⁴⁹ <http://a2im.org/groups/pandora>

⁵⁰ <http://www.cnet.com/news/like-a-rolling-milestone-pandora-hits-250m-registered-users/> and <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MTkxNTM1fENoaWxkSUQ9LTF8VHlwZT0z&t=1>, Pg.9

⁵¹ <http://a2im.org/groups/spotify>

⁵² <https://press.spotify.com/us/information/>

⁵³ <http://a2im.org/groups/vevo/>

- **Youtube**⁵⁵ – Youtube is the world’s largest music video streaming community with millions of music creators -- amateur, professional, commercial or non-commercial -- and over 1 billion registered members covering all regions globally. 6 billion hours of video is watched every month on Youtube,⁵⁶ of which 38.4% is music-related.⁵⁷
- **Reverbnation**⁵⁸ – Reverbnation⁵⁹ is one of the world’s largest music community and a leading music distributor with over 3.87 million musicians, venues labels and industry professionals covering every country globally. The Reverbnation community grows by over 50,000 artists, bands, labels and industry professionals monthly.
- **BMG**⁶⁰ – BMG is focused on the management of music publishing and recording rights. BMG has an international presence and represents over 2.5 million music rights globally.⁶¹

A2IM also includes members that are associated with global government agencies which exclusively represent substantial music economies and music members, such as France (BureauExport⁶²), China (China Audio Video Association⁶³) and Germany (Initiative Musik).⁶⁴ A2IM also has Affiliate⁶⁵ associations within the global music community. These include Affiliates such as MusicFirst,⁶⁶ the Copyright Alliance,⁶⁷ the Worldwide Independent Network (WIN)⁶⁸ and Merlin.⁶⁹

A2IM also represents a recognized Music Coalition representing the interests of the Global Independent Music Community.⁷⁰ The A2IM Coalition includes Merlin, a global rights agency for the independent label sector, representing over 20,000 labels from 39 countries, Worldwide Independent Network (representing label creators in over 20 countries), Association of Independent Music (representing largest and most respected labels in the world), and IMPALA (Independent Music Companies Association on behalf of over 4,000 independent music companies and national associations across Europe, representing 99% of music actors in Europe which are micro, small and medium sized enterprises.

⁵⁴ <http://www.vevo.com/c/EN/US/about>

⁵⁵ <http://a2im.org/groups/youtube/>

⁵⁶ <https://www.youtube.com/yt/press/statistics.html>

⁵⁷ http://www.researchandmarkets.com/reports/2092499/internet_video_2011_2014_view_share_site_and

⁵⁸ <http://a2im.org/groups/reverb-nation/>

⁵⁹ <http://www.reverbnation.com/about>

⁶⁰ <http://a2im.org/groups/bmg-rights/>

⁶¹ <http://www.bmg.com/category/about-us/history/>

⁶² <http://a2im.org/groups/french-music-export-office>

⁶³ <http://a2im.org/groups/china-audio-video-association-cava>

⁶⁴ <http://a2im.org/groups/initiative-musik-gmbh>

⁶⁵ <http://a2im.org/groups/tag/associate+members/>

⁶⁶ <http://musicfirstcoalition.org/coalition>, The musicFIRST Coalition, with founding members A2IM, RIAA, and Recording Academy represents musicians, artists, managers, music businesses, and performance right advocates.

⁶⁷ <http://www.copyrightalliance.org/members>

⁶⁸ <http://www.winformusic.org>

⁶⁹ <http://www.merlinnetwork.org>

⁷⁰ <https://www.icann.org/en/system/files/correspondence/bengloff-to-chehade-et-al-20aug14-en.pdf> and <https://www.icann.org/en/system/files/correspondence/bengloff-to-crocker-et-al-07mar15-en.pdf>

Cumulatively, A2IM's Label and Associate Membership, A2IM's Affiliates and the A2IM's Global Independent Music Community Coalition, covers a majority of the global music community. Its cumulative membership is in the hundreds of millions of entities with formal boundaries belonging to strictly organized and delineated communities related to music as per the Community Definition and Size (See Application answer to Question 20a).

Another global Music Community Coalition led by the RIAA "on behalf of over 15 national and international trade associations" also expressed its support for .MUSIC to be under a "community" application model, including encouraging statements in support of DotMusic's policies that stated that the coalition "was encouraged to see" that DotMusic "included several measures to deter and address copyright infringement within that TLD." The "coalition members represent the people that write, sing, record, manufacture, distribute and/or license over 80% of the world's music"⁷¹ – a majority of global music.⁷²

Collectively, the DotMusic application received support from the largest coalition of music community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support⁷³ from institutions/organizations representing a majority of the Community addressed. Music -- as commonly-known by the general public and experienced today -- would not be possible without these supporting, non-negligible and relevant organizations that have endorsed DotMusic.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Community Establishment* and *Community Endorsement* from the majority of the global Music Community as defined.

B) Nexus⁷⁴

According to the Applicant Guidebook ("AGB"), to receive the maximum score for Nexus, the applied-for string -- "music" -- must match the name of the community or be a well-known short-form or abbreviation of the community name.

The *Nexus* of the "Music Community" entirely matches the applied-for "music" string because it represents the entire global Music Community as commonly-known and perceived by the general public. This definition allows for all constituents with a requisite awareness of the Community

⁷¹ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.1

⁷² <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.3, Appendix A

⁷³ <http://music.us/supporters>

⁷⁴ See <http://music.us/nexus>

defined to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination. The definition of the Community requires that members have an active, non-tangential relationship with the applied-for string and the requisite awareness of the music community they identify with as part of the registration process. It is clear that the general public will directly associate and equate the string with the Community as defined by DotMusic. There is no possibility of overreaching beyond the definition or allowing unrelated non-music entities to be included as part of the Community.

Community members may register a .MUSIC by either:

- 1) Identifying that they belong to a Music Community Member Organization (“MCMO”); or
- 2) Identifying the community they belong to, which is consistent with the definition of the Community: “the strictly delineated and organized logical alliance of communities of similar nature related to music.”

All Community members are aware of and recognize their inclusion in the defined Community by identifying which clearly defined community they belong to and have an active participation in. The *nexus* of the applied-for string ensures inclusion of the entire global community that the string represents while excluding unrelated-entities not associated with the string. This way there is a clear match and alignment between the “music” sting and the Community defined.

While the exact size of the global Music Community as defined is unknown (there is no empirical evidence providing an exact, finite number because amateur entities are also included in the Community’s definition), it is in the considerable millions as explicitly stated in the DotMusic Application. DotMusic’s definition of the Community and mutually-inclusive Registration Policies ensure that eligible members are only music-related and associated with the string. This is because the string identifies all constituents involved in music. Music-only participation optimizes the relevancy of .MUSIC domains to the string and entirely matches the *nexus* between the string and Community defined. According to DotMusic, the Community *definition, eligibility criteria and content and use* requirements ensure that peripheral industries and entities not related to music are excluded so that the string and the defined Community matches and aligns in a consistent manner consistent with DotMusic’s community-based purpose i.e. only entities with music-related activities are able to register .MUSIC domains.

Membership aligns with the *nexus* of the Community and the string, which is explicitly relevant to music. The string as defined in the application demonstrates uniqueness because it has no other significant meaning beyond identifying the community described in the application. According to DotMusic’s application, any tangential or implicit association with the *nexus* of the Community and the string is not regarded as a delineated membership since it would be considered unclear, dispersed or unbound. Such unclear, dispersed or unbound tangential

relationships with the defined “music” Community and applied-for “music” string would not constitute a qualifying Community membership and would be ineligible for registration.

The inclusion of every music constituent type is paramount to the purpose of the string. Every type of music constituent critically contributes to the function and operation of the music sector within a regulated framework given the symbiotic overlapping nature of the Community as defined and structured. Music would not function as it does today without the participation of all music constituent types which cumulatively match the string with the Community definition.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Nexus*.

Respectfully Submitted,



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RESEARCH INTERESTS

Organization theory; cultural innovation, production, and consumption; institutional logics, complexity, and contradiction; nonprofit governance and strategy, esp. in the performing arts

PUBLICATIONS

Refereed Articles, Conference Proceedings, & Book Chapters

Noah Askin and Michael Mauskapf. (2014). "Cultural Attributes and Their Influence on Consumption Patterns in Popular Music." *Lecture Notes in Computer Science (LNCS)*, 8851: 508–530.

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Michael Mauskapf, William Ocasio, and Edward Zajac. "Dissonance as a Source of Change at the New York Philharmonic, 1842–1928" (under review at *AJS*)

Working Papers & Research in Progress

Noah Askin and Michael Mauskapf. "Attribute-based Cultural Networks and their Role in Shaping the Evaluation of Popular Music" (Target: *Sociological Science*)

Rachel Ruttan, Michael Mauskapf, and Loran Nordgren. "The Double-Edged Sword of Institutional Complexity and its Effects on Individual Agency" (Target: *AMJ*)

"Using Big Data to Study the Dynamics of Innovation, Collaboration, and Competition in Popular Music" (with Noah Askin, Brian Uzzi, Agnes Horvat, and Klaus Weber)

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Commissioned entries on ~20 conductors, administrators, and musical organizations, *The Grove Dictionary of American Music*, Second Edition. New York: Oxford University Press. Program notes for the Detroit Symphony Orchestra and other performing arts organizations

CONFERENCE PRESENTATIONS

"Cultural Attributes and their Influence on Consumption Patterns in Popular Music," SocInfo2014,

Barcelona [November 2014] *Winner of the 2014 Best Presentation Award; Best Paper Award Runner-Up*

"Using Big Data to Understand Consumption Dynamics in Popular Music: Evidence from the *Billboard Hot 100*," Annual Meeting of the Academy of Management (AOM), Philadelphia, PA [August 2014]

Co-Organizer, Symposium on "State of the Arts: New Frontiers in the Analysis of Culture and Cultural Organizations," AOM, Philadelphia, PA [August 2014]

"The Effects of Institutional Complexity on Individual Agency," AOM, Philadelphia, PA [August 2014]

"History, Society, and Institutions: The Role of Collective Memory in the Formation of Societal Logics," European Group on Organizational Studies (EGOS), Rotterdam [July 2014]

"The Emergence and Persistence of Institutional Dissonance at the New York Philharmonic, 1842–1928," AOM, Orlando, FL [August 2013]

"The Effects of Institutional Complexity on Creative Cognition," AOM, Orlando, FL [August 2013]

"The Generation and Diffusion of Innovation in Cultural Networks," EGOS, Montreal [July 2013]

"The Effects of Institutional Complexity on Creative Cognition," EGOS, Montreal [July 2013]

"The Evolution of Philanthropy and the Generation and Allocation of Resources," *The Inaugural Paul R. Lawrence Conference: Connecting Rigor and Relevance in Institutional Analysis*, Harvard Business School [June 2013]

"Harmony and Disharmony Within and Between Logics: Evidence from the New York Philharmonic, 1902–12," conference on *Organizing Institutions: Creating, Enacting and Reacting to Institutional Logics*, Banff, Canada [June 2012]

“New York Goes Corporate: The Philharmonic’s Shift to a Nonprofit Operating Model,” Annual Meeting of the American Musicological Society, San Francisco [November 2011] *Covered by the San Francisco Examiner*

“Music for Whose Good?: El Sistema in America,” GAMMA-UT Conference on Music of the Americas, University of Texas at Austin [March 2011]

“‘Fighting the Good Fight’: Robert Whitney, Charles Farnsley, and the Louisville Orchestra New Music Project,” AMS Midwest Chapter, Chicago [October 2010] *Winner of the 2011 Best Student Paper Award*

“What Inhibits Organizational Change?: The Study of an Orchestra on the Brink,” Annual Meeting of the Academy of Management, Montreal [August 2010]

“An American Experiment: The Louisville New Music Project,” Conference on *The Symphony Orchestra as Cultural Phenomenon*, Institute for Musical Research, London [July 2010]

“The Liability of Being Elite: American Orchestras in the 20th Century,” Annual Meeting of the Society for American Music, Ottawa [March 2010]

“Bartók’s Concerto for Orchestra and the Rise of Collective Virtuosity,” Annual Meeting of the Society for American Music, Denver, CO [March 2009]

INVITED TALKS & WORKSHOP

“A New Approach to Studying Production and Consumption Dynamics in Popular Music,” The Echo Nest & Spotify Headquarters, Boston, MA [November 2014]; also presented at Northwestern Institute on Complex Systems (NICO) Brownbag, Northwestern University [October 2014]; Culture Workshop, Northwestern University Sociology Dept. [October 2014]; Knowledge Lab, University of Chicago Sociology Dept. [July 2014]

“American Symphony Orchestras: Past, Present, and Future,” MIT Music Dept., Boston, MA [November 2014]; also presented at Oberlin College Musicology Dept., Oberlin, OH [April 2013]; Chicago College of Performing Arts (CCPA), Roosevelt University, Chicago, IL [December 2011]

“Untangling the Symphony Orchestra: An Organizational Perspective,” Michigan Interdisciplinary Music Forum, Ann Arbor, MI [April 2011]

“ReImagining Engagement in the Performing Arts: A Case Study,” Arts of Citizenship Forum, University of Michigan, Ann Arbor [November 2010]

Moderator and panelist for *American Orchestras Summit: Creating Partnerships in Research and Performance*, University of Michigan, Ann Arbor [January 2010]

“Orchestras as Organizations,” Interdisciplinary Committee on Organizational Studies (ICOS) Lecture Series, Ross School of Business, University of Michigan, Ann Arbor, MI [Jan. 22, 2010]

Pre-concert lectures for performances by the New York Philharmonic, Chicago Symphony Orchestra and other performing arts organizations, [2008–present]

HONORS, AWARDS, & GRANTS

Best Presentation Award, SocInfo 2014

Best Paper Award, SocInfo 2014 (Runner-up)

Conference Travel Grant, The Graduate School, Northwestern University (2014, 2013)

Catalyst Grant, The Graduate School, Northwestern University (2013)

Finalist, Wiley Housewright Dissertation Award, Society for American Music (2012)

Rackham Humanities Candidacy Research Fellowship, University of Michigan (2011)

Rackham International Research Award, University of Michigan (2011; declined)

A-R Editions Award for Best Student Paper given at AMS Midwest (2010–11)

Arts of Citizenship Public Scholarship Fellow, University of Michigan (2010)

Glenn McGeoch Departmental Teaching Award, University of Michigan (2009–10)

Louise E. Cuyler Prize in Musicology, University of Michigan (2009–10)

Interdisciplinary Committee on Organizational Studies (ICOS) Conference Grant (Winter 2010)
Cuyler Travel Award, University of Michigan (2010)

Michigan Student Leadership Award (honorable mention 2009, 2010)

Rackham Summer Research Grant, University of Michigan (2008, 2010)

TEACHING EXPERIENCE

Northwestern University

Teaching Assistant, Management and Organizations (MORS) Department

Power in Organizations (Full and Part-Time MBA, Prof. William Ocasio) (2015, 2014, 2013)

Leadership in Organizations (Full and Part-Time MBA, Prof. Loran Nordgren) (2014, 2013)

Leading the Strategic Change Process (Executive MBA, Prof. Paul Hirsch) (2014, 2013)

Negotiations (Part-Time MBA, Prof. Nicole Stephens) (2014)

University of Michigan

Graduate Teaching Certificate, Center for Research on Learning and Teaching (2011)

Lecturer, Residential College

Classical Music in America (2010, 4.9/5.0)

Teaching Assistant, Musicology Department

Music Appreciation for non-music majors (2010, 4.8/5.0)
Popular Music survey for non-music majors (2009, 5.0/5.0)
American Music survey for music majors (2009, 5.0/5.0)
World Music survey for music majors (2008, 4.7/5.0)
Western Classical Music survey for music majors (2008, 4.8/5.0)

WORK EXPERIENCE

Symphony Bros., LLC (www.symphonybros.com)
Co-Founder and Managing Partner (2010–present)

University of Michigan, School of Music, Theatre & Dance, Ann Arbor, MI
Ed. Assistant to Jane Fulcher, *Oxford Handbook to the New Cultural History of Music* (2009–2011)
Ed. Assistant to Charles Garrett, *The Grove Dictionary of American Music*, 2nd Edition (2007–2010)

University Musical Society (UMS), Ann Arbor, MI
Audience Development Intern, Education Department (2009–2011)

Relâche Ensemble, Philadelphia, PA
Intern and Interim Executive Director (2006–2007)

University of Pennsylvania, Department of Music, Philadelphia, PA
Manager, College House Music Program (2004–2007)
Manager, Librarian, and Program annotator, University of Pennsylvania ensembles (2004–2007)

PROFESSIONAL SERVICE

The Academy
Member, Communications Committee, OMT Division (2013–present)
Co-Organizer & Contributor, The ASQ Blog (ASQblog.com) (2013–present)
Ad Hoc Reviewer, *Organization Science* and *Organizational Studies* (2012–present)

Northwestern University
Co-Organizer, SION Interdisciplinary Graduate Student Workshop (2012–present)
Chair, PhD Student Advisory Committee, MORS Dept. (2014–2015)
Member, PhD Student Admissions Committee, MORS Dept. (2013–2014)
Chair, PhD Student Social Committee, MORS Dept. (2012–2013)

University of Michigan
Executive Director and President, Arts Enterprise @ UM (2008–2010)
President, Michigan Interdisciplinary Music Society (2009–2010)

Other (Community, Arts and Culture)

Mentor, Minds Matter (<http://mindsmatterchicago.org/>) (2013–present)
Member, Board of Directors, Lake Shore Symphony Orchestra (2013–2015)

Member, Board of Directors, Arts Enterprise (www.artsenterprise.com) (2010–2012)
Occasional source for *Bloomberg News* and *The Tennessean* (2011–present)
Inaugural EmcArts Blogging Fellow (2011)
Member, Cultural Leaders Forum, Ann Arbor Arts Alliance (2008)

PROFESSIONAL MEMBERSHIPS

American Sociological Association (since 2014)
European Group on Organizational Studies (since 2013)
Academy of Management (since 2010)
American Musicological Society (since 2007)
League of American Orchestras (since 2007)
Society for American Music (since 2007)

WEBSITE(S)

<http://www.kellogg.northwestern.edu/faculty/mauskapf/index.htm>
CV: <http://www.kellogg.northwestern.edu/faculty/mauskapf/CV2014.pdf>

Re: Expert Testimony on (i) Community Establishment; (ii) Nexus; and (iii) Support for DotMusic’s Community-Based Application¹ for .MUSIC (Application ID 1-1115-14110)

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

Please accept this letter to verify the following facts: (i) the Music Community’s *Establishment* as defined by DotMusic; (2) the matching *Nexus* between the “music” Community and the “music” string (or top-level domain); and (3) that DotMusic possesses documented *Support* from organizations representing a majority of the global Music Community addressed and defined.

Please see my credentials attached hereto that identify my level of expertise and specialized knowledge with respect to music.

SUMMARY

Based upon my knowledge of music, the music community and DotMusic’s public statements concerning their .MUSIC community application, DotMusic has established the following facts:

- 1) Its Community definition recognizes the cohesive, symbiotic and overlapping nature of the global Music Community. The definition includes those associated with commercial and non-commercial creation, performance, marketing and distribution of music;
- 2) “Music Community” members have the requisite awareness and recognition of the interdependency, overlapping and cohesive nature of each “organized community of similar nature that relates to music.” These organized and aligned communities are closely united and make “music” as we know it today. It is this self-awareness and interdependence that gives the “Music Community” its strength. With exponential growth of the Internet, mobile and the Domain Name System (DNS), the “Music Community’s” use and reliance on the Internet to create, market and disseminate music-related content, products, services and activities will continue to grow;
- 3) The “Music Community” functions in a regulated sector with global copyright protections – it is clear that the “community,” as defined, implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate a globally-recognized set of standards for

¹ <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1392>

the protection of the “Music Community” member rights with relation to their copyrighted music works around the world;

4) The “Music” Community -- as defined by DotMusic -- has at least one entity dedicated to the community supporting DotMusic’s application. Such documented *Support* includes several “international federation of national communities of a similar nature,” music coalitions and others that are strongly associated with “music,” which represent a majority of the Community with considerable millions of members worldwide.²

5) The *Nexus* of the “music” Community matches the “music” applied-for string because it represents the entire global Music Community – a community that pre-existed 2007 with a size in the considerable millions of constituents. The “Music Community” definition -- which incorporates the strict fundamental attributes of a closely united Community definition that is “organized” and “delineated” -- ensures that all of its constituent members have a requisite awareness of the community as defined, including both commercial and non-commercial stakeholders, to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination.

6) DotMusic has received support from the largest coalition of Music Community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community. Cumulatively, DotMusic possesses documented support³ from institutions/organizations representing a majority of the defined and recognized Community.

There is substantive evidence that DotMusic fulfills the *Nexus, Community Establishment and Support* criteria for the “Music” string. The inclusion and representation of every music constituent type is paramount to the articulated purpose of the string. DotMusic and its application’s global Music Community supporters substantiate that every type of music constituent contributes to the function and operation of the music sector within a regulated framework. The symbiotic nature of the Community as defined and structured means that “Music” would not function as it does today without the participation of all music constituent types that interconnect to match the “music” string with the “music” Community definition.

² <http://music.us/supporters>

³ <http://music.us/supporters>

ASSESSMENT OF COMMUNITY DEFINITION, ESTABLISHMENT AND NEXUS

A) *Music Community Definition, Establishment & Community Endorsement*⁴

DotMusic’s definition of the “Music Community” as a “strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music” (See Application, 20a) is factually accurate and representative of the “Music Community.” Community characteristics include:

i) An Organized, Cohesive, Interdependent Logically-Allied Community:

The “Music Community” definition covers the regulated, interdependent and cohesive nature of the music sector that exists today. “Music Community” members have the requisite awareness and recognition of the interdependent, overlapping and cohesive nature of each “organized community of similar nature that relates to music” that comprises the “Music Community.” Without such cohesiveness and interdependency, the defined “Music” Community matching the applied-for string (“Music”) would not be able to function in its regulated sector, a “Music” regulated sector that was publicly recognized by both ICANN and the Government Advisory Committee.⁵

As a result, the Music Community as defined is “closely united” (As per the definition of “cohesion” according to Merriam-Webster dictionary⁶) or “united or form a whole” (As per the definition of the word “cohesion” according to Oxford Dictionaries⁷).

The “Music Community” as defined (a “strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music”) establishes that:

- (1) There is an awareness and recognition among its members;
- (2) The organized and delineated logical alliance of communities exists; and
- (3) The Community is “closely united” and “interdependent” (i.e. Each “organized community of similar nature that relates to music” which is part of the “logical alliance of communities that relate to music” is not mutually exclusive).

In short, the applied-for string (“Music”) matches the name of the “Music” Community as defined by DotMusic’s application. DotMusic’s “Music Community” definition accurately represents the common definition of the “Music Community,” which is confirmed by Wikipedia.

⁴ See <http://music.us/establishment>

⁵ <https://www.icann.org/en/system/files/bm/briefing-materials-2-05feb14-en.pdf>, Pg.3

⁶ <http://www.merriam-webster.com/dictionary/cohesion>

⁷ http://www.oxforddictionaries.com/us/definition/american_english/cohesion

According to Wikipedia:⁸

Music community is defined as a logical alliance of interdependent communities that are related to music, which include commercial participants...and non-commercial participants...and consists of an “ensemble of practices and institutions that make possible and regulate the production, distribution and consumption of music”...UNESCO identifies the music community as a “community of identity” implying common identifiable characteristics and cohesive attributes such as sharing a music culture, norms and subscribing to common ideals related to music...The music community is not defined as much by demographic indicators such as race, gender, and income level, as it is by common values, cohesive norms and interconnected structures to build a community identity. It refers to music-related individuals and organisations in a shared environment with shared understandings and practices, modes of production and distribution. The shared organisation of collective musical activities, identity and community value is created as result of infrastructure and a shared set of common values...Many studies outline the historical, cultural, and spatial significance of the music community, including how its identity is formed through musical practices. The music community shares a cohesive and interconnected structure of artistic expression, with diverse subcultures and socio-economic interactions...subscribing to common ideals. Under such structured context music consumption becomes possible regardless whether the transaction is commercial and non-commercial.⁹

ii) *An Aware, Pre-Existing and Recognized Community of Considerable Millions Worldwide:*

DotMusic’s definition of the Community covers all Community members associated with the string, each with a requisite awareness of the Community that can be validated through their natural association with a particular music-related community that they clearly identify with. According to DotMusic, all Music Community members must identify their music-related community in order to demonstrate their requisite awareness of the defined Community as part of the .MUSIC registration and validation process.

⁸ Wikipedia is ranked 6th among the ten most popular websites (Alexa, Retrieved March 23, 2015 from <http://www.alexacom/siteinfo/wikipedia.org>) and constitutes the Internet's largest, most frequently updated and popular general reference work (See OECD, OECD Internet Economy Outlook 2012, OECD Publishing, http://www.oecd-ilibrary.org/science-and-technology/oecd-internet-economy-outlook-2012_9789264086463-en,Pg.172) that compares favorably to the accuracy of other encyclopedias (such as the Britannica) according to a 2012 study conducted in partnership with Oxford University (See <http://blog.wikimedia.org/2012/08/02/seven-years-after-nature-pilot-study-compares-wikipedia-favorably-to-other-encyclopedias-in-three-languages>).

⁹ Music Community. In *Wikipedia*. Retrieved March 23, 2015, from https://en.wikipedia.org/wiki/Music_community

According to DotMusic, the Music Community’s geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents (Application Answer to Question 20a).

According to DotMusic, “registrants will be verified using Community-organized, unified “criteria taken from holistic perspective with due regard of Community particularities” that “invoke a formal membership (Application Answer to Question 20a).” The defined Community represents all music-related entities with a clear and straightforward membership with the Community involved in the legal production, performance, promotion, and distribution of music worldwide. According to DotMusic, the Music Community members must have an active, non-tangential relationship with the applied-for string “music” and also have the requisite awareness of the music-related community that they are a part of by specifically identifying it as part of the registration and validation process (i.e. upon successful registration and validation, each community member will be given a unique community identification number that will automatically associate them with their identified community and the “music” string).

DotMusic’s Community definition matches the applied-for string because it allows both commercial and non-commercial stakeholders to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination/exclusion. Given the regulated sector of the community, it is clear that the “Music Community” as defined implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate cohesive and globally-recognized set of standards for the protection of the music community members’ rights with relation to their copyrighted music works around the world.¹⁰

The Berne Convention for the Protection of Literary and Artistic Works¹¹ provides that each of the 168 contracting parties¹² (representing an overwhelming majority of the world’s population) provides automatic protection for music works first published in other countries of the Berne union and for unpublished music works whose authors are citizens of or resident in such other countries.¹³ This means that if a Music Community member’s copyright rights are violated in any other signatory country’s jurisdiction, then the music community member will have the music copyright rights given by that country. Music Community members are clearly aware of the collective Community’s rights, which could not be made possible without these cohesive and globally-recognized set of standards. If such standards were not coherent or enforced then music would not be able to exist in its current form and the industry component of the Music Community sector would not exist. As such, the Community’s *Establishment* and definition is “cohesive” and hence cannot be construed since the Community is a logical alliance of music

¹⁰ http://www.rightsdirect.com/content/rd/en/toolbar/copyright_education/International_Copyright_Basics.html

¹¹ http://www.wipo.int/treaties/en/text.jsp?file_id=283698

¹² http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=15

¹³ <http://www.britannica.com/EBchecked/topic/62482/Berne-Convention>

communities that establish a clearly delineated and organized Community structure that is “closely united” and functions as a “whole”

Further evidence to substantiate the cohesive, symbiotic and overlapping nature of the Community, includes other globally-recognized standards and classification systems, which identify who the individual songwriters, publishers and rights holders are and which songs they are associated with so that Community members are appropriately compensated, regardless of whether the constituent is a commercial, non-commercial or amateur entity. The “music” string is commonly used in classification systems such as ISMN,¹⁴ ISRC,¹⁵ ISWC,¹⁶ ISNI.¹⁷ (Application Answer to Question 20a). For example, if a music entity would like to distribute their music, either commercially or for free, then an ISRC can be assigned to globally identify any specific music work. An ISRC, which facilitates efficient music discovery and community member payment, is constructed from 12 characters representing country, registrant, year of registration and designation (i.e. the serial number assigned by the registrant). With respect to domains, an equivalent system that relates to identifying a specific domain’s registrant and other relevant information pertaining to the domain is WHOIS. Domain registrants are required by ICANN “to provide accurate WHOIS contact data” or else their domain “registration may be suspended or even cancelled”.¹⁸

Without such Music Community “cohesion” and standardized systems functioning in its regulated sector, the Music Community would not be able to create, market and distribute their music. By the same token, fans would not be able to identify the music they are listening to with a specific music artist, regardless of whether the listening activity or behavior is commercial or non-commercial in nature. The socio-economic structure that characterizes “music” as commonly-known today would be non-existent without these organized and delineated elements that commonly define the Community.

¹⁴ The International Standard Music Number (ISMN) is a unique number for the identification of all notated music publications from all over the world. The ISMN is an ISO certified global standard number (ISO 10957:2009). See <http://www.ismn-international.org/whatis.html> and

http://www.iso.org/iso/home/store/catalogue_ics/catalogue_detail_ics.htm?csnumber=43173

¹⁵ The ISRC (International Standard Recording Code) is the international identification system for sound recordings and music video recordings. The ISRC is an ISO certified global standard number (ISO 3901:2001) and is managed by the IFPI. See <http://isrc.ifpi.org>, <https://www.usisrc.org/about/index.html> and http://www.iso.org/iso/catalogue_detail?csnumber=23401

¹⁶ The ISWC (International Standard Musical Work Code) is a unique, permanent and internationally recognized reference number for the identification of musical works. The ISWC has been approved by ISO (International Organization for Standardisation) as a global standard (ISO 15707:2001) and is managed by CISAC. See <http://www.iswc.org/en/faq.html> and http://www.iso.org/iso/catalogue_detail?csnumber=28780

¹⁷ The International Standard Name Identifier (ISNI) is the ISO certified global standard number (ISO 27729) for identifying the millions of contributors to creative works and those active in their distribution. ISNI holds public records of over 8 million identities and 490,000 organizations. See <http://www.isni.org/> and http://www.iso.org/iso/catalogue_detail?csnumber=44292

¹⁸ <https://whois.icann.org/en/about-whois> and <https://www.icann.org/resources/pages/faqs-f0-2012-02-25-en>

iii) International Federations and Organizations Dedicated to Community Functions:

According to ICANN’s Applicant Guidebook (“AGB”)¹⁹: *“With respect to “Delineation” and “Extension,” it should be noted that a community can consist of...a logical alliance of communities (for example, an international federation of national communities of a similar nature... viable as such, provided the requisite awareness and recognition of the community is at hand among the members.”* (AGB, 4-12). The community as defined in the DotMusic application has at least one entity mainly dedicated to the community which has supported DotMusic, which include several “international federation of national communities of a similar nature” relating to music, music coalitions and other relevant and non-negligible music organizations.

One of these entities include the only international federation of national communities relating to government culture agencies and arts councils, which has an integral association with music globally: the International Federation of Arts Councils and Culture Agencies (IFACCA).

IFACCA is the only international federation that represents government culture agencies and arts councils globally. These national communities are governmental institutions that play a pivotal role with respect to music.²⁰ IFACCA’s members cover the majority of music entities globally, regardless of whether they are commercial, non-commercial or amateurs. Government ministry of culture and council agencies related to music cover a majority of the overall community with respect to headcount and geographic reach. The “Size” covered reaches over a hundred million music entities i.e. “considerable size with millions of constituents” per Application Answer to Question 20a.

The string “music” falls under the jurisdiction of each country’s Ministry of Culture governmental agency or arts/music council (emphasis added). The degree of power and influence of government ministry of culture and council agencies with respect to music surpasses any organization type since these agencies (i) provide the majority of funding for music-related activities; (ii) regulate copyright law; and (iii) encompass all the music entities that fall under their country, regardless whether these entities are commercial, non-commercial or amateurs. IFACCA is globally recognized by its strategic partners, such as UNESCO, a United Nations agency representing 195 member states and the European Commission.²¹ The UNESCO strategic partnership²² is relevant, especially since UNESCO founded the International Music Council (the “IMC”) in 1949, which represents over 200 million music constituents from over 150 countries and over 1000 organizations globally.²³

¹⁹ <https://newgtlds.icann.org/en/applicants/agb/guidebook-full-11jan12-en.pdf>

²⁰ http://www.ifacca.org/membership/current_members/

²¹ http://www.ifacca.org/strategic_partners/

²² http://www.ifacca.org/strategic_partners/

²³ <http://www.imc-cim.org/about-imc-separator/who-we-are.html>

Government activities in the clearly delineated and organized “Music Community” include setting statutory royalty rates. For example, in the United States, mechanical royalties are based on a “statutory rate” set by the U.S. Congress. This rate is increased to follow changes in the economy, usually based on the Consumer Price Index. Currently, the mechanical statutory rate is \$0.091 for songs five minutes or less in length or \$.0175 per minute for songs that are over five minutes long.²⁴

Ministries of culture and arts councils (that comprise IFACCA’s membership) support musicians, musical performances, independent music artists, non-commercial musical expression and education in their respective countries. The 165 ministries of culture, arts councils and affiliates that comprise IFACCA’s membership support the “performing arts” and music specifically. Without the financial and logistical support of arts councils and the ministries of culture, the music community would be adversely affected, and in some countries, may not exist in any appreciable manner. For example, the Ministry of Culture 2011 budget for the small country state of Cyprus for culture funding was €34,876,522 with critical support of music activities.²⁵ Other small government Ministries of Culture, such as Albania,²⁶ or government Ministries of Culture and Arts Councils from countries with larger populations, such as India,²⁷ all provide critical support and substantial advocacy for music. Other examples include government institutions collaborating and advocating music through their funded country-based pavilion initiatives at Midem, the world’s largest music conference.²⁸

Government ministries and arts councils provide critical support for the Music Community, including commercial music organizations. By way of example, government ministries’ and arts councils’ substantial connection to and support of “music” is noted in the reports of funding and support for music. Some examples to showcase the degree of power of the IFACCA’s membership towards the string and global and national music are music investment and music funding (Annual reports by governments and councils):

- New Zealand Ministry of Culture has funded significant music projects. Some include the REAL New Zealand Music Tour (\$415,000), the New Zealand String Quartet (\$150,000) and New Zealand Music Commission: (\$1,378,000).²⁹
- The Australian Government/Council For The Arts invested \$51.2 million for the nation’s orchestras; \$21.6 million for opera; \$10.8 million for other music artists and

²⁴ U.S. Copyright Office, <http://www.copyright.gov/carp/m200a.html>

²⁵ 2011 Annual Report for Cyprus Ministry of Culture, Section 1.2 “Music”

(http://www.moec.gov.cy/en/annual_reports/annual_report_2011_en.pdf). Activities include Music Performances in Cyprus (1.2.1) and Abroad (1.2.2), Subsidization of Paphos Aphrodite Festival (1.2.3), Music Publications (1.2.4), Subsidization and Purchases of Digital Records (1.2.5), Promotion for Cypriot musical creativity abroad (1.2.6), Cyprus Symphony Orchestra Foundation (1.2.7), Music Information Centre (1.2.8), Developing Music Education (1.2.9), Organising of the 1st Musicological Symposium (1.2.10) and Musical Festivities for the European Volunteerism Year (1.2.11)

²⁶ http://www.culturalpolicies.net/down/albania_012011.pdf

²⁷ 2010-11 Annual Report from India Ministry of Culture, [http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011\(Eng\).pdf](http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011(Eng).pdf)

²⁸ <http://my.midem.com/en/contact-us/pavilion-representatives/>

²⁹ 2011 Annual Report from New Zealand Ministry of Culture:

[http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20\(D-0448383\).PDF](http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20(D-0448383).PDF)

organizations; \$13.1 million for multi-platform artists and organizations; and \$4 million in miscellaneous funding, including sector building and audience development initiatives and programs.³⁰

- Canada Council for the Arts is Canada’s national, arts funding agency investing \$28 million in its Canada Council Musical Instrument Bank (Page 16) and \$28,156,000 in Music Arts Programs (Page 66).³¹ The Government of Canada also renewed its annual investment of \$27.6 million over five years in the Canada Music Fund.³²
- The United Kingdom Department for Culture and Education (DfE) will fund music education at significant levels: £77 million, £65 million and £60 million will be available in the three years from April 2012.³³
- The United States National Endowment of the Arts has awarded more than \$4 billion to support the arts since its inception³⁴ and has a strong focus on music as outlined in its Strategic Plan³⁵ with Congress requested to provide \$154,465,000 for fiscal year 2014.³⁶
- The National Arts Council of South Africa invested 2,536,131 ZAR in Music and 9,995,000 ZAR in Orchestras and has focused strongly on the “Strengthening of live indigenous music and advocating the revival of the live music circuit in South Africa”³⁷
- The Singapore Arts Council will fund \$10.2 million in the arts under its 2013 Grants Framework, including the Ding Yi Music Company and Siong Leng Musical Association.³⁸
- In 2011, the support for artistic activities by the Arts Council of Finland was €32.4 million of which €4,921,850 was awarded to music.³⁹

Each of IFACCA’s members has a clear association with, and mandate to support the music arts in their countries. In most countries, their ministry of culture/arts council is the largest funder and marketing supporter of the music arts.

³⁰ 2011 Annual Report for the Australia Council for the Arts, http://www.australiacouncil.gov.au/data/assets/pdf_file/0016/142351/Australia-Council-Annual-Report-201112.pdf, Page 28

³¹ 2011 Annual Report for Canada Council for the Arts, http://www.canadacouncil.ca/NR/rdoonlyres/6F7549BB-F4E5-4B8B-95F4-1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf

³² <http://www.pch.gc.ca/eng/1294862453819/1294862453821>

³³ Department for Culture, The Importance of Music, A National Plan for Music Education, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/180973/DFE-00086-2011.pdf, Page 4, 2011

³⁴ 2011 Annual report for the National Endowment of the Arts, <http://www.nea.gov/about/11Annual/2011-NEA-Annual-Report.pdf>, Page 2

³⁵ NEA Strategic Plan 2012-2016, www.arts.gov/about/Budget/NEAStrategicPlan2012-2016.pdf

³⁶ http://www.ifacca.org/national_agency_news/2013/04/10/us-president-requests-154465000-neh-2014/

³⁷ 2010-2011 Annual Report for the National Arts Council South Africa, National Arts Council South Africa, <http://www.nac.org.za/media/publications/AR%2010-11%20NAC.PDF/download>, Page 11. Also Mmino, the South African – Norwegian Education Music Programme, solely funds music projects funding a total of 294 projects. Thirteen projects were allocated funding for a total of R1,680,600 of which R1,381,000 went towards music educational and R299,600 to exchange projects (Page 10)

³⁸ Singapore Arts Council, <http://www.nac.gov.sg/media-centre/news-releases/news-detail?id=c2db15e2-c319-40ec-939c-d58735d0a91c>

³⁹ <http://www.taiteenkeskustoimikunta.fi/documents/10162/31704/TY+tilastotiedote+1+12+.pdf>, Page 1 and Page

Another clear example of an “entity dedicated to the community” with members that cover hundreds of millions of music constituents with formal boundaries is A2IM, the American Association of Independent Music. A2IM has two types of members: U.S independent Label members and Associate members. A2IM membership for Labels and Associates is invoked formally through an application and if accepted would require annual membership dues.⁴⁰

The reach of A2IM Associate⁴¹ membership covers hundreds of millions of entities (i.e. the reach of A2IM’s total membership “geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents – See Application Answer to Question 20a).

Organized and strictly delineated communities related to music that are A2IM members include:

- **Apple iTunes**⁴² – iTunes accounts for 63% of global digital music market⁴³ - a majority – with a registered community of 800 million registered members⁴⁴ available in 119 countries who abide to strict terms of service and boundaries⁴⁵ and have downloaded over 25 billion songs⁴⁶ from iTunes’ catalog of over 43 million songs⁴⁷ covering a global music community, regardless of genre or whether the community entities are amateur, professional, commercial or non-commercial. To add music to iTunes, all music artists must have a formal membership with iTunes via an Apple ID registration, which includes a current credit card on file.⁴⁸
- **Pandora**⁴⁹ – Pandora is the world’s largest streaming music radio with a community of over 250 million registered members.⁵⁰
- **Spotify**⁵¹ – Spotify is the world’s largest music streaming community with over 50 million active registered members in 58 countries and over 30 million songs. The music community uploads 20,000 songs every day.⁵²
- **Vevo**⁵³ – Vevo is the world’s leading all-premium music video community and platform with over 8 billion monthly views globally.⁵⁴

⁴⁰ <http://a2im.org/about-joining/>

⁴¹ <http://a2im.org/groups/tag/associate+members/>

⁴² <http://a2im.org/groups/itunes>

⁴³ <http://appleinsider.com/articles/13/04/16/apples-itunes-rules-digital-music-market-with-63-share>

⁴⁴ <http://www.npr.org/blogs/therecord/2015/01/06/375173595/with-downloads-in-decline-can-itunes-adapt>

⁴⁵ <http://www.apple.com/legal/internet-services/itunes/ww/index.html>

⁴⁶ <http://www.apple.com/pr/library/2013/02/06iTunes-Store-Sets-New-Record-with-25-Billion-Songs-Sold.html>

⁴⁷ <https://www.apple.com/itunes/features/>

⁴⁸ <https://www.apple.com/itunes/working-itunes/sell-content/music-faq.html>

⁴⁹ <http://a2im.org/groups/pandora>

⁵⁰ <http://www.cnet.com/news/like-a-rolling-milestone-pandora-hits-250m-registered-users/> and <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MTkxNTM1fENoaWxkSUQ9LTF8VHlwZT0z&t=1>, Pg.9

⁵¹ <http://a2im.org/groups/spotify>

⁵² <https://press.spotify.com/us/information/>

⁵³ <http://a2im.org/groups/vevo/>

- **Youtube**⁵⁵ – Youtube is the world’s largest music video streaming community with millions of music creators -- amateur, professional, commercial or non-commercial -- and over 1 billion registered members covering all regions globally. 6 billion hours of video is watched every month on Youtube,⁵⁶ of which 38.4% is music-related.⁵⁷
- **ReverbNation**⁵⁸ – ReverbNation⁵⁹ is one of the world’s largest music community and a leading music distributor with over 3.87 million musicians, venues labels and industry professionals covering every country globally. The ReverbNation community grows by over 50,000 artists, bands, labels and industry professionals monthly.
- **BMG**⁶⁰ – BMG is focused on the management of music publishing and recording rights. BMG has an international presence and represents over 2.5 million music rights globally.⁶¹

A2IM also includes members that are associated with global government agencies which exclusively represent substantial music economies and music members, such as France (BureauExport⁶²), China (China Audio Video Association⁶³) and Germany (Initiative Musik).⁶⁴ A2IM also has Affiliate⁶⁵ associations within the global music community. These include Affiliates such as MusicFirst,⁶⁶ the Copyright Alliance,⁶⁷ the Worldwide Independent Network (WIN)⁶⁸ and Merlin.⁶⁹

A2IM also represents a recognized Music Coalition representing the interests of the Global Independent Music Community.⁷⁰ The A2IM Coalition includes Merlin, a global rights agency for the independent label sector, representing over 20,000 labels from 39 countries, Worldwide Independent Network (representing label creators in over 20 countries), Association of Independent Music (representing largest and most respected labels in the world), and IMPALA (Independent Music Companies Association on behalf of over 4,000 independent music companies and national associations across Europe, representing 99% of music actors in Europe which are micro, small and medium sized enterprises.

⁵⁴ <http://www.vevo.com/c/EN/US/about>

⁵⁵ <http://a2im.org/groups/youtube/>

⁵⁶ <https://www.youtube.com/yt/press/statistics.html>

⁵⁷ http://www.researchandmarkets.com/reports/2092499/internet_video_2011_2014_view_share_site_and

⁵⁸ <http://a2im.org/groups/reverb-nation/>

⁵⁹ <http://www.reverbnation.com/about>

⁶⁰ <http://a2im.org/groups/bmg-rights/>

⁶¹ <http://www.bmg.com/category/about-us/history/>

⁶² <http://a2im.org/groups/french-music-export-office>

⁶³ <http://a2im.org/groups/china-audio-video-association-cava>

⁶⁴ <http://a2im.org/groups/initiative-musik-gmbh>

⁶⁵ <http://a2im.org/groups/tag/associate+members/>

⁶⁶ <http://musicfirstcoalition.org/coalition>, The musicFIRST Coalition, with founding members A2IM, RIAA, and Recording Academy represents musicians, artists, managers, music businesses, and performance right advocates.

⁶⁷ <http://www.copyrightalliance.org/members>

⁶⁸ <http://www.winformusic.org>

⁶⁹ <http://www.merlinnetwork.org>

⁷⁰ <https://www.icann.org/en/system/files/correspondence/bengloff-to-chehade-et-al-20aug14-en.pdf> and <https://www.icann.org/en/system/files/correspondence/bengloff-to-crocker-et-al-07mar15-en.pdf>

Cumulatively, A2IM's Label and Associate Membership, A2IM's Affiliates and the A2IM's Global Independent Music Community Coalition, covers a majority of the global music community. Its cumulative membership is in the hundreds of millions of entities with formal boundaries belonging to strictly organized and delineated communities related to music as per the Community Definition and Size (See Application answer to Question 20a).

Another global Music Community Coalition led by the RIAA "on behalf of over 15 national and international trade associations" also expressed its support for .MUSIC to be under a "community" application model, including encouraging statements in support of DotMusic's policies that stated that the coalition "was encouraged to see" that DotMusic "included several measures to deter and address copyright infringement within that TLD." The "coalition members represent the people that write, sing, record, manufacture, distribute and/or license over 80% of the world's music"⁷¹ – a majority of global music.⁷²

Collectively, the DotMusic application received support from the largest coalition of music community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community. Cumulatively, DotMusic possesses documented support⁷³ from institutions/organizations representing a majority of the Community addressed. Music -- as commonly-known by the general public and experienced today -- would not be possible without these supporting, non-negligible and relevant organizations that have endorsed DotMusic.

In conclusion, there is substantive evidence that DotMusic entirely fulfills the criteria for *Community Establishment* and *Community Endorsement* from the majority of the global Music Community as defined.

B) Nexus⁷⁴

According to the Applicant Guidebook ("AGB"), to receive the maximum score for Nexus, the applied-for string -- "music" -- must match the name of the community or be a well-known short-form or abbreviation of the community name.

The *Nexus* of the "Music Community" entirely matches the applied-for "music" string because it represents the entire global Music Community as commonly-known and perceived by the general public. This definition allows for all constituents with a requisite awareness of the Community

⁷¹ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.1

⁷² <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.3, Appendix A

⁷³ <http://music.us/supporters>

⁷⁴ See <http://music.us/nexus>

defined to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination. The definition of the Community requires that members have an active, non-tangential relationship with the applied-for string and the requisite awareness of the music community they identify with as part of the registration process. It is clear that the general public will directly associate and equate the string with the Community as defined by DotMusic. There is no possibility of overreaching beyond the definition or allowing unrelated non-music entities to be included as part of the Community.

Community members may register a .MUSIC by either:

- 1) Identifying that they belong to a Music Community Member Organization (“MCMO”); or
- 2) Identifying the community they belong to, which is consistent with the definition of the Community: “the strictly delineated and organized logical alliance of communities of similar nature related to music.”

All Community members are aware of and recognize their inclusion in the defined Community by identifying which clearly defined community they belong to and have an active participation in. The *nexus* of the applied-for string ensures inclusion of the entire global community that the string represents while excluding unrelated-entities not associated with the string. This way there is a clear match and alignment between the “music” string and the Community defined.

While the exact size of the global Music Community as defined is unknown (there is no empirical evidence providing an exact, finite number because amateur entities are also included in the Community’s definition), it is in the considerable millions as explicitly stated in the DotMusic Application. DotMusic’s definition of the Community and mutually-inclusive Registration Policies ensure that eligible members are only music-related and associated with the string. This is because the string identifies all constituents involved in music. Music-only participation optimizes the relevancy of .MUSIC domains to the string and entirely matches the *nexus* between the string and Community defined. According to DotMusic, the Community *definition, eligibility criteria and content and use* requirements ensure that peripheral industries and entities not related to music are excluded so that the string and the defined Community matches and aligns in a consistent manner consistent with DotMusic’s community-based purpose i.e. only entities with music-related activities are able to register .MUSIC domains.

Membership aligns with the *nexus* of the Community and the string, which is explicitly relevant to music. The string as defined in the application demonstrates uniqueness because it has no other significant meaning beyond identifying the community described in the application. According to DotMusic’s application, any tangential or implicit association with the *nexus* of the Community and the string is not regarded as a delineated membership since it would be considered unclear, dispersed or unbound. Such unclear, dispersed or unbound tangential

relationships with the defined “music” Community and applied-for “music” string would not constitute a qualifying Community membership and would be ineligible for registration.

The inclusion of every music constituent type is paramount to the purpose of the string. Every type of music constituent critically contributes to the function and operation of the music sector within a regulated framework given the symbiotic overlapping nature of the Community as defined and structured. Music would not function as it does today without the participation of all music constituent types which cumulatively match the string with the Community definition.

In conclusion, there is substantive evidence that DotMusic entirely fulfills the criteria for *Nexus*.

Respectfully Submitted,

Signature: 
Contact Information Redacted Apr 7 '15 ip: 98.240.69.57

Name: Mike Alleyne

Title: Professor

Organization: Middle Tennessee State University

Date: 7th April, 2015

About Dr. Mike Alleyne

Professor in the Department of Recording Industry

Middle Tennessee State University

Mike Alleyne is a tenured full Professor in the Department of Recording Industry at Middle Tennessee State University (MTSU). He is the author of *The Encyclopedia of Reggae: The Golden Age of Roots Reggae* (Sterling Publishing, 2012) and contributing editor of *Rhythm Revolution* (Cognella Academic Publishing, 2013 & 2014). His popular music writings have been published in peer-reviewed journals such as *Popular Music History*, the *Canadian Journal of Latin American and Caribbean Studies*, *Rock Music Studies*, *Popular Music & Society*, and the *Journal on the Art of Record Production*.

Professor Alleyne was also a consultant for the Estate of Marvin Gaye in the 2015 copyright infringement trial involving the 2013 hit song “Blurred Lines.” His report was admitted into evidence in the case. His book chapter contributions appear in *Rihanna: Barbados World-Girl in Global Popular Culture* (2015), *Sound and Music in Film and Visual Media: An Overview* (2009), *Globalization, Diaspora & Caribbean Popular Culture* (2005), *Bob Marley: The Man & His Music* (2003), and *Culture and Mass Communication in the Caribbean* (2001). Prof. Alleyne has also contributed several entries to the award-winning *Grove Dictionary of American Music* (2013), and has also been published in *Billboard*, the internationally-recognized weekly magazine on the music industry.

Dr. Alleyne’s work has led to guest lectures in Jamaica, Barbados, England, Sweden and Germany, and the presentation of conference papers across the globe. In 2012, he was the guest speaker at the annual Bob Marley Lecture in Kingston, Jamaica, presenting “For The Record: Bob Marley’s Island Albums and the 40th Anniversary of Catch a Fire.” Professor Alleyne has served as the Distinguished Cultural Studies Lecturer & Scholar-in-Residence at the University of the West Indies, Trinidad, and has been a doctoral thesis examiner for that institution’s other campuses.. Prof. Alleyne has also been a guest lecturer in the Music Management program at Linnaeus University in Sweden in 2004 & 2007 (formerly the University of Kalmar) and at the Pop Akademie in Germany (2010-2015).

He has presented numerous conference papers on popular music across Europe, Latin America and Africa. Beyond Caribbean popular music, his academic work also encompasses from the history of album cover art. Professor Alleyne’s involvement with popular music also includes his roles as a writer member of ASCAP (American Society of Composers, Authors & Publishers) and PRS (Performing Right Society).

Professor Alleyne is also an Editorial Board member for the journal *Popular Music & Society*, and a member of the International Association for the Study of Popular Music (IASPM) and the Caribbean Studies Association (CSA).

Popular Music Specialist/Author

BOOKS:

2014

Rhythm Revolution: A Chronological Anthology of American Popular Music (Ed.) Revised Edition. San Diego: Cognella Academic Publishing.

2013

Rhythm Revolution: A Chronological Anthology of American Popular Music (Ed.). San Diego: Cognella Academic Publishing.

2012

The Encyclopedia of Reggae: The Golden Age of Roots Reggae. New York: Sterling Publishing.

RECENT JOURNAL, DICTIONARY AND BOOK REVIEW PUBLICATIONS:

2014

“After the Storm: Hipgnosis, Storm Thorgerson & the Rock Album Cover.” *Rock Music Studies*, Vol. 1, Issue 3: 251-267.

2013

Book Review. *Archipelagos of Sound*. *Canadian Journal of Latin American and Caribbean Studies*. Vol. 38, No. 74.

“Quincy Jones,” “Bob Marley,” “Reggae,” and “Nile Rodgers.” *The Grove Dictionary of American Music*, Second Edition. (Ed. C. H. Garrett). New York: Oxford University Press.

2011

“Rihanna & The Barbados Music Industry.” *Caribbean Creatives* 1.2 : 5.

2009

“Globalisation and Commercialisation of Caribbean Music.” *Popular Music History* 3.3 : 247-273.

“Sounds Reel: Tracking The Cultural History of Film Sound Technology.” *Sound and Music in Film and Visual Media: An Overview*. (Ed. Graeme Harper). Continuum Press : 15-41.

“Facing The Music.” *Billboard*, 21 March, 2009 : 4.

Conference Presentations

Recent journal, dictionary and book review publications:

2014

“After the Storm: Hipgnosis, Storm Thorgerson & the Rock Album Cover.” *Rock Music Studies*, Vol. 1, Issue 3: 251-267.

“Cover Stories: The Reggae Album Cover Art of Tony Wright.” 39th Annual Caribbean Studies Association Conference, Merida, Mexico.

2013

Book Review. *Archipelagos of Sound*. *Canadian Journal of Latin American and Caribbean Studies*. Vol. 38, No. 74.

“Quincy Jones,” “Bob Marley,” “Reggae,” and “Nile Rodgers.” *The Grove Dictionary of American Music*, Second Edition. (Ed. C. H. Garrett). New York: Oxford University Press.

“Visual Roots: Reggae Album Cover Images.” Jamaica Music Museum, Institute of Jamaica.

“Reggae in the Material World: The Police Revisited.” International Reggae Conference, Kingston, Jamaica.

2012

“For The Record: Bob Marley’s Island Albums and the 40th Anniversary of Catch a Fire.” The Annual Bob Marley Lecture, University of the West Indies, Kingston, Jamaica.

2011

“Rihanna & The Barbados Music Industry.” *Caribbean Creatives* 1.2 : 5.

2009

“Globalisation and Commercialisation of Caribbean Music.” *Popular Music History* 3.3 : 247-273.

“Sounds Reel: Tracking The Cultural History of Film Sound Technology.” *Sound and Music in Film and Visual Media: An Overview*. (Ed. Graeme Harper). Continuum Press : 15-41.

“Facing The Music.” *Billboard*, 21 March, 2009 : 4.

Portfolio

Rhythm Revolution:

The essay collection *Rhythm Revolution* provides a compact but detailed analysis of significant genres, artists, and trends characterizing popular music's evolution after World War II. It addresses the creative, economic, social, and political contexts of key developments in the music itself, and the recording industry.

The book's chronological structure shows interconnections between different developments. Beginning with British rock and pop from the 1950s through the 1970s, the text then pairs the 1960s with soul music, and the 1970s with the rise of fusion and funk. There is a chapter devoted to the roots of reggae, and coverage of the 1980s addresses the expanding role of televised music. In addition, the material provides a wealth of detail on topics not typically covered, including the history of the album cover, and the formation and impact of specific record labels.

Rhythm Revolution is ideal for teachers who want to engage their students in a detailed examination of pivotal eras and turning points. It can be used as a stand-alone text, or as a supplemental reader to standard textbooks on popular music history.

The Encyclopedia of Reggae: The Golden Age of Roots Reggae:

This heavily illustrated guide to reggae is a colorful, herbally endowed, and sunsplashed history of one of the world's most popular musical styles. Reggae was born in 1960s Jamaica, a potent mix of such indigenous genres as ska and rocksteady plus R&B, jazz, and traditional African rhythms. Before long, it had conquered the globe, influencing musicians from Britain to Brazil. *The Encyclopedia of Reggae* focuses on the music's golden age, from the late 1960s to the mid-1980s heyday of dancehall, and features more than 500 images, including rare album art and ephemera. Written by one of the foremost experts on the subject, this amazing resource profiles more than 200 key performers, impresarios, and producers from reggae's history.

Websites:

http://rim.mtsu.edu/faculty_display.php?faculty=malleyne

<http://mikealleyneprojects.com/>

Re: Expert Testimony on (i) Community Establishment; (ii) Nexus; and (iii) Support for DotMusic’s Community-Based Application¹ for .MUSIC (Application ID 1-1115-14110)

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

Please accept this letter that indicates that there is substantive and compelling evidence that the DotMusic application convincingly meets the full criteria under Community Priority Evaluation on the following points: (i) the Music Community’s *Establishment* as defined by DotMusic; (2) the matching *Nexus* between the “music” Community and the “music” string (or top-level domain); and (3) that DotMusic possesses documented *Support* from organizations representing a majority of the global Music Community addressed and defined.

Please see my credentials attached hereto that identify my level of expertise and specialized knowledge with respect to the music community’s organization and delineation.

SUMMARY

DotMusic has established the following:

- 1) Its Community definition recognizes the cohesive, symbiotic and overlapping nature of the global Music Community. The definition includes those associated with commercial and non-commercial creation, performance, marketing and distribution of music;
- 2) “Music Community” members have the requisite awareness and recognition of the interdependency, overlapping and cohesive nature of each “organized community of similar nature that relates to music.” These organized and aligned communities are closely united and make “music” as we know it today. It is this self-awareness and interdependence that gives the “Music Community” its strength. With exponential growth of the Internet, mobile and the Domain Name System (DNS), the “Music Community’s” use and reliance on the Internet to create, market and disseminate music-related content, products, services and activities will continue to grow;
- 3) The “Music Community” functions in a regulated sector with global copyright protections – it is clear that the “community,” as defined, implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate a globally-recognized set of standards for

¹ <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1392>

the protection of the “Music Community” member rights with relation to their copyrighted music works around the world;

4) The “Music” Community -- as defined by DotMusic -- has at least one entity dedicated to the community supporting DotMusic’s application. Such documented *Support* includes several “international federation of national communities of a similar nature,” music coalitions and others that are strongly associated with “music,” which represent a majority of the Community with considerable millions of members worldwide.²

5) The *Nexus* of the “music” Community matches the “music” applied-for string because it represents the entire global Music Community – a community that pre-existed 2007 with a size in the considerable millions of constituents. The “Music Community” definition -- which incorporates the strict fundamental attributes of a closely united Community definition that is “organized” and “delineated” -- ensures that all of its constituent members have a requisite awareness of the community as defined, including both commercial and non-commercial stakeholders, to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination.

6) DotMusic has received support from the largest coalition of Music Community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support³ from institutions/organizations representing a majority of the Community as defined and recognized in the DotMusic application.

There is substantive evidence that DotMusic fulfills the *Nexus, Community Establishment and Support* criteria for the “Music” string. The inclusion and representation of every music constituent type is paramount to the articulated purpose of the string. DotMusic and its application’s global Music Community supporters substantiate that every type of music constituent contributes to the function and operation of the music sector within a regulated framework. The symbiotic nature of the Community as defined and structured means that “Music” would not function as it does today without the participation of all music constituent types that interconnect to match the “music” string with the “music” Community definition.

² <http://music.us/supporters>

³ <http://music.us/supporters>

ASSESSMENT OF COMMUNITY DEFINITION, ESTABLISHMENT AND NEXUS

A) *Music Community Definition, Establishment & Community Endorsement*⁴

DotMusic’s definition of the “Music Community” as a “strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music” (See Application, 20a) is factually accurate and representative of the “Music Community.” Community characteristics include:

i) An Organized, Cohesive, Interdependent Logically-Allied Community:

The “Music Community” definition covers the regulated, interdependent and cohesive nature of the music sector that exists today. “Music Community” members have the requisite awareness and recognition of the interdependent, overlapping and cohesive nature of each “organized community of similar nature that relates to music” that comprises the “Music Community.” Without such cohesiveness and interdependency, the defined “Music” Community matching the applied-for string (“Music”) would not be able to function in its regulated sector, a “Music” regulated sector that was publicly recognized by both ICANN and the Government Advisory Committee.⁵

As a result, the Music Community as defined is “closely united” (As per the definition of “cohesion” according to Merriam-Webster dictionary⁶) or “united or form a whole” (As per the definition of the word “cohesion” according to Oxford Dictionaries⁷).

The “Music Community” as defined (a “strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music”) establishes that:

- (1) There is an awareness and recognition among its members;
- (2) The organized and delineated logical alliance of communities exists; and
- (3) The Community is “closely united” and “interdependent” (i.e. Each “organized community of similar nature that relates to music” which is part of the “logical alliance of communities that relate to music” is not mutually exclusive).

In short, the applied-for string (“Music”) matches the name of the “Music” Community as defined by DotMusic’s application. DotMusic’s “Music Community” definition accurately represents the common definition of the “Music Community,” which is confirmed by Wikipedia.

⁴ See <http://music.us/establishment>

⁵ <https://www.icann.org/en/system/files/bm/briefing-materials-2-05feb14-en.pdf>, Pg.3

⁶ <http://www.merriam-webster.com/dictionary/cohesion>

⁷ http://www.oxforddictionaries.com/us/definition/american_english/cohesion

According to Wikipedia:⁸

Music community is defined as a logical alliance of interdependent communities that are related to music, which include commercial participants...and non-commercial participants...and consists of an “ensemble of practices and institutions that make possible and regulate the production, distribution and consumption of music”...UNESCO identifies the music community as a “community of identity” implying common identifiable characteristics and cohesive attributes such as sharing a music culture, norms and subscribing to common ideals related to music...The music community is not defined as much by demographic indicators such as race, gender, and income level, as it is by common values, cohesive norms and interconnected structures to build a community identity. It refers to music-related individuals and organisations in a shared environment with shared understandings and practices, modes of production and distribution. The shared organisation of collective musical activities, identity and community value is created as result of infrastructure and a shared set of common values...Many studies outline the historical, cultural, and spatial significance of the music community, including how its identity is formed through musical practices. The music community shares a cohesive and interconnected structure of artistic expression, with diverse subcultures and socio-economic interactions...subscribing to common ideals. Under such structured context music consumption becomes possible regardless whether the transaction is commercial and non-commercial.⁹

ii) *An Aware, Pre-Existing and Recognized Community of Considerable Millions Worldwide:*

DotMusic’s definition of the Community covers all Community members associated with the string, each with a requisite awareness of the Community that can be validated through their natural association with a particular music-related community that they clearly identify with. According to DotMusic, all Music Community members must identify their music-related community in order to demonstrate their requisite awareness of the defined Community as part of the .MUSIC registration and validation process.

⁸ Wikipedia is ranked 6th among the ten most popular websites (Alexa, Retrieved March 23, 2015 from <http://www.alexacom/siteinfo/wikipedia.org>) and constitutes the Internet's largest, most frequently updated and popular general reference work (See OECD, OECD Internet Economy Outlook 2012, OECD Publishing, http://www.oecd-ilibrary.org/science-and-technology/oecd-internet-economy-outlook-2012_9789264086463-en,Pg.172) that compares favorably to the accuracy of other encyclopedias (such as the Britannica) according to a 2012 study conducted in partnership with Oxford University (See <http://blog.wikimedia.org/2012/08/02/seven-years-after-nature-pilot-study-compares-wikipedia-favorably-to-other-encyclopedias-in-three-languages>).

⁹ Music Community. In *Wikipedia*. Retrieved March 23, 2015, from https://en.wikipedia.org/wiki/Music_community

According to DotMusic, the Music Community’s geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents (Application Answer to Question 20a).

According to DotMusic, “registrants will be verified using Community-organized, unified “criteria taken from holistic perspective with due regard of Community particularities” that “invoke a formal membership (Application Answer to Question 20a).” The defined Community represents all music-related entities with a clear and straightforward membership with the Community involved in the legal production, performance, promotion, and distribution of music worldwide. According to DotMusic, the Music Community members must have an active, non-tangential relationship with the applied-for string “music” and also have the requisite awareness of the music-related community that they are a part of by specifically identifying it as part of the registration and validation process (i.e. upon successful registration and validation, each community member will be given a unique community identification number that will automatically associate them with their identified community and the “music” string).

DotMusic’s Community definition matches the applied-for string because it allows both commercial and non-commercial stakeholders to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination/exclusion. Given the regulated sector of the community, it is clear that the “Music Community” as defined implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate cohesive and globally-recognized set of standards for the protection of the music community members’ rights with relation to their copyrighted music works around the world.¹⁰

The Berne Convention for the Protection of Literary and Artistic Works¹¹ provides that each of the 168 contracting parties¹² (representing an overwhelming majority of the world’s population) provides automatic protection for music works first published in other countries of the Berne union and for unpublished music works whose authors are citizens of or resident in such other countries.¹³ This means that if a Music Community member’s copyright rights are violated in any other signatory country’s jurisdiction, then the music community member will have the music copyright rights given by that country. Music Community members are clearly aware of the collective Community’s rights, which could not be made possible without these cohesive and globally-recognized set of standards. If such standards were not coherent or enforced then music would not be able to exist in its current form and the industry component of the Music Community sector would not exist. As such, the Community’s *Establishment* and definition is “cohesive” and hence cannot be construed since the Community is a logical alliance of music

¹⁰ http://www.rightsdirect.com/content/rd/en/toolbar/copyright_education/International_Copyright_Basics.html

¹¹ http://www.wipo.int/treaties/en/text.jsp?file_id=283698

¹² http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=15

¹³ <http://www.britannica.com/EBchecked/topic/62482/Berne-Convention>

communities that establish a clearly delineated and organized Community structure that is “closely united” and functions as a “whole”

Further evidence to substantiate the cohesive, symbiotic and overlapping nature of the Community, includes other globally-recognized standards and classification systems, which identify who the individual songwriters, publishers and rights holders are and which songs they are associated with so that Community members are appropriately compensated, regardless of whether the constituent is a commercial, non-commercial or amateur entity. The “music” string is commonly used in classification systems such as ISMN,¹⁴ ISRC,¹⁵ ISWC,¹⁶ ISNI.¹⁷ (Application Answer to Question 20a). For example, if a music entity would like to distribute their music, either commercially or for free, then an ISRC can be assigned to globally identify any specific music work. An ISRC, which facilitates efficient music discovery and community member payment, is constructed from 12 characters representing country, registrant, year of registration and designation (i.e. the serial number assigned by the registrant). With respect to domains, an equivalent system that relates to identifying a specific domain’s registrant and other relevant information pertaining to the domain is WHOIS. Domain registrants are required by ICANN “to provide accurate WHOIS contact data” or else their domain “registration may be suspended or even cancelled”.¹⁸

Without such Music Community “cohesion” and standardized systems functioning in its regulated sector, the Music Community would not be able to create, market and distribute their music. By the same token, fans would not be able to identify the music they are listening to with a specific music artist, regardless of whether the listening activity or behavior is commercial or non-commercial in nature. The socio-economic structure that characterizes “music” as commonly-known today would be non-existent without these organized and delineated elements that commonly define the Community.

¹⁴ The International Standard Music Number (ISMN) is a unique number for the identification of all notated music publications from all over the world. The ISMN is an ISO certified global standard number (ISO 10957:2009). See <http://www.ismn-international.org/whatis.html> and

http://www.iso.org/iso/home/store/catalogue_ics/catalogue_detail_ics.htm?csnumber=43173

¹⁵ The ISRC (International Standard Recording Code) is the international identification system for sound recordings and music video recordings. The ISRC is an ISO certified global standard number (ISO 3901:2001) and is managed by the IFPI. See <http://isrc.ifpi.org>, <https://www.usisrc.org/about/index.html> and http://www.iso.org/iso/catalogue_detail?csnumber=23401

¹⁶ The ISWC (International Standard Musical Work Code) is a unique, permanent and internationally recognized reference number for the identification of musical works. The ISWC has been approved by ISO (International Organization for Standardisation) as a global standard (ISO 15707:2001) and is managed by CISAC. See <http://www.iswc.org/en/faq.html> and http://www.iso.org/iso/catalogue_detail?csnumber=28780

¹⁷ The International Standard Name Identifier (ISNI) is the ISO certified global standard number (ISO 27729) for identifying the millions of contributors to creative works and those active in their distribution. ISNI holds public records of over 8 million identities and 490,000 organizations. See <http://www.isni.org/> and http://www.iso.org/iso/catalogue_detail?csnumber=44292

¹⁸ <https://whois.icann.org/en/about-whois> and <https://www.icann.org/resources/pages/faqs-f0-2012-02-25-en>

iii) International Federations and Organizations Dedicated to Community Functions:

According to ICANN’s Applicant Guidebook (“AGB”)¹⁹: *“With respect to “Delineation” and “Extension,” it should be noted that a community can consist of...a logical alliance of communities (for example, an international federation of national communities of a similar nature... viable as such, provided the requisite awareness and recognition of the community is at hand among the members.”* (AGB, 4-12). The community as defined in the DotMusic application has at least one entity mainly dedicated to the community which has supported DotMusic, which include several “international federation of national communities of a similar nature” relating to music, music coalitions and other relevant and non-negligible music organizations.

One of these entities include the only international federation of national communities relating to government culture agencies and arts councils, which has an integral association with music globally: the International Federation of Arts Councils and Culture Agencies (IFACCA).

IFACCA is the only international federation that represents government culture agencies and arts councils globally. These national communities are governmental institutions that play a pivotal role with respect to music.²⁰ IFACCA’s members cover the majority of music entities globally, regardless of whether they are commercial, non-commercial or amateurs. Government ministry of culture and council agencies related to music cover a majority of the overall community with respect to headcount and geographic reach. The “Size” covered reaches over a hundred million music entities i.e. “considerable size with millions of constituents” per Application Answer to Question 20a.

The string “music” falls under the jurisdiction of each country’s Ministry of Culture governmental agency or arts/music council (emphasis added). The degree of power and influence of government ministry of culture and council agencies with respect to music surpasses any organization type since these agencies (i) provide the majority of funding for music-related activities; (ii) regulate copyright law; and (iii) encompass all the music entities that fall under their country, regardless whether these entities are commercial, non-commercial or amateurs. IFACCA is globally recognized by its strategic partners, such as UNESCO, a United Nations agency representing 195 member states and the European Commission.²¹ The UNESCO strategic partnership²² is relevant, especially since UNESCO founded the International Music Council (the “IMC”) in 1949, which represents over 200 million music constituents from over 150 countries and over 1000 organizations globally.²³

¹⁹ <https://newgtlds.icann.org/en/applicants/agb/guidebook-full-11jan12-en.pdf>

²⁰ http://www.ifacca.org/membership/current_members/

²¹ http://www.ifacca.org/strategic_partners/

²² http://www.ifacca.org/strategic_partners/

²³ <http://www.imc-cim.org/about-imc-separator/who-we-are.html>

Government activities in the clearly delineated and organized “Music Community” include setting statutory royalty rates. For example, in the United States, mechanical royalties are based on a “statutory rate” set by the U.S. Congress. This rate is increased to follow changes in the economy, usually based on the Consumer Price Index. Currently, the mechanical statutory rate is \$0.091 for songs five minutes or less in length or \$.0175 per minute for songs that are over five minutes long.²⁴

Ministries of culture and arts councils (that comprise IFACCA’s membership) support musicians, musical performances, independent music artists, non-commercial musical expression and education in their respective countries. The 165 ministries of culture, arts councils and affiliates that comprise IFACCA’s membership support the “performing arts” and music specifically. Without the financial and logistical support of arts councils and the ministries of culture, the music community would be adversely affected, and in some countries, may not exist in any appreciable manner. For example, the Ministry of Culture 2011 budget for the small country state of Cyprus for culture funding was €34,876,522 with critical support of music activities.²⁵ Other small government Ministries of Culture, such as Albania,²⁶ or government Ministries of Culture and Arts Councils from countries with larger populations, such as India,²⁷ all provide critical support and substantial advocacy for music. Other examples include government institutions collaborating and advocating music through their funded country-based pavilion initiatives at Midem, the world’s largest music conference.²⁸

Government ministries and arts councils provide critical support for the Music Community, including commercial music organizations. By way of example, government ministries’ and arts councils’ substantial connection to and support of “music” is noted in the reports of funding and support for music. Some examples to showcase the degree of power of the IFACCA’s membership towards the string and global and national music are music investment and music funding (Annual reports by governments and councils):

- New Zealand Ministry of Culture has funded significant music projects. Some include the REAL New Zealand Music Tour (\$415,000), the New Zealand String Quartet (\$150,000) and New Zealand Music Commission: (\$1,378,000).²⁹
- The Australian Government/Council For The Arts invested \$51.2 million for the nation’s orchestras; \$21.6 million for opera; \$10.8 million for other music artists and

²⁴ U.S. Copyright Office, <http://www.copyright.gov/carp/m200a.html>

²⁵ 2011 Annual Report for Cyprus Ministry of Culture, Section 1.2 “Music”

(http://www.moec.gov.cy/en/annual_reports/annual_report_2011_en.pdf). Activities include Music Performances in Cyprus (1.2.1) and Abroad (1.2.2), Subsidization of Paphos Aphrodite Festival (1.2.3), Music Publications (1.2.4), Subsidization and Purchases of Digital Records (1.2.5), Promotion for Cypriot musical creativity abroad (1.2.6), Cyprus Symphony Orchestra Foundation (1.2.7), Music Information Centre (1.2.8), Developing Music Education (1.2.9), Organising of the 1st Musicological Symposium (1.2.10) and Musical Festivities for the European Volunteerism Year (1.2.11)

²⁶ http://www.culturalpolicies.net/down/albania_012011.pdf

²⁷ 2010-11 Annual Report from India Ministry of Culture, [http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011\(Eng\).pdf](http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011(Eng).pdf)

²⁸ <http://my.midem.com/en/contact-us/pavilion-representatives/>

²⁹ 2011 Annual Report from New Zealand Ministry of Culture:

[http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20\(D-0448383\).PDF](http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20(D-0448383).PDF)

organizations; \$13.1 million for multi-platform artists and organizations; and \$4 million in miscellaneous funding, including sector building and audience development initiatives and programs.³⁰

- Canada Council for the Arts is Canada’s national, arts funding agency investing \$28 million in its Canada Council Musical Instrument Bank (Page 16) and \$28,156,000 in Music Arts Programs (Page 66).³¹ The Government of Canada also renewed its annual investment of \$27.6 million over five years in the Canada Music Fund.³²
- The United Kingdom Department for Culture and Education (DfE) will fund music education at significant levels: £77 million, £65 million and £60 million will be available in the three years from April 2012.³³
- The United States National Endowment of the Arts has awarded more than \$4 billion to support the arts since its inception³⁴ and has a strong focus on music as outlined in its Strategic Plan³⁵ with Congress requested to provide \$154,465,000 for fiscal year 2014.³⁶
- The National Arts Council of South Africa invested 2,536,131 ZAR in Music and 9,995,000 ZAR in Orchestras and has focused strongly on the “Strengthening of live indigenous music and advocating the revival of the live music circuit in South Africa”³⁷
- The Singapore Arts Council will fund \$10.2 million in the arts under its 2013 Grants Framework, including the Ding Yi Music Company and Siong Leng Musical Association.³⁸
- In 2011, the support for artistic activities by the Arts Council of Finland was €32.4 million of which €4,921,850 was awarded to music.³⁹

Each of IFACCA’s members has a clear association with, and mandate to support the music arts in their countries. In most countries, their ministry of culture/arts council is the largest funder and marketing supporter of the music arts.

³⁰ 2011 Annual Report for the Australia Council for the Arts, http://www.australiacouncil.gov.au/data/assets/pdf_file/0016/142351/Australia-Council-Annual-Report-201112.pdf, Page 28

³¹ 2011 Annual Report for Canada Council for the Arts, http://www.canadacouncil.ca/NR/rdoonlyres/6F7549BB-F4E5-4B8B-95F4-1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf

³² <http://www.pch.gc.ca/eng/1294862453819/1294862453821>

³³ Department for Culture, The Importance of Music, A National Plan for Music Education, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/180973/DFE-00086-2011.pdf, Page 4, 2011

³⁴ 2011 Annual report for the National Endowment of the Arts, <http://www.nea.gov/about/11Annual/2011-NEA-Annual-Report.pdf>, Page 2

³⁵ NEA Strategic Plan 2012-2016, www.arts.gov/about/Budget/NEAStrategicPlan2012-2016.pdf

³⁶ http://www.ifacca.org/national_agency_news/2013/04/10/us-president-requests-154465000-neh-2014/

³⁷ 2010-2011 Annual Report for the National Arts Council South Africa, National Arts Council South Africa, <http://www.nac.org.za/media/publications/AR%2010-11%20NAC.PDF/download>, Page 11. Also Mmino, the South African – Norwegian Education Music Programme, solely funds music projects funding a total of 294 projects. Thirteen projects were allocated funding for a total of R1,680,600 of which R1,381,000 went towards music educational and R299,600 to exchange projects (Page 10)

³⁸ Singapore Arts Council, <http://www.nac.gov.sg/media-centre/news-releases/news-detail?id=c2db15e2-c319-40ec-939c-d58735d0a91c>

³⁹ <http://www.taiteenkeskustoimikunta.fi/documents/10162/31704/TY+tilastotiedote+1+12+.pdf>, Page 1 and Page

Another clear example of an “entity dedicated to the community” with members that cover hundreds of millions of music constituents with formal boundaries is A2IM, the American Association of Independent Music. A2IM has two types of members: U.S independent Label members and Associate members. A2IM membership for Labels and Associates is invoked formally through an application and if accepted would require annual membership dues.⁴⁰

The reach of A2IM Associate⁴¹ membership covers hundreds of millions of entities (i.e. the reach of A2IM’s total membership “geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents – See Application Answer to Question 20a).

Organized and strictly delineated communities related to music that are A2IM members include:

- **Apple iTunes**⁴² – iTunes accounts for 63% of global digital music market⁴³ - a majority – with a registered community of 800 million registered members⁴⁴ available in 119 countries who abide to strict terms of service and boundaries⁴⁵ and have downloaded over 25 billion songs⁴⁶ from iTunes’ catalog of over 43 million songs⁴⁷ covering a global music community, regardless of genre or whether the community entities are amateur, professional, commercial or non-commercial. To add music to iTunes, all music artists must have a formal membership with iTunes via an Apple ID registration, which includes a current credit card on file.⁴⁸
- **Pandora**⁴⁹ – Pandora is the world’s largest streaming music radio with a community of over 250 million registered members.⁵⁰
- **Spotify**⁵¹ – Spotify is the world’s largest music streaming community with over 50 million active registered members in 58 countries and over 30 million songs. The music community uploads 20,000 songs every day.⁵²
- **Vevo**⁵³ – Vevo is the world’s leading all-premium music video community and platform with over 8 billion monthly views globally.⁵⁴

⁴⁰ <http://a2im.org/about-joining/>

⁴¹ <http://a2im.org/groups/tag/associate+members/>

⁴² <http://a2im.org/groups/itunes>

⁴³ <http://appleinsider.com/articles/13/04/16/apples-itunes-rules-digital-music-market-with-63-share>

⁴⁴ <http://www.npr.org/blogs/therecord/2015/01/06/375173595/with-downloads-in-decline-can-itunes-adapt>

⁴⁵ <http://www.apple.com/legal/internet-services/itunes/ww/index.html>

⁴⁶ <http://www.apple.com/pr/library/2013/02/06iTunes-Store-Sets-New-Record-with-25-Billion-Songs-Sold.html>

⁴⁷ <https://www.apple.com/itunes/features/>

⁴⁸ <https://www.apple.com/itunes/working-itunes/sell-content/music-faq.html>

⁴⁹ <http://a2im.org/groups/pandora>

⁵⁰ <http://www.cnet.com/news/like-a-rolling-milestone-pandora-hits-250m-registered-users/> and <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MTkxNTM1fENoaWxkSUQ9LTF8VHlwZT0z&t=1>, Pg.9

⁵¹ <http://a2im.org/groups/spotify>

⁵² <https://press.spotify.com/us/information/>

⁵³ <http://a2im.org/groups/vevo/>

- **Youtube**⁵⁵ – Youtube is the world’s largest music video streaming community with millions of music creators -- amateur, professional, commercial or non-commercial -- and over 1 billion registered members covering all regions globally. 6 billion hours of video is watched every month on Youtube,⁵⁶ of which 38.4% is music-related.⁵⁷
- **Reverbnation**⁵⁸ – Reverbnation⁵⁹ is one of the world’s largest music community and a leading music distributor with over 3.87 million musicians, venues labels and industry professionals covering every country globally. The Reverbnation community grows by over 50,000 artists, bands, labels and industry professionals monthly.
- **BMG**⁶⁰ – BMG is focused on the management of music publishing and recording rights. BMG has an international presence and represents over 2.5 million music rights globally.⁶¹

A2IM also includes members that are associated with global government agencies which exclusively represent substantial music economies and music members, such as France (BureauExport⁶²), China (China Audio Video Association⁶³) and Germany (Initiative Musik).⁶⁴ A2IM also has Affiliate⁶⁵ associations within the global music community. These include Affiliates such as MusicFirst,⁶⁶ the Copyright Alliance,⁶⁷ the Worldwide Independent Network (WIN)⁶⁸ and Merlin.⁶⁹

A2IM also represents a recognized Music Coalition representing the interests of the Global Independent Music Community.⁷⁰ The A2IM Coalition includes Merlin, a global rights agency for the independent label sector, representing over 20,000 labels from 39 countries, Worldwide Independent Network (representing label creators in over 20 countries), Association of Independent Music (representing largest and most respected labels in the world), and IMPALA (Independent Music Companies Association on behalf of over 4,000 independent music companies and national associations across Europe, representing 99% of music actors in Europe which are micro, small and medium sized enterprises.

⁵⁴ <http://www.vevo.com/c/EN/US/about>

⁵⁵ <http://a2im.org/groups/youtube/>

⁵⁶ <https://www.youtube.com/yt/press/statistics.html>

⁵⁷ http://www.researchandmarkets.com/reports/2092499/internet_video_2011_2014_view_share_site_and

⁵⁸ <http://a2im.org/groups/reverb-nation/>

⁵⁹ <http://www.reverbnation.com/about>

⁶⁰ <http://a2im.org/groups/bmg-rights/>

⁶¹ <http://www.bmg.com/category/about-us/history/>

⁶² <http://a2im.org/groups/french-music-export-office>

⁶³ <http://a2im.org/groups/china-audio-video-association-cava>

⁶⁴ <http://a2im.org/groups/initiative-musik-gmbh>

⁶⁵ <http://a2im.org/groups/tag/associate+members/>

⁶⁶ <http://musicfirstcoalition.org/coalition>, The musicFIRST Coalition, with founding members A2IM, RIAA, and Recording Academy represents musicians, artists, managers, music businesses, and performance right advocates.

⁶⁷ <http://www.copyrightalliance.org/members>

⁶⁸ <http://www.winformusic.org>

⁶⁹ <http://www.merlinnetwork.org>

⁷⁰ <https://www.icann.org/en/system/files/correspondence/bengloff-to-chehade-et-al-20aug14-en.pdf> and <https://www.icann.org/en/system/files/correspondence/bengloff-to-crocker-et-al-07mar15-en.pdf>

Cumulatively, A2IM's Label and Associate Membership, A2IM's Affiliates and the A2IM's Global Independent Music Community Coalition, covers a majority of the global music community. Its cumulative membership is in the hundreds of millions of entities with formal boundaries belonging to strictly organized and delineated communities related to music as per the Community Definition and Size (See Application answer to Question 20a).

Another global Music Community Coalition led by the RIAA "on behalf of over 15 national and international trade associations" also expressed its support for .MUSIC to be under a "community" application model, including encouraging statements in support of DotMusic's policies that stated that the coalition "was encouraged to see" that DotMusic "included several measures to deter and address copyright infringement within that TLD." The "coalition members represent the people that write, sing, record, manufacture, distribute and/or license over 80% of the world's music"⁷¹ – a majority of global music.⁷²

Another letter⁷³ sent to ICANN (on April 14th, 2015) by Danielle Aguirre from the NMPA and on behalf of a music publisher and songwriter community coalition representing a majority of the global music publishing community, also expressed "support [for] the .MUSIC community applications because respecting and protecting music rights serves the global music community and the public interest."

Collectively, the DotMusic application received support from the largest coalition of music community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support⁷⁴ from institutions/organizations representing a majority of the Community addressed. Music -- as commonly-known by the general public and experienced today -- would not be possible without these supporting, non-negligible and relevant organizations that have endorsed DotMusic.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Community Establishment* and *Community Endorsement* from the majority of the global Music Community as defined.

⁷¹ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.1

⁷² <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.3, Appendix A

⁷³ <https://www.icann.org/en/system/files/correspondence/aguirre-to-icann-board-eiu-14apr15-en.pdf>

⁷⁴ <http://music.us/supporters>

B) Nexus⁷⁵

According to the Applicant Guidebook (“AGB”), to receive the maximum score for Nexus, the applied-for string -- “music” -- must match the name of the community or be a well-known short-form or abbreviation of the community name.

The *Nexus* of the “Music Community” entirely matches the applied-for “music” string because it represents the entire global Music Community as commonly-known and perceived by the general public. This definition allows for all constituents with a requisite awareness of the Community defined to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination. The definition of the Community requires that members have an active, non-tangential relationship with the applied-for string and the requisite awareness of the music community they identify with as part of the registration process. It is clear that the general public will directly associate and equate the string with the Community as defined by DotMusic. There is no possibility of overreaching beyond the definition or allowing unrelated non-music entities to be included as part of the Community.

Community members may register a .MUSIC by either:

- 1) Identifying that they belong to a Music Community Member Organization (“MCMO”); or
- 2) Identifying the community they belong to, which is consistent with the definition of the Community: “the strictly delineated and organized logical alliance of communities of similar nature related to music.”

All Community members are aware of and recognize their inclusion in the defined Community by identifying which clearly defined community they belong to and have an active participation in. The *nexus* of the applied-for string ensures inclusion of the entire global community that the string represents while excluding unrelated-entities not associated with the string. This way there is a clear match and alignment between the “music” sting and the Community defined.

While the exact size of the global Music Community as defined is unknown (there is no empirical evidence providing an exact, finite number because amateur entities are also included in the Community’s definition), it is in the considerable millions as explicitly stated in the DotMusic Application. DotMusic’s definition of the Community and mutually-inclusive Registration Policies ensure that eligible members are only music-related and associated with the string. This is because the string identifies all constituents involved in music. Music-only participation optimizes the relevancy of .MUSIC domains to the string and entirely matches the *nexus* between the string and Community defined. According to DotMusic, the Community *definition, eligibility* criteria and *content and use* requirements ensure that peripheral industries

⁷⁵ See <http://music.us/nexus>

and entities not related to music are excluded so that the string and the defined Community matches and aligns in a consistent manner consistent with DotMusic's community-based purpose i.e. only entities with music-related activities are able to register .MUSIC domains.

Membership aligns with the *nexus* of the Community and the string, which is explicitly relevant to music. The string as defined in the application demonstrates uniqueness because it has no other significant meaning beyond identifying the community described in the application. According to DotMusic's application, any tangential or implicit association with the *nexus* of the Community and the string is not regarded as a delineated membership since it would be considered unclear, dispersed or unbound. Such unclear, dispersed or unbound tangential relationships with the defined "music" Community and applied-for "music" string would not constitute a qualifying Community membership and would be ineligible for registration.

The inclusion of every music constituent type is paramount to the purpose of the string. Every type of music constituent critically contributes to the function and operation of the music sector within a regulated framework given the symbiotic overlapping nature of the Community as defined and structured. Music would not function as it does today without the participation of all music constituent types which cumulatively match the string with the Community definition.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Nexus*.

Respectfully Submitted,

Nathan Hesselink

Signature: Contact Information Redacted, Apr 24 '15 ip: 137.82.250.164

Name: Nathan Hesselink

Title: Professor of Music

Organization: University of British Columbia

About Dr. Nathan Hesselink

*Professor, Ethnomusicology
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*PhD in Ethnomusicology (University of London)
MA (Mich.),
BMus (Northwestern),*

Biography

Nathan Hesselink's research broadly encompasses the topic of rhythmic play and social meaning, firstly in South Korean traditional percussion genres and more recently in British rock music. He received his Ph.D. in ethnomusicology from the University of London, SOAS, and was a postdoctoral research fellow in Korean studies at the University of California, Berkeley. In addition to visiting posts at the University of Chicago and the Academy of Korean Studies, in 2012 he was Trinity Term Visiting Research Associate, St John's College, University of Oxford.

Select publications include *P'ungmul: South Korean Drumming and Dance* (University of Chicago, 2006, winner of the 2008 Lee Hye-Gu Award by the Korean Musicological Society), *SamulNori: Contemporary Korean Drumming and the Rebirth of Itinerant Performance Culture* (University of Chicago, 2012), and "Radiohead's 'Pyramid Song': Ambiguity, Rhythm, and Participation," *Music Theory Online* (19.1.3, 2013). He is currently Professor of Ethnomusicology at the University of British Columbia and a Research Associate of the Centre for Korean Research.

Education

Interlochen Arts Academy, high school diploma cello performance, 1984

Northwestern University, BM cello performance, 1988

University of Michigan-Ann Arbor, MA ethnomusicology, 1992

University of London-School of Oriental and African Studies, PhD ethnomusicology, 1998

Posts

Instructor of Performance Studies (Korean Percussion), University of London-SOAS, 1996-97

Postdoctoral Research Fellow in Korean Studies, University of California-Berkeley, 1998-99

Assistant Professor of Ethnomusicology, Illinois State University, 1999-2005

Visiting Assistant Professor of Ethnomusicology, University of Chicago, 2003

Professor of Ethnomusicology, University of British Columbia, 2005-present

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Advanced Research Fellow in Korean Studies, Academy of Korean Studies (South Korea), 2006

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Website(s)

<http://music.ubc.ca/person/nathan-hesselink/>

<https://sites.google.com/site/nathanhesselink/home>

<https://sites.google.com/site/nathanhesselink/home/resume>

Re: Expert Testimony on (i) Community Establishment; (ii) Nexus; and (iii) Support for DotMusic’s Community-Based Application¹ for .MUSIC (Application ID 1-1115-14110)

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

Please accept this letter that indicates that there is substantive and compelling evidence that the DotMusic application convincingly meets the full criteria under Community Priority Evaluation on the following points: (i) the Music Community’s *Establishment* as defined by DotMusic; (2) the matching *Nexus* between the “music” Community and the “music” string (or top-level domain); and (3) that DotMusic possesses documented *Support* from organizations representing a majority of the global Music Community addressed and defined.

Please see my credentials attached hereto that identify my level of expertise and specialized knowledge with respect to the music community’s organization and delineation.

SUMMARY

DotMusic has established the following:

- 1) Its Community definition recognizes the cohesive, symbiotic and overlapping nature of the global Music Community. The definition includes those associated with commercial and non-commercial creation, performance, marketing and distribution of music;
- 2) “Music Community” members have the requisite awareness and recognition of the interdependency, overlapping and cohesive nature of each “organized community of similar nature that relates to music.” These organized and aligned communities are closely united and make “music” as we know it today. It is this self-awareness and interdependence that gives the “Music Community” its strength. With exponential growth of the Internet, mobile and the Domain Name System (DNS), the “Music Community’s” use and reliance on the Internet to create, market and disseminate music-related content, products, services and activities will continue to grow;
- 3) The “Music Community” functions in a regulated sector with global copyright protections – it is clear that the “community,” as defined, implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate a globally-recognized set of standards for

¹ <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1392>

the protection of the “Music Community” member rights with relation to their copyrighted music works around the world;

4) The “Music” Community -- as defined by DotMusic -- has at least one entity dedicated to the community supporting DotMusic’s application. Such documented *Support* includes several “international federation of national communities of a similar nature,” music coalitions and others that are strongly associated with “music,” which represent a majority of the Community with considerable millions of members worldwide.²

5) The *Nexus* of the “music” Community matches the “music” applied-for string because it represents the entire global Music Community – a community that pre-existed 2007 with a size in the considerable millions of constituents. The “Music Community” definition -- which incorporates the strict fundamental attributes of a closely united Community definition that is “organized” and “delineated” -- ensures that all of its constituent members have a requisite awareness of the community as defined, including both commercial and non-commercial stakeholders, to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination.

6) DotMusic has received support from the largest coalition of Music Community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support³ from institutions/organizations representing a majority of the Community as defined and recognized in the DotMusic application.

There is substantive evidence that DotMusic fulfills the *Nexus, Community Establishment and Support* criteria for the “Music” string. The inclusion and representation of every music constituent type is paramount to the articulated purpose of the string. DotMusic and its application’s global Music Community supporters substantiate that every type of music constituent contributes to the function and operation of the music sector within a regulated framework. The symbiotic nature of the Community as defined and structured means that “Music” would not function as it does today without the participation of all music constituent types that interconnect to match the “music” string with the “music” Community definition.

² <http://music.us/supporters>

³ <http://music.us/supporters>

ASSESSMENT OF COMMUNITY DEFINITION, ESTABLISHMENT AND NEXUS

A) *Music Community Definition, Establishment & Community Endorsement*⁴

DotMusic's definition of the "Music Community" as a "strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music" (See Application, 20a) is factually accurate and representative of the "Music Community." Community characteristics include:

i) An Organized, Cohesive, Interdependent Logically-Allied Community:

The "Music Community" definition covers the regulated, interdependent and cohesive nature of the music sector that exists today. "Music Community" members have the requisite awareness and recognition of the interdependent, overlapping and cohesive nature of each "organized community of similar nature that relates to music" that comprises the "Music Community." Without such cohesiveness and interdependency, the defined "Music" Community matching the applied-for string ("Music") would not be able to function in its regulated sector, a "Music" regulated sector that was publicly recognized by both ICANN and the Government Advisory Committee.⁵

As a result, the Music Community as defined is "closely united" (As per the definition of "cohesion" according to Merriam-Webster dictionary⁶) or "united or form a whole" (As per the definition of the word "cohesion" according to Oxford Dictionaries⁷).

The "Music Community" as defined (a "strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music") establishes that:

- (1) There is an awareness and recognition among its members;
- (2) The organized and delineated logical alliance of communities exists; and
- (3) The Community is "closely united" and "interdependent" (i.e. Each "organized community of similar nature that relates to music" which is part of the "logical alliance of communities that relate to music" is not mutually exclusive).

In short, the applied-for string ("Music") matches the name of the "Music" Community as defined by DotMusic's application. DotMusic's "Music Community" definition accurately represents the common definition of the "Music Community," which is confirmed by Wikipedia.

⁴ See <http://music.us/establishment>

⁵ <https://www.icann.org/en/system/files/bm/briefing-materials-2-05feb14-en.pdf>, Pg.3

⁶ <http://www.merriam-webster.com/dictionary/cohesion>

⁷ http://www.oxforddictionaries.com/us/definition/american_english/cohesion

According to Wikipedia:⁸

Music community is defined as a logical alliance of interdependent communities that are related to music, which include commercial participants...and non-commercial participants...and consists of an “ensemble of practices and institutions that make possible and regulate the production, distribution and consumption of music”...UNESCO identifies the music community as a “community of identity” implying common identifiable characteristics and cohesive attributes such as sharing a music culture, norms and subscribing to common ideals related to music...The music community is not defined as much by demographic indicators such as race, gender, and income level, as it is by common values, cohesive norms and interconnected structures to build a community identity. It refers to music-related individuals and organisations in a shared environment with shared understandings and practices, modes of production and distribution. The shared organisation of collective musical activities, identity and community value is created as result of infrastructure and a shared set of common values...Many studies outline the historical, cultural, and spatial significance of the music community, including how its identity is formed through musical practices. The music community shares a cohesive and interconnected structure of artistic expression, with diverse subcultures and socio-economic interactions...subscribing to common ideals. Under such structured context music consumption becomes possible regardless whether the transaction is commercial and non-commercial.⁹

ii) *An Aware, Pre-Existing and Recognized Community of Considerable Millions Worldwide:*

DotMusic’s definition of the Community covers all Community members associated with the string, each with a requisite awareness of the Community that can be validated through their natural association with a particular music-related community that they clearly identify with. According to DotMusic, all Music Community members must identify their music-related community in order to demonstrate their requisite awareness of the defined Community as part of the .MUSIC registration and validation process.

⁸ Wikipedia is ranked 6th among the ten most popular websites (Alexa, Retrieved March 23, 2015 from <http://www.alexacom/siteinfo/wikipedia.org>) and constitutes the Internet's largest, most frequently updated and popular general reference work (See OECD, OECD Internet Economy Outlook 2012, OECD Publishing, http://www.oecd-ilibrary.org/science-and-technology/oecd-internet-economy-outlook-2012_9789264086463-en,Pg.172) that compares favorably to the accuracy of other encyclopedias (such as the Britannica) according to a 2012 study conducted in partnership with Oxford University (See <http://blog.wikimedia.org/2012/08/02/seven-years-after-nature-pilot-study-compares-wikipedia-favorably-to-other-encyclopedias-in-three-languages>).

⁹ Music Community. In *Wikipedia*. Retrieved March 23, 2015, from https://en.wikipedia.org/wiki/Music_community

According to DotMusic, the Music Community’s geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents (Application Answer to Question 20a).

According to DotMusic, “registrants will be verified using Community-organized, unified “criteria taken from holistic perspective with due regard of Community particularities” that “invoke a formal membership (Application Answer to Question 20a).” The defined Community represents all music-related entities with a clear and straightforward membership with the Community involved in the legal production, performance, promotion, and distribution of music worldwide. According to DotMusic, the Music Community members must have an active, non-tangential relationship with the applied-for string “music” and also have the requisite awareness of the music-related community that they are a part of by specifically identifying it as part of the registration and validation process (i.e. upon successful registration and validation, each community member will be given a unique community identification number that will automatically associate them with their identified community and the “music” string).

DotMusic’s Community definition matches the applied-for string because it allows both commercial and non-commercial stakeholders to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination/exclusion. Given the regulated sector of the community, it is clear that the “Music Community” as defined implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate cohesive and globally-recognized set of standards for the protection of the music community members’ rights with relation to their copyrighted music works around the world.¹⁰

The Berne Convention for the Protection of Literary and Artistic Works¹¹ provides that each of the 168 contracting parties¹² (representing an overwhelming majority of the world’s population) provides automatic protection for music works first published in other countries of the Berne union and for unpublished music works whose authors are citizens of or resident in such other countries.¹³ This means that if a Music Community member’s copyright rights are violated in any other signatory country’s jurisdiction, then the music community member will have the music copyright rights given by that country. Music Community members are clearly aware of the collective Community’s rights, which could not be made possible without these cohesive and globally-recognized set of standards. If such standards were not coherent or enforced then music would not be able to exist in its current form and the industry component of the Music Community sector would not exist. As such, the Community’s *Establishment* and definition is “cohesive” and hence cannot be construed since the Community is a logical alliance of music

¹⁰ http://www.rightsdirect.com/content/rd/en/toolbar/copyright_education/International_Copyright_Basics.html

¹¹ http://www.wipo.int/treaties/en/text.jsp?file_id=283698

¹² http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=15

¹³ <http://www.britannica.com/EBchecked/topic/62482/Berne-Convention>

communities that establish a clearly delineated and organized Community structure that is “closely united” and functions as a “whole”

Further evidence to substantiate the cohesive, symbiotic and overlapping nature of the Community, includes other globally-recognized standards and classification systems, which identify who the individual songwriters, publishers and rights holders are and which songs they are associated with so that Community members are appropriately compensated, regardless of whether the constituent is a commercial, non-commercial or amateur entity. The “music” string is commonly used in classification systems such as ISMN,¹⁴ ISRC,¹⁵ ISWC,¹⁶ ISNI.¹⁷ (Application Answer to Question 20a). For example, if a music entity would like to distribute their music, either commercially or for free, then an ISRC can be assigned to globally identify any specific music work. An ISRC, which facilitates efficient music discovery and community member payment, is constructed from 12 characters representing country, registrant, year of registration and designation (i.e. the serial number assigned by the registrant). With respect to domains, an equivalent system that relates to identifying a specific domain’s registrant and other relevant information pertaining to the domain is WHOIS. Domain registrants are required by ICANN “to provide accurate WHOIS contact data” or else their domain “registration may be suspended or even cancelled”.¹⁸

Without such Music Community “cohesion” and standardized systems functioning in its regulated sector, the Music Community would not be able to create, market and distribute their music. By the same token, fans would not be able to identify the music they are listening to with a specific music artist, regardless of whether the listening activity or behavior is commercial or non-commercial in nature. The socio-economic structure that characterizes “music” as commonly-known today would be non-existent without these organized and delineated elements that commonly define the Community.

¹⁴ The International Standard Music Number (ISMN) is a unique number for the identification of all notated music publications from all over the world. The ISMN is an ISO certified global standard number (ISO 10957:2009). See <http://www.ismn-international.org/whatis.html> and

http://www.iso.org/iso/home/store/catalogue_ics/catalogue_detail_ics.htm?csnumber=43173

¹⁵ The ISRC (International Standard Recording Code) is the international identification system for sound recordings and music video recordings. The ISRC is an ISO certified global standard number (ISO 3901:2001) and is managed by the IFPI. See <http://isrc.ifpi.org>, <https://www.usisrc.org/about/index.html> and http://www.iso.org/iso/catalogue_detail?csnumber=23401

¹⁶ The ISWC (International Standard Musical Work Code) is a unique, permanent and internationally recognized reference number for the identification of musical works. The ISWC has been approved by ISO (International Organization for Standardisation) as a global standard (ISO 15707:2001) and is managed by CISAC. See <http://www.iswc.org/en/faq.html> and http://www.iso.org/iso/catalogue_detail?csnumber=28780

¹⁷ The International Standard Name Identifier (ISNI) is the ISO certified global standard number (ISO 27729) for identifying the millions of contributors to creative works and those active in their distribution. ISNI holds public records of over 8 million identities and 490,000 organizations. See <http://www.isni.org/> and http://www.iso.org/iso/catalogue_detail?csnumber=44292

¹⁸ <https://whois.icann.org/en/about-whois> and <https://www.icann.org/resources/pages/faqs-f0-2012-02-25-en>

iii) International Federations and Organizations Dedicated to Community Functions:

According to ICANN’s Applicant Guidebook (“AGB”)¹⁹: *“With respect to “Delineation” and “Extension,” it should be noted that a community can consist of...a logical alliance of communities (for example, an international federation of national communities of a similar nature... viable as such, provided the requisite awareness and recognition of the community is at hand among the members.”* (AGB, 4-12). The community as defined in the DotMusic application has at least one entity mainly dedicated to the community which has supported DotMusic, which include several “international federation of national communities of a similar nature” relating to music, music coalitions and other relevant and non-negligible music organizations.

One of these entities include the only international federation of national communities relating to government culture agencies and arts councils, which has an integral association with music globally: the International Federation of Arts Councils and Culture Agencies (IFACCA).

IFACCA is the only international federation that represents government culture agencies and arts councils globally. These national communities are governmental institutions that play a pivotal role with respect to music.²⁰ IFACCA’s members cover the majority of music entities globally, regardless of whether they are commercial, non-commercial or amateurs. Government ministry of culture and council agencies related to music cover a majority of the overall community with respect to headcount and geographic reach. The “Size” covered reaches over a hundred million music entities i.e. “considerable size with millions of constituents” per Application Answer to Question 20a.

The string “music” falls under the jurisdiction of each country’s Ministry of Culture governmental agency or arts/music council (emphasis added). The degree of power and influence of government ministry of culture and council agencies with respect to music surpasses any organization type since these agencies (i) provide the majority of funding for music-related activities; (ii) regulate copyright law; and (iii) encompass all the music entities that fall under their country, regardless whether these entities are commercial, non-commercial or amateurs. IFACCA is globally recognized by its strategic partners, such as UNESCO, a United Nations agency representing 195 member states and the European Commission.²¹ The UNESCO strategic partnership²² is relevant, especially since UNESCO founded the International Music Council (the “IMC”) in 1949, which represents over 200 million music constituents from over 150 countries and over 1000 organizations globally.²³

¹⁹ <https://newgtlds.icann.org/en/applicants/agb/guidebook-full-11jan12-en.pdf>

²⁰ http://www.ifacca.org/membership/current_members/

²¹ http://www.ifacca.org/strategic_partners/

²² http://www.ifacca.org/strategic_partners/

²³ <http://www.imc-cim.org/about-imc-separator/who-we-are.html>

Government activities in the clearly delineated and organized “Music Community” include setting statutory royalty rates. For example, in the United States, mechanical royalties are based on a “statutory rate” set by the U.S. Congress. This rate is increased to follow changes in the economy, usually based on the Consumer Price Index. Currently, the mechanical statutory rate is \$0.091 for songs five minutes or less in length or \$.0175 per minute for songs that are over five minutes long.²⁴

Ministries of culture and arts councils (that comprise IFACCA’s membership) support musicians, musical performances, independent music artists, non-commercial musical expression and education in their respective countries. The 165 ministries of culture, arts councils and affiliates that comprise IFACCA’s membership support the “performing arts” and music specifically. Without the financial and logistical support of arts councils and the ministries of culture, the music community would be adversely affected, and in some countries, may not exist in any appreciable manner. For example, the Ministry of Culture 2011 budget for the small country state of Cyprus for culture funding was €34,876,522 with critical support of music activities.²⁵ Other small government Ministries of Culture, such as Albania,²⁶ or government Ministries of Culture and Arts Councils from countries with larger populations, such as India,²⁷ all provide critical support and substantial advocacy for music. Other examples include government institutions collaborating and advocating music through their funded country-based pavilion initiatives at Midem, the world’s largest music conference.²⁸

Government ministries and arts councils provide critical support for the Music Community, including commercial music organizations. By way of example, government ministries’ and arts councils’ substantial connection to and support of “music” is noted in the reports of funding and support for music. Some examples to showcase the degree of power of the IFACCA’s membership towards the string and global and national music are music investment and music funding (Annual reports by governments and councils):

- New Zealand Ministry of Culture has funded significant music projects. Some include the REAL New Zealand Music Tour (\$415,000), the New Zealand String Quartet (\$150,000) and New Zealand Music Commission: (\$1,378,000).²⁹
- The Australian Government/Council For The Arts invested \$51.2 million for the nation’s orchestras; \$21.6 million for opera; \$10.8 million for other music artists and

²⁴ U.S. Copyright Office, <http://www.copyright.gov/carp/m200a.html>

²⁵ 2011 Annual Report for Cyprus Ministry of Culture, Section 1.2 “Music”

(http://www.moec.gov.cy/en/annual_reports/annual_report_2011_en.pdf). Activities include Music Performances in Cyprus (1.2.1) and Abroad (1.2.2), Subsidization of Paphos Aphrodite Festival (1.2.3), Music Publications (1.2.4), Subsidization and Purchases of Digital Records (1.2.5), Promotion for Cypriot musical creativity abroad (1.2.6), Cyprus Symphony Orchestra Foundation (1.2.7), Music Information Centre (1.2.8), Developing Music Education (1.2.9), Organising of the 1st Musicological Symposium (1.2.10) and Musical Festivities for the European Volunteerism Year (1.2.11)

²⁶ http://www.culturalpolicies.net/down/albania_012011.pdf

²⁷ 2010-11 Annual Report from India Ministry of Culture, [http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011\(Eng\).pdf](http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011(Eng).pdf)

²⁸ <http://my.midem.com/en/contact-us/pavilion-representatives/>

²⁹ 2011 Annual Report from New Zealand Ministry of Culture:

[http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20\(D-0448383\).PDF](http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20(D-0448383).PDF)

organizations; \$13.1 million for multi-platform artists and organizations; and \$4 million in miscellaneous funding, including sector building and audience development initiatives and programs.³⁰

- Canada Council for the Arts is Canada’s national, arts funding agency investing \$28 million in its Canada Council Musical Instrument Bank (Page 16) and \$28,156,000 in Music Arts Programs (Page 66).³¹ The Government of Canada also renewed its annual investment of \$27.6 million over five years in the Canada Music Fund.³²
- The United Kingdom Department for Culture and Education (DfE) will fund music education at significant levels: £77 million, £65 million and £60 million will be available in the three years from April 2012.³³
- The United States National Endowment of the Arts has awarded more than \$4 billion to support the arts since its inception³⁴ and has a strong focus on music as outlined in its Strategic Plan³⁵ with Congress requested to provide \$154,465,000 for fiscal year 2014.³⁶
- The National Arts Council of South Africa invested 2,536,131 ZAR in Music and 9,995,000 ZAR in Orchestras and has focused strongly on the “Strengthening of live indigenous music and advocating the revival of the live music circuit in South Africa”³⁷
- The Singapore Arts Council will fund \$10.2 million in the arts under its 2013 Grants Framework, including the Ding Yi Music Company and Siong Leng Musical Association.³⁸
- In 2011, the support for artistic activities by the Arts Council of Finland was €32.4 million of which €4,921,850 was awarded to music.³⁹

Each of IFACCA’s members has a clear association with, and mandate to support the music arts in their countries. In most countries, their ministry of culture/arts council is the largest funder and marketing supporter of the music arts.

³⁰ 2011 Annual Report for the Australia Council for the Arts, http://www.australiacouncil.gov.au/data/assets/pdf_file/0016/142351/Australia-Council-Annual-Report-201112.pdf, Page 28

³¹ 2011 Annual Report for Canada Council for the Arts, http://www.canadacouncil.ca/NR/rdoonlyres/6F7549BB-F4E5-4B8B-95F4-1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf

³² <http://www.pch.gc.ca/eng/1294862453819/1294862453821>

³³ Department for Culture, The Importance of Music, A National Plan for Music Education, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/180973/DFE-00086-2011.pdf, Page 4, 2011

³⁴ 2011 Annual report for the National Endowment of the Arts, <http://www.nea.gov/about/11Annual/2011-NEA-Annual-Report.pdf>, Page 2

³⁵ NEA Strategic Plan 2012-2016, www.arts.gov/about/Budget/NEAStrategicPlan2012-2016.pdf

³⁶ http://www.ifacca.org/national_agency_news/2013/04/10/us-president-requests-154465000-neh-2014/

³⁷ 2010-2011 Annual Report for the National Arts Council South Africa, National Arts Council South Africa, <http://www.nac.org.za/media/publications/AR%2010-11%20NAC.PDF/download>, Page 11. Also Mmino, the South African – Norwegian Education Music Programme, solely funds music projects funding a total of 294 projects. Thirteen projects were allocated funding for a total of R1,680,600 of which R1,381,000 went towards music educational and R299,600 to exchange projects (Page 10)

³⁸ Singapore Arts Council, <http://www.nac.gov.sg/media-centre/news-releases/news-detail?id=c2db15e2-c319-40ec-939c-d58735d0a91c>

³⁹ <http://www.taiteenkeskustoimikunta.fi/documents/10162/31704/TY+tilastotiedote+1+12+.pdf>, Page 1 and Page

Another clear example of an “entity dedicated to the community” with members that cover hundreds of millions of music constituents with formal boundaries is A2IM, the American Association of Independent Music. A2IM has two types of members: U.S independent Label members and Associate members. A2IM membership for Labels and Associates is invoked formally through an application and if accepted would require annual membership dues.⁴⁰

The reach of A2IM Associate⁴¹ membership covers hundreds of millions of entities (i.e. the reach of A2IM’s total membership “geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents – See Application Answer to Question 20a).

Organized and strictly delineated communities related to music that are A2IM members include:

- **Apple iTunes**⁴² – iTunes accounts for 63% of global digital music market⁴³ - a majority – with a registered community of 800 million registered members⁴⁴ available in 119 countries who abide to strict terms of service and boundaries⁴⁵ and have downloaded over 25 billion songs⁴⁶ from iTunes’ catalog of over 43 million songs⁴⁷ covering a global music community, regardless of genre or whether the community entities are amateur, professional, commercial or non-commercial. To add music to iTunes, all music artists must have a formal membership with iTunes via an Apple ID registration, which includes a current credit card on file.⁴⁸
- **Pandora**⁴⁹ – Pandora is the world’s largest streaming music radio with a community of over 250 million registered members.⁵⁰
- **Spotify**⁵¹ – Spotify is the world’s largest music streaming community with over 50 million active registered members in 58 countries and over 30 million songs. The music community uploads 20,000 songs every day.⁵²
- **Vevo**⁵³ – Vevo is the world’s leading all-premium music video community and platform with over 8 billion monthly views globally.⁵⁴

⁴⁰ <http://a2im.org/about-joining/>

⁴¹ <http://a2im.org/groups/tag/associate+members/>

⁴² <http://a2im.org/groups/itunes>

⁴³ <http://appleinsider.com/articles/13/04/16/apples-itunes-rules-digital-music-market-with-63-share>

⁴⁴ <http://www.npr.org/blogs/therecord/2015/01/06/375173595/with-downloads-in-decline-can-itunes-adapt>

⁴⁵ <http://www.apple.com/legal/internet-services/itunes/ww/index.html>

⁴⁶ <http://www.apple.com/pr/library/2013/02/06iTunes-Store-Sets-New-Record-with-25-Billion-Songs-Sold.html>

⁴⁷ <https://www.apple.com/itunes/features/>

⁴⁸ <https://www.apple.com/itunes/working-itunes/sell-content/music-faq.html>

⁴⁹ <http://a2im.org/groups/pandora>

⁵⁰ <http://www.cnet.com/news/like-a-rolling-milestone-pandora-hits-250m-registered-users/> and <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MTkxNTM1fENoaWxkSUQ9LTF8VHlwZT0z&t=1>, Pg.9

⁵¹ <http://a2im.org/groups/spotify>

⁵² <https://press.spotify.com/us/information/>

⁵³ <http://a2im.org/groups/vevo/>

- **Youtube**⁵⁵ – Youtube is the world’s largest music video streaming community with millions of music creators -- amateur, professional, commercial or non-commercial -- and over 1 billion registered members covering all regions globally. 6 billion hours of video is watched every month on Youtube,⁵⁶ of which 38.4% is music-related.⁵⁷
- **ReverbNation**⁵⁸ – ReverbNation⁵⁹ is one of the world’s largest music community and a leading music distributor with over 3.87 million musicians, venues labels and industry professionals covering every country globally. The ReverbNation community grows by over 50,000 artists, bands, labels and industry professionals monthly.
- **BMG**⁶⁰ – BMG is focused on the management of music publishing and recording rights. BMG has an international presence and represents over 2.5 million music rights globally.⁶¹

A2IM also includes members that are associated with global government agencies which exclusively represent substantial music economies and music members, such as France (BureauExport⁶²), China (China Audio Video Association⁶³) and Germany (Initiative Musik).⁶⁴ A2IM also has Affiliate⁶⁵ associations within the global music community. These include Affiliates such as MusicFirst,⁶⁶ the Copyright Alliance,⁶⁷ the Worldwide Independent Network (WIN)⁶⁸ and Merlin.⁶⁹

A2IM also represents a recognized Music Coalition representing the interests of the Global Independent Music Community.⁷⁰ The A2IM Coalition includes Merlin, a global rights agency for the independent label sector, representing over 20,000 labels from 39 countries, Worldwide Independent Network (representing label creators in over 20 countries), Association of Independent Music (representing largest and most respected labels in the world), and IMPALA (Independent Music Companies Association on behalf of over 4,000 independent music companies and national associations across Europe, representing 99% of music actors in Europe which are micro, small and medium sized enterprises.

⁵⁴ <http://www.vevo.com/c/EN/US/about>

⁵⁵ <http://a2im.org/groups/youtube/>

⁵⁶ <https://www.youtube.com/yt/press/statistics.html>

⁵⁷ http://www.researchandmarkets.com/reports/2092499/internet_video_2011_2014_view_share_site_and

⁵⁸ <http://a2im.org/groups/reverb-nation/>

⁵⁹ <http://www.reverbnation.com/about>

⁶⁰ <http://a2im.org/groups/bmg-rights/>

⁶¹ <http://www.bmg.com/category/about-us/history/>

⁶² <http://a2im.org/groups/french-music-export-office>

⁶³ <http://a2im.org/groups/china-audio-video-association-cava>

⁶⁴ <http://a2im.org/groups/initiative-musik-gmbh>

⁶⁵ <http://a2im.org/groups/tag/associate+members/>

⁶⁶ <http://musicfirstcoalition.org/coalition>, The musicFIRST Coalition, with founding members A2IM, RIAA, and Recording Academy represents musicians, artists, managers, music businesses, and performance right advocates.

⁶⁷ <http://www.copyrightalliance.org/members>

⁶⁸ <http://www.winformusic.org>

⁶⁹ <http://www.merlinnetwork.org>

⁷⁰ <https://www.icann.org/en/system/files/correspondence/bengloff-to-chehade-et-al-20aug14-en.pdf> and <https://www.icann.org/en/system/files/correspondence/bengloff-to-crocker-et-al-07mar15-en.pdf>

Cumulatively, A2IM's Label and Associate Membership, A2IM's Affiliates and the A2IM's Global Independent Music Community Coalition, covers a majority of the global music community. Its cumulative membership is in the hundreds of millions of entities with formal boundaries belonging to strictly organized and delineated communities related to music as per the Community Definition and Size (See Application answer to Question 20a).

Another global Music Community Coalition led by the RIAA "on behalf of over 15 national and international trade associations" also expressed its support for .MUSIC to be under a "community" application model, including encouraging statements in support of DotMusic's policies that stated that the coalition "was encouraged to see" that DotMusic "included several measures to deter and address copyright infringement within that TLD." The "coalition members represent the people that write, sing, record, manufacture, distribute and/or license over 80% of the world's music"⁷¹ – a majority of global music.⁷²

Collectively, the DotMusic application received support from the largest coalition of music community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support⁷³ from institutions/organizations representing a majority of the Community addressed. Music -- as commonly-known by the general public and experienced today -- would not be possible without these supporting, non-negligible and relevant organizations that have endorsed DotMusic.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Community Establishment* and *Community Endorsement* from the majority of the global Music Community as defined.

B) Nexus⁷⁴

According to the Applicant Guidebook ("AGB"), to receive the maximum score for Nexus, the applied-for string -- "music" -- must match the name of the community or be a well-known short-form or abbreviation of the community name.

The *Nexus* of the "Music Community" entirely matches the applied-for "music" string because it represents the entire global Music Community as commonly-known and perceived by the general public. This definition allows for all constituents with a requisite awareness of the Community

⁷¹ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.1

⁷² <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.3, Appendix A

⁷³ <http://music.us/supporters>

⁷⁴ See <http://music.us/nexus>

defined to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination. The definition of the Community requires that members have an active, non-tangential relationship with the applied-for string and the requisite awareness of the music community they identify with as part of the registration process. It is clear that the general public will directly associate and equate the string with the Community as defined by DotMusic. There is no possibility of overreaching beyond the definition or allowing unrelated non-music entities to be included as part of the Community.

Community members may register a .MUSIC by either:

- 1) Identifying that they belong to a Music Community Member Organization (“MCMO”); or
- 2) Identifying the community they belong to, which is consistent with the definition of the Community: “the strictly delineated and organized logical alliance of communities of similar nature related to music.”

All Community members are aware of and recognize their inclusion in the defined Community by identifying which clearly defined community they belong to and have an active participation in. The *nexus* of the applied-for string ensures inclusion of the entire global community that the string represents while excluding unrelated-entities not associated with the string. This way there is a clear match and alignment between the “music” sting and the Community defined.

While the exact size of the global Music Community as defined is unknown (there is no empirical evidence providing an exact, finite number because amateur entities are also included in the Community’s definition), it is in the considerable millions as explicitly stated in the DotMusic Application. DotMusic’s definition of the Community and mutually-inclusive Registration Policies ensure that eligible members are only music-related and associated with the string. This is because the string identifies all constituents involved in music. Music-only participation optimizes the relevancy of .MUSIC domains to the string and entirely matches the *nexus* between the string and Community defined. According to DotMusic, the Community *definition, eligibility criteria and content and use* requirements ensure that peripheral industries and entities not related to music are excluded so that the string and the defined Community matches and aligns in a consistent manner consistent with DotMusic’s community-based purpose i.e. only entities with music-related activities are able to register .MUSIC domains.

Membership aligns with the *nexus* of the Community and the string, which is explicitly relevant to music. The string as defined in the application demonstrates uniqueness because it has no other significant meaning beyond identifying the community described in the application. According to DotMusic’s application, any tangential or implicit association with the *nexus* of the Community and the string is not regarded as a delineated membership since it would be considered unclear, dispersed or unbound. Such unclear, dispersed or unbound tangential

relationships with the defined “music” Community and applied-for “music” string would not constitute a qualifying Community membership and would be ineligible for registration.

The inclusion of every music constituent type is paramount to the purpose of the string. Every type of music constituent critically contributes to the function and operation of the music sector within a regulated framework given the symbiotic overlapping nature of the Community as defined and structured. Music would not function as it does today without the participation of all music constituent types which cumulatively match the string with the Community definition.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Nexus*.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'P. McMahon', with a long horizontal flourish extending to the right.

Signature: Contact Information Redacted Apr 14 '15 ip: 150.203.62.73

Name: Paul McMahon

Title: Dr

Organization: School of Music, Australian National University

Date: 15 April 2015

About Dr. Paul McMahon

*Lecturer in Music,
Performance Convenor
College of Arts and Social Sciences
Australian National University*

Education

B. Cr. Arts (Music) (University of Southern Queensland),
Grad. Dip. Mus. (Queensland Conservatorium Griffith University),
M. Mus. (Perf.) (University of Sydney),
PhD (Queensland Conservatorium Griffith University)

Research interests

- Historical performance practice
- Vocal performance and the pedagogy of singing
- Music performance research

Biography

Performing regularly as a soloist with symphony orchestras, chamber music groups & choirs throughout Australia, New Zealand & Asia, tenor Paul McMahon is one of Australia's leading exponents of Baroque repertoire, particularly the Evangelist role in the *Passions* of J. S. Bach. Career highlights include Bach's *Matthäus-Passion* under Roy Goodman; Haydn's *Die Schöpfung* under the late Richard Hickox, and Mozart's *Great Mass in C Minor* under Masaaki Suzuki. Paul's recent collaborations include recitals with the renowned pianists Bengt Forsberg and Kathryn Stott & the Australia Ensemble.

He has appeared as soloist in the festivals of Sydney, Melbourne & Brisbane & has broadcast extensively on ABC Classic FM. He was a member of The Song Company from 1997 to 2001, touring regularly throughout Australia, Asia & Europe. Paul's discography includes the solo album of lute songs entitled *A Painted Tale*; a CD & DVD recording of Handel's *Messiah*; Monteverdi's *L'Orfeo*; Mozart's *Requiem & Idomeneo*. He is featured on the *Swoon* series; various Christmas cds & the soundtrack to feature film *The Bank*. This season, Paul appears as soloist in Handel's *Messiah* (MSO, QSO & the Consort of St George's Cathedral, Perth).

Other solo appearances include Handel's *Theodora* (Canberra Choral Society), Haydn's *Theresienmesse* (MSO), Mozart's *Requiem* (Auckland Philharmonia), Orff's *Carmina Burana* (Sydney Symphony), & Beethoven's *Symphony 9* (Adelaide Symphony Orchestra). Paul holds a PhD & Graduate Diploma of Music (Queensland Conservatorium Griffith University), Master of Music (Performance) (Sydney Conservatorium of Music), & Bachelor of Creative Arts (University of Southern Queensland). In 2002, he was awarded a Churchill Fellowship for intensive study of Baroque repertoire under Marius van Altena at the Royal Conservatoire in The Hague.

Publications

Book and book chapters

- McMahon, Paul G. (2014). "Handel and the voice practitioner: Perspectives on performance practice and higher education pedagogy" in *Teaching singing in the 21st century*. Scott D. Harrison & Jessica O'Bryan (eds). Dordrecht: Springer, pp. 263–286.
- McMahon, Paul G. (2010). "Classical voice pedagogy in Greater Newcastle: The singing teacher's perspective." In *Perspectives on teaching singing: Australian vocal pedagogues sing their voices*, Scott D. Harrison (ed.). pp. 66–82. Brisbane: Australian Academic Press.
- McMahon, Paul G. (2009). *George Frideric Handel and Giovanni Battista Draghi: Two contrasting approaches to text setting in John Dryden's A Song for St Cecilia's Day, 1687*. Köln: Lambert Academic Publishing.

Conference Publications (Peer-reviewed)

- McMahon, Paul G. (2013). *Dialogue and collective interaction: Informants upon the collaborative interpretation of Baroque performance practice*. Proceedings of the International Symposium on Performance Science, Vienna (August, 2013).
- McMahon, Paul G. (2013). *Practitioner reflections on higher education pedagogy: Performance practice and the music of Handel*. Proceedings of the 8th International Conference of Voice Teachers, pp. 147–156, Brisbane (July, 2013). ISBN 978-0-9922713-0-5.

Journal articles (Refereed)

- McMahon, Paul G. (In press). Tudor and Jacobean England: Observations on secular and sacred vocal music. *Musicology Australia*. Abingdon: Taylor and Francis.
- McMahon, Paul G. (2006). Draghi and Handel: Two contrasting approaches to John Dryden's Song for St Cecilia's Day, 1687. *Australian Voice*, Vol. 12, Journal of the Australian National Association of Teachers of Singing, pp. 32–38.

Conference Presentations

- McMahon, Paul G. (2015). *The dialogue of friendship: Musical discourse and character relationships in Handel's Jephtha*. 38th National Conference of the Musicological Society of Australia, Sydney (October 2015).
- McMahon, Paul G. (2015). *Darkness to light: Reflections upon Handel's rhetorical vocal writing in the English oratorio Samson*. Australian and New Zealand Association for Medieval and Early Modern Studies 10th Biennial International Conference, Brisbane (July 2015).
- McMahon, Paul G. (2014). *Rhetorical devices in sacred and secular realms: The musico-dramatic structures of Bach and Handel*. The Voice and the History of Emotions Performance Collaboratory, Sydney (October 2014).
- McMahon, Paul G. (2014). *The premiere of Alexander's Feast and Cecilia, volgi un sguardo: Handel's vocal writing for tenors John Beard and Carlo Arrigoni in 1736*. 16th International Conference on Baroque Music, Salzburg (July, 2014).

- McMahon, Paul G. (2013). *Dialogue and collective interaction: Informants upon the collaborative interpretation of Baroque performance practice*. International Symposium on Performance Science, Vienna (August, 2013).
- McMahon, Paul G. (2013). *Practitioner reflections on higher education pedagogy: Performance practice and the music of Handel*. 8th International Conference of Voice Teachers, Brisbane (July, 2013).
- McMahon, Paul G. (2012). *Baroque performance practice: Methodologies in conservatoire pedagogy*. 3rd International Reflective Conservatoire Conference, London (March, 2012). Conference Reader ISBN: 978-0-9571888-1-5.
<http://rconference2012.org.uk/attachments/papers/PaulMcMahon.pdf>

Excellence in Research Australia research portfolio

- McMahon, Paul G. (2011). *Affect: Emotive text and musical expression in the 'live' performance of eighteenth-century vocal music*. FoR code: 190407.

CD recordings (featured soloist)

- McMahon, Paul G. (2009). *David and Jonathan*. Sydney: ABC Classics (476 3691).
- McMahon, Paul G. (2009). *The First Nowell*. Sydney: ABC Classics (476 3682).
- McMahon, Paul G. (2008). *Exaltate Dominum*. Sydney: ABC Classics (476 6290).
- McMahon, Paul G. (2008). *Handel – Top 40*. Sydney: ABC Classics (476 3335).
- McMahon, Paul G. (2007). *Idomeneo*. Sydney: ABC Classics (476 6350).
- McMahon, Paul G. (2007). *Angels ever bright*. Sydney: ABC Classics (442 9812).
- McMahon, Paul G. (2006). *Danny Boy*. Sydney: ABC Classics (476 9238).
- McMahon, Paul G. (2006). *Ye Banks and Braes*. Sydney: ABC Classics (476 8035).
- McMahon, Paul G. (2006). *Pepusch Cantatas*. Sydney: Salut Baroque (SAL004).
- McMahon, Paul G. (2006). *Fairest Isle – The timeless music of Henry Purcell*. Sydney: ABC Classics (476 5329).
- McMahon, Paul G. (2006). *Eternity*. Sydney: ABC Classics (476 160-7).
- McMahon, Paul G. (2005). *Swoon Gold*. Sydney: ABC Classics (476 7925).
- McMahon, Paul G. (2005). *L'Orfeo*. Sydney: ABC Classics (476 8030).
- McMahon, Paul G. (2005). *Choral Spectacular*. Sydney: ABC Classics (476 5706).
- McMahon, Paul G. (2005). *Praise II*. Sydney: ABC Classics (476 284-1).
- McMahon, Paul G. (2005). *A Painted Tale*. Sydney: ABC Classics (476 192-9).
- McMahon, Paul G. (2004). *The Fairy Queen*. Sydney: ABC Classics (476 2879).
- McMahon, Paul G. (2004). *An Introduction to Handel's Messiah*. Sydney: ABC Classics (476 289-0).
- McMahon, Paul G. (2004). *Felix and Me*. Sydney: ABC Classics (476 176-2).
- McMahon, Paul G. (2004). *Silent Night*. Sydney: ABC Classics (476 291-6).
- McMahon, Paul G. (2003). *Classic*. Sydney: ABC Classics (476 155-8).
- McMahon, Paul G. (2003). *Semele*. Sydney: ABC Classics (980 047-0).
- McMahon, Paul G. (2003). *The Rise and Rise of Australian Rugby*. Sydney: ABC Classics (476 122-9).
- McMahon, Paul G. (2002). *Messiah*. Sydney: ABC Classics (472601-2).
- McMahon, Paul G. (2002). *Carmina Burana*. Sydney: ABC Classics (472 481-2).
- McMahon, Paul G. (2002). *Prayer for Peace*. Sydney: ABC Classics (465 824-2).
- McMahon, Paul G. (2002). *Glorious Night*. Sydney: ABC Classics (472 600-2).
- McMahon, Paul G. (2001). *Perfect Day*. Sydney: ABC Classics (472 044-2).
- McMahon, Paul G. (2001). *The Bank* (Soundtrack). Sydney: ABC Classics (465 703-2).

- McMahon, Paul G. (2001). *La Naissance de Venus*. Sydney: ABC Classics (472 045-2).

DVD recordings (featured soloist)

- McMahon, Paul G. (2003). *Swoon—A Visual and Musical Odyssey*. Sydney: ABC Classics (DVD 980047-6).
- McMahon, Paul G. (2002). *Messiah*. Sydney: ABC Classics (DVD 472 604-9).

Selected performances (2005 – 2015)

- McMahon, Paul G. (2015). Bach *St John Passion*, Sydney Philharmonia Choirs.
- McMahon, Paul G. (2015). Bach *Coffee Cantata*, Canberra International Music Festival.
- McMahon, Paul G. (2014). Bach *St John Passion*, Trinity College, Melbourne. (#)
- McMahon, Paul G. (2014). Bach *St Matthew Passion*, St George's Cathedral, Perth. (R)
- McMahon, Paul G. (2014). Handel: *Messiah*, New Zealand Symphony Orchestra.
- McMahon, Paul G. (2014). *Dr Who Symphonic Spectacular*, Melbourne Symphony Orchestra.
- McMahon, Paul G. (2014). *Carmina Burana*, Adelaide Symphony Orchestra. (R)
- McMahon, Paul G. (2013). Beethoven *Ninth Symphony*, Adelaide Symphony Orchestra. (# R)
- McMahon, Paul G. (2013). Handel *Messiah*, Melbourne Symphony Orchestra.
- McMahon, Paul G. (2013). Handel *Messiah*, Queensland Symphony Orchestra.
- McMahon, Paul G. (2013). Handel *Messiah*, St George's Cathedral, Perth. (R)
- McMahon, Paul G. (2013). Handel *Messiah*, Newcastle University Choir.
- McMahon, Paul G. (2013). Handel *Theodora*, Canberra Choral Society. (^ R)
- McMahon, Paul G. (2013). Haydn *Theresienmesse*, Melbourne Symphony Orchestra. (^ R)
- McMahon, Paul G. (2013). Mozart Requiem. Auckland Philharmonic Orchestra. (^ R)
- McMahon, Paul G. (2013). Orff *Carmina Burana*, Sydney Symphony. R
- McMahon, Paul G. (2012). Mozart *Requiem*, Adelaide Symphony Orchestra (* R).
- McMahon, Paul G. (2012). Mozart *Great Mass in C Minor*, Auckland Choral.
- McMahon, Paul G. (2012). Bach *Magnificat*, St George's Cathedral, Perth.
- McMahon, Paul G. (2012). Glanville-Hicks *Profiles from China*, Australia Ensemble, Sydney. (* # R)
- McMahon, Paul G. (2012). Mozart *Requiem*, Sydney Symphony. (* # R)
- McMahon, Paul G. (2012). Bach *Johannes-Passion*, Melbourne Bach Choir.
- McMahon, Paul G. (2012). Handel *Messiah*, St George's Cathedral, Perth. (R)
- McMahon, Paul G. (2011). Handel *Messiah*, Hobart Baroque. (R)
- McMahon, Paul G. (2011). Bach *Christmas Oratorio*, St George's Cathedral, Perth. (R)
- McMahon, Paul G. (2011). Mozart *Great Mass in C Minor*, West Australian Symphony Orchestra, Perth. (* # R)
- McMahon, Paul G. (2011). Mozart *Great Mass in C Minor*, Melbourne Symphony Orchestra. (* #)
- McMahon, Paul G. (2011). Bach *Mass in B Minor*, Sydney Philharmonia Choirs. (* ^ R)
- McMahon, Paul G. (2011) de Lalande *De Profundis Clamavi*, Sydney Philharmonia Choirs.
- McMahon, Paul G. (2011). Orff *Carmina Burana*, Melbourne Symphony Orchestra. (* # R)
- McMahon, Paul G. (2011). Handel *Messiah*, St George's Cathedral, Perth. (R)
- McMahon, Paul G. (2011). Bach *Magnificat*, Adelaide Symphony Orchestra. (* #)
- McMahon, Paul G. (2011). Bach *Johannes-Passion*, Sydney Philharmonia Choirs. (R)
- McMahon, Paul G. (2011). Bach *Johannes-Passion*, St George's Cathedral, Perth. (R)
- McMahon, Paul G. (2011). Bach *Matthäus-Passion*, Orpheus Choir, Wellington. (R)
- McMahon, Paul G. (2010). Handel *Messiah*, Auckland Choral. (R)

- McMahan, Paul G. (2010). Mozart *Requiem*, St George's Cathedral, Perth. (R)
- McMahan, Paul G. (2010). Mozart *Great Mass in C Minor*, St George's Cathedral, Perth. (R)
- McMahan, Paul G. (2010). Monteverdi *Vespro della Beata Vergine*, Sydney Philharmonia Choirs. (R)
- McMahan, Paul G. (2010). Purcell *King Arthur*, Sydney Philharmonia Choirs. (R)
- McMahan, Paul G. (2010). Bach *Matthäus-Passion*, Auckland Philharmonia Orchestra. (* ^ R)
- McMahan, Paul G. (2010). Bach *Mass in B Minor*, Orpheus Choir, Wellington. (* ^ R)
- McMahan, Paul G. (2010). Bach *Johannes-Passion*, City of Dunedin Choir. (R)
- McMahan, Paul G. (2010). Monteverdi *Vespro della Beata Vergine*, Christ Church St Laurence, Sydney.
- McMahan, Paul G. (2010). Bach *Matthäus-Passion*, Melbourne Bach Choir.
- McMahan, Paul G. (2009). Handel *Messiah*, Melbourne Symphony Orchestra. (* # R)
- McMahan, Paul G. (2009). Spiers *A Slender Strand of Memories*. (* +) World premiere performance of a commissioned work marking the sesquicentenary of local government in Newcastle.
- McMahan, Paul G. (2009). Haydn *Creation*, Auckland Philharmonic Orchestra. (* ^ R)
- McMahan, Paul G. (2009) Handel *Messiah*, Adelaide Symphony Orchestra. (* # R)
- McMahan, Paul G. (2009). Dean *Winter Songs*. Australia Ensemble, Sydney. (* # R)
- McMahan, Paul G. (2008). Charpentier *David and Jonathan*, Pinchgut Opera, Sydney. (* # R)
- McMahan, Paul G. (2008). Bach *Mass in B Minor*, Sydney Philharmonia Choirs. (* ^ R)
- McMahan, Paul G. (2007). Britten *Canticle II*, Australian Festival of Chamber Music, Townsville. (* #)
- McMahan, Paul G. (2007). Vaughan Williams *On Wenlock Edge*, Australian Festival of Chamber Music, Townsville. (* #)
- McMahan, Paul G. (2006). Mozart *Idomeneo (Arbace)*, Pinchgut Opera, Sydney. (* # R)
- McMahan, Paul G. (2006). Bach *Matthäus-Passion*, Sydney Chamber Choir. (* # R)
- McMahan, Paul G. (2005). Bach cantatas BWV 79, 80, 140, Sydney Philharmonia Choirs. (* # R)
- McMahan, Paul G. (2005). Bach cantatas BWV 19, 130, 149, Sydney Philharmonia Choirs. (* #)
- McMahan, Paul G. (2005). Bach cantatas BWV 27, 46, 78, 105, Sydney Philharmonia Choirs. (* # R)
- McMahan, Paul G. (2005). Stradella cantatas and serenatas, University of Newcastle. (* +)
- McMahan, Paul G. (2005). Bach cantatas BWV 7, 9, 30, Sydney Philharmonia Choirs. (* # R)

***Key:**

ERA FoR Code: 190407

recorded by ABC Classic FM

^ archival recording

R review/s published

Website(s)

<https://researchers.anu.edu.au/researchers/mcmahon-p>

<http://www.paulmcmahon.com.au>

Re: Expert Testimony on (i) Community Establishment; (ii) Nexus; and (iii) Support for DotMusic’s Community-Based Application¹ for .MUSIC (Application ID 1-1115-14110)

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

Please accept this letter that indicates that there is substantive and compelling evidence that the DotMusic application convincingly meets the full criteria under Community Priority Evaluation on the following points: (i) the Music Community’s *Establishment* as defined by DotMusic; (ii) the matching *Nexus* between the “music” Community and the “music” string (or top-level domain); and (iii) that DotMusic possesses documented *Support* from organizations representing a majority of the global Music Community addressed and defined.

Please see my credentials attached hereto that identify my level of expertise and specialized knowledge with respect to the music community’s organization and delineation.

SUMMARY

DotMusic has established the following:

- 1) Its Community definition recognizes the cohesive, symbiotic and overlapping nature of the global Music Community. The definition includes those associated with commercial and non-commercial creation, performance, marketing and distribution of music;
- 2) “Music Community” members have the requisite awareness and recognition of the interdependency, overlapping and cohesive nature of each “organized community of similar nature that relates to music.” These organized and aligned communities are closely united and make “music” as we know it today. It is this self-awareness and interdependence that gives the “Music Community” its strength. With exponential growth of the Internet, mobile and the Domain Name System (DNS), the “Music Community’s” use and reliance on the Internet to create, market and disseminate music-related content, products, services and activities will continue to grow;
- 3) The “Music Community” functions in a regulated sector with global copyright protections – it is clear that the “community,” as defined, implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate a globally-recognized set of standards for

¹ <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1392>

the protection of the “Music Community” member rights with relation to their copyrighted music works around the world;

4) The “Music” Community -- as defined by DotMusic -- has at least one entity mainly dedicated to the community supporting DotMusic’s application. Such documented *Support* includes several “international federation of national communities of a similar nature,” music coalitions and others that are strongly associated with “music,” which represent a majority of the Community with considerable millions of members worldwide.²

5) The *Nexus* of the “music” Community matches the “music” applied-for string because it represents the entire global Music Community – a community that pre-existed 2007 with a size in the considerable millions of constituents. The “Music Community” definition -- which incorporates the strict fundamental attributes of a closely united Community definition that is “organized” and “delineated” -- ensures that all of its constituent members have a requisite awareness of the community as defined, including both commercial and non-commercial stakeholders, to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination.

6) DotMusic has received support from the largest coalition of Music Community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support³ from institutions/organizations representing a majority of the Community as defined and recognized in the DotMusic application.

There is substantive evidence that DotMusic fulfills the *Nexus, Community Establishment and Support* criteria for the “Music” string. The inclusion and representation of every music constituent type is paramount to the articulated purpose of the string. DotMusic and its application’s global Music Community supporters substantiate that every type of music constituent contributes to the function and operation of the music sector within a regulated framework. The symbiotic nature of the Community as defined and structured means that “Music” would not function as it does today without the participation of all music constituent types that interconnect to match the “music” string with the “music” Community definition.

² <http://music.us/supporters>

³ <http://music.us/supporters>

ASSESSMENT OF COMMUNITY DEFINITION, ESTABLISHMENT AND NEXUS

A) Music Community Definition, Establishment & Community Endorsement⁴

DotMusic’s definition of the “Music Community” as a “strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music” (See Application Answer to Question 20a) is factually accurate and representative of the “Music Community.” Community characteristics include:

i) An Organized, Cohesive, Interdependent Logically-Allied Community:

The “Music Community” definition covers the regulated, interdependent and cohesive nature of the music sector that exists today. “Music Community” members have the requisite awareness and recognition of the interdependent, overlapping and cohesive nature of each “organized community of similar nature that relates to music” that comprises the “Music Community.” Without such cohesiveness and interdependency, the defined “Music” Community matching the applied-for string (“Music”) would not be able to function in its regulated sector. “Music” is a regulated sector comprised of a logical alliance of interdependent communities relating to music with organized practices and institutions that enable and regulate the production, distribution and consumption of music that was publicly recognized by both ICANN and the Government Advisory Committee⁵

As a result, the Music Community as defined is “closely united” (As per the definition of “cohesion” according to Merriam-Webster dictionary⁶) or “united or form a whole” (As per the definition of the word “cohesion” according to Oxford Dictionaries⁷).

DotMusic’s application follows unified principles that the entire Community subscribes to, such as: creating a trusted identifier and safe haven for music consumption, protecting musicians’ rights and intellectual property, fighting copyright infringement/piracy, supporting fair compensation and music education, and following a multi-stakeholder approach of representation of all types of global music constituents without discrimination (See Application Answers to 18).

The “Music Community” as defined (a “strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music”) establishes that:

- (1) There is an awareness and recognition among its members;

⁴ See <http://music.us/establishment>

⁵ <https://www.icann.org/en/system/files/bm/briefing-materials-2-05feb14-en.pdf>, Pg.3

⁶ <http://www.merriam-webster.com/dictionary/cohesion>

⁷ http://www.oxforddictionaries.com/us/definition/american_english/cohesion

- (2) The organized and delineated logical alliance of communities exists; and
- (3) The Community is “closely united” and “interdependent” (i.e. Each “organized community of similar nature that relates to music” which is part of the “logical alliance of communities that relate to music” is not mutually exclusive).

In short, the applied-for string (“Music”) matches the name of the “Music” Community as defined by DotMusic’s application. DotMusic’s “Music Community” definition accurately represents the common definition of the “Music Community,” which is confirmed by Wikipedia.

According to Wikipedia:⁸

Music community is defined as a logical alliance of interdependent communities that are related to music, which include commercial participants...and non-commercial participants...and consists of an “ensemble of practices and institutions that make possible and regulate the production, distribution and consumption of music”...UNESCO identifies the music community as a “community of identity” implying common identifiable characteristics and cohesive attributes such as sharing a music culture, norms and subscribing to common ideals related to music...The music community is not defined as much by demographic indicators such as race, gender, and income level, as it is by common values, cohesive norms and interconnected structures to build a community identity. It refers to music-related individuals and organisations in a shared environment with shared understandings and practices, modes of production and distribution. The shared organisation of collective musical activities, identity and community value is created as result of infrastructure and a shared set of common values...Many studies outline the historical, cultural, and spatial significance of the music community, including how its identity is formed through musical practices. The music community shares a cohesive and interconnected structure of artistic expression, with diverse subcultures and socio-economic interactions...subscribing to common ideals. Under such structured context music consumption becomes possible regardless whether the transaction is commercial and non-commercial.⁹

⁸ Wikipedia is ranked 6th among the ten most popular websites (Alexa, Retrieved March 23, 2015 from <http://www.alexa.com/siteinfo/wikipedia.org>) and constitutes the Internet's largest, most frequently updated and popular general reference work (See OECD, OECD Internet Economy Outlook 2012, OECD Publishing, http://www.oecd-ilibrary.org/science-and-technology/oecd-internet-economy-outlook-2012_9789264086463-en, Pg.172) that compares favorably to the accuracy of other encyclopedias (such as the Britannica) according to a 2012 study conducted in partnership with Oxford University (See <http://blog.wikimedia.org/2012/08/02/seven-years-after-nature-pilot-study-compares-wikipedia-favorably-to-other-encyclopedias-in-three-languages>).

⁹ Music Community. In *Wikipedia*. Retrieved July 6, 2015, from https://en.wikipedia.org/wiki/Music_community

ii) An Aware, Pre-Existing and Recognized Community of Considerable Millions Worldwide:

DotMusic's definition of the Community covers all Community members associated with the string, each with a requisite awareness of the Community that can be validated through their natural association with a particular music-related community that they clearly identify with. According to DotMusic, all Music Community members must identify their music-related community in order to demonstrate their requisite awareness of the defined Community as part of the .MUSIC registration and validation process.

According to DotMusic, the Music Community's geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents (Application Answer to Question 20a).

According to DotMusic, "registrants will be verified using Community-organized, unified "criteria taken from holistic perspective with due regard of Community particularities" that "invoke a formal membership (Application Answer to Question 20a)." The defined Community represents all music-related entities with a clear and straightforward membership with the Community involved in the legal production, performance, promotion, and distribution of music worldwide. According to DotMusic, the Music Community members must have an active, non-tangential relationship with the applied-for string "music" and also have the requisite awareness of the music-related community that they are a part of by specifically identifying it as part of the registration and validation process (i.e. upon successful registration and validation, each community member will be given a unique community identification number that will automatically associate them with their identified community and the "music" string).

DotMusic's Community definition matches the applied-for string because it allows both commercial and non-commercial stakeholders to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination/exclusion. Given the regulated sector of the community, it is clear that the "Music Community" as defined implies "more of cohesion than a mere commonality of interest" with an "awareness and recognition of a community among its members." Several international treaties mandate cohesive and globally-recognized set of standards for the protection of the music community members' rights with relation to their copyrighted music works around the world.¹⁰

The Berne Convention for the Protection of Literary and Artistic Works¹¹ provides that each of the 168 contracting parties¹² (representing an overwhelming majority of the world's population) provides automatic protection for music works first published in other countries of the Berne union and for unpublished music works whose authors are citizens of or resident in such other

¹⁰ http://www.rightsdirect.com/content/rd/en/toolbar/copyright_education/International_Copyright_Basics.html

¹¹ http://www.wipo.int/treaties/en/text.jsp?file_id=283698

¹² http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=15

countries.¹³ This means that if a Music Community member’s copyright rights are violated in any other signatory country’s jurisdiction, then the music community member will have the music copyright rights given by that country. Music Community members are clearly aware of the collective Community’s rights, which could not be made possible without these cohesive and globally-recognized set of standards. If such standards were not coherent or enforced then music would not be able to exist in its current form and the industry component of the Music Community sector would not exist. As such, the Community’s *Establishment* and definition is “cohesive” and hence cannot be construed since the Community is a logical alliance of music communities that establish a clearly delineated and organized Community structure that is “closely united” and functions as a “whole”

Further evidence to substantiate the cohesive, symbiotic and overlapping nature of the Community, includes other globally-recognized standards and classification systems, which identify who the individual songwriters, publishers and rights holders are and which songs they are associated with so that Community members are appropriately compensated, regardless of whether the constituent is a commercial, non-commercial or amateur entity. The “music” string is commonly used in classification systems such as ISMN,¹⁴ ISRC,¹⁵ ISWC,¹⁶ ISNI.¹⁷ (Application Answer to Question 20a). For example, if a music entity would like to distribute their music, either commercially or for free, then an ISRC can be assigned to globally identify any specific music work. An ISRC, which facilitates efficient music discovery and community member payment, is constructed from 12 characters representing country, registrant, year of registration and designation (i.e. the serial number assigned by the registrant). With respect to domains, an equivalent system that relates to identifying a specific domain’s registrant and other relevant information pertaining to the domain is WHOIS. Domain registrants are required by ICANN “to provide accurate WHOIS contact data” or else their domain “registration may be suspended or even cancelled”.¹⁸

¹³ <http://www.britannica.com/EBchecked/topic/62482/Berne-Convention>

¹⁴ The International Standard Music Number (ISMN) is a unique number for the identification of all notated music publications from all over the world. The ISMN is an ISO certified global standard number (ISO 10957:2009). See <http://www.ismn-international.org/whatis.html> and http://www.iso.org/iso/home/store/catalogue_ics/catalogue_detail_ics.htm?csnumber=43173

¹⁵ The ISRC (International Standard Recording Code) is the international identification system for sound recordings and music video recordings. The ISRC is an ISO certified global standard number (ISO 3901:2001) and is managed by the IFPI. See <http://isrc.ifpi.org>, <https://www.usisrc.org/about/index.html> and http://www.iso.org/iso/catalogue_detail?csnumber=23401

¹⁶ The ISWC (International Standard Musical Work Code) is a unique, permanent and internationally recognized reference number for the identification of musical works. The ISWC has been approved by ISO (International Organization for Standardisation) as a global standard (ISO 15707:2001) and is managed by CISAC. See <http://www.iswc.org/en/faq.html> and http://www.iso.org/iso/catalogue_detail?csnumber=28780

¹⁷ The International Standard Name Identifier (ISNI) is the ISO certified global standard number (ISO 27729) for identifying the millions of contributors to creative works and those active in their distribution. ISNI holds public records of over 8 million identities and 490,000 organizations. See <http://www.isni.org/> and http://www.iso.org/iso/catalogue_detail?csnumber=44292

¹⁸ <https://whois.icann.org/en/about-whois> and <https://www.icann.org/resources/pages/faqs-f0-2012-02-25-en>

Without such Music Community “cohesion” and standardized systems functioning in its regulated sector, the Music Community would not be able to create, market and distribute their music. By the same token, fans would not be able to identify the music they are listening to with a specific music artist, regardless of whether the listening activity or behavior is commercial or non-commercial in nature. The socio-economic structure that characterizes “music” as commonly-known today would be non-existent without these organized and delineated elements that commonly define the Community.

iii) *International Federations and Organizations mainly Dedicated to the Community:*

According to ICANN’s Applicant Guidebook (“AGB”)¹⁹: “*With respect to “Delineation” and “Extension,” it should be noted that a community can consist of...a logical alliance of communities (for example, an international federation of national communities of a similar nature... viable as such, provided the requisite awareness and recognition of the community is at hand among the members.*” (AGB, 4-12). The community as defined in the DotMusic application has at least one entity *mainly*²⁰ dedicated to the community which has supported DotMusic, which include several “international federation of national communities of a similar nature” relating to music, music coalitions and other relevant and non-negligible music organizations.

One of these entities include the only international federation of national communities relating to government culture agencies and arts councils, which has an integral association with music globally: the International Federation of Arts Councils and Culture Agencies (IFACCA).

IFACCA is the only international federation that represents government culture agencies and arts councils globally. These national communities are governmental institutions that play a pivotal

¹⁹ <https://newgtlds.icann.org/en/applicants/agb/guidebook-full-11jan12-en.pdf>

²⁰ Per the Oxford and Merriam Webster dictionaries, the word “mainly” is defined as “*more than anything else*” (See <http://www.oxforddictionaries.com/definition/english/mainly> and <http://www.merriam-webster.com/dictionary/mainly> respectively). According to DotMusic, the string .MUSIC relates to the Community “by representing all constituents involved in music creation, production and distribution” (Application Answer to Question 20d). Supporting organizations related to that string that are “mainly” dedicated to the Community and its activities, include the International Federation of Arts Councils and Culture Agencies (IFACCA) representing government culture ministries and arts councils, the International Federation of Musicians (FIM) representing musicians globally, the International Federation of Phonographic Industry (IFPI) representing the recording industry worldwide, the International Confederation of Music Publishers (ICPM) representing the voice of global music publishing, the International Association of Music Information Centres (IAMIC), the American Association of Independent Music (A2IM), whose associate members represent a majority of music consumed, the Independent Music Worldwide Independent Network (WIN) representing independent music worldwide, the International Society for Music Education (ISME) the premiere international organization representing music education, and many others (See support at <http://music.us/supporters> and <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails:downloadattachment/142588?t:ac=1392>).

role with respect to music.²¹ IFACCA's members cover the majority of music entities globally, regardless of whether they are commercial, non-commercial or amateurs. Government ministry of culture and council agencies related to music cover a majority of the overall community with respect to headcount and geographic reach. The "Size" covered reaches over a hundred million music entities i.e. "considerable size with millions of constituents" per Application Answer to Question 20a.

The string "music" falls under the jurisdiction of each country's Ministry of Culture governmental agency or arts/music council (emphasis added). The degree of power and influence of government ministry of culture and council agencies with respect to music surpasses any organization type since these agencies (i) provide the majority of funding for music-related activities; (ii) regulate copyright law; and (iii) encompass all the music entities that fall under their country, regardless whether these entities are commercial, non-commercial or amateurs. IFACCA is globally recognized by its strategic partners, such as UNESCO, a United Nations agency representing 195 member states and the European Commission.²² The UNESCO strategic partnership²³ is relevant, especially since UNESCO founded the International Music Council (the "IMC") in 1949, which represents over 200 million music constituents from over 150 countries and over 1000 organizations globally.²⁴

Government activities in the clearly delineated and organized "Music Community" include setting statutory royalty rates. For example, in the United States, mechanical royalties are based on a "statutory rate" set by the U.S. Congress. This rate is increased to follow changes in the economy, usually based on the Consumer Price Index. Currently, the mechanical statutory rate is \$0.091 for songs five minutes or less in length or \$.0175 per minute for songs that are over five minutes long.²⁵

Ministries of culture and arts councils (that comprise IFACCA's membership) support musicians, musical performances, independent music artists, non-commercial musical expression and education in their respective countries. The 165 ministries of culture, arts councils and affiliates that comprise IFACCA's membership support the "performing arts" and music specifically. Without the financial and logistical support of arts councils and the ministries of culture, the music community would be adversely affected, and in some countries, may not exist in any appreciable manner. For example, the Ministry of Culture 2011 budget for the small country state of Cyprus for culture funding was €34,876,522 with critical support of music activities.²⁶ Other small government Ministries of Culture, such as Albania,²⁷ or government

²¹ http://www.ifacca.org/membership/current_members/

²² http://www.ifacca.org/strategic_partners/

²³ http://www.ifacca.org/strategic_partners/

²⁴ <http://www.imc-cim.org/about-imc-separator/who-we-are.html>

²⁵ U.S Copyright Office, <http://www.copyright.gov/carp/m200a.html>

²⁶ 2011 Annual Report for Cyprus Ministry of Culture, Section 1.2 "Music"

(http://www.moec.gov.cy/en/annual_reports/annual_report_2011_en.pdf). Activities include Music Performances in Cyprus (1.2.1) and Abroad (1.2.2), Subsidization of Paphos Aphrodite Festival (1.2.3), Music Publications (1.2.4), Subsidization and Purchases of Digital Records (1.2.5), Promotion for Cypriot musical creativity abroad (1.2.6),

Ministries of Culture and Arts Councils from countries with larger populations, such as India,²⁸ all provide critical support and substantial advocacy for music. Other examples include government institutions collaborating and advocating music through their funded country-based pavilion initiatives at Midem, the world's largest music conference.²⁹

Government ministries and arts councils provide critical support for the Music Community, including commercial music organizations. By way of example, government ministries' and arts councils' substantial connection to and support of "music" is noted in the reports of funding and support for music. Some examples to showcase the degree of power of the IFACCA's membership towards the string and global and national music are music investment and music funding (Annual reports by governments and councils):

- New Zealand Ministry of Culture has funded significant music projects. Some include the REAL New Zealand Music Tour (\$415,000), the New Zealand String Quartet (\$150,000) and New Zealand Music Commission: (\$1,378,000).³⁰
- The Australian Government/Council For The Arts invested \$51.2 million for the nation's orchestras; \$21.6 million for opera; \$10.8 million for other music artists and organizations; \$13.1 million for multi-platform artists and organizations; and \$4 million in miscellaneous funding, including sector building and audience development initiatives and programs.³¹
- Canada Council for the Arts is Canada's national, arts funding agency investing \$28 million in its Canada Council Musical Instrument Bank (Page 16) and \$28,156,000 in Music Arts Programs (Page 66).³² The Government of Canada also renewed its annual investment of \$27.6 million over five years in the Canada Music Fund.³³
- The United Kingdom Department for Culture and Education (DfE) will fund music education at significant levels: £77 million, £65 million and £60 million will be available in the three years from April 2012.³⁴

Cyprus Symphony Orchestra Foundation (1.2.7), Music Information Centre (1.2.8), Developing Music Education (1.2.9), Organising of the 1st Musicological Symposium (1.2.10) and Musical Festivities for the European Volunteerism Year (1.2.11)

²⁷ http://www.culturalpolicies.net/down/albania_012011.pdf

²⁸ 2010-11 Annual Report from India Ministry of Culture, [http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011\(Eng\).pdf](http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011(Eng).pdf)

²⁹ <http://my.midem.com/en/contact-us/pavilion-representatives/>

³⁰ 2011 Annual Report from New Zealand Ministry of Culture:

[http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20\(D-0448383\).PDF](http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20(D-0448383).PDF)

³¹ 2011 Annual Report for the Australia Council for the Arts,

http://www.australiacouncil.gov.au/data/assets/pdf_file/0016/142351/Australia-Council-Annual-Report-201112.pdf, Page 28

³² 2011 Annual Report for Canada Council for the Arts, [http://www.canadacouncil.ca/NR/rdonlyres/6F7549BB-F4E5-4B8B-95F4-](http://www.canadacouncil.ca/NR/rdonlyres/6F7549BB-F4E5-4B8B-95F4-1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf)

[1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf](http://www.canadacouncil.ca/NR/rdonlyres/6F7549BB-F4E5-4B8B-95F4-1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf)

³³ <http://www.pch.gc.ca/eng/1294862453819/1294862453821>

³⁴ Department for Culture, The Importance of Music, A National Plan for Music Education,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/180973/DFE-00086-2011.pdf, Page 4, 2011

- The United States National Endowment of the Arts has awarded more than \$4 billion to support the arts since its inception³⁵ and has a strong focus on music as outlined in its Strategic Plan³⁶ with Congress requested to provide \$154,465,000 for fiscal year 2014.³⁷
- The National Arts Council of South Africa invested 2,536,131 ZAR in Music and 9,995,000 ZAR in Orchestras and has focused strongly on the “Strengthening of live indigenous music and advocating the revival of the live music circuit in South Africa”³⁸
- The Singapore Arts Council will fund \$10.2 million in the arts under its 2013 Grants Framework, including the Ding Yi Music Company and Siong Leng Musical Association.³⁹
- In 2011, the support for artistic activities by the Arts Council of Finland was €32.4 million of which €4,921,850 was awarded to music.⁴⁰

Each of IFACCA’s members has a clear association with, and mandate to support the music arts in their countries. In most countries, their ministry of culture/arts council is the largest funder and marketing supporter of the music arts.

The IFPI is another entity *mainly* dedicated to the Community. The IFPI is the only organization that represents the interests of the recording industry worldwide. It is the “voice of the recording industry worldwide”⁴¹ whose members⁴² – major and independent companies -- represent a majority of all commercial music consumed globally. For example, the RIAA, an IFPI national group member,⁴³ represents “approximately 85% of all legitimate recorded music produced and sold in the United States,”⁴⁴ the world’s largest music market with 30% global market share.⁴⁵ Formed in 1933, the IFPI’s mission was to “represent the interests of the recording industry worldwide in all fora.”

³⁵ 2011 Annual report for the National Endowment of the Arts, <http://www.nea.gov/about/11Annual/2011-NEA-Annual-Report.pdf>, Page 2

³⁶ NEA Strategic Plan 2012-2016, www.arts.gov/about/Budget/NEAStrategicPlan2012-2016.pdf

³⁷ http://www.ifacca.org/national_agency_news/2013/04/10/us-president-requests-154465000-neh-2014/

³⁸ 2010-2011 Annual Report for the National Arts Council South Africa, National Arts Council South Africa, <http://www.nac.org.za/media/publications/AR%2010-11%20NAC.PDF/download>, Page 11. Also Mmino, the South African – Norwegian Education Music Programme, solely funds music projects funding a total of 294 projects. Thirteen projects were allocated funding for a total of R1,680,600 of which R1,381,000 went towards music educational and R299,600 to exchange projects (Page 10)

³⁹ Singapore Arts Council, <http://www.nac.gov.sg/media-centre/news-releases/news-detail?id=c2db15e2-c319-40ec-939c-d58735d0a91c>

⁴⁰ <http://www.taiteenkeskustoimikunta.fi/documents/10162/31704/TY+tilastotiedote+1+12+.pdf>, Page 1 and Page 23

⁴¹ <http://www.ifpi.org/about.php>

⁴² <http://www.ifpi.org/our-members.php>

⁴³ <http://www.ifpi.org/national-groups.php>

⁴⁴ <http://www.riaa.com/faq.php>

⁴⁵ <http://www.statista.com/topics/1639/music/>

Another clear example of an “entity *mainly* dedicated to the community” with members that cover hundreds of millions of music constituents with formal boundaries is A2IM, the American Association of Independent Music. A2IM has two types of members: U.S independent Label members and Associate members. A2IM membership for Labels and Associates is invoked formally through an application and if accepted would require annual membership dues.⁴⁶

The reach of A2IM Associate⁴⁷ membership covers hundreds of millions of entities (i.e. the reach of A2IM’s total membership “geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents – See Application Answer to Question 20a).

Organized and strictly delineated communities related to music that are A2IM members include:

- **Apple iTunes**⁴⁸ – iTunes accounts for 63% of global digital music market⁴⁹ - a majority – with a registered community of 800 million registered members⁵⁰ available in 119 countries who abide to strict terms of service and boundaries⁵¹ and have downloaded over 25 billion songs⁵² from iTunes’ catalog of over 43 million songs⁵³ covering a global music community, regardless of genre or whether the community entities are amateur, professional, commercial or non-commercial. To add music to iTunes, all music artists must have a formal membership with iTunes via an Apple ID registration, which includes a current credit card on file.⁵⁴
- **Pandora**⁵⁵ – Pandora is the world’s largest streaming music radio with a community of over 250 million registered members.⁵⁶
- **Spotify**⁵⁷ – Spotify is the world’s largest music streaming community with over 50 million active registered members in 58 countries and over 30 million songs. The music community uploads 20,000 songs every day.⁵⁸
- **Vevo**⁵⁹ – Vevo is the world’s leading all-premium music video community and platform with over 8 billion monthly views globally.⁶⁰

⁴⁶ <http://a2im.org/about-joining/>

⁴⁷ <http://a2im.org/groups/tag/associate+members/>

⁴⁸ <http://a2im.org/groups/itunes>

⁴⁹ <http://appleinsider.com/articles/13/04/16/apples-itunes-rules-digital-music-market-with-63-share>

⁵⁰ <http://www.npr.org/blogs/therecord/2015/01/06/375173595/with-downloads-in-decline-can-itunes-adapt>

⁵¹ <http://www.apple.com/legal/internet-services/itunes/ww/index.html>

⁵² <http://www.apple.com/pr/library/2013/02/06iTunes-Store-Sets-New-Record-with-25-Billion-Songs-Sold.html>

⁵³ <https://www.apple.com/itunes/features/>

⁵⁴ <https://www.apple.com/itunes/working-itunes/sell-content/music-faq.html>

⁵⁵ <http://a2im.org/groups/pandora>

⁵⁶ <http://www.cnet.com/news/like-a-rolling-milestone-pandora-hits-250m-registered-users/> and <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MTkxNTM1fENoaWxkSUQ9LTF8VHlwZT0z&t=1>, Pg.9

⁵⁷ <http://a2im.org/groups/spotify>

⁵⁸ <https://press.spotify.com/us/information/>

⁵⁹ <http://a2im.org/groups/vevo/>

- **Youtube**⁶¹ – Youtube is the world’s largest music video streaming community with millions of music creators -- amateur, professional, commercial or non-commercial -- and over 1 billion registered members covering all regions globally. 6 billion hours of video is watched every month on Youtube,⁶² of which 38.4% is music-related.⁶³
- **ReverbNation**⁶⁴ – ReverbNation⁶⁵ is one of the world’s largest music community and a leading music distributor with over 3.87 million musicians, venues labels and industry professionals covering every country globally. The ReverbNation community grows by over 50,000 artists, bands, labels and industry professionals monthly.
- **BMG**⁶⁶ – BMG is focused on the management of music publishing and recording rights. BMG has an international presence and represents over 2.5 million music rights globally.⁶⁷

A2IM also includes members that are associated with global government agencies which exclusively represent substantial music economies and music members, such as France (BureauExport⁶⁸), China (China Audio Video Association⁶⁹) and Germany (Initiative Musik).⁷⁰ A2IM also has Affiliate⁷¹ associations within the global music community. These include Affiliates such as MusicFirst,⁷² the Copyright Alliance,⁷³ the Worldwide Independent Network (WIN)⁷⁴ and Merlin.⁷⁵

A2IM also represents a recognized Music Coalition representing the interests of the Global Independent Music Community.⁷⁶ The A2IM Coalition includes Merlin, a global rights agency for the independent label sector, representing over 20,000 labels from 39 countries, Worldwide Independent Network (representing label creators in over 20 countries), Association of Independent Music (representing largest and most respected labels in the world), and IMPALA (Independent Music Companies Association on behalf of over 4,000 independent music companies and national associations across Europe, representing 99% of music actors in Europe which are micro, small and medium sized enterprises).

⁶⁰ <http://www.vevo.com/c/EN/US/about>

⁶¹ <http://a2im.org/groups/youtube/>

⁶² <https://www.youtube.com/yt/press/statistics.html>

⁶³ http://www.researchandmarkets.com/reports/2092499/internet_video_2011_2014_view_share_site_and

⁶⁴ <http://a2im.org/groups/reverb-nation/>

⁶⁵ <http://www.reverbnation.com/about>

⁶⁶ <http://a2im.org/groups/bmg-rights/>

⁶⁷ <http://www.bmg.com/category/about-us/history/>

⁶⁸ <http://a2im.org/groups/french-music-export-office>

⁶⁹ <http://a2im.org/groups/china-audio-video-association-cava>

⁷⁰ <http://a2im.org/groups/initiative-musik-gmbh>

⁷¹ <http://a2im.org/groups/tag/associate+members/>

⁷² <http://musicfirstcoalition.org/coalition>, The musicFIRST Coalition, with founding members A2IM, RIAA, and Recording Academy represents musicians, artists, managers, music businesses, and performance right advocates.

⁷³ <http://www.copyrightalliance.org/members>

⁷⁴ <http://www.winformusic.org>

⁷⁵ <http://www.merlinnetwork.org>

⁷⁶ <https://www.icann.org/en/system/files/correspondence/bengloff-to-chehade-et-al-20aug14-en.pdf> and <https://www.icann.org/en/system/files/correspondence/bengloff-to-crocker-et-al-07mar15-en.pdf>

Cumulatively, A2IM's Label and Associate Membership, A2IM's Affiliates and the A2IM's Global Independent Music Community Coalition, covers a majority of the global music community. Its cumulative membership is in the hundreds of millions of entities with formal boundaries belonging to strictly organized and delineated communities related to music as per the Community Definition and Size (See Application answer to Question 20a).

Another global Music Community Coalition led by the RIAA “on behalf of over 15 national and international trade associations” also expressed its support for .MUSIC to be under a “community” application model, including encouraging statements in support of DotMusic’s policies that stated that the coalition “was encouraged to see” that DotMusic “included several measures to deter and address copyright infringement within that TLD.” The “coalition members represent the people that write, sing, record, manufacture, distribute and/or license over 80% of the world’s music”⁷⁷ – a majority of global music.⁷⁸

Another letter⁷⁹ sent to ICANN (on April 14th, 2015) by Danielle Aguirre from the NMPA and on behalf of a music publisher and songwriter community coalition representing a majority of the global music publishing community, also expressed “support [for] the .MUSIC community applications because respecting and protecting music rights serves the global music community and the public interest.”

The International Music Products Association, NAMM, is another globally-recognized and relevant group of non-negligible size that has supported DotMusic.⁸⁰ NAMM, formed in 1901, is *mainly* dedicated to the global music community by representing the international music products industry and community, with globally-recognized members and exhibitors that include Yamaha, Roland, Sennheiser, Sony, Fender, Harman, Kawai, Shure, Steinway, Audio-Technica, AKAI, Gibson, Peavey, Korg, AKG, Selmer, JBL, Alesis, Ibanez, AVID, Casio, DW, Sabian, Pearl, Zildjian, Martin, Ludwig, Marshall and others.^{81 82} Every amateur and professional musician worldwide uses music products manufactured and distributed by NAMM’s members. Without these musical instruments and products, music as we know it today would not be created or produced. NAMM and its trade shows power the \$17 billion global music products industry serving as a hub for the global music community wanting to seek out the newest innovations in musical products, recording technology, sound and lighting. NAMM’s mission is “to strengthen

⁷⁷ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.1

⁷⁸ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.3, Appendix A

⁷⁹ <https://www.icann.org/en/system/files/correspondence/aguirre-to-icann-board-eiu-14apr15-en.pdf>

⁸⁰ http://music.us/letters/NAMM_International_Music_Products_Association.pdf

⁸¹ https://www.namm.org/files/showdir/ExhibitorList_WN15.xls

⁸² <http://www.musictrades.com/global.html>

the music products industry and promote the pleasures and benefits of making music.”⁸³ NAMM also hosts the NAMM Show, the world's largest event for the music products industry.

Collectively, the DotMusic application received support from the largest coalition of music community member organizations ever assembled to support a cause representing over 95% of music consumed globally.⁸⁴ Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support⁸⁵ from institutions/organizations representing a majority of the Community addressed. Music -- as commonly-known by the general public and experienced today -- would not be possible without these supporting, non-negligible and relevant organizations that have endorsed DotMusic.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Community Establishment* and *Community Endorsement* from the majority of the global Music Community as defined.

B) Nexus⁸⁶

According to the Applicant Guidebook (“AGB”), to receive the maximum score for Nexus, the applied-for string -- “music” -- must match the name of the community or be a well-known short-form or abbreviation of the community name.

The *Nexus* of the “Music Community” entirely matches the applied-for “music” string because it represents the entire global Music Community as commonly-known and perceived by the general public. This definition allows for all constituents with a requisite awareness of the Community defined to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination. The definition of the Community requires that members have an active, non-tangential relationship with the applied-for string and the requisite awareness of the music community they identify with as part of the registration process. It is clear that the general public will directly associate and equate the string with the Community as defined by DotMusic. There is no possibility of overreaching beyond the definition or allowing unrelated non-music entities to be included as part of the Community. Community members may register a .MUSIC by either:

⁸³ <https://www.namm.org/about>

⁸⁴ See <http://music.us/supporters>, <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/downloadattachment/142588?t:ac=1392>, Bloomberg BNA at http://music.us/RIAA_Backs_DotMusic.pdf Pg.1, and <http://diffuser.fm/will-dot-music-domains-make-the-internet-better/>

⁸⁵ <http://music.us/supporters>

⁸⁶ See <http://music.us/nexus>

- 1) Identifying that they belong to a Music Community Member Organization (“MCMO”); or
- 2) Identifying the community they belong to, which is consistent with the definition of the Community: “the strictly delineated and organized logical alliance of communities of similar nature related to music.”

All Community members are aware of and recognize their inclusion in the defined Community by identifying which clearly defined community they belong to and have an active participation in. The *nexus* of the applied-for string ensures inclusion of the entire global community that the string represents while excluding unrelated-entities not associated with the string. This way there is a clear match and alignment between the “music” sting and the Community defined.

While the exact size of the global Music Community as defined is unknown (there is no empirical evidence providing an exact, finite number because amateur entities are also included in the Community’s definition), it is in the considerable millions as explicitly stated in the DotMusic Application. DotMusic’s definition of the Community and mutually-inclusive Registration Policies ensure that eligible members are only music-related and associated with the string. This is because the string identifies all constituents involved in music. Music-only participation optimizes the relevancy of .MUSIC domains to the string and entirely matches the *nexus* between the string and Community defined. According to DotMusic, the Community *definition, eligibility* criteria and *content and use* requirements ensure that peripheral industries and entities not related to music are excluded so that the string and the defined Community matches and aligns in a consistent manner consistent with DotMusic’s community-based purpose i.e. only entities with music-related activities are able to register .MUSIC domains.

Membership aligns with the *nexus* of the Community and the string, which is explicitly relevant to music. The string as defined in the application demonstrates uniqueness because it has no other significant meaning beyond identifying the community described in the application. According to DotMusic’s application, any tangential or implicit association with the *nexus* of the Community and the string is not regarded as a delineated membership since it would be considered unclear, dispersed or unbound. Such unclear, dispersed or unbound tangential relationships with the defined “music” Community and applied-for “music” string would not constitute a qualifying Community membership and would be ineligible for registration. Every type of music constituent critically contributes to the function and operation of the music sector within a regulated framework⁸⁷ given the symbiotic overlapping nature of the Community as defined and structured. Music would not function as it does today without the participation of all music constituent types which cumulatively match the string with the Community definition.

⁸⁷ ICANN has disclosed that the string .MUSIC is a sensitive string operating in a regulated sector. ICANN also accepted Government Advisory Committee (GAC) advice for safeguards to protect the Music Community and the public interest (See <https://icann.org/en/system/files/correspondence/crocker-to-dryden-3-29oct13-en.pdf> Pg.7)

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Nexus*.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Rachel Resop', with a stylized flourish at the end.

Signature:

Contact Information Redacted Aug 5 '15 ip: 149.142.103.112

Name: Rachel Resop

Title: PhD

Organization: University of California, Los Angeles

Re: Expert Testimony on (i) Community Establishment; (ii) Nexus; and (iii) Support for DotMusic’s Community-Based Application¹ for .MUSIC (Application ID 1-1115-14110)

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

Please accept this letter that indicates that there is substantive and compelling evidence that the DotMusic application convincingly meets the full criteria under Community Priority Evaluation on the following points: (i) the Music Community’s *Establishment* as defined by DotMusic; (2) the matching *Nexus* between the “music” Community and the “music” string (or top-level domain); and (3) that DotMusic possesses documented *Support* from organizations representing a majority of the global Music Community addressed and defined.

Please see my credentials attached hereto that identify my level of expertise and specialized knowledge with respect to the music community’s organization and delineation.

SUMMARY

DotMusic has established the following:

- 1) Its Community definition recognizes the cohesive, symbiotic and overlapping nature of the global Music Community. The definition includes those associated with commercial and non-commercial creation, performance, marketing and distribution of music;
- 2) “Music Community” members have the requisite awareness and recognition of the interdependency, overlapping and cohesive nature of each “organized community of similar nature that relates to music.” These organized and aligned communities are closely united and make “music” as we know it today. It is this self-awareness and interdependence that gives the “Music Community” its strength. With exponential growth of the Internet, mobile and the Domain Name System (DNS), the “Music Community’s” use and reliance on the Internet to create, market and disseminate music-related content, products, services and activities will continue to grow;
- 3) The “Music Community” functions in a regulated sector with global copyright protections – it is clear that the “community,” as defined, implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate a globally-recognized set of standards for

¹ <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1392>

the protection of the “Music Community” member rights with relation to their copyrighted music works around the world;

4) The “Music” Community -- as defined by DotMusic -- has at least one entity dedicated to the community supporting DotMusic’s application. Such documented *Support* includes several “international federation of national communities of a similar nature,” music coalitions and others that are strongly associated with “music,” which represent a majority of the Community with considerable millions of members worldwide.²

5) The *Nexus* of the “music” Community matches the “music” applied-for string because it represents the entire global Music Community – a community that pre-existed 2007 with a size in the considerable millions of constituents. The “Music Community” definition -- which incorporates the strict fundamental attributes of a closely united Community definition that is “organized” and “delineated” -- ensures that all of its constituent members have a requisite awareness of the community as defined, including both commercial and non-commercial stakeholders, to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination.

6) DotMusic has received support from the largest coalition of Music Community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support³ from institutions/organizations representing a majority of the Community as defined and recognized in the DotMusic application.

There is substantive evidence that DotMusic fulfills the *Nexus, Community Establishment and Support* criteria for the “Music” string. The inclusion and representation of every music constituent type is paramount to the articulated purpose of the string. DotMusic and its application’s global Music Community supporters substantiate that every type of music constituent contributes to the function and operation of the music sector within a regulated framework. The symbiotic nature of the Community as defined and structured means that “Music” would not function as it does today without the participation of all music constituent types that interconnect to match the “music” string with the “music” Community definition.

² <http://music.us/supporters>

³ <http://music.us/supporters>

ASSESSMENT OF COMMUNITY DEFINITION, ESTABLISHMENT AND NEXUS

A) *Music Community Definition, Establishment & Community Endorsement*⁴

DotMusic's definition of the "Music Community" as a "strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music" (See Application, 20a) is factually accurate and representative of the "Music Community." Community characteristics include:

i) An Organized, Cohesive, Interdependent Logically-Allied Community:

The "Music Community" definition covers the regulated, interdependent and cohesive nature of the music sector that exists today. "Music Community" members have the requisite awareness and recognition of the interdependent, overlapping and cohesive nature of each "organized community of similar nature that relates to music" that comprises the "Music Community." Without such cohesiveness and interdependency, the defined "Music" Community matching the applied-for string ("Music") would not be able to function in its regulated sector, a "Music" regulated sector that was publicly recognized by both ICANN and the Government Advisory Committee.⁵

As a result, the Music Community as defined is "closely united" (As per the definition of "cohesion" according to Merriam-Webster dictionary⁶) or "united or form a whole" (As per the definition of the word "cohesion" according to Oxford Dictionaries⁷).

The "Music Community" as defined (a "strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music") establishes that:

- (1) There is an awareness and recognition among its members;
- (2) The organized and delineated logical alliance of communities exists; and
- (3) The Community is "closely united" and "interdependent" (i.e. Each "organized community of similar nature that relates to music" which is part of the "logical alliance of communities that relate to music" is not mutually exclusive).

In short, the applied-for string ("Music") matches the name of the "Music" Community as defined by DotMusic's application. DotMusic's "Music Community" definition accurately represents the common definition of the "Music Community," which is confirmed by Wikipedia.

⁴ See <http://music.us/establishment>

⁵ <https://www.icann.org/en/system/files/bm/briefing-materials-2-05feb14-en.pdf>, Pg.3

⁶ <http://www.merriam-webster.com/dictionary/cohesion>

⁷ http://www.oxforddictionaries.com/us/definition/american_english/cohesion

According to Wikipedia:⁸

Music community is defined as a logical alliance of interdependent communities that are related to music, which include commercial participants...and non-commercial participants...and consists of an “ensemble of practices and institutions that make possible and regulate the production, distribution and consumption of music”...UNESCO identifies the music community as a “community of identity” implying common identifiable characteristics and cohesive attributes such as sharing a music culture, norms and subscribing to common ideals related to music...The music community is not defined as much by demographic indicators such as race, gender, and income level, as it is by common values, cohesive norms and interconnected structures to build a community identity. It refers to music-related individuals and organisations in a shared environment with shared understandings and practices, modes of production and distribution. The shared organisation of collective musical activities, identity and community value is created as result of infrastructure and a shared set of common values...Many studies outline the historical, cultural, and spatial significance of the music community, including how its identity is formed through musical practices. The music community shares a cohesive and interconnected structure of artistic expression, with diverse subcultures and socio-economic interactions...subscribing to common ideals. Under such structured context music consumption becomes possible regardless whether the transaction is commercial and non-commercial.⁹

ii) *An Aware, Pre-Existing and Recognized Community of Considerable Millions Worldwide:*

DotMusic’s definition of the Community covers all Community members associated with the string, each with a requisite awareness of the Community that can be validated through their natural association with a particular music-related community that they clearly identify with. According to DotMusic, all Music Community members must identify their music-related community in order to demonstrate their requisite awareness of the defined Community as part of the .MUSIC registration and validation process.

⁸ Wikipedia is ranked 6th among the ten most popular websites (Alexa, Retrieved March 23, 2015 from <http://www.alexacom/siteinfo/wikipedia.org>) and constitutes the Internet's largest, most frequently updated and popular general reference work (See OECD, OECD Internet Economy Outlook 2012, OECD Publishing, http://www.oecd-ilibrary.org/science-and-technology/oecd-internet-economy-outlook-2012_9789264086463-en,Pg.172) that compares favorably to the accuracy of other encyclopedias (such as the Britannica) according to a 2012 study conducted in partnership with Oxford University (See <http://blog.wikimedia.org/2012/08/02/seven-years-after-nature-pilot-study-compares-wikipedia-favorably-to-other-encyclopedias-in-three-languages>).

⁹ Music Community. In *Wikipedia*. Retrieved March 23, 2015, from https://en.wikipedia.org/wiki/Music_community

According to DotMusic, the Music Community’s geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents (Application Answer to Question 20a).

According to DotMusic, “registrants will be verified using Community-organized, unified “criteria taken from holistic perspective with due regard of Community particularities” that “invoke a formal membership (Application Answer to Question 20a).” The defined Community represents all music-related entities with a clear and straightforward membership with the Community involved in the legal production, performance, promotion, and distribution of music worldwide. According to DotMusic, the Music Community members must have an active, non-tangential relationship with the applied-for string “music” and also have the requisite awareness of the music-related community that they are a part of by specifically identifying it as part of the registration and validation process (i.e. upon successful registration and validation, each community member will be given a unique community identification number that will automatically associate them with their identified community and the “music” string).

DotMusic’s Community definition matches the applied-for string because it allows both commercial and non-commercial stakeholders to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination/exclusion. Given the regulated sector of the community, it is clear that the “Music Community” as defined implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate cohesive and globally-recognized set of standards for the protection of the music community members’ rights with relation to their copyrighted music works around the world.¹⁰

The Berne Convention for the Protection of Literary and Artistic Works¹¹ provides that each of the 168 contracting parties¹² (representing an overwhelming majority of the world’s population) provides automatic protection for music works first published in other countries of the Berne union and for unpublished music works whose authors are citizens of or resident in such other countries.¹³ This means that if a Music Community member’s copyright rights are violated in any other signatory country’s jurisdiction, then the music community member will have the music copyright rights given by that country. Music Community members are clearly aware of the collective Community’s rights, which could not be made possible without these cohesive and globally-recognized set of standards. If such standards were not coherent or enforced then music would not be able to exist in its current form and the industry component of the Music Community sector would not exist. As such, the Community’s *Establishment* and definition is “cohesive” and hence cannot be construed since the Community is a logical alliance of music

¹⁰ http://www.rightsdirect.com/content/rd/en/toolbar/copyright_education/International_Copyright_Basics.html

¹¹ http://www.wipo.int/treaties/en/text.jsp?file_id=283698

¹² http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=15

¹³ <http://www.britannica.com/EBchecked/topic/62482/Berne-Convention>

communities that establish a clearly delineated and organized Community structure that is “closely united” and functions as a “whole”

Further evidence to substantiate the cohesive, symbiotic and overlapping nature of the Community, includes other globally-recognized standards and classification systems, which identify who the individual songwriters, publishers and rights holders are and which songs they are associated with so that Community members are appropriately compensated, regardless of whether the constituent is a commercial, non-commercial or amateur entity. The “music” string is commonly used in classification systems such as ISMN,¹⁴ ISRC,¹⁵ ISWC,¹⁶ ISNI.¹⁷ (Application Answer to Question 20a). For example, if a music entity would like to distribute their music, either commercially or for free, then an ISRC can be assigned to globally identify any specific music work. An ISRC, which facilitates efficient music discovery and community member payment, is constructed from 12 characters representing country, registrant, year of registration and designation (i.e. the serial number assigned by the registrant). With respect to domains, an equivalent system that relates to identifying a specific domain’s registrant and other relevant information pertaining to the domain is WHOIS. Domain registrants are required by ICANN “to provide accurate WHOIS contact data” or else their domain “registration may be suspended or even cancelled”.¹⁸

Without such Music Community “cohesion” and standardized systems functioning in its regulated sector, the Music Community would not be able to create, market and distribute their music. By the same token, fans would not be able to identify the music they are listening to with a specific music artist, regardless of whether the listening activity or behavior is commercial or non-commercial in nature. The socio-economic structure that characterizes “music” as commonly-known today would be non-existent without these organized and delineated elements that commonly define the Community.

¹⁴ The International Standard Music Number (ISMN) is a unique number for the identification of all notated music publications from all over the world. The ISMN is an ISO certified global standard number (ISO 10957:2009). See <http://www.ismn-international.org/whatis.html> and

http://www.iso.org/iso/home/store/catalogue_ics/catalogue_detail_ics.htm?csnumber=43173

¹⁵ The ISRC (International Standard Recording Code) is the international identification system for sound recordings and music video recordings. The ISRC is an ISO certified global standard number (ISO 3901:2001) and is managed by the IFPI. See <http://isrc.ifpi.org>, <https://www.usisrc.org/about/index.html> and http://www.iso.org/iso/catalogue_detail?csnumber=23401

¹⁶ The ISWC (International Standard Musical Work Code) is a unique, permanent and internationally recognized reference number for the identification of musical works. The ISWC has been approved by ISO (International Organization for Standardisation) as a global standard (ISO 15707:2001) and is managed by CISAC. See <http://www.iswc.org/en/faq.html> and http://www.iso.org/iso/catalogue_detail?csnumber=28780

¹⁷ The International Standard Name Identifier (ISNI) is the ISO certified global standard number (ISO 27729) for identifying the millions of contributors to creative works and those active in their distribution. ISNI holds public records of over 8 million identities and 490,000 organizations. See <http://www.isni.org/> and http://www.iso.org/iso/catalogue_detail?csnumber=44292

¹⁸ <https://whois.icann.org/en/about-whois> and <https://www.icann.org/resources/pages/faqs-f0-2012-02-25-en>

iii) International Federations and Organizations Dedicated to Community Functions:

According to ICANN's Applicant Guidebook ("AGB")¹⁹: *"With respect to "Delineation" and "Extension," it should be noted that a community can consist of...a logical alliance of communities (for example, an international federation of national communities of a similar nature... viable as such, provided the requisite awareness and recognition of the community is at hand among the members."* (AGB, 4-12). The community as defined in the DotMusic application has at least one entity mainly dedicated to the community which has supported DotMusic, which include several "international federation of national communities of a similar nature" relating to music, music coalitions and other relevant and non-negligible music organizations.

One of these entities include the only international federation of national communities relating to government culture agencies and arts councils, which has an integral association with music globally: the International Federation of Arts Councils and Culture Agencies (IFACCA).

IFACCA is the only international federation that represents government culture agencies and arts councils globally. These national communities are governmental institutions that play a pivotal role with respect to music.²⁰ IFACCA's members cover the majority of music entities globally, regardless of whether they are commercial, non-commercial or amateurs. Government ministry of culture and council agencies related to music cover a majority of the overall community with respect to headcount and geographic reach. The "Size" covered reaches over a hundred million music entities i.e. "considerable size with millions of constituents" per Application Answer to Question 20a.

The string "music" falls under the jurisdiction of each country's Ministry of Culture governmental agency or arts/music council (emphasis added). The degree of power and influence of government ministry of culture and council agencies with respect to music surpasses any organization type since these agencies (i) provide the majority of funding for music-related activities; (ii) regulate copyright law; and (iii) encompass all the music entities that fall under their country, regardless whether these entities are commercial, non-commercial or amateurs. IFACCA is globally recognized by its strategic partners, such as UNESCO, a United Nations agency representing 195 member states and the European Commission.²¹ The UNESCO strategic partnership²² is relevant, especially since UNESCO founded the International Music Council (the "IMC") in 1949, which represents over 200 million music constituents from over 150 countries and over 1000 organizations globally.²³

¹⁹ <https://newgtlds.icann.org/en/applicants/agb/guidebook-full-11jan12-en.pdf>

²⁰ http://www.ifacca.org/membership/current_members/

²¹ http://www.ifacca.org/strategic_partners/

²² http://www.ifacca.org/strategic_partners/

²³ <http://www.imc-cim.org/about-imc-separator/who-we-are.html>

Government activities in the clearly delineated and organized “Music Community” include setting statutory royalty rates. For example, in the United States, mechanical royalties are based on a “statutory rate” set by the U.S. Congress. This rate is increased to follow changes in the economy, usually based on the Consumer Price Index. Currently, the mechanical statutory rate is \$0.091 for songs five minutes or less in length or \$.0175 per minute for songs that are over five minutes long.²⁴

Ministries of culture and arts councils (that comprise IFACCA’s membership) support musicians, musical performances, independent music artists, non-commercial musical expression and education in their respective countries. The 165 ministries of culture, arts councils and affiliates that comprise IFACCA’s membership support the “performing arts” and music specifically. Without the financial and logistical support of arts councils and the ministries of culture, the music community would be adversely affected, and in some countries, may not exist in any appreciable manner. For example, the Ministry of Culture 2011 budget for the small country state of Cyprus for culture funding was €34,876,522 with critical support of music activities.²⁵ Other small government Ministries of Culture, such as Albania,²⁶ or government Ministries of Culture and Arts Councils from countries with larger populations, such as India,²⁷ all provide critical support and substantial advocacy for music. Other examples include government institutions collaborating and advocating music through their funded country-based pavilion initiatives at Midem, the world’s largest music conference.²⁸

Government ministries and arts councils provide critical support for the Music Community, including commercial music organizations. By way of example, government ministries’ and arts councils’ substantial connection to and support of “music” is noted in the reports of funding and support for music. Some examples to showcase the degree of power of the IFACCA’s membership towards the string and global and national music are music investment and music funding (Annual reports by governments and councils):

- New Zealand Ministry of Culture has funded significant music projects. Some include the REAL New Zealand Music Tour (\$415,000), the New Zealand String Quartet (\$150,000) and New Zealand Music Commission: (\$1,378,000).²⁹
- The Australian Government/Council For The Arts invested \$51.2 million for the nation’s orchestras; \$21.6 million for opera; \$10.8 million for other music artists and

²⁴ U.S. Copyright Office, <http://www.copyright.gov/carp/m200a.html>

²⁵ 2011 Annual Report for Cyprus Ministry of Culture, Section 1.2 “Music”

(http://www.moec.gov.cy/en/annual_reports/annual_report_2011_en.pdf). Activities include Music Performances in Cyprus (1.2.1) and Abroad (1.2.2), Subsidization of Paphos Aphrodite Festival (1.2.3), Music Publications (1.2.4), Subsidization and Purchases of Digital Records (1.2.5), Promotion for Cypriot musical creativity abroad (1.2.6), Cyprus Symphony Orchestra Foundation (1.2.7), Music Information Centre (1.2.8), Developing Music Education (1.2.9), Organising of the 1st Musicological Symposium (1.2.10) and Musical Festivities for the European Volunteerism Year (1.2.11)

²⁶ http://www.culturalpolicies.net/down/albania_012011.pdf

²⁷ 2010-11 Annual Report from India Ministry of Culture, [http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011\(Eng\).pdf](http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011(Eng).pdf)

²⁸ <http://my.midem.com/en/contact-us/pavilion-representatives/>

²⁹ 2011 Annual Report from New Zealand Ministry of Culture:

[http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20\(D-0448383\).PDF](http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20(D-0448383).PDF)

organizations; \$13.1 million for multi-platform artists and organizations; and \$4 million in miscellaneous funding, including sector building and audience development initiatives and programs.³⁰

- Canada Council for the Arts is Canada’s national, arts funding agency investing \$28 million in its Canada Council Musical Instrument Bank (Page 16) and \$28,156,000 in Music Arts Programs (Page 66).³¹ The Government of Canada also renewed its annual investment of \$27.6 million over five years in the Canada Music Fund.³²
- The United Kingdom Department for Culture and Education (DfE) will fund music education at significant levels: £77 million, £65 million and £60 million will be available in the three years from April 2012.³³
- The United States National Endowment of the Arts has awarded more than \$4 billion to support the arts since its inception³⁴ and has a strong focus on music as outlined in its Strategic Plan³⁵ with Congress requested to provide \$154,465,000 for fiscal year 2014.³⁶
- The National Arts Council of South Africa invested 2,536,131 ZAR in Music and 9,995,000 ZAR in Orchestras and has focused strongly on the “Strengthening of live indigenous music and advocating the revival of the live music circuit in South Africa”³⁷
- The Singapore Arts Council will fund \$10.2 million in the arts under its 2013 Grants Framework, including the Ding Yi Music Company and Siong Leng Musical Association.³⁸
- In 2011, the support for artistic activities by the Arts Council of Finland was €32.4 million of which €4,921,850 was awarded to music.³⁹

Each of IFACCA’s members has a clear association with, and mandate to support the music arts in their countries. In most countries, their ministry of culture/arts council is the largest funder and marketing supporter of the music arts.

³⁰ 2011 Annual Report for the Australia Council for the Arts, http://www.australiacouncil.gov.au/data/assets/pdf_file/0016/142351/Australia-Council-Annual-Report-201112.pdf, Page 28

³¹ 2011 Annual Report for Canada Council for the Arts, http://www.canadacouncil.ca/NR/rdoonlyres/6F7549BB-F4E5-4B8B-95F4-1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf

³² <http://www.pch.gc.ca/eng/1294862453819/1294862453821>

³³ Department for Culture, The Importance of Music, A National Plan for Music Education, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/180973/DFE-00086-2011.pdf, Page 4, 2011

³⁴ 2011 Annual report for the National Endowment of the Arts, <http://www.nea.gov/about/11Annual/2011-NEA-Annual-Report.pdf>, Page 2

³⁵ NEA Strategic Plan 2012-2016, www.arts.gov/about/Budget/NEAStrategicPlan2012-2016.pdf

³⁶ http://www.ifacca.org/national_agency_news/2013/04/10/us-president-requests-154465000-neh-2014/

³⁷ 2010-2011 Annual Report for the National Arts Council South Africa, National Arts Council South Africa, <http://www.nac.org.za/media/publications/AR%2010-11%20NAC.PDF/download>, Page 11. Also Mmino, the South African – Norwegian Education Music Programme, solely funds music projects funding a total of 294 projects. Thirteen projects were allocated funding for a total of R1,680,600 of which R1,381,000 went towards music educational and R299,600 to exchange projects (Page 10)

³⁸ Singapore Arts Council, <http://www.nac.gov.sg/media-centre/news-releases/news-detail?id=c2db15e2-c319-40ec-939c-d58735d0a91c>

³⁹ <http://www.taiteenkeskustoimikunta.fi/documents/10162/31704/TY+tilastotiedote+1+12+.pdf>, Page 1 and Page

Another clear example of an “entity dedicated to the community” with members that cover hundreds of millions of music constituents with formal boundaries is A2IM, the American Association of Independent Music. A2IM has two types of members: U.S independent Label members and Associate members. A2IM membership for Labels and Associates is invoked formally through an application and if accepted would require annual membership dues.⁴⁰

The reach of A2IM Associate⁴¹ membership covers hundreds of millions of entities (i.e. the reach of A2IM’s total membership “geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents – See Application Answer to Question 20a).

Organized and strictly delineated communities related to music that are A2IM members include:

- **Apple iTunes**⁴² – iTunes accounts for 63% of global digital music market⁴³ - a majority – with a registered community of 800 million registered members⁴⁴ available in 119 countries who abide to strict terms of service and boundaries⁴⁵ and have downloaded over 25 billion songs⁴⁶ from iTunes’ catalog of over 43 million songs⁴⁷ covering a global music community, regardless of genre or whether the community entities are amateur, professional, commercial or non-commercial. To add music to iTunes, all music artists must have a formal membership with iTunes via an Apple ID registration, which includes a current credit card on file.⁴⁸
- **Pandora**⁴⁹ – Pandora is the world’s largest streaming music radio with a community of over 250 million registered members.⁵⁰
- **Spotify**⁵¹ – Spotify is the world’s largest music streaming community with over 50 million active registered members in 58 countries and over 30 million songs. The music community uploads 20,000 songs every day.⁵²
- **Vevo**⁵³ – Vevo is the world’s leading all-premium music video community and platform with over 8 billion monthly views globally.⁵⁴

⁴⁰ <http://a2im.org/about-joining/>

⁴¹ <http://a2im.org/groups/tag/associate+members/>

⁴² <http://a2im.org/groups/itunes>

⁴³ <http://appleinsider.com/articles/13/04/16/apples-itunes-rules-digital-music-market-with-63-share>

⁴⁴ <http://www.npr.org/blogs/therecord/2015/01/06/375173595/with-downloads-in-decline-can-itunes-adapt>

⁴⁵ <http://www.apple.com/legal/internet-services/itunes/ww/index.html>

⁴⁶ <http://www.apple.com/pr/library/2013/02/06iTunes-Store-Sets-New-Record-with-25-Billion-Songs-Sold.html>

⁴⁷ <https://www.apple.com/itunes/features/>

⁴⁸ <https://www.apple.com/itunes/working-itunes/sell-content/music-faq.html>

⁴⁹ <http://a2im.org/groups/pandora>

⁵⁰ <http://www.cnet.com/news/like-a-rolling-milestone-pandora-hits-250m-registered-users/> and <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MTkxNTM1fENoaWxkSUQ9LTF8VHlwZT0z&t=1>, Pg.9

⁵¹ <http://a2im.org/groups/spotify>

⁵² <https://press.spotify.com/us/information/>

⁵³ <http://a2im.org/groups/vevo/>

- **Youtube**⁵⁵ – Youtube is the world’s largest music video streaming community with millions of music creators -- amateur, professional, commercial or non-commercial -- and over 1 billion registered members covering all regions globally. 6 billion hours of video is watched every month on Youtube,⁵⁶ of which 38.4% is music-related.⁵⁷
- **Reverbnation**⁵⁸ – Reverbnation⁵⁹ is one of the world’s largest music community and a leading music distributor with over 3.87 million musicians, venues labels and industry professionals covering every country globally. The Reverbnation community grows by over 50,000 artists, bands, labels and industry professionals monthly.
- **BMG**⁶⁰ – BMG is focused on the management of music publishing and recording rights. BMG has an international presence and represents over 2.5 million music rights globally.⁶¹

A2IM also includes members that are associated with global government agencies which exclusively represent substantial music economies and music members, such as France (BureauExport⁶²), China (China Audio Video Association⁶³) and Germany (Initiative Musik).⁶⁴ A2IM also has Affiliate⁶⁵ associations within the global music community. These include Affiliates such as MusicFirst,⁶⁶ the Copyright Alliance,⁶⁷ the Worldwide Independent Network (WIN)⁶⁸ and Merlin.⁶⁹

A2IM also represents a recognized Music Coalition representing the interests of the Global Independent Music Community.⁷⁰ The A2IM Coalition includes Merlin, a global rights agency for the independent label sector, representing over 20,000 labels from 39 countries, Worldwide Independent Network (representing label creators in over 20 countries), Association of Independent Music (representing largest and most respected labels in the world), and IMPALA (Independent Music Companies Association on behalf of over 4,000 independent music companies and national associations across Europe, representing 99% of music actors in Europe which are micro, small and medium sized enterprises.

⁵⁴ <http://www.vevo.com/c/EN/US/about>

⁵⁵ <http://a2im.org/groups/youtube/>

⁵⁶ <https://www.youtube.com/yt/press/statistics.html>

⁵⁷ http://www.researchandmarkets.com/reports/2092499/internet_video_2011_2014_view_share_site_and

⁵⁸ <http://a2im.org/groups/reverb-nation/>

⁵⁹ <http://www.reverbnation.com/about>

⁶⁰ <http://a2im.org/groups/bmg-rights/>

⁶¹ <http://www.bmg.com/category/about-us/history/>

⁶² <http://a2im.org/groups/french-music-export-office>

⁶³ <http://a2im.org/groups/china-audio-video-association-cava>

⁶⁴ <http://a2im.org/groups/initiative-musik-gmbh>

⁶⁵ <http://a2im.org/groups/tag/associate+members/>

⁶⁶ <http://musicfirstcoalition.org/coalition>, The musicFIRST Coalition, with founding members A2IM, RIAA, and Recording Academy represents musicians, artists, managers, music businesses, and performance right advocates.

⁶⁷ <http://www.copyrightalliance.org/members>

⁶⁸ <http://www.winformusic.org>

⁶⁹ <http://www.merlinnetwork.org>

⁷⁰ <https://www.icann.org/en/system/files/correspondence/bengloff-to-chehade-et-al-20aug14-en.pdf> and <https://www.icann.org/en/system/files/correspondence/bengloff-to-crocker-et-al-07mar15-en.pdf>

Cumulatively, A2IM's Label and Associate Membership, A2IM's Affiliates and the A2IM's Global Independent Music Community Coalition, covers a majority of the global music community. Its cumulative membership is in the hundreds of millions of entities with formal boundaries belonging to strictly organized and delineated communities related to music as per the Community Definition and Size (See Application answer to Question 20a).

Another global Music Community Coalition led by the RIAA "on behalf of over 15 national and international trade associations" also expressed its support for .MUSIC to be under a "community" application model, including encouraging statements in support of DotMusic's policies that stated that the coalition "was encouraged to see" that DotMusic "included several measures to deter and address copyright infringement within that TLD." The "coalition members represent the people that write, sing, record, manufacture, distribute and/or license over 80% of the world's music"⁷¹ – a majority of global music.⁷²

Another letter⁷³ sent to ICANN (on April 14th, 2015) by Danielle Aguirre from the NMPA and on behalf of a music publisher and songwriter community coalition representing a majority of the global music publishing community, also expressed "support [for] the .MUSIC community applications because respecting and protecting music rights serves the global music community and the public interest."

Collectively, the DotMusic application received support from the largest coalition of music community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support⁷⁴ from institutions/organizations representing a majority of the Community addressed. Music -- as commonly-known by the general public and experienced today -- would not be possible without these supporting, non-negligible and relevant organizations that have endorsed DotMusic.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Community Establishment* and *Community Endorsement* from the majority of the global Music Community as defined.

⁷¹ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.1

⁷² <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.3, Appendix A

⁷³ <https://www.icann.org/en/system/files/correspondence/aguirre-to-icann-board-eiu-14apr15-en.pdf>

⁷⁴ <http://music.us/supporters>

B) Nexus⁷⁵

According to the Applicant Guidebook (“AGB”), to receive the maximum score for Nexus, the applied-for string -- “music” -- must match the name of the community or be a well-known short-form or abbreviation of the community name.

The *Nexus* of the “Music Community” entirely matches the applied-for “music” string because it represents the entire global Music Community as commonly-known and perceived by the general public. This definition allows for all constituents with a requisite awareness of the Community defined to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination. The definition of the Community requires that members have an active, non-tangential relationship with the applied-for string and the requisite awareness of the music community they identify with as part of the registration process. It is clear that the general public will directly associate and equate the string with the Community as defined by DotMusic. There is no possibility of overreaching beyond the definition or allowing unrelated non-music entities to be included as part of the Community.

Community members may register a .MUSIC by either:

- 1) Identifying that they belong to a Music Community Member Organization (“MCMO”); or
- 2) Identifying the community they belong to, which is consistent with the definition of the Community: “the strictly delineated and organized logical alliance of communities of similar nature related to music.”

All Community members are aware of and recognize their inclusion in the defined Community by identifying which clearly defined community they belong to and have an active participation in. The *nexus* of the applied-for string ensures inclusion of the entire global community that the string represents while excluding unrelated-entities not associated with the string. This way there is a clear match and alignment between the “music” sting and the Community defined.

While the exact size of the global Music Community as defined is unknown (there is no empirical evidence providing an exact, finite number because amateur entities are also included in the Community’s definition), it is in the considerable millions as explicitly stated in the DotMusic Application. DotMusic’s definition of the Community and mutually-inclusive Registration Policies ensure that eligible members are only music-related and associated with the string. This is because the string identifies all constituents involved in music. Music-only participation optimizes the relevancy of .MUSIC domains to the string and entirely matches the *nexus* between the string and Community defined. According to DotMusic, the Community *definition, eligibility* criteria and *content and use* requirements ensure that peripheral industries

⁷⁵ See <http://music.us/nexus>

and entities not related to music are excluded so that the string and the defined Community matches and aligns in a consistent manner consistent with DotMusic’s community-based purpose i.e. only entities with music-related activities are able to register .MUSIC domains.

Membership aligns with the *nexus* of the Community and the string, which is explicitly relevant to music. The string as defined in the application demonstrates uniqueness because it has no other significant meaning beyond identifying the community described in the application. According to DotMusic’s application, any tangential or implicit association with the *nexus* of the Community and the string is not regarded as a delineated membership since it would be considered unclear, dispersed or unbound. Such unclear, dispersed or unbound tangential relationships with the defined “music” Community and applied-for “music” string would not constitute a qualifying Community membership and would be ineligible for registration.

The inclusion of every music constituent type is paramount to the purpose of the string. Every type of music constituent critically contributes to the function and operation of the music sector within a regulated framework given the symbiotic overlapping nature of the Community as defined and structured. Music would not function as it does today without the participation of all music constituent types which cumulatively match the string with the Community definition.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Nexus*.

Respectfully Submitted,



Signature: Contact Information Redacted May 29 '15 ip: 146.200.68.77

Name: Dr. Shain Shapiro

Title: Managing Director

Organization: Sound Diplomacy

Re: Expert Testimony on (i) Community Establishment; (ii) Nexus; and (iii) Support for DotMusic’s Community-Based Application¹ for .MUSIC (Application ID 1-1115-14110)

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

Please accept this letter that indicates that there is substantive and compelling evidence that the DotMusic application convincingly meets the full criteria under Community Priority Evaluation on the following points: (i) the Music Community’s *Establishment* as defined by DotMusic; (2) the matching *Nexus* between the “music” Community and the “music” string (or top-level domain); and (3) that DotMusic possesses documented *Support* from organizations representing a majority of the global Music Community addressed and defined.

Please see my credentials attached hereto that identify my level of expertise and specialized knowledge with respect to the music community’s organization and delineation.

SUMMARY

DotMusic has established the following:

- 1) Its Community definition recognizes the cohesive, symbiotic and overlapping nature of the global Music Community. The definition includes those associated with commercial and non-commercial creation, performance, marketing and distribution of music;
- 2) “Music Community” members have the requisite awareness and recognition of the interdependency, overlapping and cohesive nature of each “organized community of similar nature that relates to music.” These organized and aligned communities are closely united and make “music” as we know it today. It is this self-awareness and interdependence that gives the “Music Community” its strength. With exponential growth of the Internet, mobile and the Domain Name System (DNS), the “Music Community’s” use and reliance on the Internet to create, market and disseminate music-related content, products, services and activities will continue to grow;
- 3) The “Music Community” functions in a regulated sector with global copyright protections – it is clear that the “community,” as defined, implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate a globally-recognized set of standards for

¹ <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1392>

the protection of the “Music Community” member rights with relation to their copyrighted music works around the world;

4) The “Music” Community -- as defined by DotMusic -- has at least one entity mainly dedicated to the community supporting DotMusic’s application. Such documented *Support* includes several “international federation of national communities of a similar nature,” music coalitions and others that are strongly associated with “music,” which represent a majority of the Community with considerable millions of members worldwide.²

5) The *Nexus* of the “music” Community matches the “music” applied-for string because it represents the entire global Music Community – a community that pre-existed 2007 with a size in the considerable millions of constituents. The “Music Community” definition -- which incorporates the strict fundamental attributes of a closely united Community definition that is “organized” and “delineated” -- ensures that all of its constituent members have a requisite awareness of the community as defined, including both commercial and non-commercial stakeholders, to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination.

6) DotMusic has received support from the largest coalition of Music Community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support³ from institutions/organizations representing a majority of the Community as defined and recognized in the DotMusic application.

There is substantive evidence that DotMusic fulfills the *Nexus, Community Establishment and Support* criteria for the “Music” string. The inclusion and representation of every music constituent type is paramount to the articulated purpose of the string. DotMusic and its application’s global Music Community supporters substantiate that every type of music constituent contributes to the function and operation of the music sector within a regulated framework. The symbiotic nature of the Community as defined and structured means that “Music” would not function as it does today without the participation of all music constituent types that interconnect to match the “music” string with the “music” Community definition.

² <http://music.us/supporters>

³ <http://music.us/supporters>

ASSESSMENT OF COMMUNITY DEFINITION, ESTABLISHMENT AND NEXUS

A) *Music Community Definition, Establishment & Community Endorsement*⁴

DotMusic’s definition of the “Music Community” as a “strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music” (See Application, 20a) is factually accurate and representative of the “Music Community.” Community characteristics include:

i) An Organized, Cohesive, Interdependent Logically-Allied Community:

The “Music Community” definition covers the regulated, interdependent and cohesive nature of the music sector that exists today. “Music Community” members have the requisite awareness and recognition of the interdependent, overlapping and cohesive nature of each “organized community of similar nature that relates to music” that comprises the “Music Community.” Without such cohesiveness and interdependency, the defined “Music” Community matching the applied-for string (“Music”) would not be able to function in its regulated sector, a “Music” regulated sector that was publicly recognized by both ICANN and the Government Advisory Committee.⁵

As a result, the Music Community as defined is “closely united” (As per the definition of “cohesion” according to Merriam-Webster dictionary⁶) or “united or form a whole” (As per the definition of the word “cohesion” according to Oxford Dictionaries⁷).

The “Music Community” as defined (a “strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music”) establishes that:

- (1) There is an awareness and recognition among its members;
- (2) The organized and delineated logical alliance of communities exists; and
- (3) The Community is “closely united” and “interdependent” (i.e. Each “organized community of similar nature that relates to music” which is part of the “logical alliance of communities that relate to music” is not mutually exclusive).

In short, the applied-for string (“Music”) matches the name of the “Music” Community as defined by DotMusic’s application. DotMusic’s “Music Community” definition accurately represents the common definition of the “Music Community,” which is confirmed by Wikipedia.

⁴ See <http://music.us/establishment>

⁵ <https://www.icann.org/en/system/files/bm/briefing-materials-2-05feb14-en.pdf>, Pg.3

⁶ <http://www.merriam-webster.com/dictionary/cohesion>

⁷ http://www.oxforddictionaries.com/us/definition/american_english/cohesion

According to Wikipedia:⁸

Music community is defined as a logical alliance of interdependent communities that are related to music, which include commercial participants...and non-commercial participants...and consists of an “ensemble of practices and institutions that make possible and regulate the production, distribution and consumption of music”...UNESCO identifies the music community as a “community of identity” implying common identifiable characteristics and cohesive attributes such as sharing a music culture, norms and subscribing to common ideals related to music...The music community is not defined as much by demographic indicators such as race, gender, and income level, as it is by common values, cohesive norms and interconnected structures to build a community identity. It refers to music-related individuals and organisations in a shared environment with shared understandings and practices, modes of production and distribution. The shared organisation of collective musical activities, identity and community value is created as result of infrastructure and a shared set of common values...Many studies outline the historical, cultural, and spatial significance of the music community, including how its identity is formed through musical practices. The music community shares a cohesive and interconnected structure of artistic expression, with diverse subcultures and socio-economic interactions...subscribing to common ideals. Under such structured context music consumption becomes possible regardless whether the transaction is commercial and non-commercial.⁹

ii) *An Aware, Pre-Existing and Recognized Community of Considerable Millions Worldwide:*

DotMusic’s definition of the Community covers all Community members associated with the string, each with a requisite awareness of the Community that can be validated through their natural association with a particular music-related community that they clearly identify with. According to DotMusic, all Music Community members must identify their music-related community in order to demonstrate their requisite awareness of the defined Community as part of the .MUSIC registration and validation process.

⁸ Wikipedia is ranked 6th among the ten most popular websites (Alexa, Retrieved March 23, 2015 from <http://www.alexacom/siteinfo/wikipedia.org>) and constitutes the Internet's largest, most frequently updated and popular general reference work (See OECD, OECD Internet Economy Outlook 2012, OECD Publishing, http://www.oecd-ilibrary.org/science-and-technology/oecd-internet-economy-outlook-2012_9789264086463-en, Pg.172) that compares favorably to the accuracy of other encyclopedias (such as the Britannica) according to a 2012 study conducted in partnership with Oxford University (See <http://blog.wikimedia.org/2012/08/02/seven-years-after-nature-pilot-study-compares-wikipedia-favorably-to-other-encyclopedias-in-three-languages>).

⁹ Music Community. In *Wikipedia*. Retrieved July 6, 2015, from https://en.wikipedia.org/wiki/Music_community

According to DotMusic, the Music Community’s geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents (Application Answer to Question 20a).

According to DotMusic, “registrants will be verified using Community-organized, unified “criteria taken from holistic perspective with due regard of Community particularities” that “invoke a formal membership (Application Answer to Question 20a).” The defined Community represents all music-related entities with a clear and straightforward membership with the Community involved in the legal production, performance, promotion, and distribution of music worldwide. According to DotMusic, the Music Community members must have an active, non-tangential relationship with the applied-for string “music” and also have the requisite awareness of the music-related community that they are a part of by specifically identifying it as part of the registration and validation process (i.e. upon successful registration and validation, each community member will be given a unique community identification number that will automatically associate them with their identified community and the “music” string).

DotMusic’s Community definition matches the applied-for string because it allows both commercial and non-commercial stakeholders to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination/exclusion. Given the regulated sector of the community, it is clear that the “Music Community” as defined implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate cohesive and globally-recognized set of standards for the protection of the music community members’ rights with relation to their copyrighted music works around the world.¹⁰

The Berne Convention for the Protection of Literary and Artistic Works¹¹ provides that each of the 168 contracting parties¹² (representing an overwhelming majority of the world’s population) provides automatic protection for music works first published in other countries of the Berne union and for unpublished music works whose authors are citizens of or resident in such other countries.¹³ This means that if a Music Community member’s copyright rights are violated in any other signatory country’s jurisdiction, then the music community member will have the music copyright rights given by that country. Music Community members are clearly aware of the collective Community’s rights, which could not be made possible without these cohesive and globally-recognized set of standards. If such standards were not coherent or enforced then music would not be able to exist in its current form and the industry component of the Music Community sector would not exist. As such, the Community’s *Establishment* and definition is “cohesive” and hence cannot be construed since the Community is a logical alliance of music

¹⁰ http://www.rightsdirect.com/content/rd/en/toolbar/copyright_education/International_Copyright_Basics.html

¹¹ http://www.wipo.int/treaties/en/text.jsp?file_id=283698

¹² http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=15

¹³ <http://www.britannica.com/EBchecked/topic/62482/Berne-Convention>

communities that establish a clearly delineated and organized Community structure that is “closely united” and functions as a “whole”

Further evidence to substantiate the cohesive, symbiotic and overlapping nature of the Community, includes other globally-recognized standards and classification systems, which identify who the individual songwriters, publishers and rights holders are and which songs they are associated with so that Community members are appropriately compensated, regardless of whether the constituent is a commercial, non-commercial or amateur entity. The “music” string is commonly used in classification systems such as ISMN,¹⁴ ISRC,¹⁵ ISWC,¹⁶ ISNI.¹⁷ (Application Answer to Question 20a). For example, if a music entity would like to distribute their music, either commercially or for free, then an ISRC can be assigned to globally identify any specific music work. An ISRC, which facilitates efficient music discovery and community member payment, is constructed from 12 characters representing country, registrant, year of registration and designation (i.e. the serial number assigned by the registrant). With respect to domains, an equivalent system that relates to identifying a specific domain’s registrant and other relevant information pertaining to the domain is WHOIS. Domain registrants are required by ICANN “to provide accurate WHOIS contact data” or else their domain “registration may be suspended or even cancelled”.¹⁸

Without such Music Community “cohesion” and standardized systems functioning in its regulated sector, the Music Community would not be able to create, market and distribute their music. By the same token, fans would not be able to identify the music they are listening to with a specific music artist, regardless of whether the listening activity or behavior is commercial or non-commercial in nature. The socio-economic structure that characterizes “music” as commonly-known today would be non-existent without these organized and delineated elements that commonly define the Community.

¹⁴ The International Standard Music Number (ISMN) is a unique number for the identification of all notated music publications from all over the world. The ISMN is an ISO certified global standard number (ISO 10957:2009). See <http://www.ismn-international.org/whatis.html> and

http://www.iso.org/iso/home/store/catalogue_ics/catalogue_detail_ics.htm?csnumber=43173

¹⁵ The ISRC (International Standard Recording Code) is the international identification system for sound recordings and music video recordings. The ISRC is an ISO certified global standard number (ISO 3901:2001) and is managed by the IFPI. See <http://isrc.ifpi.org>, <https://www.usisrc.org/about/index.html> and http://www.iso.org/iso/catalogue_detail?csnumber=23401

¹⁶ The ISWC (International Standard Musical Work Code) is a unique, permanent and internationally recognized reference number for the identification of musical works. The ISWC has been approved by ISO (International Organization for Standardisation) as a global standard (ISO 15707:2001) and is managed by CISAC. See <http://www.iswc.org/en/faq.html> and http://www.iso.org/iso/catalogue_detail?csnumber=28780

¹⁷ The International Standard Name Identifier (ISNI) is the ISO certified global standard number (ISO 27729) for identifying the millions of contributors to creative works and those active in their distribution. ISNI holds public records of over 8 million identities and 490,000 organizations. See <http://www.isni.org/> and http://www.iso.org/iso/catalogue_detail?csnumber=44292

¹⁸ <https://whois.icann.org/en/about-whois> and <https://www.icann.org/resources/pages/faqs-f0-2012-02-25-en>

iii) *International Federations and Organizations mainly Dedicated to the Community:*

According to ICANN's Applicant Guidebook ("AGB")¹⁹: *"With respect to "Delineation" and "Extension," it should be noted that a community can consist of...a logical alliance of communities (for example, an international federation of national communities of a similar nature... viable as such, provided the requisite awareness and recognition of the community is at hand among the members."* (AGB, 4-12). The community as defined in the DotMusic application has at least one entity mainly²⁰ dedicated to the community which has supported DotMusic, which include several "international federation of national communities of a similar nature" relating to music, music coalitions and other relevant and non-negligible music organizations.

One of these entities include the only international federation of national communities relating to government culture agencies and arts councils, which has an integral association with music globally: the International Federation of Arts Councils and Culture Agencies (IFACCA).

IFACCA is the only international federation that represents government culture agencies and arts councils globally. These national communities are governmental institutions that play a pivotal role with respect to music.²¹ IFACCA's members cover the majority of music entities globally, regardless of whether they are commercial, non-commercial or amateurs. Government ministry of culture and council agencies related to music cover a majority of the overall community with respect to headcount and geographic reach. The "Size" covered reaches over a hundred million music entities i.e. "considerable size with millions of constituents" per Application Answer to Question 20a.

The string "music" falls under the jurisdiction of each country's Ministry of Culture governmental agency or arts/music council (emphasis added). The degree of power and

¹⁹ <https://newgtlds.icann.org/en/applicants/agb/guidebook-full-11jan12-en.pdf>

²⁰ Per the Oxford and Merriam Webster dictionaries, the word "mainly" is defined as "*more than anything else*" (See <http://www.oxforddictionaries.com/definition/english/mainly> and <http://www.merriam-webster.com/dictionary/mainly> respectively). According to DotMusic, the string .MUSIC relates to the Community "by representing all constituents involved in music creation, production and distribution" (Application Answer to Question 20d). Supporting organizations related to that string that are "mainly" dedicated to the Community and its activities, include the International Federation of Arts Councils and Culture Agencies (IFACCA) representing government culture ministries and arts councils, the International Federation of Musicians (FIM) representing musicians globally, the International Federation of Phonographic Industry (IFPI) representing the recording industry worldwide, the International Confederation of Music Publishers (ICPM) representing the voice of global music publishing, the International Association of Music Information Centres (IAMIC), the American Association of Independent Music (A2IM), whose associate members represent a majority of music consumed, the Independent Music Worldwide Independent Network (WIN) representing independent music worldwide, the International Society for Music Education (ISME) the premiere international organization representing music education, and many others (See support at <http://music.us/supporters> and <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/downloadattachment/142588?t:ac=1392>).

²¹ http://www.ifacca.org/membership/current_members/

influence of government ministry of culture and council agencies with respect to music surpasses any organization type since these agencies (i) provide the majority of funding for music-related activities; (ii) regulate copyright law; and (iii) encompass all the music entities that fall under their country, regardless whether these entities are commercial, non-commercial or amateurs. IFACCA is globally recognized by its strategic partners, such as UNESCO, a United Nations agency representing 195 member states and the European Commission.²² The UNESCO strategic partnership²³ is relevant, especially since UNESCO founded the International Music Council (the “IMC”) in 1949, which represents over 200 million music constituents from over 150 countries and over 1000 organizations globally.²⁴

Government activities in the clearly delineated and organized “Music Community” include setting statutory royalty rates. For example, in the United States, mechanical royalties are based on a "statutory rate" set by the U.S. Congress. This rate is increased to follow changes in the economy, usually based on the Consumer Price Index. Currently, the mechanical statutory rate is \$0.091 for songs five minutes or less in length or \$.0175 per minute for songs that are over five minutes long.²⁵

Ministries of culture and arts councils (that comprise IFACCA’s membership) support musicians, musical performances, independent music artists, non-commercial musical expression and education in their respective countries. The 165 ministries of culture, arts councils and affiliates that comprise IFACCA’s membership support the “performing arts” and music specifically. Without the financial and logistical support of arts councils and the ministries of culture, the music community would be adversely affected, and in some countries, may not exist in any appreciable manner. For example, the Ministry of Culture 2011 budget for the small country state of Cyprus for culture funding was €34,876,522 with critical support of music activities.²⁶ Other small government Ministries of Culture, such as Albania,²⁷ or government Ministries of Culture and Arts Councils from countries with larger populations, such as India,²⁸ all provide critical support and substantial advocacy for music. Other examples include government institutions collaborating and advocating music through their funded country-based pavilion initiatives at Midem, the world’s largest music conference.²⁹

²² http://www.ifacca.org/strategic_partners/

²³ http://www.ifacca.org/strategic_partners/

²⁴ <http://www.imc-cim.org/about-imc-separator/who-we-are.html>

²⁵ U.S Copyright Office, <http://www.copyright.gov/carp/m200a.html>

²⁶ 2011 Annual Report for Cyprus Ministry of Culture, Section 1.2 “Music”

(http://www.moec.gov.cy/en/annual_reports/annual_report_2011_en.pdf). Activities include Music Performances in Cyprus (1.2.1) and Abroad (1.2.2), Subsidization of Paphos Aphrodite Festival (1.2.3), Music Publications (1.2.4), Subsidization and Purchases of Digital Records (1.2.5), Promotion for Cypriot musical creativity abroad (1.2.6), Cyprus Symphony Orchestra Foundation (1.2.7), Music Information Centre (1.2.8), Developing Music Education (1.2.9), Organising of the 1st Musicological Symposium (1.2.10) and Musical Festivities for the European Volunteerism Year (1.2.11)

²⁷ http://www.culturalpolicies.net/down/albania_012011.pdf

²⁸ 2010-11 Annual Report from India Ministry of Culture, [http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011\(Eng\).pdf](http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011(Eng).pdf)

²⁹ <http://my.midem.com/en/contact-us/pavilion-representatives/>

Government ministries and arts councils provide critical support for the Music Community, including commercial music organizations. By way of example, government ministries' and arts councils' substantial connection to and support of "music" is noted in the reports of funding and support for music. Some examples to showcase the degree of power of the IFACCA's membership towards the string and global and national music are music investment and music funding (Annual reports by governments and councils):

- New Zealand Ministry of Culture has funded significant music projects. Some include the REAL New Zealand Music Tour (\$415,000), the New Zealand String Quartet (\$150,000) and New Zealand Music Commission: (\$1,378,000).³⁰
- The Australian Government/Council For The Arts invested \$51.2 million for the nation's orchestras; \$21.6 million for opera; \$10.8 million for other music artists and organizations; \$13.1 million for multi-platform artists and organizations; and \$4 million in miscellaneous funding, including sector building and audience development initiatives and programs.³¹
- Canada Council for the Arts is Canada's national, arts funding agency investing \$28 million in its Canada Council Musical Instrument Bank (Page 16) and \$28,156,000 in Music Arts Programs (Page 66).³² The Government of Canada also renewed its annual investment of \$27.6 million over five years in the Canada Music Fund.³³
- The United Kingdom Department for Culture and Education (DfE) will fund music education at significant levels: £77 million, £65 million and £60 million will be available in the three years from April 2012.³⁴
- The United States National Endowment of the Arts has awarded more than \$4 billion to support the arts since its inception³⁵ and has a strong focus on music as outlined in its Strategic Plan³⁶ with Congress requested to provide \$154,465,000 for fiscal year 2014.³⁷
- The National Arts Council of South Africa invested 2,536,131 ZAR in Music and 9,995,000 ZAR in Orchestras and has focused strongly on the "Strengthening of live indigenous music and advocating the revival of the live music circuit in South Africa"³⁸

³⁰ 2011 Annual Report from New Zealand Ministry of Culture:

[http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20\(D-0448383\).PDF](http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20(D-0448383).PDF)

³¹ 2011 Annual Report for the Australia Council for the Arts,

http://www.australiacouncil.gov.au/data/assets/pdf_file/0016/142351/Australia-Council-Annual-Report-201112.pdf, Page 28

³² 2011 Annual Report for Canada Council for the Arts, [http://www.canadacouncil.ca/NR/rdoonlyres/6F7549BB-F4E5-4B8B-95F4-](http://www.canadacouncil.ca/NR/rdoonlyres/6F7549BB-F4E5-4B8B-95F4-1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf)

[1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf](http://www.pch.gc.ca/eng/1294862453819/1294862453821)

³³ <http://www.pch.gc.ca/eng/1294862453819/1294862453821>

³⁴ Department for Culture, The Importance of Music, A National Plan for Music Education,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/180973/DFE-00086-2011.pdf, Page 4, 2011

³⁵ 2011 Annual report for the National Endowment of the Arts, <http://www.nea.gov/about/11Annual/2011-NEA-Annual-Report.pdf>, Page 2

³⁶ NEA Strategic Plan 2012-2016, www.arts.gov/about/Budget/NEAStrategicPlan2012-2016.pdf

³⁷ http://www.ifacca.org/national_agency_news/2013/04/10/us-president-requests-154465000-neh-2014/

³⁸ 2010-2011 Annual Report for the National Arts Council South Africa, National Arts Council South Africa, <http://www.nac.org.za/media/publications/AR%2010-11%20NAC.PDF/download>, Page 11. Also Mmino, the South African – Norwegian Education Music Programme, solely funds music projects funding a total of 294 projects. Thirteen projects were allocated funding for a total of R1,680,600 of which R1,381,000 went towards music educational and R299,600 to exchange projects (Page 10)

- The Singapore Arts Council will fund \$10.2 million in the arts under its 2013 Grants Framework, including the Ding Yi Music Company and Siong Leng Musical Association.³⁹
- In 2011, the support for artistic activities by the Arts Council of Finland was €32.4 million of which €4,921,850 was awarded to music.⁴⁰

Each of IFACCA’s members has a clear association with, and mandate to support the music arts in their countries. In most countries, their ministry of culture/arts council is the largest funder and marketing supporter of the music arts.

Another clear example of an “entity *mainly* dedicated to the community” with members that cover hundreds of millions of music constituents with formal boundaries is A2IM, the American Association of Independent Music. A2IM has two types of members: U.S independent Label members and Associate members. A2IM membership for Labels and Associates is invoked formally through an application and if accepted would require annual membership dues.⁴¹

The reach of A2IM Associate⁴² membership covers hundreds of millions of entities (i.e. the reach of A2IM’s total membership “geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents – See Application Answer to Question 20a).

Organized and strictly delineated communities related to music that are A2IM members include:

- **Apple iTunes**⁴³ – iTunes accounts for 63% of global digital music market⁴⁴ - a majority – with a registered community of 800 million registered members⁴⁵ available in 119 countries who abide to strict terms of service and boundaries⁴⁶ and have downloaded over 25 billion songs⁴⁷ from iTunes’ catalog of over 43 million songs⁴⁸ covering a global music community, regardless of genre or whether the community entities are amateur, professional, commercial or non-commercial. To add music to iTunes, all music artists must have a formal membership with iTunes via an Apple ID registration, which includes a current credit card on file.⁴⁹

³⁹ Singapore Arts Council, <http://www.nac.gov.sg/media-centre/news-releases/news-detail?id=c2db15e2-c319-40ec-939c-d58735d0a91c>

⁴⁰ <http://www.taiteenkeskustoimikunta.fi/documents/10162/31704/TY+tilastotiedote+1+12+.pdf>, Page 1 and Page

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⁴¹ <http://a2im.org/about-joining/>

⁴² <http://a2im.org/groups/tag/associate+members/>

⁴³ <http://a2im.org/groups/itunes>

⁴⁴ <http://appleinsider.com/articles/13/04/16/apples-itunes-rules-digital-music-market-with-63-share>

⁴⁵ <http://www.npr.org/blogs/therecord/2015/01/06/375173595/with-downloads-in-decline-can-itunes-adapt>

⁴⁶ <http://www.apple.com/legal/internet-services/itunes/ww/index.html>

⁴⁷ <http://www.apple.com/pr/library/2013/02/06iTunes-Store-Sets-New-Record-with-25-Billion-Songs-Sold.html>

⁴⁸ <https://www.apple.com/itunes/features/>

⁴⁹ <https://www.apple.com/itunes/working-itunes/sell-content/music-faq.html>

- **Pandora**⁵⁰ – Pandora is the world’s largest streaming music radio with a community of over 250 million registered members.⁵¹
- **Spotify**⁵² – Spotify is the world’s largest music streaming community with over 50 million active registered members in 58 countries and over 30 million songs. The music community uploads 20,000 songs every day.⁵³
- **Vevo**⁵⁴ – Vevo is the world’s leading all-premium music video community and platform with over 8 billion monthly views globally.⁵⁵
- **Youtube**⁵⁶ – Youtube is the world’s largest music video streaming community with millions of music creators -- amateur, professional, commercial or non-commercial -- and over 1 billion registered members covering all regions globally. 6 billion hours of video is watched every month on Youtube,⁵⁷ of which 38.4% is music-related.⁵⁸
- **Reverbnation**⁵⁹ – Reverbnation⁶⁰ is one of the world’s largest music community and a leading music distributor with over 3.87 million musicians, venues labels and industry professionals covering every country globally. The Reverbnation community grows by over 50,000 artists, bands, labels and industry professionals monthly.
- **BMG**⁶¹ – BMG is focused on the management of music publishing and recording rights. BMG has an international presence and represents over 2.5 million music rights globally.⁶²

A2IM also includes members that are associated with global government agencies which exclusively represent substantial music economies and music members, such as France (BureauExport⁶³), China (China Audio Video Association⁶⁴) and Germany (Initiative Musik).⁶⁵ A2IM also has Affiliate⁶⁶ associations within the global music community. These include Affiliates such as MusicFirst,⁶⁷ the Copyright Alliance,⁶⁸ the Worldwide Independent Network (WIN)⁶⁹ and Merlin.⁷⁰

⁵⁰ <http://a2im.org/groups/pandora>

⁵¹ <http://www.cnet.com/news/like-a-rolling-milestone-pandora-hits-250m-registered-users/> and <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MTkxNTM1fENoaWxkSUQ9LTF8VHlwZT0z&t=1>, Pg.9

⁵² <http://a2im.org/groups/spotify>

⁵³ <https://press.spotify.com/us/information/>

⁵⁴ <http://a2im.org/groups/vevo/>

⁵⁵ <http://www.vevo.com/c/EN/US/about>

⁵⁶ <http://a2im.org/groups/youtube/>

⁵⁷ <https://www.youtube.com/yt/press/statistics.html>

⁵⁸ http://www.researchandmarkets.com/reports/2092499/internet_video_2011_2014_view_share_site_and

⁵⁹ <http://a2im.org/groups/reverb-nation/>

⁶⁰ <http://www.reverbnation.com/about>

⁶¹ <http://a2im.org/groups/bmg-rights/>

⁶² <http://www.bmg.com/category/about-us/history/>

⁶³ <http://a2im.org/groups/french-music-export-office>

⁶⁴ <http://a2im.org/groups/china-audio-video-association-cava>

⁶⁵ <http://a2im.org/groups/initiative-musik-gmbh>

⁶⁶ <http://a2im.org/groups/tag/associate+members/>

⁶⁷ <http://musicfirstcoalition.org/coalition>, The musicFIRST Coalition, with founding members A2IM, RIAA, and Recording Academy represents musicians, artists, managers, music businesses, and performance right advocates.

⁶⁸ <http://www.copyrightalliance.org/members>

⁶⁹ <http://www.winformusic.org>

A2IM also represents a recognized Music Coalition representing the interests of the Global Independent Music Community.⁷¹ The A2IM Coalition includes Merlin, a global rights agency for the independent label sector, representing over 20,000 labels from 39 countries, Worldwide Independent Network (representing label creators in over 20 countries), Association of Independent Music (representing largest and most respected labels in the world), and IMPALA (Independent Music Companies Association on behalf of over 4,000 independent music companies and national associations across Europe, representing 99% of music actors in Europe which are micro, small and medium sized enterprises).

Cumulatively, A2IM's Label and Associate Membership, A2IM's Affiliates and the A2IM's Global Independent Music Community Coalition, covers a majority of the global music community. Its cumulative membership is in the hundreds of millions of entities with formal boundaries belonging to strictly organized and delineated communities related to music as per the Community Definition and Size (See Application answer to Question 20a).

The IFPI is another entity *mainly* dedicated to the Community. The IFPI is the only organization that represents the interests of the recording industry worldwide. It is the "voice of the recording industry worldwide"⁷² whose members⁷³ – major and independent companies -- represent a majority of all commercial music consumed globally. For example, the RIAA, an IFPI national group member,⁷⁴ represents "approximately 85% of all legitimate recorded music produced and sold in the United States,"⁷⁵ the world's largest music market with 30% global market share.⁷⁶ Formed in 1933, the IFPI's mission was to "represent the interests of the recording industry worldwide in all fora."

Another global Music Community Coalition led by the RIAA "on behalf of over 15 national and international trade associations" also expressed its support for .MUSIC to be under a "community" application model, including encouraging statements in support of DotMusic's policies that stated that the coalition "was encouraged to see" that DotMusic "included several measures to deter and address copyright infringement within that TLD." The "coalition members represent the people that write, sing, record, manufacture, distribute and/or license over 80% of the world's music"⁷⁷ – a majority of global music.⁷⁸

⁷⁰ <http://www.merlinnetwork.org>

⁷¹ <https://www.icann.org/en/system/files/correspondence/bengloff-to-chehade-et-al-20aug14-en.pdf> and <https://www.icann.org/en/system/files/correspondence/bengloff-to-crocker-et-al-07mar15-en.pdf>

⁷² <http://www.ifpi.org/about.php>

⁷³ <http://www.ifpi.org/our-members.php>

⁷⁴ <http://www.ifpi.org/national-groups.php>

⁷⁵ <http://www.riaa.com/faq.php>

⁷⁶ <http://www.statista.com/topics/1639/music/>

⁷⁷ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.1

⁷⁸ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.3, Appendix A

Another letter⁷⁹ sent to ICANN (on April 14th, 2015) by Danielle Aguirre from the NMPA and on behalf of a music publisher and songwriter community coalition representing a majority of the global music publishing community, also expressed “support [for] the .MUSIC community applications because respecting and protecting music rights serves the global music community and the public interest.”

Collectively, the DotMusic application received support from the largest coalition of music community member organizations ever assembled to support a cause representing over 95% of music consumed globally.⁸⁰ Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support⁸¹ from institutions/organizations representing a majority of the Community addressed. Music -- as commonly-known by the general public and experienced today -- would not be possible without these supporting, non-negligible and relevant organizations that have endorsed DotMusic.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Community Establishment* and *Community Endorsement* from the majority of the global Music Community as defined.

B) Nexus⁸²

According to the Applicant Guidebook (“AGB”), to receive the maximum score for Nexus, the applied-for string -- “music” -- must match the name of the community or be a well-known short-form or abbreviation of the community name.

The *Nexus* of the “Music Community” entirely matches the applied-for “music” string because it represents the entire global Music Community as commonly-known and perceived by the general public. This definition allows for all constituents with a requisite awareness of the Community defined to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination. The definition of the Community requires that members have an active, non-tangential relationship with the applied-for string and the requisite awareness of the music community they identify with as part of the registration process. It is clear that the general public will directly associate and equate the string with the Community as defined by DotMusic. There is no possibility of overreaching beyond the definition or allowing unrelated non-music

⁷⁹ <https://www.icann.org/en/system/files/correspondence/aguirre-to-icann-board-ciu-14apr15-en.pdf>

⁸⁰ See <http://music.us/supporters>, <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/downloadattachment/142588?t:ac=1392>, Bloomberg BNA at http://music.us/RIAA_Backs_DotMusic.pdf Pg.1, and <http://diffuser.fm/will-dot-music-domains-make-the-internet-better/>

⁸¹ <http://music.us/supporters>

⁸² See <http://music.us/nexus>

entities to be included as part of the Community. Community members may register a .MUSIC by either:

- 1) Identifying that they belong to a Music Community Member Organization (“MCMO”); or
- 2) Identifying the community they belong to, which is consistent with the definition of the Community: “the strictly delineated and organized logical alliance of communities of similar nature related to music.”

All Community members are aware of and recognize their inclusion in the defined Community by identifying which clearly defined community they belong to and have an active participation in. The *nexus* of the applied-for string ensures inclusion of the entire global community that the string represents while excluding unrelated-entities not associated with the string. This way there is a clear match and alignment between the “music” sting and the Community defined.

While the exact size of the global Music Community as defined is unknown (there is no empirical evidence providing an exact, finite number because amateur entities are also included in the Community’s definition), it is in the considerable millions as explicitly stated in the DotMusic Application. DotMusic’s definition of the Community and mutually-inclusive Registration Policies ensure that eligible members are only music-related and associated with the string. This is because the string identifies all constituents involved in music. Music-only participation optimizes the relevancy of .MUSIC domains to the string and entirely matches the *nexus* between the string and Community defined. According to DotMusic, the Community *definition, eligibility* criteria and *content and use* requirements ensure that peripheral industries and entities not related to music are excluded so that the string and the defined Community matches and aligns in a consistent manner consistent with DotMusic’s community-based purpose i.e. only entities with music-related activities are able to register .MUSIC domains.

Membership aligns with the *nexus* of the Community and the string, which is explicitly relevant to music. The string as defined in the application demonstrates uniqueness because it has no other significant meaning beyond identifying the community described in the application. According to DotMusic’s application, any tangential or implicit association with the *nexus* of the Community and the string is not regarded as a delineated membership since it would be considered unclear, dispersed or unbound. Such unclear, dispersed or unbound tangential relationships with the defined “music” Community and applied-for “music” string would not constitute a qualifying Community membership and would be ineligible for registration. Every type of music constituent critically contributes to the function and operation of the music sector within a regulated framework⁸³ given the symbiotic overlapping nature of the Community as

⁸³ ICANN has disclosed that the string .MUSIC is a sensitive string operating in a regulated sector. ICANN also accepted Government Advisory Committee (GAC) advice for safeguards to protect the Music Community and the public interest (See <https://icann.org/en/system/files/correspondence/crocker-to-dryden-3-29oct13-en.pdf> Pg.7)

defined and structured. Music would not function as it does today without the participation of all music constituent types which cumulatively match the string with the Community definition.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Nexus*.

Respectfully Submitted,

Sharon A Chanley, PhD

Contact Information Redacted Aug 1 '15 ip: 174.126.129.147

Signature:

Name: Sharon Chanley

Title: Instructor

Organization: AZ State University

SHARON ANNE CHANLEY

Show Low, AZ
Contact Information Redacted

EDUCATION

Ph.D., Public Administration

Arizona State University, School of Public Affairs. Tempe, AZ. December 2001. Dissertation "Domestic Violence, Welfare, and Welfare Reform: The Family Violence Option in Arizona."

Master of Public Administration

Arizona State University, School of Public Affairs, Tempe, AZ. August, 1996.

Southwest Texas State University, Political Science Department; Master of Public Administration program with concentration in Legal and Judicial Administration. 15 hours completed.

Bachelor of Liberal Studies

St. Edward's University, New College, Austin, Texas. May 1981. Concentration: Management of Non-Profit Organizations. Graduated Summa Cum Laude.

Austin Community College, Austin, Texas, Fall 1973 – Summer 1980 and University of Texas, Austin, Texas, Summer 1973

ACADEMIC POSITIONS

AZ State University

College of Letters and Sciences, Interdisciplinary and Liberal Studies
Faculty Associate
Spring 2015 – Current

Developing and teaching undergraduate online courses in Liberal Studies.

Upper Iowa University

Online
Master of Public Administration and Online Undergraduate Programs
Online Instructor, Assessment Consultant, and Member, MPA Faculty Advisory Committee
Summer 2008 – Current

Developing and teaching graduate and undergraduate online courses in the area of public policy and in the MPA program core including in the nonprofit management emphasis area, and for program's capstone course. Developing and analyzing program assessment materials including student writing and critical thinking assessments, NASPPA Accreditation Self-Study materials, faculty development information.

Active member of the MPA Faculty Advisory Committee providing guidance to the MPA Program Coordinator on program policies and other governance issues.

Consultant to assist MPA Program Coordinator in development of materials for NASPPA accreditation and program assessment tools and analyses.

Thomas Edison State College

Online Mentor
Summer 2009 - Current

Teaching undergraduate online course in career exploration and personal development.

South University

Master of Public Administration program
Subject Matter Expert
Online Faculty
Summer 2008 – 2013

Provided consultation services to director of online and blended programs regarding curriculum for master in public administration program. Online course developer for *grant writing and contract administration* and *foundations to public administration*.

Teaching in the online MPA program including courses in the public administration core and in the nonprofit concentration.

Western Illinois University

Macomb IL
Political Science Department
Visiting Instructor
Fall 2008 – May 15, 2009

Taught undergraduate courses in the area of public policy and political science including Introduction to Public Policy, State Government and Politics, and Environmental Politics.

Norwich University

Northfield VT
Master of Public Administration & Justice Administration programs
Senior Instructor and Online Course Developer
Fall 2007 – Fall 2008

Taught the online Capstone course and seminars in Justice Policy for the Masters in Justice Administration program and to begin teaching seminars in the Masters in Public Administration program. Developed online course in nonprofit management and designed the curriculum for the public works administration concentration for graduate students.

Bucknell University

Lewisburg PA
Women's and Gender Studies Visiting Assistant Professor
Teaching Fellow Social Justice College

January – December 2006

Taught undergraduate core courses including Introduction in Feminist Thought and Introduction to Women's and Gender Studies as well as special topics, Women and Public Policy. In addition, taught first year residential student Foundation Seminar for students in the Social Justice College.

University Of Illinois At Springfield

Springfield IL

Liberal Studies/Individual Option Programs

Assistant Professor

2000 – 2005

Taught core courses at the undergraduate and graduate levels including introductory courses in which students design their degree programs and closure courses. Teach undergraduate and graduate courses in my discipline. Advise students on course selection and other issues. Serve as committee chair for Individual Option committees. Serve as member of Master's thesis committees from other program. Conduct scholarly activities including publications in peer-reviewed journals. Participate in governance activities at program, college, and university levels.

Credit For Prior Learning Program

Director

2001 – 2005

Taught core course related to experiential learning and to assist students develop portfolio-based requests for credit. Promote Credit for Prior Learning throughout university. Administer the program including planning, policy, and budget.

Arizona State University

Tempe AZ

Women's Studies Program

Instructor

1998 - 2000

Taught first year, sophomore, and junior levels of women's studies core and elective courses. Coordinated the women's studies senior internship program and taught related course.

OTHER INSTITUTIONS

As my schedule has allowed, I have taught and developed courses, on-contract, for other institutions including: Mississippi University for Women (2011), Ashford University (2010-2011), New England College (2009), and Empire State College (2007). Courses included undergraduate and graduate courses in state and local government, public budgeting, budgeting and finance, economic analysis, poverty and race policy, American public policy, and American government.

MANAGEMENT & ADMINISTRATIVE PROFESSIONAL EXPERIENCE

ARIZONA COALITION AGAINST DOMESTIC VIOLENCE

Phoenix, AZ

Executive Director

1993-1995

Consulting Finance Officer

1997

Chief Executive Officer for statewide non-profit organization with annual budget of \$125,000, fifteen member Board of Directors and 3 full-time employees.

Fund Raising and Community Affairs: Increased annual agency budget by \$35,000. Doubled membership including increased participation to 90% of state shelter programs. Increased agency community visibility and impact through membership on other statewide organizations addressing issues of domestic violence. Reestablished positive working relationships with regional domestic violence task forces and other key community groups. Established first battered women's and first women of color advisory committees. Established legislative alert network and conducted lobbying activities at the state and national level related to domestic violence laws and funding of related programs and services. Significantly increased agency and issue visibility through speaking engagements and statewide media interviews.

Program Management: Established first program for the Coalition to address technical assistance needs of shelter programs. Coordinated first statewide conference, held in three cities, on domestic violence. Doubled referrals provided to victims of domestic violence. Established resource library on domestic violence issues.

Administration and Management: Redesigned organization structure from general membership organization to one that operates primarily through standing and advisory committees with a Board of Directors to provide more internal oversight of agency activities and to ensure representation of diverse groups and organizations including battered women and women of color. Renegotiated improved contracts with AZ Department of Health Services and AZ Department of Economic Security. Redesigned agency budgeting and financial reporting systems.

Consulting Finance Officer: Responsible for entry and reconciliation of accounting data and information for 14 month period covering portions of two previous fiscal years. Preparation of financial reports for Board of Directors, funding sources and other regulatory agencies and for independent audit. Assisted new Executive Director with the development of funding applications and budgets during transition period from the previous interim director.

ARIZONA FAMILY PLANNING COUNCIL

Phoenix, AZ

Grants Administrator

1990-1993

Grants Administrator responsible for administration of \$2 million Title X statewide family planning grant and contracts with delegate agencies including program and fiscal evaluations, contract development and review of compliance with federal, state and Council regulations and policies.

Service Management: Provided direct consultation to delegate agencies and other family planning providers regarding service delivery and program management. Maintained and developed systematic procedures for distribution of up-to-date information regarding family planning and related services, unmet need, policies, programs and developments in the field. Revised format and prepared for publication an annual statistical report on family planning services provided throughout Arizona.

Financial and Administration: Revised delegate agency peer review process and evaluation document. Revised grant application format and delegate reporting requirements and system. Responsible for increasing funding to Council during 1992 by \$10,710 through contracts from the U.S. Department of Health & Human Services Region IX Office of Family Planning and the Arizona Department of Health Services, Division of Maternal and Child Health.

LAPIS CONSULTING SERVICE

Austin, TX

Owner/Consultant

1980-1990

Consultant and trainer for non-profit organizations in fund raising, personnel management, program evaluation, planning, budgeting, and Board development. Consultant under contract with U.S. Department of Health and Human Services in program, service and grant management evaluations.

Consultant to private businesses in office organization, record-keeping systems, personnel management, and design/implementation of accounting and financial management systems.

Training of personnel in computer applications including word processing, database, accounting, and spread sheet programs.

Direct fund raising for non-profit organizations, political candidates, and individuals including paid fundraiser for successful Austin City Council campaign for George Humphrey and for child custody legal case for lesbian friend being challenged for custody based on her sexual preference.

AUSTIN WOMEN'S CENTER

Austin, TX

Executive Director

1985-1987

Chief Executive Officer for non-profit organization with annual budget of \$450,000, 15 member Board of Directors, 15 paid employees and 45 volunteers.

Service Management: Implemented program expansion including a demonstration project for employment services to AFDC mothers (Project Self Sufficiency). Reorganized service delivery model and personnel/management structure. Increased client recruitment activities, expanded existing programs to include broader scope of services, and increased access for clients, particularly minority group men and women.

Financial & Administration: Developed and revised administrative systems; budget and financial management procedures; and, personnel and Board policies.

PLANNED PARENTHOOD OF AUSTIN

Austin, TX

Executive Director

1980-1985

Acting Executive Director

1980

Director of Support Services

1976-1980)

Chief Executive Officer of non-profit organization with annual budget of \$1,000,000; 35 member Board of Directors; 28 paid employees; and, 65 volunteers.

Service Management: Expanded government subsidized family planning services. Secured funding for and opened two additional self-supporting centers. Doubled client medical services. Established tubal ligation service program coordinating government funding, private foundation support, and low-cost physician and hospital services.

Fund Raising & Community Affairs: Developed fund raising program that increased private funding from \$12,000 in 1980 to, in 1984, \$110,000 for operations, \$16,000 for special programs, and \$100,000 for a building fund. Public speaking before community groups, media interviews, news conferences and presented testimony before funding sources and Texas Legislative sub-committees.

Financial & Administration: Increased annual operating budget from its 1980 level of \$400,000 to its 1984/85 total of just over \$1,000,000. Designed planning process including documents and monitoring and reporting systems utilized as models by the Planned Parenthood Federation of America--Southern Regional office and the Travis County Department of Human Services.

GRANTS

Welfare reform and battered women in Arizona. Center for Urban Studies, College of Public Programs, Arizona State University, 1998.

A variety of public and private grants and contracts awarded to organizations for which I worked including programs for family planning, domestic violence, and job training (1975-1995).

OTHER EXPERIENCE

ARIZONA STATE UNIVERSITY

Tempe, AZ

Dean's Office 1995-1998

College Of Public Programs

Student Academic Specialist (1997-1998)

Graduate Associate (1996-1997)

Graduate Assistant (1994-1996)

UNIVERSITY OF TEXAS

Austin, TX

LBJ School Of Public Affairs And Government Department 1989-1993

SOUTHWEST TEXAS STATE UNIVERSITY San Marcos, TX

Political Science Department 1989-1993

Research Assistant

Landon Curry, Ph.D.

UNIVERSITY OF TEXAS
Austin, TX
Government Department 1989
Research Assistant
Henry Dietz, Ph.D.

SOUTHWEST TEXAS STATE UNIVERSITY
San Marcos, TX
Political Science Department 1989-1990
Research Assistant
Ray Leal, Ph.D.

AUSTIN-TRAVIS COUNTY HEALTH DEPARTMENT
Accountant Clerk 1970-1976

PUBLICATIONS

Chanley, Sharon A., Chanley, Jesse J. Jr., and Heather E. Campbell. (2001). Providing refuge: The value of domestic violence shelter services. *American Review of Public Administration*, 31(4).

Chanley, Sharon A. and Alozie, Nick. (2001) Policy for the 'deserving' but politically weak: The 1996 Welfare Reform Act and battered women. *Policy Studies Review*, 18(1).

Chanley, Sharon A. Essay on domestic violence and welfare in the American Society of Public Administrators, Women in Public Administration Section's newsletter, 1997.

HONORS and AWARDS

Nominated for Arizona State University's College of Liberal Arts and Sciences "Distinguished Teaching Award," 2000

Who's Who in American Education, nominated by students, 1999, 2004, 2005

Outstanding DPA Graduate Paper, Spring, 1999, for paper entitled "Cost/Benefit Analysis of a Domestic Violence Shelter in a Rural Community" co-authored with Jesse J. Chanley, Jr. Carried \$1,000 stipend.

Recipient of national 1999 P.E.O. Scholars Award for 1999 – 2000.

Outstanding DPA Graduate Paper, Spring, 1998, for paper entitled: "Welfare Reform and Battered Women: The Personal Responsibility and Work Opportunity Reconciliation Act of 1996" Carried \$1,000 stipend.

Preparing Future Faculty Fellow, Fall, 1998.

Regents' Scholar for academic years 1996-97, 1997-98, and 1999-2000.

Pi Alpha Alpha National Public Administration Honorary Society, 1997

Outstanding MPA Graduate Paper, April 1996, for research design entitled: "Employee Burnout in Domestic Violence Shelter Workers." Carried \$500 stipend.

CONFERENCE PRESENTATIONS and PARTICIPATION

Midwest Political Science Association, Annual Meeting, Chicago, April 3-6, 2008.

Panel: Motherhood and Politics. Discussant

Panel: Theory and Practice Of Service Learning, Discussant

Midwest Political Science Association, Annual Meeting, Chicago, April 17-18, 2004.

Round Table: Work, Welfare, and Consequences. Paper: Battered Women's Shelter Staff and Welfare Reform.

Midwest Political Science Association, Annual Meeting, Chicago, April 25-28, 2002. Panel: The Politics of Income (Re)Distribution: National, State, and Local Politics and Policy. Paper: "Welfare Reform: Issue Context and Policy Design."

"Trapped by Poverty, Trapped by Abuse" biannual national conference through the Project for Research on Welfare, Work, and Domestic Violence sponsored by the Center for Impact Research and the University of Michigan School of Social Work Center on Poverty, Risk, and Mental Health. Ann Arbor, MI, October 26-28, 2001. Paper: "Implementation of the Family Violence Option in Arizona: Empty Promises."

Midwest Political Science Association, Annual Meeting, Chicago, April 19-22, 2001. Panel: Welfare Policy: Images And Public Opinion. Paper: "Degenerative Pluralism and Welfare Policy for Battered Women."

Western Political Science Association, Annual Meeting, Seattle, March 25-27, 1999. Panel: Women Interests: Political and Institutional Responses. Paper: "Cost/Benefit Analysis of a Domestic Violence Shelter" with co-author, Jesse J. Chanley, Jr.

Western Political Science Association, Annual Meeting, Seattle, March 25-27, 1999. Panel: Women Interests: Social Construction. Paper: "Policy for the 'Deserving' but Politically Weak: The 1996 Welfare Reform Act and Battered Women." Co-author, Nicholas Alozie, Arizona State University.

Society for the Study of Social Problems, Annual Meeting, San Francisco, CA, August 1998. Panel: The Effects of Welfare Reform on Women and Children. Paper: "Welfare Reform and Battered Women: The Personal Responsibility and Work Opportunity Reconciliation Act of 1996."

Society for the Study of Social Problems, Annual Meeting, San Francisco, CA, August 20-23, 1998. Chanley, Sharon A and Kathleen Joan Ferraro "Women, Violence and Welfare Reform in Arizona: A Collaborative Feminist Action Research Project," with the students of WST 498.

Southwestern Social Science Association, Annual Meeting, Dallas, TX, March 1989. Paper: "Measure of Legislative Professionalism." Co-author: Landon Curry, Southwest Texas State University.

Revised March 26, 2015

Re: Expert Testimony on (i) Community Establishment; (ii) Nexus; and (iii) Support for DotMusic’s Community-Based Application¹ for .MUSIC (Application ID 1-1115-14110)

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

Please accept this letter that indicates that there is substantive and compelling evidence that the DotMusic application convincingly meets the full criteria under Community Priority Evaluation on the following points: (i) the Music Community’s *Establishment* as defined by DotMusic; (2) the matching *Nexus* between the “music” Community and the “music” string (or top-level domain); and (3) that DotMusic possesses documented *Support* from organizations representing a majority of the global Music Community addressed and defined.

Please see my credentials attached hereto that identify my level of expertise and specialized knowledge with respect to the music community’s organization and delineation.

SUMMARY

DotMusic has established the following:

- 1) Its Community definition recognizes the cohesive, symbiotic and overlapping nature of the global Music Community. The definition includes those associated with commercial and non-commercial creation, performance, marketing and distribution of music;
- 2) “Music Community” members have the requisite awareness and recognition of the interdependency, overlapping and cohesive nature of each “organized community of similar nature that relates to music.” These organized and aligned communities are closely united and make “music” as we know it today. It is this self-awareness and interdependence that gives the “Music Community” its strength. With exponential growth of the Internet, mobile and the Domain Name System (DNS), the “Music Community’s” use and reliance on the Internet to create, market and disseminate music-related content, products, services and activities will continue to grow;
- 3) The “Music Community” functions in a regulated sector with global copyright protections – it is clear that the “community,” as defined, implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate a globally-recognized set of standards for

¹ <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1392>

the protection of the “Music Community” member rights with relation to their copyrighted music works around the world;

4) The “Music” Community -- as defined by DotMusic -- has at least one entity dedicated to the community supporting DotMusic’s application. Such documented *Support* includes several “international federation of national communities of a similar nature,” music coalitions and others that are strongly associated with “music,” which represent a majority of the Community with considerable millions of members worldwide.²

5) The *Nexus* of the “music” Community matches the “music” applied-for string because it represents the entire global Music Community – a community that pre-existed 2007 with a size in the considerable millions of constituents. The “Music Community” definition -- which incorporates the strict fundamental attributes of a closely united Community definition that is “organized” and “delineated” -- ensures that all of its constituent members have a requisite awareness of the community as defined, including both commercial and non-commercial stakeholders, to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination.

6) DotMusic has received support from the largest coalition of Music Community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support³ from institutions/organizations representing a majority of the Community as defined and recognized in the DotMusic application.

There is substantive evidence that DotMusic fulfills the *Nexus, Community Establishment and Support* criteria for the “Music” string. The inclusion and representation of every music constituent type is paramount to the articulated purpose of the string. DotMusic and its application’s global Music Community supporters substantiate that every type of music constituent contributes to the function and operation of the music sector within a regulated framework. The symbiotic nature of the Community as defined and structured means that “Music” would not function as it does today without the participation of all music constituent types that interconnect to match the “music” string with the “music” Community definition.

² <http://music.us/supporters>

³ <http://music.us/supporters>

ASSESSMENT OF COMMUNITY DEFINITION, ESTABLISHMENT AND NEXUS

A) *Music Community Definition, Establishment & Community Endorsement*⁴

DotMusic's definition of the "Music Community" as a "strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music" (See Application, 20a) is factually accurate and representative of the "Music Community." Community characteristics include:

i) An Organized, Cohesive, Interdependent Logically-Allied Community:

The "Music Community" definition covers the regulated, interdependent and cohesive nature of the music sector that exists today. "Music Community" members have the requisite awareness and recognition of the interdependent, overlapping and cohesive nature of each "organized community of similar nature that relates to music" that comprises the "Music Community." Without such cohesiveness and interdependency, the defined "Music" Community matching the applied-for string ("Music") would not be able to function in its regulated sector, a "Music" regulated sector that was publicly recognized by both ICANN and the Government Advisory Committee.⁵

As a result, the Music Community as defined is "closely united" (As per the definition of "cohesion" according to Merriam-Webster dictionary⁶) or "united or form a whole" (As per the definition of the word "cohesion" according to Oxford Dictionaries⁷).

The "Music Community" as defined (a "strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music") establishes that:

- (1) There is an awareness and recognition among its members;
- (2) The organized and delineated logical alliance of communities exists; and
- (3) The Community is "closely united" and "interdependent" (i.e. Each "organized community of similar nature that relates to music" which is part of the "logical alliance of communities that relate to music" is not mutually exclusive).

In short, the applied-for string ("Music") matches the name of the "Music" Community as defined by DotMusic's application. DotMusic's "Music Community" definition accurately represents the common definition of the "Music Community," which is confirmed by Wikipedia.

⁴ See <http://music.us/establishment>

⁵ <https://www.icann.org/en/system/files/bm/briefing-materials-2-05feb14-en.pdf>, Pg.3

⁶ <http://www.merriam-webster.com/dictionary/cohesion>

⁷ http://www.oxforddictionaries.com/us/definition/american_english/cohesion

According to Wikipedia:⁸

Music community is defined as a logical alliance of interdependent communities that are related to music, which include commercial participants...and non-commercial participants...and consists of an “ensemble of practices and institutions that make possible and regulate the production, distribution and consumption of music”...UNESCO identifies the music community as a “community of identity” implying common identifiable characteristics and cohesive attributes such as sharing a music culture, norms and subscribing to common ideals related to music...The music community is not defined as much by demographic indicators such as race, gender, and income level, as it is by common values, cohesive norms and interconnected structures to build a community identity. It refers to music-related individuals and organisations in a shared environment with shared understandings and practices, modes of production and distribution. The shared organisation of collective musical activities, identity and community value is created as result of infrastructure and a shared set of common values...Many studies outline the historical, cultural, and spatial significance of the music community, including how its identity is formed through musical practices. The music community shares a cohesive and interconnected structure of artistic expression, with diverse subcultures and socio-economic interactions...subscribing to common ideals. Under such structured context music consumption becomes possible regardless whether the transaction is commercial and non-commercial.⁹

ii) *An Aware, Pre-Existing and Recognized Community of Considerable Millions Worldwide:*

DotMusic’s definition of the Community covers all Community members associated with the string, each with a requisite awareness of the Community that can be validated through their natural association with a particular music-related community that they clearly identify with. According to DotMusic, all Music Community members must identify their music-related community in order to demonstrate their requisite awareness of the defined Community as part of the .MUSIC registration and validation process.

⁸ Wikipedia is ranked 6th among the ten most popular websites (Alexa, Retrieved March 23, 2015 from <http://www.alexacom/siteinfo/wikipedia.org>) and constitutes the Internet's largest, most frequently updated and popular general reference work (See OECD, OECD Internet Economy Outlook 2012, OECD Publishing, http://www.oecd-ilibrary.org/science-and-technology/oecd-internet-economy-outlook-2012_9789264086463-en,Pg.172) that compares favorably to the accuracy of other encyclopedias (such as the Britannica) according to a 2012 study conducted in partnership with Oxford University (See <http://blog.wikimedia.org/2012/08/02/seven-years-after-nature-pilot-study-compares-wikipedia-favorably-to-other-encyclopedias-in-three-languages>).

⁹ Music Community. In *Wikipedia*. Retrieved March 23, 2015, from https://en.wikipedia.org/wiki/Music_community

According to DotMusic, the Music Community’s geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents (Application Answer to Question 20a).

According to DotMusic, “registrants will be verified using Community-organized, unified “criteria taken from holistic perspective with due regard of Community particularities” that “invoke a formal membership (Application Answer to Question 20a).” The defined Community represents all music-related entities with a clear and straightforward membership with the Community involved in the legal production, performance, promotion, and distribution of music worldwide. According to DotMusic, the Music Community members must have an active, non-tangential relationship with the applied-for string “music” and also have the requisite awareness of the music-related community that they are a part of by specifically identifying it as part of the registration and validation process (i.e. upon successful registration and validation, each community member will be given a unique community identification number that will automatically associate them with their identified community and the “music” string).

DotMusic’s Community definition matches the applied-for string because it allows both commercial and non-commercial stakeholders to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination/exclusion. Given the regulated sector of the community, it is clear that the “Music Community” as defined implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate cohesive and globally-recognized set of standards for the protection of the music community members’ rights with relation to their copyrighted music works around the world.¹⁰

The Berne Convention for the Protection of Literary and Artistic Works¹¹ provides that each of the 168 contracting parties¹² (representing an overwhelming majority of the world’s population) provides automatic protection for music works first published in other countries of the Berne union and for unpublished music works whose authors are citizens of or resident in such other countries.¹³ This means that if a Music Community member’s copyright rights are violated in any other signatory country’s jurisdiction, then the music community member will have the music copyright rights given by that country. Music Community members are clearly aware of the collective Community’s rights, which could not be made possible without these cohesive and globally-recognized set of standards. If such standards were not coherent or enforced then music would not be able to exist in its current form and the industry component of the Music Community sector would not exist. As such, the Community’s *Establishment* and definition is “cohesive” and hence cannot be construed since the Community is a logical alliance of music

¹⁰ http://www.rightsdirect.com/content/rd/en/toolbar/copyright_education/International_Copyright_Basics.html

¹¹ http://www.wipo.int/treaties/en/text.jsp?file_id=283698

¹² http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=15

¹³ <http://www.britannica.com/EBchecked/topic/62482/Berne-Convention>

communities that establish a clearly delineated and organized Community structure that is “closely united” and functions as a “whole”

Further evidence to substantiate the cohesive, symbiotic and overlapping nature of the Community, includes other globally-recognized standards and classification systems, which identify who the individual songwriters, publishers and rights holders are and which songs they are associated with so that Community members are appropriately compensated, regardless of whether the constituent is a commercial, non-commercial or amateur entity. The “music” string is commonly used in classification systems such as ISMN,¹⁴ ISRC,¹⁵ ISWC,¹⁶ ISNI.¹⁷ (Application Answer to Question 20a). For example, if a music entity would like to distribute their music, either commercially or for free, then an ISRC can be assigned to globally identify any specific music work. An ISRC, which facilitates efficient music discovery and community member payment, is constructed from 12 characters representing country, registrant, year of registration and designation (i.e. the serial number assigned by the registrant). With respect to domains, an equivalent system that relates to identifying a specific domain’s registrant and other relevant information pertaining to the domain is WHOIS. Domain registrants are required by ICANN “to provide accurate WHOIS contact data” or else their domain “registration may be suspended or even cancelled”.¹⁸

Without such Music Community “cohesion” and standardized systems functioning in its regulated sector, the Music Community would not be able to create, market and distribute their music. By the same token, fans would not be able to identify the music they are listening to with a specific music artist, regardless of whether the listening activity or behavior is commercial or non-commercial in nature. The socio-economic structure that characterizes “music” as commonly-known today would be non-existent without these organized and delineated elements that commonly define the Community.

¹⁴ The International Standard Music Number (ISMN) is a unique number for the identification of all notated music publications from all over the world. The ISMN is an ISO certified global standard number (ISO 10957:2009). See <http://www.ismn-international.org/whatis.html> and

http://www.iso.org/iso/home/store/catalogue_ics/catalogue_detail_ics.htm?csnumber=43173

¹⁵ The ISRC (International Standard Recording Code) is the international identification system for sound recordings and music video recordings. The ISRC is an ISO certified global standard number (ISO 3901:2001) and is managed by the IFPI. See <http://isrc.ifpi.org>, <https://www.usisrc.org/about/index.html> and http://www.iso.org/iso/catalogue_detail?csnumber=23401

¹⁶ The ISWC (International Standard Musical Work Code) is a unique, permanent and internationally recognized reference number for the identification of musical works. The ISWC has been approved by ISO (International Organization for Standardisation) as a global standard (ISO 15707:2001) and is managed by CISAC. See <http://www.iswc.org/en/faq.html> and http://www.iso.org/iso/catalogue_detail?csnumber=28780

¹⁷ The International Standard Name Identifier (ISNI) is the ISO certified global standard number (ISO 27729) for identifying the millions of contributors to creative works and those active in their distribution. ISNI holds public records of over 8 million identities and 490,000 organizations. See <http://www.isni.org/> and http://www.iso.org/iso/catalogue_detail?csnumber=44292

¹⁸ <https://whois.icann.org/en/about-whois> and <https://www.icann.org/resources/pages/faqs-f0-2012-02-25-en>

iii) International Federations and Organizations Dedicated to Community Functions:

According to ICANN’s Applicant Guidebook (“AGB”)¹⁹: *“With respect to “Delineation” and “Extension,” it should be noted that a community can consist of...a logical alliance of communities (for example, an international federation of national communities of a similar nature... viable as such, provided the requisite awareness and recognition of the community is at hand among the members.”* (AGB, 4-12). The community as defined in the DotMusic application has at least one entity mainly dedicated to the community which has supported DotMusic, which include several “international federation of national communities of a similar nature” relating to music, music coalitions and other relevant and non-negligible music organizations.

One of these entities include the only international federation of national communities relating to government culture agencies and arts councils, which has an integral association with music globally: the International Federation of Arts Councils and Culture Agencies (IFACCA).

IFACCA is the only international federation that represents government culture agencies and arts councils globally. These national communities are governmental institutions that play a pivotal role with respect to music.²⁰ IFACCA’s members cover the majority of music entities globally, regardless of whether they are commercial, non-commercial or amateurs. Government ministry of culture and council agencies related to music cover a majority of the overall community with respect to headcount and geographic reach. The “Size” covered reaches over a hundred million music entities i.e. “considerable size with millions of constituents” per Application Answer to Question 20a.

The string “music” falls under the jurisdiction of each country’s Ministry of Culture governmental agency or arts/music council (emphasis added). The degree of power and influence of government ministry of culture and council agencies with respect to music surpasses any organization type since these agencies (i) provide the majority of funding for music-related activities; (ii) regulate copyright law; and (iii) encompass all the music entities that fall under their country, regardless whether these entities are commercial, non-commercial or amateurs. IFACCA is globally recognized by its strategic partners, such as UNESCO, a United Nations agency representing 195 member states and the European Commission.²¹ The UNESCO strategic partnership²² is relevant, especially since UNESCO founded the International Music Council (the “IMC”) in 1949, which represents over 200 million music constituents from over 150 countries and over 1000 organizations globally.²³

¹⁹ <https://newgtlds.icann.org/en/applicants/agb/guidebook-full-11jan12-en.pdf>

²⁰ http://www.ifacca.org/membership/current_members/

²¹ http://www.ifacca.org/strategic_partners/

²² http://www.ifacca.org/strategic_partners/

²³ <http://www.imc-cim.org/about-imc-separator/who-we-are.html>

Government activities in the clearly delineated and organized “Music Community” include setting statutory royalty rates. For example, in the United States, mechanical royalties are based on a “statutory rate” set by the U.S. Congress. This rate is increased to follow changes in the economy, usually based on the Consumer Price Index. Currently, the mechanical statutory rate is \$0.091 for songs five minutes or less in length or \$.0175 per minute for songs that are over five minutes long.²⁴

Ministries of culture and arts councils (that comprise IFACCA’s membership) support musicians, musical performances, independent music artists, non-commercial musical expression and education in their respective countries. The 165 ministries of culture, arts councils and affiliates that comprise IFACCA’s membership support the “performing arts” and music specifically. Without the financial and logistical support of arts councils and the ministries of culture, the music community would be adversely affected, and in some countries, may not exist in any appreciable manner. For example, the Ministry of Culture 2011 budget for the small country state of Cyprus for culture funding was €34,876,522 with critical support of music activities.²⁵ Other small government Ministries of Culture, such as Albania,²⁶ or government Ministries of Culture and Arts Councils from countries with larger populations, such as India,²⁷ all provide critical support and substantial advocacy for music. Other examples include government institutions collaborating and advocating music through their funded country-based pavilion initiatives at Midem, the world’s largest music conference.²⁸

Government ministries and arts councils provide critical support for the Music Community, including commercial music organizations. By way of example, government ministries’ and arts councils’ substantial connection to and support of “music” is noted in the reports of funding and support for music. Some examples to showcase the degree of power of the IFACCA’s membership towards the string and global and national music are music investment and music funding (Annual reports by governments and councils):

- New Zealand Ministry of Culture has funded significant music projects. Some include the REAL New Zealand Music Tour (\$415,000), the New Zealand String Quartet (\$150,000) and New Zealand Music Commission: (\$1,378,000).²⁹
- The Australian Government/Council For The Arts invested \$51.2 million for the nation’s orchestras; \$21.6 million for opera; \$10.8 million for other music artists and

²⁴ U.S. Copyright Office, <http://www.copyright.gov/carp/m200a.html>

²⁵ 2011 Annual Report for Cyprus Ministry of Culture, Section 1.2 “Music”

(http://www.moec.gov.cy/en/annual_reports/annual_report_2011_en.pdf). Activities include Music Performances in Cyprus (1.2.1) and Abroad (1.2.2), Subsidization of Paphos Aphrodite Festival (1.2.3), Music Publications (1.2.4), Subsidization and Purchases of Digital Records (1.2.5), Promotion for Cypriot musical creativity abroad (1.2.6), Cyprus Symphony Orchestra Foundation (1.2.7), Music Information Centre (1.2.8), Developing Music Education (1.2.9), Organising of the 1st Musicological Symposium (1.2.10) and Musical Festivities for the European Volunteerism Year (1.2.11)

²⁶ http://www.culturalpolicies.net/down/albania_012011.pdf

²⁷ 2010-11 Annual Report from India Ministry of Culture, [http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011\(Eng\).pdf](http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011(Eng).pdf)

²⁸ <http://my.midem.com/en/contact-us/pavilion-representatives/>

²⁹ 2011 Annual Report from New Zealand Ministry of Culture:

[http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20\(D-0448383\).PDF](http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20(D-0448383).PDF)

organizations; \$13.1 million for multi-platform artists and organizations; and \$4 million in miscellaneous funding, including sector building and audience development initiatives and programs.³⁰

- Canada Council for the Arts is Canada’s national, arts funding agency investing \$28 million in its Canada Council Musical Instrument Bank (Page 16) and \$28,156,000 in Music Arts Programs (Page 66).³¹ The Government of Canada also renewed its annual investment of \$27.6 million over five years in the Canada Music Fund.³²
- The United Kingdom Department for Culture and Education (DfE) will fund music education at significant levels: £77 million, £65 million and £60 million will be available in the three years from April 2012.³³
- The United States National Endowment of the Arts has awarded more than \$4 billion to support the arts since its inception³⁴ and has a strong focus on music as outlined in its Strategic Plan³⁵ with Congress requested to provide \$154,465,000 for fiscal year 2014.³⁶
- The National Arts Council of South Africa invested 2,536,131 ZAR in Music and 9,995,000 ZAR in Orchestras and has focused strongly on the “Strengthening of live indigenous music and advocating the revival of the live music circuit in South Africa”³⁷
- The Singapore Arts Council will fund \$10.2 million in the arts under its 2013 Grants Framework, including the Ding Yi Music Company and Siong Leng Musical Association.³⁸
- In 2011, the support for artistic activities by the Arts Council of Finland was €32.4 million of which €4,921,850 was awarded to music.³⁹

Each of IFACCA’s members has a clear association with, and mandate to support the music arts in their countries. In most countries, their ministry of culture/arts council is the largest funder and marketing supporter of the music arts.

³⁰ 2011 Annual Report for the Australia Council for the Arts, http://www.australiacouncil.gov.au/data/assets/pdf_file/0016/142351/Australia-Council-Annual-Report-201112.pdf, Page 28

³¹ 2011 Annual Report for Canada Council for the Arts, http://www.canadacouncil.ca/NR/rdoonlyres/6F7549BB-F4E5-4B8B-95F4-1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf

³² <http://www.pch.gc.ca/eng/1294862453819/1294862453821>

³³ Department for Culture, The Importance of Music, A National Plan for Music Education, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/180973/DFE-00086-2011.pdf, Page 4, 2011

³⁴ 2011 Annual report for the National Endowment of the Arts, <http://www.nea.gov/about/11Annual/2011-NEA-Annual-Report.pdf>, Page 2

³⁵ NEA Strategic Plan 2012-2016, www.arts.gov/about/Budget/NEAStrategicPlan2012-2016.pdf

³⁶ http://www.ifacca.org/national_agency_news/2013/04/10/us-president-requests-154465000-neh-2014/

³⁷ 2010-2011 Annual Report for the National Arts Council South Africa, National Arts Council South Africa, <http://www.nac.org.za/media/publications/AR%2010-11%20NAC.PDF/download>, Page 11. Also Mmino, the South African – Norwegian Education Music Programme, solely funds music projects funding a total of 294 projects. Thirteen projects were allocated funding for a total of R1,680,600 of which R1,381,000 went towards music educational and R299,600 to exchange projects (Page 10)

³⁸ Singapore Arts Council, <http://www.nac.gov.sg/media-centre/news-releases/news-detail?id=c2db15e2-c319-40ec-939c-d58735d0a91c>

³⁹ <http://www.taiteenkeskustoimikunta.fi/documents/10162/31704/TY+tilastotiedote+1+12+.pdf>, Page 1 and Page

Another clear example of an “entity dedicated to the community” with members that cover hundreds of millions of music constituents with formal boundaries is A2IM, the American Association of Independent Music. A2IM has two types of members: U.S independent Label members and Associate members. A2IM membership for Labels and Associates is invoked formally through an application and if accepted would require annual membership dues.⁴⁰

The reach of A2IM Associate⁴¹ membership covers hundreds of millions of entities (i.e. the reach of A2IM’s total membership “geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents – See Application Answer to Question 20a).

Organized and strictly delineated communities related to music that are A2IM members include:

- **Apple iTunes**⁴² – iTunes accounts for 63% of global digital music market⁴³ - a majority – with a registered community of 800 million registered members⁴⁴ available in 119 countries who abide to strict terms of service and boundaries⁴⁵ and have downloaded over 25 billion songs⁴⁶ from iTunes’ catalog of over 43 million songs⁴⁷ covering a global music community, regardless of genre or whether the community entities are amateur, professional, commercial or non-commercial. To add music to iTunes, all music artists must have a formal membership with iTunes via an Apple ID registration, which includes a current credit card on file.⁴⁸
- **Pandora**⁴⁹ – Pandora is the world’s largest streaming music radio with a community of over 250 million registered members.⁵⁰
- **Spotify**⁵¹ – Spotify is the world’s largest music streaming community with over 50 million active registered members in 58 countries and over 30 million songs. The music community uploads 20,000 songs every day.⁵²
- **Vevo**⁵³ – Vevo is the world’s leading all-premium music video community and platform with over 8 billion monthly views globally.⁵⁴

⁴⁰ <http://a2im.org/about-joining/>

⁴¹ <http://a2im.org/groups/tag/associate+members/>

⁴² <http://a2im.org/groups/itunes>

⁴³ <http://appleinsider.com/articles/13/04/16/apples-itunes-rules-digital-music-market-with-63-share>

⁴⁴ <http://www.npr.org/blogs/therecord/2015/01/06/375173595/with-downloads-in-decline-can-itunes-adapt>

⁴⁵ <http://www.apple.com/legal/internet-services/itunes/ww/index.html>

⁴⁶ <http://www.apple.com/pr/library/2013/02/06iTunes-Store-Sets-New-Record-with-25-Billion-Songs-Sold.html>

⁴⁷ <https://www.apple.com/itunes/features/>

⁴⁸ <https://www.apple.com/itunes/working-itunes/sell-content/music-faq.html>

⁴⁹ <http://a2im.org/groups/pandora>

⁵⁰ <http://www.cnet.com/news/like-a-rolling-milestone-pandora-hits-250m-registered-users/> and <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MTkxNTM1fENoaWxkSUQ9LTF8VHlwZT0z&t=1>, Pg.9

⁵¹ <http://a2im.org/groups/spotify>

⁵² <https://press.spotify.com/us/information/>

⁵³ <http://a2im.org/groups/vevo/>

- **Youtube**⁵⁵ – Youtube is the world’s largest music video streaming community with millions of music creators -- amateur, professional, commercial or non-commercial -- and over 1 billion registered members covering all regions globally. 6 billion hours of video is watched every month on Youtube,⁵⁶ of which 38.4% is music-related.⁵⁷
- **ReverbNation**⁵⁸ – ReverbNation⁵⁹ is one of the world’s largest music community and a leading music distributor with over 3.87 million musicians, venues labels and industry professionals covering every country globally. The ReverbNation community grows by over 50,000 artists, bands, labels and industry professionals monthly.
- **BMG**⁶⁰ – BMG is focused on the management of music publishing and recording rights. BMG has an international presence and represents over 2.5 million music rights globally.⁶¹

A2IM also includes members that are associated with global government agencies which exclusively represent substantial music economies and music members, such as France (BureauExport⁶²), China (China Audio Video Association⁶³) and Germany (Initiative Musik).⁶⁴ A2IM also has Affiliate⁶⁵ associations within the global music community. These include Affiliates such as MusicFirst,⁶⁶ the Copyright Alliance,⁶⁷ the Worldwide Independent Network (WIN)⁶⁸ and Merlin.⁶⁹

A2IM also represents a recognized Music Coalition representing the interests of the Global Independent Music Community.⁷⁰ The A2IM Coalition includes Merlin, a global rights agency for the independent label sector, representing over 20,000 labels from 39 countries, Worldwide Independent Network (representing label creators in over 20 countries), Association of Independent Music (representing largest and most respected labels in the world), and IMPALA (Independent Music Companies Association on behalf of over 4,000 independent music companies and national associations across Europe, representing 99% of music actors in Europe which are micro, small and medium sized enterprises.

⁵⁴ <http://www.vevo.com/c/EN/US/about>

⁵⁵ <http://a2im.org/groups/youtube/>

⁵⁶ <https://www.youtube.com/yt/press/statistics.html>

⁵⁷ http://www.researchandmarkets.com/reports/2092499/internet_video_2011_2014_view_share_site_and

⁵⁸ <http://a2im.org/groups/reverb-nation/>

⁵⁹ <http://www.reverbnation.com/about>

⁶⁰ <http://a2im.org/groups/bmg-rights/>

⁶¹ <http://www.bmg.com/category/about-us/history/>

⁶² <http://a2im.org/groups/french-music-export-office>

⁶³ <http://a2im.org/groups/china-audio-video-association-cava>

⁶⁴ <http://a2im.org/groups/initiative-musik-gmbh>

⁶⁵ <http://a2im.org/groups/tag/associate+members/>

⁶⁶ <http://musicfirstcoalition.org/coalition>, The musicFIRST Coalition, with founding members A2IM, RIAA, and Recording Academy represents musicians, artists, managers, music businesses, and performance right advocates.

⁶⁷ <http://www.copyrightalliance.org/members>

⁶⁸ <http://www.winformusic.org>

⁶⁹ <http://www.merlinnetwork.org>

⁷⁰ <https://www.icann.org/en/system/files/correspondence/bengloff-to-chehade-et-al-20aug14-en.pdf> and <https://www.icann.org/en/system/files/correspondence/bengloff-to-crocker-et-al-07mar15-en.pdf>

Cumulatively, A2IM's Label and Associate Membership, A2IM's Affiliates and the A2IM's Global Independent Music Community Coalition, covers a majority of the global music community. Its cumulative membership is in the hundreds of millions of entities with formal boundaries belonging to strictly organized and delineated communities related to music as per the Community Definition and Size (See Application answer to Question 20a).

Another global Music Community Coalition led by the RIAA "on behalf of over 15 national and international trade associations" also expressed its support for .MUSIC to be under a "community" application model, including encouraging statements in support of DotMusic's policies that stated that the coalition "was encouraged to see" that DotMusic "included several measures to deter and address copyright infringement within that TLD." The "coalition members represent the people that write, sing, record, manufacture, distribute and/or license over 80% of the world's music"⁷¹ – a majority of global music.⁷²

Another letter⁷³ sent to ICANN (on April 14th, 2015) by Danielle Aguirre from the NMPA and on behalf of a music publisher and songwriter community coalition representing a majority of the global music publishing community, also expressed "support [for] the .MUSIC community applications because respecting and protecting music rights serves the global music community and the public interest."

Collectively, the DotMusic application received support from the largest coalition of music community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support⁷⁴ from institutions/organizations representing a majority of the Community addressed. Music -- as commonly-known by the general public and experienced today -- would not be possible without these supporting, non-negligible and relevant organizations that have endorsed DotMusic.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Community Establishment* and *Community Endorsement* from the majority of the global Music Community as defined.

⁷¹ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.1

⁷² <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.3, Appendix A

⁷³ <https://www.icann.org/en/system/files/correspondence/aguirre-to-icann-board-eiu-14apr15-en.pdf>

⁷⁴ <http://music.us/supporters>

B) Nexus⁷⁵

According to the Applicant Guidebook (“AGB”), to receive the maximum score for Nexus, the applied-for string -- “music” -- must match the name of the community or be a well-known short-form or abbreviation of the community name.

The *Nexus* of the “Music Community” entirely matches the applied-for “music” string because it represents the entire global Music Community as commonly-known and perceived by the general public. This definition allows for all constituents with a requisite awareness of the Community defined to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination. The definition of the Community requires that members have an active, non-tangential relationship with the applied-for string and the requisite awareness of the music community they identify with as part of the registration process. It is clear that the general public will directly associate and equate the string with the Community as defined by DotMusic. There is no possibility of overreaching beyond the definition or allowing unrelated non-music entities to be included as part of the Community.

Community members may register a .MUSIC by either:

- 1) Identifying that they belong to a Music Community Member Organization (“MCMO”); or
- 2) Identifying the community they belong to, which is consistent with the definition of the Community: “the strictly delineated and organized logical alliance of communities of similar nature related to music.”

All Community members are aware of and recognize their inclusion in the defined Community by identifying which clearly defined community they belong to and have an active participation in. The *nexus* of the applied-for string ensures inclusion of the entire global community that the string represents while excluding unrelated-entities not associated with the string. This way there is a clear match and alignment between the “music” sting and the Community defined.

While the exact size of the global Music Community as defined is unknown (there is no empirical evidence providing an exact, finite number because amateur entities are also included in the Community’s definition), it is in the considerable millions as explicitly stated in the DotMusic Application. DotMusic’s definition of the Community and mutually-inclusive Registration Policies ensure that eligible members are only music-related and associated with the string. This is because the string identifies all constituents involved in music. Music-only participation optimizes the relevancy of .MUSIC domains to the string and entirely matches the *nexus* between the string and Community defined. According to DotMusic, the Community *definition, eligibility* criteria and *content and use* requirements ensure that peripheral industries

⁷⁵ See <http://music.us/nexus>

and entities not related to music are excluded so that the string and the defined Community matches and aligns in a consistent manner consistent with DotMusic's community-based purpose i.e. only entities with music-related activities are able to register .MUSIC domains.

Membership aligns with the *nexus* of the Community and the string, which is explicitly relevant to music. The string as defined in the application demonstrates uniqueness because it has no other significant meaning beyond identifying the community described in the application. According to DotMusic's application, any tangential or implicit association with the *nexus* of the Community and the string is not regarded as a delineated membership since it would be considered unclear, dispersed or unbound. Such unclear, dispersed or unbound tangential relationships with the defined "music" Community and applied-for "music" string would not constitute a qualifying Community membership and would be ineligible for registration.

The inclusion of every music constituent type is paramount to the purpose of the string. Every type of music constituent critically contributes to the function and operation of the music sector within a regulated framework given the symbiotic overlapping nature of the Community as defined and structured. Music would not function as it does today without the participation of all music constituent types which cumulatively match the string with the Community definition.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Nexus*.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Tom ter Bogt', with a stylized, cursive script.

Signature: Contact Information Redacted Apr 22 '15 ip: 84.83.185.7

Name: Tom ter Bogt

Title: prof. dr.

Organization: Utrecht University

About Professor Dr. Tom ter Bogt

Chair

Popular Music and Youth Culture

Professor in Social Sciences

Professor in Cultural Diversity & Youth

Social and Behavioral Sciences

Utrecht University

Profile

Tom ter Bogt (1956), cultural psychologist; professor Popular Music and Youth Culture, first at the University of Amsterdam, and since September 2006 at Utrecht University.

He obtained his PhD with a thesis on the history of protestant work ethic in the Netherlands and work ethic among present-day adolescents. He is author of two books on youth and youth culture, and has written a television series on youth culture and pop music. Research interests: pop music, youth culture, adolescent problem behavior and substance use.

Ter Bogt's research interests relate to pop music's artists and audiences, and adolescent risk behavior. His research focuses on (1) the role of music in the development of children and adolescents, (2) music as an agent of consolation, (3) adolescent risk behavior, and (4) the role of media in the development of adolescent sexual identity.

He is part of the Dutch Health Behaviour in School-aged Children (HBSC) research team. The HBSC-project runs in more than 40 European and North-American countries and aims at assessing physical and mental health, and wellbeing in school children.

Strategic themes / Focus areas

Dynamics of Youth (strategic theme)

Involved in the following study programme(s)

Interdisciplinary Social Science

All publications

2015 - Scholarly publications

de Looze, Margaretha, Ter Bogt, Tom F M, Raaijmakers, Quinten A W, Pickett, William, Kuntsche, Emmanuel & Vollebergh, Wilma A M (2015). [Cross-national evidence for the clustering and psychosocial correlates of adolescent risk behaviours in 27 countries](#). *European Journal of Public Health*, 25 (1), (pp. 50-56) (7 p.). © The Author 2014.

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2014 - Other output

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Re: Expert Testimony on (i) Community Establishment; (ii) Nexus; and (iii) Support for DotMusic’s Community-Based Application¹ for .MUSIC (Application ID 1-1115-14110)

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

Please accept this letter to verify the following facts: (i) the Music Community’s *Establishment* as defined by DotMusic; (2) the matching *Nexus* between the “music” Community and the “music” string (or top-level domain); and (3) that DotMusic possesses documented *Support* from organizations representing a majority of the global Music Community addressed and defined.

Please see my credentials attached hereto that identify my level of expertise and specialized knowledge with respect to music.

SUMMARY

Based upon my knowledge of music, the music community and DotMusic’s public statements concerning their .MUSIC community application, DotMusic has established the following facts:

- 1) Its Community definition recognizes the cohesive, symbiotic and overlapping nature of the global Music Community. The definition includes those associated with commercial and non-commercial creation, performance, marketing and distribution of music;
- 2) “Music Community” members have the requisite awareness and recognition of the interdependency, overlapping and cohesive nature of each “organized community of similar nature that relates to music.” These organized and aligned communities are closely united and make “music” as we know it today. It is this self-awareness and interdependence that gives the “Music Community” its strength. With exponential growth of the Internet, mobile and the Domain Name System (DNS), the “Music Community’s” use and reliance on the Internet to create, market and disseminate music-related content, products, services and activities will continue to grow;
- 3) The “Music Community” functions in a regulated sector with global copyright protections – it is clear that the “community,” as defined, implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate a globally-recognized set of standards for

¹ <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1392>

the protection of the “Music Community” member rights with relation to their copyrighted music works around the world;

4) The “Music” Community -- as defined by DotMusic -- has at least one entity dedicated to the community supporting DotMusic’s application. Such documented *Support* includes several “international federation of national communities of a similar nature,” music coalitions and others that are strongly associated with “music,” which represent a majority of the Community with considerable millions of members worldwide.²

5) The *Nexus* of the “music” Community matches the “music” applied-for string because it represents the entire global Music Community – a community that pre-existed 2007 with a size in the considerable millions of constituents. The “Music Community” definition -- which incorporates the strict fundamental attributes of a closely united Community definition that is “organized” and “delineated” -- ensures that all of its constituent members have a requisite awareness of the community as defined, including both commercial and non-commercial stakeholders, to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination.

6) DotMusic has received support from the largest coalition of Music Community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community. Cumulatively, DotMusic possesses documented support³ from institutions/organizations representing a majority of the defined and recognized Community.

There is substantive evidence that DotMusic fulfills the *Nexus, Community Establishment and Support* criteria for the “Music” string. The inclusion and representation of every music constituent type is paramount to the articulated purpose of the string. DotMusic and its application’s global Music Community supporters substantiate that every type of music constituent contributes to the function and operation of the music sector within a regulated framework. The symbiotic nature of the Community as defined and structured means that “Music” would not function as it does today without the participation of all music constituent types that interconnect to match the “music” string with the “music” Community definition.

² <http://music.us/supporters>

³ <http://music.us/supporters>

ASSESSMENT OF COMMUNITY DEFINITION, ESTABLISHMENT AND NEXUS

A) *Music Community Definition, Establishment & Community Endorsement*⁴

DotMusic’s definition of the “Music Community” as a “strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music” (See Application, 20a) is factually accurate and representative of the “Music Community.” Community characteristics include:

i) An Organized, Cohesive, Interdependent Logically-Allied Community:

The “Music Community” definition covers the regulated, interdependent and cohesive nature of the music sector that exists today. “Music Community” members have the requisite awareness and recognition of the interdependent, overlapping and cohesive nature of each “organized community of similar nature that relates to music” that comprises the “Music Community.” Without such cohesiveness and interdependency, the defined “Music” Community matching the applied-for string (“Music”) would not be able to function in its regulated sector, a “Music” regulated sector that was publicly recognized by both ICANN and the Government Advisory Committee.⁵

As a result, the Music Community as defined is “closely united” (As per the definition of “cohesion” according to Merriam-Webster dictionary⁶) or “united or form a whole” (As per the definition of the word “cohesion” according to Oxford Dictionaries⁷).

The “Music Community” as defined (a “strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music”) establishes that:

- (1) There is an awareness and recognition among its members;
- (2) The organized and delineated logical alliance of communities exists; and
- (3) The Community is “closely united” and “interdependent” (i.e. Each “organized community of similar nature that relates to music” which is part of the “logical alliance of communities that relate to music” is not mutually exclusive).

In short, the applied-for string (“Music”) matches the name of the “Music” Community as defined by DotMusic’s application. DotMusic’s “Music Community” definition accurately represents the common definition of the “Music Community,” which is confirmed by Wikipedia.

⁴ See <http://music.us/establishment>

⁵ <https://www.icann.org/en/system/files/bm/briefing-materials-2-05feb14-en.pdf>, Pg.3

⁶ <http://www.merriam-webster.com/dictionary/cohesion>

⁷ http://www.oxforddictionaries.com/us/definition/american_english/cohesion

According to Wikipedia:⁸

Music community is defined as a logical alliance of interdependent communities that are related to music, which include commercial participants...and non-commercial participants...and consists of an “ensemble of practices and institutions that make possible and regulate the production, distribution and consumption of music”...UNESCO identifies the music community as a “community of identity” implying common identifiable characteristics and cohesive attributes such as sharing a music culture, norms and subscribing to common ideals related to music...The music community is not defined as much by demographic indicators such as race, gender, and income level, as it is by common values, cohesive norms and interconnected structures to build a community identity. It refers to music-related individuals and organisations in a shared environment with shared understandings and practices, modes of production and distribution. The shared organisation of collective musical activities, identity and community value is created as result of infrastructure and a shared set of common values...Many studies outline the historical, cultural, and spatial significance of the music community, including how its identity is formed through musical practices. The music community shares a cohesive and interconnected structure of artistic expression, with diverse subcultures and socio-economic interactions...subscribing to common ideals. Under such structured context music consumption becomes possible regardless whether the transaction is commercial and non-commercial.⁹

ii) *An Aware, Pre-Existing and Recognized Community of Considerable Millions Worldwide:*

DotMusic’s definition of the Community covers all Community members associated with the string, each with a requisite awareness of the Community that can be validated through their natural association with a particular music-related community that they clearly identify with. According to DotMusic, all Music Community members must identify their music-related community in order to demonstrate their requisite awareness of the defined Community as part of the .MUSIC registration and validation process.

⁸ Wikipedia is ranked 6th among the ten most popular websites (Alexa, Retrieved March 23, 2015 from <http://www.alexacom/siteinfo/wikipedia.org>) and constitutes the Internet's largest, most frequently updated and popular general reference work (See OECD, OECD Internet Economy Outlook 2012, OECD Publishing, http://www.oecd-ilibrary.org/science-and-technology/oecd-internet-economy-outlook-2012_9789264086463-en,Pg.172) that compares favorably to the accuracy of other encyclopedias (such as the Britannica) according to a 2012 study conducted in partnership with Oxford University (See <http://blog.wikimedia.org/2012/08/02/seven-years-after-nature-pilot-study-compares-wikipedia-favorably-to-other-encyclopedias-in-three-languages>).

⁹ Music Community. In *Wikipedia*. Retrieved March 23, 2015, from https://en.wikipedia.org/wiki/Music_community

According to DotMusic, the Music Community’s geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents (Application Answer to Question 20a).

According to DotMusic, “registrants will be verified using Community-organized, unified “criteria taken from holistic perspective with due regard of Community particularities” that “invoke a formal membership (Application Answer to Question 20a).” The defined Community represents all music-related entities with a clear and straightforward membership with the Community involved in the legal production, performance, promotion, and distribution of music worldwide. According to DotMusic, the Music Community members must have an active, non-tangential relationship with the applied-for string “music” and also have the requisite awareness of the music-related community that they are a part of by specifically identifying it as part of the registration and validation process (i.e. upon successful registration and validation, each community member will be given a unique community identification number that will automatically associate them with their identified community and the “music” string).

DotMusic’s Community definition matches the applied-for string because it allows both commercial and non-commercial stakeholders to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination/exclusion. Given the regulated sector of the community, it is clear that the “Music Community” as defined implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate cohesive and globally-recognized set of standards for the protection of the music community members’ rights with relation to their copyrighted music works around the world.¹⁰

The Berne Convention for the Protection of Literary and Artistic Works¹¹ provides that each of the 168 contracting parties¹² (representing an overwhelming majority of the world’s population) provides automatic protection for music works first published in other countries of the Berne union and for unpublished music works whose authors are citizens of or resident in such other countries.¹³ This means that if a Music Community member’s copyright rights are violated in any other signatory country’s jurisdiction, then the music community member will have the music copyright rights given by that country. Music Community members are clearly aware of the collective Community’s rights, which could not be made possible without these cohesive and globally-recognized set of standards. If such standards were not coherent or enforced then music would not be able to exist in its current form and the industry component of the Music Community sector would not exist. As such, the Community’s *Establishment* and definition is “cohesive” and hence cannot be construed since the Community is a logical alliance of music

¹⁰ http://www.rightsdirect.com/content/rd/en/toolbar/copyright_education/International_Copyright_Basics.html

¹¹ http://www.wipo.int/treaties/en/text.jsp?file_id=283698

¹² http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=15

¹³ <http://www.britannica.com/EBchecked/topic/62482/Berne-Convention>

communities that establish a clearly delineated and organized Community structure that is “closely united” and functions as a “whole”

Further evidence to substantiate the cohesive, symbiotic and overlapping nature of the Community, includes other globally-recognized standards and classification systems, which identify who the individual songwriters, publishers and rights holders are and which songs they are associated with so that Community members are appropriately compensated, regardless of whether the constituent is a commercial, non-commercial or amateur entity. The “music” string is commonly used in classification systems such as ISMN,¹⁴ ISRC,¹⁵ ISWC,¹⁶ ISNI.¹⁷ (Application Answer to Question 20a). For example, if a music entity would like to distribute their music, either commercially or for free, then an ISRC can be assigned to globally identify any specific music work. An ISRC, which facilitates efficient music discovery and community member payment, is constructed from 12 characters representing country, registrant, year of registration and designation (i.e. the serial number assigned by the registrant). With respect to domains, an equivalent system that relates to identifying a specific domain’s registrant and other relevant information pertaining to the domain is WHOIS. Domain registrants are required by ICANN “to provide accurate WHOIS contact data” or else their domain “registration may be suspended or even cancelled”.¹⁸

Without such Music Community “cohesion” and standardized systems functioning in its regulated sector, the Music Community would not be able to create, market and distribute their music. By the same token, fans would not be able to identify the music they are listening to with a specific music artist, regardless of whether the listening activity or behavior is commercial or non-commercial in nature. The socio-economic structure that characterizes “music” as commonly-known today would be non-existent without these organized and delineated elements that commonly define the Community.

¹⁴ The International Standard Music Number (ISMN) is a unique number for the identification of all notated music publications from all over the world. The ISMN is an ISO certified global standard number (ISO 10957:2009). See <http://www.ismn-international.org/whatis.html> and

http://www.iso.org/iso/home/store/catalogue_ics/catalogue_detail_ics.htm?csnumber=43173

¹⁵ The ISRC (International Standard Recording Code) is the international identification system for sound recordings and music video recordings. The ISRC is an ISO certified global standard number (ISO 3901:2001) and is managed by the IFPI. See <http://isrc.ifpi.org>, <https://www.usisrc.org/about/index.html> and http://www.iso.org/iso/catalogue_detail?csnumber=23401

¹⁶ The ISWC (International Standard Musical Work Code) is a unique, permanent and internationally recognized reference number for the identification of musical works. The ISWC has been approved by ISO (International Organization for Standardisation) as a global standard (ISO 15707:2001) and is managed by CISAC. See <http://www.iswc.org/en/faq.html> and http://www.iso.org/iso/catalogue_detail?csnumber=28780

¹⁷ The International Standard Name Identifier (ISNI) is the ISO certified global standard number (ISO 27729) for identifying the millions of contributors to creative works and those active in their distribution. ISNI holds public records of over 8 million identities and 490,000 organizations. See <http://www.isni.org/> and http://www.iso.org/iso/catalogue_detail?csnumber=44292

¹⁸ <https://whois.icann.org/en/about-whois> and <https://www.icann.org/resources/pages/faqs-f0-2012-02-25-en>

iii) International Federations and Organizations Dedicated to Community Functions:

According to ICANN’s Applicant Guidebook (“AGB”)¹⁹: *“With respect to “Delineation” and “Extension,” it should be noted that a community can consist of...a logical alliance of communities (for example, an international federation of national communities of a similar nature... viable as such, provided the requisite awareness and recognition of the community is at hand among the members.”* (AGB, 4-12). The community as defined in the DotMusic application has at least one entity mainly dedicated to the community which has supported DotMusic, which include several “international federation of national communities of a similar nature” relating to music, music coalitions and other relevant and non-negligible music organizations.

One of these entities include the only international federation of national communities relating to government culture agencies and arts councils, which has an integral association with music globally: the International Federation of Arts Councils and Culture Agencies (IFACCA).

IFACCA is the only international federation that represents government culture agencies and arts councils globally. These national communities are governmental institutions that play a pivotal role with respect to music.²⁰ IFACCA’s members cover the majority of music entities globally, regardless of whether they are commercial, non-commercial or amateurs. Government ministry of culture and council agencies related to music cover a majority of the overall community with respect to headcount and geographic reach. The “Size” covered reaches over a hundred million music entities i.e. “considerable size with millions of constituents” per Application Answer to Question 20a.

The string “music” falls under the jurisdiction of each country’s Ministry of Culture governmental agency or arts/music council (emphasis added). The degree of power and influence of government ministry of culture and council agencies with respect to music surpasses any organization type since these agencies (i) provide the majority of funding for music-related activities; (ii) regulate copyright law; and (iii) encompass all the music entities that fall under their country, regardless whether these entities are commercial, non-commercial or amateurs. IFACCA is globally recognized by its strategic partners, such as UNESCO, a United Nations agency representing 195 member states and the European Commission.²¹ The UNESCO strategic partnership²² is relevant, especially since UNESCO founded the International Music Council (the “IMC”) in 1949, which represents over 200 million music constituents from over 150 countries and over 1000 organizations globally.²³

¹⁹ <https://newgtlds.icann.org/en/applicants/agb/guidebook-full-11jan12-en.pdf>

²⁰ http://www.ifacca.org/membership/current_members/

²¹ http://www.ifacca.org/strategic_partners/

²² http://www.ifacca.org/strategic_partners/

²³ <http://www.imc-cim.org/about-imc-separator/who-we-are.html>

Government activities in the clearly delineated and organized “Music Community” include setting statutory royalty rates. For example, in the United States, mechanical royalties are based on a “statutory rate” set by the U.S. Congress. This rate is increased to follow changes in the economy, usually based on the Consumer Price Index. Currently, the mechanical statutory rate is \$0.091 for songs five minutes or less in length or \$.0175 per minute for songs that are over five minutes long.²⁴

Ministries of culture and arts councils (that comprise IFACCA’s membership) support musicians, musical performances, independent music artists, non-commercial musical expression and education in their respective countries. The 165 ministries of culture, arts councils and affiliates that comprise IFACCA’s membership support the “performing arts” and music specifically. Without the financial and logistical support of arts councils and the ministries of culture, the music community would be adversely affected, and in some countries, may not exist in any appreciable manner. For example, the Ministry of Culture 2011 budget for the small country state of Cyprus for culture funding was €34,876,522 with critical support of music activities.²⁵ Other small government Ministries of Culture, such as Albania,²⁶ or government Ministries of Culture and Arts Councils from countries with larger populations, such as India,²⁷ all provide critical support and substantial advocacy for music. Other examples include government institutions collaborating and advocating music through their funded country-based pavilion initiatives at Midem, the world’s largest music conference.²⁸

Government ministries and arts councils provide critical support for the Music Community, including commercial music organizations. By way of example, government ministries’ and arts councils’ substantial connection to and support of “music” is noted in the reports of funding and support for music. Some examples to showcase the degree of power of the IFACCA’s membership towards the string and global and national music are music investment and music funding (Annual reports by governments and councils):

- New Zealand Ministry of Culture has funded significant music projects. Some include the REAL New Zealand Music Tour (\$415,000), the New Zealand String Quartet (\$150,000) and New Zealand Music Commission: (\$1,378,000).²⁹
- The Australian Government/Council For The Arts invested \$51.2 million for the nation’s orchestras; \$21.6 million for opera; \$10.8 million for other music artists and

²⁴ U.S Copyright Office, <http://www.copyright.gov/carp/m200a.html>

²⁵ 2011 Annual Report for Cyprus Ministry of Culture, Section 1.2 “Music”

(http://www.moec.gov.cy/en/annual_reports/annual_report_2011_en.pdf). Activities include Music Performances in Cyprus (1.2.1) and Abroad (1.2.2), Subsidization of Paphos Aphrodite Festival (1.2.3), Music Publications (1.2.4), Subsidization and Purchases of Digital Records (1.2.5), Promotion for Cypriot musical creativity abroad (1.2.6), Cyprus Symphony Orchestra Foundation (1.2.7), Music Information Centre (1.2.8), Developing Music Education (1.2.9), Organising of the 1st Musicological Symposium (1.2.10) and Musical Festivities for the European Volunteerism Year (1.2.11)

²⁶ http://www.culturalpolicies.net/down/albania_012011.pdf

²⁷ 2010-11 Annual Report from India Ministry of Culture, [http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011\(Eng\).pdf](http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011(Eng).pdf)

²⁸ <http://my.midem.com/en/contact-us/pavilion-representatives/>

²⁹ 2011 Annual Report from New Zealand Ministry of Culture:

[http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20\(D-0448383\).PDF](http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20(D-0448383).PDF)

organizations; \$13.1 million for multi-platform artists and organizations; and \$4 million in miscellaneous funding, including sector building and audience development initiatives and programs.³⁰

- Canada Council for the Arts is Canada’s national, arts funding agency investing \$28 million in its Canada Council Musical Instrument Bank (Page 16) and \$28,156,000 in Music Arts Programs (Page 66).³¹ The Government of Canada also renewed its annual investment of \$27.6 million over five years in the Canada Music Fund.³²
- The United Kingdom Department for Culture and Education (DfE) will fund music education at significant levels: £77 million, £65 million and £60 million will be available in the three years from April 2012.³³
- The United States National Endowment of the Arts has awarded more than \$4 billion to support the arts since its inception³⁴ and has a strong focus on music as outlined in its Strategic Plan³⁵ with Congress requested to provide \$154,465,000 for fiscal year 2014.³⁶
- The National Arts Council of South Africa invested 2,536,131 ZAR in Music and 9,995,000 ZAR in Orchestras and has focused strongly on the “Strengthening of live indigenous music and advocating the revival of the live music circuit in South Africa”³⁷
- The Singapore Arts Council will fund \$10.2 million in the arts under its 2013 Grants Framework, including the Ding Yi Music Company and Siong Leng Musical Association.³⁸
- In 2011, the support for artistic activities by the Arts Council of Finland was €32.4 million of which €4,921,850 was awarded to music.³⁹

Each of IFACCA’s members has a clear association with, and mandate to support the music arts in their countries. In most countries, their ministry of culture/arts council is the largest funder and marketing supporter of the music arts.

³⁰ 2011 Annual Report for the Australia Council for the Arts, http://www.australiacouncil.gov.au/data/assets/pdf_file/0016/142351/Australia-Council-Annual-Report-201112.pdf, Page 28

³¹ 2011 Annual Report for Canada Council for the Arts, http://www.canadacouncil.ca/NR/rdoonlyres/6F7549BB-F4E5-4B8B-95F4-1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf

³² <http://www.pch.gc.ca/eng/1294862453819/1294862453821>

³³ Department for Culture, The Importance of Music, A National Plan for Music Education, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/180973/DFE-00086-2011.pdf, Page 4, 2011

³⁴ 2011 Annual report for the National Endowment of the Arts, <http://www.nea.gov/about/11Annual/2011-NEA-Annual-Report.pdf>, Page 2

³⁵ NEA Strategic Plan 2012-2016, www.arts.gov/about/Budget/NEAStrategicPlan2012-2016.pdf

³⁶ http://www.ifacca.org/national_agency_news/2013/04/10/us-president-requests-154465000-neh-2014/

³⁷ 2010-2011 Annual Report for the National Arts Council South Africa, National Arts Council South Africa, <http://www.nac.org.za/media/publications/AR%2010-11%20NAC.PDF/download>, Page 11. Also Mmino, the South African – Norwegian Education Music Programme, solely funds music projects funding a total of 294 projects. Thirteen projects were allocated funding for a total of R1,680,600 of which R1,381,000 went towards music educational and R299,600 to exchange projects (Page 10)

³⁸ Singapore Arts Council, <http://www.nac.gov.sg/media-centre/news-releases/news-detail?id=c2db15e2-c319-40ec-939c-d58735d0a91c>

³⁹ <http://www.taiteenkeskustoimikunta.fi/documents/10162/31704/TY+tilastotiedote+1+12+.pdf>, Page 1 and Page

Another clear example of an “entity dedicated to the community” with members that cover hundreds of millions of music constituents with formal boundaries is A2IM, the American Association of Independent Music. A2IM has two types of members: U.S independent Label members and Associate members. A2IM membership for Labels and Associates is invoked formally through an application and if accepted would require annual membership dues.⁴⁰

The reach of A2IM Associate⁴¹ membership covers hundreds of millions of entities (i.e. the reach of A2IM’s total membership “geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents – See Application Answer to Question 20a).

Organized and strictly delineated communities related to music that are A2IM members include:

- **Apple iTunes**⁴² – iTunes accounts for 63% of global digital music market⁴³ - a majority – with a registered community of 800 million registered members⁴⁴ available in 119 countries who abide to strict terms of service and boundaries⁴⁵ and have downloaded over 25 billion songs⁴⁶ from iTunes’ catalog of over 43 million songs⁴⁷ covering a global music community, regardless of genre or whether the community entities are amateur, professional, commercial or non-commercial. To add music to iTunes, all music artists must have a formal membership with iTunes via an Apple ID registration, which includes a current credit card on file.⁴⁸
- **Pandora**⁴⁹ – Pandora is the world’s largest streaming music radio with a community of over 250 million registered members.⁵⁰
- **Spotify**⁵¹ – Spotify is the world’s largest music streaming community with over 50 million active registered members in 58 countries and over 30 million songs. The music community uploads 20,000 songs every day.⁵²
- **Vevo**⁵³ – Vevo is the world’s leading all-premium music video community and platform with over 8 billion monthly views globally.⁵⁴

⁴⁰ <http://a2im.org/about-joining/>

⁴¹ <http://a2im.org/groups/tag/associate+members/>

⁴² <http://a2im.org/groups/itunes>

⁴³ <http://appleinsider.com/articles/13/04/16/apples-itunes-rules-digital-music-market-with-63-share>

⁴⁴ <http://www.npr.org/blogs/therecord/2015/01/06/375173595/with-downloads-in-decline-can-itunes-adapt>

⁴⁵ <http://www.apple.com/legal/internet-services/itunes/ww/index.html>

⁴⁶ <http://www.apple.com/pr/library/2013/02/06iTunes-Store-Sets-New-Record-with-25-Billion-Songs-Sold.html>

⁴⁷ <https://www.apple.com/itunes/features/>

⁴⁸ <https://www.apple.com/itunes/working-itunes/sell-content/music-faq.html>

⁴⁹ <http://a2im.org/groups/pandora>

⁵⁰ <http://www.cnet.com/news/like-a-rolling-milestone-pandora-hits-250m-registered-users/> and <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MTkxNTM1fENoaWxkSUQ9LTF8VHlwZT0z&t=1>, Pg.9

⁵¹ <http://a2im.org/groups/spotify>

⁵² <https://press.spotify.com/us/information/>

⁵³ <http://a2im.org/groups/vevo/>

- **Youtube**⁵⁵ – Youtube is the world’s largest music video streaming community with millions of music creators -- amateur, professional, commercial or non-commercial -- and over 1 billion registered members covering all regions globally. 6 billion hours of video is watched every month on Youtube,⁵⁶ of which 38.4% is music-related.⁵⁷
- **ReverbNation**⁵⁸ – ReverbNation⁵⁹ is one of the world’s largest music community and a leading music distributor with over 3.87 million musicians, venues labels and industry professionals covering every country globally. The ReverbNation community grows by over 50,000 artists, bands, labels and industry professionals monthly.
- **BMG**⁶⁰ – BMG is focused on the management of music publishing and recording rights. BMG has an international presence and represents over 2.5 million music rights globally.⁶¹

A2IM also includes members that are associated with global government agencies which exclusively represent substantial music economies and music members, such as France (BureauExport⁶²), China (China Audio Video Association⁶³) and Germany (Initiative Musik).⁶⁴ A2IM also has Affiliate⁶⁵ associations within the global music community. These include Affiliates such as MusicFirst,⁶⁶ the Copyright Alliance,⁶⁷ the Worldwide Independent Network (WIN)⁶⁸ and Merlin.⁶⁹

A2IM also represents a recognized Music Coalition representing the interests of the Global Independent Music Community.⁷⁰ The A2IM Coalition includes Merlin, a global rights agency for the independent label sector, representing over 20,000 labels from 39 countries, Worldwide Independent Network (representing label creators in over 20 countries), Association of Independent Music (representing largest and most respected labels in the world), and IMPALA (Independent Music Companies Association on behalf of over 4,000 independent music companies and national associations across Europe, representing 99% of music actors in Europe which are micro, small and medium sized enterprises.

⁵⁴ <http://www.vevo.com/c/EN/US/about>

⁵⁵ <http://a2im.org/groups/youtube/>

⁵⁶ <https://www.youtube.com/yt/press/statistics.html>

⁵⁷ http://www.researchandmarkets.com/reports/2092499/internet_video_2011_2014_view_share_site_and

⁵⁸ <http://a2im.org/groups/reverb-nation/>

⁵⁹ <http://www.reverbnation.com/about>

⁶⁰ <http://a2im.org/groups/bmg-rights/>

⁶¹ <http://www.bmg.com/category/about-us/history/>

⁶² <http://a2im.org/groups/french-music-export-office>

⁶³ <http://a2im.org/groups/china-audio-video-association-cava>

⁶⁴ <http://a2im.org/groups/initiative-musik-gmbh>

⁶⁵ <http://a2im.org/groups/tag/associate+members/>

⁶⁶ <http://musicfirstcoalition.org/coalition>, The musicFIRST Coalition, with founding members A2IM, RIAA, and Recording Academy represents musicians, artists, managers, music businesses, and performance right advocates.

⁶⁷ <http://www.copyrightalliance.org/members>

⁶⁸ <http://www.winformusic.org>

⁶⁹ <http://www.merlinnetwork.org>

⁷⁰ <https://www.icann.org/en/system/files/correspondence/bengloff-to-chehade-et-al-20aug14-en.pdf> and <https://www.icann.org/en/system/files/correspondence/bengloff-to-crocker-et-al-07mar15-en.pdf>

Cumulatively, A2IM's Label and Associate Membership, A2IM's Affiliates and the A2IM's Global Independent Music Community Coalition, covers a majority of the global music community. Its cumulative membership is in the hundreds of millions of entities with formal boundaries belonging to strictly organized and delineated communities related to music as per the Community Definition and Size (See Application answer to Question 20a).

Another global Music Community Coalition led by the RIAA "on behalf of over 15 national and international trade associations" also expressed its support for .MUSIC to be under a "community" application model, including encouraging statements in support of DotMusic's policies that stated that the coalition "was encouraged to see" that DotMusic "included several measures to deter and address copyright infringement within that TLD." The "coalition members represent the people that write, sing, record, manufacture, distribute and/or license over 80% of the world's music"⁷¹ – a majority of global music.⁷²

Collectively, the DotMusic application received support from the largest coalition of music community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community. Cumulatively, DotMusic possesses documented support⁷³ from institutions/organizations representing a majority of the Community addressed. Music -- as commonly-known by the general public and experienced today -- would not be possible without these supporting, non-negligible and relevant organizations that have endorsed DotMusic.

In conclusion, there is substantive evidence that DotMusic entirely fulfills the criteria for *Community Establishment* and *Community Endorsement* from the majority of the global Music Community as defined.

B) Nexus⁷⁴

According to the Applicant Guidebook ("AGB"), to receive the maximum score for Nexus, the applied-for string -- "music" -- must match the name of the community or be a well-known short-form or abbreviation of the community name.

The *Nexus* of the "Music Community" entirely matches the applied-for "music" string because it represents the entire global Music Community as commonly-known and perceived by the general public. This definition allows for all constituents with a requisite awareness of the Community

⁷¹ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.1

⁷² <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.3, Appendix A

⁷³ <http://music.us/supporters>

⁷⁴ See <http://music.us/nexus>

defined to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination. The definition of the Community requires that members have an active, non-tangential relationship with the applied-for string and the requisite awareness of the music community they identify with as part of the registration process. It is clear that the general public will directly associate and equate the string with the Community as defined by DotMusic. There is no possibility of overreaching beyond the definition or allowing unrelated non-music entities to be included as part of the Community.

Community members may register a .MUSIC by either:

- 1) Identifying that they belong to a Music Community Member Organization (“MCMO”); or
- 2) Identifying the community they belong to, which is consistent with the definition of the Community: “the strictly delineated and organized logical alliance of communities of similar nature related to music.”

All Community members are aware of and recognize their inclusion in the defined Community by identifying which clearly defined community they belong to and have an active participation in. The *nexus* of the applied-for string ensures inclusion of the entire global community that the string represents while excluding unrelated-entities not associated with the string. This way there is a clear match and alignment between the “music” string and the Community defined.

While the exact size of the global Music Community as defined is unknown (there is no empirical evidence providing an exact, finite number because amateur entities are also included in the Community’s definition), it is in the considerable millions as explicitly stated in the DotMusic Application. DotMusic’s definition of the Community and mutually-inclusive Registration Policies ensure that eligible members are only music-related and associated with the string. This is because the string identifies all constituents involved in music. Music-only participation optimizes the relevancy of .MUSIC domains to the string and entirely matches the *nexus* between the string and Community defined. According to DotMusic, the Community *definition, eligibility criteria and content and use* requirements ensure that peripheral industries and entities not related to music are excluded so that the string and the defined Community matches and aligns in a consistent manner consistent with DotMusic’s community-based purpose i.e. only entities with music-related activities are able to register .MUSIC domains.

Membership aligns with the *nexus* of the Community and the string, which is explicitly relevant to music. The string as defined in the application demonstrates uniqueness because it has no other significant meaning beyond identifying the community described in the application. According to DotMusic’s application, any tangential or implicit association with the *nexus* of the Community and the string is not regarded as a delineated membership since it would be considered unclear, dispersed or unbound. Such unclear, dispersed or unbound tangential

relationships with the defined “music” Community and applied-for “music” string would not constitute a qualifying Community membership and would be ineligible for registration.

The inclusion of every music constituent type is paramount to the purpose of the string. Every type of music constituent critically contributes to the function and operation of the music sector within a regulated framework given the symbiotic overlapping nature of the Community as defined and structured. Music would not function as it does today without the participation of all music constituent types which cumulatively match the string with the Community definition.

In conclusion, there is substantive evidence that DotMusic entirely fulfills the criteria for *Nexus*.

Respectfully Submitted,

Signature: 
Contact Information Redacted Apr 6 '15 ip: 176.183.93.227

Name: Dr. Vassilis Varvaresos

Title: Pianist

Expertise: Doctorate in Piano Performance

Date: 6/4/2015

About Dr. Vassilis Varvaresos

*Doctorate in Piano Performance
Juilliard School*

Born in Thessaloniki, Greece in 1983, Dr. Varvaresos started studying music at the age of five, and received a scholarship to the Conservatory of Northern Greece. He continued his studies at the Conservatory with Milena Mollova. He won First Prize in the 1995 Petar Konjovic International Competition in Belgrade, the 1996 Pan-Hellenic Young Artist Competition in Athens, and was chosen as one of eleven young musicians from around the world to perform in Monte Carlo in a special “little Mozarts” concert organized by Italy’s RAI TV. Dr. Varvaresos holds a bachelor of music degree and a master of music degree from the Juilliard School, where he studied with Jerome Lowenthal. His paper on Claude Debussy, which won the Scholastic Distinction Award from the The Juilliard School, was published in Greece by Kodikas Publications. In May 2011 Dr. Varvaresos received his Doctorate in Piano Performance from the Juilliard School.¹ He was a student of Jerome Lowenthal, Yoheved Kaplinsky, and Robert MacDonald.

Dr. Varvaresos made his sensational New York orchestra debut in 2007 at Lincoln Center performing Lowell Liebermann’s Piano Concerto No. 2 with the Juilliard Orchestra under the baton of Andreas Delfs. In October 2010, as a special guest of the Archbishop of the Greek-Orthodox Church of America, Dr. Varvaresos appeared with the Manhattan Symphony Orchestra in Chopin’s Piano Concerto in e minor at Alice Tully Hall, while in the winter of 2008 he was asked to be the soloist with the Athens State Symphony Orchestra, representing Greece on a two-week tour of China, on the occasion of the 2008 Beijing Olympic Games. Dr. Varvaresos, on this occasion, performed in front of a total of 6000 people. Dr. Varvaresos’ made his recital debut in Athens, Greece appearing at the 2010 Athens Festival. During the same summer he has appeared in recital and chamber music concerts in Mykonos, Greece and in Constantinople and Cyprus.

Dr. Varvaresos previous seasons included concerts in Vienna’s legendary Musikverein, performances of Chopin’s Piano Concerto No. 1 with the Cyprus Symphony Orchestra in Leukosia and Lemesos under the baton of Spiros Pisinis, recitals in Mykonos, Greece and a featured concert at the International Piano Festival of Gijón, Spain.

Since then, he has performed in numerous occasions both in the U. S. and abroad. Highlight performances include an appearance with the Westmoreland Symphony Orchestra, where Dr. Varvaresos performed Rachmaninov’s Rhapsody on a Theme by Paganini and Gerswhin’s Rhapsody in Blue in a double-bill special event as well as concerto and recital appearances in the U.S. and his native Greece.

As a soloist with orchestra in the United States, Dr. Varvaresos has performed Grieg’s Piano Concerto with the Victoria Symphony in Texas, Tchaikovsky’s Concerto No. 1 with the Westmoreland Symphony (PA), Chopin’s Concerto No. 2 with the Dearborn (MI) Orchestra Society, Haydn’s Concerto in D Major

¹ The Juilliard School is globally recognized as the top music school in the world (See <http://www.hollywoodreporter.com/news/hollywood-reporter-unveils-top-25-745732> and <http://www.world-top-10.com/list/World-Top-Music-School/19>).

with the Hartford Symphony, Mozart's Concerto No. 5 with the Modesto (CA) Symphony, Mozart's Concerto no. 20 with the Altoona (PA) Symphony, Rachmaninov 's Concerto no. 1 with the JCC of Greater Washington, and Beethoven' s Concerto no.3 with the Sacramento Youth Symphony.

Dr. Varvaresos ' performances in his native Greece include the Tchaikovsky Piano Concerto at the Megaron Hall with the Athens State Symphony Orchestra, Solon Michailides's Piano Concerto and the Grieg Piano Concerto in the Megaron Hall of Athens, Rachmaninov's Concerto no. 2, Mozart 's Concerto no. 20 and Beethoven' s Concerto No. 3, with the Orchestra of Thessaloniki. He has performed numerous times on Greek State Television, as well as on television in Italy, Yugoslavia and Bulgaria. Dr. Varvaresos has represented Greece in a special "EuroConcert" at the Museum of Modern Art in Helsinki, at the Greek Embassy in Milan, and for the U.S. Ambassador to Greece. He has also performed as a recitalist in Austria, Germany, France, Italy, The Czech Republic, Bulgaria, and Yugoslavia.

Dr. Varvaresos is a founding member of Fourtissimo!, a group of four award-winning pianists whose goal is to reinvent the concert going experience through tasteful and uncompromising experimentation: unorthodox choice of repertoire, questions and choices concerning the form of the piano recital, and original compositions/transcriptions that test the limitations of the instrument and point the way towards a new type of instrumental virtuosity and inventiveness . The group's debut at Carnegie's Zankel Hall in October 2010 received immediate audience and critical acclaim.

Dr. Varvaresos is also active as a composer. His dance composition Three Etudes was chosen to represent the Juilliard School in a Dance Forum hosted by the Pallucca Schüle in Dresden, Germany in October of 2007. He has written ten film scores, including "Ellsworth Kelly: Fragments" and "Sir John Soane: An English Architect, an American Legacy" produced by the Checkerboard Film Foundation. He has also composed the score for the short film "Hardwood".

Dr. Varvaresos is currently pursuing the prestigious Diplôme d' Artiste-Interpète degree at the Conservatoire Nationale et Supérieur de Musique et de Danse in Paris, France. He studies with Michel Dalberto.

Dr. Varvaresos is recipient of Musical Studies Grants from the Bagby Foundation and the George and Marie Vergottis Foundation. Since 2008, he has also been the recipient of the Gina Bachauer Foundation Grant for Outstanding Talent in Music and Onassis Foundation Grant.

Website: <http://www.varvaresos.com/>

Press Reviews

...Varvaresos playing was effervescent..."

[The Hartford Courant](#)

"Tout aussi investi, Vassilis Varvaresos lui donne la réplique pianistique avec un égal feu intérieur, dans un jeu concentré qui exclut toute virtuosité "

<http://www.concertclassic.com/article/winterreise-par-dimitris-tiliakos-et-vassilis-varvaresos-leclat-de-deux-jeunes-interpretes#sthash.IPOVYqDa.dpuf>

"Τηλιακός και Βαρβαρέσος τόλμησαν να πάρουν ρίσκα σε διάφορα επίπεδα και να καταθέσουν τη δική τους πρόταση: σύγχρονη, μουσικά ενδιαφέρουσα και πνευματικά διεγερτική." Kathimerini, 1.2.2015

<http://www.kathimerini.gr/801408/article/politismos/moysikh/ena-3exwristo-xeimwniatiko-ta3idi>

"Μια βραδιά που πρόσφερε τροφή στην ψυχή.", efsyn, 20.1.2015

<http://www.efsyn.gr/arthro/heimoniatiiko-taxidi-san-na-itan-gia-proti-fora>

"Ήταν ένα απ' αυτά τα ρεσιτάλ που όσοι το παρακολούθησαν ένιωσαν πως είχαν κερδίσει ένα από εκείνα τα σπάνια διαμαντάκια που μοιράζει κατά καιρούς το Μέγαρο στο κοινό του." Protagon, 17.1.2015

<http://www.protagon.gr/?i=protagon.el.politismos&id=38927>

"The score is for Vassilis a good opportunity to recreate the world we live in. A modern remake of the romantic concerto. How? By imposing an extremely diverse sound, a turmoil at times hard to contain – but with braveness in reaching the octaves, by the pervasiveness of his personality which superimposes an almost cinematic vision on Tchaikovsky's music."

<http://www.festivalenescu.ro/en/news/346>

"En totale communion avec le public, il a parachevé sa "conquête" avec un Fantaisie-Improptu de Chopin d'une parfaite fluidité et musicalité avant de "porter l'estocade" avec une improvisation fouguese, brillante et délirante, mêlant intelligemment des thèmes aussi variés que Summertime de Gershwin, la Vè Symphonie et la Lettre à Elise de Beethoven, la 2è Rhapsodie hongroise de Liszt...Jeune, très jeune, mais déjà très grand musicien qui sait rendre son public heureux, nous espérons le revoir très vite à Nohant!"

<https://www.facebook.com/notes/nohant-festival-chopin/concert-de-vassilis-varvaresos-dimanche-22-juin-2014/251101535082771?fref=nf>

A Paris, le festival Chopin souffle ses trente bougies. "De son côté, Vassilis Varvaresos a su emporter l'adhésion du public avec une interprétation magistrale de l'ouverture de Tannhäuser de Wagner transcrite par Liszt. Une partition aux proportions dantesques dont il a su restituer tout le souffle épique et tragique, avec une virtuosité confondante."

[La Lettre du musicien](#)

"First up was Mozart's elegant Sonata in B flat major. Inui and Varvaresos captured Mozart's musical dialogues, between themes, performing forces and movements. Theirs was lucid, transparent playing entirely in tune with Mozartean ideals."

[AL.com](#)

"Υπάρχουν κάποιοι άνθρωποι που, όταν τους γνωρίσεις, καταλαβαίνεις πως έχουν γεννηθεί με ένα ιδιαίτερο ταλέντο και ωριμάζουν για να μεγαλοουργήσουν." [Protagon](#)

"...Και πιστεύω πως αυτός ο σολίστας θα γίνει ο εκφραστής μιας νέας σεμνής, δημιουργικής και βαθιά συναισθηματικής και ανθρώπινης Ελλάδας, που θα λάμπει στα επόμενα χρόνια στο μουσικό στερέωμα."

[Protagon](#)

"Following this great program greatly played, Vassilis Varvaresos played a spicy Greek dance with all the exuberance and heartiness of a soul in love with life."

The New York Concert Review

Varvaresos at **Carnegie Hall**

"On March 19, 2012, the world-renowned Greek pianist Vassilis Varvaresos performed at a benefit piano recital at Carnegie Hall to thunderous applause."

Cyprus Federation Org

"So impressive, in fact, that I had no desire to hear any encores. Vassilis Varvaresos had demonstrated what he already has shown through Europe. For he is that rare young performer who, with a mere two hands, can tell the most gorgeous tales"

[Harry Rolnick at Concertonet.com](#)

"... Varvaresos played with rhythmic energy, sincerity, and contagious passion. This is a pianist that truly possesses everything..."

La Voz de Asturias

"Young Master on the Rise."

The Washington Post

"...Varvaresos engaged his audience for a performance that sizzled from start to finish. I felt as though I was hearing this piece for the first time and now I 'm a believer. Vassilis Varvaresos not only has a natural yet finely honed technique, it springs as one with the wide scope of profound musicianship. The Liszt was delivered in an astonishingly powerful and poetic trajectory. The audience was stunned. I remembered to stand up and shout – if ever there was a reason to yell Bravo, this was it."

New York Concert Review

"...Dr. Varvaresos first offered No. 9, "Vertige," in a rendition so dizzying that one needed to clutch one's seat..."

[New York Concert Review](#)

Varvaresos managed to control perfectly the robust Steinway – he was able to create a clean, tight sound that served perfectly the aesthetics of the time. His phrasing was elegant, flexible, [...] with well-crafted commas and periods. He delivered an outstanding “Allegretto e innocente...”

Eletherotypia (Greece)

Re: Expert Testimony on (i) Community Establishment; (ii) Nexus; and (iii) Support for DotMusic’s Community-Based Application¹ for .MUSIC (Application ID 1-1115-14110)

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

Please accept this letter that indicates that there is substantive and compelling evidence that the DotMusic application convincingly meets the full criteria under Community Priority Evaluation on the following points: (i) the Music Community’s *Establishment* as defined by DotMusic; (ii) the matching *Nexus* between the “music” Community and the “music” string (or top-level domain); and (iii) that DotMusic possesses documented *Support* from organizations representing a majority of the global Music Community addressed and defined.

Please see my credentials attached hereto that identify my level of expertise and specialized knowledge with respect to the music community’s organization and delineation.

SUMMARY

DotMusic has established the following:

- 1) Its Community definition recognizes the cohesive, symbiotic and overlapping nature of the global Music Community. The definition includes those associated with commercial and non-commercial creation, performance, marketing and distribution of music;
- 2) “Music Community” members have the requisite awareness and recognition of the interdependency, overlapping and cohesive nature of each “organized community of similar nature that relates to music.” These organized and aligned communities are closely united and make “music” as we know it today. It is this self-awareness and interdependence that gives the “Music Community” its strength. With exponential growth of the Internet, mobile and the Domain Name System (DNS), the “Music Community’s” use and reliance on the Internet to create, market and disseminate music-related content, products, services and activities will continue to grow;
- 3) The “Music Community” functions in a regulated sector with global copyright protections – it is clear that the “community,” as defined, implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate a globally-recognized set of standards for

¹ <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1392>

the protection of the “Music Community” member rights with relation to their copyrighted music works around the world;

4) The “Music” Community -- as defined by DotMusic -- has at least one entity mainly dedicated to the community supporting DotMusic’s application. Such documented *Support* includes several “international federation of national communities of a similar nature,” music coalitions and others that are strongly associated with “music,” which represent a majority of the Community with considerable millions of members worldwide.²

5) The *Nexus* of the “music” Community matches the “music” applied-for string because it represents the entire global Music Community – a community that pre-existed 2007 with a size in the considerable millions of constituents. The “Music Community” definition -- which incorporates the strict fundamental attributes of a closely united Community definition that is “organized” and “delineated” -- ensures that all of its constituent members have a requisite awareness of the community as defined, including both commercial and non-commercial stakeholders, to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination.

6) DotMusic has received support from the largest coalition of Music Community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support³ from institutions/organizations representing a majority of the Community as defined and recognized in the DotMusic application.

There is substantive evidence that DotMusic fulfills the *Nexus, Community Establishment and Support* criteria for the “Music” string. The inclusion and representation of every music constituent type is paramount to the articulated purpose of the string. DotMusic and its application’s global Music Community supporters substantiate that every type of music constituent contributes to the function and operation of the music sector within a regulated framework. The symbiotic nature of the Community as defined and structured means that “Music” would not function as it does today without the participation of all music constituent types that interconnect to match the “music” string with the “music” Community definition.

² <http://music.us/supporters>

³ <http://music.us/supporters>

ASSESSMENT OF COMMUNITY DEFINITION, ESTABLISHMENT AND NEXUS

A) *Music Community Definition, Establishment & Community Endorsement*⁴

DotMusic's definition of the "Music Community" as a "strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music" (See Application Answer to Question 20a) is factually accurate and representative of the "Music Community." Community characteristics include:

i) An Organized, Cohesive, Interdependent Logically-Allied Community:

The "Music Community" definition covers the regulated, interdependent and cohesive nature of the music sector that exists today. "Music Community" members have the requisite awareness and recognition of the interdependent, overlapping and cohesive nature of each "organized community of similar nature that relates to music" that comprises the "Music Community." Without such cohesiveness and interdependency, the defined "Music" Community matching the applied-for string ("Music") would not be able to function in its regulated sector. "Music" is a regulated sector comprised of a logical alliance of interdependent communities relating to music with organized practices and institutions that enable and regulate the production, distribution and consumption of music that was publicly recognized by both ICANN and the Government Advisory Committee⁵

As a result, the Music Community as defined is "closely united" (As per the definition of "cohesion" according to Merriam-Webster dictionary⁶) or "united or form a whole" (As per the definition of the word "cohesion" according to Oxford Dictionaries⁷).

DotMusic's application follows unified principles that the entire Community subscribes to, such as: creating a trusted identifier and safe haven for music consumption, protecting musicians' rights and intellectual property, fighting copyright infringement/piracy, supporting fair compensation and music education, and following a multi-stakeholder approach of representation of all types of global music constituents without discrimination (See Application Answers to 18).

The "Music Community" as defined (a "strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music") establishes that:

- (1) There is an awareness and recognition among its members;

⁴ See <http://music.us/establishment>

⁵ <https://www.icann.org/en/system/files/bm/briefing-materials-2-05feb14-en.pdf>, Pg.3

⁶ <http://www.merriam-webster.com/dictionary/cohesion>

⁷ http://www.oxforddictionaries.com/us/definition/american_english/cohesion

- (2) The organized and delineated logical alliance of communities exists; and
- (3) The Community is “closely united” and “interdependent” (i.e. Each “organized community of similar nature that relates to music” which is part of the “logical alliance of communities that relate to music” is not mutually exclusive).

In short, the applied-for string (“Music”) matches the name of the “Music” Community as defined by DotMusic’s application. DotMusic’s “Music Community” definition accurately represents the common definition of the “Music Community,” which is confirmed by Wikipedia.

According to Wikipedia:⁸

Music community is defined as a logical alliance of interdependent communities that are related to music, which include commercial participants...and non-commercial participants...and consists of an “ensemble of practices and institutions that make possible and regulate the production, distribution and consumption of music”...UNESCO identifies the music community as a “community of identity” implying common identifiable characteristics and cohesive attributes such as sharing a music culture, norms and subscribing to common ideals related to music...The music community is not defined as much by demographic indicators such as race, gender, and income level, as it is by common values, cohesive norms and interconnected structures to build a community identity. It refers to music-related individuals and organisations in a shared environment with shared understandings and practices, modes of production and distribution. The shared organisation of collective musical activities, identity and community value is created as result of infrastructure and a shared set of common values...Many studies outline the historical, cultural, and spatial significance of the music community, including how its identity is formed through musical practices. The music community shares a cohesive and interconnected structure of artistic expression, with diverse subcultures and socio-economic interactions...subscribing to common ideals. Under such structured context music consumption becomes possible regardless whether the transaction is commercial and non-commercial.⁹

⁸ Wikipedia is ranked 6th among the ten most popular websites (Alexa, Retrieved March 23, 2015 from <http://www.alexacom/siteinfo/wikipedia.org>) and constitutes the Internet's largest, most frequently updated and popular general reference work (See OECD, OECD Internet Economy Outlook 2012, OECD Publishing, http://www.oecd-ilibrary.org/science-and-technology/oecd-internet-economy-outlook-2012_9789264086463-en, Pg.172) that compares favorably to the accuracy of other encyclopedias (such as the Britannica) according to a 2012 study conducted in partnership with Oxford University (See <http://blog.wikimedia.org/2012/08/02/seven-years-after-nature-pilot-study-compares-wikipedia-favorably-to-other-encyclopedias-in-three-languages>).

⁹ Music Community. In *Wikipedia*. Retrieved July 6, 2015, from https://en.wikipedia.org/wiki/Music_community

ii) An Aware, Pre-Existing and Recognized Community of Considerable Millions Worldwide:

DotMusic's definition of the Community covers all Community members associated with the string, each with a requisite awareness of the Community that can be validated through their natural association with a particular music-related community that they clearly identify with. According to DotMusic, all Music Community members must identify their music-related community in order to demonstrate their requisite awareness of the defined Community as part of the .MUSIC registration and validation process.

According to DotMusic, the Music Community's geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents (Application Answer to Question 20a).

According to DotMusic, "registrants will be verified using Community-organized, unified "criteria taken from holistic perspective with due regard of Community particularities" that "invoke a formal membership (Application Answer to Question 20a)." The defined Community represents all music-related entities with a clear and straightforward membership with the Community involved in the legal production, performance, promotion, and distribution of music worldwide. According to DotMusic, the Music Community members must have an active, non-tangential relationship with the applied-for string "music" and also have the requisite awareness of the music-related community that they are a part of by specifically identifying it as part of the registration and validation process (i.e. upon successful registration and validation, each community member will be given a unique community identification number that will automatically associate them with their identified community and the "music" string).

DotMusic's Community definition matches the applied-for string because it allows both commercial and non-commercial stakeholders to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination/exclusion. Given the regulated sector of the community, it is clear that the "Music Community" as defined implies "more of cohesion than a mere commonality of interest" with an "awareness and recognition of a community among its members." Several international treaties mandate cohesive and globally-recognized set of standards for the protection of the music community members' rights with relation to their copyrighted music works around the world.¹⁰

The Berne Convention for the Protection of Literary and Artistic Works¹¹ provides that each of the 168 contracting parties¹² (representing an overwhelming majority of the world's population) provides automatic protection for music works first published in other countries of the Berne union and for unpublished music works whose authors are citizens of or resident in such other

¹⁰ http://www.rightsdirect.com/content/rd/en/toolbar/copyright_education/International_Copyright_Basics.html

¹¹ http://www.wipo.int/treaties/en/text.jsp?file_id=283698

¹² http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=15

countries.¹³ This means that if a Music Community member's copyright rights are violated in any other signatory country's jurisdiction, then the music community member will have the music copyright rights given by that country. Music Community members are clearly aware of the collective Community's rights, which could not be made possible without these cohesive and globally-recognized set of standards. If such standards were not coherent or enforced then music would not be able to exist in its current form and the industry component of the Music Community sector would not exist. As such, the Community's *Establishment* and definition is "cohesive" and hence cannot be construed since the Community is a logical alliance of music communities that establish a clearly delineated and organized Community structure that is "closely united" and functions as a "whole"

Further evidence to substantiate the cohesive, symbiotic and overlapping nature of the Community, includes other globally-recognized standards and classification systems, which identify who the individual songwriters, publishers and rights holders are and which songs they are associated with so that Community members are appropriately compensated, regardless of whether the constituent is a commercial, non-commercial or amateur entity. The "music" string is commonly used in classification systems such as ISMN,¹⁴ ISRC,¹⁵ ISWC,¹⁶ ISNI.¹⁷ (Application Answer to Question 20a). For example, if a music entity would like to distribute their music, either commercially or for free, then an ISRC can be assigned to globally identify any specific music work. An ISRC, which facilitates efficient music discovery and community member payment, is constructed from 12 characters representing country, registrant, year of registration and designation (i.e. the serial number assigned by the registrant). With respect to domains, an equivalent system that relates to identifying a specific domain's registrant and other relevant information pertaining to the domain is WHOIS. Domain registrants are required by ICANN "to provide accurate WHOIS contact data" or else their domain "registration may be suspended or even cancelled".¹⁸

¹³ <http://www.britannica.com/EBchecked/topic/62482/Berne-Convention>

¹⁴ The International Standard Music Number (ISMN) is a unique number for the identification of all notated music publications from all over the world. The ISMN is an ISO certified global standard number (ISO 10957:2009). See <http://www.ismn-international.org/whatis.html> and http://www.iso.org/iso/home/store/catalogue_ics/catalogue_detail_ics.htm?csnumber=43173

¹⁵ The ISRC (International Standard Recording Code) is the international identification system for sound recordings and music video recordings. The ISRC is an ISO certified global standard number (ISO 3901:2001) and is managed by the IFPI. See <http://isrc.ifpi.org>, <https://www.usisrc.org/about/index.html> and http://www.iso.org/iso/catalogue_detail?csnumber=23401

¹⁶ The ISWC (International Standard Musical Work Code) is a unique, permanent and internationally recognized reference number for the identification of musical works. The ISWC has been approved by ISO (International Organization for Standardisation) as a global standard (ISO 15707:2001) and is managed by CISAC. See <http://www.iswc.org/en/faq.html> and http://www.iso.org/iso/catalogue_detail?csnumber=28780

¹⁷ The International Standard Name Identifier (ISNI) is the ISO certified global standard number (ISO 27729) for identifying the millions of contributors to creative works and those active in their distribution. ISNI holds public records of over 8 million identities and 490,000 organizations. See <http://www.isni.org/> and http://www.iso.org/iso/catalogue_detail?csnumber=44292

¹⁸ <https://whois.icann.org/en/about-whois> and <https://www.icann.org/resources/pages/faqs-f0-2012-02-25-en>

Without such Music Community “cohesion” and standardized systems functioning in its regulated sector, the Music Community would not be able to create, market and distribute their music. By the same token, fans would not be able to identify the music they are listening to with a specific music artist, regardless of whether the listening activity or behavior is commercial or non-commercial in nature. The socio-economic structure that characterizes “music” as commonly-known today would be non-existent without these organized and delineated elements that commonly define the Community.

iii) *International Federations and Organizations mainly Dedicated to the Community:*

According to ICANN’s Applicant Guidebook (“AGB”)¹⁹: *“With respect to “Delineation” and “Extension,” it should be noted that a community can consist of...a logical alliance of communities (for example, an international federation of national communities of a similar nature... viable as such, provided the requisite awareness and recognition of the community is at hand among the members.”* (AGB, 4-12). The community as defined in the DotMusic application has at least one entity *mainly*²⁰ dedicated to the community which has supported DotMusic, which include several “international federation of national communities of a similar nature” relating to music, music coalitions and other relevant and non-negligible music organizations.

One of these entities include the only international federation of national communities relating to government culture agencies and arts councils, which has an integral association with music globally: the International Federation of Arts Councils and Culture Agencies (IFACCA).

IFACCA is the only international federation that represents government culture agencies and arts councils globally. These national communities are governmental institutions that play a pivotal

¹⁹ <https://newgtlds.icann.org/en/applicants/agb/guidebook-full-11jan12-en.pdf>

²⁰ Per the Oxford and Merriam Webster dictionaries, the word “mainly” is defined as “*more than anything else*” (See <http://www.oxforddictionaries.com/definition/english/mainly> and <http://www.merriam-webster.com/dictionary/mainly> respectively). According to DotMusic, the string .MUSIC relates to the Community “by representing all constituents involved in music creation, production and distribution” (Application Answer to Question 20d). Supporting organizations related to that string that are “mainly” dedicated to the Community and its activities, include the International Federation of Arts Councils and Culture Agencies (IFACCA) representing government culture ministries and arts councils, the International Federation of Musicians (FIM) representing musicians globally, the International Federation of Phonographic Industry (IFPI) representing the recording industry worldwide, the International Confederation of Music Publishers (ICPM) representing the voice of global music publishing, the International Association of Music Information Centres (IAMIC), the American Association of Independent Music (A2IM), whose associate members represent a majority of music consumed, the Independent Music Worldwide Independent Network (WIN) representing independent music worldwide, the International Society for Music Education (ISME) the premiere international organization representing music education, and many others (See support at <http://music.us/supporters> and <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails:downloadattachment/142588?t:ac=1392>).

role with respect to music.²¹ IFACCA's members cover the majority of music entities globally, regardless of whether they are commercial, non-commercial or amateurs. Government ministry of culture and council agencies related to music cover a majority of the overall community with respect to headcount and geographic reach. The "Size" covered reaches over a hundred million music entities i.e. "considerable size with millions of constituents" per Application Answer to Question 20a.

The string "music" falls under the jurisdiction of each country's Ministry of Culture governmental agency or arts/music council (emphasis added). The degree of power and influence of government ministry of culture and council agencies with respect to music surpasses any organization type since these agencies (i) provide the majority of funding for music-related activities; (ii) regulate copyright law; and (iii) encompass all the music entities that fall under their country, regardless whether these entities are commercial, non-commercial or amateurs. IFACCA is globally recognized by its strategic partners, such as UNESCO, a United Nations agency representing 195 member states and the European Commission.²² The UNESCO strategic partnership²³ is relevant, especially since UNESCO founded the International Music Council (the "IMC") in 1949, which represents over 200 million music constituents from over 150 countries and over 1000 organizations globally.²⁴

Government activities in the clearly delineated and organized "Music Community" include setting statutory royalty rates. For example, in the United States, mechanical royalties are based on a "statutory rate" set by the U.S. Congress. This rate is increased to follow changes in the economy, usually based on the Consumer Price Index. Currently, the mechanical statutory rate is \$0.091 for songs five minutes or less in length or \$.0175 per minute for songs that are over five minutes long.²⁵

Ministries of culture and arts councils (that comprise IFACCA's membership) support musicians, musical performances, independent music artists, non-commercial musical expression and education in their respective countries. The 165 ministries of culture, arts councils and affiliates that comprise IFACCA's membership support the "performing arts" and music specifically. Without the financial and logistical support of arts councils and the ministries of culture, the music community would be adversely affected, and in some countries, may not exist in any appreciable manner. For example, the Ministry of Culture 2011 budget for the small country state of Cyprus for culture funding was €34,876,522 with critical support of music activities.²⁶ Other small government Ministries of Culture, such as Albania,²⁷ or government

²¹ http://www.ifacca.org/membership/current_members/

²² http://www.ifacca.org/strategic_partners/

²³ http://www.ifacca.org/strategic_partners/

²⁴ <http://www.imc-cim.org/about-imc-separator/who-we-are.html>

²⁵ U.S Copyright Office, <http://www.copyright.gov/carp/m200a.html>

²⁶ 2011 Annual Report for Cyprus Ministry of Culture, Section 1.2 "Music"

(http://www.moec.gov.cy/en/annual_reports/annual_report_2011_en.pdf). Activities include Music Performances in Cyprus (1.2.1) and Abroad (1.2.2), Subsidization of Paphos Aphrodite Festival (1.2.3), Music Publications (1.2.4), Subsidization and Purchases of Digital Records (1.2.5), Promotion for Cypriot musical creativity abroad (1.2.6),

Ministries of Culture and Arts Councils from countries with larger populations, such as India,²⁸ all provide critical support and substantial advocacy for music. Other examples include government institutions collaborating and advocating music through their funded country-based pavilion initiatives at Midem, the world's largest music conference.²⁹

Government ministries and arts councils provide critical support for the Music Community, including commercial music organizations. By way of example, government ministries' and arts councils' substantial connection to and support of "music" is noted in the reports of funding and support for music. Some examples to showcase the degree of power of the IFACCA's membership towards the string and global and national music are music investment and music funding (Annual reports by governments and councils):

- New Zealand Ministry of Culture has funded significant music projects. Some include the REAL New Zealand Music Tour (\$415,000), the New Zealand String Quartet (\$150,000) and New Zealand Music Commission: (\$1,378,000).³⁰
- The Australian Government/Council For The Arts invested \$51.2 million for the nation's orchestras; \$21.6 million for opera; \$10.8 million for other music artists and organizations; \$13.1 million for multi-platform artists and organizations; and \$4 million in miscellaneous funding, including sector building and audience development initiatives and programs.³¹
- Canada Council for the Arts is Canada's national, arts funding agency investing \$28 million in its Canada Council Musical Instrument Bank (Page 16) and \$28,156,000 in Music Arts Programs (Page 66).³² The Government of Canada also renewed its annual investment of \$27.6 million over five years in the Canada Music Fund.³³
- The United Kingdom Department for Culture and Education (DfE) will fund music education at significant levels: £77 million, £65 million and £60 million will be available in the three years from April 2012.³⁴

Cyprus Symphony Orchestra Foundation (1.2.7), Music Information Centre (1.2.8), Developing Music Education (1.2.9), Organising of the 1st Musicological Symposium (1.2.10) and Musical Festivities for the European Volunteerism Year (1.2.11)

²⁷ http://www.culturalpolicies.net/down/albania_012011.pdf

²⁸ 2010-11 Annual Report from India Ministry of Culture, [http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011\(Eng\).pdf](http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011(Eng).pdf)

²⁹ <http://my.midem.com/en/contact-us/pavilion-representatives/>

³⁰ 2011 Annual Report from New Zealand Ministry of Culture:

[http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20\(D-0448383\).PDF](http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20(D-0448383).PDF)

³¹ 2011 Annual Report for the Australia Council for the Arts,

http://www.australiacouncil.gov.au/data/assets/pdf_file/0016/142351/Australia-Council-Annual-Report-201112.pdf, Page 28

³² 2011 Annual Report for Canada Council for the Arts, [http://www.canadacouncil.ca/NR/rdonlyres/6F7549BB-F4E5-4B8B-95F4-](http://www.canadacouncil.ca/NR/rdonlyres/6F7549BB-F4E5-4B8B-95F4-1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf)

[1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf](http://www.canadacouncil.ca/NR/rdonlyres/6F7549BB-F4E5-4B8B-95F4-1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf)

³³ <http://www.pch.gc.ca/eng/1294862453819/1294862453821>

³⁴ Department for Culture, The Importance of Music, A National Plan for Music Education,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/180973/DFE-00086-2011.pdf, Page 4, 2011

- The United States National Endowment of the Arts has awarded more than \$4 billion to support the arts since its inception³⁵ and has a strong focus on music as outlined in its Strategic Plan³⁶ with Congress requested to provide \$154,465,000 for fiscal year 2014.³⁷
- The National Arts Council of South Africa invested 2,536,131 ZAR in Music and 9,995,000 ZAR in Orchestras and has focused strongly on the “Strengthening of live indigenous music and advocating the revival of the live music circuit in South Africa”³⁸
- The Singapore Arts Council will fund \$10.2 million in the arts under its 2013 Grants Framework, including the Ding Yi Music Company and Siong Leng Musical Association.³⁹
- In 2011, the support for artistic activities by the Arts Council of Finland was €32.4 million of which €4,921,850 was awarded to music.⁴⁰

Each of IFACCA’s members has a clear association with, and mandate to support the music arts in their countries. In most countries, their ministry of culture/arts council is the largest funder and marketing supporter of the music arts.

The IFPI is another entity *mainly* dedicated to the Community. The IFPI is the only organization that represents the interests of the recording industry worldwide. It is the “voice of the recording industry worldwide”⁴¹ whose members⁴² – major and independent companies -- represent a majority of all commercial music consumed globally. For example, the RIAA, an IFPI national group member,⁴³ represents “approximately 85% of all legitimate recorded music produced and sold in the United States,”⁴⁴ the world’s largest music market with 30% global market share.⁴⁵ Formed in 1933, the IFPI’s mission was to “represent the interests of the recording industry worldwide in all fora.”

³⁵ 2011 Annual report for the National Endowment of the Arts, <http://www.nea.gov/about/11Annual/2011-NEA-Annual-Report.pdf>, Page 2

³⁶ NEA Strategic Plan 2012-2016, www.arts.gov/about/Budget/NEAStrategicPlan2012-2016.pdf

³⁷ http://www.ifacca.org/national_agency_news/2013/04/10/us-president-requests-154465000-neh-2014/

³⁸ 2010-2011 Annual Report for the National Arts Council South Africa, National Arts Council South Africa, <http://www.nac.org.za/media/publications/AR%2010-11%20NAC.PDF/download>, Page 11. Also Mmino, the South African – Norwegian Education Music Programme, solely funds music projects funding a total of 294 projects. Thirteen projects were allocated funding for a total of R1,680,600 of which R1,381,000 went towards music educational and R299,600 to exchange projects (Page 10)

³⁹ Singapore Arts Council, <http://www.nac.gov.sg/media-centre/news-releases/news-detail?id=c2db15e2-c319-40ec-939c-d58735d0a91c>

⁴⁰ <http://www.taiteenkeskustoimikunta.fi/documents/10162/31704/TY+tilastotiedote+1+12+.pdf>, Page 1 and Page 23

⁴¹ <http://www.ifpi.org/about.php>

⁴² <http://www.ifpi.org/our-members.php>

⁴³ <http://www.ifpi.org/national-groups.php>

⁴⁴ <http://www.riaa.com/faq.php>

⁴⁵ <http://www.statista.com/topics/1639/music/>

Another clear example of an “entity *mainly* dedicated to the community” with members that cover hundreds of millions of music constituents with formal boundaries is A2IM, the American Association of Independent Music. A2IM has two types of members: U.S independent Label members and Associate members. A2IM membership for Labels and Associates is invoked formally through an application and if accepted would require annual membership dues.⁴⁶

The reach of A2IM Associate⁴⁷ membership covers hundreds of millions of entities (i.e. the reach of A2IM’s total membership “geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents – See Application Answer to Question 20a).

Organized and strictly delineated communities related to music that are A2IM members include:

- **Apple iTunes**⁴⁸ – iTunes accounts for 63% of global digital music market⁴⁹ - a majority – with a registered community of 800 million registered members⁵⁰ available in 119 countries who abide to strict terms of service and boundaries⁵¹ and have downloaded over 25 billion songs⁵² from iTunes’ catalog of over 43 million songs⁵³ covering a global music community, regardless of genre or whether the community entities are amateur, professional, commercial or non-commercial. To add music to iTunes, all music artists must have a formal membership with iTunes via an Apple ID registration, which includes a current credit card on file.⁵⁴
- **Pandora**⁵⁵ – Pandora is the world’s largest streaming music radio with a community of over 250 million registered members.⁵⁶
- **Spotify**⁵⁷ – Spotify is the world’s largest music streaming community with over 50 million active registered members in 58 countries and over 30 million songs. The music community uploads 20,000 songs every day.⁵⁸
- **Vevo**⁵⁹ – Vevo is the world’s leading all-premium music video community and platform with over 8 billion monthly views globally.⁶⁰

⁴⁶ <http://a2im.org/about-joining/>

⁴⁷ <http://a2im.org/groups/tag/associate+members/>

⁴⁸ <http://a2im.org/groups/itunes>

⁴⁹ <http://appleinsider.com/articles/13/04/16/apples-itunes-rules-digital-music-market-with-63-share>

⁵⁰ <http://www.npr.org/blogs/therecord/2015/01/06/375173595/with-downloads-in-decline-can-itunes-adapt>

⁵¹ <http://www.apple.com/legal/internet-services/itunes/ww/index.html>

⁵² <http://www.apple.com/pr/library/2013/02/06iTunes-Store-Sets-New-Record-with-25-Billion-Songs-Sold.html>

⁵³ <https://www.apple.com/itunes/features/>

⁵⁴ <https://www.apple.com/itunes/working-itunes/sell-content/music-faq.html>

⁵⁵ <http://a2im.org/groups/pandora>

⁵⁶ <http://www.cnet.com/news/like-a-rolling-milestone-pandora-hits-250m-registered-users/> and <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MTkxNTM1fENoaWxkSUQ9LTF8VHlwZT0z&t=1>, Pg.9

⁵⁷ <http://a2im.org/groups/spotify>

⁵⁸ <https://press.spotify.com/us/information/>

⁵⁹ <http://a2im.org/groups/vevo/>

- **Youtube**⁶¹ – Youtube is the world’s largest music video streaming community with millions of music creators -- amateur, professional, commercial or non-commercial -- and over 1 billion registered members covering all regions globally. 6 billion hours of video is watched every month on Youtube,⁶² of which 38.4% is music-related.⁶³
- **ReverbNation**⁶⁴ – ReverbNation⁶⁵ is one of the world’s largest music community and a leading music distributor with over 3.87 million musicians, venues labels and industry professionals covering every country globally. The ReverbNation community grows by over 50,000 artists, bands, labels and industry professionals monthly.
- **BMG**⁶⁶ – BMG is focused on the management of music publishing and recording rights. BMG has an international presence and represents over 2.5 million music rights globally.⁶⁷

A2IM also includes members that are associated with global government agencies which exclusively represent substantial music economies and music members, such as France (BureauExport⁶⁸), China (China Audio Video Association⁶⁹) and Germany (Initiative Musik).⁷⁰ A2IM also has Affiliate⁷¹ associations within the global music community. These include Affiliates such as MusicFirst,⁷² the Copyright Alliance,⁷³ the Worldwide Independent Network (WIN)⁷⁴ and Merlin.⁷⁵

A2IM also represents a recognized Music Coalition representing the interests of the Global Independent Music Community.⁷⁶ The A2IM Coalition includes Merlin, a global rights agency for the independent label sector, representing over 20,000 labels from 39 countries, Worldwide Independent Network (representing label creators in over 20 countries), Association of Independent Music (representing largest and most respected labels in the world), and IMPALA (Independent Music Companies Association on behalf of over 4,000 independent music companies and national associations across Europe, representing 99% of music actors in Europe which are micro, small and medium sized enterprises).

⁶⁰ <http://www.vevo.com/c/EN/US/about>

⁶¹ <http://a2im.org/groups/youtube/>

⁶² <https://www.youtube.com/yt/press/statistics.html>

⁶³ http://www.researchandmarkets.com/reports/2092499/internet_video_2011_2014_view_share_site_and

⁶⁴ <http://a2im.org/groups/reverb-nation/>

⁶⁵ <http://www.reverbnation.com/about>

⁶⁶ <http://a2im.org/groups/bmg-rights/>

⁶⁷ <http://www.bmg.com/category/about-us/history/>

⁶⁸ <http://a2im.org/groups/french-music-export-office>

⁶⁹ <http://a2im.org/groups/china-audio-video-association-cava>

⁷⁰ <http://a2im.org/groups/initiative-musik-gmbh>

⁷¹ <http://a2im.org/groups/tag/associate+members/>

⁷² <http://musicfirstcoalition.org/coalition>, The musicFIRST Coalition, with founding members A2IM, RIAA, and Recording Academy represents musicians, artists, managers, music businesses, and performance right advocates.

⁷³ <http://www.copyrightalliance.org/members>

⁷⁴ <http://www.winformusic.org>

⁷⁵ <http://www.merlinnetwork.org>

⁷⁶ <https://www.icann.org/en/system/files/correspondence/bengloff-to-chehade-et-al-20aug14-en.pdf> and <https://www.icann.org/en/system/files/correspondence/bengloff-to-crocker-et-al-07mar15-en.pdf>

Cumulatively, A2IM's Label and Associate Membership, A2IM's Affiliates and the A2IM's Global Independent Music Community Coalition, covers a majority of the global music community. Its cumulative membership is in the hundreds of millions of entities with formal boundaries belonging to strictly organized and delineated communities related to music as per the Community Definition and Size (See Application answer to Question 20a).

Another global Music Community Coalition led by the RIAA “on behalf of over 15 national and international trade associations” also expressed its support for .MUSIC to be under a “community” application model, including encouraging statements in support of DotMusic’s policies that stated that the coalition “was encouraged to see” that DotMusic “included several measures to deter and address copyright infringement within that TLD.” The “coalition members represent the people that write, sing, record, manufacture, distribute and/or license over 80% of the world’s music”⁷⁷ – a majority of global music.⁷⁸

Another letter⁷⁹ sent to ICANN (on April 14th, 2015) by Danielle Aguirre from the NMPA and on behalf of a music publisher and songwriter community coalition representing a majority of the global music publishing community, also expressed “support [for] the .MUSIC community applications because respecting and protecting music rights serves the global music community and the public interest.”

The International Music Products Association, NAMM, is another globally-recognized and relevant group of non-negligible size that has supported DotMusic.⁸⁰ NAMM, formed in 1901, is *mainly* dedicated to the global music community by representing the international music products industry and community, with globally-recognized members and exhibitors that include Yamaha, Roland, Sennheiser, Sony, Fender, Harman, Kawai, Shure, Steinway, Audio-Technica, AKAI, Gibson, Peavey, Korg, AKG, Selmer, JBL, Alesis, Ibanez, AVID, Casio, DW, Sabian, Pearl, Zildjian, Martin, Ludwig, Marshall and others.^{81 82} Every amateur and professional musician worldwide uses music products manufactured and distributed by NAMM’s members. Without these musical instruments and products, music as we know it today would not be created or produced. NAMM and its trade shows power the \$17 billion global music products industry serving as a hub for the global music community wanting to seek out the newest innovations in musical products, recording technology, sound and lighting. NAMM’s mission is “to strengthen

⁷⁷ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.1

⁷⁸ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.3, Appendix A

⁷⁹ <https://www.icann.org/en/system/files/correspondence/aguirre-to-icann-board-eiu-14apr15-en.pdf>

⁸⁰ http://music.us/letters/NAMM_International_Music_Products_Association.pdf

⁸¹ https://www.namm.org/files/showdir/ExhibitorList_WN15.xls

⁸² <http://www.musictrades.com/global.html>

the music products industry and promote the pleasures and benefits of making music.”⁸³ NAMM also hosts the NAMM Show, the world's largest event for the music products industry.

Collectively, the DotMusic application received support from the largest coalition of music community member organizations ever assembled to support a cause representing over 95% of music consumed globally.⁸⁴ Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support⁸⁵ from institutions/organizations representing a majority of the Community addressed. Music -- as commonly-known by the general public and experienced today -- would not be possible without these supporting, non-negligible and relevant organizations that have endorsed DotMusic.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Community Establishment* and *Community Endorsement* from the majority of the global Music Community as defined.

B) Nexus⁸⁶

According to the Applicant Guidebook (“AGB”), to receive the maximum score for Nexus, the applied-for string -- “music” -- must match the name of the community or be a well-known short-form or abbreviation of the community name.

The *Nexus* of the “Music Community” entirely matches the applied-for “music” string because it represents the entire global Music Community as commonly-known and perceived by the general public. This definition allows for all constituents with a requisite awareness of the Community defined to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination. The definition of the Community requires that members have an active, non-tangential relationship with the applied-for string and the requisite awareness of the music community they identify with as part of the registration process. It is clear that the general public will directly associate and equate the string with the Community as defined by DotMusic. There is no possibility of overreaching beyond the definition or allowing unrelated non-music entities to be included as part of the Community. Community members may register a .MUSIC by either:

⁸³ <https://www.namm.org/about>

⁸⁴ See <http://music.us/supporters>, <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/downloadattachment/142588?t:ac=1392>, Bloomberg BNA at http://music.us/RIAA_Backs_DotMusic.pdf Pg.1, and <http://diffuser.fm/will-dot-music-domains-make-the-internet-better/>

⁸⁵ <http://music.us/supporters>

⁸⁶ See <http://music.us/nexus>

- 1) Identifying that they belong to a Music Community Member Organization (“MCMO”); or
- 2) Identifying the community they belong to, which is consistent with the definition of the Community: “the strictly delineated and organized logical alliance of communities of similar nature related to music.”

All Community members are aware of and recognize their inclusion in the defined Community by identifying which clearly defined community they belong to and have an active participation in. The *nexus* of the applied-for string ensures inclusion of the entire global community that the string represents while excluding unrelated-entities not associated with the string. This way there is a clear match and alignment between the “music” sting and the Community defined.

While the exact size of the global Music Community as defined is unknown (there is no empirical evidence providing an exact, finite number because amateur entities are also included in the Community’s definition), it is in the considerable millions as explicitly stated in the DotMusic Application. DotMusic’s definition of the Community and mutually-inclusive Registration Policies ensure that eligible members are only music-related and associated with the string. This is because the string identifies all constituents involved in music. Music-only participation optimizes the relevancy of .MUSIC domains to the string and entirely matches the *nexus* between the string and Community defined. According to DotMusic, the Community *definition, eligibility* criteria and *content and use* requirements ensure that peripheral industries and entities not related to music are excluded so that the string and the defined Community matches and aligns in a consistent manner consistent with DotMusic’s community-based purpose i.e. only entities with music-related activities are able to register .MUSIC domains.


Membership aligns with the *nexus* of the Community and the string, which is explicitly relevant to music. The string as defined in the application demonstrates uniqueness because it has no other significant meaning beyond identifying the community described in the application. According to DotMusic’s application, any tangential or implicit association with the *nexus* of the Community and the string is not regarded as a delineated membership since it would be considered unclear, dispersed or unbound. Such unclear, dispersed or unbound tangential relationships with the defined “music” Community and applied-for “music” string would not constitute a qualifying Community membership and would be ineligible for registration. Every type of music constituent critically contributes to the function and operation of the music sector within a regulated framework⁸⁷ given the symbiotic overlapping nature of the Community as defined and structured. Music would not function as it does today without the participation of all music constituent types which cumulatively match the string with the Community definition.

⁸⁷ ICANN has disclosed that the string .MUSIC is a sensitive string operating in a regulated sector. ICANN also accepted Government Advisory Committee (GAC) advice for safeguards to protect the Music Community and the public interest (See <https://icann.org/en/system/files/correspondence/crocker-to-dryden-3-29oct13-en.pdf> Pg.7)

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Nexus*.

Respectfully Submitted,

Signature:



Contact Information Red Aug 7 '15 ip: 72.9.31.159

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Title: CONSULTANT

Organization: TALENT COACH BY KALMAR COUNTY MUSIC FOUNDATION

Professor Wendy Tilton, Ph.D

Education

Kennedy Western University
Doctorate, Philosophy; Education, Ph.D
2004

U.S. Department of State Bureau of Educational and Cultural Affairs
Fulbright Scholar Program
Core Fulbright U.S. Scholar Program
2012 – 2013

Fielding Graduate University
EdD, Education, Leadership & Change
2005 – 2011

New York University
MS, Real Estate Investment & Development
1994 – 1995

University of Kentucky
Baccalaureate, Science
1993 – 1994

Mercer County Community College
Associate of Science, Humanities & Social Science
1990 – 1996

Re: Expert Testimony on (i) Community Establishment; (ii) Nexus; and (iii) Support for DotMusic’s Community-Based Application¹ for .MUSIC (Application ID 1-1115-14110)

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

Please accept this letter that indicates that there is substantive and compelling evidence that the DotMusic application convincingly meets the full criteria under Community Priority Evaluation on the following points: (i) the Music Community’s *Establishment* as defined by DotMusic; (2) the matching *Nexus* between the “music” Community and the “music” string (or top-level domain); and (3) that DotMusic possesses documented *Support* from organizations representing a majority of the global Music Community addressed and defined.

Please see my credentials attached hereto that identify my level of expertise and specialized knowledge with respect to the music community’s organization and delineation.

SUMMARY

DotMusic has established the following:

- 1) Its Community definition recognizes the cohesive, symbiotic and overlapping nature of the global Music Community. The definition includes those associated with commercial and non-commercial creation, performance, marketing and distribution of music;
- 2) “Music Community” members have the requisite awareness and recognition of the interdependency, overlapping and cohesive nature of each “organized community of similar nature that relates to music.” These organized and aligned communities are closely united and make “music” as we know it today. It is this self-awareness and interdependence that gives the “Music Community” its strength. With exponential growth of the Internet, mobile and the Domain Name System (DNS), the “Music Community’s” use and reliance on the Internet to create, market and disseminate music-related content, products, services and activities will continue to grow;
- 3) The “Music Community” functions in a regulated sector with global copyright protections – it is clear that the “community,” as defined, implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate a globally-recognized set of standards for

¹ <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1392>

the protection of the “Music Community” member rights with relation to their copyrighted music works around the world;

4) The “Music” Community -- as defined by DotMusic -- has at least one entity dedicated to the community supporting DotMusic’s application. Such documented *Support* includes several “international federation of national communities of a similar nature,” music coalitions and others that are strongly associated with “music,” which represent a majority of the Community with considerable millions of members worldwide.²

5) The *Nexus* of the “music” Community matches the “music” applied-for string because it represents the entire global Music Community – a community that pre-existed 2007 with a size in the considerable millions of constituents. The “Music Community” definition -- which incorporates the strict fundamental attributes of a closely united Community definition that is “organized” and “delineated” -- ensures that all of its constituent members have a requisite awareness of the community as defined, including both commercial and non-commercial stakeholders, to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination.

6) DotMusic has received support from the largest coalition of Music Community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support³ from institutions/organizations representing a majority of the Community as defined and recognized in the DotMusic application.

There is substantive evidence that DotMusic fulfills the *Nexus, Community Establishment and Support* criteria for the “Music” string. The inclusion and representation of every music constituent type is paramount to the articulated purpose of the string. DotMusic and its application’s global Music Community supporters substantiate that every type of music constituent contributes to the function and operation of the music sector within a regulated framework. The symbiotic nature of the Community as defined and structured means that “Music” would not function as it does today without the participation of all music constituent types that interconnect to match the “music” string with the “music” Community definition.

² <http://music.us/supporters>

³ <http://music.us/supporters>

ASSESSMENT OF COMMUNITY DEFINITION, ESTABLISHMENT AND NEXUS

A) *Music Community Definition, Establishment & Community Endorsement*⁴

DotMusic’s definition of the “Music Community” as a “strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music” (See Application, 20a) is factually accurate and representative of the “Music Community.” Community characteristics include:

i) An Organized, Cohesive, Interdependent Logically-Allied Community:

The “Music Community” definition covers the regulated, interdependent and cohesive nature of the music sector that exists today. “Music Community” members have the requisite awareness and recognition of the interdependent, overlapping and cohesive nature of each “organized community of similar nature that relates to music” that comprises the “Music Community.” Without such cohesiveness and interdependency, the defined “Music” Community matching the applied-for string (“Music”) would not be able to function in its regulated sector, a “Music” regulated sector that was publicly recognized by both ICANN and the Government Advisory Committee.⁵

As a result, the Music Community as defined is “closely united” (As per the definition of “cohesion” according to Merriam-Webster dictionary⁶) or “united or form a whole” (As per the definition of the word “cohesion” according to Oxford Dictionaries⁷).

The “Music Community” as defined (a “strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music”) establishes that:

- (1) There is an awareness and recognition among its members;
- (2) The organized and delineated logical alliance of communities exists; and
- (3) The Community is “closely united” and “interdependent” (i.e. Each “organized community of similar nature that relates to music” which is part of the “logical alliance of communities that relate to music” is not mutually exclusive).

In short, the applied-for string (“Music”) matches the name of the “Music” Community as defined by DotMusic’s application. DotMusic’s “Music Community” definition accurately represents the common definition of the “Music Community,” which is confirmed by Wikipedia.

⁴ See <http://music.us/establishment>

⁵ <https://www.icann.org/en/system/files/bm/briefing-materials-2-05feb14-en.pdf>, Pg.3

⁶ <http://www.merriam-webster.com/dictionary/cohesion>

⁷ http://www.oxforddictionaries.com/us/definition/american_english/cohesion

According to Wikipedia:⁸

Music community is defined as a logical alliance of interdependent communities that are related to music, which include commercial participants...and non-commercial participants...and consists of an “ensemble of practices and institutions that make possible and regulate the production, distribution and consumption of music”...UNESCO identifies the music community as a “community of identity” implying common identifiable characteristics and cohesive attributes such as sharing a music culture, norms and subscribing to common ideals related to music...The music community is not defined as much by demographic indicators such as race, gender, and income level, as it is by common values, cohesive norms and interconnected structures to build a community identity. It refers to music-related individuals and organisations in a shared environment with shared understandings and practices, modes of production and distribution. The shared organisation of collective musical activities, identity and community value is created as result of infrastructure and a shared set of common values...Many studies outline the historical, cultural, and spatial significance of the music community, including how its identity is formed through musical practices. The music community shares a cohesive and interconnected structure of artistic expression, with diverse subcultures and socio-economic interactions...subscribing to common ideals. Under such structured context music consumption becomes possible regardless whether the transaction is commercial and non-commercial.⁹

ii) *An Aware, Pre-Existing and Recognized Community of Considerable Millions Worldwide:*

DotMusic’s definition of the Community covers all Community members associated with the string, each with a requisite awareness of the Community that can be validated through their natural association with a particular music-related community that they clearly identify with. According to DotMusic, all Music Community members must identify their music-related community in order to demonstrate their requisite awareness of the defined Community as part of the .MUSIC registration and validation process.

⁸ Wikipedia is ranked 6th among the ten most popular websites (Alexa, Retrieved March 23, 2015 from <http://www.alexacom/siteinfo/wikipedia.org>) and constitutes the Internet's largest, most frequently updated and popular general reference work (See OECD, OECD Internet Economy Outlook 2012, OECD Publishing, http://www.oecd-ilibrary.org/science-and-technology/oecd-internet-economy-outlook-2012_9789264086463-en,Pg.172) that compares favorably to the accuracy of other encyclopedias (such as the Britannica) according to a 2012 study conducted in partnership with Oxford University (See <http://blog.wikimedia.org/2012/08/02/seven-years-after-nature-pilot-study-compares-wikipedia-favorably-to-other-encyclopedias-in-three-languages>).

⁹ Music Community. In *Wikipedia*. Retrieved March 23, 2015, from https://en.wikipedia.org/wiki/Music_community

According to DotMusic, the Music Community’s geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents (Application Answer to Question 20a).

According to DotMusic, “registrants will be verified using Community-organized, unified “criteria taken from holistic perspective with due regard of Community particularities” that “invoke a formal membership (Application Answer to Question 20a).” The defined Community represents all music-related entities with a clear and straightforward membership with the Community involved in the legal production, performance, promotion, and distribution of music worldwide. According to DotMusic, the Music Community members must have an active, non-tangential relationship with the applied-for string “music” and also have the requisite awareness of the music-related community that they are a part of by specifically identifying it as part of the registration and validation process (i.e. upon successful registration and validation, each community member will be given a unique community identification number that will automatically associate them with their identified community and the “music” string).

DotMusic’s Community definition matches the applied-for string because it allows both commercial and non-commercial stakeholders to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination/exclusion. Given the regulated sector of the community, it is clear that the “Music Community” as defined implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate cohesive and globally-recognized set of standards for the protection of the music community members’ rights with relation to their copyrighted music works around the world.¹⁰

The Berne Convention for the Protection of Literary and Artistic Works¹¹ provides that each of the 168 contracting parties¹² (representing an overwhelming majority of the world’s population) provides automatic protection for music works first published in other countries of the Berne union and for unpublished music works whose authors are citizens of or resident in such other countries.¹³ This means that if a Music Community member’s copyright rights are violated in any other signatory country’s jurisdiction, then the music community member will have the music copyright rights given by that country. Music Community members are clearly aware of the collective Community’s rights, which could not be made possible without these cohesive and globally-recognized set of standards. If such standards were not coherent or enforced then music would not be able to exist in its current form and the industry component of the Music Community sector would not exist. As such, the Community’s *Establishment* and definition is “cohesive” and hence cannot be construed since the Community is a logical alliance of music

¹⁰ http://www.rightsdirect.com/content/rd/en/toolbar/copyright_education/International_Copyright_Basics.html

¹¹ http://www.wipo.int/treaties/en/text.jsp?file_id=283698

¹² http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=15

¹³ <http://www.britannica.com/EBchecked/topic/62482/Berne-Convention>

communities that establish a clearly delineated and organized Community structure that is “closely united” and functions as a “whole”

Further evidence to substantiate the cohesive, symbiotic and overlapping nature of the Community, includes other globally-recognized standards and classification systems, which identify who the individual songwriters, publishers and rights holders are and which songs they are associated with so that Community members are appropriately compensated, regardless of whether the constituent is a commercial, non-commercial or amateur entity. The “music” string is commonly used in classification systems such as ISMN,¹⁴ ISRC,¹⁵ ISWC,¹⁶ ISNI.¹⁷ (Application Answer to Question 20a). For example, if a music entity would like to distribute their music, either commercially or for free, then an ISRC can be assigned to globally identify any specific music work. An ISRC, which facilitates efficient music discovery and community member payment, is constructed from 12 characters representing country, registrant, year of registration and designation (i.e. the serial number assigned by the registrant). With respect to domains, an equivalent system that relates to identifying a specific domain’s registrant and other relevant information pertaining to the domain is WHOIS. Domain registrants are required by ICANN “to provide accurate WHOIS contact data” or else their domain “registration may be suspended or even cancelled”.¹⁸

Without such Music Community “cohesion” and standardized systems functioning in its regulated sector, the Music Community would not be able to create, market and distribute their music. By the same token, fans would not be able to identify the music they are listening to with a specific music artist, regardless of whether the listening activity or behavior is commercial or non-commercial in nature. The socio-economic structure that characterizes “music” as commonly-known today would be non-existent without these organized and delineated elements that commonly define the Community.

¹⁴ The International Standard Music Number (ISMN) is a unique number for the identification of all notated music publications from all over the world. The ISMN is an ISO certified global standard number (ISO 10957:2009). See <http://www.ismn-international.org/whatis.html> and

http://www.iso.org/iso/home/store/catalogue_ics/catalogue_detail_ics.htm?csnumber=43173

¹⁵ The ISRC (International Standard Recording Code) is the international identification system for sound recordings and music video recordings. The ISRC is an ISO certified global standard number (ISO 3901:2001) and is managed by the IFPI. See <http://isrc.ifpi.org>, <https://www.usisrc.org/about/index.html> and http://www.iso.org/iso/catalogue_detail?csnumber=23401

¹⁶ The ISWC (International Standard Musical Work Code) is a unique, permanent and internationally recognized reference number for the identification of musical works. The ISWC has been approved by ISO (International Organization for Standardisation) as a global standard (ISO 15707:2001) and is managed by CISAC. See <http://www.iswc.org/en/faq.html> and http://www.iso.org/iso/catalogue_detail?csnumber=28780

¹⁷ The International Standard Name Identifier (ISNI) is the ISO certified global standard number (ISO 27729) for identifying the millions of contributors to creative works and those active in their distribution. ISNI holds public records of over 8 million identities and 490,000 organizations. See <http://www.isni.org/> and http://www.iso.org/iso/catalogue_detail?csnumber=44292

¹⁸ <https://whois.icann.org/en/about-whois> and <https://www.icann.org/resources/pages/faqs-f0-2012-02-25-en>

iii) International Federations and Organizations Dedicated to Community Functions:

According to ICANN’s Applicant Guidebook (“AGB”)¹⁹: *“With respect to “Delineation” and “Extension,” it should be noted that a community can consist of...a logical alliance of communities (for example, an international federation of national communities of a similar nature... viable as such, provided the requisite awareness and recognition of the community is at hand among the members.”* (AGB, 4-12). The community as defined in the DotMusic application has at least one entity mainly dedicated to the community which has supported DotMusic, which include several “international federation of national communities of a similar nature” relating to music, music coalitions and other relevant and non-negligible music organizations.

One of these entities include the only international federation of national communities relating to government culture agencies and arts councils, which has an integral association with music globally: the International Federation of Arts Councils and Culture Agencies (IFACCA).

IFACCA is the only international federation that represents government culture agencies and arts councils globally. These national communities are governmental institutions that play a pivotal role with respect to music.²⁰ IFACCA’s members cover the majority of music entities globally, regardless of whether they are commercial, non-commercial or amateurs. Government ministry of culture and council agencies related to music cover a majority of the overall community with respect to headcount and geographic reach. The “Size” covered reaches over a hundred million music entities i.e. “considerable size with millions of constituents” per Application Answer to Question 20a.

The string “music” falls under the jurisdiction of each country’s Ministry of Culture governmental agency or arts/music council (emphasis added). The degree of power and influence of government ministry of culture and council agencies with respect to music surpasses any organization type since these agencies (i) provide the majority of funding for music-related activities; (ii) regulate copyright law; and (iii) encompass all the music entities that fall under their country, regardless whether these entities are commercial, non-commercial or amateurs. IFACCA is globally recognized by its strategic partners, such as UNESCO, a United Nations agency representing 195 member states and the European Commission.²¹ The UNESCO strategic partnership²² is relevant, especially since UNESCO founded the International Music Council (the “IMC”) in 1949, which represents over 200 million music constituents from over 150 countries and over 1000 organizations globally.²³

¹⁹ <https://newgtlds.icann.org/en/applicants/agb/guidebook-full-11jan12-en.pdf>

²⁰ http://www.ifacca.org/membership/current_members/

²¹ http://www.ifacca.org/strategic_partners/

²² http://www.ifacca.org/strategic_partners/

²³ <http://www.imc-cim.org/about-imc-separator/who-we-are.html>

Government activities in the clearly delineated and organized “Music Community” include setting statutory royalty rates. For example, in the United States, mechanical royalties are based on a “statutory rate” set by the U.S. Congress. This rate is increased to follow changes in the economy, usually based on the Consumer Price Index. Currently, the mechanical statutory rate is \$0.091 for songs five minutes or less in length or \$.0175 per minute for songs that are over five minutes long.²⁴

Ministries of culture and arts councils (that comprise IFACCA’s membership) support musicians, musical performances, independent music artists, non-commercial musical expression and education in their respective countries. The 165 ministries of culture, arts councils and affiliates that comprise IFACCA’s membership support the “performing arts” and music specifically. Without the financial and logistical support of arts councils and the ministries of culture, the music community would be adversely affected, and in some countries, may not exist in any appreciable manner. For example, the Ministry of Culture 2011 budget for the small country state of Cyprus for culture funding was €34,876,522 with critical support of music activities.²⁵ Other small government Ministries of Culture, such as Albania,²⁶ or government Ministries of Culture and Arts Councils from countries with larger populations, such as India,²⁷ all provide critical support and substantial advocacy for music. Other examples include government institutions collaborating and advocating music through their funded country-based pavilion initiatives at Midem, the world’s largest music conference.²⁸

Government ministries and arts councils provide critical support for the Music Community, including commercial music organizations. By way of example, government ministries’ and arts councils’ substantial connection to and support of “music” is noted in the reports of funding and support for music. Some examples to showcase the degree of power of the IFACCA’s membership towards the string and global and national music are music investment and music funding (Annual reports by governments and councils):

- New Zealand Ministry of Culture has funded significant music projects. Some include the REAL New Zealand Music Tour (\$415,000), the New Zealand String Quartet (\$150,000) and New Zealand Music Commission: (\$1,378,000).²⁹
- The Australian Government/Council For The Arts invested \$51.2 million for the nation’s orchestras; \$21.6 million for opera; \$10.8 million for other music artists and

²⁴ U.S. Copyright Office, <http://www.copyright.gov/carp/m200a.html>

²⁵ 2011 Annual Report for Cyprus Ministry of Culture, Section 1.2 “Music”

(http://www.moec.gov.cy/en/annual_reports/annual_report_2011_en.pdf). Activities include Music Performances in Cyprus (1.2.1) and Abroad (1.2.2), Subsidization of Paphos Aphrodite Festival (1.2.3), Music Publications (1.2.4), Subsidization and Purchases of Digital Records (1.2.5), Promotion for Cypriot musical creativity abroad (1.2.6), Cyprus Symphony Orchestra Foundation (1.2.7), Music Information Centre (1.2.8), Developing Music Education (1.2.9), Organising of the 1st Musicological Symposium (1.2.10) and Musical Festivities for the European Volunteerism Year (1.2.11)

²⁶ http://www.culturalpolicies.net/down/albania_012011.pdf

²⁷ 2010-11 Annual Report from India Ministry of Culture, [http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011\(Eng\).pdf](http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011(Eng).pdf)

²⁸ <http://my.midem.com/en/contact-us/pavilion-representatives/>

²⁹ 2011 Annual Report from New Zealand Ministry of Culture:

[http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20\(D-0448383\).PDF](http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20(D-0448383).PDF)

organizations; \$13.1 million for multi-platform artists and organizations; and \$4 million in miscellaneous funding, including sector building and audience development initiatives and programs.³⁰

- Canada Council for the Arts is Canada’s national, arts funding agency investing \$28 million in its Canada Council Musical Instrument Bank (Page 16) and \$28,156,000 in Music Arts Programs (Page 66).³¹ The Government of Canada also renewed its annual investment of \$27.6 million over five years in the Canada Music Fund.³²
- The United Kingdom Department for Culture and Education (DfE) will fund music education at significant levels: £77 million, £65 million and £60 million will be available in the three years from April 2012.³³
- The United States National Endowment of the Arts has awarded more than \$4 billion to support the arts since its inception³⁴ and has a strong focus on music as outlined in its Strategic Plan³⁵ with Congress requested to provide \$154,465,000 for fiscal year 2014.³⁶
- The National Arts Council of South Africa invested 2,536,131 ZAR in Music and 9,995,000 ZAR in Orchestras and has focused strongly on the “Strengthening of live indigenous music and advocating the revival of the live music circuit in South Africa”³⁷
- The Singapore Arts Council will fund \$10.2 million in the arts under its 2013 Grants Framework, including the Ding Yi Music Company and Siong Leng Musical Association.³⁸
- In 2011, the support for artistic activities by the Arts Council of Finland was €32.4 million of which €4,921,850 was awarded to music.³⁹

Each of IFACCA’s members has a clear association with, and mandate to support the music arts in their countries. In most countries, their ministry of culture/arts council is the largest funder and marketing supporter of the music arts.

³⁰ 2011 Annual Report for the Australia Council for the Arts, http://www.australiacouncil.gov.au/data/assets/pdf_file/0016/142351/Australia-Council-Annual-Report-201112.pdf, Page 28

³¹ 2011 Annual Report for Canada Council for the Arts, http://www.canadacouncil.ca/NR/rdoonlyres/6F7549BB-F4E5-4B8B-95F4-1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf

³² <http://www.pch.gc.ca/eng/1294862453819/1294862453821>

³³ Department for Culture, The Importance of Music, A National Plan for Music Education, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/180973/DFE-00086-2011.pdf, Page 4, 2011

³⁴ 2011 Annual report for the National Endowment of the Arts, <http://www.nea.gov/about/11Annual/2011-NEA-Annual-Report.pdf>, Page 2

³⁵ NEA Strategic Plan 2012-2016, www.arts.gov/about/Budget/NEAStrategicPlan2012-2016.pdf

³⁶ http://www.ifacca.org/national_agency_news/2013/04/10/us-president-requests-154465000-neh-2014/

³⁷ 2010-2011 Annual Report for the National Arts Council South Africa, National Arts Council South Africa, <http://www.nac.org.za/media/publications/AR%2010-11%20NAC.PDF/download>, Page 11. Also Mmino, the South African – Norwegian Education Music Programme, solely funds music projects funding a total of 294 projects. Thirteen projects were allocated funding for a total of R1,680,600 of which R1,381,000 went towards music educational and R299,600 to exchange projects (Page 10)

³⁸ Singapore Arts Council, <http://www.nac.gov.sg/media-centre/news-releases/news-detail?id=c2db15e2-c319-40ec-939c-d58735d0a91c>

³⁹ <http://www.taiteenkeskustoimikunta.fi/documents/10162/31704/TY+tilastotiedote+1+12+.pdf>, Page 1 and Page

Another clear example of an “entity dedicated to the community” with members that cover hundreds of millions of music constituents with formal boundaries is A2IM, the American Association of Independent Music. A2IM has two types of members: U.S independent Label members and Associate members. A2IM membership for Labels and Associates is invoked formally through an application and if accepted would require annual membership dues.⁴⁰

The reach of A2IM Associate⁴¹ membership covers hundreds of millions of entities (i.e. the reach of A2IM’s total membership “geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents – See Application Answer to Question 20a).

Organized and strictly delineated communities related to music that are A2IM members include:

- **Apple iTunes**⁴² – iTunes accounts for 63% of global digital music market⁴³ - a majority – with a registered community of 800 million registered members⁴⁴ available in 119 countries who abide to strict terms of service and boundaries⁴⁵ and have downloaded over 25 billion songs⁴⁶ from iTunes’ catalog of over 43 million songs⁴⁷ covering a global music community, regardless of genre or whether the community entities are amateur, professional, commercial or non-commercial. To add music to iTunes, all music artists must have a formal membership with iTunes via an Apple ID registration, which includes a current credit card on file.⁴⁸
- **Pandora**⁴⁹ – Pandora is the world’s largest streaming music radio with a community of over 250 million registered members.⁵⁰
- **Spotify**⁵¹ – Spotify is the world’s largest music streaming community with over 50 million active registered members in 58 countries and over 30 million songs. The music community uploads 20,000 songs every day.⁵²
- **Vevo**⁵³ – Vevo is the world’s leading all-premium music video community and platform with over 8 billion monthly views globally.⁵⁴

⁴⁰ <http://a2im.org/about-joining/>

⁴¹ <http://a2im.org/groups/tag/associate+members/>

⁴² <http://a2im.org/groups/itunes>

⁴³ <http://appleinsider.com/articles/13/04/16/apples-itunes-rules-digital-music-market-with-63-share>

⁴⁴ <http://www.npr.org/blogs/therecord/2015/01/06/375173595/with-downloads-in-decline-can-itunes-adapt>

⁴⁵ <http://www.apple.com/legal/internet-services/itunes/ww/index.html>

⁴⁶ <http://www.apple.com/pr/library/2013/02/06iTunes-Store-Sets-New-Record-with-25-Billion-Songs-Sold.html>

⁴⁷ <https://www.apple.com/itunes/features/>

⁴⁸ <https://www.apple.com/itunes/working-itunes/sell-content/music-faq.html>

⁴⁹ <http://a2im.org/groups/pandora>

⁵⁰ <http://www.cnet.com/news/like-a-rolling-milestone-pandora-hits-250m-registered-users/> and <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MTkxNTM1fENoaWxkSUQ9LTF8VHlwZT0z&t=1>, Pg.9

⁵¹ <http://a2im.org/groups/spotify>

⁵² <https://press.spotify.com/us/information/>

⁵³ <http://a2im.org/groups/vevo/>

- **Youtube**⁵⁵ – Youtube is the world’s largest music video streaming community with millions of music creators -- amateur, professional, commercial or non-commercial -- and over 1 billion registered members covering all regions globally. 6 billion hours of video is watched every month on Youtube,⁵⁶ of which 38.4% is music-related.⁵⁷
- **ReverbNation**⁵⁸ – ReverbNation⁵⁹ is one of the world’s largest music community and a leading music distributor with over 3.87 million musicians, venues labels and industry professionals covering every country globally. The ReverbNation community grows by over 50,000 artists, bands, labels and industry professionals monthly.
- **BMG**⁶⁰ – BMG is focused on the management of music publishing and recording rights. BMG has an international presence and represents over 2.5 million music rights globally.⁶¹

A2IM also includes members that are associated with global government agencies which exclusively represent substantial music economies and music members, such as France (BureauExport⁶²), China (China Audio Video Association⁶³) and Germany (Initiative Musik).⁶⁴ A2IM also has Affiliate⁶⁵ associations within the global music community. These include Affiliates such as MusicFirst,⁶⁶ the Copyright Alliance,⁶⁷ the Worldwide Independent Network (WIN)⁶⁸ and Merlin.⁶⁹

A2IM also represents a recognized Music Coalition representing the interests of the Global Independent Music Community.⁷⁰ The A2IM Coalition includes Merlin, a global rights agency for the independent label sector, representing over 20,000 labels from 39 countries, Worldwide Independent Network (representing label creators in over 20 countries), Association of Independent Music (representing largest and most respected labels in the world), and IMPALA (Independent Music Companies Association on behalf of over 4,000 independent music companies and national associations across Europe, representing 99% of music actors in Europe which are micro, small and medium sized enterprises.

⁵⁴ <http://www.vevo.com/c/EN/US/about>

⁵⁵ <http://a2im.org/groups/youtube/>

⁵⁶ <https://www.youtube.com/yt/press/statistics.html>

⁵⁷ http://www.researchandmarkets.com/reports/2092499/internet_video_2011_2014_view_share_site_and

⁵⁸ <http://a2im.org/groups/reverb-nation/>

⁵⁹ <http://www.reverbnation.com/about>

⁶⁰ <http://a2im.org/groups/bmg-rights/>

⁶¹ <http://www.bmg.com/category/about-us/history/>

⁶² <http://a2im.org/groups/french-music-export-office>

⁶³ <http://a2im.org/groups/china-audio-video-association-cava>

⁶⁴ <http://a2im.org/groups/initiative-musik-gmbh>

⁶⁵ <http://a2im.org/groups/tag/associate+members/>

⁶⁶ <http://musicfirstcoalition.org/coalition>, The musicFIRST Coalition, with founding members A2IM, RIAA, and Recording Academy represents musicians, artists, managers, music businesses, and performance right advocates.

⁶⁷ <http://www.copyrightalliance.org/members>

⁶⁸ <http://www.winformusic.org>

⁶⁹ <http://www.merlinnetwork.org>

⁷⁰ <https://www.icann.org/en/system/files/correspondence/bengloff-to-chehade-et-al-20aug14-en.pdf> and <https://www.icann.org/en/system/files/correspondence/bengloff-to-crocker-et-al-07mar15-en.pdf>

Cumulatively, A2IM's Label and Associate Membership, A2IM's Affiliates and the A2IM's Global Independent Music Community Coalition, covers a majority of the global music community. Its cumulative membership is in the hundreds of millions of entities with formal boundaries belonging to strictly organized and delineated communities related to music as per the Community Definition and Size (See Application answer to Question 20a).

Another global Music Community Coalition led by the RIAA "on behalf of over 15 national and international trade associations" also expressed its support for .MUSIC to be under a "community" application model, including encouraging statements in support of DotMusic's policies that stated that the coalition "was encouraged to see" that DotMusic "included several measures to deter and address copyright infringement within that TLD." The "coalition members represent the people that write, sing, record, manufacture, distribute and/or license over 80% of the world's music"⁷¹ – a majority of global music.⁷²

Another letter⁷³ sent to ICANN (on April 14th, 2015) by Danielle Aguirre from the NMPA and on behalf of a music publisher and songwriter community coalition representing a majority of the global music publishing community, also expressed "support [for] the .MUSIC community applications because respecting and protecting music rights serves the global music community and the public interest."

Collectively, the DotMusic application received support from the largest coalition of music community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support⁷⁴ from institutions/organizations representing a majority of the Community addressed. Music -- as commonly-known by the general public and experienced today -- would not be possible without these supporting, non-negligible and relevant organizations that have endorsed DotMusic.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Community Establishment* and *Community Endorsement* from the majority of the global Music Community as defined.

⁷¹ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.1

⁷² <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.3, Appendix A

⁷³ <https://www.icann.org/en/system/files/correspondence/aguirre-to-icann-board-eiu-14apr15-en.pdf>

⁷⁴ <http://music.us/supporters>

B) Nexus⁷⁵

According to the Applicant Guidebook (“AGB”), to receive the maximum score for Nexus, the applied-for string -- “music” -- must match the name of the community or be a well-known short-form or abbreviation of the community name.

The *Nexus* of the “Music Community” entirely matches the applied-for “music” string because it represents the entire global Music Community as commonly-known and perceived by the general public. This definition allows for all constituents with a requisite awareness of the Community defined to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination. The definition of the Community requires that members have an active, non-tangential relationship with the applied-for string and the requisite awareness of the music community they identify with as part of the registration process. It is clear that the general public will directly associate and equate the string with the Community as defined by DotMusic. There is no possibility of overreaching beyond the definition or allowing unrelated non-music entities to be included as part of the Community.

Community members may register a .MUSIC by either:

- 1) Identifying that they belong to a Music Community Member Organization (“MCMO”); or
- 2) Identifying the community they belong to, which is consistent with the definition of the Community: “the strictly delineated and organized logical alliance of communities of similar nature related to music.”

All Community members are aware of and recognize their inclusion in the defined Community by identifying which clearly defined community they belong to and have an active participation in. The *nexus* of the applied-for string ensures inclusion of the entire global community that the string represents while excluding unrelated-entities not associated with the string. This way there is a clear match and alignment between the “music” sting and the Community defined.

While the exact size of the global Music Community as defined is unknown (there is no empirical evidence providing an exact, finite number because amateur entities are also included in the Community’s definition), it is in the considerable millions as explicitly stated in the DotMusic Application. DotMusic’s definition of the Community and mutually-inclusive Registration Policies ensure that eligible members are only music-related and associated with the string. This is because the string identifies all constituents involved in music. Music-only participation optimizes the relevancy of .MUSIC domains to the string and entirely matches the *nexus* between the string and Community defined. According to DotMusic, the Community *definition, eligibility* criteria and *content and use* requirements ensure that peripheral industries

⁷⁵ See <http://music.us/nexus>

and entities not related to music are excluded so that the string and the defined Community matches and aligns in a consistent manner consistent with DotMusic's community-based purpose i.e. only entities with music-related activities are able to register .MUSIC domains.

Membership aligns with the *nexus* of the Community and the string, which is explicitly relevant to music. The string as defined in the application demonstrates uniqueness because it has no other significant meaning beyond identifying the community described in the application. According to DotMusic's application, any tangential or implicit association with the *nexus* of the Community and the string is not regarded as a delineated membership since it would be considered unclear, dispersed or unbound. Such unclear, dispersed or unbound tangential relationships with the defined "music" Community and applied-for "music" string would not constitute a qualifying Community membership and would be ineligible for registration.

The inclusion of every music constituent type is paramount to the purpose of the string. Every type of music constituent critically contributes to the function and operation of the music sector within a regulated framework given the symbiotic overlapping nature of the Community as defined and structured. Music would not function as it does today without the participation of all music constituent types which cumulatively match the string with the Community definition.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Nexus*.

Respectfully Submitted,



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About Professor Dr. Wilfred Dolfsma

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Biography

Trained as both an economist and philosopher, Wilfred Dolfsma (1970) holds a PhD in the former from [Erasmus University](#). He is professor of innovation at the [University of Groningen School of Economics and Business](#), and is corresponding editor for the [Review of Social Economy](#). Dolfsma's main research focus is the different aspects of cooperation in processes of innovation.

During previous affiliations he has been imbued with Economics of Innovation ([Delft University of Technology](#)), Innovation Management ([RSM Erasmus University](#)), Economic Geography ([Rheinischen Friedrich-Wilhelms-Universität Bonn](#)), Philosophy of Science and Technology ([Twente University of Technology](#)), Economics of Organisation ([Utrecht School of Economics](#)), and innovation and development at [UNU MERIT](#).

He has authored Institutional Economics and the Formation of Preferences (2004), Knowledge Economies (2008), and Institutions, Communication and Values (forthcoming). The former monograph won him [EAEPE's Gunnar Myrdal Prize](#) in 2006. He co-edited Understanding the Dynamics of the Knowledge Economy (with [Luc Soete](#), 2006), Globalization, Social Capital and Inequality (with [Charlie Dannreuther](#), 2003), Ethics and the Market (with [Deb Figart](#) and [Jane Clary](#), 2006) and Media & Economic: Markten in Beweging en een Overheid die stuurt zonder Kompas. Preadviezen van de Koninklijke Vereniging voor de Staatshuishoudkunde (with [Richard Nahuis](#), 2005). Articles have featured in, a.o., the Journal of Economic Issues, American Journal of Economics and Sociology, Journal of Evolutionary Economics, Journal of Economic and Social Geography, Journal of Business Ethics, The Information Society, International Journal of Innovation Management, and Research Policy.

Teaching in following courses:

- Organisation and Environment
- Cooperation for Innovation (SIM MScBA)
- Capturing Value from Innovation (SIM MScBA)
- Inter-firm Collaboration for Innovation (Research Master, Innovation & Organization profile)
- Strategy and Organisation Practice (Accountancy master, Univ of Curacao)
- Master theses

Job title

Professor of Innovation; director SOM research programme Innovation and Organization

Other positions

Editor-in-Chief, Review of Social Economy

Associate Editor, Innovation: Management, Policy, Practice

Additional activities: member of the executive board, Association for Social Economics.

Field/Discipline

Innovation & Technology Management

Business

Management

Strategic Management

Expertise:

Innovation

Cooperation

Appropriability issues

Profile

Wilfred Dolfsma is based at the School of Economics and Business of the University of Groningen, The Netherlands, in addition to UNU-MERIT. He is also Visiting Scholar at the University of Aberdeen Business School. His main interests are the issues of innovation and industry dynamics, and mainly at micro and meso levels. How is existing knowledge exchanged within and between firms, how does new knowledge emerge, and how does this contribute to innovation?

He is also interested in: Consumption, consumption theory; Law & Economics (IPR); Evolutionary, Institutional & Social Economics; Economic History & Methodology; Media / Entertainment Industries.

He is corresponding editor ('editor-in-chief') of the Review of Social Economy, and recently received the Myrdal prize for best monograph, awarded by EAEPE (2006).

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<http://www.rug.nl/staff/w.a.dolfsma/cv>

Re: Expert Testimony on (i) Community Establishment; (ii) Nexus; and (iii) Support for DotMusic’s Community-Based Application¹ for .MUSIC (Application ID 1-1115-14110)

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

Please accept this letter that indicates that there is substantive and compelling evidence that the DotMusic application convincingly meets the full criteria under Community Priority Evaluation on the following points: (i) the Music Community’s *Establishment* as defined by DotMusic; (2) the matching *Nexus* between the “music” Community and the “music” string (or top-level domain); and (3) that DotMusic possesses documented *Support* from organizations representing a majority of the global Music Community addressed and defined.

Please see my credentials attached hereto that identify my level of expertise and specialized knowledge with respect to the music community’s organization and delineation.

SUMMARY

DotMusic has established the following:

- 1) Its Community definition recognizes the cohesive, symbiotic and overlapping nature of the global Music Community. The definition includes those associated with commercial and non-commercial creation, performance, marketing and distribution of music;
- 2) “Music Community” members have the requisite awareness and recognition of the interdependency, overlapping and cohesive nature of each “organized community of similar nature that relates to music.” These organized and aligned communities are closely united and make “music” as we know it today. It is this self-awareness and interdependence that gives the “Music Community” its strength. With exponential growth of the Internet, mobile and the Domain Name System (DNS), the “Music Community’s” use and reliance on the Internet to create, market and disseminate music-related content, products, services and activities will continue to grow;
- 3) The “Music Community” functions in a regulated sector with global copyright protections – it is clear that the “community,” as defined, implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate a globally-recognized set of standards for

¹ <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1392>

the protection of the “Music Community” member rights with relation to their copyrighted music works around the world;

4) The “Music” Community -- as defined by DotMusic -- has at least one entity mainly dedicated to the community supporting DotMusic’s application. Such documented *Support* includes several “international federation of national communities of a similar nature,” music coalitions and others that are strongly associated with “music,” which represent a majority of the Community with considerable millions of members worldwide.²

5) The *Nexus* of the “music” Community matches the “music” applied-for string because it represents the entire global Music Community – a community that pre-existed 2007 with a size in the considerable millions of constituents. The “Music Community” definition -- which incorporates the strict fundamental attributes of a closely united Community definition that is “organized” and “delineated” -- ensures that all of its constituent members have a requisite awareness of the community as defined, including both commercial and non-commercial stakeholders, to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination.

6) DotMusic has received support from the largest coalition of Music Community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support³ from institutions/organizations representing a majority of the Community as defined and recognized in the DotMusic application.

There is substantive evidence that DotMusic fulfills the *Nexus, Community Establishment and Support* criteria for the “Music” string. The inclusion and representation of every music constituent type is paramount to the articulated purpose of the string. DotMusic and its application’s global Music Community supporters substantiate that every type of music constituent contributes to the function and operation of the music sector within a regulated framework. The symbiotic nature of the Community as defined and structured means that “Music” would not function as it does today without the participation of all music constituent types that interconnect to match the “music” string with the “music” Community definition.

² <http://music.us/supporters>

³ <http://music.us/supporters>

ASSESSMENT OF COMMUNITY DEFINITION, ESTABLISHMENT AND NEXUS

A) *Music Community Definition, Establishment & Community Endorsement*⁴

DotMusic’s definition of the “Music Community” as a “strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music” (See Application, 20a) is factually accurate and representative of the “Music Community.” Community characteristics include:

i) An Organized, Cohesive, Interdependent Logically-Allied Community:

The “Music Community” definition covers the regulated, interdependent and cohesive nature of the music sector that exists today. “Music Community” members have the requisite awareness and recognition of the interdependent, overlapping and cohesive nature of each “organized community of similar nature that relates to music” that comprises the “Music Community.” Without such cohesiveness and interdependency, the defined “Music” Community matching the applied-for string (“Music”) would not be able to function in its regulated sector, a “Music” regulated sector that was publicly recognized by both ICANN and the Government Advisory Committee.⁵

As a result, the Music Community as defined is “closely united” (As per the definition of “cohesion” according to Merriam-Webster dictionary⁶) or “united or form a whole” (As per the definition of the word “cohesion” according to Oxford Dictionaries⁷).

The “Music Community” as defined (a “strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music”) establishes that:

- (1) There is an awareness and recognition among its members;
- (2) The organized and delineated logical alliance of communities exists; and
- (3) The Community is “closely united” and “interdependent” (i.e. Each “organized community of similar nature that relates to music” which is part of the “logical alliance of communities that relate to music” is not mutually exclusive).

In short, the applied-for string (“Music”) matches the name of the “Music” Community as defined by DotMusic’s application. DotMusic’s “Music Community” definition accurately represents the common definition of the “Music Community,” which is confirmed by Wikipedia.

⁴ See <http://music.us/establishment>

⁵ <https://www.icann.org/en/system/files/bm/briefing-materials-2-05feb14-en.pdf>, Pg.3

⁶ <http://www.merriam-webster.com/dictionary/cohesion>

⁷ http://www.oxforddictionaries.com/us/definition/american_english/cohesion

According to Wikipedia:⁸

Music community is defined as a logical alliance of interdependent communities that are related to music, which include commercial participants...and non-commercial participants...and consists of an “ensemble of practices and institutions that make possible and regulate the production, distribution and consumption of music”...UNESCO identifies the music community as a “community of identity” implying common identifiable characteristics and cohesive attributes such as sharing a music culture, norms and subscribing to common ideals related to music...The music community is not defined as much by demographic indicators such as race, gender, and income level, as it is by common values, cohesive norms and interconnected structures to build a community identity. It refers to music-related individuals and organisations in a shared environment with shared understandings and practices, modes of production and distribution. The shared organisation of collective musical activities, identity and community value is created as result of infrastructure and a shared set of common values...Many studies outline the historical, cultural, and spatial significance of the music community, including how its identity is formed through musical practices. The music community shares a cohesive and interconnected structure of artistic expression, with diverse subcultures and socio-economic interactions...subscribing to common ideals. Under such structured context music consumption becomes possible regardless whether the transaction is commercial and non-commercial.⁹

ii) *An Aware, Pre-Existing and Recognized Community of Considerable Millions Worldwide:*

DotMusic’s definition of the Community covers all Community members associated with the string, each with a requisite awareness of the Community that can be validated through their natural association with a particular music-related community that they clearly identify with. According to DotMusic, all Music Community members must identify their music-related community in order to demonstrate their requisite awareness of the defined Community as part of the .MUSIC registration and validation process.

⁸ Wikipedia is ranked 6th among the ten most popular websites (Alexa, Retrieved March 23, 2015 from <http://www.alexacom/siteinfo/wikipedia.org>) and constitutes the Internet's largest, most frequently updated and popular general reference work (See OECD, OECD Internet Economy Outlook 2012, OECD Publishing, http://www.oecd-ilibrary.org/science-and-technology/oecd-internet-economy-outlook-2012_9789264086463-en, Pg.172) that compares favorably to the accuracy of other encyclopedias (such as the Britannica) according to a 2012 study conducted in partnership with Oxford University (See <http://blog.wikimedia.org/2012/08/02/seven-years-after-nature-pilot-study-compares-wikipedia-favorably-to-other-encyclopedias-in-three-languages>).

⁹ Music Community. In *Wikipedia*. Retrieved July 6, 2015, from https://en.wikipedia.org/wiki/Music_community

According to DotMusic, the Music Community’s geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents (Application Answer to Question 20a).

According to DotMusic, “registrants will be verified using Community-organized, unified “criteria taken from holistic perspective with due regard of Community particularities” that “invoke a formal membership (Application Answer to Question 20a).” The defined Community represents all music-related entities with a clear and straightforward membership with the Community involved in the legal production, performance, promotion, and distribution of music worldwide. According to DotMusic, the Music Community members must have an active, non-tangential relationship with the applied-for string “music” and also have the requisite awareness of the music-related community that they are a part of by specifically identifying it as part of the registration and validation process (i.e. upon successful registration and validation, each community member will be given a unique community identification number that will automatically associate them with their identified community and the “music” string).

DotMusic’s Community definition matches the applied-for string because it allows both commercial and non-commercial stakeholders to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination/exclusion. Given the regulated sector of the community, it is clear that the “Music Community” as defined implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate cohesive and globally-recognized set of standards for the protection of the music community members’ rights with relation to their copyrighted music works around the world.¹⁰

The Berne Convention for the Protection of Literary and Artistic Works¹¹ provides that each of the 168 contracting parties¹² (representing an overwhelming majority of the world’s population) provides automatic protection for music works first published in other countries of the Berne union and for unpublished music works whose authors are citizens of or resident in such other countries.¹³ This means that if a Music Community member’s copyright rights are violated in any other signatory country’s jurisdiction, then the music community member will have the music copyright rights given by that country. Music Community members are clearly aware of the collective Community’s rights, which could not be made possible without these cohesive and globally-recognized set of standards. If such standards were not coherent or enforced then music would not be able to exist in its current form and the industry component of the Music Community sector would not exist. As such, the Community’s *Establishment* and definition is “cohesive” and hence cannot be construed since the Community is a logical alliance of music

¹⁰ http://www.rightsdirect.com/content/rd/en/toolbar/copyright_education/International_Copyright_Basics.html

¹¹ http://www.wipo.int/treaties/en/text.jsp?file_id=283698

¹² http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=15

¹³ <http://www.britannica.com/EBchecked/topic/62482/Berne-Convention>

communities that establish a clearly delineated and organized Community structure that is “closely united” and functions as a “whole”

Further evidence to substantiate the cohesive, symbiotic and overlapping nature of the Community, includes other globally-recognized standards and classification systems, which identify who the individual songwriters, publishers and rights holders are and which songs they are associated with so that Community members are appropriately compensated, regardless of whether the constituent is a commercial, non-commercial or amateur entity. The “music” string is commonly used in classification systems such as ISMN,¹⁴ ISRC,¹⁵ ISWC,¹⁶ ISNI.¹⁷ (Application Answer to Question 20a). For example, if a music entity would like to distribute their music, either commercially or for free, then an ISRC can be assigned to globally identify any specific music work. An ISRC, which facilitates efficient music discovery and community member payment, is constructed from 12 characters representing country, registrant, year of registration and designation (i.e. the serial number assigned by the registrant). With respect to domains, an equivalent system that relates to identifying a specific domain’s registrant and other relevant information pertaining to the domain is WHOIS. Domain registrants are required by ICANN “to provide accurate WHOIS contact data” or else their domain “registration may be suspended or even cancelled”.¹⁸

Without such Music Community “cohesion” and standardized systems functioning in its regulated sector, the Music Community would not be able to create, market and distribute their music. By the same token, fans would not be able to identify the music they are listening to with a specific music artist, regardless of whether the listening activity or behavior is commercial or non-commercial in nature. The socio-economic structure that characterizes “music” as commonly-known today would be non-existent without these organized and delineated elements that commonly define the Community.

¹⁴ The International Standard Music Number (ISMN) is a unique number for the identification of all notated music publications from all over the world. The ISMN is an ISO certified global standard number (ISO 10957:2009). See <http://www.ismn-international.org/whatis.html> and

http://www.iso.org/iso/home/store/catalogue_ics/catalogue_detail_ics.htm?csnumber=43173

¹⁵ The ISRC (International Standard Recording Code) is the international identification system for sound recordings and music video recordings. The ISRC is an ISO certified global standard number (ISO 3901:2001) and is managed by the IFPI. See <http://isrc.ifpi.org>, <https://www.usisrc.org/about/index.html> and http://www.iso.org/iso/catalogue_detail?csnumber=23401

¹⁶ The ISWC (International Standard Musical Work Code) is a unique, permanent and internationally recognized reference number for the identification of musical works. The ISWC has been approved by ISO (International Organization for Standardisation) as a global standard (ISO 15707:2001) and is managed by CISAC. See <http://www.iswc.org/en/faq.html> and http://www.iso.org/iso/catalogue_detail?csnumber=28780

¹⁷ The International Standard Name Identifier (ISNI) is the ISO certified global standard number (ISO 27729) for identifying the millions of contributors to creative works and those active in their distribution. ISNI holds public records of over 8 million identities and 490,000 organizations. See <http://www.isni.org/> and http://www.iso.org/iso/catalogue_detail?csnumber=44292

¹⁸ <https://whois.icann.org/en/about-whois> and <https://www.icann.org/resources/pages/faqs-f0-2012-02-25-en>

iii) *International Federations and Organizations mainly Dedicated to the Community:*

According to ICANN's Applicant Guidebook ("AGB")¹⁹: *"With respect to "Delineation" and "Extension," it should be noted that a community can consist of...a logical alliance of communities (for example, an international federation of national communities of a similar nature... viable as such, provided the requisite awareness and recognition of the community is at hand among the members."* (AGB, 4-12). The community as defined in the DotMusic application has at least one entity mainly²⁰ dedicated to the community which has supported DotMusic, which include several "international federation of national communities of a similar nature" relating to music, music coalitions and other relevant and non-negligible music organizations.

One of these entities include the only international federation of national communities relating to government culture agencies and arts councils, which has an integral association with music globally: the International Federation of Arts Councils and Culture Agencies (IFACCA).

IFACCA is the only international federation that represents government culture agencies and arts councils globally. These national communities are governmental institutions that play a pivotal role with respect to music.²¹ IFACCA's members cover the majority of music entities globally, regardless of whether they are commercial, non-commercial or amateurs. Government ministry of culture and council agencies related to music cover a majority of the overall community with respect to headcount and geographic reach. The "Size" covered reaches over a hundred million music entities i.e. "considerable size with millions of constituents" per Application Answer to Question 20a.

The string "music" falls under the jurisdiction of each country's Ministry of Culture governmental agency or arts/music council (emphasis added). The degree of power and

¹⁹ <https://newgtlds.icann.org/en/applicants/agb/guidebook-full-11jan12-en.pdf>

²⁰ Per the Oxford and Merriam Webster dictionaries, the word "mainly" is defined as "*more than anything else*" (See <http://www.oxforddictionaries.com/definition/english/mainly> and <http://www.merriam-webster.com/dictionary/mainly> respectively). According to DotMusic, the string .MUSIC relates to the Community "by representing all constituents involved in music creation, production and distribution" (Application Answer to Question 20d). Supporting organizations related to that string that are "mainly" dedicated to the Community and its activities, include the International Federation of Arts Councils and Culture Agencies (IFACCA) representing government culture ministries and arts councils, the International Federation of Musicians (FIM) representing musicians globally, the International Federation of Phonographic Industry (IFPI) representing the recording industry worldwide, the International Confederation of Music Publishers (ICPM) representing the voice of global music publishing, the International Association of Music Information Centres (IAMIC), the American Association of Independent Music (A2IM), whose associate members represent a majority of music consumed, the Independent Music Worldwide Independent Network (WIN) representing independent music worldwide, the International Society for Music Education (ISME) the premiere international organization representing music education, and many others (See support at <http://music.us/supporters> and <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/downloadattachment/142588?t:ac=1392>).

²¹ http://www.ifacca.org/membership/current_members/

influence of government ministry of culture and council agencies with respect to music surpasses any organization type since these agencies (i) provide the majority of funding for music-related activities; (ii) regulate copyright law; and (iii) encompass all the music entities that fall under their country, regardless whether these entities are commercial, non-commercial or amateurs. IFACCA is globally recognized by its strategic partners, such as UNESCO, a United Nations agency representing 195 member states and the European Commission.²² The UNESCO strategic partnership²³ is relevant, especially since UNESCO founded the International Music Council (the “IMC”) in 1949, which represents over 200 million music constituents from over 150 countries and over 1000 organizations globally.²⁴

Government activities in the clearly delineated and organized “Music Community” include setting statutory royalty rates. For example, in the United States, mechanical royalties are based on a “statutory rate” set by the U.S. Congress. This rate is increased to follow changes in the economy, usually based on the Consumer Price Index. Currently, the mechanical statutory rate is \$0.091 for songs five minutes or less in length or \$.0175 per minute for songs that are over five minutes long.²⁵

Ministries of culture and arts councils (that comprise IFACCA’s membership) support musicians, musical performances, independent music artists, non-commercial musical expression and education in their respective countries. The 165 ministries of culture, arts councils and affiliates that comprise IFACCA’s membership support the “performing arts” and music specifically. Without the financial and logistical support of arts councils and the ministries of culture, the music community would be adversely affected, and in some countries, may not exist in any appreciable manner. For example, the Ministry of Culture 2011 budget for the small country state of Cyprus for culture funding was €34,876,522 with critical support of music activities.²⁶ Other small government Ministries of Culture, such as Albania,²⁷ or government Ministries of Culture and Arts Councils from countries with larger populations, such as India,²⁸ all provide critical support and substantial advocacy for music. Other examples include government institutions collaborating and advocating music through their funded country-based pavilion initiatives at Midem, the world’s largest music conference.²⁹

²² http://www.ifacca.org/strategic_partners/

²³ http://www.ifacca.org/strategic_partners/

²⁴ <http://www.imc-cim.org/about-imc-separator/who-we-are.html>

²⁵ U.S Copyright Office, <http://www.copyright.gov/carp/m200a.html>

²⁶ 2011 Annual Report for Cyprus Ministry of Culture, Section 1.2 “Music”

(http://www.moec.gov.cy/en/annual_reports/annual_report_2011_en.pdf). Activities include Music Performances in Cyprus (1.2.1) and Abroad (1.2.2), Subsidization of Paphos Aphrodite Festival (1.2.3), Music Publications (1.2.4), Subsidization and Purchases of Digital Records (1.2.5), Promotion for Cypriot musical creativity abroad (1.2.6), Cyprus Symphony Orchestra Foundation (1.2.7), Music Information Centre (1.2.8), Developing Music Education (1.2.9), Organising of the 1st Musicological Symposium (1.2.10) and Musical Festivities for the European Volunteerism Year (1.2.11)

²⁷ http://www.culturalpolicies.net/down/albania_012011.pdf

²⁸ 2010-11 Annual Report from India Ministry of Culture, [http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011\(Eng\).pdf](http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011(Eng).pdf)

²⁹ <http://my.midem.com/en/contact-us/pavilion-representatives/>

Government ministries and arts councils provide critical support for the Music Community, including commercial music organizations. By way of example, government ministries' and arts councils' substantial connection to and support of "music" is noted in the reports of funding and support for music. Some examples to showcase the degree of power of the IFACCA's membership towards the string and global and national music are music investment and music funding (Annual reports by governments and councils):

- New Zealand Ministry of Culture has funded significant music projects. Some include the REAL New Zealand Music Tour (\$415,000), the New Zealand String Quartet (\$150,000) and New Zealand Music Commission: (\$1,378,000).³⁰
- The Australian Government/Council For The Arts invested \$51.2 million for the nation's orchestras; \$21.6 million for opera; \$10.8 million for other music artists and organizations; \$13.1 million for multi-platform artists and organizations; and \$4 million in miscellaneous funding, including sector building and audience development initiatives and programs.³¹
- Canada Council for the Arts is Canada's national, arts funding agency investing \$28 million in its Canada Council Musical Instrument Bank (Page 16) and \$28,156,000 in Music Arts Programs (Page 66).³² The Government of Canada also renewed its annual investment of \$27.6 million over five years in the Canada Music Fund.³³
- The United Kingdom Department for Culture and Education (DfE) will fund music education at significant levels: £77 million, £65 million and £60 million will be available in the three years from April 2012.³⁴
- The United States National Endowment of the Arts has awarded more than \$4 billion to support the arts since its inception³⁵ and has a strong focus on music as outlined in its Strategic Plan³⁶ with Congress requested to provide \$154,465,000 for fiscal year 2014.³⁷
- The National Arts Council of South Africa invested 2,536,131 ZAR in Music and 9,995,000 ZAR in Orchestras and has focused strongly on the "Strengthening of live indigenous music and advocating the revival of the live music circuit in South Africa"³⁸

³⁰ 2011 Annual Report from New Zealand Ministry of Culture:

[http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20\(D-0448383\).PDF](http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20(D-0448383).PDF)

³¹ 2011 Annual Report for the Australia Council for the Arts,

http://www.australiacouncil.gov.au/data/assets/pdf_file/0016/142351/Australia-Council-Annual-Report-201112.pdf, Page 28

³² 2011 Annual Report for Canada Council for the Arts, [http://www.canadacouncil.ca/NR/rdoonlyres/6F7549BB-F4E5-4B8B-95F4-](http://www.canadacouncil.ca/NR/rdoonlyres/6F7549BB-F4E5-4B8B-95F4-1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf)

[1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf](http://www.pch.gc.ca/eng/1294862453819/1294862453821)

³³ <http://www.pch.gc.ca/eng/1294862453819/1294862453821>

³⁴ Department for Culture, The Importance of Music, A National Plan for Music Education,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/180973/DFE-00086-2011.pdf, Page 4, 2011

³⁵ 2011 Annual report for the National Endowment of the Arts, <http://www.nea.gov/about/11Annual/2011-NEA-Annual-Report.pdf>, Page 2

³⁶ NEA Strategic Plan 2012-2016, www.arts.gov/about/Budget/NEAStrategicPlan2012-2016.pdf

³⁷ http://www.ifacca.org/national_agency_news/2013/04/10/us-president-requests-154465000-neh-2014/

³⁸ 2010-2011 Annual Report for the National Arts Council South Africa, National Arts Council South Africa, <http://www.nac.org.za/media/publications/AR%2010-11%20NAC.PDF/download>, Page 11. Also Mmino, the South African – Norwegian Education Music Programme, solely funds music projects funding a total of 294 projects. Thirteen projects were allocated funding for a total of R1,680,600 of which R1,381,000 went towards music educational and R299,600 to exchange projects (Page 10)

- The Singapore Arts Council will fund \$10.2 million in the arts under its 2013 Grants Framework, including the Ding Yi Music Company and Siong Leng Musical Association.³⁹
- In 2011, the support for artistic activities by the Arts Council of Finland was €32.4 million of which €4,921,850 was awarded to music.⁴⁰

Each of IFACCA’s members has a clear association with, and mandate to support the music arts in their countries. In most countries, their ministry of culture/arts council is the largest funder and marketing supporter of the music arts.

Another clear example of an “entity *mainly* dedicated to the community” with members that cover hundreds of millions of music constituents with formal boundaries is A2IM, the American Association of Independent Music. A2IM has two types of members: U.S independent Label members and Associate members. A2IM membership for Labels and Associates is invoked formally through an application and if accepted would require annual membership dues.⁴¹

The reach of A2IM Associate⁴² membership covers hundreds of millions of entities (i.e. the reach of A2IM’s total membership “geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents – See Application Answer to Question 20a).

Organized and strictly delineated communities related to music that are A2IM members include:

- **Apple iTunes**⁴³ – iTunes accounts for 63% of global digital music market⁴⁴ - a majority – with a registered community of 800 million registered members⁴⁵ available in 119 countries who abide to strict terms of service and boundaries⁴⁶ and have downloaded over 25 billion songs⁴⁷ from iTunes’ catalog of over 43 million songs⁴⁸ covering a global music community, regardless of genre or whether the community entities are amateur, professional, commercial or non-commercial. To add music to iTunes, all music artists must have a formal membership with iTunes via an Apple ID registration, which includes a current credit card on file.⁴⁹

³⁹ Singapore Arts Council, <http://www.nac.gov.sg/media-centre/news-releases/news-detail?id=c2db15e2-c319-40ec-939c-d58735d0a91c>

⁴⁰ <http://www.taiteenkeskustoimikunta.fi/documents/10162/31704/TY+tilastotiedote+1+12+.pdf>, Page 1 and Page

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⁴¹ <http://a2im.org/about-joining/>

⁴² <http://a2im.org/groups/tag/associate+members/>

⁴³ <http://a2im.org/groups/itunes>

⁴⁴ <http://appleinsider.com/articles/13/04/16/apples-itunes-rules-digital-music-market-with-63-share>

⁴⁵ <http://www.npr.org/blogs/therecord/2015/01/06/375173595/with-downloads-in-decline-can-itunes-adapt>

⁴⁶ <http://www.apple.com/legal/internet-services/itunes/ww/index.html>

⁴⁷ <http://www.apple.com/pr/library/2013/02/06iTunes-Store-Sets-New-Record-with-25-Billion-Songs-Sold.html>

⁴⁸ <https://www.apple.com/itunes/features/>

⁴⁹ <https://www.apple.com/itunes/working-itunes/sell-content/music-faq.html>

- **Pandora**⁵⁰ – Pandora is the world’s largest streaming music radio with a community of over 250 million registered members.⁵¹
- **Spotify**⁵² – Spotify is the world’s largest music streaming community with over 50 million active registered members in 58 countries and over 30 million songs. The music community uploads 20,000 songs every day.⁵³
- **Vevo**⁵⁴ – Vevo is the world’s leading all-premium music video community and platform with over 8 billion monthly views globally.⁵⁵
- **Youtube**⁵⁶ – Youtube is the world’s largest music video streaming community with millions of music creators -- amateur, professional, commercial or non-commercial -- and over 1 billion registered members covering all regions globally. 6 billion hours of video is watched every month on Youtube,⁵⁷ of which 38.4% is music-related.⁵⁸
- **Reverbnation**⁵⁹ – Reverbnation⁶⁰ is one of the world’s largest music community and a leading music distributor with over 3.87 million musicians, venues labels and industry professionals covering every country globally. The Reverbnation community grows by over 50,000 artists, bands, labels and industry professionals monthly.
- **BMG**⁶¹ – BMG is focused on the management of music publishing and recording rights. BMG has an international presence and represents over 2.5 million music rights globally.⁶²

A2IM also includes members that are associated with global government agencies which exclusively represent substantial music economies and music members, such as France (BureauExport⁶³), China (China Audio Video Association⁶⁴) and Germany (Initiative Musik).⁶⁵ A2IM also has Affiliate⁶⁶ associations within the global music community. These include Affiliates such as MusicFirst,⁶⁷ the Copyright Alliance,⁶⁸ the Worldwide Independent Network (WIN)⁶⁹ and Merlin.⁷⁰

⁵⁰ <http://a2im.org/groups/pandora>

⁵¹ <http://www.cnet.com/news/like-a-rolling-milestone-pandora-hits-250m-registered-users/> and <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MTkxNTM1fENoaWxkSUQ9LTF8VHlwZT0z&t=1>, Pg.9

⁵² <http://a2im.org/groups/spotify>

⁵³ <https://press.spotify.com/us/information/>

⁵⁴ <http://a2im.org/groups/vevo/>

⁵⁵ <http://www.vevo.com/c/EN/US/about>

⁵⁶ <http://a2im.org/groups/youtube/>

⁵⁷ <https://www.youtube.com/yt/press/statistics.html>

⁵⁸ http://www.researchandmarkets.com/reports/2092499/internet_video_2011_2014_view_share_site_and

⁵⁹ <http://a2im.org/groups/reverb-nation/>

⁶⁰ <http://www.reverbnation.com/about>

⁶¹ <http://a2im.org/groups/bmg-rights/>

⁶² <http://www.bmg.com/category/about-us/history/>

⁶³ <http://a2im.org/groups/french-music-export-office>

⁶⁴ <http://a2im.org/groups/china-audio-video-association-cava>

⁶⁵ <http://a2im.org/groups/initiative-musik-gmbh>

⁶⁶ <http://a2im.org/groups/tag/associate+members/>

⁶⁷ <http://musicfirstcoalition.org/coalition>, The musicFIRST Coalition, with founding members A2IM, RIAA, and Recording Academy represents musicians, artists, managers, music businesses, and performance right advocates.

⁶⁸ <http://www.copyrightalliance.org/members>

⁶⁹ <http://www.winformusic.org>

A2IM also represents a recognized Music Coalition representing the interests of the Global Independent Music Community.⁷¹ The A2IM Coalition includes Merlin, a global rights agency for the independent label sector, representing over 20,000 labels from 39 countries, Worldwide Independent Network (representing label creators in over 20 countries), Association of Independent Music (representing largest and most respected labels in the world), and IMPALA (Independent Music Companies Association on behalf of over 4,000 independent music companies and national associations across Europe, representing 99% of music actors in Europe which are micro, small and medium sized enterprises).

Cumulatively, A2IM's Label and Associate Membership, A2IM's Affiliates and the A2IM's Global Independent Music Community Coalition, covers a majority of the global music community. Its cumulative membership is in the hundreds of millions of entities with formal boundaries belonging to strictly organized and delineated communities related to music as per the Community Definition and Size (See Application answer to Question 20a).

The IFPI is another entity *mainly* dedicated to the Community. The IFPI is the only organization that represents the interests of the recording industry worldwide. It is the "voice of the recording industry worldwide"⁷² whose members⁷³ – major and independent companies -- represent a majority of all commercial music consumed globally. For example, the RIAA, an IFPI national group member,⁷⁴ represents "approximately 85% of all legitimate recorded music produced and sold in the United States,"⁷⁵ the world's largest music market with 30% global market share.⁷⁶ Formed in 1933, the IFPI's mission was to "represent the interests of the recording industry worldwide in all fora."

Another global Music Community Coalition led by the RIAA "on behalf of over 15 national and international trade associations" also expressed its support for .MUSIC to be under a "community" application model, including encouraging statements in support of DotMusic's policies that stated that the coalition "was encouraged to see" that DotMusic "included several measures to deter and address copyright infringement within that TLD." The "coalition members represent the people that write, sing, record, manufacture, distribute and/or license over 80% of the world's music"⁷⁷ – a majority of global music.⁷⁸

⁷⁰ <http://www.merlinnetwork.org>

⁷¹ <https://www.icann.org/en/system/files/correspondence/bengloff-to-chehade-et-al-20aug14-en.pdf> and <https://www.icann.org/en/system/files/correspondence/bengloff-to-crocker-et-al-07mar15-en.pdf>

⁷² <http://www.ifpi.org/about.php>

⁷³ <http://www.ifpi.org/our-members.php>

⁷⁴ <http://www.ifpi.org/national-groups.php>

⁷⁵ <http://www.riaa.com/faq.php>

⁷⁶ <http://www.statista.com/topics/1639/music/>

⁷⁷ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.1

⁷⁸ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.3, Appendix A

Another letter⁷⁹ sent to ICANN (on April 14th, 2015) by Danielle Aguirre from the NMPA and on behalf of a music publisher and songwriter community coalition representing a majority of the global music publishing community, also expressed “support [for] the .MUSIC community applications because respecting and protecting music rights serves the global music community and the public interest.”

Collectively, the DotMusic application received support from the largest coalition of music community member organizations ever assembled to support a cause representing over 95% of music consumed globally.⁸⁰ Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support⁸¹ from institutions/organizations representing a majority of the Community addressed. Music -- as commonly-known by the general public and experienced today -- would not be possible without these supporting, non-negligible and relevant organizations that have endorsed DotMusic.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Community Establishment* and *Community Endorsement* from the majority of the global Music Community as defined.

B) Nexus⁸²

According to the Applicant Guidebook (“AGB”), to receive the maximum score for Nexus, the applied-for string -- “music” -- must match the name of the community or be a well-known short-form or abbreviation of the community name.

The *Nexus* of the “Music Community” entirely matches the applied-for “music” string because it represents the entire global Music Community as commonly-known and perceived by the general public. This definition allows for all constituents with a requisite awareness of the Community defined to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination. The definition of the Community requires that members have an active, non-tangential relationship with the applied-for string and the requisite awareness of the music community they identify with as part of the registration process. It is clear that the general public will directly associate and equate the string with the Community as defined by DotMusic. There is no possibility of overreaching beyond the definition or allowing unrelated non-music

⁷⁹ <https://www.icann.org/en/system/files/correspondence/aguirre-to-icann-board-ciu-14apr15-en.pdf>

⁸⁰ See <http://music.us/supporters>, <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/downloadattachment/142588?t:ac=1392>, Bloomberg BNA at http://music.us/RIAA_Backs_DotMusic.pdf Pg.1, and <http://diffuser.fm/will-dot-music-domains-make-the-internet-better/>

⁸¹ <http://music.us/supporters>

⁸² See <http://music.us/nexus>

entities to be included as part of the Community. Community members may register a .MUSIC by either:

- 1) Identifying that they belong to a Music Community Member Organization (“MCMO”); or
- 2) Identifying the community they belong to, which is consistent with the definition of the Community: “the strictly delineated and organized logical alliance of communities of similar nature related to music.”

All Community members are aware of and recognize their inclusion in the defined Community by identifying which clearly defined community they belong to and have an active participation in. The *nexus* of the applied-for string ensures inclusion of the entire global community that the string represents while excluding unrelated-entities not associated with the string. This way there is a clear match and alignment between the “music” sting and the Community defined.

While the exact size of the global Music Community as defined is unknown (there is no empirical evidence providing an exact, finite number because amateur entities are also included in the Community’s definition), it is in the considerable millions as explicitly stated in the DotMusic Application. DotMusic’s definition of the Community and mutually-inclusive Registration Policies ensure that eligible members are only music-related and associated with the string. This is because the string identifies all constituents involved in music. Music-only participation optimizes the relevancy of .MUSIC domains to the string and entirely matches the *nexus* between the string and Community defined. According to DotMusic, the Community *definition, eligibility* criteria and *content and use* requirements ensure that peripheral industries and entities not related to music are excluded so that the string and the defined Community matches and aligns in a consistent manner consistent with DotMusic’s community-based purpose i.e. only entities with music-related activities are able to register .MUSIC domains.

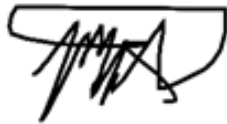
Membership aligns with the *nexus* of the Community and the string, which is explicitly relevant to music. The string as defined in the application demonstrates uniqueness because it has no other significant meaning beyond identifying the community described in the application. According to DotMusic’s application, any tangential or implicit association with the *nexus* of the Community and the string is not regarded as a delineated membership since it would be considered unclear, dispersed or unbound. Such unclear, dispersed or unbound tangential relationships with the defined “music” Community and applied-for “music” string would not constitute a qualifying Community membership and would be ineligible for registration. Every type of music constituent critically contributes to the function and operation of the music sector within a regulated framework⁸³ given the symbiotic overlapping nature of the Community as

⁸³ ICANN has disclosed that the string .MUSIC is a sensitive string operating in a regulated sector. ICANN also accepted Government Advisory Committee (GAC) advice for safeguards to protect the Music Community and the public interest (See <https://icann.org/en/system/files/correspondence/crocker-to-dryden-3-29oct13-en.pdf> Pg.7)

defined and structured. Music would not function as it does today without the participation of all music constituent types which cumulatively match the string with the Community definition.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Nexus*.

Respectfully Submitted,

A handwritten signature in black ink, appearing to be 'Matthew Covey', enclosed within a simple rectangular border.

Signature: Contact Information Redacted Aug 2 '15 ip: 67.163.202.251

Name: Matthew Covey

Title: Director

Organization: Tamizdat

Re: Expert Testimony on (i) Community Establishment; (ii) Nexus; and (iii) Support for DotMusic’s Community-Based Application¹ for .MUSIC (Application ID 1-1115-14110)

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

Please accept this letter that indicates that there is substantive and compelling evidence that the DotMusic application convincingly meets the full criteria under Community Priority Evaluation on the following points: (i) the Music Community’s *Establishment* as defined by DotMusic; (ii) the matching *Nexus* between the “music” Community and the “music” string (or top-level domain); and (iii) that DotMusic possesses documented *Support* from organizations representing a majority of the global Music Community addressed and defined.

Please see my credentials attached hereto that identify my level of expertise and specialized knowledge with respect to the music community’s organization and delineation.

SUMMARY

DotMusic has established the following:

- 1) Its Community definition recognizes the cohesive, symbiotic and overlapping nature of the global Music Community. The definition includes those associated with commercial and non-commercial creation, performance, marketing and distribution of music;
- 2) “Music Community” members have the requisite awareness and recognition of the interdependency, overlapping and cohesive nature of each “organized community of similar nature that relates to music.” These organized and aligned communities are closely united and make “music” as we know it today. It is this self-awareness and interdependence that gives the “Music Community” its strength. With exponential growth of the Internet, mobile and the Domain Name System (DNS), the “Music Community’s” use and reliance on the Internet to create, market and disseminate music-related content, products, services and activities will continue to grow;
- 3) The “Music Community” functions in a regulated sector with global copyright protections – it is clear that the “community,” as defined, implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate a globally-recognized set of standards for

¹ <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1392>

the protection of the “Music Community” member rights with relation to their copyrighted music works around the world;

4) The “Music” Community -- as defined by DotMusic -- has at least one entity mainly dedicated to the community supporting DotMusic’s application. Such documented *Support* includes several “international federation of national communities of a similar nature,” music coalitions and others that are strongly associated with “music,” which represent a majority of the Community with considerable millions of members worldwide.²

5) The *Nexus* of the “music” Community matches the “music” applied-for string because it represents the entire global Music Community – a community that pre-existed 2007 with a size in the considerable millions of constituents. The “Music Community” definition -- which incorporates the strict fundamental attributes of a closely united Community definition that is “organized” and “delineated” -- ensures that all of its constituent members have a requisite awareness of the community as defined, including both commercial and non-commercial stakeholders, to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination.

6) DotMusic has received support from the largest coalition of Music Community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support³ from institutions/organizations representing a majority of the Community as defined and recognized in the DotMusic application.

There is substantive evidence that DotMusic fulfills the *Nexus, Community Establishment and Support* criteria for the “Music” string. The inclusion and representation of every music constituent type is paramount to the articulated purpose of the string. DotMusic and its application’s global Music Community supporters substantiate that every type of music constituent contributes to the function and operation of the music sector within a regulated framework. The symbiotic nature of the Community as defined and structured means that “Music” would not function as it does today without the participation of all music constituent types that interconnect to match the “music” string with the “music” Community definition.

² <http://music.us/supporters>

³ <http://music.us/supporters>

ASSESSMENT OF COMMUNITY DEFINITION, ESTABLISHMENT AND NEXUS

A) *Music Community Definition, Establishment & Community Endorsement*⁴

DotMusic's definition of the "Music Community" as a "strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music" (See Application Answer to Question 20a) is factually accurate and representative of the "Music Community." Community characteristics include:

i) An Organized, Cohesive, Interdependent Logically-Allied Community:

The "Music Community" definition covers the regulated, interdependent and cohesive nature of the music sector that exists today. "Music Community" members have the requisite awareness and recognition of the interdependent, overlapping and cohesive nature of each "organized community of similar nature that relates to music" that comprises the "Music Community." Without such cohesiveness and interdependency, the defined "Music" Community matching the applied-for string ("Music") would not be able to function in its regulated sector. "Music" is a regulated sector comprised of a logical alliance of interdependent communities relating to music with organized practices and institutions that enable and regulate the production, distribution and consumption of music that was publicly recognized by both ICANN and the Government Advisory Committee⁵

As a result, the Music Community as defined is "closely united" (As per the definition of "cohesion" according to Merriam-Webster dictionary⁶) or "united or form a whole" (As per the definition of the word "cohesion" according to Oxford Dictionaries⁷).

DotMusic's application follows unified principles that the entire Community subscribes to, such as: creating a trusted identifier and safe haven for music consumption, protecting musicians' rights and intellectual property, fighting copyright infringement/piracy, supporting fair compensation and music education, and following a multi-stakeholder approach of representation of all types of global music constituents without discrimination (See Application Answers to 18).

The "Music Community" as defined (a "strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music") establishes that:

- (1) There is an awareness and recognition among its members;

⁴ See <http://music.us/establishment>

⁵ <https://www.icann.org/en/system/files/bm/briefing-materials-2-05feb14-en.pdf>, Pg.3

⁶ <http://www.merriam-webster.com/dictionary/cohesion>

⁷ http://www.oxforddictionaries.com/us/definition/american_english/cohesion

- (2) The organized and delineated logical alliance of communities exists; and
- (3) The Community is “closely united” and “interdependent” (i.e. Each “organized community of similar nature that relates to music” which is part of the “logical alliance of communities that relate to music” is not mutually exclusive).

In short, the applied-for string (“Music”) matches the name of the “Music” Community as defined by DotMusic’s application. DotMusic’s “Music Community” definition accurately represents the common definition of the “Music Community,” which is confirmed by Wikipedia.

According to Wikipedia:⁸

Music community is defined as a logical alliance of interdependent communities that are related to music, which include commercial participants...and non-commercial participants...and consists of an “ensemble of practices and institutions that make possible and regulate the production, distribution and consumption of music”...UNESCO identifies the music community as a “community of identity” implying common identifiable characteristics and cohesive attributes such as sharing a music culture, norms and subscribing to common ideals related to music...The music community is not defined as much by demographic indicators such as race, gender, and income level, as it is by common values, cohesive norms and interconnected structures to build a community identity. It refers to music-related individuals and organisations in a shared environment with shared understandings and practices, modes of production and distribution. The shared organisation of collective musical activities, identity and community value is created as result of infrastructure and a shared set of common values...Many studies outline the historical, cultural, and spatial significance of the music community, including how its identity is formed through musical practices. The music community shares a cohesive and interconnected structure of artistic expression, with diverse subcultures and socio-economic interactions...subscribing to common ideals. Under such structured context music consumption becomes possible regardless whether the transaction is commercial and non-commercial.⁹

⁸ Wikipedia is ranked 6th among the ten most popular websites (Alexa, Retrieved March 23, 2015 from <http://www.alexacom/siteinfo/wikipedia.org>) and constitutes the Internet's largest, most frequently updated and popular general reference work (See OECD, OECD Internet Economy Outlook 2012, OECD Publishing, http://www.oecd-ilibrary.org/science-and-technology/oecd-internet-economy-outlook-2012_9789264086463-en, Pg.172) that compares favorably to the accuracy of other encyclopedias (such as the Britannica) according to a 2012 study conducted in partnership with Oxford University (See <http://blog.wikimedia.org/2012/08/02/seven-years-after-nature-pilot-study-compares-wikipedia-favorably-to-other-encyclopedias-in-three-languages>).

⁹ Music Community. In *Wikipedia*. Retrieved July 6, 2015, from https://en.wikipedia.org/wiki/Music_community

ii) An Aware, Pre-Existing and Recognized Community of Considerable Millions Worldwide:

DotMusic's definition of the Community covers all Community members associated with the string, each with a requisite awareness of the Community that can be validated through their natural association with a particular music-related community that they clearly identify with. According to DotMusic, all Music Community members must identify their music-related community in order to demonstrate their requisite awareness of the defined Community as part of the .MUSIC registration and validation process.

According to DotMusic, the Music Community's geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents (Application Answer to Question 20a).

According to DotMusic, "registrants will be verified using Community-organized, unified "criteria taken from holistic perspective with due regard of Community particularities" that "invoke a formal membership (Application Answer to Question 20a)." The defined Community represents all music-related entities with a clear and straightforward membership with the Community involved in the legal production, performance, promotion, and distribution of music worldwide. According to DotMusic, the Music Community members must have an active, non-tangential relationship with the applied-for string "music" and also have the requisite awareness of the music-related community that they are a part of by specifically identifying it as part of the registration and validation process (i.e. upon successful registration and validation, each community member will be given a unique community identification number that will automatically associate them with their identified community and the "music" string).

DotMusic's Community definition matches the applied-for string because it allows both commercial and non-commercial stakeholders to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination/exclusion. Given the regulated sector of the community, it is clear that the "Music Community" as defined implies "more of cohesion than a mere commonality of interest" with an "awareness and recognition of a community among its members." Several international treaties mandate cohesive and globally-recognized set of standards for the protection of the music community members' rights with relation to their copyrighted music works around the world.¹⁰

The Berne Convention for the Protection of Literary and Artistic Works¹¹ provides that each of the 168 contracting parties¹² (representing an overwhelming majority of the world's population) provides automatic protection for music works first published in other countries of the Berne union and for unpublished music works whose authors are citizens of or resident in such other

¹⁰ http://www.rightsdirect.com/content/rd/en/toolbar/copyright_education/International_Copyright_Basics.html

¹¹ http://www.wipo.int/treaties/en/text.jsp?file_id=283698

¹² http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=15

countries.¹³ This means that if a Music Community member's copyright rights are violated in any other signatory country's jurisdiction, then the music community member will have the music copyright rights given by that country. Music Community members are clearly aware of the collective Community's rights, which could not be made possible without these cohesive and globally-recognized set of standards. If such standards were not coherent or enforced then music would not be able to exist in its current form and the industry component of the Music Community sector would not exist. As such, the Community's *Establishment* and definition is "cohesive" and hence cannot be construed since the Community is a logical alliance of music communities that establish a clearly delineated and organized Community structure that is "closely united" and functions as a "whole"

Further evidence to substantiate the cohesive, symbiotic and overlapping nature of the Community, includes other globally-recognized standards and classification systems, which identify who the individual songwriters, publishers and rights holders are and which songs they are associated with so that Community members are appropriately compensated, regardless of whether the constituent is a commercial, non-commercial or amateur entity. The "music" string is commonly used in classification systems such as ISMN,¹⁴ ISRC,¹⁵ ISWC,¹⁶ ISNI.¹⁷ (Application Answer to Question 20a). For example, if a music entity would like to distribute their music, either commercially or for free, then an ISRC can be assigned to globally identify any specific music work. An ISRC, which facilitates efficient music discovery and community member payment, is constructed from 12 characters representing country, registrant, year of registration and designation (i.e. the serial number assigned by the registrant). With respect to domains, an equivalent system that relates to identifying a specific domain's registrant and other relevant information pertaining to the domain is WHOIS. Domain registrants are required by ICANN "to provide accurate WHOIS contact data" or else their domain "registration may be suspended or even cancelled".¹⁸

¹³ <http://www.britannica.com/EBchecked/topic/62482/Berne-Convention>

¹⁴ The International Standard Music Number (ISMN) is a unique number for the identification of all notated music publications from all over the world. The ISMN is an ISO certified global standard number (ISO 10957:2009). See <http://www.ismn-international.org/whatis.html> and http://www.iso.org/iso/home/store/catalogue_ics/catalogue_detail_ics.htm?csnumber=43173

¹⁵ The ISRC (International Standard Recording Code) is the international identification system for sound recordings and music video recordings. The ISRC is an ISO certified global standard number (ISO 3901:2001) and is managed by the IFPI. See <http://isrc.ifpi.org>, <https://www.usisrc.org/about/index.html> and http://www.iso.org/iso/catalogue_detail?csnumber=23401

¹⁶ The ISWC (International Standard Musical Work Code) is a unique, permanent and internationally recognized reference number for the identification of musical works. The ISWC has been approved by ISO (International Organization for Standardisation) as a global standard (ISO 15707:2001) and is managed by CISAC. See <http://www.iswc.org/en/faq.html> and http://www.iso.org/iso/catalogue_detail?csnumber=28780

¹⁷ The International Standard Name Identifier (ISNI) is the ISO certified global standard number (ISO 27729) for identifying the millions of contributors to creative works and those active in their distribution. ISNI holds public records of over 8 million identities and 490,000 organizations. See <http://www.isni.org/> and http://www.iso.org/iso/catalogue_detail?csnumber=44292

¹⁸ <https://whois.icann.org/en/about-whois> and <https://www.icann.org/resources/pages/faqs-f0-2012-02-25-en>

Without such Music Community “cohesion” and standardized systems functioning in its regulated sector, the Music Community would not be able to create, market and distribute their music. By the same token, fans would not be able to identify the music they are listening to with a specific music artist, regardless of whether the listening activity or behavior is commercial or non-commercial in nature. The socio-economic structure that characterizes “music” as commonly-known today would be non-existent without these organized and delineated elements that commonly define the Community.

iii) *International Federations and Organizations mainly Dedicated to the Community:*

According to ICANN’s Applicant Guidebook (“AGB”)¹⁹: “*With respect to “Delineation” and “Extension,” it should be noted that a community can consist of...a logical alliance of communities (for example, an international federation of national communities of a similar nature... viable as such, provided the requisite awareness and recognition of the community is at hand among the members.*” (AGB, 4-12). The community as defined in the DotMusic application has at least one entity *mainly*²⁰ dedicated to the community which has supported DotMusic, which include several “international federation of national communities of a similar nature” relating to music, music coalitions and other relevant and non-negligible music organizations.

One of these entities include the only international federation of national communities relating to government culture agencies and arts councils, which has an integral association with music globally: the International Federation of Arts Councils and Culture Agencies (IFACCA).

IFACCA is the only international federation that represents government culture agencies and arts councils globally. These national communities are governmental institutions that play a pivotal

¹⁹ <https://newgtlds.icann.org/en/applicants/agb/guidebook-full-11jan12-en.pdf>

²⁰ Per the Oxford and Merriam Webster dictionaries, the word “mainly” is defined as “*more than anything else*” (See <http://www.oxforddictionaries.com/definition/english/mainly> and <http://www.merriam-webster.com/dictionary/mainly> respectively). According to DotMusic, the string .MUSIC relates to the Community “by representing all constituents involved in music creation, production and distribution” (Application Answer to Question 20d). Supporting organizations related to that string that are “mainly” dedicated to the Community and its activities, include the International Federation of Arts Councils and Culture Agencies (IFACCA) representing government culture ministries and arts councils, the International Federation of Musicians (FIM) representing musicians globally, the International Federation of Phonographic Industry (IFPI) representing the recording industry worldwide, the International Confederation of Music Publishers (ICPM) representing the voice of global music publishing, the International Association of Music Information Centres (IAMIC), the American Association of Independent Music (A2IM), whose associate members represent a majority of music consumed, the Independent Music Worldwide Independent Network (WIN) representing independent music worldwide, the International Society for Music Education (ISME) the premiere international organization representing music education, and many others (See support at <http://music.us/supporters> and <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails:downloadattachment/142588?t:ac=1392>).

role with respect to music.²¹ IFACCA's members cover the majority of music entities globally, regardless of whether they are commercial, non-commercial or amateurs. Government ministry of culture and council agencies related to music cover a majority of the overall community with respect to headcount and geographic reach. The "Size" covered reaches over a hundred million music entities i.e. "considerable size with millions of constituents" per Application Answer to Question 20a.

The string "music" falls under the jurisdiction of each country's Ministry of Culture governmental agency or arts/music council (emphasis added). The degree of power and influence of government ministry of culture and council agencies with respect to music surpasses any organization type since these agencies (i) provide the majority of funding for music-related activities; (ii) regulate copyright law; and (iii) encompass all the music entities that fall under their country, regardless whether these entities are commercial, non-commercial or amateurs. IFACCA is globally recognized by its strategic partners, such as UNESCO, a United Nations agency representing 195 member states and the European Commission.²² The UNESCO strategic partnership²³ is relevant, especially since UNESCO founded the International Music Council (the "IMC") in 1949, which represents over 200 million music constituents from over 150 countries and over 1000 organizations globally.²⁴

Government activities in the clearly delineated and organized "Music Community" include setting statutory royalty rates. For example, in the United States, mechanical royalties are based on a "statutory rate" set by the U.S. Congress. This rate is increased to follow changes in the economy, usually based on the Consumer Price Index. Currently, the mechanical statutory rate is \$0.091 for songs five minutes or less in length or \$.0175 per minute for songs that are over five minutes long.²⁵

Ministries of culture and arts councils (that comprise IFACCA's membership) support musicians, musical performances, independent music artists, non-commercial musical expression and education in their respective countries. The 165 ministries of culture, arts councils and affiliates that comprise IFACCA's membership support the "performing arts" and music specifically. Without the financial and logistical support of arts councils and the ministries of culture, the music community would be adversely affected, and in some countries, may not exist in any appreciable manner. For example, the Ministry of Culture 2011 budget for the small country state of Cyprus for culture funding was €34,876,522 with critical support of music activities.²⁶ Other small government Ministries of Culture, such as Albania,²⁷ or government

²¹ http://www.ifacca.org/membership/current_members/

²² http://www.ifacca.org/strategic_partners/

²³ http://www.ifacca.org/strategic_partners/

²⁴ <http://www.imc-cim.org/about-imc-separator/who-we-are.html>

²⁵ U.S Copyright Office, <http://www.copyright.gov/carp/m200a.html>

²⁶ 2011 Annual Report for Cyprus Ministry of Culture, Section 1.2 "Music"

(http://www.moec.gov.cy/en/annual_reports/annual_report_2011_en.pdf). Activities include Music Performances in Cyprus (1.2.1) and Abroad (1.2.2), Subsidization of Paphos Aphrodite Festival (1.2.3), Music Publications (1.2.4), Subsidization and Purchases of Digital Records (1.2.5), Promotion for Cypriot musical creativity abroad (1.2.6),

Ministries of Culture and Arts Councils from countries with larger populations, such as India,²⁸ all provide critical support and substantial advocacy for music. Other examples include government institutions collaborating and advocating music through their funded country-based pavilion initiatives at Midem, the world's largest music conference.²⁹

Government ministries and arts councils provide critical support for the Music Community, including commercial music organizations. By way of example, government ministries' and arts councils' substantial connection to and support of "music" is noted in the reports of funding and support for music. Some examples to showcase the degree of power of the IFACCA's membership towards the string and global and national music are music investment and music funding (Annual reports by governments and councils):

- New Zealand Ministry of Culture has funded significant music projects. Some include the REAL New Zealand Music Tour (\$415,000), the New Zealand String Quartet (\$150,000) and New Zealand Music Commission: (\$1,378,000).³⁰
- The Australian Government/Council For The Arts invested \$51.2 million for the nation's orchestras; \$21.6 million for opera; \$10.8 million for other music artists and organizations; \$13.1 million for multi-platform artists and organizations; and \$4 million in miscellaneous funding, including sector building and audience development initiatives and programs.³¹
- Canada Council for the Arts is Canada's national, arts funding agency investing \$28 million in its Canada Council Musical Instrument Bank (Page 16) and \$28,156,000 in Music Arts Programs (Page 66).³² The Government of Canada also renewed its annual investment of \$27.6 million over five years in the Canada Music Fund.³³
- The United Kingdom Department for Culture and Education (DfE) will fund music education at significant levels: £77 million, £65 million and £60 million will be available in the three years from April 2012.³⁴

Cyprus Symphony Orchestra Foundation (1.2.7), Music Information Centre (1.2.8), Developing Music Education (1.2.9), Organising of the 1st Musicological Symposium (1.2.10) and Musical Festivities for the European Volunteerism Year (1.2.11)

²⁷ http://www.culturalpolicies.net/down/albania_012011.pdf

²⁸ 2010-11 Annual Report from India Ministry of Culture, [http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011\(Eng\).pdf](http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011(Eng).pdf)

²⁹ <http://my.midem.com/en/contact-us/pavilion-representatives/>

³⁰ 2011 Annual Report from New Zealand Ministry of Culture:

[http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20\(D-0448383\).PDF](http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20(D-0448383).PDF)

³¹ 2011 Annual Report for the Australia Council for the Arts,

http://www.australiacouncil.gov.au/data/assets/pdf_file/0016/142351/Australia-Council-Annual-Report-201112.pdf, Page 28

³² 2011 Annual Report for Canada Council for the Arts, [http://www.canadacouncil.ca/NR/rdonlyres/6F7549BB-F4E5-4B8B-95F4-](http://www.canadacouncil.ca/NR/rdonlyres/6F7549BB-F4E5-4B8B-95F4-1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf)

[1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf](http://www.canadacouncil.ca/NR/rdonlyres/6F7549BB-F4E5-4B8B-95F4-1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf)

³³ <http://www.pch.gc.ca/eng/1294862453819/1294862453821>

³⁴ Department for Culture, The Importance of Music, A National Plan for Music Education,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/180973/DFE-00086-2011.pdf, Page 4, 2011

- The United States National Endowment of the Arts has awarded more than \$4 billion to support the arts since its inception³⁵ and has a strong focus on music as outlined in its Strategic Plan³⁶ with Congress requested to provide \$154,465,000 for fiscal year 2014.³⁷
- The National Arts Council of South Africa invested 2,536,131 ZAR in Music and 9,995,000 ZAR in Orchestras and has focused strongly on the “Strengthening of live indigenous music and advocating the revival of the live music circuit in South Africa”³⁸
- The Singapore Arts Council will fund \$10.2 million in the arts under its 2013 Grants Framework, including the Ding Yi Music Company and Siong Leng Musical Association.³⁹
- In 2011, the support for artistic activities by the Arts Council of Finland was €32.4 million of which €4,921,850 was awarded to music.⁴⁰

Each of IFACCA’s members has a clear association with, and mandate to support the music arts in their countries. In most countries, their ministry of culture/arts council is the largest funder and marketing supporter of the music arts.

The IFPI is another entity *mainly* dedicated to the Community. The IFPI is the only organization that represents the interests of the recording industry worldwide. It is the “voice of the recording industry worldwide”⁴¹ whose members⁴² – major and independent companies -- represent a majority of all commercial music consumed globally. For example, the RIAA, an IFPI national group member,⁴³ represents “approximately 85% of all legitimate recorded music produced and sold in the United States,”⁴⁴ the world’s largest music market with 30% global market share.⁴⁵ Formed in 1933, the IFPI’s mission was to “represent the interests of the recording industry worldwide in all fora.”

³⁵ 2011 Annual report for the National Endowment of the Arts, <http://www.nea.gov/about/11Annual/2011-NEA-Annual-Report.pdf>, Page 2

³⁶ NEA Strategic Plan 2012-2016, www.arts.gov/about/Budget/NEAStrategicPlan2012-2016.pdf

³⁷ http://www.ifacca.org/national_agency_news/2013/04/10/us-president-requests-154465000-neh-2014/

³⁸ 2010-2011 Annual Report for the National Arts Council South Africa, National Arts Council South Africa, <http://www.nac.org.za/media/publications/AR%2010-11%20NAC.PDF/download>, Page 11. Also Mmino, the South African – Norwegian Education Music Programme, solely funds music projects funding a total of 294 projects. Thirteen projects were allocated funding for a total of R1,680,600 of which R1,381,000 went towards music educational and R299,600 to exchange projects (Page 10)

³⁹ Singapore Arts Council, <http://www.nac.gov.sg/media-centre/news-releases/news-detail?id=c2db15e2-c319-40ec-939c-d58735d0a91c>

⁴⁰ <http://www.taiteenkeskustoimikunta.fi/documents/10162/31704/TY+tilastotiedote+1+12+.pdf>, Page 1 and Page 23

⁴¹ <http://www.ifpi.org/about.php>

⁴² <http://www.ifpi.org/our-members.php>

⁴³ <http://www.ifpi.org/national-groups.php>

⁴⁴ <http://www.riaa.com/faq.php>

⁴⁵ <http://www.statista.com/topics/1639/music/>

Another clear example of an “entity *mainly* dedicated to the community” with members that cover hundreds of millions of music constituents with formal boundaries is A2IM, the American Association of Independent Music. A2IM has two types of members: U.S independent Label members and Associate members. A2IM membership for Labels and Associates is invoked formally through an application and if accepted would require annual membership dues.⁴⁶

The reach of A2IM Associate⁴⁷ membership covers hundreds of millions of entities (i.e. the reach of A2IM’s total membership “geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents – See Application Answer to Question 20a).

Organized and strictly delineated communities related to music that are A2IM members include:

- **Apple iTunes**⁴⁸ – iTunes accounts for 63% of global digital music market⁴⁹ - a majority – with a registered community of 800 million registered members⁵⁰ available in 119 countries who abide to strict terms of service and boundaries⁵¹ and have downloaded over 25 billion songs⁵² from iTunes’ catalog of over 43 million songs⁵³ covering a global music community, regardless of genre or whether the community entities are amateur, professional, commercial or non-commercial. To add music to iTunes, all music artists must have a formal membership with iTunes via an Apple ID registration, which includes a current credit card on file.⁵⁴
- **Pandora**⁵⁵ – Pandora is the world’s largest streaming music radio with a community of over 250 million registered members.⁵⁶
- **Spotify**⁵⁷ – Spotify is the world’s largest music streaming community with over 50 million active registered members in 58 countries and over 30 million songs. The music community uploads 20,000 songs every day.⁵⁸
- **Vevo**⁵⁹ – Vevo is the world’s leading all-premium music video community and platform with over 8 billion monthly views globally.⁶⁰

⁴⁶ <http://a2im.org/about-joining/>

⁴⁷ <http://a2im.org/groups/tag/associate+members/>

⁴⁸ <http://a2im.org/groups/itunes>

⁴⁹ <http://appleinsider.com/articles/13/04/16/apples-itunes-rules-digital-music-market-with-63-share>

⁵⁰ <http://www.npr.org/blogs/therecord/2015/01/06/375173595/with-downloads-in-decline-can-itunes-adapt>

⁵¹ <http://www.apple.com/legal/internet-services/itunes/ww/index.html>

⁵² <http://www.apple.com/pr/library/2013/02/06iTunes-Store-Sets-New-Record-with-25-Billion-Songs-Sold.html>

⁵³ <https://www.apple.com/itunes/features/>

⁵⁴ <https://www.apple.com/itunes/working-itunes/sell-content/music-faq.html>

⁵⁵ <http://a2im.org/groups/pandora>

⁵⁶ <http://www.cnet.com/news/like-a-rolling-milestone-pandora-hits-250m-registered-users/> and <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MTkxNTM1fENoaWxkSUQ9LTF8VHlwZT0z&t=1>, Pg.9

⁵⁷ <http://a2im.org/groups/spotify>

⁵⁸ <https://press.spotify.com/us/information/>

⁵⁹ <http://a2im.org/groups/vevo/>

- **Youtube**⁶¹ – Youtube is the world’s largest music video streaming community with millions of music creators -- amateur, professional, commercial or non-commercial -- and over 1 billion registered members covering all regions globally. 6 billion hours of video is watched every month on Youtube,⁶² of which 38.4% is music-related.⁶³
- **ReverbNation**⁶⁴ – ReverbNation⁶⁵ is one of the world’s largest music community and a leading music distributor with over 3.87 million musicians, venues labels and industry professionals covering every country globally. The ReverbNation community grows by over 50,000 artists, bands, labels and industry professionals monthly.
- **BMG**⁶⁶ – BMG is focused on the management of music publishing and recording rights. BMG has an international presence and represents over 2.5 million music rights globally.⁶⁷

A2IM also includes members that are associated with global government agencies which exclusively represent substantial music economies and music members, such as France (BureauExport⁶⁸), China (China Audio Video Association⁶⁹) and Germany (Initiative Musik).⁷⁰ A2IM also has Affiliate⁷¹ associations within the global music community. These include Affiliates such as MusicFirst,⁷² the Copyright Alliance,⁷³ the Worldwide Independent Network (WIN)⁷⁴ and Merlin.⁷⁵

A2IM also represents a recognized Music Coalition representing the interests of the Global Independent Music Community.⁷⁶ The A2IM Coalition includes Merlin, a global rights agency for the independent label sector, representing over 20,000 labels from 39 countries, Worldwide Independent Network (representing label creators in over 20 countries), Association of Independent Music (representing largest and most respected labels in the world), and IMPALA (Independent Music Companies Association on behalf of over 4,000 independent music companies and national associations across Europe, representing 99% of music actors in Europe which are micro, small and medium sized enterprises.

⁶⁰ <http://www.vevo.com/c/EN/US/about>

⁶¹ <http://a2im.org/groups/youtube/>

⁶² <https://www.youtube.com/yt/press/statistics.html>

⁶³ http://www.researchandmarkets.com/reports/2092499/internet_video_2011_2014_view_share_site_and

⁶⁴ <http://a2im.org/groups/reverb-nation/>

⁶⁵ <http://www.reverbnation.com/about>

⁶⁶ <http://a2im.org/groups/bmg-rights/>

⁶⁷ <http://www.bmg.com/category/about-us/history/>

⁶⁸ <http://a2im.org/groups/french-music-export-office>

⁶⁹ <http://a2im.org/groups/china-audio-video-association-cava>

⁷⁰ <http://a2im.org/groups/initiative-musik-gmbh>

⁷¹ <http://a2im.org/groups/tag/associate+members/>

⁷² <http://musicfirstcoalition.org/coalition>, The musicFIRST Coalition, with founding members A2IM, RIAA, and Recording Academy represents musicians, artists, managers, music businesses, and performance right advocates.

⁷³ <http://www.copyrightalliance.org/members>

⁷⁴ <http://www.winformusic.org>

⁷⁵ <http://www.merlinnetwork.org>

⁷⁶ <https://www.icann.org/en/system/files/correspondence/bengloff-to-chehade-et-al-20aug14-en.pdf> and <https://www.icann.org/en/system/files/correspondence/bengloff-to-crocker-et-al-07mar15-en.pdf>

Cumulatively, A2IM's Label and Associate Membership, A2IM's Affiliates and the A2IM's Global Independent Music Community Coalition, covers a majority of the global music community. Its cumulative membership is in the hundreds of millions of entities with formal boundaries belonging to strictly organized and delineated communities related to music as per the Community Definition and Size (See Application answer to Question 20a).

Another global Music Community Coalition led by the RIAA “on behalf of over 15 national and international trade associations” also expressed its support for .MUSIC to be under a “community” application model, including encouraging statements in support of DotMusic’s policies that stated that the coalition “was encouraged to see” that DotMusic “included several measures to deter and address copyright infringement within that TLD.” The “coalition members represent the people that write, sing, record, manufacture, distribute and/or license over 80% of the world’s music”⁷⁷ – a majority of global music.⁷⁸

Another letter⁷⁹ sent to ICANN (on April 14th, 2015) by Danielle Aguirre from the NMPA and on behalf of a music publisher and songwriter community coalition representing a majority of the global music publishing community, also expressed “support [for] the .MUSIC community applications because respecting and protecting music rights serves the global music community and the public interest.”

The International Music Products Association, NAMM, is another globally-recognized and relevant group of non-negligible size that has supported DotMusic.⁸⁰ NAMM, formed in 1901, is *mainly* dedicated to the global music community by representing the international music products industry and community, with globally-recognized members and exhibitors that include Yamaha, Roland, Sennheiser, Sony, Fender, Harman, Kawai, Shure, Steinway, Audio-Technica, AKAI, Gibson, Peavey, Korg, AKG, Selmer, JBL, Alesis, Ibanez, AVID, Casio, DW, Sabian, Pearl, Zildjian, Martin, Ludwig, Marshall and others.^{81 82} Every amateur and professional musician worldwide uses music products manufactured and distributed by NAMM’s members. Without these musical instruments and products, music as we know it today would not be created or produced. NAMM and its trade shows power the \$17 billion global music products industry serving as a hub for the global music community wanting to seek out the newest innovations in musical products, recording technology, sound and lighting. NAMM’s mission is “to strengthen

⁷⁷ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.1

⁷⁸ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.3, Appendix A

⁷⁹ <https://www.icann.org/en/system/files/correspondence/aguirre-to-icann-board-eiu-14apr15-en.pdf>

⁸⁰ http://music.us/letters/NAMM_International_Music_Products_Association.pdf

⁸¹ https://www.namm.org/files/showdir/ExhibitorList_WN15.xls

⁸² <http://www.musictrades.com/global.html>

the music products industry and promote the pleasures and benefits of making music.”⁸³ NAMM also hosts the NAMM Show, the world's largest event for the music products industry.

Collectively, the DotMusic application received support from the largest coalition of music community member organizations ever assembled to support a cause representing over 95% of music consumed globally.⁸⁴ Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support⁸⁵ from institutions/organizations representing a majority of the Community addressed. Music -- as commonly-known by the general public and experienced today -- would not be possible without these supporting, non-negligible and relevant organizations that have endorsed DotMusic.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Community Establishment* and *Community Endorsement* from the majority of the global Music Community as defined.

B) Nexus⁸⁶

According to the Applicant Guidebook (“AGB”), to receive the maximum score for Nexus, the applied-for string -- “music” -- must match the name of the community or be a well-known short-form or abbreviation of the community name.

The *Nexus* of the “Music Community” entirely matches the applied-for “music” string because it represents the entire global Music Community as commonly-known and perceived by the general public. This definition allows for all constituents with a requisite awareness of the Community defined to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination. The definition of the Community requires that members have an active, non-tangential relationship with the applied-for string and the requisite awareness of the music community they identify with as part of the registration process. It is clear that the general public will directly associate and equate the string with the Community as defined by DotMusic. There is no possibility of overreaching beyond the definition or allowing unrelated non-music entities to be included as part of the Community. Community members may register a .MUSIC by either:

⁸³ <https://www.namm.org/about>

⁸⁴ See <http://music.us/supporters>, <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/downloadattachment/142588?t:ac=1392>, Bloomberg BNA at http://music.us/RIAA_Backs_DotMusic.pdf Pg.1, and <http://diffuser.fm/will-dot-music-domains-make-the-internet-better/>

⁸⁵ <http://music.us/supporters>

⁸⁶ See <http://music.us/nexus>

- 1) Identifying that they belong to a Music Community Member Organization (“MCMO”); or
- 2) Identifying the community they belong to, which is consistent with the definition of the Community: “the strictly delineated and organized logical alliance of communities of similar nature related to music.”

All Community members are aware of and recognize their inclusion in the defined Community by identifying which clearly defined community they belong to and have an active participation in. The *nexus* of the applied-for string ensures inclusion of the entire global community that the string represents while excluding unrelated-entities not associated with the string. This way there is a clear match and alignment between the “music” sting and the Community defined.

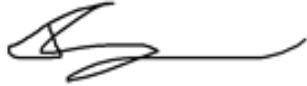
While the exact size of the global Music Community as defined is unknown (there is no empirical evidence providing an exact, finite number because amateur entities are also included in the Community’s definition), it is in the considerable millions as explicitly stated in the DotMusic Application. DotMusic’s definition of the Community and mutually-inclusive Registration Policies ensure that eligible members are only music-related and associated with the string. This is because the string identifies all constituents involved in music. Music-only participation optimizes the relevancy of .MUSIC domains to the string and entirely matches the *nexus* between the string and Community defined. According to DotMusic, the Community *definition, eligibility* criteria and *content and use* requirements ensure that peripheral industries and entities not related to music are excluded so that the string and the defined Community matches and aligns in a consistent manner consistent with DotMusic’s community-based purpose i.e. only entities with music-related activities are able to register .MUSIC domains.

Membership aligns with the *nexus* of the Community and the string, which is explicitly relevant to music. The string as defined in the application demonstrates uniqueness because it has no other significant meaning beyond identifying the community described in the application. According to DotMusic’s application, any tangential or implicit association with the *nexus* of the Community and the string is not regarded as a delineated membership since it would be considered unclear, dispersed or unbound. Such unclear, dispersed or unbound tangential relationships with the defined “music” Community and applied-for “music” string would not constitute a qualifying Community membership and would be ineligible for registration. Every type of music constituent critically contributes to the function and operation of the music sector within a regulated framework⁸⁷ given the symbiotic overlapping nature of the Community as defined and structured. Music would not function as it does today without the participation of all music constituent types which cumulatively match the string with the Community definition.

⁸⁷ ICANN has disclosed that the string .MUSIC is a sensitive string operating in a regulated sector. ICANN also accepted Government Advisory Committee (GAC) advice for safeguards to protect the Music Community and the public interest (See <https://icann.org/en/system/files/correspondence/crocker-to-dryden-3-29oct13-en.pdf> Pg.7)

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Nexus*.

Respectfully Submitted,



Signature:

Contact Information Redacted

Aug 11 '15

ip: 46.230.186.46

Name: Jonathan Segel

Title: composer

Organization: self

Jonathan Segal MM

Education

Mills College

Masters in Music Composition

Credits:

Year	Album	Artist	Credits
2014	El Camino Real	Camper Van Beethoven	Composer, Guitar, Keyboards, Mandolin, Violin, Vocals (Background)
2013	La Costa Perdida	Camper Van Beethoven	Guitar, Mandolin, Organ, Violin, Vocals (Background)
2012	All Attractions/Apricot Jam	Jonathan Segal	Composer, Guitar, Keyboards, Primary Artist, Synthesizer, Theremin, Violin, Vocals
2009	Sonic Demons	Lucio Menegon	Improvisation
2009	The Full Sun	Scott Pinkmountain	Violin
2009	Time for Leaving	McCabe & Mrs. Miller	Violin
2008	Hieronymus Firebrain	Jonathan Segal	Composer, Primary Artist
2008	Live	Keller Williams	Composer
2008	Popular Songs of Great Enduring Strength and Beauty	Camper Van Beethoven	Group Member, Guitar, Keyboards, Mandolin, Violin, Vocals
2007	Amnesia Glass Box	Jonathan Segal	Primary Artist
2007	First Annual Camp Out Live	Camper Van Beethoven	Performer, Producer

2007	Honey	Jonathan Segel	Composer, Engineer, Guitar, Keyboards, Mixing, Primary Artist, Violin, Vocals
2007	Rauk	Jonathan Segel	Primary Artist
2007	Summerleaf	Jonathan Segel	Primary Artist
2007	The Sugar Factory	Evelyn Glennie	Reconstruction
2007	Underwater Tigers	Jonathan Segel	Primary Artist
2006	An Inescapable Siren Within Earshot Distance Therein and Other Whereabouts	Moe! Staiano's MOE!KESTRA!	Producer, Violin
2006	Greenland	Cracker	Photography
2006	Music + One	Myles Boisen	Primary Artist, Violin
2006	New Ways of Letting Go	Michael Zapruder	Violin
2006	The Way You Shine	The Shimmers	Violin
2005	Chris Brown: Rogue Wave	Chris Brown	Computers
2005	Cost	Patrick Phelan	Main Personnel, Violin
2005	Live at the World Cafe, Vol. 20		Composer
2005	Look at All the Love We Found: A Tribute to Sublime	Sublime	Computers, Powerbook, Violin
2005	Tragic Realism	LD & the New Criticism	Violin
2004	Connections 2: In Benefit Of KRCB-FM		Composer
2004	Left of the Dial: Dispatches from the '80s		Violin, Vocals

	Underground		
2004	New Roman Times	Camper Van Beethoven	Composer, Engineer, Group Member, Guitar, Mixing, Synthesizer, Violin, Vocals
2003	Bass U.S.A., Vol. 1		Composer
2003	Compositions for Guitars	Taku Sugimoto	Guitar
2003	Edgy Not Antsy	Jonathan Segel	Announcer, Bass (Electric), Cello, Charango, Dan Bau, Digital Editing, Drum Programming, Fender Rhodes, Guitar, Guitar (Rickenbacker), Organ, Piano, Primary Artist, Sound Editing, Violin
2003	Gen	Shoko Hikage	Composer, Main Personnel, Primary Artist, Violin
2003	Horror, Pt. 7: The Post Day of the Dead Ritual	Eugene Chadbourne	Mandolin, Violin (Electric)
2003	Latino St. Dance Mix		Composer
2003	Lipstick Traces: Secret History of Manic	Manic Street Preachers	Composer
2003	Non-Linear Accelerator	Jonathan Segel	Primary Artist
2003	Psychadelidoowop	Camper Van Chadbourne	Box, Dan Bau, Dan Nhi, Dan Tranh, Delay, DJ, Engineer, Field Recording, Mandolin, Microcassette, Violin, Vocal Recording, Vocals
2003	Rough Trade Shops: Country		Composer
2003	Tempted to Smile	Fred Frith	Composer, Guitar, Main Personnel, Photography, Primary Artist, Violin
2003	Two Forms of Multitudes: Conducted Improvisations	Moe! Staiano's MOE!KESTRA!	Bass (Electric)

2002	Cigarettes & Carrot Juice: The Santa Cruz Years	Camper Van Beethoven	Bass, Casio, Composer, Guitar, Guitar (Electric), Instrumentation, Keyboards, Mandolin, Noise, Sitar, Tape, Viola, Violin, Vocals
2002	Driving in the Rain 3 Am: Songs to Get Lost With		Composer
2002	Tusk	Camper Van Beethoven	Editing, Engineer, Guitar, Keyboards, Noise, Photography, Remixing, Tapes, Violin, Vocals
2001	Blues & Soul, Vol. 8: 1982-1983		Composer
2001	Digital Bass 2002	Bass 305	Composer
2000	Camper Van Beethoven Is Dead: Long Live Camper Van Beethoven	Camper Van Beethoven	Composer, Musician
2000	Fireflies	Mike Levy	Cello, Viola, Violin
2000	I Talked to Death in Stereo	Eugene Chadbourne	Mandolin, Toy Instruments
2000	Scissors and Paper	Jonathan Segel	Composer, Primary Artist
1999	Jimi	Eugene Chadbourne	Mandolin, Violin
1999	Revenge of Camper Van Chadbourne	Camper Van Chadbourne	Fiddle, Guitar, Mandolin, Mixing, Vocals
1999	Shark Bait	Magnet	Fiddle, Guest Artist, Violin, Vocals (Background)
1999	Used Record Pile	Camper Van Chadbourne	Mandolin, Violin
1998	Days for Days	Loud Family	Bouzouki, Cittern, Slide Guitar, Violin
1998	Greatest Hits & Test Tones	Big City Orchestra	String Section

1998	Hits from the Underground: The 80's		Composer
1998	The Fog Show	Alison Faith Levy	Editing, Sequencing
1998	This Is Acid Jazz, Vol. 6: Golden Age of Groove		Composer
1998	To Phil	Eugene Chadbourne	Mandolin, Violin, Vocals
1997	Before X		Composer
1997	Fancy Birdhouse	Jack & Jill	Guitar, Mixing, Vocals
1997	Sleeping Car (Schlafwagen)	Granfaloon Bus	Cello, Guest Artist, Trumpet
1997	Ssssh/Cricklewood Green	Ten Years After	Composer
1996	Bio-Dome		Composer
1996	Chadbourne Barber Shop	Eugene Chadbourne	Guest Artist, Organ
1996	Coctails	The Coctails	Composer
1996	Jesse Helms Busted With Pornography	Eugene Chadbourne	Fiddle, Primary Artist, Vocals
1996	Toast	Electric Chairmen	Guitar, Harmonium, Mixing, Organ, Violin, Vocals
1995	C is for Cookie	Sesame Street	Composer
1995	Chill and ShriII	Jack & Jill	Composer, Guitar, Harmonium, Producer, Vocals
1995	Circles	Fi'ness	Composer
1995	Out in the Heat	Victor Krummenacher	Harmonium, Photography
1995	People's Fuzz	Flowerhead	Composer

1995	Who Killed Acid Jazz?	Bass Buddah Heads	Composer
1994	Here	Hieronymus Firebrain	Accordion, Composer, Guitar, Mixing, Violin, Vocals
1994	Love Like a Man	Ten Years After	Composer
1994	Pushing the Norton		Composer, Guitar, Vocals
1994	There	Hieronymus Firebrain	Accordion, Composer, Engineer, Guitar, Mandolin, Mixing, Primary Artist, Violin, Vocals
1994	Virgin Years	Camper Van Beethoven	Composer
1993	Camper Vantiquities	Camper Van Beethoven	Composer, Guitar, Keyboards, Mixing, Violin, Vocals, Vocals (Background)
1992	A Love Restrained	Granfaloon Bus	Guest Artist, Piano, Violin
1992	Get-A-Way	Dee Dee Wilde	Composer
1992	Her Greatest Hits	Belinda Carlisle	Composer
1992	Overwhelming Colorfast	Overwhelming Colorfast	Violin
1991	Circles	Kiss Amc	Composer
1991	Inside Out	D.A.M.	Composer
1991	MTV: Best of 120 Minutes, Vol. 1		Composer
1991	Meridian	Monks of Doom	Photography, Portrait Photography
1990	Acoustic Music Project		Composer, Performer, Primary Artist, Violin, Vocals
1990	Eddie Chatterbox Double Trio Jazz Album	Eugene Chadbourne	Mandolin, Violin
1990	Nijmegen Hassen Hunt	Eugene	Violin

		Chadbourne	
1989	Eugene Von Beethoven's 69th Sin Funny	Camper Van Chadbourne	Guitar, Violin
1989	Key Lime Pie	Camper Van Beethoven	Composer
1988	Our Beloved Revolutionary Sweetheart	Camper Van Beethoven	Casio, Cittern, Composer, Group Member, Guitar, Keyboards, Mandolin, Photo Courtesy, Piano, Strings, Unknown Contributor Role
1988	Storytelling	Jonathan Segel	Guitar, Primary Artist, Vocals
1988	The Ancient and the Infant	Ron Cooley	Composer
1988	The Eddie Chatterbox Double Trio Love Album	Eugene Chadbourne	Keyboards, Mandolin, Violin
1988	Third Album/Vampire Can Mating Oven	Camper Van Beethoven	Bass, Coloring, Composer, Guitar, Keyboards, Printer, Violin, Vocals
1988	This World Owes Me a Buzz	Spot 1019	Violin
1987	Camper Van Chadbourne	Camper Van Chadbourne	Fiddle, Keyboards, Mandolin, Piano, Sitar
1987	The Men Who Loved Music	The Young Fresh Fellows	Violin
1987	Vampire Can Mating Oven	Camper Van Beethoven	Composer
1986	Camper Van Beethoven	Camper Van Beethoven	Banjo, Bass, Coloring, Composer, Drums, Guitar, Instrumentation, Multi Instruments, Printer, Violin
1986	II & III	Camper Van Beethoven	Casio, Composer, Guitar (Electric), Mandolin, Noise, Sangbe Drum, Sitar, Viola, Violin
1986	Take the Skinheads	Camper Van	Composer

	Bowling EP	Beethoven	
1985	Telephone Free Landslide Victory	Camper Van Beethoven	Composer, Group Member, Keyboards, Mandolin, Musician, Noise, Violin, Vocals
1982	Blaze of Glory	Game Theory	Project Assistant
1975	Rufus Featuring Chaka Khan	Rufus & Chaka Khan	Composer
	Emergency Rental	Rent Romus	Violin
	From Lo-Fi to Disco!	Woog Riots	Composer
	I Had Something to Prove	Eugene Chadbourne	Mandolin
	It Was Like That When We Got Here	Camper Van Beethoven	Composer

Websites:

<http://www.jonathansegel.com/#!about/cadp>

<http://music.jsegel.com>

<http://www.allmusic.com/artist/jonathan-segel-mn0000263541/credits>

https://en.wikipedia.org/wiki/Jonathan_Segel

Re: Expert Testimony on (i) Community Establishment; (ii) Nexus; and (iii) Support for DotMusic’s Community-Based Application¹ for .MUSIC (Application ID 1-1115-14110)

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

Please accept this letter that indicates that there is substantive and compelling evidence that the DotMusic application convincingly meets the full criteria under Community Priority Evaluation on the following points: (i) the Music Community’s *Establishment* as defined by DotMusic; (ii) the matching *Nexus* between the “music” Community and the “music” string (or top-level domain); and (iii) that DotMusic possesses documented *Support* from organizations representing a majority of the global Music Community addressed and defined.

Please see my credentials attached hereto that identify my level of expertise and specialized knowledge with respect to the music community’s organization and delineation.

SUMMARY

DotMusic has established the following:

- 1) Its Community definition recognizes the cohesive, symbiotic and overlapping nature of the global Music Community. The definition includes those associated with commercial and non-commercial creation, performance, marketing and distribution of music;
- 2) “Music Community” members have the requisite awareness and recognition of the interdependency, overlapping and cohesive nature of each “organized community of similar nature that relates to music.” These organized and aligned communities are closely united and make “music” as we know it today. It is this self-awareness and interdependence that gives the “Music Community” its strength. With exponential growth of the Internet, mobile and the Domain Name System (DNS), the “Music Community’s” use and reliance on the Internet to create, market and disseminate music-related content, products, services and activities will continue to grow;
- 3) The “Music Community” functions in a regulated sector with global copyright protections – it is clear that the “community,” as defined, implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate a globally-recognized set of standards for

¹ <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1392>

the protection of the “Music Community” member rights with relation to their copyrighted music works around the world;

4) The “Music” Community -- as defined by DotMusic -- has at least one entity mainly dedicated to the community supporting DotMusic’s application. Such documented *Support* includes several “international federation of national communities of a similar nature,” music coalitions and others that are strongly associated with “music,” which represent a majority of the Community with considerable millions of members worldwide.²

5) The *Nexus* of the “music” Community matches the “music” applied-for string because it represents the entire global Music Community – a community that pre-existed 2007 with a size in the considerable millions of constituents. The “Music Community” definition -- which incorporates the strict fundamental attributes of a closely united Community definition that is “organized” and “delineated” -- ensures that all of its constituent members have a requisite awareness of the community as defined, including both commercial and non-commercial stakeholders, to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination.

6) DotMusic has received support from the largest coalition of Music Community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support³ from institutions/organizations representing a majority of the Community as defined and recognized in the DotMusic application.

There is substantive evidence that DotMusic fulfills the *Nexus*, *Community Establishment* and *Support* criteria for the “Music” string. The inclusion and representation of every music constituent type is paramount to the articulated purpose of the string. DotMusic and its application’s global Music Community supporters substantiate that every type of music constituent contributes to the function and operation of the music sector within a regulated framework. The symbiotic nature of the Community as defined and structured means that “Music” would not function as it does today without the participation of all music constituent types that interconnect to match the “music” string with the “music” Community definition.

² <http://music.us/supporters>

³ <http://music.us/supporters>

ASSESSMENT OF COMMUNITY DEFINITION, ESTABLISHMENT AND NEXUS

A) *Music Community Definition, Establishment & Community Endorsement*⁴

DotMusic's definition of the "Music Community" as a "strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music" (See Application Answer to Question 20a) is factually accurate and representative of the "Music Community." Community characteristics include:

i) An Organized, Cohesive, Interdependent Logically-Allied Community:

The "Music Community" definition covers the regulated, interdependent and cohesive nature of the music sector that exists today. "Music Community" members have the requisite awareness and recognition of the interdependent, overlapping and cohesive nature of each "organized community of similar nature that relates to music" that comprises the "Music Community." Without such cohesiveness and interdependency, the defined "Music" Community matching the applied-for string ("Music") would not be able to function in its regulated sector. "Music" is a regulated sector comprised of a logical alliance of interdependent communities relating to music with organized practices and institutions that enable and regulate the production, distribution and consumption of music that was publicly recognized by both ICANN and the Government Advisory Committee⁵

As a result, the Music Community as defined is "closely united" (As per the definition of "cohesion" according to Merriam-Webster dictionary⁶) or "united or form a whole" (As per the definition of the word "cohesion" according to Oxford Dictionaries⁷).

DotMusic's application follows unified principles that the entire Community subscribes to, such as: creating a trusted identifier and safe haven for music consumption, protecting musicians' rights and intellectual property, fighting copyright infringement/piracy, supporting fair compensation and music education, and following a multi-stakeholder approach of representation of all types of global music constituents without discrimination (See Application Answers to 18).

The "Music Community" as defined (a "strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music") establishes that:

- (1) There is an awareness and recognition among its members;

⁴ See <http://music.us/establishment>

⁵ <https://www.icann.org/en/system/files/bm/briefing-materials-2-05feb14-en.pdf>, Pg.3

⁶ <http://www.merriam-webster.com/dictionary/cohesion>

⁷ http://www.oxforddictionaries.com/us/definition/american_english/cohesion

- (2) The organized and delineated logical alliance of communities exists; and
- (3) The Community is “closely united” and “interdependent” (i.e. Each “organized community of similar nature that relates to music” which is part of the “logical alliance of communities that relate to music” is not mutually exclusive).

In short, the applied-for string (“Music”) matches the name of the “Music” Community as defined by DotMusic’s application. DotMusic’s “Music Community” definition accurately represents the common definition of the “Music Community,” which is confirmed by Wikipedia.

According to Wikipedia:⁸

Music community is defined as a logical alliance of interdependent communities that are related to music, which include commercial participants...and non-commercial participants...and consists of an “ensemble of practices and institutions that make possible and regulate the production, distribution and consumption of music”...UNESCO identifies the music community as a “community of identity” implying common identifiable characteristics and cohesive attributes such as sharing a music culture, norms and subscribing to common ideals related to music...The music community is not defined as much by demographic indicators such as race, gender, and income level, as it is by common values, cohesive norms and interconnected structures to build a community identity. It refers to music-related individuals and organisations in a shared environment with shared understandings and practices, modes of production and distribution. The shared organisation of collective musical activities, identity and community value is created as result of infrastructure and a shared set of common values...Many studies outline the historical, cultural, and spatial significance of the music community, including how its identity is formed through musical practices. The music community shares a cohesive and interconnected structure of artistic expression, with diverse subcultures and socio-economic interactions...subscribing to common ideals. Under such structured context music consumption becomes possible regardless whether the transaction is commercial and non-commercial.⁹

⁸ Wikipedia is ranked 6th among the ten most popular websites (Alexa, Retrieved March 23, 2015 from <http://www.alexa.com/siteinfo/wikipedia.org>) and constitutes the Internet's largest, most frequently updated and popular general reference work (See OECD, OECD Internet Economy Outlook 2012, OECD Publishing, http://www.oecd-ilibrary.org/science-and-technology/oecd-internet-economy-outlook-2012_9789264086463-en, Pg.172) that compares favorably to the accuracy of other encyclopedias (such as the Britannica) according to a 2012 study conducted in partnership with Oxford University (See <http://blog.wikimedia.org/2012/08/02/seven-years-after-nature-pilot-study-compares-wikipedia-favorably-to-other-encyclopedias-in-three-languages>).

⁹ Music Community. In *Wikipedia*. Retrieved July 6, 2015, from https://en.wikipedia.org/wiki/Music_community

ii) An Aware, Pre-Existing and Recognized Community of Considerable Millions Worldwide:

DotMusic's definition of the Community covers all Community members associated with the string, each with a requisite awareness of the Community that can be validated through their natural association with a particular music-related community that they clearly identify with. According to DotMusic, all Music Community members must identify their music-related community in order to demonstrate their requisite awareness of the defined Community as part of the .MUSIC registration and validation process.

According to DotMusic, the Music Community's geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents (Application Answer to Question 20a).

According to DotMusic, "registrants will be verified using Community-organized, unified "criteria taken from holistic perspective with due regard of Community particularities" that "invoke a formal membership (Application Answer to Question 20a)." The defined Community represents all music-related entities with a clear and straightforward membership with the Community involved in the legal production, performance, promotion, and distribution of music worldwide. According to DotMusic, the Music Community members must have an active, non-tangential relationship with the applied-for string "music" and also have the requisite awareness of the music-related community that they are a part of by specifically identifying it as part of the registration and validation process (i.e. upon successful registration and validation, each community member will be given a unique community identification number that will automatically associate them with their identified community and the "music" string).

DotMusic's Community definition matches the applied-for string because it allows both commercial and non-commercial stakeholders to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination/exclusion. Given the regulated sector of the community, it is clear that the "Music Community" as defined implies "more of cohesion than a mere commonality of interest" with an "awareness and recognition of a community among its members." Several international treaties mandate cohesive and globally-recognized set of standards for the protection of the music community members' rights with relation to their copyrighted music works around the world.¹⁰

The Berne Convention for the Protection of Literary and Artistic Works¹¹ provides that each of the 168 contracting parties¹² (representing an overwhelming majority of the world's population) provides automatic protection for music works first published in other countries of the Berne union and for unpublished music works whose authors are citizens of or resident in such other

¹⁰ http://www.rightsdirect.com/content/rd/en/toolbar/copyright_education/International_Copyright_Basics.html

¹¹ http://www.wipo.int/treaties/en/text.jsp?file_id=283698

¹² http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=15

countries.¹³ This means that if a Music Community member's copyright rights are violated in any other signatory country's jurisdiction, then the music community member will have the music copyright rights given by that country. Music Community members are clearly aware of the collective Community's rights, which could not be made possible without these cohesive and globally-recognized set of standards. If such standards were not coherent or enforced then music would not be able to exist in its current form and the industry component of the Music Community sector would not exist. As such, the Community's *Establishment* and definition is "cohesive" and hence cannot be construed since the Community is a logical alliance of music communities that establish a clearly delineated and organized Community structure that is "closely united" and functions as a "whole"

Further evidence to substantiate the cohesive, symbiotic and overlapping nature of the Community, includes other globally-recognized standards and classification systems, which identify who the individual songwriters, publishers and rights holders are and which songs they are associated with so that Community members are appropriately compensated, regardless of whether the constituent is a commercial, non-commercial or amateur entity. The "music" string is commonly used in classification systems such as ISMN,¹⁴ ISRC,¹⁵ ISWC,¹⁶ ISNI.¹⁷ (Application Answer to Question 20a). For example, if a music entity would like to distribute their music, either commercially or for free, then an ISRC can be assigned to globally identify any specific music work. An ISRC, which facilitates efficient music discovery and community member payment, is constructed from 12 characters representing country, registrant, year of registration and designation (i.e. the serial number assigned by the registrant). With respect to domains, an equivalent system that relates to identifying a specific domain's registrant and other relevant information pertaining to the domain is WHOIS. Domain registrants are required by ICANN "to provide accurate WHOIS contact data" or else their domain "registration may be suspended or even cancelled".¹⁸

¹³ <http://www.britannica.com/EBchecked/topic/62482/Berne-Convention>

¹⁴ The International Standard Music Number (ISMN) is a unique number for the identification of all notated music publications from all over the world. The ISMN is an ISO certified global standard number (ISO 10957:2009). See <http://www.ismn-international.org/whatis.html> and http://www.iso.org/iso/home/store/catalogue_ics/catalogue_detail_ics.htm?csnumber=43173

¹⁵ The ISRC (International Standard Recording Code) is the international identification system for sound recordings and music video recordings. The ISRC is an ISO certified global standard number (ISO 3901:2001) and is managed by the IFPI. See <http://isrc.ifpi.org>, <https://www.usisrc.org/about/index.html> and http://www.iso.org/iso/catalogue_detail?csnumber=23401

¹⁶ The ISWC (International Standard Musical Work Code) is a unique, permanent and internationally recognized reference number for the identification of musical works. The ISWC has been approved by ISO (International Organization for Standardisation) as a global standard (ISO 15707:2001) and is managed by CISAC. See <http://www.iswc.org/en/faq.html> and http://www.iso.org/iso/catalogue_detail?csnumber=28780

¹⁷ The International Standard Name Identifier (ISNI) is the ISO certified global standard number (ISO 27729) for identifying the millions of contributors to creative works and those active in their distribution. ISNI holds public records of over 8 million identities and 490,000 organizations. See <http://www.isni.org/> and http://www.iso.org/iso/catalogue_detail?csnumber=44292

¹⁸ <https://whois.icann.org/en/about-whois> and <https://www.icann.org/resources/pages/faqs-f0-2012-02-25-en>

Without such Music Community “cohesion” and standardized systems functioning in its regulated sector, the Music Community would not be able to create, market and distribute their music. By the same token, fans would not be able to identify the music they are listening to with a specific music artist, regardless of whether the listening activity or behavior is commercial or non-commercial in nature. The socio-economic structure that characterizes “music” as commonly-known today would be non-existent without these organized and delineated elements that commonly define the Community.

iii) *International Federations and Organizations mainly Dedicated to the Community:*

According to ICANN’s Applicant Guidebook (“AGB”)¹⁹: “*With respect to “Delineation” and “Extension,” it should be noted that a community can consist of...a logical alliance of communities (for example, an international federation of national communities of a similar nature... viable as such, provided the requisite awareness and recognition of the community is at hand among the members.*” (AGB, 4-12). The community as defined in the DotMusic application has at least one entity *mainly*²⁰ dedicated to the community which has supported DotMusic, which include several “international federation of national communities of a similar nature” relating to music, music coalitions and other relevant and non-negligible music organizations.

One of these entities include the only international federation of national communities relating to government culture agencies and arts councils, which has an integral association with music globally: the International Federation of Arts Councils and Culture Agencies (IFACCA).

IFACCA is the only international federation that represents government culture agencies and arts councils globally. These national communities are governmental institutions that play a pivotal

¹⁹ <https://newgtlds.icann.org/en/applicants/agb/guidebook-full-11jan12-en.pdf>

²⁰ Per the Oxford and Merriam Webster dictionaries, the word “mainly” is defined as “*more than anything else*” (See <http://www.oxforddictionaries.com/definition/english/mainly> and <http://www.merriam-webster.com/dictionary/mainly> respectively). According to DotMusic, the string .MUSIC relates to the Community “by representing all constituents involved in music creation, production and distribution” (Application Answer to Question 20d). Supporting organizations related to that string that are “mainly” dedicated to the Community and its activities, include the International Federation of Arts Councils and Culture Agencies (IFACCA) representing government culture ministries and arts councils, the International Federation of Musicians (FIM) representing musicians globally, the International Federation of Phonographic Industry (IFPI) representing the recording industry worldwide, the International Confederation of Music Publishers (ICPM) representing the voice of global music publishing, the International Association of Music Information Centres (IAMIC), the American Association of Independent Music (A2IM), whose associate members represent a majority of music consumed, the Independent Music Worldwide Independent Network (WIN) representing independent music worldwide, the International Society for Music Education (ISME) the premiere international organization representing music education, and many others (See support at <http://music.us/supporters> and <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails:downloadattachment/142588?t:ac=1392>).

role with respect to music.²¹ IFACCA's members cover the majority of music entities globally, regardless of whether they are commercial, non-commercial or amateurs. Government ministry of culture and council agencies related to music cover a majority of the overall community with respect to headcount and geographic reach. The "Size" covered reaches over a hundred million music entities i.e. "considerable size with millions of constituents" per Application Answer to Question 20a.

The string "music" falls under the jurisdiction of each country's Ministry of Culture governmental agency or arts/music council (emphasis added). The degree of power and influence of government ministry of culture and council agencies with respect to music surpasses any organization type since these agencies (i) provide the majority of funding for music-related activities; (ii) regulate copyright law; and (iii) encompass all the music entities that fall under their country, regardless whether these entities are commercial, non-commercial or amateurs. IFACCA is globally recognized by its strategic partners, such as UNESCO, a United Nations agency representing 195 member states and the European Commission.²² The UNESCO strategic partnership²³ is relevant, especially since UNESCO founded the International Music Council (the "IMC") in 1949, which represents over 200 million music constituents from over 150 countries and over 1000 organizations globally.²⁴

Government activities in the clearly delineated and organized "Music Community" include setting statutory royalty rates. For example, in the United States, mechanical royalties are based on a "statutory rate" set by the U.S. Congress. This rate is increased to follow changes in the economy, usually based on the Consumer Price Index. Currently, the mechanical statutory rate is \$0.091 for songs five minutes or less in length or \$.0175 per minute for songs that are over five minutes long.²⁵

Ministries of culture and arts councils (that comprise IFACCA's membership) support musicians, musical performances, independent music artists, non-commercial musical expression and education in their respective countries. The 165 ministries of culture, arts councils and affiliates that comprise IFACCA's membership support the "performing arts" and music specifically. Without the financial and logistical support of arts councils and the ministries of culture, the music community would be adversely affected, and in some countries, may not exist in any appreciable manner. For example, the Ministry of Culture 2011 budget for the small country state of Cyprus for culture funding was €34,876,522 with critical support of music activities.²⁶ Other small government Ministries of Culture, such as Albania,²⁷ or government

²¹ http://www.ifacca.org/membership/current_members/

²² http://www.ifacca.org/strategic_partners/

²³ http://www.ifacca.org/strategic_partners/

²⁴ <http://www.imc-cim.org/about-imc-separator/who-we-are.html>

²⁵ U.S Copyright Office, <http://www.copyright.gov/carp/m200a.html>

²⁶ 2011 Annual Report for Cyprus Ministry of Culture, Section 1.2 "Music"

(http://www.moec.gov.cy/en/annual_reports/annual_report_2011_en.pdf). Activities include Music Performances in Cyprus (1.2.1) and Abroad (1.2.2), Subsidization of Paphos Aphrodite Festival (1.2.3), Music Publications (1.2.4), Subsidization and Purchases of Digital Records (1.2.5), Promotion for Cypriot musical creativity abroad (1.2.6),

Ministries of Culture and Arts Councils from countries with larger populations, such as India,²⁸ all provide critical support and substantial advocacy for music. Other examples include government institutions collaborating and advocating music through their funded country-based pavilion initiatives at Midem, the world's largest music conference.²⁹

Government ministries and arts councils provide critical support for the Music Community, including commercial music organizations. By way of example, government ministries' and arts councils' substantial connection to and support of "music" is noted in the reports of funding and support for music. Some examples to showcase the degree of power of the IFACCA's membership towards the string and global and national music are music investment and music funding (Annual reports by governments and councils):

- New Zealand Ministry of Culture has funded significant music projects. Some include the REAL New Zealand Music Tour (\$415,000), the New Zealand String Quartet (\$150,000) and New Zealand Music Commission: (\$1,378,000).³⁰
- The Australian Government/Council For The Arts invested \$51.2 million for the nation's orchestras; \$21.6 million for opera; \$10.8 million for other music artists and organizations; \$13.1 million for multi-platform artists and organizations; and \$4 million in miscellaneous funding, including sector building and audience development initiatives and programs.³¹
- Canada Council for the Arts is Canada's national, arts funding agency investing \$28 million in its Canada Council Musical Instrument Bank (Page 16) and \$28,156,000 in Music Arts Programs (Page 66).³² The Government of Canada also renewed its annual investment of \$27.6 million over five years in the Canada Music Fund.³³
- The United Kingdom Department for Culture and Education (DfE) will fund music education at significant levels: £77 million, £65 million and £60 million will be available in the three years from April 2012.³⁴

Cyprus Symphony Orchestra Foundation (1.2.7), Music Information Centre (1.2.8), Developing Music Education (1.2.9), Organising of the 1st Musicological Symposium (1.2.10) and Musical Festivities for the European Volunteerism Year (1.2.11)

²⁷ http://www.culturalpolicies.net/down/albania_012011.pdf

²⁸ 2010-11 Annual Report from India Ministry of Culture, [http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011\(Eng\).pdf](http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011(Eng).pdf)

²⁹ <http://my.midem.com/en/contact-us/pavilion-representatives/>

³⁰ 2011 Annual Report from New Zealand Ministry of Culture:

[http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20\(D-0448383\).PDF](http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20(D-0448383).PDF)

³¹ 2011 Annual Report for the Australia Council for the Arts,

http://www.australiacouncil.gov.au/data/assets/pdf_file/0016/142351/Australia-Council-Annual-Report-201112.pdf, Page 28

³² 2011 Annual Report for Canada Council for the Arts, [http://www.canadacouncil.ca/NR/rdonlyres/6F7549BB-F4E5-4B8B-95F4-](http://www.canadacouncil.ca/NR/rdonlyres/6F7549BB-F4E5-4B8B-95F4-1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf)

[1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf](http://www.canadacouncil.ca/NR/rdonlyres/6F7549BB-F4E5-4B8B-95F4-1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf)

³³ <http://www.pch.gc.ca/eng/1294862453819/1294862453821>

³⁴ Department for Culture, The Importance of Music, A National Plan for Music Education,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/180973/DFE-00086-2011.pdf, Page 4, 2011

- The United States National Endowment of the Arts has awarded more than \$4 billion to support the arts since its inception³⁵ and has a strong focus on music as outlined in its Strategic Plan³⁶ with Congress requested to provide \$154,465,000 for fiscal year 2014.³⁷
- The National Arts Council of South Africa invested 2,536,131 ZAR in Music and 9,995,000 ZAR in Orchestras and has focused strongly on the “Strengthening of live indigenous music and advocating the revival of the live music circuit in South Africa”³⁸
- The Singapore Arts Council will fund \$10.2 million in the arts under its 2013 Grants Framework, including the Ding Yi Music Company and Siong Leng Musical Association.³⁹
- In 2011, the support for artistic activities by the Arts Council of Finland was €32.4 million of which €4,921,850 was awarded to music.⁴⁰

Each of IFACCA’s members has a clear association with, and mandate to support the music arts in their countries. In most countries, their ministry of culture/arts council is the largest funder and marketing supporter of the music arts.

The IFPI is another entity *mainly* dedicated to the Community. The IFPI is the only organization that represents the interests of the recording industry worldwide. It is the “voice of the recording industry worldwide”⁴¹ whose members⁴² – major and independent companies -- represent a majority of all commercial music consumed globally. For example, the RIAA, an IFPI national group member,⁴³ represents “approximately 85% of all legitimate recorded music produced and sold in the United States,”⁴⁴ the world’s largest music market with 30% global market share.⁴⁵ Formed in 1933, the IFPI’s mission was to “represent the interests of the recording industry worldwide in all fora.”

³⁵ 2011 Annual report for the National Endowment of the Arts, <http://www.nea.gov/about/11Annual/2011-NEA-Annual-Report.pdf>, Page 2

³⁶ NEA Strategic Plan 2012-2016, www.arts.gov/about/Budget/NEAStrategicPlan2012-2016.pdf

³⁷ http://www.ifacca.org/national_agency_news/2013/04/10/us-president-requests-154465000-neh-2014/

³⁸ 2010-2011 Annual Report for the National Arts Council South Africa, National Arts Council South Africa, <http://www.nac.org.za/media/publications/AR%2010-11%20NAC.PDF/download>, Page 11. Also Mmino, the South African – Norwegian Education Music Programme, solely funds music projects funding a total of 294 projects. Thirteen projects were allocated funding for a total of R1,680,600 of which R1,381,000 went towards music educational and R299,600 to exchange projects (Page 10)

³⁹ Singapore Arts Council, <http://www.nac.gov.sg/media-centre/news-releases/news-detail?id=c2db15e2-c319-40ec-939c-d58735d0a91c>

⁴⁰ <http://www.taiteenkeskustoimikunta.fi/documents/10162/31704/TY+tilastotiedote+1+12+.pdf>, Page 1 and Page 23

⁴¹ <http://www.ifpi.org/about.php>

⁴² <http://www.ifpi.org/our-members.php>

⁴³ <http://www.ifpi.org/national-groups.php>

⁴⁴ <http://www.riaa.com/faq.php>

⁴⁵ <http://www.statista.com/topics/1639/music/>

Another clear example of an “entity *mainly* dedicated to the community” with members that cover hundreds of millions of music constituents with formal boundaries is A2IM, the American Association of Independent Music. A2IM has two types of members: U.S independent Label members and Associate members. A2IM membership for Labels and Associates is invoked formally through an application and if accepted would require annual membership dues.⁴⁶

The reach of A2IM Associate⁴⁷ membership covers hundreds of millions of entities (i.e. the reach of A2IM’s total membership “geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents – See Application Answer to Question 20a).

Organized and strictly delineated communities related to music that are A2IM members include:

- **Apple iTunes**⁴⁸ – iTunes accounts for 63% of global digital music market⁴⁹ - a majority – with a registered community of 800 million registered members⁵⁰ available in 119 countries who abide to strict terms of service and boundaries⁵¹ and have downloaded over 25 billion songs⁵² from iTunes’ catalog of over 43 million songs⁵³ covering a global music community, regardless of genre or whether the community entities are amateur, professional, commercial or non-commercial. To add music to iTunes, all music artists must have a formal membership with iTunes via an Apple ID registration, which includes a current credit card on file.⁵⁴
- **Pandora**⁵⁵ – Pandora is the world’s largest streaming music radio with a community of over 250 million registered members.⁵⁶
- **Spotify**⁵⁷ – Spotify is the world’s largest music streaming community with over 50 million active registered members in 58 countries and over 30 million songs. The music community uploads 20,000 songs every day.⁵⁸
- **Vevo**⁵⁹ – Vevo is the world’s leading all-premium music video community and platform with over 8 billion monthly views globally.⁶⁰

⁴⁶ <http://a2im.org/about-joining/>

⁴⁷ <http://a2im.org/groups/tag/associate+members/>

⁴⁸ <http://a2im.org/groups/itunes>

⁴⁹ <http://appleinsider.com/articles/13/04/16/apples-itunes-rules-digital-music-market-with-63-share>

⁵⁰ <http://www.npr.org/blogs/therecord/2015/01/06/375173595/with-downloads-in-decline-can-itunes-adapt>

⁵¹ <http://www.apple.com/legal/internet-services/itunes/ww/index.html>

⁵² <http://www.apple.com/pr/library/2013/02/06iTunes-Store-Sets-New-Record-with-25-Billion-Songs-Sold.html>

⁵³ <https://www.apple.com/itunes/features/>

⁵⁴ <https://www.apple.com/itunes/working-itunes/sell-content/music-faq.html>

⁵⁵ <http://a2im.org/groups/pandora>

⁵⁶ <http://www.cnet.com/news/like-a-rolling-milestone-pandora-hits-250m-registered-users/> and <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MTkxNTM1fENoaWxkSUQ9LTF8VHlwZT0z&t=1>, Pg.9

⁵⁷ <http://a2im.org/groups/spotify>

⁵⁸ <https://press.spotify.com/us/information/>

⁵⁹ <http://a2im.org/groups/vevo/>

- **Youtube**⁶¹ – Youtube is the world’s largest music video streaming community with millions of music creators -- amateur, professional, commercial or non-commercial -- and over 1 billion registered members covering all regions globally. 6 billion hours of video is watched every month on Youtube,⁶² of which 38.4% is music-related.⁶³
- **Reverbnation**⁶⁴ – Reverbnation⁶⁵ is one of the world’s largest music community and a leading music distributor with over 3.87 million musicians, venues labels and industry professionals covering every country globally. The Reverbnation community grows by over 50,000 artists, bands, labels and industry professionals monthly.
- **BMG**⁶⁶ – BMG is focused on the management of music publishing and recording rights. BMG has an international presence and represents over 2.5 million music rights globally.⁶⁷

A2IM also includes members that are associated with global government agencies which exclusively represent substantial music economies and music members, such as France (BureauExport⁶⁸), China (China Audio Video Association⁶⁹) and Germany (Initiative Musik).⁷⁰ A2IM also has Affiliate⁷¹ associations within the global music community. These include Affiliates such as MusicFirst,⁷² the Copyright Alliance,⁷³ the Worldwide Independent Network (WIN)⁷⁴ and Merlin.⁷⁵

A2IM also represents a recognized Music Coalition representing the interests of the Global Independent Music Community.⁷⁶ The A2IM Coalition includes Merlin, a global rights agency for the independent label sector, representing over 20,000 labels from 39 countries, Worldwide Independent Network (representing label creators in over 20 countries), Association of Independent Music (representing largest and most respected labels in the world), and IMPALA (Independent Music Companies Association on behalf of over 4,000 independent music companies and national associations across Europe, representing 99% of music actors in Europe which are micro, small and medium sized enterprises).

⁶⁰ <http://www.vevo.com/c/EN/US/about>

⁶¹ <http://a2im.org/groups/youtube/>

⁶² <https://www.youtube.com/yt/press/statistics.html>

⁶³ http://www.researchandmarkets.com/reports/2092499/internet_video_2011_2014_view_share_site_and

⁶⁴ <http://a2im.org/groups/reverb-nation/>

⁶⁵ <http://www.reverbnation.com/about>

⁶⁶ <http://a2im.org/groups/bmg-rights/>

⁶⁷ <http://www.bmg.com/category/about-us/history/>

⁶⁸ <http://a2im.org/groups/french-music-export-office>

⁶⁹ <http://a2im.org/groups/china-audio-video-association-cava>

⁷⁰ <http://a2im.org/groups/initiative-musik-gmbh>

⁷¹ <http://a2im.org/groups/tag/associate+members/>

⁷² <http://musicfirstcoalition.org/coalition>, The musicFIRST Coalition, with founding members A2IM, RIAA, and Recording Academy represents musicians, artists, managers, music businesses, and performance right advocates.

⁷³ <http://www.copyrightalliance.org/members>

⁷⁴ <http://www.winformusic.org>

⁷⁵ <http://www.merlinnetwork.org>

⁷⁶ <https://www.icann.org/en/system/files/correspondence/bengloff-to-chehade-et-al-20aug14-en.pdf> and <https://www.icann.org/en/system/files/correspondence/bengloff-to-crocker-et-al-07mar15-en.pdf>

Cumulatively, A2IM's Label and Associate Membership, A2IM's Affiliates and the A2IM's Global Independent Music Community Coalition, covers a majority of the global music community. Its cumulative membership is in the hundreds of millions of entities with formal boundaries belonging to strictly organized and delineated communities related to music as per the Community Definition and Size (See Application answer to Question 20a).

Another global Music Community Coalition led by the RIAA “on behalf of over 15 national and international trade associations” also expressed its support for .MUSIC to be under a “community” application model, including encouraging statements in support of DotMusic’s policies that stated that the coalition “was encouraged to see” that DotMusic “included several measures to deter and address copyright infringement within that TLD.” The “coalition members represent the people that write, sing, record, manufacture, distribute and/or license over 80% of the world’s music”⁷⁷ – a majority of global music.⁷⁸

Another letter⁷⁹ sent to ICANN (on April 14th, 2015) by Danielle Aguirre from the NMPA and on behalf of a music publisher and songwriter community coalition representing a majority of the global music publishing community, also expressed “support [for] the .MUSIC community applications because respecting and protecting music rights serves the global music community and the public interest.”

The International Music Products Association, NAMM, is another globally-recognized and relevant group of non-negligible size that has supported DotMusic.⁸⁰ NAMM, formed in 1901, is *mainly* dedicated to the global music community by representing the international music products industry and community, with globally-recognized members and exhibitors that include Yamaha, Roland, Sennheiser, Sony, Fender, Harman, Kawai, Shure, Steinway, Audio-Technica, AKAI, Gibson, Peavey, Korg, AKG, Selmer, JBL, Alesis, Ibanez, AVID, Casio, DW, Sabian, Pearl, Zildjian, Martin, Ludwig, Marshall and others.^{81 82} Every amateur and professional musician worldwide uses music products manufactured and distributed by NAMM’s members. Without these musical instruments and products, music as we know it today would not be created or produced. NAMM and its trade shows power the \$17 billion global music products industry serving as a hub for the global music community wanting to seek out the newest innovations in musical products, recording technology, sound and lighting. NAMM’s mission is “to strengthen

⁷⁷ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.1

⁷⁸ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.3, Appendix A

⁷⁹ <https://www.icann.org/en/system/files/correspondence/aguirre-to-icann-board-eiu-14apr15-en.pdf>

⁸⁰ http://music.us/letters/NAMM_International_Music_Products_Association.pdf

⁸¹ https://www.namm.org/files/showdir/ExhibitorList_WN15.xls

⁸² <http://www.musictrades.com/global.html>

the music products industry and promote the pleasures and benefits of making music.”⁸³ NAMM also hosts the NAMM Show, the world's largest event for the music products industry.

Collectively, the DotMusic application received support from the largest coalition of music community member organizations ever assembled to support a cause representing over 95% of music consumed globally.⁸⁴ Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support⁸⁵ from institutions/organizations representing a majority of the Community addressed. Music -- as commonly-known by the general public and experienced today -- would not be possible without these supporting, non-negligible and relevant organizations that have endorsed DotMusic.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Community Establishment* and *Community Endorsement* from the majority of the global Music Community as defined.

B) Nexus⁸⁶

According to the Applicant Guidebook (“AGB”), to receive the maximum score for Nexus, the applied-for string -- “music” -- must match the name of the community or be a well-known short-form or abbreviation of the community name.

The *Nexus* of the “Music Community” entirely matches the applied-for “music” string because it represents the entire global Music Community as commonly-known and perceived by the general public. This definition allows for all constituents with a requisite awareness of the Community defined to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination. The definition of the Community requires that members have an active, non-tangential relationship with the applied-for string and the requisite awareness of the music community they identify with as part of the registration process. It is clear that the general public will directly associate and equate the string with the Community as defined by DotMusic. There is no possibility of overreaching beyond the definition or allowing unrelated non-music entities to be included as part of the Community. Community members may register a .MUSIC by either:

⁸³ <https://www.namm.org/about>

⁸⁴ See <http://music.us/supporters>, <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/downloadattachment/142588?t:ac=1392>, Bloomberg BNA at http://music.us/RIAA_Backs_DotMusic.pdf Pg.1, and <http://diffuser.fm/will-dot-music-domains-make-the-internet-better/>

⁸⁵ <http://music.us/supporters>

⁸⁶ See <http://music.us/nexus>

- 1) Identifying that they belong to a Music Community Member Organization (“MCMO”); or
- 2) Identifying the community they belong to, which is consistent with the definition of the Community: “the strictly delineated and organized logical alliance of communities of similar nature related to music.”

All Community members are aware of and recognize their inclusion in the defined Community by identifying which clearly defined community they belong to and have an active participation in. The *nexus* of the applied-for string ensures inclusion of the entire global community that the string represents while excluding unrelated-entities not associated with the string. This way there is a clear match and alignment between the “music” sting and the Community defined.

While the exact size of the global Music Community as defined is unknown (there is no empirical evidence providing an exact, finite number because amateur entities are also included in the Community’s definition), it is in the considerable millions as explicitly stated in the DotMusic Application. DotMusic’s definition of the Community and mutually-inclusive Registration Policies ensure that eligible members are only music-related and associated with the string. This is because the string identifies all constituents involved in music. Music-only participation optimizes the relevancy of .MUSIC domains to the string and entirely matches the *nexus* between the string and Community defined. According to DotMusic, the Community *definition, eligibility* criteria and *content and use* requirements ensure that peripheral industries and entities not related to music are excluded so that the string and the defined Community matches and aligns in a consistent manner consistent with DotMusic’s community-based purpose i.e. only entities with music-related activities are able to register .MUSIC domains.

Membership aligns with the *nexus* of the Community and the string, which is explicitly relevant to music. The string as defined in the application demonstrates uniqueness because it has no other significant meaning beyond identifying the community described in the application. According to DotMusic’s application, any tangential or implicit association with the *nexus* of the Community and the string is not regarded as a delineated membership since it would be considered unclear, dispersed or unbound. Such unclear, dispersed or unbound tangential relationships with the defined “music” Community and applied-for “music” string would not constitute a qualifying Community membership and would be ineligible for registration. Every type of music constituent critically contributes to the function and operation of the music sector within a regulated framework⁸⁷ given the symbiotic overlapping nature of the Community as defined and structured. Music would not function as it does today without the participation of all music constituent types which cumulatively match the string with the Community definition.

⁸⁷ ICANN has disclosed that the string .MUSIC is a sensitive string operating in a regulated sector. ICANN also accepted Government Advisory Committee (GAC) advice for safeguards to protect the Music Community and the public interest (See <https://icann.org/en/system/files/correspondence/crocker-to-dryden-3-29oct13-en.pdf> Pg.7)

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Nexus*.

Respectfully Submitted,

Signature:

A handwritten signature in black ink, appearing to be 'David Loscos', written over a horizontal line.

Name: David Loscos

Title: Director of the Postgraduate Degree in Global Music
Business & Lecturer

Organization: University Pompeu Fabra

David Loscos

Highlights:

- Produced the strategic internationalization plan for Uruguayan music; endorsed by the Creative Industries Department of the Ministry of Culture of the Government of Uruguay.
- Produced the strategic internationalization plan for Chilean music; endorsed by the National Music Council of the Ministry of Culture of the Government of Chile.
- As CEO and founder of Tenzing Media produced and worked on the White Book 2013 for music in Spain (endorsed by Promusicae, the Spanish music recording association); and the Legal and Financial Guide for Music in Spain (endorsed by Instituto Autor).
- Former International and local product manager for BMG Music Spain.
- Former Label and Division manager for PRISA media group.
- MBA in Music Industries, Institute of Popular Music at the University of Liverpool.
- Executive director of the postgraduate degree in music industry management at Pompeu Fabra University in Barcelona.
- Lecturer, Global Entertainment and Music Business (<http://valencia.berklee.edu/faculty/david-loscos/>)

David's professional background and vision has always had music at its core.

He started at BMG Music Spain at the end of 1997 where he worked as international and local Product manager. In 2000 he joined Eresmas Interactiva - Wanadoo as World Music Channel Manager. From 2001 until 2003 he worked at MUXXIC Records within the PRISA Media Group, first as Label Manager and then as Director of the Roots and World Music Division. In 2003 he founded and managed Fireyellow, his own music company.

His experience in the educational field has focused on the several sides of the music business. Since 2003, he is the Director of the Music Industry Management Course at the University Pompeu Fabra Institute of Continuing Education in Barcelona. In 2006 he joined ESMUC (Escola Superior de Música de Catalunya) as Professor of Music Publishing and Record Production. One year later, he co-founded Seminarios de la Música, a company specialised on providing intense and continuing training to music industry professionals.

As a consultant he was the co-founder and CEO of Tenzing Media, a business advisory and consulting firm for the music and creative industries that provided internationalization services to music projects and organizations in Spain and Latin America

David has a degree in Business Management from the University of Barcelona and an MBA in Music Industries from the Institute of Popular Music at the University of Liverpool.

Specialities: Global Music Business, Internationalization, Latin Markets, Global Audiences

Education

University of Liverpool
MBA, Music Industries
1999 – 2000

University of Gothenburg
Economics
1995 – 1996

Universitat de Barcelona
Graduate, Business Management
1990 – 1995

Universitat Pompeu Fabra
Executive Programme, Consultant

Experience

Director of the Postgraduate Degree in Global Music Business
idEC / UPF
2004 – Present (11 years), Barcelona

The first music business postgraduate degree in Spanish worldwide currently reaches its 11th edition. The programme proposes the integrated learning of the music business. Starting from the creation, the contents are structured horizontally so that, besides the format, the areas of management, production and marketing of any music project are perfectly defined.

Faculty Member
Berklee College of Music
January 2012 – Present (3 years 8 months)Valencia Campus

Courses taught:

Principles of Marketing - Study Abroad
International Marketing and Branding - Master in Global Entertainment and Music Business
Online and Social Media Management - Master in Global Entertainment and Music Business

Founder and CEO
Fireyellow
2003 – Present (12 years)
Barcelona

"Devoted to music related projects and organizations"
Fireyellow provides four different kind of services:

- a) Training
- b) Consulting

- c) Joint ventures and partnerships
- d) Label and digital distribution

Acts and releases: Maria del Mar Bonet, Toti Soler, Gallygows, Auxiliar, El Tercer Hombre
Music soundtracks: Porca Miseria (TVC, 52 chapter series, 4 seasons)
Joint ventures: Collita Pròpia (Sony Music)

Co-Founder and CEO

Tenzing Media

2008 – 2014 (6 years)

Creative industries consulting agency specialised on music projects and organizations.

Clients: Cluster de Música de Uruguay, Consejo de Música Nacional de Chile, Festival Cine Documental Musical In-Edit, Advanced Music, Universitat Pompeu Fabra, ICEX, Aie, Fundación Autor

Director División Otras Músicas

Muxxic Records

October 2001 – December 2002 (1 year 3 months)

Local Product Manager

BMG Music Spain (SONY Music)

March 2001 – October 2001 (8 months)

Jefe de Canal

Eresmas Interactiva (Wanadoo)

September 2000 – March 2001 (7 months)

International Product Manager

BMG Music Spain

December 1997 – September 1999 (1 year 10 months)

Website: <https://www.linkedin.com/in/davidloscos>

Re: Expert Testimony on (i) Community Establishment; (ii) Nexus; and (iii) Support for DotMusic’s Community-Based Application¹ for .MUSIC (Application ID 1-1115-14110)

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

Please accept this letter that indicates that there is substantive and compelling evidence that the DotMusic application convincingly meets the full criteria under Community Priority Evaluation on the following points: (i) the Music Community’s *Establishment* as defined by DotMusic; (2) the matching *Nexus* between the “music” Community and the “music” string (or top-level domain); and (3) that DotMusic possesses documented *Support* from organizations representing a majority of the global Music Community addressed and defined.

Please see my credentials attached hereto that identify my level of expertise and specialized knowledge with respect to the music community’s organization and delineation.

SUMMARY

DotMusic has established the following:

- 1) Its Community definition recognizes the cohesive, symbiotic and overlapping nature of the global Music Community. The definition includes those associated with commercial and non-commercial creation, performance, marketing and distribution of music;
- 2) “Music Community” members have the requisite awareness and recognition of the interdependency, overlapping and cohesive nature of each “organized community of similar nature that relates to music.” These organized and aligned communities are closely united and make “music” as we know it today. It is this self-awareness and interdependence that gives the “Music Community” its strength. With exponential growth of the Internet, mobile and the Domain Name System (DNS), the “Music Community’s” use and reliance on the Internet to create, market and disseminate music-related content, products, services and activities will continue to grow;
- 3) The “Music Community” functions in a regulated sector with global copyright protections – it is clear that the “community,” as defined, implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate a globally-recognized set of standards for

¹ <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1392>

the protection of the “Music Community” member rights with relation to their copyrighted music works around the world;

4) The “Music” Community -- as defined by DotMusic -- has at least one entity mainly dedicated to the community supporting DotMusic’s application. Such documented *Support* includes several “international federation of national communities of a similar nature,” music coalitions and others that are strongly associated with “music,” which represent a majority of the Community with considerable millions of members worldwide.²

5) The *Nexus* of the “music” Community matches the “music” applied-for string because it represents the entire global Music Community – a community that pre-existed 2007 with a size in the considerable millions of constituents. The “Music Community” definition -- which incorporates the strict fundamental attributes of a closely united Community definition that is “organized” and “delineated” -- ensures that all of its constituent members have a requisite awareness of the community as defined, including both commercial and non-commercial stakeholders, to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination.

6) DotMusic has received support from the largest coalition of Music Community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support³ from institutions/organizations representing a majority of the Community as defined and recognized in the DotMusic application.

There is substantive evidence that DotMusic fulfills the *Nexus, Community Establishment and Support* criteria for the “Music” string. The inclusion and representation of every music constituent type is paramount to the articulated purpose of the string. DotMusic and its application’s global Music Community supporters substantiate that every type of music constituent contributes to the function and operation of the music sector within a regulated framework. The symbiotic nature of the Community as defined and structured means that “Music” would not function as it does today without the participation of all music constituent types that interconnect to match the “music” string with the “music” Community definition.

² <http://music.us/supporters>

³ <http://music.us/supporters>

ASSESSMENT OF COMMUNITY DEFINITION, ESTABLISHMENT AND NEXUS

A) *Music Community Definition, Establishment & Community Endorsement*⁴

DotMusic’s definition of the “Music Community” as a “strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music” (See Application, 20a) is factually accurate and representative of the “Music Community.” Community characteristics include:

i) An Organized, Cohesive, Interdependent Logically-Allied Community:

The “Music Community” definition covers the regulated, interdependent and cohesive nature of the music sector that exists today. “Music Community” members have the requisite awareness and recognition of the interdependent, overlapping and cohesive nature of each “organized community of similar nature that relates to music” that comprises the “Music Community.” Without such cohesiveness and interdependency, the defined “Music” Community matching the applied-for string (“Music”) would not be able to function in its regulated sector, a “Music” regulated sector that was publicly recognized by both ICANN and the Government Advisory Committee.⁵

As a result, the Music Community as defined is “closely united” (As per the definition of “cohesion” according to Merriam-Webster dictionary⁶) or “united or form a whole” (As per the definition of the word “cohesion” according to Oxford Dictionaries⁷).

The “Music Community” as defined (a “strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music”) establishes that:

- (1) There is an awareness and recognition among its members;
- (2) The organized and delineated logical alliance of communities exists; and
- (3) The Community is “closely united” and “interdependent” (i.e. Each “organized community of similar nature that relates to music” which is part of the “logical alliance of communities that relate to music” is not mutually exclusive).

In short, the applied-for string (“Music”) matches the name of the “Music” Community as defined by DotMusic’s application. DotMusic’s “Music Community” definition accurately represents the common definition of the “Music Community,” which is confirmed by Wikipedia.

⁴ See <http://music.us/establishment>

⁵ <https://www.icann.org/en/system/files/bm/briefing-materials-2-05feb14-en.pdf>, Pg.3

⁶ <http://www.merriam-webster.com/dictionary/cohesion>

⁷ http://www.oxforddictionaries.com/us/definition/american_english/cohesion

According to Wikipedia:⁸

Music community is defined as a logical alliance of interdependent communities that are related to music, which include commercial participants...and non-commercial participants...and consists of an “ensemble of practices and institutions that make possible and regulate the production, distribution and consumption of music”...UNESCO identifies the music community as a “community of identity” implying common identifiable characteristics and cohesive attributes such as sharing a music culture, norms and subscribing to common ideals related to music...The music community is not defined as much by demographic indicators such as race, gender, and income level, as it is by common values, cohesive norms and interconnected structures to build a community identity. It refers to music-related individuals and organisations in a shared environment with shared understandings and practices, modes of production and distribution. The shared organisation of collective musical activities, identity and community value is created as result of infrastructure and a shared set of common values...Many studies outline the historical, cultural, and spatial significance of the music community, including how its identity is formed through musical practices. The music community shares a cohesive and interconnected structure of artistic expression, with diverse subcultures and socio-economic interactions...subscribing to common ideals. Under such structured context music consumption becomes possible regardless whether the transaction is commercial and non-commercial.⁹

ii) *An Aware, Pre-Existing and Recognized Community of Considerable Millions Worldwide:*

DotMusic’s definition of the Community covers all Community members associated with the string, each with a requisite awareness of the Community that can be validated through their natural association with a particular music-related community that they clearly identify with. According to DotMusic, all Music Community members must identify their music-related community in order to demonstrate their requisite awareness of the defined Community as part of the .MUSIC registration and validation process.

⁸ Wikipedia is ranked 6th among the ten most popular websites (Alexa, Retrieved March 23, 2015 from <http://www.alexa.com/siteinfo/wikipedia.org>) and constitutes the Internet's largest, most frequently updated and popular general reference work (See OECD, OECD Internet Economy Outlook 2012, OECD Publishing, http://www.oecd-ilibrary.org/science-and-technology/oecd-internet-economy-outlook-2012_9789264086463-en, Pg.172) that compares favorably to the accuracy of other encyclopedias (such as the Britannica) according to a 2012 study conducted in partnership with Oxford University (See <http://blog.wikimedia.org/2012/08/02/seven-years-after-nature-pilot-study-compares-wikipedia-favorably-to-other-encyclopedias-in-three-languages>).

⁹ Music Community. In *Wikipedia*. Retrieved July 6, 2015, from https://en.wikipedia.org/wiki/Music_community

According to DotMusic, the Music Community’s geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents (Application Answer to Question 20a).

According to DotMusic, “registrants will be verified using Community-organized, unified “criteria taken from holistic perspective with due regard of Community particularities” that “invoke a formal membership (Application Answer to Question 20a).” The defined Community represents all music-related entities with a clear and straightforward membership with the Community involved in the legal production, performance, promotion, and distribution of music worldwide. According to DotMusic, the Music Community members must have an active, non-tangential relationship with the applied-for string “music” and also have the requisite awareness of the music-related community that they are a part of by specifically identifying it as part of the registration and validation process (i.e. upon successful registration and validation, each community member will be given a unique community identification number that will automatically associate them with their identified community and the “music” string).

DotMusic’s Community definition matches the applied-for string because it allows both commercial and non-commercial stakeholders to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination/exclusion. Given the regulated sector of the community, it is clear that the “Music Community” as defined implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate cohesive and globally-recognized set of standards for the protection of the music community members’ rights with relation to their copyrighted music works around the world.¹⁰

The Berne Convention for the Protection of Literary and Artistic Works¹¹ provides that each of the 168 contracting parties¹² (representing an overwhelming majority of the world’s population) provides automatic protection for music works first published in other countries of the Berne union and for unpublished music works whose authors are citizens of or resident in such other countries.¹³ This means that if a Music Community member’s copyright rights are violated in any other signatory country’s jurisdiction, then the music community member will have the music copyright rights given by that country. Music Community members are clearly aware of the collective Community’s rights, which could not be made possible without these cohesive and globally-recognized set of standards. If such standards were not coherent or enforced then music would not be able to exist in its current form and the industry component of the Music Community sector would not exist. As such, the Community’s *Establishment* and definition is “cohesive” and hence cannot be construed since the Community is a logical alliance of music

¹⁰ http://www.rightsdirect.com/content/rd/en/toolbar/copyright_education/International_Copyright_Basics.html

¹¹ http://www.wipo.int/treaties/en/text.jsp?file_id=283698

¹² http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=15

¹³ <http://www.britannica.com/EBchecked/topic/62482/Berne-Convention>

communities that establish a clearly delineated and organized Community structure that is “closely united” and functions as a “whole”

Further evidence to substantiate the cohesive, symbiotic and overlapping nature of the Community, includes other globally-recognized standards and classification systems, which identify who the individual songwriters, publishers and rights holders are and which songs they are associated with so that Community members are appropriately compensated, regardless of whether the constituent is a commercial, non-commercial or amateur entity. The “music” string is commonly used in classification systems such as ISMN,¹⁴ ISRC,¹⁵ ISWC,¹⁶ ISNI.¹⁷ (Application Answer to Question 20a). For example, if a music entity would like to distribute their music, either commercially or for free, then an ISRC can be assigned to globally identify any specific music work. An ISRC, which facilitates efficient music discovery and community member payment, is constructed from 12 characters representing country, registrant, year of registration and designation (i.e. the serial number assigned by the registrant). With respect to domains, an equivalent system that relates to identifying a specific domain’s registrant and other relevant information pertaining to the domain is WHOIS. Domain registrants are required by ICANN “to provide accurate WHOIS contact data” or else their domain “registration may be suspended or even cancelled”.¹⁸

Without such Music Community “cohesion” and standardized systems functioning in its regulated sector, the Music Community would not be able to create, market and distribute their music. By the same token, fans would not be able to identify the music they are listening to with a specific music artist, regardless of whether the listening activity or behavior is commercial or non-commercial in nature. The socio-economic structure that characterizes “music” as commonly-known today would be non-existent without these organized and delineated elements that commonly define the Community.

¹⁴ The International Standard Music Number (ISMN) is a unique number for the identification of all notated music publications from all over the world. The ISMN is an ISO certified global standard number (ISO 10957:2009). See <http://www.ismn-international.org/whatis.html> and

http://www.iso.org/iso/home/store/catalogue_ics/catalogue_detail_ics.htm?csnumber=43173

¹⁵ The ISRC (International Standard Recording Code) is the international identification system for sound recordings and music video recordings. The ISRC is an ISO certified global standard number (ISO 3901:2001) and is managed by the IFPI. See <http://isrc.ifpi.org>, <https://www.usisrc.org/about/index.html> and http://www.iso.org/iso/catalogue_detail?csnumber=23401

¹⁶ The ISWC (International Standard Musical Work Code) is a unique, permanent and internationally recognized reference number for the identification of musical works. The ISWC has been approved by ISO (International Organization for Standardisation) as a global standard (ISO 15707:2001) and is managed by CISAC. See <http://www.iswc.org/en/faq.html> and http://www.iso.org/iso/catalogue_detail?csnumber=28780

¹⁷ The International Standard Name Identifier (ISNI) is the ISO certified global standard number (ISO 27729) for identifying the millions of contributors to creative works and those active in their distribution. ISNI holds public records of over 8 million identities and 490,000 organizations. See <http://www.isni.org/> and http://www.iso.org/iso/catalogue_detail?csnumber=44292

¹⁸ <https://whois.icann.org/en/about-whois> and <https://www.icann.org/resources/pages/faqs-f0-2012-02-25-en>

iii) *International Federations and Organizations mainly Dedicated to the Community:*

According to ICANN's Applicant Guidebook ("AGB")¹⁹: *"With respect to "Delineation" and "Extension," it should be noted that a community can consist of...a logical alliance of communities (for example, an international federation of national communities of a similar nature... viable as such, provided the requisite awareness and recognition of the community is at hand among the members." (AGB, 4-12). The community as defined in the DotMusic application has at least one entity mainly²⁰ dedicated to the community which has supported DotMusic, which include several "international federation of national communities of a similar nature" relating to music, music coalitions and other relevant and non-negligible music organizations.*

One of these entities include the only international federation of national communities relating to government culture agencies and arts councils, which has an integral association with music globally: the International Federation of Arts Councils and Culture Agencies (IFACCA).

IFACCA is the only international federation that represents government culture agencies and arts councils globally. These national communities are governmental institutions that play a pivotal role with respect to music.²¹ IFACCA's members cover the majority of music entities globally, regardless of whether they are commercial, non-commercial or amateurs. Government ministry of culture and council agencies related to music cover a majority of the overall community with respect to headcount and geographic reach. The "Size" covered reaches over a hundred million music entities i.e. "considerable size with millions of constituents" per Application Answer to Question 20a.

The string "music" falls under the jurisdiction of each country's Ministry of Culture governmental agency or arts/music council (emphasis added). The degree of power and

¹⁹ <https://newgtlds.icann.org/en/applicants/agb/guidebook-full-11jan12-en.pdf>

²⁰ Per the Oxford and Merriam Webster dictionaries, the word "mainly" is defined as "*more than anything else*" (See <http://www.oxforddictionaries.com/definition/english/mainly> and <http://www.merriam-webster.com/dictionary/mainly> respectively). According to DotMusic, the string .MUSIC relates to the Community "by representing all constituents involved in music creation, production and distribution" (Application Answer to Question 20d). Supporting organizations related to that string that are "mainly" dedicated to the Community and its activities, include the International Federation of Arts Councils and Culture Agencies (IFACCA) representing government culture ministries and arts councils, the International Federation of Musicians (FIM) representing musicians globally, the International Federation of Phonographic Industry (IFPI) representing the recording industry worldwide, the International Confederation of Music Publishers (ICPM) representing the voice of global music publishing, the International Association of Music Information Centres (IAMIC), the American Association of Independent Music (A2IM), whose associate members represent a majority of music consumed, the Independent Music Worldwide Independent Network (WIN) representing independent music worldwide, the International Society for Music Education (ISME) the premiere international organization representing music education, and many others (See support at <http://music.us/supporters> and <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/downloadattachment/142588?t:ac=1392>).

²¹ http://www.ifacca.org/membership/current_members/

influence of government ministry of culture and council agencies with respect to music surpasses any organization type since these agencies (i) provide the majority of funding for music-related activities; (ii) regulate copyright law; and (iii) encompass all the music entities that fall under their country, regardless whether these entities are commercial, non-commercial or amateurs. IFACCA is globally recognized by its strategic partners, such as UNESCO, a United Nations agency representing 195 member states and the European Commission.²² The UNESCO strategic partnership²³ is relevant, especially since UNESCO founded the International Music Council (the “IMC”) in 1949, which represents over 200 million music constituents from over 150 countries and over 1000 organizations globally.²⁴

Government activities in the clearly delineated and organized “Music Community” include setting statutory royalty rates. For example, in the United States, mechanical royalties are based on a “statutory rate” set by the U.S. Congress. This rate is increased to follow changes in the economy, usually based on the Consumer Price Index. Currently, the mechanical statutory rate is \$0.091 for songs five minutes or less in length or \$.0175 per minute for songs that are over five minutes long.²⁵

Ministries of culture and arts councils (that comprise IFACCA’s membership) support musicians, musical performances, independent music artists, non-commercial musical expression and education in their respective countries. The 165 ministries of culture, arts councils and affiliates that comprise IFACCA’s membership support the “performing arts” and music specifically. Without the financial and logistical support of arts councils and the ministries of culture, the music community would be adversely affected, and in some countries, may not exist in any appreciable manner. For example, the Ministry of Culture 2011 budget for the small country state of Cyprus for culture funding was €34,876,522 with critical support of music activities.²⁶ Other small government Ministries of Culture, such as Albania,²⁷ or government Ministries of Culture and Arts Councils from countries with larger populations, such as India,²⁸ all provide critical support and substantial advocacy for music. Other examples include government institutions collaborating and advocating music through their funded country-based pavilion initiatives at Midem, the world’s largest music conference.²⁹

²² http://www.ifacca.org/strategic_partners/

²³ http://www.ifacca.org/strategic_partners/

²⁴ <http://www.imc-cim.org/about-imc-separator/who-we-are.html>

²⁵ U.S Copyright Office, <http://www.copyright.gov/carp/m200a.html>

²⁶ 2011 Annual Report for Cyprus Ministry of Culture, Section 1.2 “Music”

(http://www.moec.gov.cy/en/annual_reports/annual_report_2011_en.pdf). Activities include Music Performances in Cyprus (1.2.1) and Abroad (1.2.2), Subsidization of Paphos Aphrodite Festival (1.2.3), Music Publications (1.2.4), Subsidization and Purchases of Digital Records (1.2.5), Promotion for Cypriot musical creativity abroad (1.2.6), Cyprus Symphony Orchestra Foundation (1.2.7), Music Information Centre (1.2.8), Developing Music Education (1.2.9), Organising of the 1st Musicological Symposium (1.2.10) and Musical Festivities for the European Volunteerism Year (1.2.11)

²⁷ http://www.culturalpolicies.net/down/albania_012011.pdf

²⁸ 2010-11 Annual Report from India Ministry of Culture, [http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011\(Eng\).pdf](http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011(Eng).pdf)

²⁹ <http://my.midem.com/en/contact-us/pavilion-representatives/>

Government ministries and arts councils provide critical support for the Music Community, including commercial music organizations. By way of example, government ministries' and arts councils' substantial connection to and support of "music" is noted in the reports of funding and support for music. Some examples to showcase the degree of power of the IFACCA's membership towards the string and global and national music are music investment and music funding (Annual reports by governments and councils):

- New Zealand Ministry of Culture has funded significant music projects. Some include the REAL New Zealand Music Tour (\$415,000), the New Zealand String Quartet (\$150,000) and New Zealand Music Commission: (\$1,378,000).³⁰
- The Australian Government/Council For The Arts invested \$51.2 million for the nation's orchestras; \$21.6 million for opera; \$10.8 million for other music artists and organizations; \$13.1 million for multi-platform artists and organizations; and \$4 million in miscellaneous funding, including sector building and audience development initiatives and programs.³¹
- Canada Council for the Arts is Canada's national, arts funding agency investing \$28 million in its Canada Council Musical Instrument Bank (Page 16) and \$28,156,000 in Music Arts Programs (Page 66).³² The Government of Canada also renewed its annual investment of \$27.6 million over five years in the Canada Music Fund.³³
- The United Kingdom Department for Culture and Education (DfE) will fund music education at significant levels: £77 million, £65 million and £60 million will be available in the three years from April 2012.³⁴
- The United States National Endowment of the Arts has awarded more than \$4 billion to support the arts since its inception³⁵ and has a strong focus on music as outlined in its Strategic Plan³⁶ with Congress requested to provide \$154,465,000 for fiscal year 2014.³⁷
- The National Arts Council of South Africa invested 2,536,131 ZAR in Music and 9,995,000 ZAR in Orchestras and has focused strongly on the "Strengthening of live indigenous music and advocating the revival of the live music circuit in South Africa"³⁸

³⁰ 2011 Annual Report from New Zealand Ministry of Culture:

[http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20\(D-0448383\).PDF](http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20(D-0448383).PDF)

³¹ 2011 Annual Report for the Australia Council for the Arts,

http://www.australiacouncil.gov.au/data/assets/pdf_file/0016/142351/Australia-Council-Annual-Report-201112.pdf, Page 28

³² 2011 Annual Report for Canada Council for the Arts, [http://www.canadacouncil.ca/NR/rdoonlyres/6F7549BB-F4E5-4B8B-95F4-](http://www.canadacouncil.ca/NR/rdoonlyres/6F7549BB-F4E5-4B8B-95F4-1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf)

[1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf](http://www.pch.gc.ca/eng/1294862453819/1294862453821)

³³ <http://www.pch.gc.ca/eng/1294862453819/1294862453821>

³⁴ Department for Culture, The Importance of Music, A National Plan for Music Education,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/180973/DFE-00086-2011.pdf, Page 4, 2011

³⁵ 2011 Annual report for the National Endowment of the Arts, <http://www.nea.gov/about/11Annual/2011-NEA-Annual-Report.pdf>, Page 2

³⁶ NEA Strategic Plan 2012-2016, www.arts.gov/about/Budget/NEAStrategicPlan2012-2016.pdf

³⁷ http://www.ifacca.org/national_agency_news/2013/04/10/us-president-requests-154465000-neh-2014/

³⁸ 2010-2011 Annual Report for the National Arts Council South Africa, National Arts Council South Africa, <http://www.nac.org.za/media/publications/AR%2010-11%20NAC.PDF/download>, Page 11. Also Mmino, the South African – Norwegian Education Music Programme, solely funds music projects funding a total of 294 projects. Thirteen projects were allocated funding for a total of R1,680,600 of which R1,381,000 went towards music educational and R299,600 to exchange projects (Page 10)

- The Singapore Arts Council will fund \$10.2 million in the arts under its 2013 Grants Framework, including the Ding Yi Music Company and Siong Leng Musical Association.³⁹
- In 2011, the support for artistic activities by the Arts Council of Finland was €32.4 million of which €4,921,850 was awarded to music.⁴⁰

Each of IFACCA’s members has a clear association with, and mandate to support the music arts in their countries. In most countries, their ministry of culture/arts council is the largest funder and marketing supporter of the music arts.

Another clear example of an “entity *mainly* dedicated to the community” with members that cover hundreds of millions of music constituents with formal boundaries is A2IM, the American Association of Independent Music. A2IM has two types of members: U.S independent Label members and Associate members. A2IM membership for Labels and Associates is invoked formally through an application and if accepted would require annual membership dues.⁴¹

The reach of A2IM Associate⁴² membership covers hundreds of millions of entities (i.e. the reach of A2IM’s total membership “geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents – See Application Answer to Question 20a).

Organized and strictly delineated communities related to music that are A2IM members include:

- **Apple iTunes**⁴³ – iTunes accounts for 63% of global digital music market⁴⁴ - a majority – with a registered community of 800 million registered members⁴⁵ available in 119 countries who abide to strict terms of service and boundaries⁴⁶ and have downloaded over 25 billion songs⁴⁷ from iTunes’ catalog of over 43 million songs⁴⁸ covering a global music community, regardless of genre or whether the community entities are amateur, professional, commercial or non-commercial. To add music to iTunes, all music artists must have a formal membership with iTunes via an Apple ID registration, which includes a current credit card on file.⁴⁹

³⁹ Singapore Arts Council, <http://www.nac.gov.sg/media-centre/news-releases/news-detail?id=c2db15e2-c319-40ec-939c-d58735d0a91c>

⁴⁰ <http://www.taiteenkeskustoimikunta.fi/documents/10162/31704/TY+tilastotiedote+1+12+.pdf>, Page 1 and Page

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⁴¹ <http://a2im.org/about-joining/>

⁴² <http://a2im.org/groups/tag/associate+members/>

⁴³ <http://a2im.org/groups/itunes>

⁴⁴ <http://appleinsider.com/articles/13/04/16/apples-itunes-rules-digital-music-market-with-63-share>

⁴⁵ <http://www.npr.org/blogs/therecord/2015/01/06/375173595/with-downloads-in-decline-can-itunes-adapt>

⁴⁶ <http://www.apple.com/legal/internet-services/itunes/ww/index.html>

⁴⁷ <http://www.apple.com/pr/library/2013/02/06iTunes-Store-Sets-New-Record-with-25-Billion-Songs-Sold.html>

⁴⁸ <https://www.apple.com/itunes/features/>

⁴⁹ <https://www.apple.com/itunes/working-itunes/sell-content/music-faq.html>

- **Pandora**⁵⁰ – Pandora is the world’s largest streaming music radio with a community of over 250 million registered members.⁵¹
- **Spotify**⁵² – Spotify is the world’s largest music streaming community with over 50 million active registered members in 58 countries and over 30 million songs. The music community uploads 20,000 songs every day.⁵³
- **Vevo**⁵⁴ – Vevo is the world’s leading all-premium music video community and platform with over 8 billion monthly views globally.⁵⁵
- **Youtube**⁵⁶ – Youtube is the world’s largest music video streaming community with millions of music creators -- amateur, professional, commercial or non-commercial -- and over 1 billion registered members covering all regions globally. 6 billion hours of video is watched every month on Youtube,⁵⁷ of which 38.4% is music-related.⁵⁸
- **Reverbnation**⁵⁹ – Reverbnation⁶⁰ is one of the world’s largest music community and a leading music distributor with over 3.87 million musicians, venues labels and industry professionals covering every country globally. The Reverbnation community grows by over 50,000 artists, bands, labels and industry professionals monthly.
- **BMG**⁶¹ – BMG is focused on the management of music publishing and recording rights. BMG has an international presence and represents over 2.5 million music rights globally.⁶²

A2IM also includes members that are associated with global government agencies which exclusively represent substantial music economies and music members, such as France (BureauExport⁶³), China (China Audio Video Association⁶⁴) and Germany (Initiative Musik).⁶⁵ A2IM also has Affiliate⁶⁶ associations within the global music community. These include Affiliates such as MusicFirst,⁶⁷ the Copyright Alliance,⁶⁸ the Worldwide Independent Network (WIN)⁶⁹ and Merlin.⁷⁰

⁵⁰ <http://a2im.org/groups/pandora>

⁵¹ <http://www.cnet.com/news/like-a-rolling-milestone-pandora-hits-250m-registered-users/> and <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MTkxNTM1fENoaWxkSUQ9LTF8VHlwZT0z&t=1>, Pg.9

⁵² <http://a2im.org/groups/spotify>

⁵³ <https://press.spotify.com/us/information/>

⁵⁴ <http://a2im.org/groups/vevo/>

⁵⁵ <http://www.vevo.com/c/EN/US/about>

⁵⁶ <http://a2im.org/groups/youtube/>

⁵⁷ <https://www.youtube.com/yt/press/statistics.html>

⁵⁸ http://www.researchandmarkets.com/reports/2092499/internet_video_2011_2014_view_share_site_and

⁵⁹ <http://a2im.org/groups/reverb-nation/>

⁶⁰ <http://www.reverbnation.com/about>

⁶¹ <http://a2im.org/groups/bmg-rights/>

⁶² <http://www.bmg.com/category/about-us/history/>

⁶³ <http://a2im.org/groups/french-music-export-office>

⁶⁴ <http://a2im.org/groups/china-audio-video-association-cava>

⁶⁵ <http://a2im.org/groups/initiative-musik-gmbh>

⁶⁶ <http://a2im.org/groups/tag/associate+members/>

⁶⁷ <http://musicfirstcoalition.org/coalition>, The musicFIRST Coalition, with founding members A2IM, RIAA, and Recording Academy represents musicians, artists, managers, music businesses, and performance right advocates.

⁶⁸ <http://www.copyrightalliance.org/members>

⁶⁹ <http://www.winformusic.org>

A2IM also represents a recognized Music Coalition representing the interests of the Global Independent Music Community.⁷¹ The A2IM Coalition includes Merlin, a global rights agency for the independent label sector, representing over 20,000 labels from 39 countries, Worldwide Independent Network (representing label creators in over 20 countries), Association of Independent Music (representing largest and most respected labels in the world), and IMPALA (Independent Music Companies Association on behalf of over 4,000 independent music companies and national associations across Europe, representing 99% of music actors in Europe which are micro, small and medium sized enterprises).

Cumulatively, A2IM's Label and Associate Membership, A2IM's Affiliates and the A2IM's Global Independent Music Community Coalition, covers a majority of the global music community. Its cumulative membership is in the hundreds of millions of entities with formal boundaries belonging to strictly organized and delineated communities related to music as per the Community Definition and Size (See Application answer to Question 20a).

The IFPI is another entity *mainly* dedicated to the Community. The IFPI is the only organization that represents the interests of the recording industry worldwide. It is the "voice of the recording industry worldwide"⁷² whose members⁷³ – major and independent companies -- represent a majority of all commercial music consumed globally. For example, the RIAA, an IFPI national group member,⁷⁴ represents "approximately 85% of all legitimate recorded music produced and sold in the United States,"⁷⁵ the world's largest music market with 30% global market share.⁷⁶ Formed in 1933, the IFPI's mission was to "represent the interests of the recording industry worldwide in all fora."

Another global Music Community Coalition led by the RIAA "on behalf of over 15 national and international trade associations" also expressed its support for .MUSIC to be under a "community" application model, including encouraging statements in support of DotMusic's policies that stated that the coalition "was encouraged to see" that DotMusic "included several measures to deter and address copyright infringement within that TLD." The "coalition members represent the people that write, sing, record, manufacture, distribute and/or license over 80% of the world's music"⁷⁷ – a majority of global music.⁷⁸

⁷⁰ <http://www.merlinnetwork.org>

⁷¹ <https://www.icann.org/en/system/files/correspondence/bengloff-to-chehade-et-al-20aug14-en.pdf> and <https://www.icann.org/en/system/files/correspondence/bengloff-to-crocker-et-al-07mar15-en.pdf>

⁷² <http://www.ifpi.org/about.php>

⁷³ <http://www.ifpi.org/our-members.php>

⁷⁴ <http://www.ifpi.org/national-groups.php>

⁷⁵ <http://www.riaa.com/faq.php>

⁷⁶ <http://www.statista.com/topics/1639/music/>

⁷⁷ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.1

⁷⁸ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.3, Appendix A

Another letter⁷⁹ sent to ICANN (on April 14th, 2015) by Danielle Aguirre from the NMPA and on behalf of a music publisher and songwriter community coalition representing a majority of the global music publishing community, also expressed “support [for] the .MUSIC community applications because respecting and protecting music rights serves the global music community and the public interest.”

Collectively, the DotMusic application received support from the largest coalition of music community member organizations ever assembled to support a cause representing over 95% of music consumed globally.⁸⁰ Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support⁸¹ from institutions/organizations representing a majority of the Community addressed. Music -- as commonly-known by the general public and experienced today -- would not be possible without these supporting, non-negligible and relevant organizations that have endorsed DotMusic.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Community Establishment* and *Community Endorsement* from the majority of the global Music Community as defined.

B) Nexus⁸²

According to the Applicant Guidebook (“AGB”), to receive the maximum score for Nexus, the applied-for string -- “music” -- must match the name of the community or be a well-known short-form or abbreviation of the community name.

The *Nexus* of the “Music Community” entirely matches the applied-for “music” string because it represents the entire global Music Community as commonly-known and perceived by the general public. This definition allows for all constituents with a requisite awareness of the Community defined to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination. The definition of the Community requires that members have an active, non-tangential relationship with the applied-for string and the requisite awareness of the music community they identify with as part of the registration process. It is clear that the general public will directly associate and equate the string with the Community as defined by DotMusic. There is no possibility of overreaching beyond the definition or allowing unrelated non-music

⁷⁹ <https://www.icann.org/en/system/files/correspondence/aguirre-to-icann-board-ciu-14apr15-en.pdf>

⁸⁰ See <http://music.us/supporters>, <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/downloadattachment/142588?t:ac=1392>, Bloomberg BNA at http://music.us/RIAA_Backs_DotMusic.pdf Pg.1, and <http://diffuser.fm/will-dot-music-domains-make-the-internet-better/>

⁸¹ <http://music.us/supporters>

⁸² See <http://music.us/nexus>

entities to be included as part of the Community. Community members may register a .MUSIC by either:

- 1) Identifying that they belong to a Music Community Member Organization (“MCMO”); or
- 2) Identifying the community they belong to, which is consistent with the definition of the Community: “the strictly delineated and organized logical alliance of communities of similar nature related to music.”

All Community members are aware of and recognize their inclusion in the defined Community by identifying which clearly defined community they belong to and have an active participation in. The *nexus* of the applied-for string ensures inclusion of the entire global community that the string represents while excluding unrelated-entities not associated with the string. This way there is a clear match and alignment between the “music” sting and the Community defined.

While the exact size of the global Music Community as defined is unknown (there is no empirical evidence providing an exact, finite number because amateur entities are also included in the Community’s definition), it is in the considerable millions as explicitly stated in the DotMusic Application. DotMusic’s definition of the Community and mutually-inclusive Registration Policies ensure that eligible members are only music-related and associated with the string. This is because the string identifies all constituents involved in music. Music-only participation optimizes the relevancy of .MUSIC domains to the string and entirely matches the *nexus* between the string and Community defined. According to DotMusic, the Community *definition, eligibility* criteria and *content and use* requirements ensure that peripheral industries and entities not related to music are excluded so that the string and the defined Community matches and aligns in a consistent manner consistent with DotMusic’s community-based purpose i.e. only entities with music-related activities are able to register .MUSIC domains.

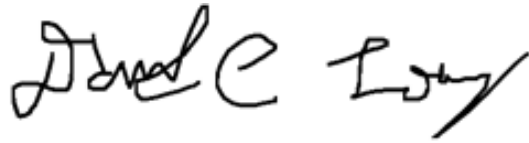
Membership aligns with the *nexus* of the Community and the string, which is explicitly relevant to music. The string as defined in the application demonstrates uniqueness because it has no other significant meaning beyond identifying the community described in the application. According to DotMusic’s application, any tangential or implicit association with the *nexus* of the Community and the string is not regarded as a delineated membership since it would be considered unclear, dispersed or unbound. Such unclear, dispersed or unbound tangential relationships with the defined “music” Community and applied-for “music” string would not constitute a qualifying Community membership and would be ineligible for registration. Every type of music constituent critically contributes to the function and operation of the music sector within a regulated framework⁸³ given the symbiotic overlapping nature of the Community as

⁸³ ICANN has disclosed that the string .MUSIC is a sensitive string operating in a regulated sector. ICANN also accepted Government Advisory Committee (GAC) advice for safeguards to protect the Music Community and the public interest (See <https://icann.org/en/system/files/correspondence/crocker-to-dryden-3-29oct13-en.pdf> Pg.7)

defined and structured. Music would not function as it does today without the participation of all music constituent types which cumulatively match the string with the Community definition.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Nexus*.

Respectfully Submitted,

A handwritten signature in black ink that reads "David Lowery". The letters are cursive and fluid, with a large 'D' and 'L'.

Signature: Contact Information Redacted Jul 22 '15 ip: 166.171.56.93

Name: David Lowery

Title: Lecturer/EDD Candidate

Organization: University of Georgia

Re: Expert Testimony on (i) Community Establishment; (ii) Nexus; and (iii) Support for DotMusic’s Community-Based Application¹ for .MUSIC (Application ID 1-1115-14110)

To ICANN and the Economist Intelligence Unit (“EIU”):

Please accept this letter as an indication of my professional opinion that there is compelling evidence for DotMusic’s application to convincingly meet the full criteria under Community Priority Evaluation on the following points: (1) the Music Community’s *Establishment* as defined by DotMusic; (2) the matching *Nexus* between the “music” Community and the “music” string (or top-level domain); and (3) that DotMusic possesses documented *Support* from organizations representing the global Music Community addressed and defined.

Please also find below the analysis of the DotMusic application pertaining to the Community Priority Evaluation criteria, and on which my assessment is based. The analysis is consistent with key findings in my research field of organization studies where the focus is specifically on matters relating to community (see for example: Glynn, 2008;² Marquis, Glynn & Davis, 2007;³ Marquis, Lounsbury & Greenwood, 2011;⁴ Schneiberg & Lounsbury, 2008;⁵ Thornton, Ocasio & Lounsbury, 2012).⁶ My credentials are attached below this analysis to identify my level of expertise and specialized knowledge with respect to the expert opinion expressed above.

SUMMARY

DotMusic has established the following:

- 1) Its Community definition recognizes the cohesive, symbiotic and overlapping nature of the global Music Community. The definition includes those associated with commercial and non-commercial creation, performance, marketing and distribution of music;
- 2) “Music Community” members have the requisite awareness and recognition of the interdependency, overlapping and cohesive nature of each “organized community of similar nature that relates to music.” These

¹ <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1392>

² Glynn, M. A. (2008). Configuring the Field of Play: How Hosting the Olympic Games Impacts Civic Community. *Journal of Management Studies*, 45(6), 1117-1146.

³ Marquis, C., Glynn, M. A., & Davis, G. F. (2007). Community Isomorphism and Corporate Social Action. *The Academy of Management Review*, 32(3), 925-945.

⁴ Marquis, C., Lounsbury, M., & Greenwood, R. (2011). Introduction: Community as an Institutional Order and a Type of Organizing. *Research in the Sociology of Organizations*, 33, ix-xxvii.

⁵ Schneiberg, M., & Lounsbury, M. (2008). Social movements and institutional analysis. In R. Greenwood, C. Oliver, R. Suddaby & K. Sahlin (Eds.), *The SAGE handbook of organizational institutionalism* (pp. 650-672). Los Angeles: SAGE.

⁶ Thornton, P. H., Ocasio, W., & Lounsbury, M. (2012). *The institutional logics perspective: A new approach to culture, structure and process*. Oxford: Oxford University Press.

organized and aligned communities are closely united and make “music” as we know it today. It is this self-awareness and interdependence that gives the “Music Community” its strength. With exponential growth of the Internet, mobile and the Domain Name System (DNS), the “Music Community’s” use and reliance on the Internet to create, market and disseminate music-related content, products, services and activities will continue to grow;

3) The “Music Community” functions in a regulated sector with global copyright protections – it is clear that the “community,” as defined, implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate a globally-recognized set of standards for the protection of the “Music Community” member rights with relation to their copyrighted music works around the world;

4) The “Music” Community -- as defined by DotMusic -- has at least one entity dedicated to the community supporting DotMusic’s application. Such documented *Support* includes several “international federation of national communities of a similar nature,” music coalitions and others that are strongly associated with “music,” which represent a majority of the Community with considerable millions of members worldwide.⁷

5) The *Nexus* of the “music” Community matches the “music” applied-for string because it represents the entire global Music Community – a community that pre-existed 2007 with a size in the considerable millions of constituents. The “Music Community” definition -- which incorporates the strict fundamental attributes of a closely united Community definition that is “organized” and “delineated” -- ensures that all of its constituent members have a requisite awareness of the community as defined, including both commercial and non-commercial stakeholders, to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination.

6) DotMusic has received support from the largest coalition of Music Community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined.

⁷ <http://music.us/supporters>

Cumulatively, DotMusic possesses documented support⁸ from institutions/organizations representing this Community.

There is substantive evidence that DotMusic fulfills the *Nexus, Community Establishment and Support* criteria for the “Music” string. The inclusion and representation of every music constituent type is paramount to the articulated purpose of the string. DotMusic and its application’s global Music Community supporters substantiate that every type of music constituent contributes to the function and operation of the music sector within a regulated framework. The symbiotic nature of the Community as defined and structured means that “Music” would not function as it does today without the participation of all music constituent types that interconnect to match the “music” string with the “music” Community definition.

ASSESSMENT OF COMMUNITY DEFINITION, ESTABLISHMENT AND NEXUS

A) Music Community Definition, Establishment & Community Endorsement⁹

DotMusic’s definition of the “Music Community” as a “strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music” (See Application, 20a) is factually accurate and representative of the “Music Community.” Community characteristics include:

i) An Organized, Cohesive, Interdependent Logically-Allied Community:

The “Music Community” definition covers the regulated, interdependent and cohesive nature of the music sector that exists today. “Music Community” members have the requisite awareness and recognition of the interdependent, overlapping and cohesive nature of each “organized community of similar nature that relates to music” that comprises the “Music Community.” Without such cohesiveness and interdependency, the defined “Music” Community matching the applied-for string (“Music”) would not be able to function in its regulated sector, a “Music” regulated sector that was publicly recognized by both ICANN and the Government Advisory Committee.¹⁰

As a result, the Music Community as defined is “closely united” (As per the definition of “cohesion” according to Merriam-Webster dictionary¹¹) or “united or form a whole” (As per the definition of the word “cohesion” according to Oxford Dictionaries¹²).

⁸ <http://music.us/supporters>

⁹ See <http://music.us/establishment>

¹⁰ <https://www.icann.org/en/system/files/bm/briefing-materials-2-05feb14-en.pdf>, Pg.3

¹¹ <http://www.merriam-webster.com/dictionary/cohesion>

¹² http://www.oxforddictionaries.com/us/definition/american_english/cohesion

The “Music Community” as defined (a “strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music”) establishes that:

- (1) There is an awareness and recognition among its members;
- (2) The organized and delineated logical alliance of communities exists; and
- (3) The Community is “closely united” and “interdependent” (i.e. Each “organized community of similar nature that relates to music” which is part of the “logical alliance of communities that relate to music” is not mutually exclusive).

In short, the applied-for string (“Music”) matches the name of the “Music” Community as defined by DotMusic’s application. DotMusic’s “Music Community” definition accurately represents the common definition of the “Music Community,” which is confirmed by Wikipedia.

According to Wikipedia:¹³

Music community is defined as a logical alliance of interdependent communities that are related to music, which include commercial participants...and non-commercial participants...and consists of an “ensemble of practices and institutions that make possible and regulate the production, distribution and consumption of music”...UNESCO identifies the music community as a “community of identity” implying common identifiable characteristics and cohesive attributes such as sharing a music culture, norms and subscribing to common ideals related to music...The music community is not defined as much by demographic indicators such as race, gender, and income level, as it is by common values, cohesive norms and interconnected structures to build a community identity. It refers to music-related individuals and organisations in a shared environment with shared understandings and practices, modes of production and distribution. The shared organisation of collective musical activities, identity and community value is created as result of infrastructure and a shared set of common values...Many studies outline the historical, cultural, and spatial significance of the music community, including how its identity is formed through musical practices. The music community shares a cohesive and interconnected structure of artistic expression, with diverse subcultures and socio-economic interactions...subscribing to common ideals. Under such

¹³ Wikipedia is ranked 6th among the ten most popular websites (Alexa, Retrieved March 23, 2015 from <http://www.alexacom/siteinfo/wikipedia.org>) and constitutes the Internet's largest, most frequently updated and popular general reference work (See OECD, OECD Internet Economy Outlook 2012, OECD Publishing, http://www.oecd-ilibrary.org/science-and-technology/oecd-internet-economy-outlook-2012_9789264086463-en,Pg.172) that compares favorably to the accuracy of other encyclopedias (such as the Britannica) according to a 2012 study conducted in partnership with Oxford University (See <http://blog.wikimedia.org/2012/08/02/seven-years-after-nature-pilot-study-compares-wikipedia-favorably-to-other-encyclopedias-in-three-languages>).

*structured context music consumption becomes possible regardless whether the transaction is commercial and non-commercial.*¹⁴

ii) An Aware, Pre-Existing and Recognized Community of Considerable Millions Worldwide:

DotMusic's definition of the Community covers all Community members associated with the string, each with a requisite awareness of the Community that can be validated through their natural association with a particular music-related community that they clearly identify with. According to DotMusic, all Music Community members must identify their music-related community in order to demonstrate their requisite awareness of the defined Community as part of the .MUSIC registration and validation process.

According to DotMusic, the Music Community's geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents (Application Answer to Question 20a).

According to DotMusic, "registrants will be verified using Community-organized, unified "criteria taken from holistic perspective with due regard of Community particularities" that "invoke a formal membership (Application Answer to Question 20a)." The defined Community represents all music-related entities with a clear and straightforward membership with the Community involved in the legal production, performance, promotion, and distribution of music worldwide. According to DotMusic, the Music Community members must have an active, non-tangential relationship with the applied-for string "music" and also have the requisite awareness of the music-related community that they are a part of by specifically identifying it as part of the registration and validation process (i.e. upon successful registration and validation, each community member will be given a unique community identification number that will automatically associate them with their identified community and the "music" string).

DotMusic's Community definition matches the applied-for string because it allows both commercial and non-commercial stakeholders to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination/exclusion. Given the regulated sector of the community, it is clear that the "Music Community" as defined implies "more of cohesion than a mere commonality of interest" with an "awareness and recognition of a community among its members." Several international treaties mandate cohesive and globally-recognized set of standards for the protection of the music community members' rights with relation to their copyrighted music works around the world.¹⁵

¹⁴ Music Community. In *Wikipedia*. Retrieved March 23, 2015, from https://en.wikipedia.org/wiki/Music_community

¹⁵ http://www.rightsdirect.com/content/rd/en/toolbar/copyright_education/International_Copyright_Basics.html

The Berne Convention for the Protection of Literary and Artistic Works¹⁶ provides that each of the 168 contracting parties¹⁷ (representing an overwhelming majority of the world's population) provides automatic protection for music works first published in other countries of the Berne union and for unpublished music works whose authors are citizens of or resident in such other countries.¹⁸ This means that if a Music Community member's copyright rights are violated in any other signatory country's jurisdiction, then the music community member will have the music copyright rights given by that country. Music Community members are clearly aware of the collective Community's rights, which could not be made possible without these cohesive and globally-recognized set of standards. If such standards were not coherent or enforced then music would not be able to exist in its current form and the industry component of the Music Community sector would not exist. As such, the Community's *Establishment* and definition is "cohesive" and hence cannot be construed since the Community is a logical alliance of music communities that establish a clearly delineated and organized Community structure that is "closely united" and functions as a "whole"

Further evidence to substantiate the cohesive, symbiotic and overlapping nature of the Community, includes other globally-recognized standards and classification systems, which identify who the individual songwriters, publishers and rights holders are and which songs they are associated with so that Community members are appropriately compensated, regardless of whether the constituent is a commercial, non-commercial or amateur entity. The "music" string is commonly used in classification systems such as ISMN,¹⁹ ISRC,²⁰ ISWC,²¹ ISNI.²² (Application Answer to Question 20a). For example, if a music entity would like to distribute their music, either commercially or for free, then an ISRC can be assigned to globally identify any specific music work. An ISRC, which facilitates efficient music discovery and community member payment, is constructed from 12 characters representing country, registrant, year of registration and designation (i.e. the serial number assigned by the registrant). With respect to

¹⁶ http://www.wipo.int/treaties/en/text.jsp?file_id=283698

¹⁷ http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=15

¹⁸ <http://www.britannica.com/EBchecked/topic/62482/Berne-Convention>

¹⁹ The International Standard Music Number (ISMN) is a unique number for the identification of all notated music publications from all over the world. The ISMN is an ISO certified global standard number (ISO 10957:2009). See <http://www.ismn-international.org/whatis.html> and

http://www.iso.org/iso/home/store/catalogue_ics/catalogue_detail_ics.htm?csnumber=43173

²⁰ The ISRC (International Standard Recording Code) is the international identification system for sound recordings and music video recordings. The ISRC is an ISO certified global standard number (ISO 3901:2001) and is managed by the IFPI. See <http://isrc.ifpi.org>, <https://www.usisrc.org/about/index.html> and http://www.iso.org/iso/catalogue_detail?csnumber=23401

²¹ The ISWC (International Standard Musical Work Code) is a unique, permanent and internationally recognized reference number for the identification of musical works. The ISWC has been approved by ISO (International Organization for Standardisation) as a global standard (ISO 15707:2001) and is managed by CISAC. See <http://www.iswc.org/en/faq.html> and http://www.iso.org/iso/catalogue_detail?csnumber=28780

²² The International Standard Name Identifier (ISNI) is the ISO certified global standard number (ISO 27729) for identifying the millions of contributors to creative works and those active in their distribution. ISNI holds public records of over 8 million identities and 490,000 organizations. See <http://www.isni.org/> and http://www.iso.org/iso/catalogue_detail?csnumber=44292

domains, an equivalent system that relates to identifying a specific domain’s registrant and other relevant information pertaining to the domain is WHOIS. Domain registrants are required by ICANN “to provide accurate WHOIS contact data” or else their domain “registration may be suspended or even cancelled”.²³

Without such Music Community “cohesion” and standardized systems functioning in its regulated sector, the Music Community would not be able to create, market and distribute their music. By the same token, fans would not be able to identify the music they are listening to with a specific music artist, regardless of whether the listening activity or behavior is commercial or non-commercial in nature. The socio-economic structure that characterizes “music” as commonly-known today would be non-existent without these organized and delineated elements that commonly define the Community.

iii) International Federations and Organizations Dedicated to Community Functions:

According to ICANN’s Applicant Guidebook (“AGB”)²⁴: “*With respect to “Delineation” and “Extension,” it should be noted that a community can consist of...a logical alliance of communities (for example, an international federation of national communities of a similar nature... viable as such, provided the requisite awareness and recognition of the community is at hand among the members.*” (AGB, 4-12). The community as defined in the DotMusic application has at least one entity mainly dedicated to the community which has supported DotMusic, which include several “international federation of national communities of a similar nature” relating to music, music coalitions and other relevant and non-negligible music organizations.

One of these entities include the only international federation of national communities relating to government culture agencies and arts councils, which has an integral association with music globally: the International Federation of Arts Councils and Culture Agencies (IFACCA).

IFACCA is the only international federation that represents government culture agencies and arts councils globally. These national communities are governmental institutions that play a pivotal role with respect to music.²⁵ IFACCA’s members cover the majority of music entities globally, regardless of whether they are commercial, non-commercial or amateurs. Government ministry of culture and council agencies related to music cover a majority of the overall community with respect to headcount and geographic reach. The “Size” covered reaches over a hundred million music entities i.e. “considerable size with millions of constituents” per Application Answer to Question 20a.

²³ <https://whois.icann.org/en/about-whois> and <https://www.icann.org/resources/pages/faqs-f0-2012-02-25-en>

²⁴ <https://newgtlds.icann.org/en/applicants/agb/guidebook-full-11jan12-en.pdf>

²⁵ http://www.ifacca.org/membership/current_members/

The string “music” falls under the jurisdiction of each country’s Ministry of Culture governmental agency or arts/music council (emphasis added). The degree of power and influence of government ministry of culture and council agencies with respect to music surpasses any organization type since these agencies (i) provide the majority of funding for music-related activities; (ii) regulate copyright law; and (iii) encompass all the music entities that fall under their country, regardless whether these entities are commercial, non-commercial or amateurs. IFACCA is globally recognized by its strategic partners, such as UNESCO, a United Nations agency representing 195 member states and the European Commission.²⁶ The UNESCO strategic partnership²⁷ is relevant, especially since UNESCO founded the International Music Council (the “IMC”) in 1949, which represents over 200 million music constituents from over 150 countries and over 1000 organizations globally.²⁸

Government activities in the clearly delineated and organized “Music Community” include setting statutory royalty rates. For example, in the United States, mechanical royalties are based on a “statutory rate” set by the U.S. Congress. This rate is increased to follow changes in the economy, usually based on the Consumer Price Index. Currently, the mechanical statutory rate is \$.091 for songs five minutes or less in length or \$.0175 per minute for songs that are over five minutes long.²⁹

Ministries of culture and arts councils (that comprise IFACCA’s membership) support musicians, musical performances, independent music artists, non-commercial musical expression and education in their respective countries. The 165 ministries of culture, arts councils and affiliates that comprise IFACCA’s membership support the “performing arts” and music specifically. Without the financial and logistical support of arts councils and the ministries of culture, the music community would be adversely affected, and in some countries, may not exist in any appreciable manner. For example, the Ministry of Culture 2011 budget for the small country state of Cyprus for culture funding was €34,876,522 with critical support of music activities.³⁰ Other small government Ministries of Culture, such as Albania,³¹ or government Ministries of Culture and Arts Councils from countries with larger populations, such as India,³² all provide critical support and substantial advocacy for music. Other examples include

²⁶ http://www.ifacca.org/strategic_partners/

²⁷ http://www.ifacca.org/strategic_partners/

²⁸ <http://www.imc-cim.org/about-imc-separator/who-we-are.html>

²⁹ U.S Copyright Office, <http://www.copyright.gov/carp/m200a.html>

³⁰ 2011 Annual Report for Cyprus Ministry of Culture, Section 1.2 “Music”

(http://www.moec.gov.cy/en/annual_reports/annual_report_2011_en.pdf). Activities include Music Performances in Cyprus (1.2.1) and Abroad (1.2.2), Subsidization of Paphos Aphrodite Festival (1.2.3), Music Publications (1.2.4), Subsidization and Purchases of Digital Records (1.2.5), Promotion for Cypriot musical creativity abroad (1.2.6), Cyprus Symphony Orchestra Foundation (1.2.7), Music Information Centre (1.2.8), Developing Music Education (1.2.9), Organising of the 1st Musicological Symposium (1.2.10) and Musical Festivities for the European Volunteerism Year (1.2.11)

³¹ http://www.culturalpolicies.net/down/albania_012011.pdf

³² 2010-11 Annual Report from India Ministry of Culture, [http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011\(Eng\).pdf](http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011(Eng).pdf)

government institutions collaborating and advocating music through their funded country-based pavilion initiatives at Midem, the world's largest music conference.³³

Government ministries and arts councils provide critical support for the Music Community, including commercial music organizations. By way of example, government ministries' and arts councils' substantial connection to and support of "music" is noted in the reports of funding and support for music. Some examples to showcase the degree of power of the IFACCA's membership towards the string and global and national music are music investment and music funding (Annual reports by governments and councils):

- New Zealand Ministry of Culture has funded significant music projects. Some include the REAL New Zealand Music Tour (\$415,000), the New Zealand String Quartet (\$150,000) and New Zealand Music Commission: (\$1,378,000).³⁴
- The Australian Government/Council For The Arts invested \$51.2 million for the nation's orchestras; \$21.6 million for opera; \$10.8 million for other music artists and organizations; \$13.1 million for multi-platform artists and organizations; and \$4 million in miscellaneous funding, including sector building and audience development initiatives and programs.³⁵
- Canada Council for the Arts is Canada's national, arts funding agency investing \$28 million in its Canada Council Musical Instrument Bank (Page 16) and \$28,156,000 in Music Arts Programs (Page 66).³⁶ The Government of Canada also renewed its annual investment of \$27.6 million over five years in the Canada Music Fund.³⁷
- The United Kingdom Department for Culture and Education (DfE) will fund music education at significant levels: £77 million, £65 million and £60 million will be available in the three years from April 2012.³⁸
- The United States National Endowment of the Arts has awarded more than \$4 billion to support the arts since its inception³⁹ and has a strong focus on music as outlined in its Strategic Plan⁴⁰ with Congress requested to provide \$154,465,000 for fiscal year 2014.⁴¹
- The National Arts Council of South Africa invested 2,536,131 ZAR in Music and 9,995,000 ZAR in Orchestras and has focused strongly on the "Strengthening of live indigenous music and advocating the revival of the live music circuit in South Africa"⁴²

³³ <http://my.midem.com/en/contact-us/pavilion-representatives/>

³⁴ 2011 Annual Report from New Zealand Ministry of Culture: [http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20\(D-0448383\).PDF](http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20(D-0448383).PDF)

³⁵ 2011 Annual Report for the Australia Council for the Arts, http://www.australiacouncil.gov.au/_data/assets/pdf_file/0016/142351/Australia-Council-Annual-Report-201112.pdf, Page 28

³⁶ 2011 Annual Report for Canada Council for the Arts, http://www.canadacouncil.ca/NR/rdonlyres/6F7549BB-F4E5-4B8B-95F4-1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf

³⁷ <http://www.pch.gc.ca/eng/1294862453819/1294862453821>

³⁸ Department for Culture, The Importance of Music, A National Plan for Music Education, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/180973/DFE-00086-2011.pdf, Page 4, 2011

³⁹ 2011 Annual report for the National Endowment of the Arts, <http://www.nea.gov/about/11Annual/2011-NEA-Annual-Report.pdf>, Page 2

⁴⁰ NEA Strategic Plan 2012-2016, www.arts.gov/about/Budget/NEAStrategicPlan2012-2016.pdf

⁴¹ http://www.ifacca.org/national_agency_news/2013/04/10/us-president-requests-154465000-neh-2014/

- The Singapore Arts Council will fund \$10.2 million in the arts under its 2013 Grants Framework, including the Ding Yi Music Company and Siong Leng Musical Association.⁴³
- In 2011, the support for artistic activities by the Arts Council of Finland was €32.4 million of which €4,921,850 was awarded to music.⁴⁴

Each of IFACCA’s members has a clear association with, and mandate to support the music arts in their countries. In most countries, their ministry of culture/arts council is the largest funder and marketing supporter of the music arts.

Another clear example of an “entity dedicated to the community” with members that cover hundreds of millions of music constituents with formal boundaries is A2IM, the American Association of Independent Music. A2IM has two types of members: U.S independent Label members and Associate members. A2IM membership for Labels and Associates is invoked formally through an application and if accepted would require annual membership dues.⁴⁵

The reach of A2IM Associate⁴⁶ membership covers hundreds of millions of entities (i.e. the reach of A2IM’s total membership “geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents – See Application Answer to Question 20a).

Organized and strictly delineated communities related to music that are A2IM members include:

⁴² 2010-2011 Annual Report for the National Arts Council South Africa, National Arts Council South Africa, <http://www.nac.org.za/media/publications/AR%2010-11%20NAC.PDF/download>, Page 11. Also Mmino, the South African – Norwegian Education Music Programme, solely funds music projects funding a total of 294 projects. Thirteen projects were allocated funding for a total of R1,680,600 of which R1,381,000 went towards music educational and R299,600 to exchange projects (Page 10)

⁴³ Singapore Arts Council, <http://www.nac.gov.sg/media-centre/news-releases/news-detail?id=c2db15e2-c319-40ec-939c-d58735d0a91c>

⁴⁴ <http://www.taiteenkeskustoimikunta.fi/documents/10162/31704/TY+tilastotiedote+1+12+.pdf>, Page 1 and Page

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⁴⁵ <http://a2im.org/about-joining/>

⁴⁶ <http://a2im.org/groups/tag/associate+members/>

- **Apple iTunes**⁴⁷ – iTunes accounts for 63% of global digital music market⁴⁸ - a majority – with a registered community of 800 million registered members⁴⁹ available in 119 countries who abide to strict terms of service and boundaries⁵⁰ and have downloaded over 25 billion songs⁵¹ from iTunes’ catalog of over 43 million songs⁵² covering a global music community, regardless of genre or whether the community entities are amateur, professional, commercial or non-commercial. To add music to iTunes, all music artists must have a formal membership with iTunes via an Apple ID registration, which includes a current credit card on file.⁵³
- **Pandora**⁵⁴ – Pandora is the world’s largest streaming music radio with a community of over 250 million registered members.⁵⁵
- **Spotify**⁵⁶ – Spotify is the world’s largest music streaming community with over 50 million active registered members in 58 countries and over 30 million songs. The music community uploads 20,000 songs every day.⁵⁷
- **Vevo**⁵⁸ – Vevo is the world’s leading all-premium music video community and platform with over 8 billion monthly views globally.⁵⁹
- **Youtube**⁶⁰ – Youtube is the world’s largest music video streaming community with millions of music creators -- amateur, professional, commercial or non-commercial -- and over 1 billion registered members covering all regions globally. 6 billion hours of video is watched every month on Youtube,⁶¹ of which 38.4% is music-related.⁶²
- **Reverbnation**⁶³ – Reverbnation⁶⁴ is one of the world’s largest music community and a leading music distributor with over 3.87 million musicians, venues labels and industry professionals covering every country globally. The Reverbnation community grows by over 50,000 artists, bands, labels and industry professionals monthly.

⁴⁷ <http://a2im.org/groups/itunes>

⁴⁸ <http://appleinsider.com/articles/13/04/16/apples-itunes-rules-digital-music-market-with-63-share>

⁴⁹ <http://www.npr.org/blogs/therecord/2015/01/06/375173595/with-downloads-in-decline-can-itunes-adapt>

⁵⁰ <http://www.apple.com/legal/internet-services/itunes/ww/index.html>

⁵¹ <http://www.apple.com/pr/library/2013/02/06iTunes-Store-Sets-New-Record-with-25-Billion-Songs-Sold.html>

⁵² <https://www.apple.com/itunes/features/>

⁵³ <https://www.apple.com/itunes/working-itunes/sell-content/music-faq.html>

⁵⁴ <http://a2im.org/groups/pandora>

⁵⁵ <http://www.cnet.com/news/like-a-rolling-milestone-pandora-hits-250m-registered-users/> and <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MTkxNTM1fENoaWxkSUQ9LTF8VHlwZT0z&t=1>, Pg.9

⁵⁶ <http://a2im.org/groups/spotify>

⁵⁷ <https://press.spotify.com/us/information/>

⁵⁸ <http://a2im.org/groups/vevo/>

⁵⁹ <http://www.vevo.com/c/EN/US/about>

⁶⁰ <http://a2im.org/groups/youtube/>

⁶¹ <https://www.youtube.com/yt/press/statistics.html>

⁶² <http://www.researchandmarkets.com/reports/2092499/internet-video-2011-2014-view-share-site-and>

⁶³ <http://a2im.org/groups/reverb-nation/>

⁶⁴ <http://www.reverbnation.com/about>

- **BMG**⁶⁵ – BMG is focused on the management of music publishing and recording rights. BMG has an international presence and represents over 2.5 million music rights globally.⁶⁶

A2IM also includes members that are associated with global government agencies which exclusively represent substantial music economies and music members, such as France (BureauExport⁶⁷), China (China Audio Video Association⁶⁸) and Germany (Initiative Musik).⁶⁹ A2IM also has Affiliate⁷⁰ associations within the global music community. These include Affiliates such as MusicFirst,⁷¹ the Copyright Alliance,⁷² the Worldwide Independent Network (WIN)⁷³ and Merlin.⁷⁴

A2IM also represents a recognized Music Coalition representing the interests of the Global Independent Music Community.⁷⁵ The A2IM Coalition includes Merlin, a global rights agency for the independent label sector, representing over 20,000 labels from 39 countries, Worldwide Independent Network (representing label creators in over 20 countries), Association of Independent Music (representing largest and most respected labels in the world), and IMPALA (Independent Music Companies Association on behalf of over 4,000 independent music companies and national associations across Europe, representing 99% of music actors in Europe which are micro, small and medium sized enterprises.

Cumulatively, A2IM's Label and Associate Membership, A2IM's Affiliates and the A2IM's Global Independent Music Community Coalition, covers a majority of the global music community. Its cumulative membership is in the hundreds of millions of entities with formal boundaries belonging to strictly organized and delineated communities related to music as per the Community Definition and Size (See Application answer to Question 20a).

⁶⁵ <http://a2im.org/groups/bmg-rights/>

⁶⁶ <http://www.bmg.com/category/about-us/history/>

⁶⁷ <http://a2im.org/groups/french-music-export-office>

⁶⁸ <http://a2im.org/groups/china-audio-video-association-cava>

⁶⁹ <http://a2im.org/groups/initiative-musik-gmbh>

⁷⁰ <http://a2im.org/groups/tag/associate+members/>

⁷¹ <http://musicfirstcoalition.org/coalition>, The musicFIRST Coalition, with founding members A2IM, RIAA, and Recording Academy represents musicians, artists, managers, music businesses, and performance right advocates.

⁷² <http://www.copyrightalliance.org/members>

⁷³ <http://www.winformusic.org>

⁷⁴ <http://www.merlinnetwork.org>

⁷⁵ <https://www.icann.org/en/system/files/correspondence/bengloff-to-chehade-et-al-20aug14-en.pdf> and <https://www.icann.org/en/system/files/correspondence/bengloff-to-crocker-et-al-07mar15-en.pdf>

Another global Music Community Coalition led by the RIAA “on behalf of over 15 national and international trade associations” also expressed its support for .MUSIC to be under a “community” application model, including encouraging statements in support of DotMusic’s policies that stated that the coalition “was encouraged to see” that DotMusic “included several measures to deter and address copyright infringement within that TLD.” The “coalition members represent the people that write, sing, record, manufacture, distribute and/or license over 80% of the world’s music”⁷⁶ – a majority of global music.⁷⁷

Collectively, the DotMusic application received support from the largest coalition of music community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community. Cumulatively, DotMusic possesses documented support⁷⁸ from institutions/organizations representing a majority of the Community addressed. Music -- as commonly-known by the general public and experienced today -- would not be possible without these supporting, non-negligible and relevant organizations that have endorsed DotMusic.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Community Establishment* and *Community Endorsement* from the majority of the global Music Community as defined.

B) Nexus⁷⁹

According to the Applicant Guidebook (“AGB”), to receive the maximum score for Nexus, the applied-for string -- “music” -- must match the name of the community or be a well-known short-form or abbreviation of the community name.

The *Nexus* of the “Music Community” entirely matches the applied-for “music” string because it represents the entire global Music Community as commonly-known and perceived by the general public. This definition allows for all constituents with a requisite awareness of the Community defined to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination. The definition of the Community requires that members have an active, non-tangential relationship with the applied-for string and the requisite awareness of the music community they identify with as part of the registration process. It is clear that the general public will directly associate and equate the string with the Community as defined by DotMusic. There is no possibility of overreaching beyond the definition or allowing unrelated non-music entities to be included as part of the Community.

⁷⁶ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.1

⁷⁷ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.3, Appendix A

⁷⁸ <http://music.us/supporters>

⁷⁹ See <http://music.us/nexus>

Community members may register a .MUSIC by either:

- 1) Identifying that they belong to a Music Community Member Organization (“MCMO”); or
- 2) Identifying the community they belong to, which is consistent with the definition of the Community: “the strictly delineated and organized logical alliance of communities of similar nature related to music.”

All Community members are aware of and recognize their inclusion in the defined Community by identifying which clearly defined community they belong to and have an active participation in. The *nexus* of the applied-for string ensures inclusion of the entire global community that the string represents while excluding unrelated-entities not associated with the string. This way there is a clear match and alignment between the “music” string and the Community defined.

While the exact size of the global Music Community as defined is unknown (there is no empirical evidence providing an exact, finite number because amateur entities are also included in the Community’s definition), it is in the considerable millions as explicitly stated in the DotMusic Application. DotMusic’s definition of the Community and mutually-inclusive Registration Policies ensure that eligible members are only music-related and associated with the string. This is because the string identifies all constituents involved in music. Music-only participation optimizes the relevancy of .MUSIC domains to the string and entirely matches the *nexus* between the string and Community defined. According to DotMusic, the Community *definition, eligibility* criteria and *content and use* requirements ensure that peripheral industries and entities not related to music are excluded so that the string and the defined Community matches and aligns in a consistent manner consistent with DotMusic’s community-based purpose i.e. only entities with music-related activities are able to register .MUSIC domains.

Membership aligns with the *nexus* of the Community and the string, which is explicitly relevant to music. The string as defined in the application demonstrates uniqueness because it has no other significant meaning beyond identifying the community described in the application. According to DotMusic’s application, any tangential or implicit association with the *nexus* of the Community and the string is not regarded as a delineated membership since it would be considered unclear, dispersed or unbound. Such unclear, dispersed or unbound tangential relationships with the defined “music” Community and applied-for “music” string would not constitute a qualifying Community membership and would be ineligible for registration.

The inclusion of every music constituent type is paramount to the purpose of the string. Every type of music constituent critically contributes to the function and operation of the music sector within a regulated framework given the symbiotic overlapping nature of the Community as defined and structured. Music would not function as it does today without the participation of all music constituent types which cumulatively match the string with the Community definition.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Nexus*.

Respectfully Submitted,



Date: Friday, April 24, 2015

Dean Pierides

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About Dean Pierides

Qualifications

BA, University of Pennsylvania
Major: Biology
Concentration: Molecular
Minors: Chemistry, Folklore and Folklife

DipEd, University of Melbourne
Awards: Dean's Honours List
Areas: Science, Biology, Environmental Science

MEd, University of Melbourne
Degree: Coursework and Major Thesis
Awards: First Class Honours (Unpublished)

Awards

Research Fellowship in Organisation, Society and Markets (2013)
Postdoctoral fellowship at the *Centre for Organisation, Society and Markets* (COSM)

The Konrad Boehmer Fellowship (2012)

Postdoctoral fellowship for research on market power and economic value in the music industry

Australian Postgraduate Award (2008-2012)

Australian Federal Government

Special Postgraduate Studentship (2008-2012)

Graduate School of Business and Economics, University of Melbourne

Teaching and Innovation Grant (2007)

Teaching and Learning Unit, Faculty of Economics and Commerce, University of Melbourne

Teaching Excellence Award (2006)

Faculty of Education, University of Melbourne

Fulbright Scholarship Program (1997-2001)

The Fulbright Commission

Memberships

[International Sociological Association](#) (ISA)

[RC17: Sociology of Organizations](#)

(Board Member)

[European Group for Organizational Studies](#) (EGOS)

(Member and past convener of sub-themes)

[International Centre for Research in Organizational Discourse, Strategy & Change](#)

(Member)

[Charisma](#) - Consumer Market Studies

(Member and Contributor)

[Meridian 180](#)

(Member and Contributor)

Current teaching

Subject BMAN20920: Critical management and organisation studies (2014-2015)
BSc Management and Management (specialisms), BSc International Management, BSc International Management with American Business Studies

Course Unit BMAN20600 - International business strategy: Contexts, concepts and skills (2015)
BA (Econ) Business Studies Specialists, BA International Business, Finance and Economics, BSc International Management, BSc Management (International Studies) Specialism, BSc Management (International Business Economics) Specialism and BSc International Management with American Business Studies

Previous Positions

University of Melbourne
Research Fellow in Organisation, Society and Markets
Department of Management and Marketing
Organisation Studies

Copenhagen Business School
Visiting scholar
Department of Organization (IOA)

Responsibilities

Ad hoc reviewer: Journal of Management
Ad hoc reviewer: Academy of Management Review
Ad hoc reviewer: Human Relations
Ad hoc reviewer: Management Learning
Ad hoc reviewer: Culture and Organization
Ad hoc reviewer: The Australian Sociological Association
Ad hoc reviewer: The Academy of Management (OMT Division)
Ad hoc reviewer: The Academy of Management (CMS Division)
Ad hoc reviewer: Australasian Journal of Marketing

President of the University of Pennsylvania Australian Alumni Club (2003-2013)
Co-chair of the Penn Alumni Secondary School Committee in Australia (2011-2013)
Volunteer for the Penn Alumni Secondary School Committee (2003-2011)
Department of Management & Marketing PhD student representative (2009-2011)
Department of Management & Marketing Research Committee (2010)

Select journal articles

Pierides, D. (2013). [Political economies of security for some time to come](#). *Journal of Cultural Economy*, 7(3), 371-377.

Pierides, D., & Woodman, D. (2012). [Object-oriented sociology and organizing in the face of emergency: Bruno Latour, Graham Harman and the material turn](#). *The British Journal of Sociology*, 63(4), 662-679.

Pierides, D. (2010). [Multi-sited ethnography and the field of educational research](#). *Critical Studies in Education*, 51(2), 179-195.

Pierides, D. (2006). [Teacher education and its policies in Australia: Making space for a new Urban Education project](#). *Penn GSE Perspectives on Urban Education*.

Re: Expert Testimony on (i) Community Establishment; (ii) Nexus; and (iii) Support for DotMusic’s Community-Based Application¹ for .MUSIC (Application ID 1-1115-14110)

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

Please accept this letter that indicates that there is substantive and compelling evidence that the DotMusic application convincingly meets the full criteria under Community Priority Evaluation on the following points: (i) the Music Community’s *Establishment* as defined by DotMusic; (ii) the matching *Nexus* between the “music” Community and the “music” string (or top-level domain); and (iii) that DotMusic possesses documented *Support* from organizations representing a majority of the global Music Community addressed and defined.

Please see my credentials attached hereto that identify my level of expertise and specialized knowledge with respect to the music community’s organization and delineation.

SUMMARY

DotMusic has established the following:

- 1) Its Community definition recognizes the cohesive, symbiotic and overlapping nature of the global Music Community. The definition includes those associated with commercial and non-commercial creation, performance, marketing and distribution of music;
- 2) “Music Community” members have the requisite awareness and recognition of the interdependency, overlapping and cohesive nature of each “organized community of similar nature that relates to music.” These organized and aligned communities are closely united and make “music” as we know it today. It is this self-awareness and interdependence that gives the “Music Community” its strength. With exponential growth of the Internet, mobile and the Domain Name System (DNS), the “Music Community’s” use and reliance on the Internet to create, market and disseminate music-related content, products, services and activities will continue to grow;
- 3) The “Music Community” functions in a regulated sector with global copyright protections – it is clear that the “community,” as defined, implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate a globally-recognized set of standards for

¹ <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1392>

the protection of the “Music Community” member rights with relation to their copyrighted music works around the world;

4) The “Music” Community -- as defined by DotMusic -- has at least one entity mainly dedicated to the community supporting DotMusic’s application. Such documented *Support* includes several “international federation of national communities of a similar nature,” music coalitions and others that are strongly associated with “music,” which represent a majority of the Community with considerable millions of members worldwide.²

5) The *Nexus* of the “music” Community matches the “music” applied-for string because it represents the entire global Music Community – a community that pre-existed 2007 with a size in the considerable millions of constituents. The “Music Community” definition -- which incorporates the strict fundamental attributes of a closely united Community definition that is “organized” and “delineated” -- ensures that all of its constituent members have a requisite awareness of the community as defined, including both commercial and non-commercial stakeholders, to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination.

6) DotMusic has received support from the largest coalition of Music Community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support³ from institutions/organizations representing a majority of the Community as defined and recognized in the DotMusic application.

There is substantive evidence that DotMusic fulfills the *Nexus, Community Establishment and Support* criteria for the “Music” string. The inclusion and representation of every music constituent type is paramount to the articulated purpose of the string. DotMusic and its application’s global Music Community supporters substantiate that every type of music constituent contributes to the function and operation of the music sector within a regulated framework. The symbiotic nature of the Community as defined and structured means that “Music” would not function as it does today without the participation of all music constituent types that interconnect to match the “music” string with the “music” Community definition.

² <http://music.us/supporters>

³ <http://music.us/supporters>

ASSESSMENT OF COMMUNITY DEFINITION, ESTABLISHMENT AND NEXUS

A) *Music Community Definition, Establishment & Community Endorsement*⁴

DotMusic’s definition of the “Music Community” as a “strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music” (See Application Answer to Question 20a) is factually accurate and representative of the “Music Community.” Community characteristics include:

i) An Organized, Cohesive, Interdependent Logically-Allied Community:

The “Music Community” definition covers the regulated, interdependent and cohesive nature of the music sector that exists today. “Music Community” members have the requisite awareness and recognition of the interdependent, overlapping and cohesive nature of each “organized community of similar nature that relates to music” that comprises the “Music Community.” Without such cohesiveness and interdependency, the defined “Music” Community matching the applied-for string (“Music”) would not be able to function in its regulated sector. “Music” is a regulated sector comprised of a logical alliance of interdependent communities relating to music with organized practices and institutions that enable and regulate the production, distribution and consumption of music that was publicly recognized by both ICANN and the Government Advisory Committee⁵

As a result, the Music Community as defined is “closely united” (As per the definition of “cohesion” according to Merriam-Webster dictionary⁶) or “united or form a whole” (As per the definition of the word “cohesion” according to Oxford Dictionaries⁷).

DotMusic’s application follows unified principles that the entire Community subscribes to, such as: creating a trusted identifier and safe haven for music consumption, protecting musicians’ rights and intellectual property, fighting copyright infringement/piracy, supporting fair compensation and music education, and following a multi-stakeholder approach of representation of all types of global music constituents without discrimination (See Application Answers to 18).

The “Music Community” as defined (a “strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music”) establishes that:

- (1) There is an awareness and recognition among its members;

⁴ See <http://music.us/establishment>

⁵ <https://www.icann.org/en/system/files/bm/briefing-materials-2-05feb14-en.pdf>, Pg.3

⁶ <http://www.merriam-webster.com/dictionary/cohesion>

⁷ http://www.oxforddictionaries.com/us/definition/american_english/cohesion

- (2) The organized and delineated logical alliance of communities exists; and
- (3) The Community is “closely united” and “interdependent” (i.e. Each “organized community of similar nature that relates to music” which is part of the “logical alliance of communities that relate to music” is not mutually exclusive).

In short, the applied-for string (“Music”) matches the name of the “Music” Community as defined by DotMusic’s application. DotMusic’s “Music Community” definition accurately represents the common definition of the “Music Community,” which is confirmed by Wikipedia.

According to Wikipedia:⁸

Music community is defined as a logical alliance of interdependent communities that are related to music, which include commercial participants...and non-commercial participants...and consists of an “ensemble of practices and institutions that make possible and regulate the production, distribution and consumption of music”...UNESCO identifies the music community as a “community of identity” implying common identifiable characteristics and cohesive attributes such as sharing a music culture, norms and subscribing to common ideals related to music...The music community is not defined as much by demographic indicators such as race, gender, and income level, as it is by common values, cohesive norms and interconnected structures to build a community identity. It refers to music-related individuals and organisations in a shared environment with shared understandings and practices, modes of production and distribution. The shared organisation of collective musical activities, identity and community value is created as result of infrastructure and a shared set of common values...Many studies outline the historical, cultural, and spatial significance of the music community, including how its identity is formed through musical practices. The music community shares a cohesive and interconnected structure of artistic expression, with diverse subcultures and socio-economic interactions...subscribing to common ideals. Under such structured context music consumption becomes possible regardless whether the transaction is commercial and non-commercial.⁹

⁸ Wikipedia is ranked 6th among the ten most popular websites (Alexa, Retrieved March 23, 2015 from <http://www.alexacom/siteinfo/wikipedia.org>) and constitutes the Internet's largest, most frequently updated and popular general reference work (See OECD, OECD Internet Economy Outlook 2012, OECD Publishing, http://www.oecd-ilibrary.org/science-and-technology/oecd-internet-economy-outlook-2012_9789264086463-en, Pg.172) that compares favorably to the accuracy of other encyclopedias (such as the Britannica) according to a 2012 study conducted in partnership with Oxford University (See <http://blog.wikimedia.org/2012/08/02/seven-years-after-nature-pilot-study-compares-wikipedia-favorably-to-other-encyclopedias-in-three-languages>).

⁹ Music Community. In *Wikipedia*. Retrieved July 6, 2015, from https://en.wikipedia.org/wiki/Music_community

ii) An Aware, Pre-Existing and Recognized Community of Considerable Millions Worldwide:

DotMusic's definition of the Community covers all Community members associated with the string, each with a requisite awareness of the Community that can be validated through their natural association with a particular music-related community that they clearly identify with. According to DotMusic, all Music Community members must identify their music-related community in order to demonstrate their requisite awareness of the defined Community as part of the .MUSIC registration and validation process.

According to DotMusic, the Music Community's geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents (Application Answer to Question 20a).

According to DotMusic, "registrants will be verified using Community-organized, unified "criteria taken from holistic perspective with due regard of Community particularities" that "invoke a formal membership (Application Answer to Question 20a)." The defined Community represents all music-related entities with a clear and straightforward membership with the Community involved in the legal production, performance, promotion, and distribution of music worldwide. According to DotMusic, the Music Community members must have an active, non-tangential relationship with the applied-for string "music" and also have the requisite awareness of the music-related community that they are a part of by specifically identifying it as part of the registration and validation process (i.e. upon successful registration and validation, each community member will be given a unique community identification number that will automatically associate them with their identified community and the "music" string).

DotMusic's Community definition matches the applied-for string because it allows both commercial and non-commercial stakeholders to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination/exclusion. Given the regulated sector of the community, it is clear that the "Music Community" as defined implies "more of cohesion than a mere commonality of interest" with an "awareness and recognition of a community among its members." Several international treaties mandate cohesive and globally-recognized set of standards for the protection of the music community members' rights with relation to their copyrighted music works around the world.¹⁰

The Berne Convention for the Protection of Literary and Artistic Works¹¹ provides that each of the 168 contracting parties¹² (representing an overwhelming majority of the world's population) provides automatic protection for music works first published in other countries of the Berne union and for unpublished music works whose authors are citizens of or resident in such other

¹⁰ http://www.rightsdirect.com/content/rd/en/toolbar/copyright_education/International_Copyright_Basics.html

¹¹ http://www.wipo.int/treaties/en/text.jsp?file_id=283698

¹² http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=15

countries.¹³ This means that if a Music Community member’s copyright rights are violated in any other signatory country’s jurisdiction, then the music community member will have the music copyright rights given by that country. Music Community members are clearly aware of the collective Community’s rights, which could not be made possible without these cohesive and globally-recognized set of standards. If such standards were not coherent or enforced then music would not be able to exist in its current form and the industry component of the Music Community sector would not exist. As such, the Community’s *Establishment* and definition is “cohesive” and hence cannot be construed since the Community is a logical alliance of music communities that establish a clearly delineated and organized Community structure that is “closely united” and functions as a “whole”

Further evidence to substantiate the cohesive, symbiotic and overlapping nature of the Community, includes other globally-recognized standards and classification systems, which identify who the individual songwriters, publishers and rights holders are and which songs they are associated with so that Community members are appropriately compensated, regardless of whether the constituent is a commercial, non-commercial or amateur entity. The “music” string is commonly used in classification systems such as ISMN,¹⁴ ISRC,¹⁵ ISWC,¹⁶ ISNI.¹⁷ (Application Answer to Question 20a). For example, if a music entity would like to distribute their music, either commercially or for free, then an ISRC can be assigned to globally identify any specific music work. An ISRC, which facilitates efficient music discovery and community member payment, is constructed from 12 characters representing country, registrant, year of registration and designation (i.e. the serial number assigned by the registrant). With respect to domains, an equivalent system that relates to identifying a specific domain’s registrant and other relevant information pertaining to the domain is WHOIS. Domain registrants are required by ICANN “to provide accurate WHOIS contact data” or else their domain “registration may be suspended or even cancelled”.¹⁸

¹³ <http://www.britannica.com/EBchecked/topic/62482/Berne-Convention>

¹⁴ The International Standard Music Number (ISMN) is a unique number for the identification of all notated music publications from all over the world. The ISMN is an ISO certified global standard number (ISO 10957:2009). See <http://www.ismn-international.org/whatis.html> and http://www.iso.org/iso/home/store/catalogue_ics/catalogue_detail_ics.htm?csnumber=43173

¹⁵ The ISRC (International Standard Recording Code) is the international identification system for sound recordings and music video recordings. The ISRC is an ISO certified global standard number (ISO 3901:2001) and is managed by the IFPI. See <http://isrc.ifpi.org>, <https://www.usisrc.org/about/index.html> and http://www.iso.org/iso/catalogue_detail?csnumber=23401

¹⁶ The ISWC (International Standard Musical Work Code) is a unique, permanent and internationally recognized reference number for the identification of musical works. The ISWC has been approved by ISO (International Organization for Standardisation) as a global standard (ISO 15707:2001) and is managed by CISAC. See <http://www.iswc.org/en/faq.html> and http://www.iso.org/iso/catalogue_detail?csnumber=28780

¹⁷ The International Standard Name Identifier (ISNI) is the ISO certified global standard number (ISO 27729) for identifying the millions of contributors to creative works and those active in their distribution. ISNI holds public records of over 8 million identities and 490,000 organizations. See <http://www.isni.org/> and http://www.iso.org/iso/catalogue_detail?csnumber=44292

¹⁸ <https://whois.icann.org/en/about-whois> and <https://www.icann.org/resources/pages/faqs-f0-2012-02-25-en>

Without such Music Community “cohesion” and standardized systems functioning in its regulated sector, the Music Community would not be able to create, market and distribute their music. By the same token, fans would not be able to identify the music they are listening to with a specific music artist, regardless of whether the listening activity or behavior is commercial or non-commercial in nature. The socio-economic structure that characterizes “music” as commonly-known today would be non-existent without these organized and delineated elements that commonly define the Community.

iii) *International Federations and Organizations mainly Dedicated to the Community:*

According to ICANN’s Applicant Guidebook (“AGB”)¹⁹: “*With respect to “Delineation” and “Extension,” it should be noted that a community can consist of...a logical alliance of communities (for example, an international federation of national communities of a similar nature... viable as such, provided the requisite awareness and recognition of the community is at hand among the members.*” (AGB, 4-12). The community as defined in the DotMusic application has at least one entity *mainly*²⁰ dedicated to the community which has supported DotMusic, which include several “international federation of national communities of a similar nature” relating to music, music coalitions and other relevant and non-negligible music organizations.

One of these entities include the only international federation of national communities relating to government culture agencies and arts councils, which has an integral association with music globally: the International Federation of Arts Councils and Culture Agencies (IFACCA).

IFACCA is the only international federation that represents government culture agencies and arts councils globally. These national communities are governmental institutions that play a pivotal

¹⁹ <https://newgtlds.icann.org/en/applicants/agb/guidebook-full-11jan12-en.pdf>

²⁰ Per the Oxford and Merriam Webster dictionaries, the word “mainly” is defined as “*more than anything else*” (See <http://www.oxforddictionaries.com/definition/english/mainly> and <http://www.merriam-webster.com/dictionary/mainly> respectively). According to DotMusic, the string .MUSIC relates to the Community “by representing all constituents involved in music creation, production and distribution” (Application Answer to Question 20d). Supporting organizations related to that string that are “mainly” dedicated to the Community and its activities, include the International Federation of Arts Councils and Culture Agencies (IFACCA) representing government culture ministries and arts councils, the International Federation of Musicians (FIM) representing musicians globally, the International Federation of Phonographic Industry (IFPI) representing the recording industry worldwide, the International Confederation of Music Publishers (ICPM) representing the voice of global music publishing, the International Association of Music Information Centres (IAMIC), the American Association of Independent Music (A2IM), whose associate members represent a majority of music consumed, the Independent Music Worldwide Independent Network (WIN) representing independent music worldwide, the International Society for Music Education (ISME) the premiere international organization representing music education, and many others (See support at <http://music.us/supporters> and <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails:downloadattachment/142588?t:ac=1392>).

role with respect to music.²¹ IFACCA's members cover the majority of music entities globally, regardless of whether they are commercial, non-commercial or amateurs. Government ministry of culture and council agencies related to music cover a majority of the overall community with respect to headcount and geographic reach. The "Size" covered reaches over a hundred million music entities i.e. "considerable size with millions of constituents" per Application Answer to Question 20a.

The string "music" falls under the jurisdiction of each country's Ministry of Culture governmental agency or arts/music council (emphasis added). The degree of power and influence of government ministry of culture and council agencies with respect to music surpasses any organization type since these agencies (i) provide the majority of funding for music-related activities; (ii) regulate copyright law; and (iii) encompass all the music entities that fall under their country, regardless whether these entities are commercial, non-commercial or amateurs. IFACCA is globally recognized by its strategic partners, such as UNESCO, a United Nations agency representing 195 member states and the European Commission.²² The UNESCO strategic partnership²³ is relevant, especially since UNESCO founded the International Music Council (the "IMC") in 1949, which represents over 200 million music constituents from over 150 countries and over 1000 organizations globally.²⁴

Government activities in the clearly delineated and organized "Music Community" include setting statutory royalty rates. For example, in the United States, mechanical royalties are based on a "statutory rate" set by the U.S. Congress. This rate is increased to follow changes in the economy, usually based on the Consumer Price Index. Currently, the mechanical statutory rate is \$0.091 for songs five minutes or less in length or \$.0175 per minute for songs that are over five minutes long.²⁵

Ministries of culture and arts councils (that comprise IFACCA's membership) support musicians, musical performances, independent music artists, non-commercial musical expression and education in their respective countries. The 165 ministries of culture, arts councils and affiliates that comprise IFACCA's membership support the "performing arts" and music specifically. Without the financial and logistical support of arts councils and the ministries of culture, the music community would be adversely affected, and in some countries, may not exist in any appreciable manner. For example, the Ministry of Culture 2011 budget for the small country state of Cyprus for culture funding was €34,876,522 with critical support of music activities.²⁶ Other small government Ministries of Culture, such as Albania,²⁷ or government

²¹ http://www.ifacca.org/membership/current_members/

²² http://www.ifacca.org/strategic_partners/

²³ http://www.ifacca.org/strategic_partners/

²⁴ <http://www.imc-cim.org/about-imc-separator/who-we-are.html>

²⁵ U.S Copyright Office, <http://www.copyright.gov/carp/m200a.html>

²⁶ 2011 Annual Report for Cyprus Ministry of Culture, Section 1.2 "Music"

(http://www.moec.gov.cy/en/annual_reports/annual_report_2011_en.pdf). Activities include Music Performances in Cyprus (1.2.1) and Abroad (1.2.2), Subsidization of Paphos Aphrodite Festival (1.2.3), Music Publications (1.2.4), Subsidization and Purchases of Digital Records (1.2.5), Promotion for Cypriot musical creativity abroad (1.2.6),

Ministries of Culture and Arts Councils from countries with larger populations, such as India,²⁸ all provide critical support and substantial advocacy for music. Other examples include government institutions collaborating and advocating music through their funded country-based pavilion initiatives at Midem, the world's largest music conference.²⁹

Government ministries and arts councils provide critical support for the Music Community, including commercial music organizations. By way of example, government ministries' and arts councils' substantial connection to and support of "music" is noted in the reports of funding and support for music. Some examples to showcase the degree of power of the IFACCA's membership towards the string and global and national music are music investment and music funding (Annual reports by governments and councils):

- New Zealand Ministry of Culture has funded significant music projects. Some include the REAL New Zealand Music Tour (\$415,000), the New Zealand String Quartet (\$150,000) and New Zealand Music Commission: (\$1,378,000).³⁰
- The Australian Government/Council For The Arts invested \$51.2 million for the nation's orchestras; \$21.6 million for opera; \$10.8 million for other music artists and organizations; \$13.1 million for multi-platform artists and organizations; and \$4 million in miscellaneous funding, including sector building and audience development initiatives and programs.³¹
- Canada Council for the Arts is Canada's national, arts funding agency investing \$28 million in its Canada Council Musical Instrument Bank (Page 16) and \$28,156,000 in Music Arts Programs (Page 66).³² The Government of Canada also renewed its annual investment of \$27.6 million over five years in the Canada Music Fund.³³
- The United Kingdom Department for Culture and Education (DfE) will fund music education at significant levels: £77 million, £65 million and £60 million will be available in the three years from April 2012.³⁴

Cyprus Symphony Orchestra Foundation (1.2.7), Music Information Centre (1.2.8), Developing Music Education (1.2.9), Organising of the 1st Musicological Symposium (1.2.10) and Musical Festivities for the European Volunteerism Year (1.2.11)

²⁷ http://www.culturalpolicies.net/down/albania_012011.pdf

²⁸ 2010-11 Annual Report from India Ministry of Culture, [http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011\(Eng\).pdf](http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011(Eng).pdf)

²⁹ <http://my.midem.com/en/contact-us/pavilion-representatives/>

³⁰ 2011 Annual Report from New Zealand Ministry of Culture:

[http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20\(D-0448383\).PDF](http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20(D-0448383).PDF)

³¹ 2011 Annual Report for the Australia Council for the Arts,

http://www.australiacouncil.gov.au/data/assets/pdf_file/0016/142351/Australia-Council-Annual-Report-201112.pdf, Page 28

³² 2011 Annual Report for Canada Council for the Arts, [http://www.canadacouncil.ca/NR/rdonlyres/6F7549BB-F4E5-4B8B-95F4-](http://www.canadacouncil.ca/NR/rdonlyres/6F7549BB-F4E5-4B8B-95F4-1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf)

[1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf](http://www.canadacouncil.ca/NR/rdonlyres/6F7549BB-F4E5-4B8B-95F4-1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf)

³³ <http://www.pch.gc.ca/eng/1294862453819/1294862453821>

³⁴ Department for Culture, The Importance of Music, A National Plan for Music Education,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/180973/DFE-00086-2011.pdf, Page 4, 2011

- The United States National Endowment of the Arts has awarded more than \$4 billion to support the arts since its inception³⁵ and has a strong focus on music as outlined in its Strategic Plan³⁶ with Congress requested to provide \$154,465,000 for fiscal year 2014.³⁷
- The National Arts Council of South Africa invested 2,536,131 ZAR in Music and 9,995,000 ZAR in Orchestras and has focused strongly on the “Strengthening of live indigenous music and advocating the revival of the live music circuit in South Africa”³⁸
- The Singapore Arts Council will fund \$10.2 million in the arts under its 2013 Grants Framework, including the Ding Yi Music Company and Siong Leng Musical Association.³⁹
- In 2011, the support for artistic activities by the Arts Council of Finland was €32.4 million of which €4,921,850 was awarded to music.⁴⁰

Each of IFACCA’s members has a clear association with, and mandate to support the music arts in their countries. In most countries, their ministry of culture/arts council is the largest funder and marketing supporter of the music arts.

The IFPI is another entity *mainly* dedicated to the Community. The IFPI is the only organization that represents the interests of the recording industry worldwide. It is the “voice of the recording industry worldwide”⁴¹ whose members⁴² – major and independent companies -- represent a majority of all commercial music consumed globally. For example, the RIAA, an IFPI national group member,⁴³ represents “approximately 85% of all legitimate recorded music produced and sold in the United States,”⁴⁴ the world’s largest music market with 30% global market share.⁴⁵ Formed in 1933, the IFPI’s mission was to “represent the interests of the recording industry worldwide in all fora.”

³⁵ 2011 Annual report for the National Endowment of the Arts, <http://www.nea.gov/about/11Annual/2011-NEA-Annual-Report.pdf>, Page 2

³⁶ NEA Strategic Plan 2012-2016, www.arts.gov/about/Budget/NEAStrategicPlan2012-2016.pdf

³⁷ http://www.ifacca.org/national_agency_news/2013/04/10/us-president-requests-154465000-neh-2014/

³⁸ 2010-2011 Annual Report for the National Arts Council South Africa, National Arts Council South Africa, <http://www.nac.org.za/media/publications/AR%2010-11%20NAC.PDF/download>, Page 11. Also Mmino, the South African – Norwegian Education Music Programme, solely funds music projects funding a total of 294 projects. Thirteen projects were allocated funding for a total of R1,680,600 of which R1,381,000 went towards music educational and R299,600 to exchange projects (Page 10)

³⁹ Singapore Arts Council, <http://www.nac.gov.sg/media-centre/news-releases/news-detail?id=c2db15e2-c319-40ec-939c-d58735d0a91c>

⁴⁰ <http://www.taiteenkeskustoimikunta.fi/documents/10162/31704/TY+tilastotiedote+1+12+.pdf>, Page 1 and Page 23

⁴¹ <http://www.ifpi.org/about.php>

⁴² <http://www.ifpi.org/our-members.php>

⁴³ <http://www.ifpi.org/national-groups.php>

⁴⁴ <http://www.riaa.com/faq.php>

⁴⁵ <http://www.statista.com/topics/1639/music/>

Another clear example of an “entity *mainly* dedicated to the community” with members that cover hundreds of millions of music constituents with formal boundaries is A2IM, the American Association of Independent Music. A2IM has two types of members: U.S independent Label members and Associate members. A2IM membership for Labels and Associates is invoked formally through an application and if accepted would require annual membership dues.⁴⁶

The reach of A2IM Associate⁴⁷ membership covers hundreds of millions of entities (i.e. the reach of A2IM’s total membership “geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents – See Application Answer to Question 20a).

Organized and strictly delineated communities related to music that are A2IM members include:

- **Apple iTunes**⁴⁸ – iTunes accounts for 63% of global digital music market⁴⁹ - a majority – with a registered community of 800 million registered members⁵⁰ available in 119 countries who abide to strict terms of service and boundaries⁵¹ and have downloaded over 25 billion songs⁵² from iTunes’ catalog of over 43 million songs⁵³ covering a global music community, regardless of genre or whether the community entities are amateur, professional, commercial or non-commercial. To add music to iTunes, all music artists must have a formal membership with iTunes via an Apple ID registration, which includes a current credit card on file.⁵⁴
- **Pandora**⁵⁵ – Pandora is the world’s largest streaming music radio with a community of over 250 million registered members.⁵⁶
- **Spotify**⁵⁷ – Spotify is the world’s largest music streaming community with over 50 million active registered members in 58 countries and over 30 million songs. The music community uploads 20,000 songs every day.⁵⁸
- **Vevo**⁵⁹ – Vevo is the world’s leading all-premium music video community and platform with over 8 billion monthly views globally.⁶⁰

⁴⁶ <http://a2im.org/about-joining/>

⁴⁷ <http://a2im.org/groups/tag/associate+members/>

⁴⁸ <http://a2im.org/groups/itunes>

⁴⁹ <http://appleinsider.com/articles/13/04/16/apples-itunes-rules-digital-music-market-with-63-share>

⁵⁰ <http://www.npr.org/blogs/therecord/2015/01/06/375173595/with-downloads-in-decline-can-itunes-adapt>

⁵¹ <http://www.apple.com/legal/internet-services/itunes/ww/index.html>

⁵² <http://www.apple.com/pr/library/2013/02/06iTunes-Store-Sets-New-Record-with-25-Billion-Songs-Sold.html>

⁵³ <https://www.apple.com/itunes/features/>

⁵⁴ <https://www.apple.com/itunes/working-itunes/sell-content/music-faq.html>

⁵⁵ <http://a2im.org/groups/pandora>

⁵⁶ <http://www.cnet.com/news/like-a-rolling-milestone-pandora-hits-250m-registered-users/> and <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MTkxNTM1fENoaWxkSUQ9LTF8VHlwZT0z&t=1>, Pg.9

⁵⁷ <http://a2im.org/groups/spotify>

⁵⁸ <https://press.spotify.com/us/information/>

⁵⁹ <http://a2im.org/groups/vevo/>

- **Youtube**⁶¹ – Youtube is the world’s largest music video streaming community with millions of music creators -- amateur, professional, commercial or non-commercial -- and over 1 billion registered members covering all regions globally. 6 billion hours of video is watched every month on Youtube,⁶² of which 38.4% is music-related.⁶³
- **ReverbNation**⁶⁴ – ReverbNation⁶⁵ is one of the world’s largest music community and a leading music distributor with over 3.87 million musicians, venues labels and industry professionals covering every country globally. The ReverbNation community grows by over 50,000 artists, bands, labels and industry professionals monthly.
- **BMG**⁶⁶ – BMG is focused on the management of music publishing and recording rights. BMG has an international presence and represents over 2.5 million music rights globally.⁶⁷

A2IM also includes members that are associated with global government agencies which exclusively represent substantial music economies and music members, such as France (BureauExport⁶⁸), China (China Audio Video Association⁶⁹) and Germany (Initiative Musik).⁷⁰ A2IM also has Affiliate⁷¹ associations within the global music community. These include Affiliates such as MusicFirst,⁷² the Copyright Alliance,⁷³ the Worldwide Independent Network (WIN)⁷⁴ and Merlin.⁷⁵

A2IM also represents a recognized Music Coalition representing the interests of the Global Independent Music Community.⁷⁶ The A2IM Coalition includes Merlin, a global rights agency for the independent label sector, representing over 20,000 labels from 39 countries, Worldwide Independent Network (representing label creators in over 20 countries), Association of Independent Music (representing largest and most respected labels in the world), and IMPALA (Independent Music Companies Association on behalf of over 4,000 independent music companies and national associations across Europe, representing 99% of music actors in Europe which are micro, small and medium sized enterprises).

⁶⁰ <http://www.vevo.com/c/EN/US/about>

⁶¹ <http://a2im.org/groups/youtube/>

⁶² <https://www.youtube.com/yt/press/statistics.html>

⁶³ http://www.researchandmarkets.com/reports/2092499/internet_video_2011_2014_view_share_site_and

⁶⁴ <http://a2im.org/groups/reverb-nation/>

⁶⁵ <http://www.reverbnation.com/about>

⁶⁶ <http://a2im.org/groups/bmg-rights/>

⁶⁷ <http://www.bmg.com/category/about-us/history/>

⁶⁸ <http://a2im.org/groups/french-music-export-office>

⁶⁹ <http://a2im.org/groups/china-audio-video-association-cava>

⁷⁰ <http://a2im.org/groups/initiative-musik-gmbh>

⁷¹ <http://a2im.org/groups/tag/associate+members/>

⁷² <http://musicfirstcoalition.org/coalition>, The musicFIRST Coalition, with founding members A2IM, RIAA, and Recording Academy represents musicians, artists, managers, music businesses, and performance right advocates.

⁷³ <http://www.copyrightalliance.org/members>

⁷⁴ <http://www.winformusic.org>

⁷⁵ <http://www.merlinnetwork.org>

⁷⁶ <https://www.icann.org/en/system/files/correspondence/bengloff-to-chehade-et-al-20aug14-en.pdf> and <https://www.icann.org/en/system/files/correspondence/bengloff-to-crocker-et-al-07mar15-en.pdf>

Cumulatively, A2IM's Label and Associate Membership, A2IM's Affiliates and the A2IM's Global Independent Music Community Coalition, covers a majority of the global music community. Its cumulative membership is in the hundreds of millions of entities with formal boundaries belonging to strictly organized and delineated communities related to music as per the Community Definition and Size (See Application answer to Question 20a).

Another global Music Community Coalition led by the RIAA “on behalf of over 15 national and international trade associations” also expressed its support for .MUSIC to be under a “community” application model, including encouraging statements in support of DotMusic’s policies that stated that the coalition “was encouraged to see” that DotMusic “included several measures to deter and address copyright infringement within that TLD.” The “coalition members represent the people that write, sing, record, manufacture, distribute and/or license over 80% of the world’s music”⁷⁷ – a majority of global music.⁷⁸

Another letter⁷⁹ sent to ICANN (on April 14th, 2015) by Danielle Aguirre from the NMPA and on behalf of a music publisher and songwriter community coalition representing a majority of the global music publishing community, also expressed “support [for] the .MUSIC community applications because respecting and protecting music rights serves the global music community and the public interest.”

The International Music Products Association, NAMM, is another globally-recognized and relevant group of non-negligible size that has supported DotMusic.⁸⁰ NAMM, formed in 1901, is *mainly* dedicated to the global music community by representing the international music products industry and community, with globally-recognized members and exhibitors that include Yamaha, Roland, Sennheiser, Sony, Fender, Harman, Kawai, Shure, Steinway, Audio-Technica, AKAI, Gibson, Peavey, Korg, AKG, Selmer, JBL, Alesis, Ibanez, AVID, Casio, DW, Sabian, Pearl, Zildjian, Martin, Ludwig, Marshall and others.^{81 82} Every amateur and professional musician worldwide uses music products manufactured and distributed by NAMM’s members. Without these musical instruments and products, music as we know it today would not be created or produced. NAMM and its trade shows power the \$17 billion global music products industry serving as a hub for the global music community wanting to seek out the newest innovations in musical products, recording technology, sound and lighting. NAMM’s mission is “to strengthen

⁷⁷ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.1

⁷⁸ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.3, Appendix A

⁷⁹ <https://www.icann.org/en/system/files/correspondence/aguirre-to-icann-board-eiu-14apr15-en.pdf>

⁸⁰ http://music.us/letters/NAMM_International_Music_Products_Association.pdf

⁸¹ https://www.namm.org/files/showdir/ExhibitorList_WN15.xls

⁸² <http://www.musictrades.com/global.html>

the music products industry and promote the pleasures and benefits of making music.”⁸³ NAMM also hosts the NAMM Show, the world's largest event for the music products industry.

Collectively, the DotMusic application received support from the largest coalition of music community member organizations ever assembled to support a cause representing over 95% of music consumed globally.⁸⁴ Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support⁸⁵ from institutions/organizations representing a majority of the Community addressed. Music -- as commonly-known by the general public and experienced today -- would not be possible without these supporting, non-negligible and relevant organizations that have endorsed DotMusic.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Community Establishment* and *Community Endorsement* from the majority of the global Music Community as defined.

B) Nexus⁸⁶

According to the Applicant Guidebook (“AGB”), to receive the maximum score for Nexus, the applied-for string -- “music” -- must match the name of the community or be a well-known short-form or abbreviation of the community name.

The *Nexus* of the “Music Community” entirely matches the applied-for “music” string because it represents the entire global Music Community as commonly-known and perceived by the general public. This definition allows for all constituents with a requisite awareness of the Community defined to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination. The definition of the Community requires that members have an active, non-tangential relationship with the applied-for string and the requisite awareness of the music community they identify with as part of the registration process. It is clear that the general public will directly associate and equate the string with the Community as defined by DotMusic. There is no possibility of overreaching beyond the definition or allowing unrelated non-music entities to be included as part of the Community. Community members may register a .MUSIC by either:

⁸³ <https://www.namm.org/about>

⁸⁴ See <http://music.us/supporters>, <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/downloadattachment/142588?t:ac=1392>, Bloomberg BNA at http://music.us/RIAA_Backs_DotMusic.pdf Pg.1, and <http://diffuser.fm/will-dot-music-domains-make-the-internet-better/>

⁸⁵ <http://music.us/supporters>

⁸⁶ See <http://music.us/nexus>

- 1) Identifying that they belong to a Music Community Member Organization (“MCMO”); or
- 2) Identifying the community they belong to, which is consistent with the definition of the Community: “the strictly delineated and organized logical alliance of communities of similar nature related to music.”

All Community members are aware of and recognize their inclusion in the defined Community by identifying which clearly defined community they belong to and have an active participation in. The *nexus* of the applied-for string ensures inclusion of the entire global community that the string represents while excluding unrelated-entities not associated with the string. This way there is a clear match and alignment between the “music” sting and the Community defined.

While the exact size of the global Music Community as defined is unknown (there is no empirical evidence providing an exact, finite number because amateur entities are also included in the Community’s definition), it is in the considerable millions as explicitly stated in the DotMusic Application. DotMusic’s definition of the Community and mutually-inclusive Registration Policies ensure that eligible members are only music-related and associated with the string. This is because the string identifies all constituents involved in music. Music-only participation optimizes the relevancy of .MUSIC domains to the string and entirely matches the *nexus* between the string and Community defined. According to DotMusic, the Community *definition, eligibility* criteria and *content and use* requirements ensure that peripheral industries and entities not related to music are excluded so that the string and the defined Community matches and aligns in a consistent manner consistent with DotMusic’s community-based purpose i.e. only entities with music-related activities are able to register .MUSIC domains.

Membership aligns with the *nexus* of the Community and the string, which is explicitly relevant to music. The string as defined in the application demonstrates uniqueness because it has no other significant meaning beyond identifying the community described in the application. According to DotMusic’s application, any tangential or implicit association with the *nexus* of the Community and the string is not regarded as a delineated membership since it would be considered unclear, dispersed or unbound. Such unclear, dispersed or unbound tangential relationships with the defined “music” Community and applied-for “music” string would not constitute a qualifying Community membership and would be ineligible for registration. Every type of music constituent critically contributes to the function and operation of the music sector within a regulated framework⁸⁷ given the symbiotic overlapping nature of the Community as defined and structured. Music would not function as it does today without the participation of all music constituent types which cumulatively match the string with the Community definition.

⁸⁷ ICANN has disclosed that the string .MUSIC is a sensitive string operating in a regulated sector. ICANN also accepted Government Advisory Committee (GAC) advice for safeguards to protect the Music Community and the public interest (See <https://icann.org/en/system/files/correspondence/crocker-to-dryden-3-29oct13-en.pdf> Pg.7)

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Nexus*.

Respectfully Submitted,

Signature:  Contact Information Redacted Aug 6 '15 ip: 31.208.7.24

Name: Andrew Dubber

Title: Professor of Music Industry Innovation

Organization: Birmingham City University

Professor Andrew Dubber

Andrew Dubber (or just "Dubber" as he is more usually known) is Professor of Music Industries Innovation, and the Award Leader for the [MA in Music Industries](#) and the [MA in Music Radio](#) at the Birmingham School of Media. He is a researcher on the Humanities in the European Research Area (HERA)-funded [Rhythm Changes](#) project.

Dubber moved to the UK from New Zealand in 2004 where, amongst many other things, he was the Degree Leader in Radio at [Auckland University of Technology](#) and the host of a jazz radio programme on [George FM](#). He is internationally recognised as a leading consultant and academic in new strategies and technologies for the radio and the music industries.

Dubber is the author of [Music in the Digital Age](#); editor of 'The 360 Deal: a collection of genuinely helpful advice for people starting out in the music industry'; co-author of *Understanding the Music Industries* (Sage, 2012); and has recently completed his new book, *Radio in the Digital Age* (Polity Books, forthcoming 2013). He also is the co-author of a book about new technologies for broadcasters in developing nations, commissioned by UNESCO, and has been a member of the steering committee for the Radio Studies Network and the board of [Un-Convention](#).

He has also written for *Computer Music Magazine*, authored sections on blogging and podcasting for the *Alternative Media Handbook* (Routledge, 2008), and travels extensively to present to academic and industry conferences in this field.

Andrew Dubber is the director of [Music Tech Fest](#), an advisor to [Bandcamp](#), [Stromatolite](#) and [Sonaris](#) and is the founder of [New Music Strategies](#), a pan-European digital music strategy think tank and consultancy group. He is the author of [Music In The Digital Age](#) (2012), [Radio in the Digital Age](#) (2013), [Understanding the Music Industries](#) (2012), [The 20 Things You Must Know About Music Online](#) (2007), and is the editor of [The 360 Deal](#) (2013), which features the advice of 360 top music business professionals for young people just starting out in the music industries.

He is a frequent keynote speaker at music industry events worldwide; his blogs and podcasts reach audiences numbering in the hundreds of thousands; and is followed by over 11,000 people on [Twitter](#), where he posts about music industry innovation, popular music culture and digital media.

Dubber is Professor of Music Industry Innovation at [Birmingham City University](#) where he runs an MA in Music Industries, supervises PhD projects in music, media and culture and leads research projects within the Interactive Cultures unit at the Birmingham Centre for Media and Cultural Research ([BCMCR](#)). His research interests include digital media cultures, media and music innovation, online music enterprise, [radio in the digital age](#), music as a tool for social change, and music as culture. He teaches about radio broadcasting, the music industries, music hacking and the online environment.

As an academic, Dubber is extensively published and frequently cited. However, his background is primarily as a practitioner in the media industries as a radio producer and presenter, label owner and record producer.

Education

University of Liverpool
MBA, Music Industries
1999 – 2000

University of Gothenburg
Economics
1995 – 1996

Universitat de Barcelona
Graduate, Business Management
1990 – 1995

Universitat Pompeu Fabra
Executive Programme, Consultant

Research

Research themes include:

- Music Innovation
- Music as a Tool for Social Change
- Radio
- Music Industries
- Music and Digital Culture
- Jazz and European Identity

Publications

Anderton C., Dubber A. & James M. 2012 *'Understanding the Music Industries'*, Sage Publications.

Dubber A. 2013 (forthcoming) - *'Radio in the Digital Age'*, Polity Press.

Dubber, A. *'Keep Up With The Changes: Online strategies for national jazz agencies'*, Jazz Research Journal 6/1, 2012.

Dubber, A. *'The Kitchen Orchestra Online: Digital Mediation and Collective Practice'* Jazz Research Journal, 5.1/5.2 2011.

Dubber A. 2011 *'Monkey On The Roof: Researching creative practice, music consumption, social change and the online environment'* Creative Industries Journal, 4:1 (pp. 19-31), Intellect.

Wall T. and Dubber A. (2010) *'Experimenting with fandom, live music, and the internet: applying insights from music fan culture to new media production'*, New Music Research Journal, Special Issue on Investigating Audience Experiences, 39 (2): pp. 159-169.

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Journal articles

Dubber, A. *'Keep Up With The Changes: Online strategies for national jazz agencies'*, Jazz Research Journal 6/1, 2012.

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Dubber, A. *'The radio interview as teaching'* The Radio Journal 2/2 2004

Book chapters & contributions

Long, P. & Wall, T. (eds) *Media Studies* [contributing author] Pearson 2009

Dubber, A. 'Podcasting' (chapter) in *The Alternative Media Handbook*, Coyer, K., Downmunt, T. & Fountain A., Routledge 2007

Dubber, A. 'Blogging' (chapter) in *The Alternative Media Handbook*, Coyer, K., Downmunt, T. & Fountain A., Routledge 2007

Dubber, A. & Wall, T. '*New broadcast technologies*' UNESCO 2006 (handbook commissioned by UNESCO to be printed and distributed to community and public broadcasters in developing nations)

Dubber, A. 'The Digitalisation of Radio in New Zealand' in *The Great New Zealand Radio Experiment*, Neill, K. & Shanahan, M. (Eds), Thomson Dunmore Press 2005

Research Reports

Dubber, A. & Wall T. *BBC Specialist Music Audiences Online* 2008, BBC/AHRC – published online at <http://interactivecultures.org> and printed for circulation amongst BBC staff and management.

Wall, T., Carter, O. & Dubber, A. *Regional Music Economies* 2006 Birmingham: Digital Central – 500 copies printed and given free to creative enterprises and music businesses within the West Midlands region.

Wall, T., Dubber, A. & Debenham, J. *Online music enterprise: new technologies of music distribution and consumption*, 2006 Birmingham: LSC – Report submitted to the Learning and Skills Council and circulated electronically to members of the local music industries through the Birmingham Music Network.

Magazine articles

Dubber, A., *DIY PR*, Computer Music Magazine, Special Edition Vol. 28 2008

Dubber, A., *Making Money in the New Music Business*, Computer Music Magazine, Special Edition Vol. 28 2008

Dubber, A., *Cashing In: What to do when you want to make real money from your musical enterprises*, Computer Music Magazine, Special Edition Vol. 28 2008

Dubber, A., *12 Top Tips for Online Success*, Computer Music Magazine, Special Edition Vol. 28 2008

Conferences

'Shift Left 95: From Cultural Cringe to the New Aesthetic in Aotearoa New Zealand', Global Jazz Conference, Musee du Quai Branly, Paris, June 2013.

'Online Knowledge Exchange for the Humanities', HERA JRP Final Conference, Kings College London, May 2013.

'Shift Left 95: From Cultural Cringe to the New Aesthetic in Aotearoa New Zealand', Rethinking Jazz Cultures, University of Salford, April 2013.

'This one time, at Bandcamp: Behavioural skeuomorphism and online independent music retail', Severn Pop Network inaugural conference: The small economies of the 'new' music industry, University of Bristol, March 2013.

'Radio in the Digital Age', Media Research Seminar, University of Sunderland, October 2012.

'Monkey on the Roof: Online music innovation and social change in the lives of Delhi street children', Subcultures, Popular Music and Social Change Conference, London Metropolitan University, September 2012.

'Music as Culture in the Digital Age', Música Independiente no Contexto Pós-Crise, Universidade do Estado do Rio de Janeiro, October 2011.

'Music, Local Identity and Commercial Radio', Cyfrwng: Media and Culture in Small Nations Conference, University of Glamorgan, June 2011.

'Online mediation of jazz performance, its context and its audiences', Watching Jazz Conference, University of Glasgow, February 2011.

'Unpicking the myths and misunderstandings of radio in the digital age', Keynote speech, The Radio Conference: A Transnational Forum, Auckland University of Technology, January 2011.

'Aftershock: Mediating Live Music Events Online', ECREA 3rd European Communication Conference, University of Hamburg, October 2010.

'Rhythm Changes: Jazz cultures and European identities (Jazz online)', 9th Nordic Jazz Conference, Helsinki, August 2010.

'Aftershock: live music performance and digital narrative', MeCCSA Annual Conference, London School of Economics, January 2010.

'Mediating live jazz festivals online', Mediating Jazz Conference, University of Salford, November 2009.

'Online on-air: BBC Radio 1's Zane Lowe - Live and Interactive', The Radio Conference: A Transnational Forum, York University Toronto, July 2009.

'Music As Culture: Digital Archives and Popular Music' [panel discussion] Unlocking Audio Conference, British Library Sound Archives, London, March 2009.

'BBC Jazz Radio Listeners Online', Leeds International Jazz Conference, University of Leeds, March 2009.

'Jazz Music Consumption Online', Leeds International Jazz Conference, Leeds College of Music, March 2008.

'Online Music Enterprise', IASPM Conference, University of Otago Dunedin, New Zealand, December 2008.

New Radio Strategies: Reconfiguring Radio in the New Media Environment July 2007.

Online music enterprise: new technologies of music distribution and consumption [co-author]
LSC 2006.

'New Zealand On Air', Sounding Out Conference, Sunderland, September 2006.

'Jazz, Radio and National Identity in New Zealand', Leeds International Jazz Conference,
Leeds College of Music, March 2006.

'Online Music Enterprise', MeCCSA/AMPE Conference, University of Leeds, January 2006.

'There is no 'We' in iPod', The First European Communication Conference, University of
Amsterdam, November 2005.

'Radio, Digitalisation and the Laws of Media', Radio Studies Network Conference,
Birmingham City University, April 2005.

'Radio Question Time'; panel, MeCCSA/AMPE conference, Lincoln, January 2005.

'There's no such thing as Internet Radio', The Radio Conference: A Transnational Forum,
University of Wisconsin Madison, WI, August 2003.

'Radio and the Internet', Between Empires Conference, Auckland University of Technology,
Auckland, February 2003.

Websites

<http://www.bcu.ac.uk/media/applying-to-us/our-staff/andrew-dubber>

<http://andrewdubber.com/books>

<http://bcu.academia.edu/dubber>

Re: Expert Testimony on (i) Community Establishment; (ii) Nexus; and (iii) Support for DotMusic’s Community-Based Application¹ for .MUSIC (Application ID 1-1115-14110)

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

Please accept this letter that indicates that there is substantive and compelling evidence that the DotMusic application convincingly meets the full criteria under Community Priority Evaluation on the following points: (i) the Music Community’s *Establishment* as defined by DotMusic; (2) the matching *Nexus* between the “music” Community and the “music” string (or top-level domain); and (3) that DotMusic possesses documented *Support* from organizations representing a majority of the global Music Community addressed and defined.

Please see my credentials attached hereto that identify my level of expertise and specialized knowledge with respect to the music community’s organization and delineation.

SUMMARY

DotMusic has established the following:

- 1) Its Community definition recognizes the cohesive, symbiotic and overlapping nature of the global Music Community. The definition includes those associated with commercial and non-commercial creation, performance, marketing and distribution of music;
- 2) “Music Community” members have the requisite awareness and recognition of the interdependency, overlapping and cohesive nature of each “organized community of similar nature that relates to music.” These organized and aligned communities are closely united and make “music” as we know it today. It is this self-awareness and interdependence that gives the “Music Community” its strength. With exponential growth of the Internet, mobile and the Domain Name System (DNS), the “Music Community’s” use and reliance on the Internet to create, market and disseminate music-related content, products, services and activities will continue to grow;
- 3) The “Music Community” functions in a regulated sector with global copyright protections – it is clear that the “community,” as defined, implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate a globally-recognized set of standards for

¹ <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1392>

the protection of the “Music Community” member rights with relation to their copyrighted music works around the world;

4) The “Music” Community -- as defined by DotMusic -- has at least one entity mainly dedicated to the community supporting DotMusic’s application. Such documented *Support* includes several “international federation of national communities of a similar nature,” music coalitions and others that are strongly associated with “music,” which represent a majority of the Community with considerable millions of members worldwide.²

5) The *Nexus* of the “music” Community matches the “music” applied-for string because it represents the entire global Music Community – a community that pre-existed 2007 with a size in the considerable millions of constituents. The “Music Community” definition -- which incorporates the strict fundamental attributes of a closely united Community definition that is “organized” and “delineated” -- ensures that all of its constituent members have a requisite awareness of the community as defined, including both commercial and non-commercial stakeholders, to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination.

6) DotMusic has received support from the largest coalition of Music Community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support³ from institutions/organizations representing a majority of the Community as defined and recognized in the DotMusic application.

There is substantive evidence that DotMusic fulfills the *Nexus, Community Establishment and Support* criteria for the “Music” string. The inclusion and representation of every music constituent type is paramount to the articulated purpose of the string. DotMusic and its application’s global Music Community supporters substantiate that every type of music constituent contributes to the function and operation of the music sector within a regulated framework. The symbiotic nature of the Community as defined and structured means that “Music” would not function as it does today without the participation of all music constituent types that interconnect to match the “music” string with the “music” Community definition.

² <http://music.us/supporters>

³ <http://music.us/supporters>

ASSESSMENT OF COMMUNITY DEFINITION, ESTABLISHMENT AND NEXUS

A) *Music Community Definition, Establishment & Community Endorsement*⁴

DotMusic’s definition of the “Music Community” as a “strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music” (See Application, 20a) is factually accurate and representative of the “Music Community.” Community characteristics include:

i) An Organized, Cohesive, Interdependent Logically-Allied Community:

The “Music Community” definition covers the regulated, interdependent and cohesive nature of the music sector that exists today. “Music Community” members have the requisite awareness and recognition of the interdependent, overlapping and cohesive nature of each “organized community of similar nature that relates to music” that comprises the “Music Community.” Without such cohesiveness and interdependency, the defined “Music” Community matching the applied-for string (“Music”) would not be able to function in its regulated sector, a “Music” regulated sector that was publicly recognized by both ICANN and the Government Advisory Committee.⁵

As a result, the Music Community as defined is “closely united” (As per the definition of “cohesion” according to Merriam-Webster dictionary⁶) or “united or form a whole” (As per the definition of the word “cohesion” according to Oxford Dictionaries⁷).

The “Music Community” as defined (a “strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music”) establishes that:

- (1) There is an awareness and recognition among its members;
- (2) The organized and delineated logical alliance of communities exists; and
- (3) The Community is “closely united” and “interdependent” (i.e. Each “organized community of similar nature that relates to music” which is part of the “logical alliance of communities that relate to music” is not mutually exclusive).

In short, the applied-for string (“Music”) matches the name of the “Music” Community as defined by DotMusic’s application. DotMusic’s “Music Community” definition accurately represents the common definition of the “Music Community,” which is confirmed by Wikipedia.

⁴ See <http://music.us/establishment>

⁵ <https://www.icann.org/en/system/files/bm/briefing-materials-2-05feb14-en.pdf>, Pg.3

⁶ <http://www.merriam-webster.com/dictionary/cohesion>

⁷ http://www.oxforddictionaries.com/us/definition/american_english/cohesion

According to Wikipedia:⁸

Music community is defined as a logical alliance of interdependent communities that are related to music, which include commercial participants...and non-commercial participants...and consists of an “ensemble of practices and institutions that make possible and regulate the production, distribution and consumption of music”...UNESCO identifies the music community as a “community of identity” implying common identifiable characteristics and cohesive attributes such as sharing a music culture, norms and subscribing to common ideals related to music...The music community is not defined as much by demographic indicators such as race, gender, and income level, as it is by common values, cohesive norms and interconnected structures to build a community identity. It refers to music-related individuals and organisations in a shared environment with shared understandings and practices, modes of production and distribution. The shared organisation of collective musical activities, identity and community value is created as result of infrastructure and a shared set of common values...Many studies outline the historical, cultural, and spatial significance of the music community, including how its identity is formed through musical practices. The music community shares a cohesive and interconnected structure of artistic expression, with diverse subcultures and socio-economic interactions...subscribing to common ideals. Under such structured context music consumption becomes possible regardless whether the transaction is commercial and non-commercial.⁹

ii) *An Aware, Pre-Existing and Recognized Community of Considerable Millions Worldwide:*

DotMusic’s definition of the Community covers all Community members associated with the string, each with a requisite awareness of the Community that can be validated through their natural association with a particular music-related community that they clearly identify with. According to DotMusic, all Music Community members must identify their music-related community in order to demonstrate their requisite awareness of the defined Community as part of the .MUSIC registration and validation process.

⁸ Wikipedia is ranked 6th among the ten most popular websites (Alexa, Retrieved March 23, 2015 from <http://www.alexacom/siteinfo/wikipedia.org>) and constitutes the Internet's largest, most frequently updated and popular general reference work (See OECD, OECD Internet Economy Outlook 2012, OECD Publishing, http://www.oecd-ilibrary.org/science-and-technology/oecd-internet-economy-outlook-2012_9789264086463-en, Pg.172) that compares favorably to the accuracy of other encyclopedias (such as the Britannica) according to a 2012 study conducted in partnership with Oxford University (See <http://blog.wikimedia.org/2012/08/02/seven-years-after-nature-pilot-study-compares-wikipedia-favorably-to-other-encyclopedias-in-three-languages>).

⁹ Music Community. In *Wikipedia*. Retrieved July 6, 2015, from https://en.wikipedia.org/wiki/Music_community

According to DotMusic, the Music Community’s geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents (Application Answer to Question 20a).

According to DotMusic, “registrants will be verified using Community-organized, unified “criteria taken from holistic perspective with due regard of Community particularities” that “invoke a formal membership (Application Answer to Question 20a).” The defined Community represents all music-related entities with a clear and straightforward membership with the Community involved in the legal production, performance, promotion, and distribution of music worldwide. According to DotMusic, the Music Community members must have an active, non-tangential relationship with the applied-for string “music” and also have the requisite awareness of the music-related community that they are a part of by specifically identifying it as part of the registration and validation process (i.e. upon successful registration and validation, each community member will be given a unique community identification number that will automatically associate them with their identified community and the “music” string).

DotMusic’s Community definition matches the applied-for string because it allows both commercial and non-commercial stakeholders to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination/exclusion. Given the regulated sector of the community, it is clear that the “Music Community” as defined implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate cohesive and globally-recognized set of standards for the protection of the music community members’ rights with relation to their copyrighted music works around the world.¹⁰

The Berne Convention for the Protection of Literary and Artistic Works¹¹ provides that each of the 168 contracting parties¹² (representing an overwhelming majority of the world’s population) provides automatic protection for music works first published in other countries of the Berne union and for unpublished music works whose authors are citizens of or resident in such other countries.¹³ This means that if a Music Community member’s copyright rights are violated in any other signatory country’s jurisdiction, then the music community member will have the music copyright rights given by that country. Music Community members are clearly aware of the collective Community’s rights, which could not be made possible without these cohesive and globally-recognized set of standards. If such standards were not coherent or enforced then music would not be able to exist in its current form and the industry component of the Music Community sector would not exist. As such, the Community’s *Establishment* and definition is “cohesive” and hence cannot be construed since the Community is a logical alliance of music

¹⁰ http://www.rightsdirect.com/content/rd/en/toolbar/copyright_education/International_Copyright_Basics.html

¹¹ http://www.wipo.int/treaties/en/text.jsp?file_id=283698

¹² http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=15

¹³ <http://www.britannica.com/EBchecked/topic/62482/Berne-Convention>

communities that establish a clearly delineated and organized Community structure that is “closely united” and functions as a “whole”

Further evidence to substantiate the cohesive, symbiotic and overlapping nature of the Community, includes other globally-recognized standards and classification systems, which identify who the individual songwriters, publishers and rights holders are and which songs they are associated with so that Community members are appropriately compensated, regardless of whether the constituent is a commercial, non-commercial or amateur entity. The “music” string is commonly used in classification systems such as ISMN,¹⁴ ISRC,¹⁵ ISWC,¹⁶ ISNI.¹⁷ (Application Answer to Question 20a). For example, if a music entity would like to distribute their music, either commercially or for free, then an ISRC can be assigned to globally identify any specific music work. An ISRC, which facilitates efficient music discovery and community member payment, is constructed from 12 characters representing country, registrant, year of registration and designation (i.e. the serial number assigned by the registrant). With respect to domains, an equivalent system that relates to identifying a specific domain’s registrant and other relevant information pertaining to the domain is WHOIS. Domain registrants are required by ICANN “to provide accurate WHOIS contact data” or else their domain “registration may be suspended or even cancelled”.¹⁸

Without such Music Community “cohesion” and standardized systems functioning in its regulated sector, the Music Community would not be able to create, market and distribute their music. By the same token, fans would not be able to identify the music they are listening to with a specific music artist, regardless of whether the listening activity or behavior is commercial or non-commercial in nature. The socio-economic structure that characterizes “music” as commonly-known today would be non-existent without these organized and delineated elements that commonly define the Community.

¹⁴ The International Standard Music Number (ISMN) is a unique number for the identification of all notated music publications from all over the world. The ISMN is an ISO certified global standard number (ISO 10957:2009). See <http://www.ismn-international.org/whatis.html> and

http://www.iso.org/iso/home/store/catalogue_ics/catalogue_detail_ics.htm?csnumber=43173

¹⁵ The ISRC (International Standard Recording Code) is the international identification system for sound recordings and music video recordings. The ISRC is an ISO certified global standard number (ISO 3901:2001) and is managed by the IFPI. See <http://isrc.ifpi.org>, <https://www.usisrc.org/about/index.html> and http://www.iso.org/iso/catalogue_detail?csnumber=23401

¹⁶ The ISWC (International Standard Musical Work Code) is a unique, permanent and internationally recognized reference number for the identification of musical works. The ISWC has been approved by ISO (International Organization for Standardisation) as a global standard (ISO 15707:2001) and is managed by CISAC. See <http://www.iswc.org/en/faq.html> and http://www.iso.org/iso/catalogue_detail?csnumber=28780

¹⁷ The International Standard Name Identifier (ISNI) is the ISO certified global standard number (ISO 27729) for identifying the millions of contributors to creative works and those active in their distribution. ISNI holds public records of over 8 million identities and 490,000 organizations. See <http://www.isni.org/> and http://www.iso.org/iso/catalogue_detail?csnumber=44292

¹⁸ <https://whois.icann.org/en/about-whois> and <https://www.icann.org/resources/pages/faqs-f0-2012-02-25-en>

iii) *International Federations and Organizations mainly Dedicated to the Community:*

According to ICANN's Applicant Guidebook ("AGB")¹⁹: *"With respect to "Delineation" and "Extension," it should be noted that a community can consist of...a logical alliance of communities (for example, an international federation of national communities of a similar nature... viable as such, provided the requisite awareness and recognition of the community is at hand among the members." (AGB, 4-12). The community as defined in the DotMusic application has at least one entity mainly²⁰ dedicated to the community which has supported DotMusic, which include several "international federation of national communities of a similar nature" relating to music, music coalitions and other relevant and non-negligible music organizations.*

One of these entities include the only international federation of national communities relating to government culture agencies and arts councils, which has an integral association with music globally: the International Federation of Arts Councils and Culture Agencies (IFACCA).

IFACCA is the only international federation that represents government culture agencies and arts councils globally. These national communities are governmental institutions that play a pivotal role with respect to music.²¹ IFACCA's members cover the majority of music entities globally, regardless of whether they are commercial, non-commercial or amateurs. Government ministry of culture and council agencies related to music cover a majority of the overall community with respect to headcount and geographic reach. The "Size" covered reaches over a hundred million music entities i.e. "considerable size with millions of constituents" per Application Answer to Question 20a.

The string "music" falls under the jurisdiction of each country's Ministry of Culture governmental agency or arts/music council (emphasis added). The degree of power and

¹⁹ <https://newgtlds.icann.org/en/applicants/agb/guidebook-full-11jan12-en.pdf>

²⁰ Per the Oxford and Merriam Webster dictionaries, the word "mainly" is defined as "*more than anything else*" (See <http://www.oxforddictionaries.com/definition/english/mainly> and <http://www.merriam-webster.com/dictionary/mainly> respectively). According to DotMusic, the string .MUSIC relates to the Community "by representing all constituents involved in music creation, production and distribution" (Application Answer to Question 20d). Supporting organizations related to that string that are "mainly" dedicated to the Community and its activities, include the International Federation of Arts Councils and Culture Agencies (IFACCA) representing government culture ministries and arts councils, the International Federation of Musicians (FIM) representing musicians globally, the International Federation of Phonographic Industry (IFPI) representing the recording industry worldwide, the International Confederation of Music Publishers (ICPM) representing the voice of global music publishing, the International Association of Music Information Centres (IAMIC), the American Association of Independent Music (A2IM), whose associate members represent a majority of music consumed, the Independent Music Worldwide Independent Network (WIN) representing independent music worldwide, the International Society for Music Education (ISME) the premiere international organization representing music education, and many others (See support at <http://music.us/supporters> and <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/downloadattachment/142588?t:ac=1392>).

²¹ http://www.ifacca.org/membership/current_members/

influence of government ministry of culture and council agencies with respect to music surpasses any organization type since these agencies (i) provide the majority of funding for music-related activities; (ii) regulate copyright law; and (iii) encompass all the music entities that fall under their country, regardless whether these entities are commercial, non-commercial or amateurs. IFACCA is globally recognized by its strategic partners, such as UNESCO, a United Nations agency representing 195 member states and the European Commission.²² The UNESCO strategic partnership²³ is relevant, especially since UNESCO founded the International Music Council (the “IMC”) in 1949, which represents over 200 million music constituents from over 150 countries and over 1000 organizations globally.²⁴

Government activities in the clearly delineated and organized “Music Community” include setting statutory royalty rates. For example, in the United States, mechanical royalties are based on a "statutory rate" set by the U.S. Congress. This rate is increased to follow changes in the economy, usually based on the Consumer Price Index. Currently, the mechanical statutory rate is \$0.091 for songs five minutes or less in length or \$.0175 per minute for songs that are over five minutes long.²⁵

Ministries of culture and arts councils (that comprise IFACCA’s membership) support musicians, musical performances, independent music artists, non-commercial musical expression and education in their respective countries. The 165 ministries of culture, arts councils and affiliates that comprise IFACCA’s membership support the “performing arts” and music specifically. Without the financial and logistical support of arts councils and the ministries of culture, the music community would be adversely affected, and in some countries, may not exist in any appreciable manner. For example, the Ministry of Culture 2011 budget for the small country state of Cyprus for culture funding was €34,876,522 with critical support of music activities.²⁶ Other small government Ministries of Culture, such as Albania,²⁷ or government Ministries of Culture and Arts Councils from countries with larger populations, such as India,²⁸ all provide critical support and substantial advocacy for music. Other examples include government institutions collaborating and advocating music through their funded country-based pavilion initiatives at Midem, the world’s largest music conference.²⁹

²² http://www.ifacca.org/strategic_partners/

²³ http://www.ifacca.org/strategic_partners/

²⁴ <http://www.imc-cim.org/about-imc-separator/who-we-are.html>

²⁵ U.S Copyright Office, <http://www.copyright.gov/carp/m200a.html>

²⁶ 2011 Annual Report for Cyprus Ministry of Culture, Section 1.2 “Music”

(http://www.moec.gov.cy/en/annual_reports/annual_report_2011_en.pdf). Activities include Music Performances in Cyprus (1.2.1) and Abroad (1.2.2), Subsidization of Paphos Aphrodite Festival (1.2.3), Music Publications (1.2.4), Subsidization and Purchases of Digital Records (1.2.5), Promotion for Cypriot musical creativity abroad (1.2.6), Cyprus Symphony Orchestra Foundation (1.2.7), Music Information Centre (1.2.8), Developing Music Education (1.2.9), Organising of the 1st Musicological Symposium (1.2.10) and Musical Festivities for the European Volunteerism Year (1.2.11)

²⁷ http://www.culturalpolicies.net/down/albania_012011.pdf

²⁸ 2010-11 Annual Report from India Ministry of Culture, [http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011\(Eng\).pdf](http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011(Eng).pdf)

²⁹ <http://my.midem.com/en/contact-us/pavilion-representatives/>

Government ministries and arts councils provide critical support for the Music Community, including commercial music organizations. By way of example, government ministries' and arts councils' substantial connection to and support of "music" is noted in the reports of funding and support for music. Some examples to showcase the degree of power of the IFACCA's membership towards the string and global and national music are music investment and music funding (Annual reports by governments and councils):

- New Zealand Ministry of Culture has funded significant music projects. Some include the REAL New Zealand Music Tour (\$415,000), the New Zealand String Quartet (\$150,000) and New Zealand Music Commission: (\$1,378,000).³⁰
- The Australian Government/Council For The Arts invested \$51.2 million for the nation's orchestras; \$21.6 million for opera; \$10.8 million for other music artists and organizations; \$13.1 million for multi-platform artists and organizations; and \$4 million in miscellaneous funding, including sector building and audience development initiatives and programs.³¹
- Canada Council for the Arts is Canada's national, arts funding agency investing \$28 million in its Canada Council Musical Instrument Bank (Page 16) and \$28,156,000 in Music Arts Programs (Page 66).³² The Government of Canada also renewed its annual investment of \$27.6 million over five years in the Canada Music Fund.³³
- The United Kingdom Department for Culture and Education (DfE) will fund music education at significant levels: £77 million, £65 million and £60 million will be available in the three years from April 2012.³⁴
- The United States National Endowment of the Arts has awarded more than \$4 billion to support the arts since its inception³⁵ and has a strong focus on music as outlined in its Strategic Plan³⁶ with Congress requested to provide \$154,465,000 for fiscal year 2014.³⁷
- The National Arts Council of South Africa invested 2,536,131 ZAR in Music and 9,995,000 ZAR in Orchestras and has focused strongly on the "Strengthening of live indigenous music and advocating the revival of the live music circuit in South Africa"³⁸

³⁰ 2011 Annual Report from New Zealand Ministry of Culture:

[http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20\(D-0448383\).PDF](http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20(D-0448383).PDF)

³¹ 2011 Annual Report for the Australia Council for the Arts,

http://www.australiacouncil.gov.au/data/assets/pdf_file/0016/142351/Australia-Council-Annual-Report-201112.pdf, Page 28

³² 2011 Annual Report for Canada Council for the Arts, [http://www.canadacouncil.ca/NR/rdoonlyres/6F7549BB-F4E5-4B8B-95F4-](http://www.canadacouncil.ca/NR/rdoonlyres/6F7549BB-F4E5-4B8B-95F4-1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf)

[1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf](http://www.pch.gc.ca/eng/1294862453819/1294862453821)

³³ <http://www.pch.gc.ca/eng/1294862453819/1294862453821>

³⁴ Department for Culture, The Importance of Music, A National Plan for Music Education,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/180973/DFE-00086-2011.pdf, Page 4, 2011

³⁵ 2011 Annual report for the National Endowment of the Arts, <http://www.nea.gov/about/11Annual/2011-NEA-Annual-Report.pdf>, Page 2

³⁶ NEA Strategic Plan 2012-2016, www.arts.gov/about/Budget/NEAStrategicPlan2012-2016.pdf

³⁷ http://www.ifacca.org/national_agency_news/2013/04/10/us-president-requests-154465000-neh-2014/

³⁸ 2010-2011 Annual Report for the National Arts Council South Africa, National Arts Council South Africa, <http://www.nac.org.za/media/publications/AR%2010-11%20NAC.PDF/download>, Page 11. Also Mmino, the South African – Norwegian Education Music Programme, solely funds music projects funding a total of 294 projects. Thirteen projects were allocated funding for a total of R1,680,600 of which R1,381,000 went towards music educational and R299,600 to exchange projects (Page 10)

- The Singapore Arts Council will fund \$10.2 million in the arts under its 2013 Grants Framework, including the Ding Yi Music Company and Siong Leng Musical Association.³⁹
- In 2011, the support for artistic activities by the Arts Council of Finland was €32.4 million of which €4,921,850 was awarded to music.⁴⁰

Each of IFACCA’s members has a clear association with, and mandate to support the music arts in their countries. In most countries, their ministry of culture/arts council is the largest funder and marketing supporter of the music arts.

Another clear example of an “entity *mainly* dedicated to the community” with members that cover hundreds of millions of music constituents with formal boundaries is A2IM, the American Association of Independent Music. A2IM has two types of members: U.S independent Label members and Associate members. A2IM membership for Labels and Associates is invoked formally through an application and if accepted would require annual membership dues.⁴¹

The reach of A2IM Associate⁴² membership covers hundreds of millions of entities (i.e. the reach of A2IM’s total membership “geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents – See Application Answer to Question 20a).

Organized and strictly delineated communities related to music that are A2IM members include:

- **Apple iTunes**⁴³ – iTunes accounts for 63% of global digital music market⁴⁴ - a majority – with a registered community of 800 million registered members⁴⁵ available in 119 countries who abide to strict terms of service and boundaries⁴⁶ and have downloaded over 25 billion songs⁴⁷ from iTunes’ catalog of over 43 million songs⁴⁸ covering a global music community, regardless of genre or whether the community entities are amateur, professional, commercial or non-commercial. To add music to iTunes, all music artists must have a formal membership with iTunes via an Apple ID registration, which includes a current credit card on file.⁴⁹

³⁹ Singapore Arts Council, <http://www.nac.gov.sg/media-centre/news-releases/news-detail?id=c2db15e2-c319-40ec-939c-d58735d0a91c>

⁴⁰ <http://www.taiteenkeskustoimikunta.fi/documents/10162/31704/TY+tilastotiedote+1+12+.pdf>, Page 1 and Page

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⁴¹ <http://a2im.org/about-joining/>

⁴² <http://a2im.org/groups/tag/associate+members/>

⁴³ <http://a2im.org/groups/itunes>

⁴⁴ <http://appleinsider.com/articles/13/04/16/apples-itunes-rules-digital-music-market-with-63-share>

⁴⁵ <http://www.npr.org/blogs/therecord/2015/01/06/375173595/with-downloads-in-decline-can-itunes-adapt>

⁴⁶ <http://www.apple.com/legal/internet-services/itunes/ww/index.html>

⁴⁷ <http://www.apple.com/pr/library/2013/02/06iTunes-Store-Sets-New-Record-with-25-Billion-Songs-Sold.html>

⁴⁸ <https://www.apple.com/itunes/features/>

⁴⁹ <https://www.apple.com/itunes/working-itunes/sell-content/music-faq.html>

- **Pandora**⁵⁰ – Pandora is the world’s largest streaming music radio with a community of over 250 million registered members.⁵¹
- **Spotify**⁵² – Spotify is the world’s largest music streaming community with over 50 million active registered members in 58 countries and over 30 million songs. The music community uploads 20,000 songs every day.⁵³
- **Vevo**⁵⁴ – Vevo is the world’s leading all-premium music video community and platform with over 8 billion monthly views globally.⁵⁵
- **Youtube**⁵⁶ – Youtube is the world’s largest music video streaming community with millions of music creators -- amateur, professional, commercial or non-commercial -- and over 1 billion registered members covering all regions globally. 6 billion hours of video is watched every month on Youtube,⁵⁷ of which 38.4% is music-related.⁵⁸
- **Reverbnation**⁵⁹ – Reverbnation⁶⁰ is one of the world’s largest music community and a leading music distributor with over 3.87 million musicians, venues labels and industry professionals covering every country globally. The Reverbnation community grows by over 50,000 artists, bands, labels and industry professionals monthly.
- **BMG**⁶¹ – BMG is focused on the management of music publishing and recording rights. BMG has an international presence and represents over 2.5 million music rights globally.⁶²

A2IM also includes members that are associated with global government agencies which exclusively represent substantial music economies and music members, such as France (BureauExport⁶³), China (China Audio Video Association⁶⁴) and Germany (Initiative Musik).⁶⁵ A2IM also has Affiliate⁶⁶ associations within the global music community. These include Affiliates such as MusicFirst,⁶⁷ the Copyright Alliance,⁶⁸ the Worldwide Independent Network (WIN)⁶⁹ and Merlin.⁷⁰

⁵⁰ <http://a2im.org/groups/pandora>

⁵¹ <http://www.cnet.com/news/like-a-rolling-milestone-pandora-hits-250m-registered-users/> and <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MTkxNTM1fENoaWxkSUQ9LTF8VHlwZT0z&t=1>, Pg.9

⁵² <http://a2im.org/groups/spotify>

⁵³ <https://press.spotify.com/us/information/>

⁵⁴ <http://a2im.org/groups/vevo/>

⁵⁵ <http://www.vevo.com/c/EN/US/about>

⁵⁶ <http://a2im.org/groups/youtube/>

⁵⁷ <https://www.youtube.com/yt/press/statistics.html>

⁵⁸ http://www.researchandmarkets.com/reports/2092499/internet_video_2011_2014_view_share_site_and

⁵⁹ <http://a2im.org/groups/reverb-nation/>

⁶⁰ <http://www.reverbnation.com/about>

⁶¹ <http://a2im.org/groups/bmg-rights/>

⁶² <http://www.bmg.com/category/about-us/history/>

⁶³ <http://a2im.org/groups/french-music-export-office>

⁶⁴ <http://a2im.org/groups/china-audio-video-association-cava>

⁶⁵ <http://a2im.org/groups/initiative-musik-gmbh>

⁶⁶ <http://a2im.org/groups/tag/associate+members/>

⁶⁷ <http://musicfirstcoalition.org/coalition>, The musicFIRST Coalition, with founding members A2IM, RIAA, and Recording Academy represents musicians, artists, managers, music businesses, and performance right advocates.

⁶⁸ <http://www.copyrightalliance.org/members>

⁶⁹ <http://www.winformusic.org>

A2IM also represents a recognized Music Coalition representing the interests of the Global Independent Music Community.⁷¹ The A2IM Coalition includes Merlin, a global rights agency for the independent label sector, representing over 20,000 labels from 39 countries, Worldwide Independent Network (representing label creators in over 20 countries), Association of Independent Music (representing largest and most respected labels in the world), and IMPALA (Independent Music Companies Association on behalf of over 4,000 independent music companies and national associations across Europe, representing 99% of music actors in Europe which are micro, small and medium sized enterprises).

Cumulatively, A2IM's Label and Associate Membership, A2IM's Affiliates and the A2IM's Global Independent Music Community Coalition, covers a majority of the global music community. Its cumulative membership is in the hundreds of millions of entities with formal boundaries belonging to strictly organized and delineated communities related to music as per the Community Definition and Size (See Application answer to Question 20a).

The IFPI is another entity *mainly* dedicated to the Community. The IFPI is the only organization that represents the interests of the recording industry worldwide. It is the "voice of the recording industry worldwide"⁷² whose members⁷³ – major and independent companies -- represent a majority of all commercial music consumed globally. For example, the RIAA, an IFPI national group member,⁷⁴ represents "approximately 85% of all legitimate recorded music produced and sold in the United States,"⁷⁵ the world's largest music market with 30% global market share.⁷⁶ Formed in 1933, the IFPI's mission was to "represent the interests of the recording industry worldwide in all fora."

Another global Music Community Coalition led by the RIAA "on behalf of over 15 national and international trade associations" also expressed its support for .MUSIC to be under a "community" application model, including encouraging statements in support of DotMusic's policies that stated that the coalition "was encouraged to see" that DotMusic "included several measures to deter and address copyright infringement within that TLD." The "coalition members represent the people that write, sing, record, manufacture, distribute and/or license over 80% of the world's music"⁷⁷ – a majority of global music.⁷⁸

⁷⁰ <http://www.merlinnetwork.org>

⁷¹ <https://www.icann.org/en/system/files/correspondence/bengloff-to-chehade-et-al-20aug14-en.pdf> and <https://www.icann.org/en/system/files/correspondence/bengloff-to-crocker-et-al-07mar15-en.pdf>

⁷² <http://www.ifpi.org/about.php>

⁷³ <http://www.ifpi.org/our-members.php>

⁷⁴ <http://www.ifpi.org/national-groups.php>

⁷⁵ <http://www.riaa.com/faq.php>

⁷⁶ <http://www.statista.com/topics/1639/music/>

⁷⁷ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.1

⁷⁸ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.3, Appendix A

Another letter⁷⁹ sent to ICANN (on April 14th, 2015) by Danielle Aguirre from the NMPA and on behalf of a music publisher and songwriter community coalition representing a majority of the global music publishing community, also expressed “support [for] the .MUSIC community applications because respecting and protecting music rights serves the global music community and the public interest.”

Collectively, the DotMusic application received support from the largest coalition of music community member organizations ever assembled to support a cause representing over 95% of music consumed globally.⁸⁰ Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support⁸¹ from institutions/organizations representing a majority of the Community addressed. Music -- as commonly-known by the general public and experienced today -- would not be possible without these supporting, non-negligible and relevant organizations that have endorsed DotMusic.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Community Establishment* and *Community Endorsement* from the majority of the global Music Community as defined.

B) Nexus⁸²

According to the Applicant Guidebook (“AGB”), to receive the maximum score for Nexus, the applied-for string -- “music” -- must match the name of the community or be a well-known short-form or abbreviation of the community name.

The *Nexus* of the “Music Community” entirely matches the applied-for “music” string because it represents the entire global Music Community as commonly-known and perceived by the general public. This definition allows for all constituents with a requisite awareness of the Community defined to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination. The definition of the Community requires that members have an active, non-tangential relationship with the applied-for string and the requisite awareness of the music community they identify with as part of the registration process. It is clear that the general public will directly associate and equate the string with the Community as defined by DotMusic. There is no possibility of overreaching beyond the definition or allowing unrelated non-music

⁷⁹ <https://www.icann.org/en/system/files/correspondence/aguirre-to-icann-board-ciu-14apr15-en.pdf>

⁸⁰ See <http://music.us/supporters>, <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/downloadattachment/142588?t:ac=1392>, Bloomberg BNA at http://music.us/RIAA_Backs_DotMusic.pdf Pg.1, and <http://diffuser.fm/will-dot-music-domains-make-the-internet-better/>

⁸¹ <http://music.us/supporters>

⁸² See <http://music.us/nexus>

entities to be included as part of the Community. Community members may register a .MUSIC by either:

- 1) Identifying that they belong to a Music Community Member Organization (“MCMO”); or
- 2) Identifying the community they belong to, which is consistent with the definition of the Community: “the strictly delineated and organized logical alliance of communities of similar nature related to music.”

All Community members are aware of and recognize their inclusion in the defined Community by identifying which clearly defined community they belong to and have an active participation in. The *nexus* of the applied-for string ensures inclusion of the entire global community that the string represents while excluding unrelated-entities not associated with the string. This way there is a clear match and alignment between the “music” sting and the Community defined.

While the exact size of the global Music Community as defined is unknown (there is no empirical evidence providing an exact, finite number because amateur entities are also included in the Community’s definition), it is in the considerable millions as explicitly stated in the DotMusic Application. DotMusic’s definition of the Community and mutually-inclusive Registration Policies ensure that eligible members are only music-related and associated with the string. This is because the string identifies all constituents involved in music. Music-only participation optimizes the relevancy of .MUSIC domains to the string and entirely matches the *nexus* between the string and Community defined. According to DotMusic, the Community *definition, eligibility* criteria and *content and use* requirements ensure that peripheral industries and entities not related to music are excluded so that the string and the defined Community matches and aligns in a consistent manner consistent with DotMusic’s community-based purpose i.e. only entities with music-related activities are able to register .MUSIC domains.

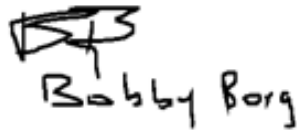
Membership aligns with the *nexus* of the Community and the string, which is explicitly relevant to music. The string as defined in the application demonstrates uniqueness because it has no other significant meaning beyond identifying the community described in the application. According to DotMusic’s application, any tangential or implicit association with the *nexus* of the Community and the string is not regarded as a delineated membership since it would be considered unclear, dispersed or unbound. Such unclear, dispersed or unbound tangential relationships with the defined “music” Community and applied-for “music” string would not constitute a qualifying Community membership and would be ineligible for registration. Every type of music constituent critically contributes to the function and operation of the music sector within a regulated framework⁸³ given the symbiotic overlapping nature of the Community as

⁸³ ICANN has disclosed that the string .MUSIC is a sensitive string operating in a regulated sector. ICANN also accepted Government Advisory Committee (GAC) advice for safeguards to protect the Music Community and the public interest (See <https://icann.org/en/system/files/correspondence/crocker-to-dryden-3-29oct13-en.pdf> Pg.7)

defined and structured. Music would not function as it does today without the participation of all music constituent types which cumulatively match the string with the Community definition.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Nexus*.

Respectfully Submitted,

A handwritten signature in black ink. The signature consists of a stylized monogram 'BB' above the name 'Bobby Borg' written in a cursive, handwritten style.

Signature: Contact Information Redacted, Jul 16 '15 ip: 162.195.62.104

Name: Bobby Borg

Title: Adjunct Professor of Music Business and Marketing, Author, Musician

Organization: Bobby Borg Consulting Group

About Bobby Borg

Bobby Borg is a former Major label, independent, and DIY recording/touring artist with over 25 years experience. A graduate of Berklee College of Music with a BA in Professional Music, and UCLA Extension with a certificate in Marketing Management and Project Management, he serves as a music business educator at Musician's Institute in Hollywood and at the University of Los Angeles in California, and he also arranges educational programs with institutions overseas. As a music business and A&R consultant to managers, labels, and supervisors, Borg is also a prominent guest speaker at music industry events and a regular contributor to international music business publications. He is the author of Billboard Books best-seller [*The Musician's Handbook: A Practical Guide To Understanding The Music Business*](#) and [*Music Marketing For The DIY Musician*](#). Borg was elected Vice President of Special Events For The American Marketing Association in Los Angeles and was awarded the Volunteer of the Year.

Academic

Borg earned a B.A in Professional Music at Berklee College of Music in Boston—special awards and honors include: Outstanding Participation in The Berklee Concert Series. Borg also received a certificate in Instructor Development at UCLA Extension (focusing on curriculum development, leadership, and management), Music Marketing (focusing on research, planning, and strategizing), and Project Management (focusing on schedules, budgets, and quality).

Author

Borg's book [*The Musician's Handbook: A Practical Approach To Understand The Music Business*](#) (Billboard Books) has been used in educational institutions and songwriters' groups globally. He is also the author of [*Music Marketing For The DIY Musician: Creating and Executing A Plan of Attack on a Low Budget*](#). Attorney Peter Peterno (representing Dr. Dre), Don Gorder (Chairman of music business at Berklee College of Music), and Steve Vai (noted guitarist) endorse Borg's works. He is the author of seven other music instructional books including [*Rudimental Combinations*](#).

Educator

Borg is currently an instructor at Musician's Institute and UCLA Extension where he teaches music business classes including: *Intro To Music Publishing, Independent Music Marketing, The Business of Working Musicians, From the Streets To Success, Doing Business as a Band, and Music Business for Degree Students*. He arranges educational opportunities for institutions around the world, such as Russia and Japan, and travels overseas to lecture on the U.S industry. Borg also teaches drum and percussion classes.

Recording Artist

Borg was part of the multi-platinum rock group [Warrant](#) where he helped write and record two albums, *Belly To Belly* and *Warrant Live* (released by CMC/BMG). The band toured extensively throughout the United States, Japan, Canada, and Mexico playing large clubs and amphitheatres—both as a headliner and a supporting act to artists like Alice Cooper and Vince Neil.

Borg was also part of the rock group [Beggars & Thieves](#) where he recorded *Beggars & Thieves* on Atlantic Records. The band was managed by Q-Prime Management (managers of Metallica and Smashing Pumpkins), produced by Steve Thompson and Michael Barbiero, and assisted by Desmond Childs (songwriter for Aerosmith, KISS, and many others).

Borg formed the alternative rock band [Left for Dead](#) where he released *Beatings from Orlando* (licensed by Alfa Music Japan). LFD embraced the independent and DIY work ethic and toured the United States in small vans. Pearl, Rhythm-Tech, Sabian, and other major equipment manufacturers sponsored him, and still do today.

Moderator/Panelist/Key Note Speaker

As a moderator, panelist, and key note speaker, Borg contributes to major industry panels for The California Lawyers For The Arts, SXSW, Taxi Road Rally, Berklee College of Music, and the University of Miami, and he sits beside noted guests like Todd Brabeck (ASCAP), Joe DiMona (BMI), and Dina LaPolt (LaPolt Law). He also speaks to a series of songwriter groups like Songsalive, Songnet, and Just Plain Folks. Borg is noted for his energy, clarity, organization, and real-world experiences.

Journalist

Borg writes for a number of international publications such as Modern Drummer, Music Connection, Berklee Today, Performer, and Singer Magazine. Additionally, he is a contributor to a number of websites including Get Signed.com, Music Dish, and Indie-Music.com.

Consultant

As a music business consultant, Borg meets privately with managers, producers, production companies, independent and DIY artists, songwriters, and anyone else needing advice in business, presentation, and career strategy. Both one-on-one (nation-wide, seasonally) and phone consultations are available.

Bobby Borg's Website: <http://www.bobbyborg.com/about/bio>

Re: Expert Testimony on (i) Community Establishment; (ii) Nexus; and (iii) Support for DotMusic’s Community-Based Application¹ for .MUSIC (Application ID 1-1115-14110)

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

Please accept this letter that indicates that there is substantive and compelling evidence that the DotMusic application convincingly meets the full criteria under Community Priority Evaluation on the following points: (i) the Music Community’s *Establishment* as defined by DotMusic; (ii) the matching *Nexus* between the “music” Community and the “music” string (or top-level domain); and (iii) that DotMusic possesses documented *Support* from organizations representing a majority of the global Music Community addressed and defined.

Please see my credentials attached hereto that identify my level of expertise and specialized knowledge with respect to the music community’s organization and delineation.

SUMMARY

DotMusic has established the following:

- 1) Its Community definition recognizes the cohesive, symbiotic and overlapping nature of the global Music Community. The definition includes those associated with commercial and non-commercial creation, performance, marketing and distribution of music;
- 2) “Music Community” members have the requisite awareness and recognition of the interdependency, overlapping and cohesive nature of each “organized community of similar nature that relates to music.” These organized and aligned communities are closely united and make “music” as we know it today. It is this self-awareness and interdependence that gives the “Music Community” its strength. With exponential growth of the Internet, mobile and the Domain Name System (DNS), the “Music Community’s” use and reliance on the Internet to create, market and disseminate music-related content, products, services and activities will continue to grow;
- 3) The “Music Community” functions in a regulated sector with global copyright protections – it is clear that the “community,” as defined, implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate a globally-recognized set of standards for

¹ <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1392>

the protection of the “Music Community” member rights with relation to their copyrighted music works around the world;

4) The “Music” Community -- as defined by DotMusic -- has at least one entity mainly dedicated to the community supporting DotMusic’s application. Such documented *Support* includes several “international federation of national communities of a similar nature,” music coalitions and others that are strongly associated with “music,” which represent a majority of the Community with considerable millions of members worldwide.²

5) The *Nexus* of the “music” Community matches the “music” applied-for string because it represents the entire global Music Community – a community that pre-existed 2007 with a size in the considerable millions of constituents. The “Music Community” definition -- which incorporates the strict fundamental attributes of a closely united Community definition that is “organized” and “delineated” -- ensures that all of its constituent members have a requisite awareness of the community as defined, including both commercial and non-commercial stakeholders, to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination.

6) DotMusic has received support from the largest coalition of Music Community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support³ from institutions/organizations representing a majority of the Community as defined and recognized in the DotMusic application.

There is substantive evidence that DotMusic fulfills the *Nexus, Community Establishment and Support* criteria for the “Music” string. The inclusion and representation of every music constituent type is paramount to the articulated purpose of the string. DotMusic and its application’s global Music Community supporters substantiate that every type of music constituent contributes to the function and operation of the music sector within a regulated framework. The symbiotic nature of the Community as defined and structured means that “Music” would not function as it does today without the participation of all music constituent types that interconnect to match the “music” string with the “music” Community definition.

² <http://music.us/supporters>

³ <http://music.us/supporters>

ASSESSMENT OF COMMUNITY DEFINITION, ESTABLISHMENT AND NEXUS

A) *Music Community Definition, Establishment & Community Endorsement*⁴

DotMusic's definition of the "Music Community" as a "strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music" (See Application Answer to Question 20a) is factually accurate and representative of the "Music Community." Community characteristics include:

i) An Organized, Cohesive, Interdependent Logically-Allied Community:

The "Music Community" definition covers the regulated, interdependent and cohesive nature of the music sector that exists today. "Music Community" members have the requisite awareness and recognition of the interdependent, overlapping and cohesive nature of each "organized community of similar nature that relates to music" that comprises the "Music Community." Without such cohesiveness and interdependency, the defined "Music" Community matching the applied-for string ("Music") would not be able to function in its regulated sector. "Music" is a regulated sector comprised of a logical alliance of interdependent communities relating to music with organized practices and institutions that enable and regulate the production, distribution and consumption of music that was publicly recognized by both ICANN and the Government Advisory Committee⁵

As a result, the Music Community as defined is "closely united" (As per the definition of "cohesion" according to Merriam-Webster dictionary⁶) or "united or form a whole" (As per the definition of the word "cohesion" according to Oxford Dictionaries⁷).

DotMusic's application follows unified principles that the entire Community subscribes to, such as: creating a trusted identifier and safe haven for music consumption, protecting musicians' rights and intellectual property, fighting copyright infringement/piracy, supporting fair compensation and music education, and following a multi-stakeholder approach of representation of all types of global music constituents without discrimination (See Application Answers to 18).

The "Music Community" as defined (a "strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music") establishes that:

- (1) There is an awareness and recognition among its members;

⁴ See <http://music.us/establishment>

⁵ <https://www.icann.org/en/system/files/bm/briefing-materials-2-05feb14-en.pdf>, Pg.3

⁶ <http://www.merriam-webster.com/dictionary/cohesion>

⁷ http://www.oxforddictionaries.com/us/definition/american_english/cohesion

- (2) The organized and delineated logical alliance of communities exists; and
- (3) The Community is “closely united” and “interdependent” (i.e. Each “organized community of similar nature that relates to music” which is part of the “logical alliance of communities that relate to music” is not mutually exclusive).

In short, the applied-for string (“Music”) matches the name of the “Music” Community as defined by DotMusic’s application. DotMusic’s “Music Community” definition accurately represents the common definition of the “Music Community,” which is confirmed by Wikipedia.

According to Wikipedia:⁸

Music community is defined as a logical alliance of interdependent communities that are related to music, which include commercial participants...and non-commercial participants...and consists of an “ensemble of practices and institutions that make possible and regulate the production, distribution and consumption of music”...UNESCO identifies the music community as a “community of identity” implying common identifiable characteristics and cohesive attributes such as sharing a music culture, norms and subscribing to common ideals related to music...The music community is not defined as much by demographic indicators such as race, gender, and income level, as it is by common values, cohesive norms and interconnected structures to build a community identity. It refers to music-related individuals and organisations in a shared environment with shared understandings and practices, modes of production and distribution. The shared organisation of collective musical activities, identity and community value is created as result of infrastructure and a shared set of common values...Many studies outline the historical, cultural, and spatial significance of the music community, including how its identity is formed through musical practices. The music community shares a cohesive and interconnected structure of artistic expression, with diverse subcultures and socio-economic interactions...subscribing to common ideals. Under such structured context music consumption becomes possible regardless whether the transaction is commercial and non-commercial.⁹

⁸ Wikipedia is ranked 6th among the ten most popular websites (Alexa, Retrieved March 23, 2015 from <http://www.alexa.com/siteinfo/wikipedia.org>) and constitutes the Internet's largest, most frequently updated and popular general reference work (See OECD, OECD Internet Economy Outlook 2012, OECD Publishing, http://www.oecd-ilibrary.org/science-and-technology/oecd-internet-economy-outlook-2012_9789264086463-en, Pg.172) that compares favorably to the accuracy of other encyclopedias (such as the Britannica) according to a 2012 study conducted in partnership with Oxford University (See <http://blog.wikimedia.org/2012/08/02/seven-years-after-nature-pilot-study-compares-wikipedia-favorably-to-other-encyclopedias-in-three-languages>).

⁹ Music Community. In *Wikipedia*. Retrieved July 6, 2015, from https://en.wikipedia.org/wiki/Music_community

ii) An Aware, Pre-Existing and Recognized Community of Considerable Millions Worldwide:

DotMusic's definition of the Community covers all Community members associated with the string, each with a requisite awareness of the Community that can be validated through their natural association with a particular music-related community that they clearly identify with. According to DotMusic, all Music Community members must identify their music-related community in order to demonstrate their requisite awareness of the defined Community as part of the .MUSIC registration and validation process.

According to DotMusic, the Music Community's geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents (Application Answer to Question 20a).

According to DotMusic, "registrants will be verified using Community-organized, unified "criteria taken from holistic perspective with due regard of Community particularities" that "invoke a formal membership (Application Answer to Question 20a)." The defined Community represents all music-related entities with a clear and straightforward membership with the Community involved in the legal production, performance, promotion, and distribution of music worldwide. According to DotMusic, the Music Community members must have an active, non-tangential relationship with the applied-for string "music" and also have the requisite awareness of the music-related community that they are a part of by specifically identifying it as part of the registration and validation process (i.e. upon successful registration and validation, each community member will be given a unique community identification number that will automatically associate them with their identified community and the "music" string).

DotMusic's Community definition matches the applied-for string because it allows both commercial and non-commercial stakeholders to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination/exclusion. Given the regulated sector of the community, it is clear that the "Music Community" as defined implies "more of cohesion than a mere commonality of interest" with an "awareness and recognition of a community among its members." Several international treaties mandate cohesive and globally-recognized set of standards for the protection of the music community members' rights with relation to their copyrighted music works around the world.¹⁰

The Berne Convention for the Protection of Literary and Artistic Works¹¹ provides that each of the 168 contracting parties¹² (representing an overwhelming majority of the world's population) provides automatic protection for music works first published in other countries of the Berne union and for unpublished music works whose authors are citizens of or resident in such other

¹⁰ http://www.rightsdirect.com/content/rd/en/toolbar/copyright_education/International_Copyright_Basics.html

¹¹ http://www.wipo.int/treaties/en/text.jsp?file_id=283698

¹² http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=15

countries.¹³ This means that if a Music Community member's copyright rights are violated in any other signatory country's jurisdiction, then the music community member will have the music copyright rights given by that country. Music Community members are clearly aware of the collective Community's rights, which could not be made possible without these cohesive and globally-recognized set of standards. If such standards were not coherent or enforced then music would not be able to exist in its current form and the industry component of the Music Community sector would not exist. As such, the Community's *Establishment* and definition is "cohesive" and hence cannot be construed since the Community is a logical alliance of music communities that establish a clearly delineated and organized Community structure that is "closely united" and functions as a "whole"

Further evidence to substantiate the cohesive, symbiotic and overlapping nature of the Community, includes other globally-recognized standards and classification systems, which identify who the individual songwriters, publishers and rights holders are and which songs they are associated with so that Community members are appropriately compensated, regardless of whether the constituent is a commercial, non-commercial or amateur entity. The "music" string is commonly used in classification systems such as ISMN,¹⁴ ISRC,¹⁵ ISWC,¹⁶ ISNI.¹⁷ (Application Answer to Question 20a). For example, if a music entity would like to distribute their music, either commercially or for free, then an ISRC can be assigned to globally identify any specific music work. An ISRC, which facilitates efficient music discovery and community member payment, is constructed from 12 characters representing country, registrant, year of registration and designation (i.e. the serial number assigned by the registrant). With respect to domains, an equivalent system that relates to identifying a specific domain's registrant and other relevant information pertaining to the domain is WHOIS. Domain registrants are required by ICANN "to provide accurate WHOIS contact data" or else their domain "registration may be suspended or even cancelled".¹⁸

¹³ <http://www.britannica.com/EBchecked/topic/62482/Berne-Convention>

¹⁴ The International Standard Music Number (ISMN) is a unique number for the identification of all notated music publications from all over the world. The ISMN is an ISO certified global standard number (ISO 10957:2009). See <http://www.ismn-international.org/whatis.html> and http://www.iso.org/iso/home/store/catalogue_ics/catalogue_detail_ics.htm?csnumber=43173

¹⁵ The ISRC (International Standard Recording Code) is the international identification system for sound recordings and music video recordings. The ISRC is an ISO certified global standard number (ISO 3901:2001) and is managed by the IFPI. See <http://isrc.ifpi.org>, <https://www.usisrc.org/about/index.html> and http://www.iso.org/iso/catalogue_detail?csnumber=23401

¹⁶ The ISWC (International Standard Musical Work Code) is a unique, permanent and internationally recognized reference number for the identification of musical works. The ISWC has been approved by ISO (International Organization for Standardisation) as a global standard (ISO 15707:2001) and is managed by CISAC. See <http://www.iswc.org/en/faq.html> and http://www.iso.org/iso/catalogue_detail?csnumber=28780

¹⁷ The International Standard Name Identifier (ISNI) is the ISO certified global standard number (ISO 27729) for identifying the millions of contributors to creative works and those active in their distribution. ISNI holds public records of over 8 million identities and 490,000 organizations. See <http://www.isni.org/> and http://www.iso.org/iso/catalogue_detail?csnumber=44292

¹⁸ <https://whois.icann.org/en/about-whois> and <https://www.icann.org/resources/pages/faqs-f0-2012-02-25-en>

Without such Music Community “cohesion” and standardized systems functioning in its regulated sector, the Music Community would not be able to create, market and distribute their music. By the same token, fans would not be able to identify the music they are listening to with a specific music artist, regardless of whether the listening activity or behavior is commercial or non-commercial in nature. The socio-economic structure that characterizes “music” as commonly-known today would be non-existent without these organized and delineated elements that commonly define the Community.

iii) *International Federations and Organizations mainly Dedicated to the Community:*

According to ICANN’s Applicant Guidebook (“AGB”)¹⁹: “*With respect to “Delineation” and “Extension,” it should be noted that a community can consist of...a logical alliance of communities (for example, an international federation of national communities of a similar nature... viable as such, provided the requisite awareness and recognition of the community is at hand among the members.*” (AGB, 4-12). The community as defined in the DotMusic application has at least one entity *mainly*²⁰ dedicated to the community which has supported DotMusic, which include several “international federation of national communities of a similar nature” relating to music, music coalitions and other relevant and non-negligible music organizations.

One of these entities include the only international federation of national communities relating to government culture agencies and arts councils, which has an integral association with music globally: the International Federation of Arts Councils and Culture Agencies (IFACCA).

IFACCA is the only international federation that represents government culture agencies and arts councils globally. These national communities are governmental institutions that play a pivotal

¹⁹ <https://newgtlds.icann.org/en/applicants/agb/guidebook-full-11jan12-en.pdf>

²⁰ Per the Oxford and Merriam Webster dictionaries, the word “mainly” is defined as “*more than anything else*” (See <http://www.oxforddictionaries.com/definition/english/mainly> and <http://www.merriam-webster.com/dictionary/mainly> respectively). According to DotMusic, the string .MUSIC relates to the Community “by representing all constituents involved in music creation, production and distribution” (Application Answer to Question 20d). Supporting organizations related to that string that are “mainly” dedicated to the Community and its activities, include the International Federation of Arts Councils and Culture Agencies (IFACCA) representing government culture ministries and arts councils, the International Federation of Musicians (FIM) representing musicians globally, the International Federation of Phonographic Industry (IFPI) representing the recording industry worldwide, the International Confederation of Music Publishers (ICPM) representing the voice of global music publishing, the International Association of Music Information Centres (IAMIC), the American Association of Independent Music (A2IM), whose associate members represent a majority of music consumed, the Independent Music Worldwide Independent Network (WIN) representing independent music worldwide, the International Society for Music Education (ISME) the premiere international organization representing music education, and many others (See support at <http://music.us/supporters> and <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails:downloadattachment/142588?t:ac=1392>).

role with respect to music.²¹ IFACCA's members cover the majority of music entities globally, regardless of whether they are commercial, non-commercial or amateurs. Government ministry of culture and council agencies related to music cover a majority of the overall community with respect to headcount and geographic reach. The "Size" covered reaches over a hundred million music entities i.e. "considerable size with millions of constituents" per Application Answer to Question 20a.

The string "music" falls under the jurisdiction of each country's Ministry of Culture governmental agency or arts/music council (emphasis added). The degree of power and influence of government ministry of culture and council agencies with respect to music surpasses any organization type since these agencies (i) provide the majority of funding for music-related activities; (ii) regulate copyright law; and (iii) encompass all the music entities that fall under their country, regardless whether these entities are commercial, non-commercial or amateurs. IFACCA is globally recognized by its strategic partners, such as UNESCO, a United Nations agency representing 195 member states and the European Commission.²² The UNESCO strategic partnership²³ is relevant, especially since UNESCO founded the International Music Council (the "IMC") in 1949, which represents over 200 million music constituents from over 150 countries and over 1000 organizations globally.²⁴

Government activities in the clearly delineated and organized "Music Community" include setting statutory royalty rates. For example, in the United States, mechanical royalties are based on a "statutory rate" set by the U.S. Congress. This rate is increased to follow changes in the economy, usually based on the Consumer Price Index. Currently, the mechanical statutory rate is \$0.091 for songs five minutes or less in length or \$.0175 per minute for songs that are over five minutes long.²⁵

Ministries of culture and arts councils (that comprise IFACCA's membership) support musicians, musical performances, independent music artists, non-commercial musical expression and education in their respective countries. The 165 ministries of culture, arts councils and affiliates that comprise IFACCA's membership support the "performing arts" and music specifically. Without the financial and logistical support of arts councils and the ministries of culture, the music community would be adversely affected, and in some countries, may not exist in any appreciable manner. For example, the Ministry of Culture 2011 budget for the small country state of Cyprus for culture funding was €34,876,522 with critical support of music activities.²⁶ Other small government Ministries of Culture, such as Albania,²⁷ or government

²¹ http://www.ifacca.org/membership/current_members/

²² http://www.ifacca.org/strategic_partners/

²³ http://www.ifacca.org/strategic_partners/

²⁴ <http://www.imc-cim.org/about-imc-separator/who-we-are.html>

²⁵ U.S Copyright Office, <http://www.copyright.gov/carp/m200a.html>

²⁶ 2011 Annual Report for Cyprus Ministry of Culture, Section 1.2 "Music"

(http://www.moec.gov.cy/en/annual_reports/annual_report_2011_en.pdf). Activities include Music Performances in Cyprus (1.2.1) and Abroad (1.2.2), Subsidization of Paphos Aphrodite Festival (1.2.3), Music Publications (1.2.4), Subsidization and Purchases of Digital Records (1.2.5), Promotion for Cypriot musical creativity abroad (1.2.6),

Ministries of Culture and Arts Councils from countries with larger populations, such as India,²⁸ all provide critical support and substantial advocacy for music. Other examples include government institutions collaborating and advocating music through their funded country-based pavilion initiatives at Midem, the world's largest music conference.²⁹

Government ministries and arts councils provide critical support for the Music Community, including commercial music organizations. By way of example, government ministries' and arts councils' substantial connection to and support of "music" is noted in the reports of funding and support for music. Some examples to showcase the degree of power of the IFACCA's membership towards the string and global and national music are music investment and music funding (Annual reports by governments and councils):

- New Zealand Ministry of Culture has funded significant music projects. Some include the REAL New Zealand Music Tour (\$415,000), the New Zealand String Quartet (\$150,000) and New Zealand Music Commission: (\$1,378,000).³⁰
- The Australian Government/Council For The Arts invested \$51.2 million for the nation's orchestras; \$21.6 million for opera; \$10.8 million for other music artists and organizations; \$13.1 million for multi-platform artists and organizations; and \$4 million in miscellaneous funding, including sector building and audience development initiatives and programs.³¹
- Canada Council for the Arts is Canada's national, arts funding agency investing \$28 million in its Canada Council Musical Instrument Bank (Page 16) and \$28,156,000 in Music Arts Programs (Page 66).³² The Government of Canada also renewed its annual investment of \$27.6 million over five years in the Canada Music Fund.³³
- The United Kingdom Department for Culture and Education (DfE) will fund music education at significant levels: £77 million, £65 million and £60 million will be available in the three years from April 2012.³⁴

Cyprus Symphony Orchestra Foundation (1.2.7), Music Information Centre (1.2.8), Developing Music Education (1.2.9), Organising of the 1st Musicological Symposium (1.2.10) and Musical Festivities for the European Volunteerism Year (1.2.11)

²⁷ http://www.culturalpolicies.net/down/albania_012011.pdf

²⁸ 2010-11 Annual Report from India Ministry of Culture, [http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011\(Eng\).pdf](http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011(Eng).pdf)

²⁹ <http://my.midem.com/en/contact-us/pavilion-representatives/>

³⁰ 2011 Annual Report from New Zealand Ministry of Culture:

[http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20\(D-0448383\).PDF](http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20(D-0448383).PDF)

³¹ 2011 Annual Report for the Australia Council for the Arts,

http://www.australiacouncil.gov.au/data/assets/pdf_file/0016/142351/Australia-Council-Annual-Report-201112.pdf, Page 28

³² 2011 Annual Report for Canada Council for the Arts, [http://www.canadacouncil.ca/NR/rdonlyres/6F7549BB-F4E5-4B8B-95F4-](http://www.canadacouncil.ca/NR/rdonlyres/6F7549BB-F4E5-4B8B-95F4-1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf)

[1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf](http://www.canadacouncil.ca/NR/rdonlyres/6F7549BB-F4E5-4B8B-95F4-1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf)

³³ <http://www.pch.gc.ca/eng/1294862453819/1294862453821>

³⁴ Department for Culture, The Importance of Music, A National Plan for Music Education,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/180973/DFE-00086-2011.pdf, Page 4, 2011

- The United States National Endowment of the Arts has awarded more than \$4 billion to support the arts since its inception³⁵ and has a strong focus on music as outlined in its Strategic Plan³⁶ with Congress requested to provide \$154,465,000 for fiscal year 2014.³⁷
- The National Arts Council of South Africa invested 2,536,131 ZAR in Music and 9,995,000 ZAR in Orchestras and has focused strongly on the “Strengthening of live indigenous music and advocating the revival of the live music circuit in South Africa”³⁸
- The Singapore Arts Council will fund \$10.2 million in the arts under its 2013 Grants Framework, including the Ding Yi Music Company and Siong Leng Musical Association.³⁹
- In 2011, the support for artistic activities by the Arts Council of Finland was €32.4 million of which €4,921,850 was awarded to music.⁴⁰

Each of IFACCA’s members has a clear association with, and mandate to support the music arts in their countries. In most countries, their ministry of culture/arts council is the largest funder and marketing supporter of the music arts.

The IFPI is another entity *mainly* dedicated to the Community. The IFPI is the only organization that represents the interests of the recording industry worldwide. It is the “voice of the recording industry worldwide”⁴¹ whose members⁴² – major and independent companies -- represent a majority of all commercial music consumed globally. For example, the RIAA, an IFPI national group member,⁴³ represents “approximately 85% of all legitimate recorded music produced and sold in the United States,”⁴⁴ the world’s largest music market with 30% global market share.⁴⁵ Formed in 1933, the IFPI’s mission was to “represent the interests of the recording industry worldwide in all fora.”

³⁵ 2011 Annual report for the National Endowment of the Arts, <http://www.nea.gov/about/11Annual/2011-NEA-Annual-Report.pdf>, Page 2

³⁶ NEA Strategic Plan 2012-2016, www.arts.gov/about/Budget/NEAStrategicPlan2012-2016.pdf

³⁷ http://www.ifacca.org/national_agency_news/2013/04/10/us-president-requests-154465000-neh-2014/

³⁸ 2010-2011 Annual Report for the National Arts Council South Africa, National Arts Council South Africa, <http://www.nac.org.za/media/publications/AR%2010-11%20NAC.PDF/download>, Page 11. Also Mmino, the South African – Norwegian Education Music Programme, solely funds music projects funding a total of 294 projects. Thirteen projects were allocated funding for a total of R1,680,600 of which R1,381,000 went towards music educational and R299,600 to exchange projects (Page 10)

³⁹ Singapore Arts Council, <http://www.nac.gov.sg/media-centre/news-releases/news-detail?id=c2db15e2-c319-40ec-939c-d58735d0a91c>

⁴⁰ <http://www.taiteenkeskustoimikunta.fi/documents/10162/31704/TY+tilastotiedote+1+12+.pdf>, Page 1 and Page 23

⁴¹ <http://www.ifpi.org/about.php>

⁴² <http://www.ifpi.org/our-members.php>

⁴³ <http://www.ifpi.org/national-groups.php>

⁴⁴ <http://www.riaa.com/faq.php>

⁴⁵ <http://www.statista.com/topics/1639/music/>

Another clear example of an “entity *mainly* dedicated to the community” with members that cover hundreds of millions of music constituents with formal boundaries is A2IM, the American Association of Independent Music. A2IM has two types of members: U.S independent Label members and Associate members. A2IM membership for Labels and Associates is invoked formally through an application and if accepted would require annual membership dues.⁴⁶

The reach of A2IM Associate⁴⁷ membership covers hundreds of millions of entities (i.e. the reach of A2IM’s total membership “geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents – See Application Answer to Question 20a).

Organized and strictly delineated communities related to music that are A2IM members include:

- **Apple iTunes**⁴⁸ – iTunes accounts for 63% of global digital music market⁴⁹ - a majority – with a registered community of 800 million registered members⁵⁰ available in 119 countries who abide to strict terms of service and boundaries⁵¹ and have downloaded over 25 billion songs⁵² from iTunes’ catalog of over 43 million songs⁵³ covering a global music community, regardless of genre or whether the community entities are amateur, professional, commercial or non-commercial. To add music to iTunes, all music artists must have a formal membership with iTunes via an Apple ID registration, which includes a current credit card on file.⁵⁴
- **Pandora**⁵⁵ – Pandora is the world’s largest streaming music radio with a community of over 250 million registered members.⁵⁶
- **Spotify**⁵⁷ – Spotify is the world’s largest music streaming community with over 50 million active registered members in 58 countries and over 30 million songs. The music community uploads 20,000 songs every day.⁵⁸
- **Vevo**⁵⁹ – Vevo is the world’s leading all-premium music video community and platform with over 8 billion monthly views globally.⁶⁰

⁴⁶ <http://a2im.org/about-joining/>

⁴⁷ <http://a2im.org/groups/tag/associate+members/>

⁴⁸ <http://a2im.org/groups/itunes>

⁴⁹ <http://appleinsider.com/articles/13/04/16/apples-itunes-rules-digital-music-market-with-63-share>

⁵⁰ <http://www.npr.org/blogs/therecord/2015/01/06/375173595/with-downloads-in-decline-can-itunes-adapt>

⁵¹ <http://www.apple.com/legal/internet-services/itunes/ww/index.html>

⁵² <http://www.apple.com/pr/library/2013/02/06iTunes-Store-Sets-New-Record-with-25-Billion-Songs-Sold.html>

⁵³ <https://www.apple.com/itunes/features/>

⁵⁴ <https://www.apple.com/itunes/working-itunes/sell-content/music-faq.html>

⁵⁵ <http://a2im.org/groups/pandora>

⁵⁶ <http://www.cnet.com/news/like-a-rolling-milestone-pandora-hits-250m-registered-users/> and <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MTkxNTM1fENoaWxkSUQ9LTF8VHlwZT0z&t=1>, Pg.9

⁵⁷ <http://a2im.org/groups/spotify>

⁵⁸ <https://press.spotify.com/us/information/>

⁵⁹ <http://a2im.org/groups/vevo/>

- **Youtube**⁶¹ – Youtube is the world’s largest music video streaming community with millions of music creators -- amateur, professional, commercial or non-commercial -- and over 1 billion registered members covering all regions globally. 6 billion hours of video is watched every month on Youtube,⁶² of which 38.4% is music-related.⁶³
- **ReverbNation**⁶⁴ – ReverbNation⁶⁵ is one of the world’s largest music community and a leading music distributor with over 3.87 million musicians, venues labels and industry professionals covering every country globally. The ReverbNation community grows by over 50,000 artists, bands, labels and industry professionals monthly.
- **BMG**⁶⁶ – BMG is focused on the management of music publishing and recording rights. BMG has an international presence and represents over 2.5 million music rights globally.⁶⁷

A2IM also includes members that are associated with global government agencies which exclusively represent substantial music economies and music members, such as France (BureauExport⁶⁸), China (China Audio Video Association⁶⁹) and Germany (Initiative Musik).⁷⁰ A2IM also has Affiliate⁷¹ associations within the global music community. These include Affiliates such as MusicFirst,⁷² the Copyright Alliance,⁷³ the Worldwide Independent Network (WIN)⁷⁴ and Merlin.⁷⁵

A2IM also represents a recognized Music Coalition representing the interests of the Global Independent Music Community.⁷⁶ The A2IM Coalition includes Merlin, a global rights agency for the independent label sector, representing over 20,000 labels from 39 countries, Worldwide Independent Network (representing label creators in over 20 countries), Association of Independent Music (representing largest and most respected labels in the world), and IMPALA (Independent Music Companies Association on behalf of over 4,000 independent music companies and national associations across Europe, representing 99% of music actors in Europe which are micro, small and medium sized enterprises.

⁶⁰ <http://www.vevo.com/c/EN/US/about>

⁶¹ <http://a2im.org/groups/youtube/>

⁶² <https://www.youtube.com/yt/press/statistics.html>

⁶³ <http://www.researchandmarkets.com/reports/2092499/internet-video-2011-2014-view-share-site-and>

⁶⁴ <http://a2im.org/groups/reverb-nation/>

⁶⁵ <http://www.reverbnation.com/about>

⁶⁶ <http://a2im.org/groups/bmg-rights/>

⁶⁷ <http://www.bmg.com/category/about-us/history/>

⁶⁸ <http://a2im.org/groups/french-music-export-office>

⁶⁹ <http://a2im.org/groups/china-audio-video-association-cava>

⁷⁰ <http://a2im.org/groups/initiative-musik-gmbh>

⁷¹ <http://a2im.org/groups/tag/associate+members/>

⁷² <http://musicfirstcoalition.org/coalition>, The musicFIRST Coalition, with founding members A2IM, RIAA, and Recording Academy represents musicians, artists, managers, music businesses, and performance right advocates.

⁷³ <http://www.copyrightalliance.org/members>

⁷⁴ <http://www.winformusic.org>

⁷⁵ <http://www.merlinnetwork.org>

⁷⁶ <https://www.icann.org/en/system/files/correspondence/bengloff-to-chehade-et-al-20aug14-en.pdf> and <https://www.icann.org/en/system/files/correspondence/bengloff-to-crocker-et-al-07mar15-en.pdf>

Cumulatively, A2IM's Label and Associate Membership, A2IM's Affiliates and the A2IM's Global Independent Music Community Coalition, covers a majority of the global music community. Its cumulative membership is in the hundreds of millions of entities with formal boundaries belonging to strictly organized and delineated communities related to music as per the Community Definition and Size (See Application answer to Question 20a).

Another global Music Community Coalition led by the RIAA “on behalf of over 15 national and international trade associations” also expressed its support for .MUSIC to be under a “community” application model, including encouraging statements in support of DotMusic’s policies that stated that the coalition “was encouraged to see” that DotMusic “included several measures to deter and address copyright infringement within that TLD.” The “coalition members represent the people that write, sing, record, manufacture, distribute and/or license over 80% of the world’s music”⁷⁷ – a majority of global music.⁷⁸

Another letter⁷⁹ sent to ICANN (on April 14th, 2015) by Danielle Aguirre from the NMPA and on behalf of a music publisher and songwriter community coalition representing a majority of the global music publishing community, also expressed “support [for] the .MUSIC community applications because respecting and protecting music rights serves the global music community and the public interest.”

The International Music Products Association, NAMM, is another globally-recognized and relevant group of non-negligible size that has supported DotMusic.⁸⁰ NAMM, formed in 1901, is *mainly* dedicated to the global music community by representing the international music products industry and community, with globally-recognized members and exhibitors that include Yamaha, Roland, Sennheiser, Sony, Fender, Harman, Kawai, Shure, Steinway, Audio-Technica, AKAI, Gibson, Peavey, Korg, AKG, Selmer, JBL, Alesis, Ibanez, AVID, Casio, DW, Sabian, Pearl, Zildjian, Martin, Ludwig, Marshall and others.^{81 82} Every amateur and professional musician worldwide uses music products manufactured and distributed by NAMM’s members. Without these musical instruments and products, music as we know it today would not be created or produced. NAMM and its trade shows power the \$17 billion global music products industry serving as a hub for the global music community wanting to seek out the newest innovations in musical products, recording technology, sound and lighting. NAMM’s mission is “to strengthen

⁷⁷ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.1

⁷⁸ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.3, Appendix A

⁷⁹ <https://www.icann.org/en/system/files/correspondence/aguirre-to-icann-board-eiu-14apr15-en.pdf>

⁸⁰ http://music.us/letters/NAMM_International_Music_Products_Association.pdf

⁸¹ https://www.namm.org/files/showdir/ExhibitorList_WN15.xls

⁸² <http://www.musictrades.com/global.html>

the music products industry and promote the pleasures and benefits of making music.”⁸³ NAMM also hosts the NAMM Show, the world's largest event for the music products industry.

Collectively, the DotMusic application received support from the largest coalition of music community member organizations ever assembled to support a cause representing over 95% of music consumed globally.⁸⁴ Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support⁸⁵ from institutions/organizations representing a majority of the Community addressed. Music -- as commonly-known by the general public and experienced today -- would not be possible without these supporting, non-negligible and relevant organizations that have endorsed DotMusic.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Community Establishment* and *Community Endorsement* from the majority of the global Music Community as defined.

B) Nexus⁸⁶

According to the Applicant Guidebook (“AGB”), to receive the maximum score for Nexus, the applied-for string -- “music” -- must match the name of the community or be a well-known short-form or abbreviation of the community name.

The *Nexus* of the “Music Community” entirely matches the applied-for “music” string because it represents the entire global Music Community as commonly-known and perceived by the general public. This definition allows for all constituents with a requisite awareness of the Community defined to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination. The definition of the Community requires that members have an active, non-tangential relationship with the applied-for string and the requisite awareness of the music community they identify with as part of the registration process. It is clear that the general public will directly associate and equate the string with the Community as defined by DotMusic. There is no possibility of overreaching beyond the definition or allowing unrelated non-music entities to be included as part of the Community. Community members may register a .MUSIC by either:

⁸³ <https://www.namm.org/about>

⁸⁴ See <http://music.us/supporters>, <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/downloadattachment/142588?t:ac=1392>, Bloomberg BNA at http://music.us/RIAA_Backs_DotMusic.pdf Pg.1, and <http://diffuser.fm/will-dot-music-domains-make-the-internet-better/>

⁸⁵ <http://music.us/supporters>

⁸⁶ See <http://music.us/nexus>

- 1) Identifying that they belong to a Music Community Member Organization (“MCMO”); or
- 2) Identifying the community they belong to, which is consistent with the definition of the Community: “the strictly delineated and organized logical alliance of communities of similar nature related to music.”

All Community members are aware of and recognize their inclusion in the defined Community by identifying which clearly defined community they belong to and have an active participation in. The *nexus* of the applied-for string ensures inclusion of the entire global community that the string represents while excluding unrelated-entities not associated with the string. This way there is a clear match and alignment between the “music” sting and the Community defined.

While the exact size of the global Music Community as defined is unknown (there is no empirical evidence providing an exact, finite number because amateur entities are also included in the Community’s definition), it is in the considerable millions as explicitly stated in the DotMusic Application. DotMusic’s definition of the Community and mutually-inclusive Registration Policies ensure that eligible members are only music-related and associated with the string. This is because the string identifies all constituents involved in music. Music-only participation optimizes the relevancy of .MUSIC domains to the string and entirely matches the *nexus* between the string and Community defined. According to DotMusic, the Community *definition, eligibility* criteria and *content and use* requirements ensure that peripheral industries and entities not related to music are excluded so that the string and the defined Community matches and aligns in a consistent manner consistent with DotMusic’s community-based purpose i.e. only entities with music-related activities are able to register .MUSIC domains.

Membership aligns with the *nexus* of the Community and the string, which is explicitly relevant to music. The string as defined in the application demonstrates uniqueness because it has no other significant meaning beyond identifying the community described in the application. According to DotMusic’s application, any tangential or implicit association with the *nexus* of the Community and the string is not regarded as a delineated membership since it would be considered unclear, dispersed or unbound. Such unclear, dispersed or unbound tangential relationships with the defined “music” Community and applied-for “music” string would not constitute a qualifying Community membership and would be ineligible for registration. Every type of music constituent critically contributes to the function and operation of the music sector within a regulated framework⁸⁷ given the symbiotic overlapping nature of the Community as defined and structured. Music would not function as it does today without the participation of all music constituent types which cumulatively match the string with the Community definition.

⁸⁷ ICANN has disclosed that the string .MUSIC is a sensitive string operating in a regulated sector. ICANN also accepted Government Advisory Committee (GAC) advice for safeguards to protect the Music Community and the public interest (See <https://icann.org/en/system/files/correspondence/crocker-to-dryden-3-29oct13-en.pdf> Pg.7)

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Nexus*.

Respectfully Submitted,



Signature:

Contact Information Redacted Aug 3 '15 ip: 64.239.143.192

Name: Heidy Vaquerano

Title: Professor & Attorney

Organization: California State University & Vaquerano Law, PC

About Heidi Vaquerano

Heidi Vaquerano launched her own firm in April 2013. Previous to that she worked at LaPolk Law, P.C. for eleven years where she became experienced in drafting and negotiating agreements relating to the Entertainment Industry including recording agreements, producer agreements, various work for hire agreements, management agreements, licensing agreements for film, TV and video games, original web TV and mechanical licensing.

Her practice focuses on transactional Entertainment Law matters and represents various clients in the music business, film and TV industry, merchandising, book publishing and mobile applications.

Heidi has lectured at various entertainment industry events and including, MIDEM in Cannes, France on behalf of the International Association of Entertainment Lawyers. Most recently she began teaching the Graduate Business Course entitled, "Introduction to the Business of Music" at California State University, Los Angeles.

Published Works

The Future Generation of TV: Creating and Monetizing Original Web Content, published by the International Association of Entertainment Lawyers' book entitled "The New Economics of the Entertainment Industry."

Talent Agents in the United States: Navigating Today's Complex Entertainment Industry, published by the International Association of Entertainment Lawyers' book entitled "Building the Artist's Brand of Business."

Secondary Ticketing in the United States, published by the International Association of Entertainment Lawyers' book entitled "Live Entertainment."

Website

<http://www.hvlawpc.com>

Re: Expert Testimony on (i) Community Establishment; (ii) Nexus; and (iii) Support for DotMusic’s Community-Based Application¹ for .MUSIC (Application ID 1-1115-14110)

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

Please accept this letter that indicates that there is substantive and compelling evidence that the DotMusic application convincingly meets the full criteria under Community Priority Evaluation on the following points: (i) the Music Community’s *Establishment* as defined by DotMusic; (ii) the matching *Nexus* between the “music” Community and the “music” string (or top-level domain); and (iii) that DotMusic possesses documented *Support* from organizations representing a majority of the global Music Community addressed and defined.

Please see my credentials attached hereto that identify my level of expertise and specialized knowledge with respect to the music community’s organization and delineation.

SUMMARY

DotMusic has established the following:

- 1) Its Community definition recognizes the cohesive, symbiotic and overlapping nature of the global Music Community. The definition includes those associated with commercial and non-commercial creation, performance, marketing and distribution of music;
- 2) “Music Community” members have the requisite awareness and recognition of the interdependency, overlapping and cohesive nature of each “organized community of similar nature that relates to music.” These organized and aligned communities are closely united and make “music” as we know it today. It is this self-awareness and interdependence that gives the “Music Community” its strength. With exponential growth of the Internet, mobile and the Domain Name System (DNS), the “Music Community’s” use and reliance on the Internet to create, market and disseminate music-related content, products, services and activities will continue to grow;
- 3) The “Music Community” functions in a regulated sector with global copyright protections – it is clear that the “community,” as defined, implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate a globally-recognized set of standards for

¹ <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1392>

the protection of the “Music Community” member rights with relation to their copyrighted music works around the world;

4) The “Music” Community -- as defined by DotMusic -- has at least one entity mainly dedicated to the community supporting DotMusic’s application. Such documented *Support* includes several “international federation of national communities of a similar nature,” music coalitions and others that are strongly associated with “music,” which represent a majority of the Community with considerable millions of members worldwide.²

5) The *Nexus* of the “music” Community matches the “music” applied-for string because it represents the entire global Music Community – a community that pre-existed 2007 with a size in the considerable millions of constituents. The “Music Community” definition -- which incorporates the strict fundamental attributes of a closely united Community definition that is “organized” and “delineated” -- ensures that all of its constituent members have a requisite awareness of the community as defined, including both commercial and non-commercial stakeholders, to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination.

6) DotMusic has received support from the largest coalition of Music Community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support³ from institutions/organizations representing a majority of the Community as defined and recognized in the DotMusic application.

There is substantive evidence that DotMusic fulfills the *Nexus, Community Establishment and Support* criteria for the “Music” string. The inclusion and representation of every music constituent type is paramount to the articulated purpose of the string. DotMusic and its application’s global Music Community supporters substantiate that every type of music constituent contributes to the function and operation of the music sector within a regulated framework. The symbiotic nature of the Community as defined and structured means that “Music” would not function as it does today without the participation of all music constituent types that interconnect to match the “music” string with the “music” Community definition.

² <http://music.us/supporters>

³ <http://music.us/supporters>

ASSESSMENT OF COMMUNITY DEFINITION, ESTABLISHMENT AND NEXUS

A) *Music Community Definition, Establishment & Community Endorsement*⁴

DotMusic's definition of the "Music Community" as a "strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music" (See Application Answer to Question 20a) is factually accurate and representative of the "Music Community." Community characteristics include:

i) An Organized, Cohesive, Interdependent Logically-Allied Community:

The "Music Community" definition covers the regulated, interdependent and cohesive nature of the music sector that exists today. "Music Community" members have the requisite awareness and recognition of the interdependent, overlapping and cohesive nature of each "organized community of similar nature that relates to music" that comprises the "Music Community." Without such cohesiveness and interdependency, the defined "Music" Community matching the applied-for string ("Music") would not be able to function in its regulated sector. "Music" is a regulated sector comprised of a logical alliance of interdependent communities relating to music with organized practices and institutions that enable and regulate the production, distribution and consumption of music that was publicly recognized by both ICANN and the Government Advisory Committee⁵

As a result, the Music Community as defined is "closely united" (As per the definition of "cohesion" according to Merriam-Webster dictionary⁶) or "united or form a whole" (As per the definition of the word "cohesion" according to Oxford Dictionaries⁷).

DotMusic's application follows unified principles that the entire Community subscribes to, such as: creating a trusted identifier and safe haven for music consumption, protecting musicians' rights and intellectual property, fighting copyright infringement/piracy, supporting fair compensation and music education, and following a multi-stakeholder approach of representation of all types of global music constituents without discrimination (See Application Answers to 18).

The "Music Community" as defined (a "strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music") establishes that:

- (1) There is an awareness and recognition among its members;

⁴ See <http://music.us/establishment>

⁵ <https://www.icann.org/en/system/files/bm/briefing-materials-2-05feb14-en.pdf>, Pg.3

⁶ <http://www.merriam-webster.com/dictionary/cohesion>

⁷ http://www.oxforddictionaries.com/us/definition/american_english/cohesion

- (2) The organized and delineated logical alliance of communities exists; and
- (3) The Community is “closely united” and “interdependent” (i.e. Each “organized community of similar nature that relates to music” which is part of the “logical alliance of communities that relate to music” is not mutually exclusive).

In short, the applied-for string (“Music”) matches the name of the “Music” Community as defined by DotMusic’s application. DotMusic’s “Music Community” definition accurately represents the common definition of the “Music Community,” which is confirmed by Wikipedia.

According to Wikipedia:⁸

Music community is defined as a logical alliance of interdependent communities that are related to music, which include commercial participants...and non-commercial participants...and consists of an “ensemble of practices and institutions that make possible and regulate the production, distribution and consumption of music”...UNESCO identifies the music community as a “community of identity” implying common identifiable characteristics and cohesive attributes such as sharing a music culture, norms and subscribing to common ideals related to music...The music community is not defined as much by demographic indicators such as race, gender, and income level, as it is by common values, cohesive norms and interconnected structures to build a community identity. It refers to music-related individuals and organisations in a shared environment with shared understandings and practices, modes of production and distribution. The shared organisation of collective musical activities, identity and community value is created as result of infrastructure and a shared set of common values...Many studies outline the historical, cultural, and spatial significance of the music community, including how its identity is formed through musical practices. The music community shares a cohesive and interconnected structure of artistic expression, with diverse subcultures and socio-economic interactions...subscribing to common ideals. Under such structured context music consumption becomes possible regardless whether the transaction is commercial and non-commercial.⁹

⁸ Wikipedia is ranked 6th among the ten most popular websites (Alexa, Retrieved March 23, 2015 from <http://www.alexacom/siteinfo/wikipedia.org>) and constitutes the Internet's largest, most frequently updated and popular general reference work (See OECD, OECD Internet Economy Outlook 2012, OECD Publishing, http://www.oecd-ilibrary.org/science-and-technology/oecd-internet-economy-outlook-2012_9789264086463-en, Pg.172) that compares favorably to the accuracy of other encyclopedias (such as the Britannica) according to a 2012 study conducted in partnership with Oxford University (See <http://blog.wikimedia.org/2012/08/02/seven-years-after-nature-pilot-study-compares-wikipedia-favorably-to-other-encyclopedias-in-three-languages>).

⁹ Music Community. In *Wikipedia*. Retrieved July 6, 2015, from https://en.wikipedia.org/wiki/Music_community

ii) An Aware, Pre-Existing and Recognized Community of Considerable Millions Worldwide:

DotMusic's definition of the Community covers all Community members associated with the string, each with a requisite awareness of the Community that can be validated through their natural association with a particular music-related community that they clearly identify with. According to DotMusic, all Music Community members must identify their music-related community in order to demonstrate their requisite awareness of the defined Community as part of the .MUSIC registration and validation process.

According to DotMusic, the Music Community's geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents (Application Answer to Question 20a).

According to DotMusic, "registrants will be verified using Community-organized, unified "criteria taken from holistic perspective with due regard of Community particularities" that "invoke a formal membership (Application Answer to Question 20a)." The defined Community represents all music-related entities with a clear and straightforward membership with the Community involved in the legal production, performance, promotion, and distribution of music worldwide. According to DotMusic, the Music Community members must have an active, non-tangential relationship with the applied-for string "music" and also have the requisite awareness of the music-related community that they are a part of by specifically identifying it as part of the registration and validation process (i.e. upon successful registration and validation, each community member will be given a unique community identification number that will automatically associate them with their identified community and the "music" string).

DotMusic's Community definition matches the applied-for string because it allows both commercial and non-commercial stakeholders to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination/exclusion. Given the regulated sector of the community, it is clear that the "Music Community" as defined implies "more of cohesion than a mere commonality of interest" with an "awareness and recognition of a community among its members." Several international treaties mandate cohesive and globally-recognized set of standards for the protection of the music community members' rights with relation to their copyrighted music works around the world.¹⁰

The Berne Convention for the Protection of Literary and Artistic Works¹¹ provides that each of the 168 contracting parties¹² (representing an overwhelming majority of the world's population) provides automatic protection for music works first published in other countries of the Berne union and for unpublished music works whose authors are citizens of or resident in such other

¹⁰ http://www.rightsdirect.com/content/rd/en/toolbar/copyright_education/International_Copyright_Basics.html

¹¹ http://www.wipo.int/treaties/en/text.jsp?file_id=283698

¹² http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=15

countries.¹³ This means that if a Music Community member's copyright rights are violated in any other signatory country's jurisdiction, then the music community member will have the music copyright rights given by that country. Music Community members are clearly aware of the collective Community's rights, which could not be made possible without these cohesive and globally-recognized set of standards. If such standards were not coherent or enforced then music would not be able to exist in its current form and the industry component of the Music Community sector would not exist. As such, the Community's *Establishment* and definition is "cohesive" and hence cannot be construed since the Community is a logical alliance of music communities that establish a clearly delineated and organized Community structure that is "closely united" and functions as a "whole"

Further evidence to substantiate the cohesive, symbiotic and overlapping nature of the Community, includes other globally-recognized standards and classification systems, which identify who the individual songwriters, publishers and rights holders are and which songs they are associated with so that Community members are appropriately compensated, regardless of whether the constituent is a commercial, non-commercial or amateur entity. The "music" string is commonly used in classification systems such as ISMN,¹⁴ ISRC,¹⁵ ISWC,¹⁶ ISNI.¹⁷ (Application Answer to Question 20a). For example, if a music entity would like to distribute their music, either commercially or for free, then an ISRC can be assigned to globally identify any specific music work. An ISRC, which facilitates efficient music discovery and community member payment, is constructed from 12 characters representing country, registrant, year of registration and designation (i.e. the serial number assigned by the registrant). With respect to domains, an equivalent system that relates to identifying a specific domain's registrant and other relevant information pertaining to the domain is WHOIS. Domain registrants are required by ICANN "to provide accurate WHOIS contact data" or else their domain "registration may be suspended or even cancelled".¹⁸

¹³ <http://www.britannica.com/EBchecked/topic/62482/Berne-Convention>

¹⁴ The International Standard Music Number (ISMN) is a unique number for the identification of all notated music publications from all over the world. The ISMN is an ISO certified global standard number (ISO 10957:2009). See <http://www.ismn-international.org/whatis.html> and http://www.iso.org/iso/home/store/catalogue_ics/catalogue_detail_ics.htm?csnumber=43173

¹⁵ The ISRC (International Standard Recording Code) is the international identification system for sound recordings and music video recordings. The ISRC is an ISO certified global standard number (ISO 3901:2001) and is managed by the IFPI. See <http://isrc.ifpi.org>, <https://www.usisrc.org/about/index.html> and http://www.iso.org/iso/catalogue_detail?csnumber=23401

¹⁶ The ISWC (International Standard Musical Work Code) is a unique, permanent and internationally recognized reference number for the identification of musical works. The ISWC has been approved by ISO (International Organization for Standardisation) as a global standard (ISO 15707:2001) and is managed by CISAC. See <http://www.iswc.org/en/faq.html> and http://www.iso.org/iso/catalogue_detail?csnumber=28780

¹⁷ The International Standard Name Identifier (ISNI) is the ISO certified global standard number (ISO 27729) for identifying the millions of contributors to creative works and those active in their distribution. ISNI holds public records of over 8 million identities and 490,000 organizations. See <http://www.isni.org/> and http://www.iso.org/iso/catalogue_detail?csnumber=44292

¹⁸ <https://whois.icann.org/en/about-whois> and <https://www.icann.org/resources/pages/faqs-f0-2012-02-25-en>

Without such Music Community “cohesion” and standardized systems functioning in its regulated sector, the Music Community would not be able to create, market and distribute their music. By the same token, fans would not be able to identify the music they are listening to with a specific music artist, regardless of whether the listening activity or behavior is commercial or non-commercial in nature. The socio-economic structure that characterizes “music” as commonly-known today would be non-existent without these organized and delineated elements that commonly define the Community.

iii) *International Federations and Organizations mainly Dedicated to the Community:*

According to ICANN’s Applicant Guidebook (“AGB”)¹⁹: “*With respect to “Delineation” and “Extension,” it should be noted that a community can consist of...a logical alliance of communities (for example, an international federation of national communities of a similar nature... viable as such, provided the requisite awareness and recognition of the community is at hand among the members.*” (AGB, 4-12). The community as defined in the DotMusic application has at least one entity *mainly*²⁰ dedicated to the community which has supported DotMusic, which include several “international federation of national communities of a similar nature” relating to music, music coalitions and other relevant and non-negligible music organizations.

One of these entities include the only international federation of national communities relating to government culture agencies and arts councils, which has an integral association with music globally: the International Federation of Arts Councils and Culture Agencies (IFACCA).

IFACCA is the only international federation that represents government culture agencies and arts councils globally. These national communities are governmental institutions that play a pivotal

¹⁹ <https://newgtlds.icann.org/en/applicants/agb/guidebook-full-11jan12-en.pdf>

²⁰ Per the Oxford and Merriam Webster dictionaries, the word “mainly” is defined as “*more than anything else*” (See <http://www.oxforddictionaries.com/definition/english/mainly> and <http://www.merriam-webster.com/dictionary/mainly> respectively). According to DotMusic, the string .MUSIC relates to the Community “by representing all constituents involved in music creation, production and distribution” (Application Answer to Question 20d). Supporting organizations related to that string that are “mainly” dedicated to the Community and its activities, include the International Federation of Arts Councils and Culture Agencies (IFACCA) representing government culture ministries and arts councils, the International Federation of Musicians (FIM) representing musicians globally, the International Federation of Phonographic Industry (IFPI) representing the recording industry worldwide, the International Confederation of Music Publishers (ICPM) representing the voice of global music publishing, the International Association of Music Information Centres (IAMIC), the American Association of Independent Music (A2IM), whose associate members represent a majority of music consumed, the Independent Music Worldwide Independent Network (WIN) representing independent music worldwide, the International Society for Music Education (ISME) the premiere international organization representing music education, and many others (See support at <http://music.us/supporters> and <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails:downloadattachment/142588?t:ac=1392>).

role with respect to music.²¹ IFACCA's members cover the majority of music entities globally, regardless of whether they are commercial, non-commercial or amateurs. Government ministry of culture and council agencies related to music cover a majority of the overall community with respect to headcount and geographic reach. The "Size" covered reaches over a hundred million music entities i.e. "considerable size with millions of constituents" per Application Answer to Question 20a.

The string "music" falls under the jurisdiction of each country's Ministry of Culture governmental agency or arts/music council (emphasis added). The degree of power and influence of government ministry of culture and council agencies with respect to music surpasses any organization type since these agencies (i) provide the majority of funding for music-related activities; (ii) regulate copyright law; and (iii) encompass all the music entities that fall under their country, regardless whether these entities are commercial, non-commercial or amateurs. IFACCA is globally recognized by its strategic partners, such as UNESCO, a United Nations agency representing 195 member states and the European Commission.²² The UNESCO strategic partnership²³ is relevant, especially since UNESCO founded the International Music Council (the "IMC") in 1949, which represents over 200 million music constituents from over 150 countries and over 1000 organizations globally.²⁴

Government activities in the clearly delineated and organized "Music Community" include setting statutory royalty rates. For example, in the United States, mechanical royalties are based on a "statutory rate" set by the U.S. Congress. This rate is increased to follow changes in the economy, usually based on the Consumer Price Index. Currently, the mechanical statutory rate is \$0.091 for songs five minutes or less in length or \$.0175 per minute for songs that are over five minutes long.²⁵

Ministries of culture and arts councils (that comprise IFACCA's membership) support musicians, musical performances, independent music artists, non-commercial musical expression and education in their respective countries. The 165 ministries of culture, arts councils and affiliates that comprise IFACCA's membership support the "performing arts" and music specifically. Without the financial and logistical support of arts councils and the ministries of culture, the music community would be adversely affected, and in some countries, may not exist in any appreciable manner. For example, the Ministry of Culture 2011 budget for the small country state of Cyprus for culture funding was €34,876,522 with critical support of music activities.²⁶ Other small government Ministries of Culture, such as Albania,²⁷ or government

²¹ http://www.ifacca.org/membership/current_members/

²² http://www.ifacca.org/strategic_partners/

²³ http://www.ifacca.org/strategic_partners/

²⁴ <http://www.imc-cim.org/about-imc-separator/who-we-are.html>

²⁵ U.S Copyright Office, <http://www.copyright.gov/carp/m200a.html>

²⁶ 2011 Annual Report for Cyprus Ministry of Culture, Section 1.2 "Music"

(http://www.moec.gov.cy/en/annual_reports/annual_report_2011_en.pdf). Activities include Music Performances in Cyprus (1.2.1) and Abroad (1.2.2), Subsidization of Paphos Aphrodite Festival (1.2.3), Music Publications (1.2.4), Subsidization and Purchases of Digital Records (1.2.5), Promotion for Cypriot musical creativity abroad (1.2.6),

Ministries of Culture and Arts Councils from countries with larger populations, such as India,²⁸ all provide critical support and substantial advocacy for music. Other examples include government institutions collaborating and advocating music through their funded country-based pavilion initiatives at Midem, the world's largest music conference.²⁹

Government ministries and arts councils provide critical support for the Music Community, including commercial music organizations. By way of example, government ministries' and arts councils' substantial connection to and support of "music" is noted in the reports of funding and support for music. Some examples to showcase the degree of power of the IFACCA's membership towards the string and global and national music are music investment and music funding (Annual reports by governments and councils):

- New Zealand Ministry of Culture has funded significant music projects. Some include the REAL New Zealand Music Tour (\$415,000), the New Zealand String Quartet (\$150,000) and New Zealand Music Commission: (\$1,378,000).³⁰
- The Australian Government/Council For The Arts invested \$51.2 million for the nation's orchestras; \$21.6 million for opera; \$10.8 million for other music artists and organizations; \$13.1 million for multi-platform artists and organizations; and \$4 million in miscellaneous funding, including sector building and audience development initiatives and programs.³¹
- Canada Council for the Arts is Canada's national, arts funding agency investing \$28 million in its Canada Council Musical Instrument Bank (Page 16) and \$28,156,000 in Music Arts Programs (Page 66).³² The Government of Canada also renewed its annual investment of \$27.6 million over five years in the Canada Music Fund.³³
- The United Kingdom Department for Culture and Education (DfE) will fund music education at significant levels: £77 million, £65 million and £60 million will be available in the three years from April 2012.³⁴

Cyprus Symphony Orchestra Foundation (1.2.7), Music Information Centre (1.2.8), Developing Music Education (1.2.9), Organising of the 1st Musicological Symposium (1.2.10) and Musical Festivities for the European Volunteerism Year (1.2.11)

²⁷ http://www.culturalpolicies.net/down/albania_012011.pdf

²⁸ 2010-11 Annual Report from India Ministry of Culture, [http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011\(Eng\).pdf](http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011(Eng).pdf)

²⁹ <http://my.midem.com/en/contact-us/pavilion-representatives/>

³⁰ 2011 Annual Report from New Zealand Ministry of Culture:

[http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20\(D-0448383\).PDF](http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20(D-0448383).PDF)

³¹ 2011 Annual Report for the Australia Council for the Arts,

http://www.australiacouncil.gov.au/data/assets/pdf_file/0016/142351/Australia-Council-Annual-Report-201112.pdf, Page 28

³² 2011 Annual Report for Canada Council for the Arts, [http://www.canadacouncil.ca/NR/rdonlyres/6F7549BB-F4E5-4B8B-95F4-](http://www.canadacouncil.ca/NR/rdonlyres/6F7549BB-F4E5-4B8B-95F4-1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf)

[1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf](http://www.canadacouncil.ca/NR/rdonlyres/6F7549BB-F4E5-4B8B-95F4-1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf)

³³ <http://www.pch.gc.ca/eng/1294862453819/1294862453821>

³⁴ Department for Culture, The Importance of Music, A National Plan for Music Education,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/180973/DFE-00086-2011.pdf, Page 4, 2011

- The United States National Endowment of the Arts has awarded more than \$4 billion to support the arts since its inception³⁵ and has a strong focus on music as outlined in its Strategic Plan³⁶ with Congress requested to provide \$154,465,000 for fiscal year 2014.³⁷
- The National Arts Council of South Africa invested 2,536,131 ZAR in Music and 9,995,000 ZAR in Orchestras and has focused strongly on the “Strengthening of live indigenous music and advocating the revival of the live music circuit in South Africa”³⁸
- The Singapore Arts Council will fund \$10.2 million in the arts under its 2013 Grants Framework, including the Ding Yi Music Company and Siong Leng Musical Association.³⁹
- In 2011, the support for artistic activities by the Arts Council of Finland was €32.4 million of which €4,921,850 was awarded to music.⁴⁰

Each of IFACCA’s members has a clear association with, and mandate to support the music arts in their countries. In most countries, their ministry of culture/arts council is the largest funder and marketing supporter of the music arts.

The IFPI is another entity *mainly* dedicated to the Community. The IFPI is the only organization that represents the interests of the recording industry worldwide. It is the “voice of the recording industry worldwide”⁴¹ whose members⁴² – major and independent companies -- represent a majority of all commercial music consumed globally. For example, the RIAA, an IFPI national group member,⁴³ represents “approximately 85% of all legitimate recorded music produced and sold in the United States,”⁴⁴ the world’s largest music market with 30% global market share.⁴⁵ Formed in 1933, the IFPI’s mission was to “represent the interests of the recording industry worldwide in all fora.”

³⁵ 2011 Annual report for the National Endowment of the Arts, <http://www.nea.gov/about/11Annual/2011-NEA-Annual-Report.pdf>, Page 2

³⁶ NEA Strategic Plan 2012-2016, www.arts.gov/about/Budget/NEAStrategicPlan2012-2016.pdf

³⁷ http://www.ifacca.org/national_agency_news/2013/04/10/us-president-requests-154465000-neh-2014/

³⁸ 2010-2011 Annual Report for the National Arts Council South Africa, National Arts Council South Africa, <http://www.nac.org.za/media/publications/AR%2010-11%20NAC.PDF/download>, Page 11. Also Mmino, the South African – Norwegian Education Music Programme, solely funds music projects funding a total of 294 projects. Thirteen projects were allocated funding for a total of R1,680,600 of which R1,381,000 went towards music educational and R299,600 to exchange projects (Page 10)

³⁹ Singapore Arts Council, <http://www.nac.gov.sg/media-centre/news-releases/news-detail?id=c2db15e2-c319-40ec-939c-d58735d0a91c>

⁴⁰ <http://www.taiteenkeskustoimikunta.fi/documents/10162/31704/TY+tilastotiedote+1+12+.pdf>, Page 1 and Page 23

⁴¹ <http://www.ifpi.org/about.php>

⁴² <http://www.ifpi.org/our-members.php>

⁴³ <http://www.ifpi.org/national-groups.php>

⁴⁴ <http://www.riaa.com/faq.php>

⁴⁵ <http://www.statista.com/topics/1639/music/>

Another clear example of an “entity *mainly* dedicated to the community” with members that cover hundreds of millions of music constituents with formal boundaries is A2IM, the American Association of Independent Music. A2IM has two types of members: U.S independent Label members and Associate members. A2IM membership for Labels and Associates is invoked formally through an application and if accepted would require annual membership dues.⁴⁶

The reach of A2IM Associate⁴⁷ membership covers hundreds of millions of entities (i.e. the reach of A2IM’s total membership “geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents – See Application Answer to Question 20a).

Organized and strictly delineated communities related to music that are A2IM members include:

- **Apple iTunes**⁴⁸ – iTunes accounts for 63% of global digital music market⁴⁹ - a majority – with a registered community of 800 million registered members⁵⁰ available in 119 countries who abide to strict terms of service and boundaries⁵¹ and have downloaded over 25 billion songs⁵² from iTunes’ catalog of over 43 million songs⁵³ covering a global music community, regardless of genre or whether the community entities are amateur, professional, commercial or non-commercial. To add music to iTunes, all music artists must have a formal membership with iTunes via an Apple ID registration, which includes a current credit card on file.⁵⁴
- **Pandora**⁵⁵ – Pandora is the world’s largest streaming music radio with a community of over 250 million registered members.⁵⁶
- **Spotify**⁵⁷ – Spotify is the world’s largest music streaming community with over 50 million active registered members in 58 countries and over 30 million songs. The music community uploads 20,000 songs every day.⁵⁸
- **Vevo**⁵⁹ – Vevo is the world’s leading all-premium music video community and platform with over 8 billion monthly views globally.⁶⁰

⁴⁶ <http://a2im.org/about-joining/>

⁴⁷ <http://a2im.org/groups/tag/associate+members/>

⁴⁸ <http://a2im.org/groups/itunes>

⁴⁹ <http://appleinsider.com/articles/13/04/16/apples-itunes-rules-digital-music-market-with-63-share>

⁵⁰ <http://www.npr.org/blogs/therecord/2015/01/06/375173595/with-downloads-in-decline-can-itunes-adapt>

⁵¹ <http://www.apple.com/legal/internet-services/itunes/ww/index.html>

⁵² <http://www.apple.com/pr/library/2013/02/06iTunes-Store-Sets-New-Record-with-25-Billion-Songs-Sold.html>

⁵³ <https://www.apple.com/itunes/features/>

⁵⁴ <https://www.apple.com/itunes/working-itunes/sell-content/music-faq.html>

⁵⁵ <http://a2im.org/groups/pandora>

⁵⁶ <http://www.cnet.com/news/like-a-rolling-milestone-pandora-hits-250m-registered-users/> and <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MTkxNTM1fENoaWxkSUQ9LTF8VHlwZT0z&t=1>, Pg.9

⁵⁷ <http://a2im.org/groups/spotify>

⁵⁸ <https://press.spotify.com/us/information/>

⁵⁹ <http://a2im.org/groups/vevo/>

- **Youtube**⁶¹ – Youtube is the world’s largest music video streaming community with millions of music creators -- amateur, professional, commercial or non-commercial -- and over 1 billion registered members covering all regions globally. 6 billion hours of video is watched every month on Youtube,⁶² of which 38.4% is music-related.⁶³
- **ReverbNation**⁶⁴ – ReverbNation⁶⁵ is one of the world’s largest music community and a leading music distributor with over 3.87 million musicians, venues labels and industry professionals covering every country globally. The ReverbNation community grows by over 50,000 artists, bands, labels and industry professionals monthly.
- **BMG**⁶⁶ – BMG is focused on the management of music publishing and recording rights. BMG has an international presence and represents over 2.5 million music rights globally.⁶⁷

A2IM also includes members that are associated with global government agencies which exclusively represent substantial music economies and music members, such as France (BureauExport⁶⁸), China (China Audio Video Association⁶⁹) and Germany (Initiative Musik).⁷⁰ A2IM also has Affiliate⁷¹ associations within the global music community. These include Affiliates such as MusicFirst,⁷² the Copyright Alliance,⁷³ the Worldwide Independent Network (WIN)⁷⁴ and Merlin.⁷⁵

A2IM also represents a recognized Music Coalition representing the interests of the Global Independent Music Community.⁷⁶ The A2IM Coalition includes Merlin, a global rights agency for the independent label sector, representing over 20,000 labels from 39 countries, Worldwide Independent Network (representing label creators in over 20 countries), Association of Independent Music (representing largest and most respected labels in the world), and IMPALA (Independent Music Companies Association on behalf of over 4,000 independent music companies and national associations across Europe, representing 99% of music actors in Europe which are micro, small and medium sized enterprises.

⁶⁰ <http://www.vevo.com/c/EN/US/about>

⁶¹ <http://a2im.org/groups/youtube/>

⁶² <https://www.youtube.com/yt/press/statistics.html>

⁶³ http://www.researchandmarkets.com/reports/2092499/internet_video_2011_2014_view_share_site_and

⁶⁴ <http://a2im.org/groups/reverb-nation/>

⁶⁵ <http://www.reverbnation.com/about>

⁶⁶ <http://a2im.org/groups/bmg-rights/>

⁶⁷ <http://www.bmg.com/category/about-us/history/>

⁶⁸ <http://a2im.org/groups/french-music-export-office>

⁶⁹ <http://a2im.org/groups/china-audio-video-association-cava>

⁷⁰ <http://a2im.org/groups/initiative-musik-gmbh>

⁷¹ <http://a2im.org/groups/tag/associate+members/>

⁷² <http://musicfirstcoalition.org/coalition>, The musicFIRST Coalition, with founding members A2IM, RIAA, and Recording Academy represents musicians, artists, managers, music businesses, and performance right advocates.

⁷³ <http://www.copyrightalliance.org/members>

⁷⁴ <http://www.winformusic.org>

⁷⁵ <http://www.merlinnetwork.org>

⁷⁶ <https://www.icann.org/en/system/files/correspondence/bengloff-to-chehade-et-al-20aug14-en.pdf> and <https://www.icann.org/en/system/files/correspondence/bengloff-to-crocker-et-al-07mar15-en.pdf>

Cumulatively, A2IM's Label and Associate Membership, A2IM's Affiliates and the A2IM's Global Independent Music Community Coalition, covers a majority of the global music community. Its cumulative membership is in the hundreds of millions of entities with formal boundaries belonging to strictly organized and delineated communities related to music as per the Community Definition and Size (See Application answer to Question 20a).

Another global Music Community Coalition led by the RIAA "on behalf of over 15 national and international trade associations" also expressed its support for .MUSIC to be under a "community" application model, including encouraging statements in support of DotMusic's policies that stated that the coalition "was encouraged to see" that DotMusic "included several measures to deter and address copyright infringement within that TLD." The "coalition members represent the people that write, sing, record, manufacture, distribute and/or license over 80% of the world's music"⁷⁷ – a majority of global music.⁷⁸

Another letter⁷⁹ sent to ICANN (on April 14th, 2015) by Danielle Aguirre from the NMPA and on behalf of a music publisher and songwriter community coalition representing a majority of the global music publishing community, also expressed "support [for] the .MUSIC community applications because respecting and protecting music rights serves the global music community and the public interest."

The International Music Products Association, NAMM, is another globally-recognized and relevant group of non-negligible size that has supported DotMusic.⁸⁰ NAMM, formed in 1901, is *mainly* dedicated to the global music community by representing the international music products industry and community, with globally-recognized members and exhibitors that include Yamaha, Roland, Sennheiser, Sony, Fender, Harman, Kawai, Shure, Steinway, Audio-Technica, AKAI, Gibson, Peavey, Korg, AKG, Selmer, JBL, Alesis, Ibanez, AVID, Casio, DW, Sabian, Pearl, Zildjian, Martin, Ludwig, Marshall and others.^{81 82} Every amateur and professional musician worldwide uses music products manufactured and distributed by NAMM's members. Without these musical instruments and products, music as we know it today would not be created or produced. NAMM and its trade shows power the \$17 billion global music products industry serving as a hub for the global music community wanting to seek out the newest innovations in musical products, recording technology, sound and lighting. NAMM's mission is "to strengthen

⁷⁷ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.1

⁷⁸ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.3, Appendix A

⁷⁹ <https://www.icann.org/en/system/files/correspondence/aguirre-to-icann-board-eiu-14apr15-en.pdf>

⁸⁰ http://music.us/letters/NAMM_International_Music_Products_Association.pdf

⁸¹ https://www.namm.org/files/showdir/ExhibitorList_WN15.xls

⁸² <http://www.musictrades.com/global.html>

the music products industry and promote the pleasures and benefits of making music.”⁸³ NAMM also hosts the NAMM Show, the world's largest event for the music products industry.

Collectively, the DotMusic application received support from the largest coalition of music community member organizations ever assembled to support a cause representing over 95% of music consumed globally.⁸⁴ Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community as defined. Cumulatively, DotMusic possesses documented support⁸⁵ from institutions/organizations representing a majority of the Community addressed. Music -- as commonly-known by the general public and experienced today -- would not be possible without these supporting, non-negligible and relevant organizations that have endorsed DotMusic.

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Community Establishment* and *Community Endorsement* from the majority of the global Music Community as defined.

B) Nexus⁸⁶

According to the Applicant Guidebook (“AGB”), to receive the maximum score for Nexus, the applied-for string -- “music” -- must match the name of the community or be a well-known short-form or abbreviation of the community name.

The *Nexus* of the “Music Community” entirely matches the applied-for “music” string because it represents the entire global Music Community as commonly-known and perceived by the general public. This definition allows for all constituents with a requisite awareness of the Community defined to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination. The definition of the Community requires that members have an active, non-tangential relationship with the applied-for string and the requisite awareness of the music community they identify with as part of the registration process. It is clear that the general public will directly associate and equate the string with the Community as defined by DotMusic. There is no possibility of overreaching beyond the definition or allowing unrelated non-music entities to be included as part of the Community. Community members may register a .MUSIC by either:

⁸³ <https://www.namm.org/about>

⁸⁴ See <http://music.us/supporters>, <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/downloadattachment/142588?t:ac=1392>, Bloomberg BNA at http://music.us/RIAA_Backs_DotMusic.pdf Pg.1, and <http://diffuser.fm/will-dot-music-domains-make-the-internet-better/>

⁸⁵ <http://music.us/supporters>

⁸⁶ See <http://music.us/nexus>

- 1) Identifying that they belong to a Music Community Member Organization (“MCMO”); or
- 2) Identifying the community they belong to, which is consistent with the definition of the Community: “the strictly delineated and organized logical alliance of communities of similar nature related to music.”

All Community members are aware of and recognize their inclusion in the defined Community by identifying which clearly defined community they belong to and have an active participation in. The *nexus* of the applied-for string ensures inclusion of the entire global community that the string represents while excluding unrelated-entities not associated with the string. This way there is a clear match and alignment between the “music” sting and the Community defined.

While the exact size of the global Music Community as defined is unknown (there is no empirical evidence providing an exact, finite number because amateur entities are also included in the Community’s definition), it is in the considerable millions as explicitly stated in the DotMusic Application. DotMusic’s definition of the Community and mutually-inclusive Registration Policies ensure that eligible members are only music-related and associated with the string. This is because the string identifies all constituents involved in music. Music-only participation optimizes the relevancy of .MUSIC domains to the string and entirely matches the *nexus* between the string and Community defined. According to DotMusic, the Community *definition, eligibility* criteria and *content and use* requirements ensure that peripheral industries and entities not related to music are excluded so that the string and the defined Community matches and aligns in a consistent manner consistent with DotMusic’s community-based purpose i.e. only entities with music-related activities are able to register .MUSIC domains.

Membership aligns with the *nexus* of the Community and the string, which is explicitly relevant to music. The string as defined in the application demonstrates uniqueness because it has no other significant meaning beyond identifying the community described in the application. According to DotMusic’s application, any tangential or implicit association with the *nexus* of the Community and the string is not regarded as a delineated membership since it would be considered unclear, dispersed or unbound. Such unclear, dispersed or unbound tangential relationships with the defined “music” Community and applied-for “music” string would not constitute a qualifying Community membership and would be ineligible for registration. Every type of music constituent critically contributes to the function and operation of the music sector within a regulated framework⁸⁷ given the symbiotic overlapping nature of the Community as defined and structured. Music would not function as it does today without the participation of all music constituent types which cumulatively match the string with the Community definition.

⁸⁷ ICANN has disclosed that the string .MUSIC is a sensitive string operating in a regulated sector. ICANN also accepted Government Advisory Committee (GAC) advice for safeguards to protect the Music Community and the public interest (See <https://icann.org/en/system/files/correspondence/crocker-to-dryden-3-29oct13-en.pdf> Pg.7)

In conclusion, there is substantive and compelling evidence that DotMusic entirely fulfills the criteria for *Nexus*.

Respectfully Submitted,

Signature: 
Contact Information Redacted Aug 9 '15 ip: 24.120.55.70

Name: Jeffrey Weber

Title: CEO

Organization: Stark Raving Records

Professor Jeffrey Weber Esq.

Jeffrey Weber has been a widely recognized music industry professional for over thirty years. He has produced over 180 CDs with releases on just about every major label as well as a host of independent labels. Along the way, his projects have yielded two Grammys, seven Grammy nominations, at least seventeen top ten albums, two number one albums and an assortment of other honors.

His book, "You've Got A Deal! The Biggest Lies of the Music Business" will be published by Headline Books in January of 2012. "Over 100 people turned up, and I was truly shocked and gratified. Took me over two hours to sign all the books for everyone. One guy drove down from Oregon and another flew in from North Carolina for this signing in Los Angeles. The publisher flew in from West Virginia. When does a publisher attend a book signing!!? Wild... The publisher who flew from West Virginia said that I had more people and sold more books at one signing than any of her other writers in her twenty-five year history. I wonder if that's a good thing or a bad thing....," says Weber.

During his thirty plus year career, he has founded, ran or participated in various label capacities from A&R, Music Supervision for film and TV, Production, Interactive Programming, Marketing, Sales, International Relations, Business Affairs and Art Director for independent labels such as Penny's Gang, 44-4 Records, Discwasher Records, Prima Records, Beach Jazz, Agenda Records, Denon Records, Handshake Records, Audio Source Records, Voss Records, Video Arts, Clear Audio, Pony Canyon, P.C.H. Records, En Pointe Records, Cameron Records as well as his own labels, Weberworks and Stark Raving Records.

His productions have also appeared on every major label including MCA, Warner Bros., Atlantic, BMG, Columbia, A&M, Elektra as well as such labels as GRP, Hip-O, Sheffield, Concord, Bainbridge, Silver Eagle, Zebra, among countless others.

Among the many artists that have fallen under the banner of "Produced by..." include: Nancy Wilson, David Benoit, Steve Lukather, the Utah Symphony, Jackson Browne, Marcus Miller, Michael McDonald, Bill Champlin, Gerald Albright, Tom Scott, Chick Corea, Stanley Clark, Etta James, Linda Hopkins, Kenny Burrell, McCoy Tyner, Jackie McLean, Billy Sheehan (Mr. Big), Cozzy Powell, the Count Basie Orchestra, John Sebastian, Ronnie Dio, Ritchie Blackmore, Pat Boone, Buddy Miles, Billy Preston, MC Lyte, Kenny Rankin, Diane Reeves, Diane Schuur, Rita Coolidge, Luther Vandross, David Crosby, Simon Phillips, Jeff Porcaro, Patrice Rushen, Toni Tennille, among many others.

Jeff has been a concert and event producer for over ten years with extensive experience in concert management and production, staging, lighting, and sound from the smallest of venues to large stadium shows. He has produced shows for the Atlantis Resort, NASCAR, the Breeder's Cup, Chicago White Sox, Cystic Fibrosis, Fallsview Casino and Resort, Ford, Harry Caray's, KTLA, Loehmann's Department Store, Lupus L.A., NAMM, National Cable

and Telecommunications Association, Netflix, Orange County Flyers, Pebble Beach Pro-Am, AT&T, Dockers, Shore Club-South Beach, Taste Of Chicago, USAA, American Idol, The Tonight Show, among many others.

In 2009, Weber finalized his, from the ground up, re-definition of the business model for a record label that he firmly believes will be the architecture for all labels in the future. Weber's model has embraced a complete slate of innovative concepts and procedures, ranging from the manner in which artist contracts are conceived and implemented to recording procedures, to innovations in sales, marketing and promotion. Designed to re-invent and re-energize the relationships between the artist and the label and the artist and the consumer, the model establishes format-breaking levels of transparency and unique partnerships in all label/artist/fan relationships.

His innovative concepts were the operational foundations for two independent labels distributed by Fontana (Universal). At the time, he was named President of both labels. In addition, Weber's dynamic business model innovations for record labels are now being taught at UCLA and the University of Texas, Austin. He has also been an educator at both UCLA (for about 22 years) and the University of Texas, Austin (for about 6 years).

Jeff is well known for his involvement in high technology recording techniques, especially live two track recording, live multi-track and digital recording. Because of their sonic excellence, his recordings have been repeatedly selected by major hardware manufacturers to demonstrate their product lines.

Jeff is very active as a music supervisor for film, television and cable. He specializes in cost effective synchronization and master use license acquisition strategies as well as production based music options.

Jeff co-founded and programmed Studio M, a nationwide broadcast television network that utilized their growing 28,000 music video library to broadcast multiple genre based music video shows. It was on the air seven days a week, for five hours a day to an estimated audience of thirty million homes.

In addition to music production, Jeff has spent over twenty years behind the microphone as a voice-over talent for commercials, cartoons, industrial films, infomercials, live web broadcasting, and television. He has done voice work for Interscope (Guns & Roses), Toyota, Nissan, Ford, VR Troopers, the Ventura County Star newspaper chain, Play It Again Sports, Sony, Boston Acoustics, Audio Source, the BBC, the Jazz Network, Dejaun Jewelers, the Los Angeles Zoo, CBS and Warner Bros., among countless others. He continues to be extremely active in this field.

Well versed in video production, Jeff has written, produced and directed over two-dozen music based concerts and videos. Recently, he produced a 12 camera, High Definition, robotic, five-channel surround sound DVD/CD for Band From TV, a rock and roll cover band comprised of famous television actors who travel the country raising money for their selected charities. He continues to travel with the band producing all their live concerts.

He has been a music journalist with articles in major industry publications nationwide. He

has received numerous awards as an art director and many of his album cover designs have been published in "Best of..." annual publications. As an educator, he has taught courses on the music industry at universities and law schools (he has a law degree as well) across the country.

Jeff is a former member of the Board of Governors of the National Academy of Recording Arts and Sciences (NARAS) as well as a former National Trustee and Chapter Vice President.

Educator

University of Texas - Austin

2007 – December 2013 (6 years)

UCLA

June 1988 – January 2011 (22 years 8 months)

Education

Southwestern University School of Law

J.D., Law

1973 – 1976

University of California, Los Angeles

BA, English/Creative Writing

1969 – 1973

Credits

Year	Album	Artist	Role
2010	Hoggin' All the Covers Unleashed!	Band from TV	Producer
2010	Something Goin' On	Shelley & Cal	Producer
2009	Only the Best of Freddie Hubbard	Freddie Hubbard	Producer
2007	About A Girl		Drums

2007	Free Flight [Xien]	Jim Walker	Producer
2007	When I Was a Planet	Invitro	Vocals
2007	XM: Watercolors - Red [Circuit City Exclusive]		Producer
2006	A Mellow Jazz Christmas		Producer
2006	Full Circle	David Benoit	Audio Production, Liner Notes, Producer
2006	Standards	Stanley Clarke	Producer
2006	Standards	David Benoit	Audio Production, Producer
2006	These Days	Ellen Johnson	Producer
2005	20th Century Masters - The Millennium Collection: The Best of David Benoit	David Benoit	Audio Production, Producer
2005	Anthology	Perri	Producer
2004	At the Brewhouse, Vol. 2	Kenny Drew	Producer
2004	Jazz Standards	Stanley Clarke	Producer
2004	Melissa Peda	Melissa Peda	Producer
2004	Once Again	The Kingston Trio	Original Liner Notes
2004	Peace for Love	Curtis Amy	Producer
2004	Smooth Jazz	Stanley Clarke	Producer
2004	Whispers of the Wind	Talia	Producer
2003	Gold Coast	Rhian Benson	Producer
2003	Ins and Outs/Lalo Live at the Blue Note	Lalo Schifrin	Digital Editing, Producer
2003	Kitty Jerry	Kitty Jerry	Producer
2002	EROShambo	Frank Garvey	Soundscape

2002	The Best Smooth Jazz Ever [GRP/Universal]		Producer
2002	The Osbourne Family Album		Producer
2001	Gold Collection [Retro Music]	Sarah Vaughan	Production Consultant
2001	House of the Deafman	DeusMachina	Soundscape, Voices
2001	Jazzy Christmas [Vertical Jazz]		Producer
2001	Out the Box	Bill Gordon	Liner Notes, Producer
2001	Talia	Talia	Producer
2001	The Early Years: If I Could Reach Rainbows	David Benoit	Producer
2000	Great Composers of Jazz	David Benoit	Producer
2000	Jazz Relaxante	Bob Conti	Producer
2000	Jazz Straight Up	Leon "Ndugu" Chancler	Producer
2000	Jazz on Broadway	Joe La Barbera	Producer
2000	Journey into the Land of Meditation	Christina Drozda	Remixing
2000	Late Night Jazz	Pete Christlieb	Producer
2000	The Gold Collection: Sings the Poetry of Pope John Paul II	Sarah Vaughan	Production Consultant
1999	Beautiful One	Holly Robinson	Producer, Vocals (Background)
1999	Sugar Cane	Rafael Aragon	Mixing, Producer
1999	Time Traveler: Three Decade Journey	Tim Weisberg	Producer
1998	Crossroads	Jeff Berlin	Choir/Chorus, Producer
1998	Love Songs	Jennifer Love Hewitt	Arranger, Producer

1998	Pump It!	Jeff Berlin	Producer, Vocals (Background)
1998	Some Other Sunset	David Benoit	Producer
1997	In a Metal Mood: No More Mr. Nice Guy	Pat Boone	Producer
1997	Jazz Profile	McCoy Tyner	Producer
1997	Other People's Houses	David Redman	Producer
1997	The Very Best of Diane Schuur	Diane Schuur	Producer
1996	In Harmony with the Homeless		Producer
1996	MDMS System Conditioning Disc		Producer
1996	Sheffield Jazz Experience		Producer
1996	The Sheffield Pop Experience		Producer
1996	To: 87	David Benoit	Producer
1995	Lifting the Spirit		Producer
1995	Road to Joy	Freeway Philharmonic	Producer
1995	Seeing for the Very First Time	Barbara Weathers	Cover Art Concept, Producer
1995	Sonic Detour	Freeway Philharmonic	Liner Notes, Producer
1995	The Best of David Benoit 1987-1995	David Benoit	Producer
1994	Acoustic Jazz		Producer
1994	Jazz Live		Producer
1994	Naked Eyes	Tim Weisberg	Percussion, Producer
1994	The Beauty of Broadway	Dale Kristien	Producer

1994	What They Don't Tell You	Rain-Bo Tribe	Producer
1993	Laughing Medusa Theme Series, Vol. 1	Emergence	Engineer, Mixing, Producer
1993	Magical Duos		Producer
1993	Passion	Rafael Aragon	Producer
1993	We're All in This Together		Producer
1992	Fascinating Jazz	Jim DeJulio	Producer
1992	Heavy Hitter	Joe Hackney	Producer
1992	High Heels	Pat Kelley	Producer
1992	KIFM - Jazz San Diego Style, Vol. 3		Producer
1992	Letter to Evan	David Benoit	Producer
1992	Love Lives On	Kenia	Producer
1992	Reruns	Grant Geissman	Producer
1992	Up-Front	The Power of Seven	Producer
1991	Nelson Kole	Nelson Kole	Producer
1991	The Paper and the Dog	Uncle Festive	Production Consultant
1991	The Usual Suspects	Usual Suspects	Cover Design, Liner Notes, Producer
1990	GRP New Magic Digital Sampler, Vol. 3		Producer
1990	La Cocina Caliente	Luis Conte	Producer
1990	Soldiers on the Moon	David Lasley	Producer
1990	This Is Me	Emily Remler	Percussion, Producer
1990	WNUA 95.5: Smooth Sounds, Vol. 3		Producer

1990	What You're Looking For	Kenia	Producer
1989	Aurora	Aurora	Producer
1989	Collection	Diane Schuur	Producer
1989	Flying	The Ritz	Percussion, Producer, Vocals
1989	GRP Presents KBLX: The Quiet Storm - Soft and Warm		Producer
1989	KIFM: Smooth Sounds of San Diego, Vol. 1		Producer
1989	Movin' Up	The Ritz	Producer
1989	That We Do Know	Uncle Festive	Producer
1989	Waiting for Spring	David Benoit	Producer
1988	Denon Jazz Sampler, Vol. 3		Producer
1988	Do It Again	Toni Tennille	Producer
1988	KBLX - The Quiet Storm		Producer
1988	The Flight	Perri	Producer
1988	The Ritz	The Ritz	Producer
1988	The Spirit of Christmas	The Ritz	Producer
1988	Up Late	Jeff Linsky	Producer
1988	WNUA 95.5: Smooth Sounds, Vol. 2		Producer
1987	Diane Schuur & the Count Basie Orchestra	Diane Schuur	Producer
1987	Every Step of the Way	David Benoit	Producer
1987	Freedom at Midnight	David Benoit	Producer
1987	Intensive Care	Paul Smith	Producer

1987	Say Uncle	Uncle Festive	Producer
1987	Young People with Faces	Uncle Festive	Producer
1986	The Cool Side of Yuletide	Joe Hackney	Producer
1986	This Side Up	David Benoit	Concept, Producer
1985	It's About Time	Jackie McLean	Producer
1985	Venusian Fantasy	Joe Hackney	Producer
1984	More than You Know	Toni Tennille	Digital Editing, Producer
1984	Odyssey	Sid Page	Engineer, Producer
1983	100 Hearts	Michel Petrucciani	Producer
1983	Digital Big Band Bash!		Producer
1983	Live from San Francisco	Maynard Ferguson	Producer
1983	Target	Tom Scott	Producer
1982	Desire	Tom Scott	Audio Production, Digital Editing, Producer
1982	Night Plane	Night Plane	Composer, Producer
1982	Portrait of an Artist	Joe Albany	Audio Production
1982	Ride Like the Wind	Freddie Hubbard	Producer
1982	Storm	Maynard Ferguson	Producer
1980	Heritage	Kenny Burrell	Digital Editing, Director, Producer
1979	The Tip of the Weisberg	Tim Weisberg	Flute, Producer
1978	Black Forest	Luis Conte	Producer, Voices
1977	Discovered Again	Dave Grusin	Production Assistant
1977	Gentle Thoughts	Lee Ritenour	Liner Notes

1977	Sugar Loaf Express Featuring Lee Ritenour	Sugar Loaf Express	Liner Notes
1976	Comin' from a Good Place	Harry James	Production Assistant
1976	The King James Version	Harry James & His Orchestra	Production Assistant

Websites:

<http://www.studioexpresso.com/profiles/jeffweber.htm>

<https://www.uclaextension.edu/pages/instructorbio.aspx?instid=3661>

<http://moody.utexas.edu/sites/communication.utexas.edu/files/attachments/utla/Music%2013.pdf>

<https://www.linkedin.com/in/jeffreyweber>

<http://www.allmusic.com/artist/jeffrey-weber-mn0000317319/credits>

Re: Expert Testimony on (i) Community Establishment; (ii) Nexus; and (iii) Support for DotMusic’s Community-Based Application¹ for .MUSIC (Application ID 1-1115-14110)

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

Please accept this letter to verify the following facts: (i) the Music Community’s *Establishment* as defined by DotMusic; (2) the matching *Nexus* between the “music” Community and the “music” string (or top-level domain); and (3) that DotMusic possesses documented *Support* from organizations representing a majority of the global Music Community addressed and defined.

Please see my credentials attached hereto that identify my level of expertise and specialized knowledge with respect to music.

SUMMARY

Based upon my knowledge of music, the music community and DotMusic’s public statements concerning their .MUSIC community application, DotMusic has established the following facts:

- 1) Its Community definition recognizes the cohesive, symbiotic and overlapping nature of the global Music Community. The definition includes those associated with commercial and non-commercial creation, performance, marketing and distribution of music;
- 2) “Music Community” members have the requisite awareness and recognition of the interdependency, overlapping and cohesive nature of each “organized community of similar nature that relates to music.” These organized and aligned communities are closely united and make “music” as we know it today. It is this self-awareness and interdependence that gives the “Music Community” its strength. With exponential growth of the Internet, mobile and the Domain Name System (DNS), the “Music Community’s” use and reliance on the Internet to create, market and disseminate music-related content, products, services and activities will continue to grow;
- 3) The “Music Community” functions in a regulated sector with global copyright protections – it is clear that the “community,” as defined, implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate a globally-recognized set of standards for

¹ <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1392>

the protection of the “Music Community” member rights with relation to their copyrighted music works around the world;

4) The “Music” Community -- as defined by DotMusic -- has at least one entity dedicated to the community supporting DotMusic’s application. Such documented *Support* includes several “international federation of national communities of a similar nature,” music coalitions and others that are strongly associated with “music,” which represent a majority of the Community with considerable millions of members worldwide.²

5) The *Nexus* of the “music” Community matches the “music” applied-for string because it represents the entire global Music Community – a community that pre-existed 2007 with a size in the considerable millions of constituents. The “Music Community” definition -- which incorporates the strict fundamental attributes of a closely united Community definition that is “organized” and “delineated” -- ensures that all of its constituent members have a requisite awareness of the community as defined, including both commercial and non-commercial stakeholders, to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination.

6) DotMusic has received support from the largest coalition of Music Community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community. Cumulatively, DotMusic possesses documented support³ from institutions/organizations representing a majority of the defined and recognized Community.

There is substantive evidence that DotMusic fulfills the *Nexus, Community Establishment and Support* criteria for the “Music” string. The inclusion and representation of every music constituent type is paramount to the articulated purpose of the string. DotMusic and its application’s global Music Community supporters substantiate that every type of music constituent contributes to the function and operation of the music sector within a regulated framework. The symbiotic nature of the Community as defined and structured means that “Music” would not function as it does today without the participation of all music constituent types that interconnect to match the “music” string with the “music” Community definition.

² <http://music.us/supporters>

³ <http://music.us/supporters>

ASSESSMENT OF COMMUNITY DEFINITION, ESTABLISHMENT AND NEXUS

A) *Music Community Definition, Establishment & Community Endorsement*⁴

DotMusic’s definition of the “Music Community” as a “strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music” (See Application, 20a) is factually accurate and representative of the “Music Community.” Community characteristics include:

i) An Organized, Cohesive, Interdependent Logically-Allied Community:

The “Music Community” definition covers the regulated, interdependent and cohesive nature of the music sector that exists today. “Music Community” members have the requisite awareness and recognition of the interdependent, overlapping and cohesive nature of each “organized community of similar nature that relates to music” that comprises the “Music Community.” Without such cohesiveness and interdependency, the defined “Music” Community matching the applied-for string (“Music”) would not be able to function in its regulated sector, a “Music” regulated sector that was publicly recognized by both ICANN and the Government Advisory Committee.⁵

As a result, the Music Community as defined is “closely united” (As per the definition of “cohesion” according to Merriam-Webster dictionary⁶) or “united or form a whole” (As per the definition of the word “cohesion” according to Oxford Dictionaries⁷).

The “Music Community” as defined (a “strictly delineated and organized community of individuals, organizations and business, a logical alliance of communities of similar nature that relate to music”) establishes that:

- (1) There is an awareness and recognition among its members;
- (2) The organized and delineated logical alliance of communities exists; and
- (3) The Community is “closely united” and “interdependent” (i.e. Each “organized community of similar nature that relates to music” which is part of the “logical alliance of communities that relate to music” is not mutually exclusive).

In short, the applied-for string (“Music”) matches the name of the “Music” Community as defined by DotMusic’s application. DotMusic’s “Music Community” definition accurately represents the common definition of the “Music Community,” which is confirmed by Wikipedia.

⁴ See <http://music.us/establishment>

⁵ <https://www.icann.org/en/system/files/bm/briefing-materials-2-05feb14-en.pdf>, Pg.3

⁶ <http://www.merriam-webster.com/dictionary/cohesion>

⁷ http://www.oxforddictionaries.com/us/definition/american_english/cohesion

According to Wikipedia:⁸

Music community is defined as a logical alliance of interdependent communities that are related to music, which include commercial participants...and non-commercial participants...and consists of an “ensemble of practices and institutions that make possible and regulate the production, distribution and consumption of music”...UNESCO identifies the music community as a “community of identity” implying common identifiable characteristics and cohesive attributes such as sharing a music culture, norms and subscribing to common ideals related to music...The music community is not defined as much by demographic indicators such as race, gender, and income level, as it is by common values, cohesive norms and interconnected structures to build a community identity. It refers to music-related individuals and organisations in a shared environment with shared understandings and practices, modes of production and distribution. The shared organisation of collective musical activities, identity and community value is created as result of infrastructure and a shared set of common values...Many studies outline the historical, cultural, and spatial significance of the music community, including how its identity is formed through musical practices. The music community shares a cohesive and interconnected structure of artistic expression, with diverse subcultures and socio-economic interactions...subscribing to common ideals. Under such structured context music consumption becomes possible regardless whether the transaction is commercial and non-commercial.⁹

ii) *An Aware, Pre-Existing and Recognized Community of Considerable Millions Worldwide:*

DotMusic’s definition of the Community covers all Community members associated with the string, each with a requisite awareness of the Community that can be validated through their natural association with a particular music-related community that they clearly identify with. According to DotMusic, all Music Community members must identify their music-related community in order to demonstrate their requisite awareness of the defined Community as part of the .MUSIC registration and validation process.

⁸ Wikipedia is ranked 6th among the ten most popular websites (Alexa, Retrieved March 23, 2015 from <http://www.alexacom/siteinfo/wikipedia.org>) and constitutes the Internet's largest, most frequently updated and popular general reference work (See OECD, OECD Internet Economy Outlook 2012, OECD Publishing, http://www.oecd-ilibrary.org/science-and-technology/oecd-internet-economy-outlook-2012_9789264086463-en,Pg.172) that compares favorably to the accuracy of other encyclopedias (such as the Britannica) according to a 2012 study conducted in partnership with Oxford University (See <http://blog.wikimedia.org/2012/08/02/seven-years-after-nature-pilot-study-compares-wikipedia-favorably-to-other-encyclopedias-in-three-languages>).

⁹ Music Community. In *Wikipedia*. Retrieved March 23, 2015, from https://en.wikipedia.org/wiki/Music_community

According to DotMusic, the Music Community’s geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents (Application Answer to Question 20a).

According to DotMusic, “registrants will be verified using Community-organized, unified “criteria taken from holistic perspective with due regard of Community particularities” that “invoke a formal membership (Application Answer to Question 20a).” The defined Community represents all music-related entities with a clear and straightforward membership with the Community involved in the legal production, performance, promotion, and distribution of music worldwide. According to DotMusic, the Music Community members must have an active, non-tangential relationship with the applied-for string “music” and also have the requisite awareness of the music-related community that they are a part of by specifically identifying it as part of the registration and validation process (i.e. upon successful registration and validation, each community member will be given a unique community identification number that will automatically associate them with their identified community and the “music” string).

DotMusic’s Community definition matches the applied-for string because it allows both commercial and non-commercial stakeholders to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination/exclusion. Given the regulated sector of the community, it is clear that the “Music Community” as defined implies “more of cohesion than a mere commonality of interest” with an “awareness and recognition of a community among its members.” Several international treaties mandate cohesive and globally-recognized set of standards for the protection of the music community members’ rights with relation to their copyrighted music works around the world.¹⁰

The Berne Convention for the Protection of Literary and Artistic Works¹¹ provides that each of the 168 contracting parties¹² (representing an overwhelming majority of the world’s population) provides automatic protection for music works first published in other countries of the Berne union and for unpublished music works whose authors are citizens of or resident in such other countries.¹³ This means that if a Music Community member’s copyright rights are violated in any other signatory country’s jurisdiction, then the music community member will have the music copyright rights given by that country. Music Community members are clearly aware of the collective Community’s rights, which could not be made possible without these cohesive and globally-recognized set of standards. If such standards were not coherent or enforced then music would not be able to exist in its current form and the industry component of the Music Community sector would not exist. As such, the Community’s *Establishment* and definition is “cohesive” and hence cannot be construed since the Community is a logical alliance of music

¹⁰ http://www.rightsdirect.com/content/rd/en/toolbar/copyright_education/International_Copyright_Basics.html

¹¹ http://www.wipo.int/treaties/en/text.jsp?file_id=283698

¹² http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=15

¹³ <http://www.britannica.com/EBchecked/topic/62482/Berne-Convention>

communities that establish a clearly delineated and organized Community structure that is “closely united” and functions as a “whole”

Further evidence to substantiate the cohesive, symbiotic and overlapping nature of the Community, includes other globally-recognized standards and classification systems, which identify who the individual songwriters, publishers and rights holders are and which songs they are associated with so that Community members are appropriately compensated, regardless of whether the constituent is a commercial, non-commercial or amateur entity. The “music” string is commonly used in classification systems such as ISMN,¹⁴ ISRC,¹⁵ ISWC,¹⁶ ISNI.¹⁷ (Application Answer to Question 20a). For example, if a music entity would like to distribute their music, either commercially or for free, then an ISRC can be assigned to globally identify any specific music work. An ISRC, which facilitates efficient music discovery and community member payment, is constructed from 12 characters representing country, registrant, year of registration and designation (i.e. the serial number assigned by the registrant). With respect to domains, an equivalent system that relates to identifying a specific domain’s registrant and other relevant information pertaining to the domain is WHOIS. Domain registrants are required by ICANN “to provide accurate WHOIS contact data” or else their domain “registration may be suspended or even cancelled”.¹⁸

Without such Music Community “cohesion” and standardized systems functioning in its regulated sector, the Music Community would not be able to create, market and distribute their music. By the same token, fans would not be able to identify the music they are listening to with a specific music artist, regardless of whether the listening activity or behavior is commercial or non-commercial in nature. The socio-economic structure that characterizes “music” as commonly-known today would be non-existent without these organized and delineated elements that commonly define the Community.

¹⁴ The International Standard Music Number (ISMN) is a unique number for the identification of all notated music publications from all over the world. The ISMN is an ISO certified global standard number (ISO 10957:2009). See <http://www.ismn-international.org/whatis.html> and

http://www.iso.org/iso/home/store/catalogue_ics/catalogue_detail_ics.htm?csnumber=43173

¹⁵ The ISRC (International Standard Recording Code) is the international identification system for sound recordings and music video recordings. The ISRC is an ISO certified global standard number (ISO 3901:2001) and is managed by the IFPI. See <http://isrc.ifpi.org>, <https://www.usisrc.org/about/index.html> and http://www.iso.org/iso/catalogue_detail?csnumber=23401

¹⁶ The ISWC (International Standard Musical Work Code) is a unique, permanent and internationally recognized reference number for the identification of musical works. The ISWC has been approved by ISO (International Organization for Standardisation) as a global standard (ISO 15707:2001) and is managed by CISAC. See <http://www.iswc.org/en/faq.html> and http://www.iso.org/iso/catalogue_detail?csnumber=28780

¹⁷ The International Standard Name Identifier (ISNI) is the ISO certified global standard number (ISO 27729) for identifying the millions of contributors to creative works and those active in their distribution. ISNI holds public records of over 8 million identities and 490,000 organizations. See <http://www.isni.org/> and http://www.iso.org/iso/catalogue_detail?csnumber=44292

¹⁸ <https://whois.icann.org/en/about-whois> and <https://www.icann.org/resources/pages/faqs-f0-2012-02-25-en>

iii) International Federations and Organizations Dedicated to Community Functions:

According to ICANN’s Applicant Guidebook (“AGB”)¹⁹: *“With respect to “Delineation” and “Extension,” it should be noted that a community can consist of...a logical alliance of communities (for example, an international federation of national communities of a similar nature... viable as such, provided the requisite awareness and recognition of the community is at hand among the members.”* (AGB, 4-12). The community as defined in the DotMusic application has at least one entity mainly dedicated to the community which has supported DotMusic, which include several “international federation of national communities of a similar nature” relating to music, music coalitions and other relevant and non-negligible music organizations.

One of these entities include the only international federation of national communities relating to government culture agencies and arts councils, which has an integral association with music globally: the International Federation of Arts Councils and Culture Agencies (IFACCA).

IFACCA is the only international federation that represents government culture agencies and arts councils globally. These national communities are governmental institutions that play a pivotal role with respect to music.²⁰ IFACCA’s members cover the majority of music entities globally, regardless of whether they are commercial, non-commercial or amateurs. Government ministry of culture and council agencies related to music cover a majority of the overall community with respect to headcount and geographic reach. The “Size” covered reaches over a hundred million music entities i.e. “considerable size with millions of constituents” per Application Answer to Question 20a.

The string “music” falls under the jurisdiction of each country’s Ministry of Culture governmental agency or arts/music council (emphasis added). The degree of power and influence of government ministry of culture and council agencies with respect to music surpasses any organization type since these agencies (i) provide the majority of funding for music-related activities; (ii) regulate copyright law; and (iii) encompass all the music entities that fall under their country, regardless whether these entities are commercial, non-commercial or amateurs. IFACCA is globally recognized by its strategic partners, such as UNESCO, a United Nations agency representing 195 member states and the European Commission.²¹ The UNESCO strategic partnership²² is relevant, especially since UNESCO founded the International Music Council (the “IMC”) in 1949, which represents over 200 million music constituents from over 150 countries and over 1000 organizations globally.²³

¹⁹ <https://newgtlds.icann.org/en/applicants/agb/guidebook-full-11jan12-en.pdf>

²⁰ http://www.ifacca.org/membership/current_members/

²¹ http://www.ifacca.org/strategic_partners/

²² http://www.ifacca.org/strategic_partners/

²³ <http://www.imc-cim.org/about-imc-separator/who-we-are.html>

Government activities in the clearly delineated and organized “Music Community” include setting statutory royalty rates. For example, in the United States, mechanical royalties are based on a “statutory rate” set by the U.S. Congress. This rate is increased to follow changes in the economy, usually based on the Consumer Price Index. Currently, the mechanical statutory rate is \$0.091 for songs five minutes or less in length or \$.0175 per minute for songs that are over five minutes long.²⁴

Ministries of culture and arts councils (that comprise IFACCA’s membership) support musicians, musical performances, independent music artists, non-commercial musical expression and education in their respective countries. The 165 ministries of culture, arts councils and affiliates that comprise IFACCA’s membership support the “performing arts” and music specifically. Without the financial and logistical support of arts councils and the ministries of culture, the music community would be adversely affected, and in some countries, may not exist in any appreciable manner. For example, the Ministry of Culture 2011 budget for the small country state of Cyprus for culture funding was €34,876,522 with critical support of music activities.²⁵ Other small government Ministries of Culture, such as Albania,²⁶ or government Ministries of Culture and Arts Councils from countries with larger populations, such as India,²⁷ all provide critical support and substantial advocacy for music. Other examples include government institutions collaborating and advocating music through their funded country-based pavilion initiatives at Midem, the world’s largest music conference.²⁸

Government ministries and arts councils provide critical support for the Music Community, including commercial music organizations. By way of example, government ministries’ and arts councils’ substantial connection to and support of “music” is noted in the reports of funding and support for music. Some examples to showcase the degree of power of the IFACCA’s membership towards the string and global and national music are music investment and music funding (Annual reports by governments and councils):

- New Zealand Ministry of Culture has funded significant music projects. Some include the REAL New Zealand Music Tour (\$415,000), the New Zealand String Quartet (\$150,000) and New Zealand Music Commission: (\$1,378,000).²⁹
- The Australian Government/Council For The Arts invested \$51.2 million for the nation’s orchestras; \$21.6 million for opera; \$10.8 million for other music artists and

²⁴ U.S. Copyright Office, <http://www.copyright.gov/carp/m200a.html>

²⁵ 2011 Annual Report for Cyprus Ministry of Culture, Section 1.2 “Music”

(http://www.moec.gov.cy/en/annual_reports/annual_report_2011_en.pdf). Activities include Music Performances in Cyprus (1.2.1) and Abroad (1.2.2), Subsidization of Paphos Aphrodite Festival (1.2.3), Music Publications (1.2.4), Subsidization and Purchases of Digital Records (1.2.5), Promotion for Cypriot musical creativity abroad (1.2.6), Cyprus Symphony Orchestra Foundation (1.2.7), Music Information Centre (1.2.8), Developing Music Education (1.2.9), Organising of the 1st Musicological Symposium (1.2.10) and Musical Festivities for the European Volunteerism Year (1.2.11)

²⁶ http://www.culturalpolicies.net/down/albania_012011.pdf

²⁷ 2010-11 Annual Report from India Ministry of Culture, [http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011\(Eng\).pdf](http://www.indiaculture.nic.in/hindi/pdf/Culture-AnRe-2010-2011(Eng).pdf)

²⁸ <http://my.midem.com/en/contact-us/pavilion-representatives/>

²⁹ 2011 Annual Report from New Zealand Ministry of Culture:

[http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20\(D-0448383\).PDF](http://www.mch.govt.nz/files/Annual%20report%202011%202012%20pdf%20version%20(D-0448383).PDF)

organizations; \$13.1 million for multi-platform artists and organizations; and \$4 million in miscellaneous funding, including sector building and audience development initiatives and programs.³⁰

- Canada Council for the Arts is Canada’s national, arts funding agency investing \$28 million in its Canada Council Musical Instrument Bank (Page 16) and \$28,156,000 in Music Arts Programs (Page 66).³¹ The Government of Canada also renewed its annual investment of \$27.6 million over five years in the Canada Music Fund.³²
- The United Kingdom Department for Culture and Education (DfE) will fund music education at significant levels: £77 million, £65 million and £60 million will be available in the three years from April 2012.³³
- The United States National Endowment of the Arts has awarded more than \$4 billion to support the arts since its inception³⁴ and has a strong focus on music as outlined in its Strategic Plan³⁵ with Congress requested to provide \$154,465,000 for fiscal year 2014.³⁶
- The National Arts Council of South Africa invested 2,536,131 ZAR in Music and 9,995,000 ZAR in Orchestras and has focused strongly on the “Strengthening of live indigenous music and advocating the revival of the live music circuit in South Africa”³⁷
- The Singapore Arts Council will fund \$10.2 million in the arts under its 2013 Grants Framework, including the Ding Yi Music Company and Siong Leng Musical Association.³⁸
- In 2011, the support for artistic activities by the Arts Council of Finland was €32.4 million of which €4,921,850 was awarded to music.³⁹

Each of IFACCA’s members has a clear association with, and mandate to support the music arts in their countries. In most countries, their ministry of culture/arts council is the largest funder and marketing supporter of the music arts.

³⁰ 2011 Annual Report for the Australia Council for the Arts, http://www.australiacouncil.gov.au/data/assets/pdf_file/0016/142351/Australia-Council-Annual-Report-201112.pdf, Page 28

³¹ 2011 Annual Report for Canada Council for the Arts, http://www.canadacouncil.ca/NR/rdoonlyres/6F7549BB-F4E5-4B8B-95F4-1FF9FAFB9186/0/CanadaCouncilAnnualReport2012_COMPLETE.pdf

³² <http://www.pch.gc.ca/eng/1294862453819/1294862453821>

³³ Department for Culture, The Importance of Music, A National Plan for Music Education, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/180973/DFE-00086-2011.pdf, Page 4, 2011

³⁴ 2011 Annual report for the National Endowment of the Arts, <http://www.nea.gov/about/11Annual/2011-NEA-Annual-Report.pdf>, Page 2

³⁵ NEA Strategic Plan 2012-2016, www.arts.gov/about/Budget/NEAStrategicPlan2012-2016.pdf

³⁶ http://www.ifacca.org/national_agency_news/2013/04/10/us-president-requests-154465000-neh-2014/

³⁷ 2010-2011 Annual Report for the National Arts Council South Africa, National Arts Council South Africa, <http://www.nac.org.za/media/publications/AR%2010-11%20NAC.PDF/download>, Page 11. Also Mmino, the South African – Norwegian Education Music Programme, solely funds music projects funding a total of 294 projects. Thirteen projects were allocated funding for a total of R1,680,600 of which R1,381,000 went towards music educational and R299,600 to exchange projects (Page 10)

³⁸ Singapore Arts Council, <http://www.nac.gov.sg/media-centre/news-releases/news-detail?id=c2db15e2-c319-40ec-939c-d58735d0a91c>

³⁹ <http://www.taiteenkeskustoimikunta.fi/documents/10162/31704/TY+tilastotiedote+1+12+.pdf>, Page 1 and Page

Another clear example of an “entity dedicated to the community” with members that cover hundreds of millions of music constituents with formal boundaries is A2IM, the American Association of Independent Music. A2IM has two types of members: U.S independent Label members and Associate members. A2IM membership for Labels and Associates is invoked formally through an application and if accepted would require annual membership dues.⁴⁰

The reach of A2IM Associate⁴¹ membership covers hundreds of millions of entities (i.e. the reach of A2IM’s total membership “geographic breadth is inclusive of all recognized territories covering regions associated with ISO-3166 codes and 193 United Nations countries with a Community of considerable size with millions of constituents – See Application Answer to Question 20a).

Organized and strictly delineated communities related to music that are A2IM members include:

- **Apple iTunes**⁴² – iTunes accounts for 63% of global digital music market⁴³ - a majority – with a registered community of 800 million registered members⁴⁴ available in 119 countries who abide to strict terms of service and boundaries⁴⁵ and have downloaded over 25 billion songs⁴⁶ from iTunes’ catalog of over 43 million songs⁴⁷ covering a global music community, regardless of genre or whether the community entities are amateur, professional, commercial or non-commercial. To add music to iTunes, all music artists must have a formal membership with iTunes via an Apple ID registration, which includes a current credit card on file.⁴⁸
- **Pandora**⁴⁹ – Pandora is the world’s largest streaming music radio with a community of over 250 million registered members.⁵⁰
- **Spotify**⁵¹ – Spotify is the world’s largest music streaming community with over 50 million active registered members in 58 countries and over 30 million songs. The music community uploads 20,000 songs every day.⁵²
- **Vevo**⁵³ – Vevo is the world’s leading all-premium music video community and platform with over 8 billion monthly views globally.⁵⁴

⁴⁰ <http://a2im.org/about-joining/>

⁴¹ <http://a2im.org/groups/tag/associate+members/>

⁴² <http://a2im.org/groups/itunes>

⁴³ <http://appleinsider.com/articles/13/04/16/apples-itunes-rules-digital-music-market-with-63-share>

⁴⁴ <http://www.npr.org/blogs/therecord/2015/01/06/375173595/with-downloads-in-decline-can-itunes-adapt>

⁴⁵ <http://www.apple.com/legal/internet-services/itunes/ww/index.html>

⁴⁶ <http://www.apple.com/pr/library/2013/02/06iTunes-Store-Sets-New-Record-with-25-Billion-Songs-Sold.html>

⁴⁷ <https://www.apple.com/itunes/features/>

⁴⁸ <https://www.apple.com/itunes/working-itunes/sell-content/music-faq.html>

⁴⁹ <http://a2im.org/groups/pandora>

⁵⁰ <http://www.cnet.com/news/like-a-rolling-milestone-pandora-hits-250m-registered-users/> and <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MTkxNTM1fENoaWxkSUQ9LTF8VHlwZT0z&t=1>, Pg.9

⁵¹ <http://a2im.org/groups/spotify>

⁵² <https://press.spotify.com/us/information/>

⁵³ <http://a2im.org/groups/vevo/>

- **Youtube**⁵⁵ – Youtube is the world’s largest music video streaming community with millions of music creators -- amateur, professional, commercial or non-commercial -- and over 1 billion registered members covering all regions globally. 6 billion hours of video is watched every month on Youtube,⁵⁶ of which 38.4% is music-related.⁵⁷
- **Reverbnation**⁵⁸ – Reverbnation⁵⁹ is one of the world’s largest music community and a leading music distributor with over 3.87 million musicians, venues labels and industry professionals covering every country globally. The Reverbnation community grows by over 50,000 artists, bands, labels and industry professionals monthly.
- **BMG**⁶⁰ – BMG is focused on the management of music publishing and recording rights. BMG has an international presence and represents over 2.5 million music rights globally.⁶¹

A2IM also includes members that are associated with global government agencies which exclusively represent substantial music economies and music members, such as France (BureauExport⁶²), China (China Audio Video Association⁶³) and Germany (Initiative Musik).⁶⁴ A2IM also has Affiliate⁶⁵ associations within the global music community. These include Affiliates such as MusicFirst,⁶⁶ the Copyright Alliance,⁶⁷ the Worldwide Independent Network (WIN)⁶⁸ and Merlin.⁶⁹

A2IM also represents a recognized Music Coalition representing the interests of the Global Independent Music Community.⁷⁰ The A2IM Coalition includes Merlin, a global rights agency for the independent label sector, representing over 20,000 labels from 39 countries, Worldwide Independent Network (representing label creators in over 20 countries), Association of Independent Music (representing largest and most respected labels in the world), and IMPALA (Independent Music Companies Association on behalf of over 4,000 independent music companies and national associations across Europe, representing 99% of music actors in Europe which are micro, small and medium sized enterprises.

⁵⁴ <http://www.vevo.com/c/EN/US/about>

⁵⁵ <http://a2im.org/groups/youtube/>

⁵⁶ <https://www.youtube.com/yt/press/statistics.html>

⁵⁷ http://www.researchandmarkets.com/reports/2092499/internet_video_2011_2014_view_share_site_and

⁵⁸ <http://a2im.org/groups/reverb-nation/>

⁵⁹ <http://www.reverbnation.com/about>

⁶⁰ <http://a2im.org/groups/bmg-rights/>

⁶¹ <http://www.bmg.com/category/about-us/history/>

⁶² <http://a2im.org/groups/french-music-export-office>

⁶³ <http://a2im.org/groups/china-audio-video-association-cava>

⁶⁴ <http://a2im.org/groups/initiative-musik-gmbh>

⁶⁵ <http://a2im.org/groups/tag/associate+members/>

⁶⁶ <http://musicfirstcoalition.org/coalition>, The musicFIRST Coalition, with founding members A2IM, RIAA, and Recording Academy represents musicians, artists, managers, music businesses, and performance right advocates.

⁶⁷ <http://www.copyrightalliance.org/members>

⁶⁸ <http://www.winformusic.org>

⁶⁹ <http://www.merlinnetwork.org>

⁷⁰ <https://www.icann.org/en/system/files/correspondence/bengloff-to-chehade-et-al-20aug14-en.pdf> and <https://www.icann.org/en/system/files/correspondence/bengloff-to-crocker-et-al-07mar15-en.pdf>

Cumulatively, A2IM's Label and Associate Membership, A2IM's Affiliates and the A2IM's Global Independent Music Community Coalition, covers a majority of the global music community. Its cumulative membership is in the hundreds of millions of entities with formal boundaries belonging to strictly organized and delineated communities related to music as per the Community Definition and Size (See Application answer to Question 20a).

Another global Music Community Coalition led by the RIAA "on behalf of over 15 national and international trade associations" also expressed its support for .MUSIC to be under a "community" application model, including encouraging statements in support of DotMusic's policies that stated that the coalition "was encouraged to see" that DotMusic "included several measures to deter and address copyright infringement within that TLD." The "coalition members represent the people that write, sing, record, manufacture, distribute and/or license over 80% of the world's music"⁷¹ – a majority of global music.⁷²

Collectively, the DotMusic application received support from the largest coalition of music community member organizations ever assembled to support a cause. Such unparalleled global Music Community support represents an overwhelming majority of the global Music Community. Cumulatively, DotMusic possesses documented support⁷³ from institutions/organizations representing a majority of the Community addressed. Music -- as commonly-known by the general public and experienced today -- would not be possible without these supporting, non-negligible and relevant organizations that have endorsed DotMusic.

In conclusion, there is substantive evidence that DotMusic entirely fulfills the criteria for *Community Establishment* and *Community Endorsement* from the majority of the global Music Community as defined.

B) Nexus⁷⁴

According to the Applicant Guidebook ("AGB"), to receive the maximum score for Nexus, the applied-for string -- "music" -- must match the name of the community or be a well-known short-form or abbreviation of the community name.

The *Nexus* of the "Music Community" entirely matches the applied-for "music" string because it represents the entire global Music Community as commonly-known and perceived by the general public. This definition allows for all constituents with a requisite awareness of the Community

⁷¹ <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.1

⁷² <https://www.icann.org/en/system/files/correspondence/riaa-to-icann-05mar15-en.pdf>, Pg.3, Appendix A

⁷³ <http://music.us/supporters>

⁷⁴ See <http://music.us/nexus>

defined to register a .MUSIC domain without any conflicts of interests, over-reaching or discrimination. The definition of the Community requires that members have an active, non-tangential relationship with the applied-for string and the requisite awareness of the music community they identify with as part of the registration process. It is clear that the general public will directly associate and equate the string with the Community as defined by DotMusic. There is no possibility of overreaching beyond the definition or allowing unrelated non-music entities to be included as part of the Community.

Community members may register a .MUSIC by either:

- 1) Identifying that they belong to a Music Community Member Organization (“MCMO”); or
- 2) Identifying the community they belong to, which is consistent with the definition of the Community: “the strictly delineated and organized logical alliance of communities of similar nature related to music.”

All Community members are aware of and recognize their inclusion in the defined Community by identifying which clearly defined community they belong to and have an active participation in. The *nexus* of the applied-for string ensures inclusion of the entire global community that the string represents while excluding unrelated-entities not associated with the string. This way there is a clear match and alignment between the “music” string and the Community defined.

While the exact size of the global Music Community as defined is unknown (there is no empirical evidence providing an exact, finite number because amateur entities are also included in the Community’s definition), it is in the considerable millions as explicitly stated in the DotMusic Application. DotMusic’s definition of the Community and mutually-inclusive Registration Policies ensure that eligible members are only music-related and associated with the string. This is because the string identifies all constituents involved in music. Music-only participation optimizes the relevancy of .MUSIC domains to the string and entirely matches the *nexus* between the string and Community defined. According to DotMusic, the Community *definition, eligibility criteria and content and use* requirements ensure that peripheral industries and entities not related to music are excluded so that the string and the defined Community matches and aligns in a consistent manner consistent with DotMusic’s community-based purpose i.e. only entities with music-related activities are able to register .MUSIC domains.

Membership aligns with the *nexus* of the Community and the string, which is explicitly relevant to music. The string as defined in the application demonstrates uniqueness because it has no other significant meaning beyond identifying the community described in the application. According to DotMusic’s application, any tangential or implicit association with the *nexus* of the Community and the string is not regarded as a delineated membership since it would be considered unclear, dispersed or unbound. Such unclear, dispersed or unbound tangential

relationships with the defined “music” Community and applied-for “music” string would not constitute a qualifying Community membership and would be ineligible for registration.

The inclusion of every music constituent type is paramount to the purpose of the string. Every type of music constituent critically contributes to the function and operation of the music sector within a regulated framework given the symbiotic overlapping nature of the Community as defined and structured. Music would not function as it does today without the participation of all music constituent types which cumulatively match the string with the Community definition.

In conclusion, there is substantive evidence that DotMusic entirely fulfills the criteria for *Nexus*.

Respectfully Submitted,

Stella Black, MM

Signature: Contact Information Redacted Apr 3 '15 ip: 99.127.186.10

Name: Stella Black, MM

Title: Composer/Opera Singer

Organization: VMD Group Enterprises, Owner

Date: April 3, 2015

About Stella Black, MM

Degrees & Studies:

Bachelor of Music Degree - Vocal Performance and Composition

Bachelor of Psychology Degree

Masters Degree of Music - Vocal Performance, Vocal Pedagogy, and Music Composition

PHD studies in Cognitive Research

Post Graduate Studies - Oberlin Conservatory of Music - Voice and Computer Analysis of the Human Voice under Richard Miller

American Institute of Musical Studies, Gras Austria - Vocal Performance/Concert Series

Additional Private Studies with, Harold Heiberg of Texas State/ Mary Schiller of Ohio State/ Jane Rolondi Gray of Converse Conservatory of Music/ Jerry Helton of Winthrop Conservatory of Music/ Arranging with Kay Holley - former Music Director of Radio City Music Hall/Conducting - Bill Malambree of Winthrop Conservatory of Music/Gyrotonics and Gyrokenisis Foundation(founded byJulio Hrovatt former Ballet Master of the Metropolitan Opera Ballet) in Dance with Miriam Barbosa fo Martha Graham School of Dance, New York.

Professional Organizations:

ASCAP - Artist

ASCAP - VMD Publishing/SB Productions

NSAI

WWSWA

NATS

SAG/AFTRA

Awards:

Metropolitan Opera Winner

Southeastern Opera Winner

NATS Vocal Winner (5 consecutive years) - Southeast Region

Young Artist Vocal Winner - Southeast Region

Recipient of the Charlotte Opera Guild Scholarship

ASCAP Plus New Songwriter Award - 2004

Finalist in three categories of the ISC International Songwriting Competition - 2006 - Nashville

Finalist in the ISC People's Choice Awards - 2006 - Nashville

Exhibit DIDP A93

Announcements

Blog Posts

[Dawn of a New Internet Era](#)

[First New gTLDs Get the Green Light for Delegation](#)

[What the Recent NGPC's Resolutions Regarding GAC Category 2 Advice and Name Collisions Mean to the Contracting Process](#)

[CANN Accredited Registrars Can Now Begin to Prepare for Trademark Clearinghouse Services](#)

[Trademark Clearinghouse Update](#)

[Building a Secure and Reliable Trademark Clearinghouse](#)

[Carefully Constructed New gTLD Program Moves Forward](#)

[EBERO Plan Moving Forward Rapidly](#)

[CANN Stands Ready for New gTLD Launch](#)

[March 29 Registration Deadline Q&A with Michael Salazar and Robb Antrobus](#)

[New gTLD Roadshows](#)

[Predicting the Future](#)

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[Video Blog](#)

[Preparing Evaluators for the New gTLD Application Process](#) →

[Tracking the Future of the New gTLD Program](#)

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PREPARING EVALUATORS FOR THE NEW GTLD APPLICATION PROCESS

by Michael Salazar 22 November 2011

The names of the global firms that will serve as the evaluation panels for new generic Top Level Domain (gTLD) applications were recently announced during the CANN 42 Dakar meeting.

As Program Director for the [New gTLD Program](#) responsible for the design and deployment of the New gTLD Application Processing Program and managing the process as it takes flight, I am extremely proud of the selections we have made. All of the organizations chosen are highly qualified, global, and are respected experts in the areas for which they have been selected.

Whom did we select?

We followed a thorough, fair, data-led process to select the evaluation panels. The process, which is described on our website under "[Call for Applicant Evaluation Panel Expressions of Interest](#)", began in February of 2009. When came on board in July 2009, quickly understood the heightened level of interest in providing services for this relatively new Program. In all, twelve global firms formally submitted responses. Out of that pool, we selected [The Economist Intelligence Unit](#), [Ernst & Young](#), [InterConnect Communications](#) (partnering with the [University College London](#)), [InterSle Consulting Group](#), [JAS Global Advisors](#), and [KPMG](#).

These firms will work together in various combinations to evaluate applications during the process as follows:

String Reviews

- **String Similarity** [InterConnect Communications/University College London](#)
- **DNS Stability** [InterSle Consulting Group](#)
- **Geographic Names** [The Economist Intelligence Unit](#) and [InterConnect Communications/University College London](#)

Applicant Reviews

- **Technical and Operational** [Ernst & Young](#), [JAS Global Advisors](#), and [KPMG](#)
- **Financial Capability** [Ernst & Young](#), [JAS Global Advisors](#), and [KPMG](#)
- **Registry Services** [InterSle Consulting Group](#)
- **Community Priority** [The Economist Intelligence Unit](#) and [InterConnect Communications](#)

Why is there more than one firm for each of the evaluation types? Three reasons:

- To provide sufficient bandwidth to conduct the number of necessary evaluations
- To provide an alternate channel to avoid conflicts of interest
- To provide for continued competition among service providers to ensure quality and value going forward

All of the firms exhibit characteristics that are important to the integrity of this process. For example, KPMG and Ernst & Young both have large global footprints and can effectively scale to ensure timely and culturally sensitive processing of applications. Their strong and long history in providing audit, tax, and advisory services makes them well suited to serve as the panels for financial and technical/operational evaluations. JAS Global Advisors has a decade of experience in due diligence, internet security, and global operations, as well as an intimate knowledge of CANN. The Economist Intelligence Unit, the sister organization of *The Economist*, incorporates a solid understanding of global corporate and government processes. InterConnect Communications, in conjunction with the University College London brings an internationally recognized and diverse linguistic resources offering an abundance of subject matter expertise. And finally, InterSle Consulting Group has a very specific, excellent subject matter expertise in the DNS.

How are we ensuring an effective and efficient evaluation effort?

Ensuring that we have an effective and efficient evaluation effort is one of the most important aspects of building this program, and this starts with how we are preparing the evaluation panels.

The first step begins with simulation exercises. Currently, my team is conducting simulation exercises using mock applications. The simulation exercises have been instrumental in testing the evaluation process, understanding the level of effort to review an application, and equally as important, to calibrate the analysis across the firms.

The next steps include designing and implementing a robust training program. We are finalizing a training program that all evaluators are required to complete before performing an evaluation. Any individual serving on a panel will need to complete the training program prior to starting. The training program seeks to ensure consistency across all processes and scoring methods so that all applications are evaluated equally.

Finally we are implementing a Quality Control program to ensure that applications have followed the same evaluation process and have been evaluated consistently. I strongly believe that the Quality Control function is a paramount component of the Program. In addition to performing the critical task of ensuring consistency, Quality Control will enable us to identify areas for improvement. These will in turn create initiatives that will bring enhanced effectiveness to the overall program as well as improvements in costs as we consider future rounds.

How will ICANN address any conflicts of interest?

Conflict of interest is an area that ICANN takes very seriously as it impacts the integrity of the Program. In fact, our processes are built to avoid and adequately deal with potential conflicts of interest. For example, where feasible we have multiple firms providing services, making sure that no evaluators have a conflict with a particular application.

I helped craft applicable language in the Applicant Guidebook and have made the topic the subject of contract negotiations with each firm, reinforcing the importance of avoiding conflict of interest (inherent or perceived). There is also a code of conduct that we have asked each firm to abide by. Some of the guidelines under the code of conduct restrict the evaluators from speaking at meetings or conferences on the topic of New gTLDs and interacting with entities or individuals that have identified themselves as potential applicants of the New gTLD Program. See [Module 2 of the Applicant Guidebook](#) (Section 2.4.3 Code of Conduct Guidelines for Panelists) for more information on the Code of Conduct and Conflict of Interest guidelines.

The New gTLD Application Program is a major undertaking for ICANN and the global Internet community. We are very excited to get this program underway. Stay tuned for additional announcements as we continue to prepare for launch on 12 January 2012.

If you have any questions about the gTLD Program, the evaluation process, or the evaluation firms selected, please send your questions to:

newgtld@icann.org

[Michael Salazar's blog](#)

Exhibit DIDP A94

Return of Organization Exempt From Income Tax

OMB No. 1545-0047

Form **990**

Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except private foundations)

2013

Department of the Treasury
Internal Revenue Service

▶ Do not enter Social Security numbers on this form as it may be made public.
▶ Information about Form 990 and its instructions is at www.irs.gov/form990.

Open to Public Inspection

A For the 2013 calendar year, or tax year beginning 07/01, 2013, and ending 06/30, 2014

B Check if applicable:	<input type="checkbox"/>	Address change	C Name of organization INTERNET CORP FOR ASSIGNED NAMES & NUMBERS			D Employer identification number 95-4712218	
	<input type="checkbox"/>	Name change					
	<input type="checkbox"/>	Initial return	Doing Business As			E Telephone number (310) 301-5800	
	<input type="checkbox"/>	Terminated	Number and street (or P.O. box if mail is not delivered to street address) Room/suite 12025 WATERFRONT DRIVE 300				
<input type="checkbox"/>	Amended return	City or town, state or province, country, and ZIP or foreign postal code LOS ANGELES, CA 90094-2536			G Gross receipts \$ 133,244,227.		
<input type="checkbox"/>	Application pending	F Name and address of principal officer: FADI CHEHADE 12025 WATERFRONT DRIVE LOS ANGELES, CA 90094					
I Tax-exempt status:		<input checked="" type="checkbox"/> 501(c)(3)	<input type="checkbox"/> 501(c) () ◀ (insert no.)	<input type="checkbox"/> 4947(a)(1) or	<input type="checkbox"/> 527	H(a) Is this a group return for subordinates? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
J Website: ▶ WWW.ICANN.ORG						H(b) Are all subordinates included? <input type="checkbox"/> Yes <input type="checkbox"/> No	
K Form of organization:		<input checked="" type="checkbox"/> Corporation	<input type="checkbox"/> Trust	<input type="checkbox"/> Association	<input type="checkbox"/> Other ▶	L Year of formation: 1998	
						M State of legal domicile: CA	

Part I Summary

Activities & Governance	1 Briefly describe the organization's mission or most significant activities: <u>SEE SCHEDULE O.</u>			
	2 Check this box <input type="checkbox"/> if the organization discontinued its operations or disposed of more than 25% of its net assets.			
	3	Number of voting members of the governing body (Part VI, line 1a)		
	4	Number of independent voting members of the governing body (Part VI, line 1b)		
	5	Total number of individuals employed in calendar year 2013 (Part V, line 2a)		
	6	Total number of volunteers (estimate if necessary)		
	7a	Total unrelated business revenue from Part VIII, column (C), line 12		
7b	Net unrelated business taxable income from Form 990-T, line 34			
Revenue	8	Contributions and grants (Part VIII, line 1h)	Prior Year	Current Year
	9	Program service revenue (Part VIII, line 2g)	656,512.	2,072,140.
	10	Investment income (Part VIII, column (A), lines 3, 4, and 7d)	232,937,659.	121,311,659.
	11	Other revenue (Part VIII, column (A), lines 5, 6d, 8c, 9c, 10c, and 11e)	2,411,378.	4,430,521.
	12	Total revenue - add lines 8 through 11 (must equal Part VIII, column (A), line 12)	176,600.	0
	12		236,182,149.	127,814,320.
Expenses	13	Grants and similar amounts paid (Part IX, column (A), lines 1-3)	359,178.	1,864,400.
	14	Benefits paid to or for members (Part IX, column (A), line 4)	0	0
	15	Salaries, other compensation, employee benefits (Part IX, column (A), lines 5-10)	32,314,216.	46,194,171.
	16a	Professional fundraising fees (Part IX, column (A), line 11e)	0	0
	16b	Total fundraising expenses (Part IX, column (D), line 25) ▶	0	0
	17	Other expenses (Part IX, column (A), lines 11a-11d, 11f-24e)	117,717,096.	76,208,820.
18	Total expenses. Add lines 13-17 (must equal Part IX, column (A), line 25)	150,390,490.	124,267,391.	
19	Revenue less expenses. Subtract line 18 from line 12	85,791,659.	3,546,929.	
Net Assets or Fund Balances	20	Total assets (Part X, line 16)	Beginning of Current Year	End of Year
	21	Total liabilities (Part X, line 26)	397,173,980.	355,256,415.
	22	Net assets or fund balances. Subtract line 21 from line 20	228,443,472.	162,152,075.
22		168,730,508.	193,104,340.	

Part II Signature Block

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than officer) is based on all information of which preparer has any knowledge.

Sign Here		31 March 2015
	XAVIER CALVEZ Type or print name and title	Date CFO

Paid Preparer Use Only	Print/Type preparer's name EVA NITTA	Preparer's signature 	Date 3/31/2015	Check <input type="checkbox"/> if self-employed	PTIN P01286320	
	Firm's name ▶ ERNST & YOUNG U.S. LLP			Firm's EIN ▶ 34-6565596		
	Firm's address ▶ 4370 LA JOLLA VILLAGE DRIVE STE 500 SAN DIEGO, CA 92122			Phone no. 858-535-7200		

May the IRS discuss this return with the preparer shown above? (see instructions) Yes No

For Paperwork Reduction Act Notice, see the separate instructions. Form 990 (2013)

Part III Statement of Program Service Accomplishments

Check if Schedule O contains a response or note to any line in this Part III Yes No

1 Briefly describe the organization's mission:

SEE SCHEDULE O.

2 Did the organization undertake any significant program services during the year which were not listed on the prior Form 990 or 990-EZ? Yes No

If "Yes," describe these new services on Schedule O.

3 Did the organization cease conducting, or make significant changes in how it conducts, any program services? Yes No

If "Yes," describe these changes on Schedule O.

4 Describe the organization's program service accomplishments for each of its three largest program services, as measured by expenses. Section 501(c)(3) and 501(c)(4) organizations are required to report the amount of grants and allocations to others, the total expenses, and revenue, if any, for each program service reported.

4a (Code:) (Expenses \$ 89,375,394. including grants of \$ 1,864,400.) (Revenue \$ 121,311,659.)

SEE SCHEDULE O.

4b (Code:) (Expenses \$ including grants of \$) (Revenue \$)

4c (Code:) (Expenses \$ including grants of \$) (Revenue \$)

4d Other program services (Describe in Schedule O.)

(Expenses \$ including grants of \$) (Revenue \$)

4e Total program service expenses ▶ 89,375,394.

Part IV Checklist of Required Schedules

	Yes	No
1 Is the organization described in section 501(c)(3) or 4947(a)(1) (other than a private foundation)? If "Yes," complete Schedule A	X	
2 Is the organization required to complete Schedule B, Schedule of Contributors (see instructions)?	X	
3 Did the organization engage in direct or indirect political campaign activities on behalf of or in opposition to candidates for public office? If "Yes," complete Schedule C, Part I		X
4 Section 501(c)(3) organizations. Did the organization engage in lobbying activities, or have a section 501(h) election in effect during the tax year? If "Yes," complete Schedule C, Part II	X	
5 Is the organization a section 501(c)(4), 501(c)(5), or 501(c)(6) organization that receives membership dues, assessments, or similar amounts as defined in Revenue Procedure 98-19? If "Yes," complete Schedule C, Part III		X
6 Did the organization maintain any donor advised funds or any similar funds or accounts for which donors have the right to provide advice on the distribution or investment of amounts in such funds or accounts? If "Yes," complete Schedule D, Part I		X
7 Did the organization receive or hold a conservation easement, including easements to preserve open space, the environment, historic land areas, or historic structures? If "Yes," complete Schedule D, Part II		X
8 Did the organization maintain collections of works of art, historical treasures, or other similar assets? If "Yes," complete Schedule D, Part III		X
9 Did the organization report an amount in Part X, line 21, for escrow or custodial account liability; serve as a custodian for amounts not listed in Part X; or provide credit counseling, debt management, credit repair, or debt negotiation services? If "Yes," complete Schedule D, Part IV		X
10 Did the organization, directly or through a related organization, hold assets in temporarily restricted endowments, permanent endowments, or quasi-endowments? If "Yes," complete Schedule D, Part V		X
11 If the organization's answer to any of the following questions is "Yes," then complete Schedule D, Parts VI, VII, VIII, IX, or X as applicable.		
a Did the organization report an amount for land, buildings, and equipment in Part X, line 10? If "Yes," complete Schedule D, Part VI	X	
b Did the organization report an amount for investments-other securities in Part X, line 12 that is 5% or more of its total assets reported in Part X, line 16? If "Yes," complete Schedule D, Part VII		X
c Did the organization report an amount for investments-program related in Part X, line 13 that is 5% or more of its total assets reported in Part X, line 16? If "Yes," complete Schedule D, Part VIII		X
d Did the organization report an amount for other assets in Part X, line 15 that is 5% or more of its total assets reported in Part X, line 16? If "Yes," complete Schedule D, Part IX		X
e Did the organization report an amount for other liabilities in Part X, line 25? If "Yes," complete Schedule D, Part X		X
f Did the organization's separate or consolidated financial statements for the tax year include a footnote that addresses the organization's liability for uncertain tax positions under FIN 48 (ASC 740)? If "Yes," complete Schedule D, Part X	X	
12 a Did the organization obtain separate, independent audited financial statements for the tax year? If "Yes," complete Schedule D, Parts XI and XII	X	
b Was the organization included in consolidated, independent audited financial statements for the tax year? If "Yes," and if the organization answered "No" to line 12a, then completing Schedule D, Parts XI and XII is optional		X
13 Is the organization a school described in section 170(b)(1)(A)(ii)? If "Yes," complete Schedule E		X
14 a Did the organization maintain an office, employees, or agents outside of the United States?	X	
b Did the organization have aggregate revenues or expenses of more than \$10,000 from grantmaking, fundraising, business, investment, and program service activities outside the United States, or aggregate foreign investments valued at \$100,000 or more? If "Yes," complete Schedule F, Parts I and IV	X	
15 Did the organization report on Part IX, column (A), line 3, more than \$5,000 of grants or other assistance to or for any foreign organization? If "Yes," complete Schedule F, Parts II and IV	X	
16 Did the organization report on Part IX, column (A), line 3, more than \$5,000 of aggregate grants or other assistance to or for foreign individuals? If "Yes," complete Schedule F, Parts III and IV	X	
17 Did the organization report a total of more than \$15,000 of expenses for professional fundraising services on Part IX, column (A), lines 6 and 11e? If "Yes," complete Schedule G, Part I (see instructions)		X
18 Did the organization report more than \$15,000 total of fundraising event gross income and contributions on Part VIII, lines 1c and 8a? If "Yes," complete Schedule G, Part II		X
19 Did the organization report more than \$15,000 of gross income from gaming activities on Part VIII, line 9a? If "Yes," complete Schedule G, Part III		X
20 a Did the organization operate one or more hospital facilities? If "Yes," complete Schedule H		X
b If "Yes" to line 20a, did the organization attach a copy of its audited financial statements to this return?		X

Part IV Checklist of Required Schedules (continued)

	Yes	No
21 Did the organization report more than \$5,000 of grants or other assistance to any domestic organization or government on Part IX, column (A), line 1? <i>If "Yes," complete Schedule I, Parts I and II</i>	X	
22 Did the organization report more than \$5,000 of grants or other assistance to individuals in the United States on Part IX, column (A), line 2? <i>If "Yes," complete Schedule I, Parts I and III</i>		X
23 Did the organization answer "Yes" to Part VII, Section A, line 3, 4, or 5 about compensation of the organization's current and former officers, directors, trustees, key employees, and highest compensated employees? <i>If "Yes," complete Schedule J</i>	X	
24 a Did the organization have a tax-exempt bond issue with an outstanding principal amount of more than \$100,000 as of the last day of the year, that was issued after December 31, 2002? <i>If "Yes," answer lines 24b through 24d and complete Schedule K. If "No," go to line 25a</i>		X
24 b Did the organization invest any proceeds of tax-exempt bonds beyond a temporary period exception?		
24 c Did the organization maintain an escrow account other than a refunding escrow at any time during the year to defease any tax-exempt bonds?		
24 d Did the organization act as an "on behalf of" issuer for bonds outstanding at any time during the year?		
25 a Section 501(c)(3) and 501(c)(4) organizations. Did the organization engage in an excess benefit transaction with a disqualified person during the year? <i>If "Yes," complete Schedule L, Part I</i>		X
25 b Is the organization aware that it engaged in an excess benefit transaction with a disqualified person in a prior year, and that the transaction has not been reported on any of the organization's prior Forms 990 or 990-EZ? <i>If "Yes," complete Schedule L, Part I</i>		X
26 Did the organization report any amount on Part X, line 5, 6, or 22 for receivables from or payable to any current or former officers, directors, trustees, key employees, highest compensated employees, or disqualified persons? If so, complete Schedule L, Part II.		X
27 Did the organization provide a grant or other assistance to an officer, director, trustee, key employee, substantial contributor or employee thereof, a grant selection committee member, or to a 35% controlled entity or family member of any of these persons? <i>If "Yes," complete Schedule L, Part III.</i>		X
28 Was the organization a party to a business transaction with one of the following parties (see Schedule L, Part IV instructions for applicable filing thresholds, conditions, and exceptions):		
28 a A current or former officer, director, trustee, or key employee? <i>If "Yes," complete Schedule L, Part IV.</i>		X
28 b A family member of a current or former officer, director, trustee, or key employee? <i>If "Yes," complete Schedule L, Part IV.</i>		X
28 c An entity of which a current or former officer, director, trustee, or key employee (or a family member thereof) was an officer, director, trustee, or direct or indirect owner? <i>If "Yes," complete Schedule L, Part IV.</i>	X	
29 Did the organization receive more than \$25,000 in non-cash contributions? <i>If "Yes," complete Schedule M</i>		X
30 Did the organization receive contributions of art, historical treasures, or other similar assets, or qualified conservation contributions? <i>If "Yes," complete Schedule M</i>		X
31 Did the organization liquidate, terminate, or dissolve and cease operations? <i>If "Yes," complete Schedule N, Part I.</i>		X
32 Did the organization sell, exchange, dispose of, or transfer more than 25% of its net assets? <i>If "Yes," complete Schedule N, Part II</i>		X
33 Did the organization own 100% of an entity disregarded as separate from the organization under Regulations sections 301.7701-2 and 301.7701-3? <i>If "Yes," complete Schedule R, Part I</i>		X
34 Was the organization related to any tax-exempt or taxable entity? <i>If "Yes," complete Schedule R, Part II, III, or IV, and Part V, line 1</i>		X
35 a Did the organization have a controlled entity within the meaning of section 512(b)(13)?		X
35 b If "Yes" to line 35a, did the organization receive any payment from or engage in any transaction with a controlled entity within the meaning of section 512(b)(13)? <i>If "Yes," complete Schedule R, Part V, line 2.</i>		
36 Section 501(c)(3) organizations. Did the organization make any transfers to an exempt non-charitable related organization? <i>If "Yes," complete Schedule R, Part V, line 2</i>		X
37 Did the organization conduct more than 5% of its activities through an entity that is not a related organization and that is treated as a partnership for federal income tax purposes? <i>If "Yes," complete Schedule R, Part VI.</i>		X
38 Did the organization complete Schedule O and provide explanations in Schedule O for Part VI, lines 11b and 19? Note. All Form 990 filers are required to complete Schedule O.	X	

Part V Statements Regarding Other IRS Filings and Tax Compliance

Check if Schedule O contains a response or note to any line in this Part V

Table with columns for line number, description, and Yes/No checkboxes. Includes sections for backup withholding, employee reporting, foreign accounts, prohibited transactions, and charitable contributions.

Part VI Governance, Management, and Disclosure For each "Yes" response to lines 2 through 7b below, and for a "No" response to line 8a, 8b, or 10b below, describe the circumstances, processes, or changes in Schedule O. See instructions.

Check if Schedule O contains a response or note to any line in this Part VI [X]

Section A. Governing Body and Management

Table with 3 columns: Question, Yes, No. Rows include: 1a Enter the number of voting members of the governing body at the end of the tax year; 1b Enter the number of voting members included in line 1a, above, who are independent; 2 Did any officer, director, trustee, or key employee have a family relationship or a business relationship with any other officer, director, trustee, or key employee?; 3 Did the organization delegate control over management duties customarily performed by or under the direct supervision of officers, directors, or trustees, or key employees to a management company or other person?; 4 Did the organization make any significant changes to its governing documents since the prior Form 990 was filed?; 5 Did the organization become aware during the year of a significant diversion of the organization's assets?; 6 Did the organization have members or stockholders?; 7a Did the organization have members, stockholders, or other persons who had the power to elect or appoint one or more members of the governing body?; 7b Are any governance decisions of the organization reserved to (or subject to approval by) members, stockholders, or persons other than the governing body?; 8 Did the organization contemporaneously document the meetings held or written actions undertaken during the year by the following: a The governing body? b Each committee with authority to act on behalf of the governing body?; 9 Is there any officer, director, trustee, or key employee listed in Part VII, Section A, who cannot be reached at the organization's mailing address? If "Yes," provide the names and addresses in Schedule O.

Section B. Policies (This Section B requests information about policies not required by the Internal Revenue Code.)

Table with 3 columns: Question, Yes, No. Rows include: 10a Did the organization have local chapters, branches, or affiliates?; 10b If "Yes," did the organization have written policies and procedures governing the activities of such chapters, affiliates, and branches to ensure their operations are consistent with the organization's exempt purposes?; 11a Has the organization provided a complete copy of this Form 990 to all members of its governing body before filing the form?; 11b Describe in Schedule O the process, if any, used by the organization to review this Form 990.; 12a Did the organization have a written conflict of interest policy? If "No," go to line 13; 12b Were officers, directors, or trustees, and key employees required to disclose annually interests that could give rise to conflicts?; 12c Did the organization regularly and consistently monitor and enforce compliance with the policy? If "Yes," describe in Schedule O how this was done; 13 Did the organization have a written whistleblower policy?; 14 Did the organization have a written document retention and destruction policy?; 15 Did the process for determining compensation of the following persons include a review and approval by independent persons, comparability data, and contemporaneous substantiation of the deliberation and decision?; 15a The organization's CEO, Executive Director, or top management official; 15b Other officers or key employees of the organization; 16a Did the organization invest in, contribute assets to, or participate in a joint venture or similar arrangement with a taxable entity during the year?; 16b If "Yes," did the organization follow a written policy or procedure requiring the organization to evaluate its participation in joint venture arrangements under applicable federal tax law, and take steps to safeguard the organization's exempt status with respect to such arrangements?

Section C. Disclosure

- 17 List the states with which a copy of this Form 990 is required to be filed CA,
18 Section 6104 requires an organization to make its Forms 1023 (or 1024 if applicable), 990, and 990-T (Section 501(c)(3)s only) available for public inspection. Indicate how you made these available. Check all that apply.
[X] Own website [] Another's website [X] Upon request [] Other (explain in Schedule O)
19 Describe in Schedule O whether (and if so, how) the organization made its governing documents, conflict of interest policy, and financial statements available to the public during the tax year.
20 State the name, physical address, and telephone number of the person who possesses the books and records of the organization: XAVIER CALVEZ 12025 WATERFRONT DRIVE, SUITE 300 LOS ANGELES, CA 90094-2536 310-301-5838

Part VII Compensation of Officers, Directors, Trustees, Key Employees, Highest Compensated Employees, and Independent Contractors

Check if Schedule O contains a response or note to any line in this Part VII. X

Section A. Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees

1a Complete this table for all persons required to be listed. Report compensation for the calendar year ending with or within the organization's tax year.

- List all of the organization's **current** officers, directors, trustees (whether individuals or organizations), regardless of amount of compensation. Enter -0- in columns (D), (E), and (F) if no compensation was paid.
- List all of the organization's **current** key employees, if any. See instructions for definition of "key employee."
- List the organization's five **current** highest compensated employees (other than an officer, director, trustee, or key employee) who received reportable compensation (Box 5 of Form W-2 and/or Box 7 of Form 1099-MISC) of more than \$100,000 from the organization and any related organizations.
- List all of the organization's **former** officers, key employees, and highest compensated employees who received more than \$100,000 of reportable compensation from the organization and any related organizations.
- List all of the organization's **former directors or trustees** that received, in the capacity as a former director or trustee of the organization, more than \$10,000 of reportable compensation from the organization and any related organizations.

List persons in the following order: individual trustees or directors; institutional trustees; officers; key employees; highest compensated employees; and former such persons.

Check this box if neither the organization nor any related organization compensated any current officer, director, or trustee.

(A) Name and Title	(B) Average hours per week (list any hours for related organizations below dotted line)	(C) Position (do not check more than one box, unless person is both an officer and a director/trustee)						(D) Reportable compensation from the organization (W-2/1099-MISC)	(E) Reportable compensation from related organizations (W-2/1099-MISC)	(F) Estimated amount of other compensation from the organization and related organizations
		Individual trustee or director	Institutional trustee	Officer	Key employee	Highest compensated employee	Former			
(1) SEBASTIEN BACHOLLET DIRECTOR	16.00 0	X					36,667.	0	0	
(2) CHERINE CHALABY DIRECTOR	16.00 0	X					42,263.	0	0	
(3) FADI CHEHADE CHIEF EXECUTIVE OFFICER	60.00 0	X		X			842,888.	0	56,192.	
(4) STEVE CROCKER DIRECTOR	16.00 0	X					75,000.	0	0	
(5) BERTRAND DE LA CHAPELLE DIRECTOR (THRU NOV 2013)	16.00 0	X					31,209.	0	0	
(6) CHRIS DISSPAIN DIRECTOR	16.00 0	X					0	0	0	
(7) WILLIAM RALPH GRAHAM DIRECTOR	16.00 0	X					36,667.	0	0	
(8) WOLFGANG KLEINWACHTER DIRECTOR	16.00 0	X					0	0	0	
(9) BRUNO LANVIN DIRECTOR	16.00 0	X					0	0	0	
(10) OLGA MADRUGA-FORTI DIRECTOR	16.00 0	X					35,000.	0	0	
(11) ERIKA MANN DIRECTOR	16.00 0	X					36,667.	0	0	
(12) GONZALO NAVARRO DIRECTOR	16.00 0	X					35,000.	0	0	
(13) RAYMOND A. PLZAK DIRECTOR	16.00 0	X					40,000.	0	0	
(14) GEORGE SADOWSKY DIRECTOR	16.00 0	X					40,000.	0	0	

Part VII Section A. Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees (continued)

(A) Name and title	(B) Average hours per week (list any hours for related organizations below dotted line)	(C) Position (do not check more than one box, unless person is both an officer and a director/trustee)						(D) Reportable compensation from the organization (W-2/1099-MISC)	(E) Reportable compensation from related organizations (W-2/1099-MISC)	(F) Estimated amount of other compensation from the organization and related organizations
		Individual trustee or director	Institutional trustee	Officer	Key employee	Highest compensated employee	Former			
(15) MIKE SILBER ----- DIRECTOR	16.00 ----- 0	X					36,667.	0	0	
(16) BRUCE TONKIN ----- DIRECTOR	16.00 ----- 0	X					0	0	0	
(17) JUDITH DUAVIT VAZQUEZ ----- DIRECTOR (THRU NOV 2013)	16.00 ----- 0	X					0	0	0	
(18) KUO-WEI WU ----- DIRECTOR	16.00 ----- 0	X					40,000.	0	0	
(19) AKRAM ATALLAH ----- PRESIDENT, GENERIC DOMAINS DIV	60.00 ----- 0			X			654,022.	0	59,442.	
(20) SUSANNA BENNETT ----- CHIEF OPERATING OFFICER	60.00 ----- 0			X			258,102.	0	36,256.	
(21) XAVIER CALVEZ ----- CHIEF FINANCIAL OFFICER	60.00 ----- 0			X			373,019.	0	54,034.	
(22) JOHN JEFFREY ----- GENERAL COUNSEL & SECRETARY	60.00 ----- 0			X			570,564.	0	38,692.	
(23) DAVID OLIVE ----- VP, POLICY DEVELOPMENT	60.00 ----- 0			X			327,862.	0	55,927.	
(24) STEVE ANTONOFF ----- DIRECTOR, HR OPERATION SERVICE	60.00 ----- 0				X		229,099.	0	41,498.	
(25) ELISE GERICH ----- VP, IANA & TECHNICAL OPERATIONS	60.00 ----- 0				X		286,803.	0	48,674.	
1b Sub-total							1,251,361.	0	56,192.	
c Total from continuation sheets to Part VII, Section A							5,587,291.	0	814,183.	
d Total (add lines 1b and 1c)							6,838,652.	0	870,375.	

2 Total number of individuals (including but not limited to those listed above) who received more than \$100,000 of reportable compensation from the organization ► 92

	Yes	No
3 Did the organization list any former officer, director, or trustee, key employee, or highest compensated employee on line 1a? <i>If "Yes," complete Schedule J for such individual</i>		X
4 For any individual listed on line 1a, is the sum of reportable compensation and other compensation from the organization and related organizations greater than \$150,000? <i>If "Yes," complete Schedule J for such individual</i>	X	
5 Did any person listed on line 1a receive or accrue compensation from any unrelated organization or individual for services rendered to the organization? <i>If "Yes," complete Schedule J for such person</i>		X

Section B. Independent Contractors

1 Complete this table for your five highest compensated independent contractors that received more than \$100,000 of compensation from the organization. Report compensation for the calendar year ending with or within the organization's tax year.

(A) Name and business address	(B) Description of services	(C) Compensation
ATTACHMENT 2		

2 Total number of independent contractors (including but not limited to those listed above) who received more than \$100,000 in compensation from the organization ► 203

Part VII Section A. Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees (continued)

(A) Name and title	(B) Average hours per week (list any hours for related organizations below dotted line)	(C) Position (do not check more than one box, unless person is both an officer and a director/trustee)						(D) Reportable compensation from the organization (W-2/1099-MISC)	(E) Reportable compensation from related organizations (W-2/1099-MISC)	(F) Estimated amount of other compensation from the organization and related organizations	
		Individual trustee or director	Institutional trustee	Officer	Key employee	Highest compensated employee	Former				
(26) JAMES HEDLUND ADVISOR TO THE PRESIDENT	60.00 0				X			357,320.	0	55,927.	
(27) JEFFREY MOSS CHIEF SECURITY OFFICER	60.00 0				X			427,028.	0	48,540.	
(28) NICK TOMASSO SR DIR, MEETING OPERATIONS	60.00 0				X			231,248.	0	47,207.	
(29) CHRISTINE WILLETT VP, GTLD OPERATIONS	60.00 0				X			330,065.	0	55,195.	
(30) DANIEL HALLORAN DEPUTY GENERAL COUNSEL	60.00 0					X		272,317.	0	56,192.	
(31) DENISE MICHEL VP, STRAT INIT/ADVISOR TO PRES	60.00 0					X		326,594.	0	59,442.	
(32) CYRUS NAMAZI VP, DNS INDUSTRY ENGAGEMENT	60.00 0					X		288,143.	0	53,787.	
(33) MAGUY SERAD VP, CONTRACTUAL COMPLIANCE SVC	60.00 0					X		279,965.	0	59,945.	
(34) AMY STATHOS DEPUTY GENERAL COUNSEL	60.00 0					X		298,473.	0	43,425.	
1b Sub-total											
c Total from continuation sheets to Part VII, Section A											
d Total (add lines 1b and 1c)											

2 Total number of individuals (including but not limited to those listed above) who received more than \$100,000 of reportable compensation from the organization **▶** 92

	Yes	No
3 Did the organization list any former officer, director, or trustee, key employee, or highest compensated employee on line 1a? <i>If "Yes," complete Schedule J for such individual</i>		X
4 For any individual listed on line 1a, is the sum of reportable compensation and other compensation from the organization and related organizations greater than \$150,000? <i>If "Yes," complete Schedule J for such individual</i>	X	
5 Did any person listed on line 1a receive or accrue compensation from any unrelated organization or individual for services rendered to the organization? <i>If "Yes," complete Schedule J for such person</i>		X

Section B. Independent Contractors

1 Complete this table for your five highest compensated independent contractors that received more than \$100,000 of compensation from the organization. Report compensation for the calendar year ending with or within the organization's tax year.

(A) Name and business address	(B) Description of services	(C) Compensation

2 Total number of independent contractors (including but not limited to those listed above) who received more than \$100,000 in compensation from the organization **▶**

Part VIII Statement of Revenue

Check if Schedule O contains a response or note to any line in this Part VIII

			(A) Total revenue	(B) Related or exempt function revenue	(C) Unrelated business revenue	(D) Revenue excluded from tax under sections 512-514	
Contributions, Gifts, Grants and Other Similar Amounts	1a Federated campaigns	1a					
	b Membership dues	1b					
	c Fundraising events	1c					
	d Related organizations	1d					
	e Government grants (contributions)	1e					
	f All other contributions, gifts, grants, and similar amounts not included above	1f	2,072,140.				
	g Noncash contributions included in lines 1a-1f: \$						
	h Total. Add lines 1a-1f ▶			2,072,140.			
Program Service Revenue			Business Code				
	2a NEW GTLD PROGRAM REVENUE		900099	37,176,623.	37,176,623.		
	b REGISTRY/REGISTRAR FEES		900099	77,271,574.	77,271,574.		
	c ACCREDITATION FEES		900099	4,084,667.	4,084,667.		
	d SPONSORSHIPS		900099	1,268,295.	1,268,295.		
	e ADDRESS REGISTRY FEES		900099	823,000.	823,000.		
	f All other program service revenue			687,500.	687,500.		
	g Total. Add lines 2a-2f ▶			121,311,659.			
Other Revenue	3 Investment income (including dividends, interest, and other similar amounts) ▶			2,783,804.		2,783,804.	
	4 Income from investment of tax-exempt bond proceeds ▶			0			
	5 Royalties ▶			0			
	6a Gross rents	(i) Real	(ii) Personal				
		b Less: rental expenses					
		c Rental income or (loss)					
		d Net rental income or (loss) ▶			0		
	7a Gross amount from sales of assets other than inventory	(i) Securities	(ii) Other				
		7,076,624.					
		b Less: cost or other basis and sales expenses					
		5,429,907.					
	c Gain or (loss)						
	1,646,717.						
	d Net gain or (loss) ▶			1,646,717.		1,646,717.	
	8a Gross income from fundraising events (not including \$ _____ of contributions reported on line 1c). See Part IV, line 18 a						
b Less: direct expenses b							
c Net income or (loss) from fundraising events ▶			0				
9a Gross income from gaming activities. See Part IV, line 19 a							
b Less: direct expenses b							
c Net income or (loss) from gaming activities ▶			0				
10a Gross sales of inventory, less returns and allowances a							
b Less: cost of goods sold b							
c Net income or (loss) from sales of inventory ▶			0				
Miscellaneous Revenue		Business Code					
11a _____							
b _____							
c _____							
d All other revenue							
e Total. Add lines 11a-11d ▶			0				
12 Total revenue. See instructions ▶			127,814,320.	121,311,659.		4,430,521.	

Part IX Statement of Functional Expenses

Section 501(c)(3) and 501(c)(4) organizations must complete all columns. All other organizations must complete column (A).

Check if Schedule O contains a response or note to any line in this Part IX X

Do not include amounts reported on lines 6b, 7b, 8b, 9b, and 10b of Part VIII.	(A) Total expenses	(B) Program service expenses	(C) Management and general expenses	(D) Fundraising expenses
1 Grants and other assistance to governments and organizations in the United States. See Part IV, line 21	176,600.	176,600.		
2 Grants and other assistance to individuals in the United States. See Part IV, line 22	0			
3 Grants and other assistance to governments, organizations, and individuals outside the United States. See Part IV, lines 15 and 16	1,687,800.	1,687,800.		
4 Benefits paid to or for members	0			
5 Compensation of current officers, directors, trustees, and key employees	5,970,748.	4,495,382.	1,475,366.	
6 Compensation not included above, to disqualified persons (as defined under section 4958(f)(1)) and persons described in section 4958(c)(3)(B)	0			
7 Other salaries and wages	30,959,961.	23,426,655.	7,533,306.	
8 Pension plan accruals and contributions (include section 401(k) and 403(b) employer contributions)	2,867,016.	2,169,402.	697,614.	
9 Other employee benefits	4,113,778.	2,760,925.	1,352,853.	
10 Payroll taxes	2,282,668.	1,727,240.	555,428.	
11 Fees for services (non-employees):				
a Management	271,811.		271,811.	
b Legal	4,112,879.	2,760,322.	1,352,557.	
c Accounting	895,335.		895,335.	
d Lobbying	540,406.	540,406.		
e Professional fundraising services. See Part IV, line 17.	0			
f Investment management fees	0			
g Other. (If line 11g amount exceeds 10% of line 25, column (A) amount, list line 11g expenses on Schedule O).	28,023,833.	18,807,941.	9,215,892.	
12 Advertising and promotion	225,172.	151,122.	74,050.	
13 Office expenses	688,270.	461,926.	226,344.	
14 Information technology	6,554,184.	4,398,781.	2,155,403.	
15 Royalties	0			
16 Occupancy	4,623,012.	3,102,693.	1,520,319.	
17 Travel	17,203,898.	11,546,240.	5,657,658.	
18 Payments of travel or entertainment expenses for any federal, state, or local public officials	0			
19 Conferences, conventions, and meetings	6,680,237.	6,680,237.		
20 Interest	0			
21 Payments to affiliates	0			
22 Depreciation, depletion, and amortization	4,695,672.	3,151,458.	1,544,214.	
23 Insurance	531,643.	356,807.	174,836.	
24 Other expenses. Itemize expenses not covered above (List miscellaneous expenses in line 24e. If line 24e amount exceeds 10% of line 25, column (A) amount, list line 24e expenses on Schedule O)				
a RISK COSTS GTLD -----	533,218.	533,218.		
b BAD DEBT -----	209,276.	140,215.	69,061.	
c DUES & SUBSCRIPTIONS -----	333,674.	223,562.	110,112.	
d MISC (VAT, TAX & LICENSE) -----	86,300.	76,462.	9,838.	
e All other expenses -----				
25 Total functional expenses. Add lines 1 through 24e	124,267,391.	89,375,394.	34,891,997.	
26 Joint costs. Complete this line only if the organization reported in column (B) joint costs from a combined educational campaign and fundraising solicitation. Check here <input type="checkbox"/> if following SOP 98-2 (ASC 958-720)	0			

Part X Balance Sheet

Check if Schedule O contains a response or note to any line in this Part X

		(A) Beginning of year		(B) End of year
Assets	1 Cash - non-interest-bearing	64,887,132.	1	24,610,589.
	2 Savings and temporary cash investments	0	2	0
	3 Pledges and grants receivable, net	0	3	0
	4 Accounts receivable, net	22,864,094.	4	26,604,975.
	5 Loans and other receivables from current and former officers, directors, trustees, key employees, and highest compensated employees. Complete Part II of Schedule L	0	5	0
	6 Loans and other receivables from other disqualified persons (as defined under section 4958(f)(1)), persons described in section 4958(c)(3)(B), and contributing employers and sponsoring organizations of section 501(c)(9) voluntary employees' beneficiary organizations (see instructions). Complete Part II of Schedule L	0	6	0
	7 Notes and loans receivable, net	0	7	0
	8 Inventories for sale or use	0	8	0
	9 Prepaid expenses and deferred charges	3,615,128.	9	1,404,590.
	10 a Land, buildings, and equipment: cost or other basis. Complete Part VI of Schedule D	10a 27,880,619.		
	b Less: accumulated depreciation	10b 11,141,016.	8,517,556.	10c 16,739,603.
	11 Investments - publicly traded securities	294,873,768.	11	285,063,325.
	12 Investments - other securities. See Part IV, line 11	0	12	0
	13 Investments - program-related. See Part IV, line 11	0	13	0
	14 Intangible assets	0	14	0
	15 Other assets. See Part IV, line 11	2,416,302.	15	833,333.
16 Total assets. Add lines 1 through 15 (must equal line 34)	397,173,980.	16	355,256,415.	
Liabilities	17 Accounts payable and accrued expenses	24,849,786.	17	16,224,238.
	18 Grants payable	0	18	0
	19 Deferred revenue	203,593,686.	19	145,927,837.
	20 Tax-exempt bond liabilities	0	20	0
	21 Escrow or custodial account liability. Complete Part IV of Schedule D	0	21	0
	22 Loans and other payables to current and former officers, directors, trustees, key employees, highest compensated employees, and disqualified persons. Complete Part II of Schedule L	0	22	0
	23 Secured mortgages and notes payable to unrelated third parties	0	23	0
	24 Unsecured notes and loans payable to unrelated third parties	0	24	0
	25 Other liabilities (including federal income tax, payables to related third parties, and other liabilities not included on lines 17-24). Complete Part X of Schedule D	0	25	0
	26 Total liabilities. Add lines 17 through 25	228,443,472.	26	162,152,075.
Net Assets or Fund Balances	Organizations that follow SFAS 117 (ASC 958), check here <input checked="" type="checkbox"/> and complete lines 27 through 29, and lines 33 and 34.			
	27 Unrestricted net assets	168,730,508.	27	193,104,340.
	28 Temporarily restricted net assets	0	28	0
	29 Permanently restricted net assets	0	29	0
	Organizations that do not follow SFAS 117 (ASC 958), check here <input type="checkbox"/> and complete lines 30 through 34.			
	30 Capital stock or trust principal, or current funds		30	
	31 Paid-in or capital surplus, or land, building, or equipment fund		31	
	32 Retained earnings, endowment, accumulated income, or other funds		32	
	33 Total net assets or fund balances	168,730,508.	33	193,104,340.
	34 Total liabilities and net assets/fund balances	397,173,980.	34	355,256,415.

Part XI Reconciliation of Net Assets

Check if Schedule O contains a response or note to any line in this Part XI

1	Total revenue (must equal Part VIII, column (A), line 12)	1	127,814,320.
2	Total expenses (must equal Part IX, column (A), line 25)	2	124,267,391.
3	Revenue less expenses. Subtract line 2 from line 1	3	3,546,929.
4	Net assets or fund balances at beginning of year (must equal Part X, line 33, column (A))	4	168,730,508.
5	Net unrealized gains (losses) on investments	5	6,623,234.
6	Donated services and use of facilities	6	0
7	Investment expenses	7	-427,476.
8	Prior period adjustments	8	14,763,230.
9	Other changes in net assets or fund balances (explain in Schedule O)	9	-132,085.
10	Net assets or fund balances at end of year. Combine lines 3 through 9 (must equal Part X, line 33, column (B))	10	193,104,340.

Part XII Financial Statements and Reporting

Check if Schedule O contains a response or note to any line in this Part XII

	Yes	No
1 Accounting method used to prepare the Form 990: <input type="checkbox"/> Cash <input checked="" type="checkbox"/> Accrual <input type="checkbox"/> Other _____ If the organization changed its method of accounting from a prior year or checked "Other," explain in Schedule O.		
2a Were the organization's financial statements compiled or reviewed by an independent accountant? If "Yes," check a box below to indicate whether the financial statements for the year were compiled or reviewed on a separate basis, consolidated basis, or both: <input type="checkbox"/> Separate basis <input type="checkbox"/> Consolidated basis <input type="checkbox"/> Both consolidated and separate basis		X
b Were the organization's financial statements audited by an independent accountant? If "Yes," check a box below to indicate whether the financial statements for the year were audited on a separate basis, consolidated basis, or both: <input checked="" type="checkbox"/> Separate basis <input type="checkbox"/> Consolidated basis <input type="checkbox"/> Both consolidated and separate basis	X	
c If "Yes" to line 2a or 2b, does the organization have a committee that assumes responsibility for oversight of the audit, review, or compilation of its financial statements and selection of an independent accountant? If the organization changed either its oversight process or selection process during the tax year, explain in Schedule O.	X	
3a As a result of a federal award, was the organization required to undergo an audit or audits as set forth in the Single Audit Act and OMB Circular A-133?		X
b If "Yes," did the organization undergo the required audit or audits? If the organization did not undergo the required audit or audits, explain why in Schedule O and describe any steps taken to undergo such audits.		

SCHEDULE A
(Form 990 or 990-EZ)

Public Charity Status and Public Support
Complete if the organization is a section 501(c)(3) organization or a section 4947(a)(1) nonexempt charitable trust.

OMB No. 1545-0047

2013

Open to Public Inspection

Department of the Treasury
Internal Revenue Service

▶ Attach to Form 990 or Form 990-EZ.
▶ Information about Schedule A (Form 990 or 990-EZ) and its instructions is at www.irs.gov/form990.

Name of the organization INTERNET CORP FOR ASSIGNED NAMES & NUMBERS	Employer identification number 95-4712218
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Part I Reason for Public Charity Status (All organizations must complete this part.) See instructions.

The organization is not a private foundation because it is: (For lines 1 through 11, check only one box.)

- 1 A church, convention of churches, or association of churches described in **section 170(b)(1)(A)(i)**.
- 2 A school described in **section 170(b)(1)(A)(ii)**. (Attach Schedule E.)
- 3 A hospital or a cooperative hospital service organization described in **section 170(b)(1)(A)(iii)**.
- 4 A medical research organization operated in conjunction with a hospital described in **section 170(b)(1)(A)(iii)**. Enter the hospital's name, city, and state: _____
- 5 An organization operated for the benefit of a college or university owned or operated by a governmental unit described in **section 170(b)(1)(A)(iv)**. (Complete Part II.)
- 6 A federal, state, or local government or governmental unit described in **section 170(b)(1)(A)(v)**.
- 7 An organization that normally receives a substantial part of its support from a governmental unit or from the general public described in **section 170(b)(1)(A)(vi)**. (Complete Part II.)
- 8 A community trust described in **section 170(b)(1)(A)(vi)**. (Complete Part II.)
- 9 An organization that normally receives: (1) more than 33 1/3 % of its support from contributions, membership fees, and gross receipts from activities related to its exempt functions - subject to certain exceptions, and (2) no more than 33 1/3 % of its support from gross investment income and unrelated business taxable income (less section 511 tax) from businesses acquired by the organization after June 30, 1975. See **section 509(a)(2)**. (Complete Part III.)
- 10 An organization organized and operated exclusively to test for public safety. See **section 509(a)(4)**.
- 11 An organization organized and operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more publicly supported organizations described in section 509(a)(1) or section 509(a)(2). See **section 509(a)(3)**. Check the box that describes the type of supporting organization and complete lines 11e through 11h.
 - a Type I b Type II c Type III-Functionally integrated d Type III-Non-functionally integrated
- e By checking this box, I certify that the organization is not controlled directly or indirectly by one or more disqualified persons other than foundation managers and other than one or more publicly supported organizations described in section 509(a)(1) or section 509(a)(2).
- f If the organization received a written determination from the IRS that it is a Type I, Type II, or Type III supporting organization, check this box
- g Since August 17, 2006, has the organization accepted any gift or contribution from any of the following persons?
 - (i) A person who directly or indirectly controls, either alone or together with persons described in (ii) and (iii) below, the governing body of the supported organization?
 - (ii) A family member of a person described in (i) above?
 - (iii) A 35% controlled entity of a person described in (i) or (ii) above?

	Yes	No
11g(i)		
11g(ii)		
11g(iii)		

(i) Name of supported organization	(ii) EIN	(iii) Type of organization (described on lines 1-9 above or IRC section (see instructions))	(iv) Is the organization in col. (i) listed in your governing document?		(v) Did you notify the organization in col. (i) of your support?		(vi) Is the organization in col. (i) organized in the U.S.?		(vii) Amount of monetary support
			Yes	No	Yes	No	Yes	No	
(A)									
(B)									
(C)									
(D)									
(E)									
Total									

For Paperwork Reduction Act Notice, see the Instructions for Form 990 or 990-EZ. Schedule A (Form 990 or 990-EZ) 2013

Part II Support Schedule for Organizations Described in Sections 170(b)(1)(A)(iv) and 170(b)(1)(A)(vi)
(Complete only if you checked the box on line 5, 7, or 8 of Part I or if the organization failed to qualify under Part III. If the organization fails to qualify under the tests listed below, please complete Part III.)

Section A. Public Support

Table with 7 columns: (a) 2009, (b) 2010, (c) 2011, (d) 2012, (e) 2013, (f) Total. Rows include: 1 Gifts, grants, contributions, and membership fees received; 2 Tax revenues levied for the organization's benefit; 3 The value of services or facilities furnished by a governmental unit; 4 Total. Add lines 1 through 3; 5 The portion of total contributions by each person; 6 Public support. Subtract line 5 from line 4.

Section B. Total Support

Table with 7 columns: (a) 2009, (b) 2010, (c) 2011, (d) 2012, (e) 2013, (f) Total. Rows include: 7 Amounts from line 4; 8 Gross income from interest, dividends, payments received on securities loans, rents, royalties and income from similar sources; 9 Net income from unrelated business activities; 10 Other income. Do not include gain or loss from the sale of capital assets; 11 Total support. Add lines 7 through 10; 12 Gross receipts from related activities; 13 First five years. If the Form 990 is for the organization's first, second, third, fourth, or fifth tax year as a section 501(c)(3) organization, check this box and stop here.

Section C. Computation of Public Support Percentage

Table with 2 columns: Percentage, %. Rows include: 14 Public support percentage for 2013; 15 Public support percentage from 2012 Schedule A, Part II, line 14; 16a 33 1/3% support test - 2013; b 33 1/3% support test - 2012; 17a 10%-facts-and-circumstances test - 2013; b 10%-facts-and-circumstances test - 2012; 18 Private foundation.

Part III Support Schedule for Organizations Described in Section 509(a)(2)
 (Complete only if you checked the box on line 9 of Part I or if the organization failed to qualify under Part II.
 If the organization fails to qualify under the tests listed below, please complete Part II.)

Section A. Public Support

Calendar year (or fiscal year beginning in) ►	(a) 2009	(b) 2010	(c) 2011	(d) 2012	(e) 2013	(f) Total
1 Gifts, grants, contributions, and membership fees received. (Do not include any "unusual grants.")	1,666,781.	1,990,805.	2,621,270.	656,512.	2,072,140.	9,007,508.
2 Gross receipts from admissions, merchandise sold or services performed, or facilities furnished in any activity that is related to the organization's tax-exempt purpose	64,096,971.	67,302,790.	69,791,646.	233,114,259.	121,311,659.	555,617,325.
3 Gross receipts from activities that are not an unrelated trade or business under section 513						0
4 Tax revenues levied for the organization's benefit and either paid to or expended on its behalf						0
5 The value of services or facilities furnished by a governmental unit to the organization without charge						0
6 Total. Add lines 1 through 5	65,763,752.	69,293,595.	72,412,916.	233,770,771.	123,383,799.	564,624,833.
7a Amounts included on lines 1, 2, and 3 received from disqualified persons						0
b Amounts included on lines 2 and 3 received from other than disqualified persons that exceed the greater of \$5,000 or 1% of the amount on line 13 for the year	37,586,921.	40,172,642.	43,321,965.	37,871,606.	37,543,078.	196,496,212.
c Add lines 7a and 7b.	37,586,921.	40,172,642.	43,321,965.	37,871,606.	37,543,078.	196,496,212.
8 Public support (Subtract line 7c from line 6.)						368,128,621.

Section B. Total Support

Calendar year (or fiscal year beginning in) ►	(a) 2009	(b) 2010	(c) 2011	(d) 2012	(e) 2013	(f) Total
9 Amounts from line 6.	65,763,752.	69,293,595.	72,412,916.	233,770,771.	123,383,799.	564,624,833.
10a Gross income from interest, dividends, payments received on securities loans, rents, royalties and income from similar sources	2,454,129.	2,260,733.	551,635.	2,411,378.	2,783,804.	10,461,679.
b Unrelated business taxable income (less section 511 taxes) from businesses acquired after June 30, 1975					0	0
c Add lines 10a and 10b	2,454,129.	2,260,733.	551,635.	2,411,378.	2,783,804.	10,461,679.
11 Net income from unrelated business activities not included in line 10b, whether or not the business is regularly carried on					0	0
12 Other income. Do not include gain or loss from the sale of capital assets (Explain in Part IV.)						
13 Total support. (Add lines 9, 10c, 11, and 12.)	68,217,881.	71,554,328.	72,964,551.	236,182,149.	126,167,603.	575,086,512.
14 First five years. If the Form 990 is for the organization's first, second, third, fourth, or fifth tax year as a section 501(c)(3) organization, check this box and stop here <input type="checkbox"/>						

Section C. Computation of Public Support Percentage

15 Public support percentage for 2013 (line 8, column (f) divided by line 13, column (f))	15	64.01 %
16 Public support percentage from 2012 Schedule A, Part III, line 15	16	60.88 %

Section D. Computation of Investment Income Percentage

17 Investment income percentage for 2013 (line 10c, column (f) divided by line 13, column (f))	17	1.82 %
18 Investment income percentage from 2012 Schedule A, Part III, line 17	18	1.89 %

19a 33 1/3% support tests - 2013. If the organization did not check the box on line 14, and line 15 is more than 33 1/3%, and line 17 is not more than 33 1/3%, check this box and **stop here**. The organization qualifies as a publicly supported organization

b 33 1/3% support tests - 2012. If the organization did not check a box on line 14 or line 19a, and line 16 is more than 33 1/3%, and line 18 is not more than 33 1/3%, check this box and **stop here**. The organization qualifies as a publicly supported organization

20 Private foundation. If the organization did not check a box on line 14, 19a, or 19b, check this box and see instructions

Part IV **Supplemental Information.** Provide the explanations required by Part II, line 10; Part II, line 17a or 17b; and Part III, line 12. Also complete this part for any additional information. (See instructions).

Schedule of Contributors

2013

▶ **Attach to Form 990, Form 990-EZ, or Form 990-PF.**

▶ Information about Schedule B (Form 990, 990-EZ, or 990-PF) and its instructions is at www.irs.gov/form990.

Name of the organization

INTERNET CORP FOR ASSIGNED NAMES & NUMBERS

Employer identification number

95-4712218

Organization type (check one):

Filers of:

Section:

Form 990 or 990-EZ

501(c)(3) () (enter number) organization

4947(a)(1) nonexempt charitable trust **not** treated as a private foundation

527 political organization

Form 990-PF

501(c)(3) exempt private foundation

4947(a)(1) nonexempt charitable trust treated as a private foundation

501(c)(3) taxable private foundation

Check if your organization is covered by the **General Rule** or a **Special Rule**.

Note. Only a section 501(c)(7), (8), or (10) organization can check boxes for both the General Rule and a Special Rule. See instructions.

General Rule

For an organization filing Form 990, 990-EZ, or 990-PF that received, during the year, \$5,000 or more (in money or property) from any one contributor. Complete Parts I and II.

Special Rules

For a section 501(c)(3) organization filing Form 990 or 990-EZ that met the 33 1/3 % support test of the regulations under sections 509(a)(1) and 170(b)(1)(A)(vi) and received from any one contributor, during the year, a contribution of the greater of (1) \$5,000 or (2) 2% of the amount on (i) Form 990, Part VIII, line 1h, or (ii) Form 990-EZ, line 1. Complete Parts I and II.

For a section 501(c)(7), (8), or (10) organization filing Form 990 or 990-EZ that received from any one contributor, during the year, total contributions of more than \$1,000 for use *exclusively* for religious, charitable, scientific, literary, or educational purposes, or the prevention of cruelty to children or animals. Complete Parts I, II, and III.

For a section 501(c)(7), (8), or (10) organization filing Form 990 or 990-EZ that received from any one contributor, during the year, contributions for use *exclusively* for religious, charitable, etc., purposes, but these contributions did not total to more than \$1,000. If this box is checked, enter here the total contributions that were received during the year for an *exclusively* religious, charitable, etc., purpose. Do not complete any of the parts unless the **General Rule** applies to this organization because it received *nonexclusively* religious, charitable, etc., contributions of \$5,000 or more during the year ▶ \$ _____

Caution. An organization that is not covered by the General Rule and/or the Special Rules does not file Schedule B (Form 990, 990-EZ, or 990-PF), but it **must** answer "No" on Part IV, line 2, of its Form 990; or check the box on line H of its Form 990-EZ or on its Form 990-PF, Part I, line 2, to certify that it does not meet the filing requirements of Schedule B (Form 990, 990-EZ, or 990-PF).

Name of organization INTERNET CORP FOR ASSIGNED NAMES & NUMBERS

Employer identification number
95-4712218**Part I** Contributors (see instructions). Use duplicate copies of Part I if additional space is needed.

(a) No.	(b) Name, address, and ZIP + 4	(c) Total contributions	(d) Type of contribution
1	.AU DOMAIN ADMINISTRATION 114 CARDIGAN STREET 3053 CARLTON VICTORIA AUSTRALIA	\$ 280,000.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
2	.CO INTERNET SAS CALLE 100 NO 8A - 49 TORRE B OF 507 6802 BOGOTA COLOMBIA	\$ 17,240.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
3	AFNIC 2 RUE STEPHENSON-MONTIGNY-LE-BRETONNEUX SAINT-QUENTIN-EN-YVELINES CEDEX ON FRANCE	\$ 45,000.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
4	ASSOCIATION DNS.PT AV. DO BRASIL, 101 1700-066 LISBOA PORTUGAL	\$ 7,500.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
5	CIRA 350 SPARKS STREET, SUITE 306 K1R 7S8 OTTAWA ONTARIO CANADA	\$ 85,000.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
6	CNNIC 4, SOUTH 4TH ST. ZHONGGUANCUN 100190 BEIJING CHINA	\$ 50,000.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)

Name of organization INTERNET CORP FOR ASSIGNED NAMES & NUMBERS	Employer identification number 95-4712218
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Part I Contributors (see instructions). Use duplicate copies of Part I if additional space is needed.

(a) No.	(b) Name, address, and ZIP + 4	(c) Total contributions	(d) Type of contribution
7	COORDINATION CENTER FOR TLD RU ZOOLOGICHESKAYA STR., 8 123242 MOSCOW RUSSIA	\$ 110,000.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
8	COUNCIL OF HUNGARIAN INTERNET PROVIDERS VICTOR HUGO 18-22 H-1132 BUDAPEST HUNGARY	\$ 50,000.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
9	CZ.NIC, Z.S.PO AMERICKA 23 2 120 00 PRAGUE CZECH REPUBLIC	\$ 17,000.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
10	DANSK INTERNET FORUM KALVEBOD BRYGGE 45, 3. SAL DK-1560 COPENHAGEN DENMARK	\$ 25,000.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
11	DENIC EG KAISERSTRASSE 75-77 D-60329 FRANKFURT AM MAIN NEUVO LEON GERMANY	\$ 90,000.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
12	DNS BELGIUM VZW UBICENTER, PHILIPSSITE 5, BUS 13 B-3001 LEUVEN BELGIUM	\$ 80,000.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)

Name of organization INTERNET CORP FOR ASSIGNED NAMES & NUMBERS

Employer identification number
95-4712218**Part I** Contributors (see instructions). Use duplicate copies of Part I if additional space is needed.

(a) No.	(b) Name, address, and ZIP + 4	(c) Total contributions	(d) Type of contribution
13	FINNISH COMMUNICATIONS REG. AUTHORITY P.O. BOX 313 FI-00181 HELSINKI FINLAND	\$ 22,000.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
14	HONG KONG INTERNET REGISTRATION CORP. FWD FINANCIAL CTR 308 DES VOEUX RD CEN. SHEUNG WAN HONG KONG	\$ 12,000.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
15	FORTH - INSTITUTE OF COMPUTER SCIENCE N. PLASTIRA 100 VASSILIKA VOUTON GR-700 HERAKLION CRETE GREECE	\$ 10,000.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
16	IIT - CNR INSTITUTE AREA DELLA RICERCA CNR VIA MORUZZI, 1 I- PISA ITALY	\$ 175,000.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
17	INTERNET INFRASTRUCTURE FOUNDATION BOX 7399 SE-103 91 STOCKHOLM SWEDEN	\$ 75,000.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
18	INTERNETNZ P.O. BOX 11881 6142 WELLINGTON NEW ZEALAND	\$ 15,000.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)

Name of organization INTERNET CORP FOR ASSIGNED NAMES & NUMBERS	Employer identification number 95-4712218
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Part I Contributors (see instructions). Use duplicate copies of Part I if additional space is needed.

(a) No.	(b) Name, address, and ZIP + 4	(c) Total contributions	(d) Type of contribution
19	ISNIC - INTERNET ICELAND KATRÍNARTÚNI 2 105 REYKJAVIK ICELAND	\$ 8,000.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
20	ISRAEL INTERNET ASSOCIATION (ISOC-IL) 6 BAREKET ST. POB 7210 4951774 PETACH TIKVA ISRAEL	\$ 18,000.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
21	JAPAN REGISTRY SERVICES CO., LTD. CHIYODA 1ST BLDG E. 13-F 3-8-1 101-0065 CHIYODA-KU JAPAN	\$ 75,000.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
22	KOREAN INTERNET & SECURITY AGENCY DAEDONG BUILDING, 109 JUNGDAE-RO 138-803 SONGPA-GU SEOUL KOREA, REPUBLIC OF (SOUTH)	\$ 30,000.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
23	NASK WAWOZOWA 18 02-796 WARSAW POLAND	\$ 8,000.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
24	NATIONAL INST. FOR R&D IN INFORMATICS 8-10, MARESAL AL. AVERESCU 11455 BUCHAREST ROMANIA	\$ 25,872.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)

Name of organization INTERNET CORP FOR ASSIGNED NAMES & NUMBERS

Employer identification number
95-4712218**Part I** Contributors (see instructions). Use duplicate copies of Part I if additional space is needed.

(a) No.	(b) Name, address, and ZIP + 4	(c) Total contributions	(d) Type of contribution
25	NEUSTAR 21575 RIDGETOP CIRCLE STERLING, VA 20166	\$ 40,000.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
26	NIC.AT JAKOB-HARINGER-STRASSE 8/V 5020 SALZBURG AUSTRALIA	\$ 40,000.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
27	NIC-MEXICO AV. EUGENIO GARZA SADA 427 L4-6 COL. 648 MONTERREY NUEVO LEON MEXICO	\$ 82,500.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
28	NOMINET UK MINERVA HOUSE, EDMUND HALLEY ROAD OX4 4D OXFORD UNITED KINGDOM	\$ 150,000.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
29	NUCLEO DE INFORMACAO E COORDENACAO AV. DAS NAÇÕES UNIDAS, 11541, 7° ANDAR 0 SAO PAULO BRASIL	\$ 50,000.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
30	RESTENA 6, RUE COUDENHOVE-KALERGI L-1359 LUXEMBOURG LUXEMBOURG	\$ 15,000.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)

Name of organization INTERNET CORP FOR ASSIGNED NAMES & NUMBERS	Employer identification number 95-4712218
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Part I Contributors (see instructions). Use duplicate copies of Part I if additional space is needed.

(a) No.	(b) Name, address, and ZIP + 4	(c) Total contributions	(d) Type of contribution
31	STICHTING INTERNET DOMEINREGISTRATIE NED P.O. BOX 5022 6802 EA ARNHEM NETHERLANDS	\$ 160,000.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
32	SWITCH (CH) PO BOX, WERDSTRASSE 2 CH-8021 ZURICH SWITZERLAND	\$ 70,000.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
33	UNINETT NORID AS ABELSGATE 5 NO-7465 TRONDHEIM NORWAY	\$ 32,000.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
34	UNIVERSIDAD DE CHILE (NIC CHILE) MIRAFLORES 222, PISO 14 CP 832 0198 SANTIAGO CHILE	\$ 45,000.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
35	ACADEMIC & RESEARCH NETWORK OF SLOVENIA TEHNOLOSKI PARK 18 LJUBLJANA SLOVENIA	\$ 5,000.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
36	GAUSS RESEARCH LABORATORY, INC. PO BOX 21613 00931-1613 SAN JUAN PUERTO RICO	\$ 5,000.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)

Name of organization INTERNET CORP FOR ASSIGNED NAMES & NUMBERS	Employer identification number 95-4712218
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Part I Contributors (see instructions). Use duplicate copies of Part I if additional space is needed.

(a) No.	(b) Name, address, and ZIP + 4	(c) Total contributions	(d) Type of contribution
37	UNIVERSITY OF LATVIA ----- 29 RAINA BULV LV-1459 ----- RIGA LATVIA	\$ 5,000.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
38	VERISIGN SARL ----- RUE DES PILETTES 3 CH-1705 ----- FRIBOURG SWITZERLAND	\$ 5,000.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
	----- ----- -----	\$ -----	Person <input type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
	----- ----- -----	\$ -----	Person <input type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
	----- ----- -----	\$ -----	Person <input type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
	----- ----- -----	\$ -----	Person <input type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)

Name of organization INTERNET CORP FOR ASSIGNED NAMES & NUMBERS

Employer identification number

95-4712218

Part II Noncash Property (see instructions). Use duplicate copies of Part II if additional space is needed.

(a) No. from Part I	(b) Description of noncash property given	(c) FMV (or estimate) (see instructions)	(d) Date received
-----	----- ----- -----	\$ -----	-----
-----	----- ----- -----	\$ -----	-----
-----	----- ----- -----	\$ -----	-----
-----	----- ----- -----	\$ -----	-----
-----	----- ----- -----	\$ -----	-----
-----	----- ----- -----	\$ -----	-----
-----	----- ----- -----	\$ -----	-----
-----	----- ----- -----	\$ -----	-----
-----	----- ----- -----	\$ -----	-----

Name of organization INTERNET CORP FOR ASSIGNED NAMES & NUMBERS	Employer identification number 95-4712218
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Part III *Exclusively* religious, charitable, etc., individual contributions to section 501(c)(7), (8), or (10) organizations that total more than \$1,000 for the year. Complete columns (a) through (e) and the following line entry.
 For organizations completing Part III, enter the total of *exclusively* religious, charitable, etc., contributions of \$1,000 or less for the year. (Enter this information once. See instructions.) ▶ \$ _____
 Use duplicate copies of Part III if additional space is needed.

(a) No. from Part I	(b) Purpose of gift	(c) Use of gift	(d) Description of how gift is held
-----	----- ----- -----	----- ----- -----	----- ----- -----
(e) Transfer of gift			
Transferee's name, address, and ZIP + 4		Relationship of transferor to transferee	
----- ----- -----		----- ----- -----	

(a) No. from Part I	(b) Purpose of gift	(c) Use of gift	(d) Description of how gift is held
-----	----- ----- -----	----- ----- -----	----- ----- -----
(e) Transfer of gift			
Transferee's name, address, and ZIP + 4		Relationship of transferor to transferee	
----- ----- -----		----- ----- -----	

(a) No. from Part I	(b) Purpose of gift	(c) Use of gift	(d) Description of how gift is held
-----	----- ----- -----	----- ----- -----	----- ----- -----
(e) Transfer of gift			
Transferee's name, address, and ZIP + 4		Relationship of transferor to transferee	
----- ----- -----		----- ----- -----	

(a) No. from Part I	(b) Purpose of gift	(c) Use of gift	(d) Description of how gift is held
-----	----- ----- -----	----- ----- -----	----- ----- -----
(e) Transfer of gift			
Transferee's name, address, and ZIP + 4		Relationship of transferor to transferee	
----- ----- -----		----- ----- -----	

SCHEDULE C
(Form 990 or 990-EZ)

Political Campaign and Lobbying Activities

OMB No. 1545-0047

2013

Open to Public Inspection

For Organizations Exempt From Income Tax Under section 501(c) and section 527
 ▶ **Complete if the organization is described below.** ▶ **Attach to Form 990 or Form 990-EZ.**
 ▶ **See separate instructions.** ▶ **Information about Schedule C (Form 990 or 990-EZ) and its instructions is at www.irs.gov/form990.**

Department of the Treasury
Internal Revenue Service

If the organization answered "Yes," to Form 990, Part IV, line 3, or Form 990-EZ, Part V, line 46 (Political Campaign Activities), then

- Section 501(c)(3) organizations: Complete Parts I-A and B. Do not complete Part I-C.
- Section 501(c) (other than section 501(c)(3)) organizations: Complete Parts I-A and C below. Do not complete Part I-B.
- Section 527 organizations: Complete Part I-A only.

If the organization answered "Yes," to Form 990, Part IV, line 4, or Form 990-EZ, Part VI, line 47 (Lobbying Activities), then

- Section 501(c)(3) organizations that have filed Form 5768 (election under section 501(h)): Complete Part II-A. Do not complete Part II-B.
- Section 501(c)(3) organizations that have NOT filed Form 5768 (election under section 501(h)): Complete Part II-B. Do not complete Part II-A.

If the organization answered "Yes," to Form 990, Part IV, line 5 (Proxy Tax) or Form 990-EZ, Part V, line 35c (Proxy Tax), then

- Section 501(c)(4), (5), or (6) organizations: Complete Part III.

Name of organization INTERNET CORP FOR ASSIGNED NAMES & NUMBERS	Employer identification number 95-4712218
---	---

Part I-A Complete if the organization is exempt under section 501(c) or is a section 527 organization.

- 1 Provide a description of the organization's direct and indirect political campaign activities in Part IV.
- 2 Political expenditures ▶ \$ _____
- 3 Volunteer hours _____

Part I-B Complete if the organization is exempt under section 501(c)(3).

- 1 Enter the amount of any excise tax incurred by the organization under section 4955 ▶ \$ _____
- 2 Enter the amount of any excise tax incurred by organization managers under section 4955 ▶ \$ _____
- 3 If the organization incurred a section 4955 tax, did it file Form 4720 for this year? Yes No
- 4a Was a correction made? Yes No
- b If "Yes," describe in Part IV.

Part I-C Complete if the organization is exempt under section 501(c), except section 501(c)(3).

- 1 Enter the amount directly expended by the filing organization for section 527 exempt function activities ▶ \$ _____
- 2 Enter the amount of the filing organization's funds contributed to other organizations for section 527 exempt function activities ▶ \$ _____
- 3 Total exempt function expenditures. Add lines 1 and 2. Enter here and on Form 1120-POL, line 17b ▶ \$ _____
- 4 Did the filing organization file **Form 1120-POL** for this year? Yes No
- 5 Enter the names, addresses and employer identification number (EIN) of all section 527 political organizations to which the filing organization made payments. For each organization listed, enter the amount paid from the filing organization's funds. Also enter the amount of political contributions received that were promptly and directly delivered to a separate political organization, such as a separate segregated fund or a political action committee (PAC). If additional space is needed, provide information in Part IV.

(a) Name	(b) Address	(c) EIN	(d) Amount paid from filing organization's funds. If none, enter -0-.	(e) Amount of political contributions received and promptly and directly delivered to a separate political organization. If none, enter -0-.
(1)	-----			
(2)	-----			
(3)	-----			
(4)	-----			
(5)	-----			
(6)	-----			

For Paperwork Reduction Act Notice, see the Instructions for Form 990 or 990-EZ.

Schedule C (Form 990 or 990-EZ) 2013

Part II-A Complete if the organization is exempt under section 501(c)(3) and filed Form 5768 (election under section 501(h)).

A Check if the filing organization belongs to an affiliated group (and list in Part IV each affiliated group member's name, address, EIN, expenses, and share of excess lobbying expenditures).

B Check if the filing organization checked box A and "limited control" provisions apply.

Limits on Lobbying Expenditures (The term "expenditures" means amounts paid or incurred.)		(a) Filing organization's totals	(b) Affiliated group totals												
1a	Total lobbying expenditures to influence public opinion (grass roots lobbying)														
b	Total lobbying expenditures to influence a legislative body (direct lobbying)														
c	Total lobbying expenditures (add lines 1a and 1b)														
d	Other exempt purpose expenditures														
e	Total exempt purpose expenditures (add lines 1c and 1d)														
f	Lobbying nontaxable amount. Enter the amount from the following table in both columns.														
<table border="1" style="width: 100%;"> <thead> <tr> <th style="text-align: left;">If the amount on line 1e, column (a) or (b) is:</th> <th style="text-align: left;">The lobbying nontaxable amount is:</th> </tr> </thead> <tbody> <tr> <td>Not over \$500,000</td> <td>20% of the amount on line 1e.</td> </tr> <tr> <td>Over \$500,000 but not over \$1,000,000</td> <td>\$100,000 plus 15% of the excess over \$500,000.</td> </tr> <tr> <td>Over \$1,000,000 but not over \$1,500,000</td> <td>\$175,000 plus 10% of the excess over \$1,000,000.</td> </tr> <tr> <td>Over \$1,500,000 but not over \$17,000,000</td> <td>\$225,000 plus 5% of the excess over \$1,500,000.</td> </tr> <tr> <td>Over \$17,000,000</td> <td>\$1,000,000.</td> </tr> </tbody> </table>		If the amount on line 1e, column (a) or (b) is:	The lobbying nontaxable amount is:	Not over \$500,000	20% of the amount on line 1e.	Over \$500,000 but not over \$1,000,000	\$100,000 plus 15% of the excess over \$500,000.	Over \$1,000,000 but not over \$1,500,000	\$175,000 plus 10% of the excess over \$1,000,000.	Over \$1,500,000 but not over \$17,000,000	\$225,000 plus 5% of the excess over \$1,500,000.	Over \$17,000,000	\$1,000,000.		
If the amount on line 1e, column (a) or (b) is:	The lobbying nontaxable amount is:														
Not over \$500,000	20% of the amount on line 1e.														
Over \$500,000 but not over \$1,000,000	\$100,000 plus 15% of the excess over \$500,000.														
Over \$1,000,000 but not over \$1,500,000	\$175,000 plus 10% of the excess over \$1,000,000.														
Over \$1,500,000 but not over \$17,000,000	\$225,000 plus 5% of the excess over \$1,500,000.														
Over \$17,000,000	\$1,000,000.														
g	Grassroots nontaxable amount (enter 25% of line 1f)														
h	Subtract line 1g from line 1a. If zero or less, enter -0-														
i	Subtract line 1f from line 1c. If zero or less, enter -0-														
j	If there is an amount other than zero on either line 1h or line 1i, did the organization file Form 4720 reporting section 4911 tax for this year?		<input type="checkbox"/> Yes <input type="checkbox"/> No												

4-Year Averaging Period Under Section 501(h)

(Some organizations that made a section 501(h) election do not have to complete all of the five columns below. See the instructions for lines 2a through 2f on page 4.)

Lobbying Expenditures During 4-Year Averaging Period					
Calendar year (or fiscal year beginning in)	(a) 2010	(b) 2011	(c) 2012	(d) 2013	(e) Total
2a Lobbying nontaxable amount					
b Lobbying ceiling amount (150% of line 2a, column (e))					
c Total lobbying expenditures					
d Grassroots nontaxable amount					
e Grassroots ceiling amount (150% of line 2d, column (e))					
f Grassroots lobbying expenditures					

Part II-B Complete if the organization is exempt under section 501(c)(3) and has NOT filed Form 5768 (election under section 501(h)).

For each "Yes," response to lines 1a through 1i below, provide in Part IV a detailed description of the lobbying activity.	(a)		(b)
	Yes	No	Amount
1 During the year, did the filing organization attempt to influence foreign, national, state or local legislation, including any attempt to influence public opinion on a legislative matter or referendum, through the use of:			
a Volunteers?		X	
b Paid staff or management (include compensation in expenses reported on lines 1c through 1i)?	X		
c Media advertisements?		X	
d Mailings to members, legislators, or the public?		X	
e Publications, or published or broadcast statements?		X	
f Grants to other organizations for lobbying purposes?		X	
g Direct contact with legislators, their staffs, government officials, or a legislative body?	X		576,138.
h Rallies, demonstrations, seminars, conventions, speeches, lectures, or any similar means?		X	
i Other activities?		X	
j Total. Add lines 1c through 1i			576,138.
2 a Did the activities in line 1 cause the organization to be not described in section 501(c)(3)?		X	
b If "Yes," enter the amount of any tax incurred under section 4912			
c If "Yes," enter the amount of any tax incurred by organization managers under section 4912			
d If the filing organization incurred a section 4912 tax, did it file Form 4720 for this year?		X	

Part III-A Complete if the organization is exempt under section 501(c)(4), section 501(c)(5), or section 501(c)(6).

	Yes	No
1 Were substantially all (90% or more) dues received nondeductible by members?	1	
2 Did the organization make only in-house lobbying expenditures of \$2,000 or less?	2	
3 Did the organization agree to carry over lobbying and political expenditures from the prior year?	3	

Part III-B Complete if the organization is exempt under section 501(c)(4), section 501(c)(5), or section 501(c)(6) and if either (a) BOTH Part III-A, lines 1 and 2, are answered "No," OR (b) Part III-A, line 3, is answered "Yes."

1 Dues, assessments and similar amounts from members	1	
2 Section 162(e) nondeductible lobbying and political expenditures (do not include amounts of political expenses for which the section 527(f) tax was paid).		
a Current year	2a	
b Carryover from last year	2b	
c Total	2c	
3 Aggregate amount reported in section 6033(e)(1)(A) notices of nondeductible section 162(e) dues	3	
4 If notices were sent and the amount on line 2c exceeds the amount on line 3, what portion of the excess does the organization agree to carryover to the reasonable estimate of nondeductible lobbying and political expenditure next year?	4	
5 Taxable amount of lobbying and political expenditures (see instructions)	5	

Part IV Supplemental Information

Provide the descriptions required for Part I-A, line 1; Part I-B, line 4; Part I-C, line 5; Part II-A (affiliated group list); Part II-A, line 2; and Part II-B, line 1. Also, complete this part for any additional information.

LOBBYING EXPENDITURES

SCHEDULE C PART II-B

THE ORGANIZATION UTILIZED THE SERVICES OF A STAFF REGISTERED LOBBYIST AND

TWO GOVERNMENT AFFAIRS FIRMS DURING THE YEAR ENDED JUNE 30, 2014, FOR A

COST OF \$576,138.

Part IV Supplemental Information *(continued)*

SCHEDULE D (Form 990)

Supplemental Financial Statements

OMB No. 1545-0047

Complete if the organization answered "Yes," to Form 990, Part IV, line 6, 7, 8, 9, 10, 11a, 11b, 11c, 11d, 11e, 11f, 12a, or 12b.

2013

Attach to Form 990.

Open to Public Inspection

Department of the Treasury Internal Revenue Service

Information about Schedule D (Form 990) and its instructions is at www.irs.gov/form990.

Name of the organization

Employer identification number

INTERNET CORP FOR ASSIGNED NAMES & NUMBERS

95-4712218

Part I Organizations Maintaining Donor Advised Funds or Other Similar Funds or Accounts. Complete if the organization answered "Yes" to Form 990, Part IV, line 6.

Table with 2 columns: (a) Donor advised funds, (b) Funds and other accounts. Rows include Total number at end of year, Aggregate contributions, Aggregate grants, Aggregate value, and questions about donor advisement.

Part II Conservation Easements. Complete if the organization answered "Yes" to Form 990, Part IV, line 7.

Table with 2 columns: Held at the End of the Tax Year. Rows include Purpose(s) of conservation easements, Total number of easements, Total acreage, Number of easements on historic structures, and monitoring expenses.

Part III Organizations Maintaining Collections of Art, Historical Treasures, or Other Similar Assets. Complete if the organization answered "Yes" to Form 990, Part IV, line 8.

Table with 2 columns: Amounts. Rows include Revenues and Assets for collections, and Revenues and Assets for financial gain.

For Paperwork Reduction Act Notice, see the Instructions for Form 990.

Schedule D (Form 990) 2013

Part III Organizations Maintaining Collections of Art, Historical Treasures, or Other Similar Assets (continued)

3 Using the organization's acquisition, accession, and other records, check any of the following that are a significant use of its collection items (check all that apply):

- a Public exhibition, b Scholarly research, c Preservation for future generations, d Loan or exchange programs, e Other

4 Provide a description of the organization's collections and explain how they further the organization's exempt purpose in Part XIII.

5 During the year, did the organization solicit or receive donations of art, historical treasures, or other similar assets to be sold to raise funds rather than to be maintained as part of the organization's collection?

Part IV Escrow and Custodial Arrangements. Complete if the organization answered "Yes" to Form 990, Part IV, line 9, or reported an amount on Form 990, Part X, line 21.

1a Is the organization an agent, trustee, custodian or other intermediary for contributions or other assets not included on Form 990, Part X?

b If "Yes," explain the arrangement in Part XIII and complete the following table:

Table with 2 columns: Description, Amount. Rows: 1c Beginning balance, 1d Additions during the year, 1e Distributions during the year, 1f Ending balance.

2a Did the organization include an amount on Form 990, Part X, line 21?

b If "Yes," explain the arrangement in Part XIII. Check here if the explanation has been provided in Part XIII.

Part V Endowment Funds. Complete if the organization answered "Yes" to Form 990, Part IV, line 10.

Table with 6 columns: (a) Current year, (b) Prior year, (c) Two years back, (d) Three years back, (e) Four years back. Rows: 1a-1g (Beginning of year balance, Contributions, Net investment earnings, gains, and losses, Grants or scholarships, Other expenditures for facilities and programs, Administrative expenses, End of year balance).

2 Provide the estimated percentage of the current year end balance (line 1g, column (a)) held as:

- a Board designated or quasi-endowment %
b Permanent endowment %
c Temporarily restricted endowment %

The percentages in lines 2a, 2b, and 2c should equal 100%.

3a Are there endowment funds not in the possession of the organization that are held and administered for the organization by:

- (i) unrelated organizations
(ii) related organizations

Table with 2 columns: Yes, No. Rows: 3a(i), 3a(ii), 3b.

b If "Yes" to 3a(ii), are the related organizations listed as required on Schedule R?

4 Describe in Part XIII the intended uses of the organization's endowment funds.

Part VI Land, Buildings, and Equipment.

Complete if the organization answered "Yes" to Form 990, Part IV, line 11a. See Form 990, Part X, line 10.

Table with 5 columns: (a) Cost or other basis (investment), (b) Cost or other basis (other), (c) Accumulated depreciation, (d) Book value. Rows: 1a Land, 1b Buildings, 1c Leasehold improvements, 1d Equipment, 1e Other, Total.

Part VII Investments - Other Securities.

Complete if the organization answered "Yes" to Form 990, Part IV, line 11b. See Form 990, Part X, line 12.

(a) Description of security or category (including name of security)	(b) Book value	(c) Method of valuation: Cost or end-of-year market value
(1) Financial derivatives		
(2) Closely-held equity interests		
(3) Other _____		
(A) _____		
(B) _____		
(C) _____		
(D) _____		
(E) _____		
(F) _____		
(G) _____		
(H) _____		
Total. (Column (b) must equal Form 990, Part X, col. (B) line 12) ▶		

Part VIII Investments - Program Related.

Complete if the organization answered "Yes" to Form 990, Part IV, line 11c. See Form 990, Part X, line 13.

(a) Description of investment	(b) Book value	(c) Method of valuation: Cost or end-of-year market value
(1) _____		
(2) _____		
(3) _____		
(4) _____		
(5) _____		
(6) _____		
(7) _____		
(8) _____		
(9) _____		
Total. (Column (b) must equal Form 990, Part X, col. (B) line 13) ▶		

Part IX Other Assets.

Complete if the organization answered "Yes" to Form 990, Part IV, line 11d. See Form 990, Part X, line 15.

(a) Description	(b) Book value
(1) _____	
(2) _____	
(3) _____	
(4) _____	
(5) _____	
(6) _____	
(7) _____	
(8) _____	
(9) _____	
Total. (Column (b) must equal Form 990, Part X, col. (B) line 15.) ▶	

Part X Other Liabilities.

Complete if the organization answered "Yes" to Form 990, Part IV, line 11e or 11f. See Form 990, Part X, line 25.

1. (a) Description of liability	(b) Book value
(1) Federal income taxes	
(2) _____	
(3) _____	
(4) _____	
(5) _____	
(6) _____	
(7) _____	
(8) _____	
(9) _____	
Total. (Column (b) must equal Form 990, Part X, col. (B) line 25.) ▶	

2. Liability for uncertain tax positions. In Part XIII, provide the text of the footnote to the organization's financial statements that reports the organization's liability for uncertain tax positions under FIN 48 (ASC 740). Check here if the text of the footnote has been provided in Part XIII

Part XI Reconciliation of Revenue per Audited Financial Statements With Revenue per Return. Complete if the organization answered "Yes" to Form 990, Part IV, line 12a.

Table with 5 main rows and sub-rows (a-e) for adjustments. Total revenue reported as 127,814,320.

Part XII Reconciliation of Expenses per Audited Financial Statements With Expenses per Return. Complete if the organization answered "Yes" to Form 990, Part IV, line 12a.

Table with 5 main rows and sub-rows (a-e) for adjustments. Total expenses reported as 124,267,391.

Part XIII Supplemental Information.

Provide the descriptions required for Part II, lines 3, 5, and 9; Part III, lines 1a and 4; Part IV, lines 1b and 2b; Part V, line 4; Part X, line 2; Part XI, lines 2d and 4b; and Part XII, lines 2d and 4b. Also complete this part to provide any additional information.

SEE PAGE 5

Part XIII Supplemental Information (continued)

FORM 990, SCHEDULE D, PART X, LINE 2

ASC 740-10 FOOTNOTE

ICANN IS EXEMPT FROM FEDERAL AND STATE INCOME TAXES UNDER SECTION 501(C)(3) OF THE INTERNAL REVENUE CODE AND SECTION 23071(D) OF THE CALIFORNIA REVENUE AND TAXATION CODE. ACCORDINGLY, NO PROVISION FOR INCOME TAXES HAS BEEN MADE IN THE ACCOMPANYING FINANCIAL STATEMENTS. HOWEVER, ICANN IS SUBJECT TO INCOME TAXES ON ANY NET INCOME THAT IS DERIVED FROM A TRADE OR BUSINESS, REGULARLY CARRIED ON, AND NOT IN FURTHERANCE OF THE PURPOSES FOR WHICH IT WAS GRANTED EXEMPTION. NO INCOME TAX PROVISION HAS BEEN RECORDED AS THE NET INCOME, IF ANY, FROM ANY UNRELATED TRADE OR BUSINESS, IN THE OPINION OF MANAGEMENT, IS NOT MATERIAL TO THE BASIC FINANCIAL STATEMENTS TAKEN AS A WHOLE.

ICANN BELIEVES IT IS IN COMPLIANCE WITH ALL APPLICABLE LAWS, HOWEVER, UPON AUDIT BY A TAXING AUTHORITY, IF AMOUNTS ARE FOUND DUE, ICANN MAY BE LIABLE FOR SUCH TAXES. MANAGEMENT HAS ANALYZED ICANN'S TAX POSITIONS TAKEN ON FEDERAL AND STATE INCOME TAX RETURNS FOR ALL OPEN TAX YEARS AND HAS CONCLUDED THAT, AS OF JUNE 30, 2014 AND 2013, NO LIABILITIES ARE REQUIRED TO BE RECORDED IN CONNECTION WITH SUCH TAX POSITIONS IN ICANN'S FINANCIAL STATEMENTS. THE FISCAL 2009 THROUGH 2013 TAX YEARS REMAIN OPEN FOR EXAMINATION BY THE TAXING AUTHORITIES. NO INTEREST OR PENALTIES ARE RECOGNIZED DURING THE YEAR AS ICANN HAS NOT RECORDED INCOME TAX CONTINGENCIES. ICANN IS NOT UNDER EXAMINATION BY THE INTERNAL REVENUE SERVICE FOR ANY OPEN TAX YEARS.

Part XIII Supplemental Information *(continued)*

FORM 990, SCHEDULE D, PART XII, LINE 2D

FOREIGN EXCHANGE GAIN (LOSS)	\$132,076
ROUNDING	9

	\$132,085

**SCHEDULE F
(Form 990)**

Statement of Activities Outside the United States

OMB No. 1545-0047

2013

Open to Public Inspection

- ▶ Complete if the organization answered "Yes" on Form 990, Part IV, line 14b, 15, or 16.
- ▶ Attach to Form 990. ▶ See separate instructions.
- ▶ Information about Schedule F (Form 990) and its instructions is at www.irs.gov/form990.

Department of the Treasury
Internal Revenue Service

Name of the organization

Employer identification number

INTERNET CORP FOR ASSIGNED NAMES & NUMBERS

95-4712218

Part I **General Information on Activities Outside the United States.** Complete if the organization answered "Yes" on Form 990, Part IV, line 14b.

1 For grantmakers. Does the organization maintain records to substantiate the amount of its grants and other assistance, the grantees' eligibility for the grants or assistance, and the selection criteria used to award the grants or assistance? **Yes** **No**

2 For grantmakers. Describe in Part V the organization's procedures for monitoring the use of its grants and other assistance outside the United States.

3 Activities per Region. (The following Part I, line 3 table can be duplicated if additional space is needed.)

(a) Region	(b) Number of offices in the region	(c) Number of employees, agents, and independent contractors in region	(d) Activities conducted in region (by type) (e.g., fundraising, program services, investments, grants to recipients located in the region)	(e) If activity listed in (d) is a program service, describe specific type of service(s) in region	(f) Total expenditures for and investments in region
(1) NORTH AMERICA		1.	PROGRAM SERVICES	SEE 990 PART III	1,060,695.
(2) CENTRAL AMERICA/CARIBBEAN		1.	PROGRAM SERVICES	SEE 990 PART III	709,811.
(3) SOUTH AMERICA		41.	PROGRAM SERVICES	SEE 990 PART III	4,638,878.
(4) EAST ASIA AND THE PACIFIC	1.	47.	PROGRAM SERVICES	SEE 990 PART III	8,253,339.
(5) EUROPE	3.	65.	PROGRAM SERVICES	SEE 990 PART III	22,424,210.
(6) RUSSIA/INDEPENDENT STATES		1.	PROGRAM SERVICES	SEE 990 PART III	178,978.
(7) MIDDLE EAST AND NORTH AFRICA		3.	PROGRAM SERVICES	SEE 990 PART III	1,280,285.
(8) SUB-SAHARAN AFRICA		107.	PROGRAM SERVICES	SEE 990 PART III	2,587,674.
(9) SOUTH ASIA			PROGRAM SERVICES	SEE 990 PART III	348,980.
(10)					
(11)					
(12)					
(13)					
(14)					
(15)					
(16)					
(17)					
3a Sub-total	4.	217.			41,482,850.
b Total from continuation sheets to Part I					
c Totals (add lines 3a and 3b)	4.	217.			41,482,850.

For Paperwork Reduction Act Notice, see the Instructions for Form 990.

Schedule F (Form 990) 2013

Part II Grants and Other Assistance to Organizations or Entities Outside the United States. Complete if the organization answered "Yes" on Form 990, Part IV, line 15, for any recipient who received more than \$5,000. Part II can be duplicated if additional space is needed.

1	(a) Name of organization	(b) IRS code section and EIN (if applicable)	(c) Region	(d) Purpose of grant	(e) Amount of cash grant	(f) Manner of cash disbursement	(g) Amount of non-cash assistance	(h) Description of non-cash assistance	(i) Method of valuation (book, FMV, appraisal, other)
(1)			CENT. AMERICA/CARIBBEAN	CTU ICT WORKSHOP	10,000.	WIRE/CASH			
(2)			EAST ASIA/PACIFIC	APRICOT 2014 SPONSORSHIP	10,000.	WIRE/CASH			
(3)			EAST ASIA/PACIFIC	INTERNET FORUM SPONS.	7,000.	WIRE/CASH			
(4)			EAST ASIA/PACIFIC	ISIF ASIA SPONSORSHIP	23,971.	WIRE/CASH			
(5)			EAST ASIA/PACIFIC	JPNIC SPONSORSHIP	8,784.	WIRE/CASH			
(6)			EAST ASIA/PACIFIC	KISA EXCH. SPONSORSHIP	49,998.	WIRE/CASH			
(7)			EAST ASIA/PACIFIC	NOG SPONSORSHIP	23,000.	WIRE/CASH			
(8)			EAST ASIA/PACIFIC	YOUTH@ICANN SPONSORSHIP	20,000.	WIRE/CASH			
(9)			EUROPE/ICELAND/GREENLAND	ARAB IGF SPONSORSHIP	81,228.	WIRE/CASH			
(10)			EUROPE/ICELAND/GREENLAND	CRYPTTECH PROJ. SPONS.	50,000.	WIRE/CASH			
(11)			EUROPE/ICELAND/GREENLAND	EURODIG 2014 SPONSORSHIP	20,910.	WIRE/CASH			
(12)			EUROPE/ICELAND/GREENLAND	EURODIG SPONSORSHIP	12,869.	WIRE/CASH			
(13)			EUROPE/ICELAND/GREENLAND	IAD SUMMIT 2014 SPONS.	10,000.	WIRE/CASH			
(14)			EUROPE/ICELAND/GREENLAND	MEP AWARDS 2013 SPONS.	13,769.	WIRE/CASH			
(15)			EUROPE/ICELAND/GREENLAND	WEF ITIAP PARTICIPANT	69,318.	WIRE/CASH			
(16)			EUROPE/ICELAND/GREENLAND	YOUTH IGF PROJ. 2013	27,658.	WIRE/CASH			

2 Enter total number of recipient organizations listed above that are recognized as charities by the foreign country, recognized as tax-exempt by the IRS, or for which the grantee or counsel has provided a section 501(c)(3) equivalency letter. ▶

3 Enter total number of other organizations or entities ▶

Part II Grants and Other Assistance to Organizations or Entities Outside the United States. Complete if the organization answered "Yes" on Form 990, Part IV, line 15, for any recipient who received more than \$5,000. Part II can be duplicated if additional space is needed.

1	(a) Name of organization	(b) IRS code section and EIN (if applicable)	(c) Region	(d) Purpose of grant	(e) Amount of cash grant	(f) Manner of cash disbursement	(g) Amount of non-cash assistance	(h) Description of non-cash assistance	(i) Method of valuation (book, FMV, appraisal, other)
(1)			NORTH AMERICA	MSH DIA-LOGUES SPONS	7,000.	WIRE/CASH			
(2)			RUSSIA/NEWLY IND. STATES	IISI SPONSORSHIP	20,000.	WIRE/CASH			
(3)			RUSSIA/NEWLY IND. STATES	MSU FORUM SPONSORSHIP	10,000.	WIRE/CASH			
(4)			RUSSIA/NEWLY IND. STATES	PIR CENTER PROGRAM	25,000.	WIRE/CASH			
(5)			SOUTH AMERICA	AYITIC SPONSORSHIP	10,000.	WIRE/CASH			
(6)			SOUTH AMERICA	ECOMLAC SPONSORSHIP	6,000.	WIRE/CASH			
(7)			SOUTH AMERICA	LACIGF SPONSORSHIP	20,000.	WIRE/CASH			
(8)			SOUTH AMERICA	LACNOG 2013 SPONSORSHIP	7,000.	WIRE/CASH			
(9)			SOUTH AMERICA	LACTLD SPONSORSHIP	36,500.	WIRE/CASH			
(10)			SOUTH AMERICA	LACNIC 21 SPONSORSHIP	7,000.	WIRE/CASH			
(11)			SOUTH AMERICA	LACNIC 19 SPONSORSHIP	7,000.	WIRE/CASH			
(12)			SOUTH ASIA	IGF BALI 2013 SPONS.	250,000.	WIRE/CASH			
(13)			SOUTH ASIA	SANOG 22/23 SPONSORSHIP	7,500.	WIRE/CASH			
(14)			SUB-SAHARAN AFRICA	AFIGF 2013 SPONSORSHIP	20,000.	WIRE/CASH			
(15)			SUB-SAHARAN AFRICA	AFNOG WORK-SHOP SPONS.	8,000.	WIRE/CASH			
(16)			SUB-SAHARAN AFRICA	AFTLD CCTLD STUDY CONTR.	20,000.	WIRE/CASH			

2 Enter total number of recipient organizations listed above that are recognized as charities by the foreign country, recognized as tax-exempt by the IRS, or for which the grantee or counsel has provided a section 501(c)(3) equivalency letter.

3 Enter total number of other organizations or entities

Part II Grants and Other Assistance to Organizations or Entities Outside the United States. Complete if the organization answered "Yes" on Form 990, Part IV, line 15, for any recipient who received more than \$5,000. Part II can be duplicated if additional space is needed.

1	(a) Name of organization	(b) IRS code section and EIN (if applicable)	(c) Region	(d) Purpose of grant	(e) Amount of cash grant	(f) Manner of cash disbursement	(g) Amount of non-cash assistance	(h) Description of non-cash assistance	(i) Method of valuation (book, FMV, appraisal, other)
(1)			SUB-SAHARAN AFRICA	AIS CONF. SPONSORSHIP	10,000.	WIRE/CASH			
(2)			EUROPE/ICELAND/GREENLAND	WEF ANNUAL MEETING 2014	31,244.	WIRE/CASH			
(3)			SUB-SAHARAN AFRICA	AFRNIC SPONSORSHIP	42,000.	WIRE/CASH			
(4)									
(5)									
(6)									
(7)									
(8)									
(9)									
(10)									
(11)									
(12)									
(13)									
(14)									
(15)									
(16)									

2 Enter total number of recipient organizations listed above that are recognized as charities by the foreign country, recognized as tax-exempt by the IRS, or for which the grantee or counsel has provided a section 501(c)(3) equivalency letter. ▶ -----

3 Enter total number of other organizations or entities ▶ ----- 35.

Part III Grants and Other Assistance to Individuals Outside the United States. Complete if the organization answered "Yes" on Form 990, Part IV, line 16. Part III can be duplicated if additional space is needed.

(a) Type of grant or assistance	(b) Region	(c) Number of recipients	(d) Amount of cash grant	(e) Manner of cash disbursement	(f) Amount of non-cash assistance	(g) Description of non-cash assistance	(h) Method of valuation (book, FMV, appraisal, other)
(1) FELLOWSHIP PROGRAM	CENT. AMERICA/CARIBBEAN	18.	8,750.	WIRE/CASH	73,305.	AIRFARE/LODG	ACTUAL EXP
(2) FELLOWSHIP PROGRAM	EAST ASIA/PACIFIC	19.	9,000.	WIRE/CASH	74,347.	AIRFARE/LODG	ACTUAL EXP
(3) FELLOWSHIP PROGRAM	EUROPE/ICELAND/GREENLAND	13.	5,500.	WIRE/CASH	39,459.	AIRFARE/LODG	ACTUAL EXP
(4) FELLOWSHIP PROGRAM	MIDDLE EAST/NORTH AFRICA	24.	8,500.	WIRE/CASH	55,219.	AIRFARE/LODG	ACTUAL EXP
(5) FELLOWSHIP PROGRAM	NORTH AMERICA	3.	1,500.	WIRE/CASH	10,975.	AIRFARE/LODG	ACTUAL EXP
(6) FELLOWSHIP PROGRAM	RUSSIA/NEWLY IND. STATES	9.	4,000.	WIRE/CASH	29,184.	AIRFARE/LODG	ACTUAL EXP
(7) FELLOWSHIP PROGRAM	SOUTH AMERICA	18.	7,210.	WIRE/CASH	53,388.	AIRFARE/LODG	ACTUAL EXP
(8) FELLOWSHIP PROGRAM	SOUTH ASIA	18.	7,500.	WIRE/CASH	50,372.	AIRFARE/LODG	ACTUAL EXP
(9) FELLOWSHIP PROGRAM	SUB-SAHARAN AFRICA	39.	18,000.	WIRE/CASH	120,783.	AIRFARE/LODG	ACTUAL EXP
(10)							
(11)							
(12)							
(13)							
(14)							
(15)							
(16)							
(17)							
(18)							

Part IV Foreign Forms

- 1 Was the organization a U.S. transferor of property to a foreign corporation during the tax year? *If "Yes," the organization may be required to file Form 926, Return by a U.S. Transferor of Property to a Foreign Corporation (see Instructions for Form 926)* Yes No
- 2 Did the organization have an interest in a foreign trust during the tax year? *If "Yes," the organization may be required to file Form 3520, Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts, and/or Form 3520-A, Annual Information Return of Foreign Trust With a U.S. Owner (see Instructions for Forms 3520 and 3520-A)* Yes No
- 3 Did the organization have an ownership interest in a foreign corporation during the tax year? *If "Yes," the organization may be required to file Form 5471, Information Return of U.S. Persons With Respect To Certain Foreign Corporations. (see Instructions for Form 5471)* Yes No
- 4 Was the organization a direct or indirect shareholder of a passive foreign investment company or a qualified electing fund during the tax year? *If "Yes," the organization may be required to file Form 8621, Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund. (see Instructions for Form 8621)* Yes No
- 5 Did the organization have an ownership interest in a foreign partnership during the tax year? *If "Yes," the organization may be required to file Form 8865, Return of U.S. Persons With Respect To Certain Foreign Partnerships. (see Instructions for Form 8865)* Yes No
- 6 Did the organization have any operations in or related to any boycotting countries during the tax year? *If "Yes," the organization may be required to file Form 5713, International Boycott Report (see Instructions for Form 5713)* Yes No

Part V Supplemental Information

Complete this part to provide the information required by Part I, line 2 (monitoring of funds); Part I, line 3, column (f) (accounting method; amounts of investments vs. expenditures per region); Part II, line 1 (accounting method); Part III (accounting method); and Part III, column (c) (estimated number of recipients), as applicable. Also complete this part to provide any additional information (see instructions).

SCHEDULE F, PART I, LINE 2

ORGANIZATION'S PROCEDURES FOR MONITORING USE OF GRANTS

AN ICANN FELLOWSHIP IS A GRANT OF SUPPORT THAT IS AWARDED TO ENABLE INDIVIDUALS FROM STAKEHOLDER GROUPS AROUND THE WORLD TO ATTEND ICANN PUBLIC MEETINGS. THIS IS A MEANS-TESTED PROGRAM. APPLICANTS MUST BE CITIZENS OF ECONOMICALLY ELIGIBLE COUNTRIES. ICANN USES THE WORLD BANK CLASSIFICATION OF LOW, LOWER-MIDDLE, AND UPPER-MIDDLE ECONOMIES. THE FELLOWSHIP COVERS THE COST OF ECONOMY CLASS AIRFARE AND HOTEL, AS WELL AS PROVIDING A STIPEND AFTER SUCCESSFUL COMPLETION OF THE PROGRAM, IN ORDER TO ASSIST IN COVERING SOME BASIC EXPENSES INCURRED BY THE FELLOW. RECIPIENTS ARE EXPECTED TO ACTIVELY CONTRIBUTE TO ICANN PROCESSES AND BE A PART OF THE NEXT GENERATION OF ICANN LEADERSHIP.

FELLOWSHIPS ARE AWARDED BY AN INDEPENDENT SELECTION COMMITTEE BASED ON A MIX OF CRITERIA INCLUDING APPLICANT EXPERIENCE AND REFERENCES, GEOGRAPHIC PROXIMITY TO MEETING, RECEIPT OF PAST FELLOWSHIPS, ETC. INDIVIDUALS MAY NOT RECEIVE THIS GRANT OF SUPPORT MORE THAN THREE TIMES. FOR EACH PUBLIC MEETING THAT INCORPORATES THE FELLOWSHIP PROGRAM, A LIST OF SELECTED FELLOWS TO ATTEND THE UPCOMING MEETING IS POSTED ON THE ICANN WEBSITE PRIOR TO THE MEETING. SUBSEQUENT TO THE PUBLIC MEETING, A LIST OF FELLOWS WHO ATTENDED THE MEETING IS POSTED ON THE ICANN WEBSITE.

TRAVEL AND HOTEL COSTS ASSOCIATED WITH FELLOWS PRE-SELECTED TO ATTEND THE PUBLIC MEETING ARE BOOKED AND PAID FOR DIRECTLY BY ICANN. ALL FELLOWS ARE ELIGIBLE TO RECEIVE A FLAT STIPEND NOT TO EXCEED U.S. \$500.00. STIPENDS

Part V Supplemental Information

Complete this part to provide the information required by Part I, line 2 (monitoring of funds); Part I, line 3, column (f) (accounting method; amounts of investments vs. expenditures per region); Part II, line 1 (accounting method); Part III (accounting method); and Part III, column (c) (estimated number of recipients), as applicable. Also complete this part to provide any additional information (see instructions).

ARE GENERALLY PROVIDED TO FELLOWS BY WIRE TRANSFER AND ARE PAID TO EACH FELLOW SUBSEQUENT TO THE MEETING AND AFTER THE FELLOW HAS DEMONSTRATED COMPLETION OF THE FELLOWSHIP PROGRAM. DURING THE TWELVE MONTHS ENDED JUNE 30, 2014, ICANN PAID \$576,991 TO ALLOW ONE HUNDRED AND SIXTY-ONE (161) FELLOWSHIP PARTICIPANTS TO ATTEND FOUR(4) ICANN PUBLIC MEETINGS.

ICANN ALSO PROVIDES TRAVEL SUPPORT TO OTHER MEMBERS OF THE VOLUNTEER COMMUNITY TO FACILITATE POLICY DEVELOPMENT EFFORTS AND OUTREACH IMPORTANT TO ICANN'S MISSION. THE PROCESS FOR SELECTION IS LARGELY BASED ON SPECIFIC CRITERIA ESTABLISHED BY EACH STAKEHOLDER/CONSTITUENCY GROUP. TRAVEL SUPPORT EXTENDED TO THESE GROUPS IS REPORTED AS PART OF TRAVEL EXPENSES IN PART IX, STATEMENT OF FUNCTIONAL EXPENSES. FOR OTHER CONTRIBUTIONS, STAKEHOLDER ENGAGEMENT STAFF DEVELOP REQUESTS BASED UPON ICANN'S STRATEGIC PLAN AND ICANN'S OPERATING PLAN. SPECIFIC NEEDS WITHIN SPECIFIC REGIONS OF THE WORLD ARE CONSIDERED. ICANN EXECUTIVES REVIEW THE LIST OF SUGGESTED CONTRIBUTIONS AND DECIDE ON WHICH CONTRIBUTIONS TO PURSUE. THE ICANN BOARD AND COMMUNITY CONSIDER THE CONTRIBUTIONS WITHIN THE OVERALL FISCAL YEAR OPERATING PLAN AND BUDGET PROCESS.

SCHEDULE F, PART I, LINE 3

AT JUNE 30, 2014, ICANN HAD INTERNATIONAL OFFICES LOCATED IN BRUSSELS, BELGIUM; ISTANBUL, TURKEY; SINGAPORE, SINGAPORE; AND GENEVA, SWITZERLAND.

THE NUMBER OF PEOPLE IN EACH REGION SHOWN IN PART I LINE 3 COL (C) OF

Part V Supplemental Information

Complete this part to provide the information required by Part I, line 2 (monitoring of funds); Part I, line 3, column (f) (accounting method; amounts of investments vs. expenditures per region); Part II, line 1 (accounting method); Part III (accounting method); and Part III, column (c) (estimated number of recipients), as applicable. Also complete this part to provide any additional information (see instructions).

SCHEDULE F INCLUDES EMPLOYEES AND LONG-TERM INDEPENDENT CONTRACTORS
WORKING FOR ICANN.

THE TOTAL EXPENDITURES BY REGION SHOWN IN PART I, LINE 3 COL (F) OF
SCHEDULE F INCLUDES:

A. THE AMOUNTS PAID (FOR COMPENSATION, TRAVEL REIMBURSEMENT, AND OTHER
COSTS AND EXPENSES) FROM THE US ACCOUNTS PAYABLE DEPARTMENT APPLICABLE TO
THE REGION.

B. ALL COSTS ASSOCIATED WITH THE FOUR ANNUAL PUBLIC MEETINGS (I.E.
DURBAN, SOUTH AFRICA; BUENOS AIRES, ARGENTINA; SINGAPORE; AND LONDON, UK)
FOR FISCAL YEAR 2014.

C. AMOUNTS EXPENDED TO FUND THE BRUSSELS, TURKEY AND SINGAPORE
BRANCH/LIAISON OFFICES AND PERSONNEL COSTS INCLUDING OFFICE EXPENSES,
TRAVEL-RELATED AND OTHER EXPENSES PAID BY THE US ACCOUNTS PAYABLE
DEPARTMENT.

D. ALL PAYMENTS MADE TO INTERNATIONAL BASED EMPLOYEES AND CONTRACTORS
WERE RECORDED IN US DOLLARS.

Part V Supplemental Information

Complete this part to provide the information required by Part I, line 2 (monitoring of funds); Part I, line 3, column (f) (accounting method; amounts of investments vs. expenditures per region); Part II, line 1 (accounting method); Part III (accounting method); and Part III, column (c) (estimated number of recipients), as applicable. Also complete this part to provide any additional information (see instructions).

SCHEDULE F, PART I, LINE 3

STATEMENT OF ACTIVITIES OUTSIDE THE UNITED STATES

THE SUBTOTAL ON LINE 3(A), COLUMN C REPRESENTS THE INDIVIDUAL EMPLOYEES.

THE ACTIVITIES PER REGION IN LINE 3 REPRESENT THE INDIVIDUAL EMPLOYEES

AND LONG-TERM INDEPENDENT CONTRACTORS.

**SCHEDULE I
(Form 990)**

**Grants and Other Assistance to Organizations,
Governments, and Individuals in the United States**

OMB No. 1545-0047

2013

**Open to Public
Inspection**

Department of the Treasury
Internal Revenue Service

Complete if the organization answered "Yes" to Form 990, Part IV, line 21 or 22.

▶ Attach to Form 990.

▶ Information about Schedule I (Form 990) and its instructions is at www.irs.gov/form990.

Name of the organization

INTERNET CORP FOR ASSIGNED NAMES & NUMBERS

Employer identification number

95-4712218

Part I General Information on Grants and Assistance

- 1 Does the organization maintain records to substantiate the amount of the grants or assistance, the grantees' eligibility for the grants or assistance, and the selection criteria used to award the grants or assistance? Yes No
- 2 Describe in Part IV the organization's procedures for monitoring the use of grant funds in the United States.

Part II Grants and Other Assistance to Governments and Organizations in the United States. Complete if the organization answered "Yes" to Form 990, Part IV, line 21, for any recipient that received more than \$5,000. Part II can be duplicated if additional space is needed.

1 (a) Name and address of organization or government	(b) EIN	(c) RC section if applicable	(d) Amount of cash grant	(e) Amount of non-cash assistance	(f) Method of valuation (book, FMV, appraisal, other)	(g) Description of non-cash assistance	(h) Purpose of grant or assistance
(1) INVENEO 972 MISSION ST. SAN FRANCISCO, CA 94103	20-1663266	501(C)(3)	58,867.				PROGRAM SUPPORT
(2) KIVA MICROFUNDS 875 HOWARD ST. SAN FRANCISCO, CA 94103	71-0992446	501(C)(3)	58,867.				PROGRAM SUPPORT
(3) WIKIMEDIA FOUNDATION 149 NEW MONTGOMERY, SAN FRANCISCO CA 94105	20-0049703	501(C)(3)	58,867.				PROGRAM SUPPORT
(4) -----							
(5) -----							
(6) -----							
(7) -----							
(8) -----							
(9) -----							
(10) -----							
(11) -----							
(12) -----							

2 Enter total number of section 501(c)(3) and government organizations listed in the line 1 table 3.

3 Enter total number of other organizations listed in the line 1 table 3.

For Paperwork Reduction Act Notice, see the Instructions for Form 990.

Schedule I (Form 990) (2013)

Part III Grants and Other Assistance to Individuals in the United States. Complete if the organization answered "Yes" on Form 990, Part IV, line 22.
Part III can be duplicated if additional space is needed.

(a) Type of grant or assistance	(b) Number of recipients	(c) Amount of cash grant	(d) Amount of non-cash assistance	(e) Method of valuation (book, FMV, appraisal, other)	(f) Description of non-cash assistance
1					
2					
3					
4					
5					
6					
7					

Part IV Supplemental Information. Complete this part to provide the information required in Part I, line 2, Part III, column (b), and any other additional information.

FORM 990, SCHEDULE I, PART II

FUNDS DONATED FROM NEW GTLD PRIORITIZATION DRAW

THE ONLY PRIORITIZATION DRAW ICANN HELD WAS CONDUCTED ON 17 DECEMBER 2012

IN LOS ANGELES TO ASSIGN PRIORITY NUMBERS TO ALL NEW GTLD APPLICATIONS.

THIS DRAW WAS CONDUCTED PURSUANT TO ICANN'S NON-PROFIT RAFFLE

REGISTRATION NUMBER RF0007607. THESE PRIORITY NUMBERS WERE USED TO

DETERMINE, AMONG OTHER THINGS, THE ORDER IN WHICH INITIAL EVALUATION

RESULTS ARE RELEASED. IN FISCAL YEAR 2014, 100% OF THE PROCEEDS WERE

DONATED TO ELIGIBLE CALIFORNIA CHARITABLE ORGANIZATIONS IN ACCORDANCE

WITH CALIFORNIA LEGAL REQUIREMENTS. ICANN SENT \$58,866.67 EACH TO THE

Part III Grants and Other Assistance to Individuals in the United States. Complete if the organization answered "Yes" on Form 990, Part IV, line 22.
Part III can be duplicated if additional space is needed.

(a) Type of grant or assistance	(b) Number of recipients	(c) Amount of cash grant	(d) Amount of non-cash assistance	(e) Method of valuation (book, FMV, appraisal, other)	(f) Description of non-cash assistance
1					
2					
3					
4					
5					
6					
7					

Part IV Supplemental Information. Complete this part to provide the information required in Part I, line 2, Part III, column (b), and any other additional information.

FOLLOWING CHARITIES: WIKIMEDIA FOUNDATION, INVENEO, AND KIVA MICROFUNDS.

FORM 990, SCHEDULE I, PART I, LINE 2

ORGANIZATION'S PROCEDURES FOR MONITORING GRANTS IN THE UNITED STATES

THE GRANTS ARE PROVIDED TO QUALIFIED ORGANIZATIONS. ONCE FUNDS ARE

TRANSFERRED, ICANN DOES NOT MONITOR THE FUNDS. THE PURPOSE OF THE FUNDS

IS AT THE DISCRETION OF THE GRANTEE.

**SCHEDULE J
(Form 990)**

Department of the Treasury
Internal Revenue Service

Compensation Information

For certain Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees

- ▶ Complete if the organization answered "Yes" to Form 990, Part IV, line 23.
- ▶ Attach to Form 990. ▶ See separate instructions.
- ▶ Information about Schedule J (Form 990) and its instructions is at www.irs.gov/form990.

OMB No. 1545-0047

2013

Open to Public Inspection

Name of the organization

INTERNET CORP FOR ASSIGNED NAMES & NUMBERS

Employer identification number

95-4712218

Part I Questions Regarding Compensation

1a Check the appropriate box(es) if the organization provided any of the following to or for a person listed in Form 990, Part VII, Section A, line 1a. Complete Part III to provide any relevant information regarding these items.

- | | |
|--|--|
| <input checked="" type="checkbox"/> First-class or charter travel | <input type="checkbox"/> Housing allowance or residence for personal use |
| <input type="checkbox"/> Travel for companions | <input type="checkbox"/> Payments for business use of personal residence |
| <input type="checkbox"/> Tax indemnification and gross-up payments | <input type="checkbox"/> Health or social club dues or initiation fees |
| <input type="checkbox"/> Discretionary spending account | <input type="checkbox"/> Personal services (e.g., maid, chauffeur, chef) |

b If any of the boxes on line 1a are checked, did the organization follow a written policy regarding payment or reimbursement or provision of all of the expenses described above? If "No," complete Part III to explain

2 Did the organization require substantiation prior to reimbursing or allowing expenses incurred by all directors, trustees, and officers, including the CEO/Executive Director, regarding the items checked in line 1a?

3 Indicate which, if any, of the following the filing organization used to establish the compensation of the organization's CEO/Executive Director. Check all that apply. Do not check any boxes for methods used by a related organization to establish compensation of the CEO/Executive Director, but explain in Part III.

- | | |
|---|---|
| <input checked="" type="checkbox"/> Compensation committee | <input checked="" type="checkbox"/> Written employment contract |
| <input checked="" type="checkbox"/> Independent compensation consultant | <input checked="" type="checkbox"/> Compensation survey or study |
| <input checked="" type="checkbox"/> Form 990 of other organizations | <input checked="" type="checkbox"/> Approval by the board or compensation committee |

4 During the year, did any person listed in Form 990, Part VII, Section A, line 1a, with respect to the filing organization or a related organization:

- a** Receive a severance payment or change-of-control payment?
 - b** Participate in, or receive payment from, a supplemental nonqualified retirement plan?
 - c** Participate in, or receive payment from, an equity-based compensation arrangement?
- If "Yes" to any of lines 4a-c, list the persons and provide the applicable amounts for each item in Part III.

Only section 501(c)(3) and 501(c)(4) organizations must complete lines 5-9.

5 For persons listed in Form 990, Part VII, Section A, line 1a, did the organization pay or accrue any compensation contingent on the revenues of:

- a** The organization?
 - b** Any related organization?
- If "Yes" to line 5a or 5b, describe in Part III.

6 For persons listed in Form 990, Part VII, Section A, line 1a, did the organization pay or accrue any compensation contingent on the net earnings of:

- a** The organization?
 - b** Any related organization?
- If "Yes" to line 6a or 6b, describe in Part III.

7 For persons listed in Form 990, Part VII, Section A, line 1a, did the organization provide any non-fixed payments not described in lines 5 and 6? If "Yes," describe in Part III

8 Were any amounts reported in Form 990, Part VII, paid or accrued pursuant to a contract that was subject to the initial contract exception described in Regulations section 53.4958-4(a)(3)? If "Yes," describe in Part III

9 If "Yes" to line 8, did the organization also follow the rebuttable presumption procedure described in Regulations section 53.4958-6(c)?

	Yes	No
1b	X	
2	X	
4a		X
4b		X
4c		X
5a		X
5b		X
6a		X
6b		X
7	X	
8		X
9		

For Paperwork Reduction Act Notice, see the Instructions for Form 990.

Schedule J (Form 990) 2013

Schedule J (Form 990) 2013

Page 2

Part II Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees. Use duplicate copies if additional space is needed.

For each individual whose compensation must be reported in Schedule J, report compensation from the organization on row (i) and from related organizations, described in the instructions, on row (ii). Do not list any individuals that are not listed on Form 990, Part VII.

Note. The sum of columns (B)(i)-(iii) for each listed individual must equal the total amount of Form 990, Part VII, Section A, line 1a, applicable column (D) and (E) amounts for that individual.

(A) Name and Title		(B) Breakdown of W-2 and/or 1099-MISC compensation			(C) Retirement and other deferred compensation	(D) Nontaxable benefits	(E) Total of columns (B)(i)-(D)	(F) Compensation reported as deferred in prior Form 990
		(i) Base compensation	(ii) Bonus & incentive compensation	(iii) Other reportable compensation				
1 STEVE ANTONOFF DIRECTOR, HR OPERATION SERVICE	(i)	179,646.	49,453.	0	23,160.	18,338.	270,597.	0
	(ii)	0	0	0	0	0	0	0
2 AKRAM ATALLAH PRESIDENT, GENERIC DOMAINS DIV	(i)	460,375.	193,647.	0	33,500.	25,942.	713,464.	0
	(ii)	0	0	0	0	0	0	0
3 SUSANNA BENNETT CHIEF OPERATING OFFICER	(i)	164,111.	93,991.	0	27,017.	9,239.	294,358.	0
	(ii)	0	0	0	0	0	0	0
4 XAVIER CALVEZ CHIEF FINANCIAL OFFICER	(i)	281,500.	91,519.	0	28,092.	25,942.	427,053.	0
	(ii)	0	0	0	0	0	0	0
5 FADI CHEHADE CHIEF EXECUTIVE OFFICER	(i)	557,500.	285,388.	0	30,250.	25,942.	899,080.	0
	(ii)	0	0	0	0	0	0	0
6 ELISE GERICH VP, IANA & TECHNICAL OPERATIONS	(i)	216,718.	70,085.	0	30,250.	18,424.	335,477.	0
	(ii)	0	0	0	0	0	0	0
7 DANIEL HALLORAN DEPUTY GENERAL COUNSEL	(i)	223,945.	48,372.	0	30,250.	25,942.	328,509.	0
	(ii)	0	0	0	0	0	0	0
8 JAMES HEDLUND ADVISOR TO THE PRESIDENT	(i)	270,136.	87,184.	0	30,250.	25,677.	413,247.	0
	(ii)	0	0	0	0	0	0	0
9 JOHN JEFFREY GENERAL COUNSEL & SECRETARY	(i)	402,271.	168,293.	0	12,750.	25,942.	609,256.	0
	(ii)	0	0	0	0	0	0	0
10 DENISE MICHEL VP, STRAT INIT/ADVISOR TO PRES	(i)	232,122.	94,472.	0	33,500.	25,942.	386,036.	0
	(ii)	0	0	0	0	0	0	0
11 JEFFREY MOSS CHIEF SECURITY OFFICER	(i)	312,663.	114,365.	0	30,250.	18,290.	475,568.	0
	(ii)	0	0	0	0	0	0	0
12 CYRUS NAMAZI VP, DNS INDUSTRY ENGAGEMENT	(i)	243,891.	44,252.	0	30,250.	23,537.	341,930.	0
	(ii)	0	0	0	0	0	0	0
13 DAVID OLIVE VP, POLICY DEVELOPMENT	(i)	247,200.	80,662.	0	30,250.	25,677.	383,789.	0
	(ii)	0	0	0	0	0	0	0
14 MAGUY SERAD VP, CONTRACTUAL COMPLIANCE SVC	(i)	202,500.	77,465.	0	34,003.	25,942.	339,910.	0
	(ii)	0	0	0	0	0	0	0
15 AMY STATHOS DEPUTY GENERAL COUNSEL	(i)	245,612.	52,861.	0	34,000.	9,425.	341,898.	0
	(ii)	0	0	0	0	0	0	0
16 NICK TOMASSO SR DIR, MEETING OPERATIONS	(i)	181,540.	49,708.	0	29,062.	18,145.	278,455.	0
	(ii)	0	0	0	0	0	0	0

Schedule J (Form 990) 2013

Part II Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees. Use duplicate copies if additional space is needed.

For each individual whose compensation must be reported in Schedule J, report compensation from the organization on row (i) and from related organizations, described in the instructions, on row (ii). Do not list any individuals that are not listed on Form 990, Part VII.

Note. The sum of columns (B)(i)-(iii) for each listed individual must equal the total amount of Form 990, Part VII, Section A, line 1a, applicable column (D) and (E) amounts for that individual.

(A) Name and Title		(B) Breakdown of W-2 and/or 1099-MISC compensation			(C) Retirement and other deferred compensation	(D) Nontaxable benefits	(E) Total of columns (B)(i)-(D)	(F) Compensation reported as deferred in prior Form 990
		(i) Base compensation	(ii) Bonus & incentive compensation	(iii) Other reportable compensation				
1 CHRISTINE WILLETT VP, GTLD OPERATIONS	(i)	231,250.	98,815.	0	29,253.	25,942.	385,260.	0
	(ii)	0	0	0	0	0	0	0
2	(i)							
	(ii)							
3	(i)							
	(ii)							
4	(i)							
	(ii)							
5	(i)							
	(ii)							
6	(i)							
	(ii)							
7	(i)							
	(ii)							
8	(i)							
	(ii)							
9	(i)							
	(ii)							
10	(i)							
	(ii)							
11	(i)							
	(ii)							
12	(i)							
	(ii)							
13	(i)							
	(ii)							
14	(i)							
	(ii)							
15	(i)							
	(ii)							
16	(i)							
	(ii)							

Part III Supplemental Information

Complete this part to provide the information, explanation, or descriptions required for Part I, lines 1a, 1b, 3, 4a, 4b, 4c, 5a, 5b, 6a, 6b, 7, and 8, and for Part II. Also complete this part for any additional information.

FORM 990, SCHEDULE J, PART I, LINE 1A

AMOUNTS LISTED IN PART VII OF FORM 990 AND SCHEDULE J REPRESENT AMOUNTS

FOR THE 2013 CALENDAR YEAR.

FORM 990, SCHEDULE J, PART I, LINE 7

REGARDING AT-RISK COMPENSATION:

THE OVERARCHING OBJECTIVE OF ICANN'S REMUNERATION FRAMEWORK IS TO ENSURE

REMUNERATION PROVIDED IS COMPETITIVE GLOBALLY AND THAT IT PROVIDES STAFF

WITH APPROPRIATE MOTIVATION FOR HIGH PERFORMANCE TOWARDS AGREED

OBJECTIVES. THIS FRAMEWORK IS DESCRIBED IN DETAIL WITHIN THE DOCUMENT

ENTITLED ICANN STAFF REMUNERATION PRACTICES.

[HTTPS://WWW.ICANN.ORG/EN/SYSTEM/FILES/FILES/REMUNERATION-PRACTICES-FY15-01](https://www.icann.org/en/system/files/files/remuneration-practices-fy15-01)

NOV14-EN.PDF

SCHEDULE J, PART II

ICANN'S OVERALL COMPENSATION PHILOSOPHY IS TO TARGET COMPENSATION BETWEEN

THE 50TH AND 75TH PERCENTILE OF THE RELEVANT MARKET, TO ATTRACT AND

RETAIN THE RIGHT STAFF. THE DRIVING ELEMENT OF THIS PHILOSOPHY IS THAT

Part III Supplemental Information

Complete this part to provide the information, explanation, or descriptions required for Part I, lines 1a, 1b, 3, 4a, 4b, 4c, 5a, 5b, 6a, 6b, 7, and 8, and for Part II. Also complete this part for any additional information.

ICANN'S COMPENSATION IS MARKET-BASED. ICANN HAS STAFF IN MANY DIFFERENT PARTS OF THE WORLD, AND STRIVES TO APPLY THIS PHILOSOPHY LOCALLY. EMPLOYMENT MARKETS AROUND THE WORLD ARE QUITE DIFFERENT, AND ALSO BRING DIFFERENT TAX, BENEFIT, AND OTHER LOCAL CONDITIONS TO BEAR. IN ADDITION, EXCHANGE RATE FLUCTUATIONS ALSO AFFECT THE U.S. DOLLAR EQUIVALENCE OF THE INTERNATIONAL STAFF.

SCHEDULE L
(Form 990 or 990-EZ)

Transactions With Interested Persons

OMB No. 1545-0047

2013

Open To Public Inspection

Department of the Treasury
Internal Revenue Service

▶ **Complete if the organization answered "Yes" on Form 990, Part IV, line 25a, 25b, 26, 27, 28a, 28b, or 28c, or Form 990-EZ, Part V, line 38a or 40b.**

▶ **Attach to Form 990 or Form 990-EZ. ▶ See separate instructions.**

▶ **Information about Schedule L (Form 990 or 990-EZ) and its instructions is at www.irs.gov/form990.**

Name of the organization

INTERNET CORP FOR ASSIGNED NAMES & NUMBERS

Employer identification number

95-4712218

Part I Excess Benefit Transactions (section 501(c)(3) and section 501(c)(4) organizations only).

Complete if the organization answered "Yes" on Form 990, Part IV, line 25a or 25b, or Form 990-EZ, Part V, line 40b.

1	(a) Name of disqualified person	(b) Relationship between disqualified person and organization	(c) Description of transaction	(d) Corrected?	
				Yes	No
(1)					
(2)					
(3)					
(4)					
(5)					
(6)					

- 2 Enter the amount of tax incurred by the organization managers or disqualified persons during the year under section 4958 ▶ \$ _____
- 3 Enter the amount of tax, if any, on line 2, above, reimbursed by the organization ▶ \$ _____

Part II Loans to and/or From Interested Persons.

Complete if the organization answered "Yes" on Form 990-EZ, Part V, line 38a or Form 990, Part IV, line 26; or if the organization reported an amount on Form 990, Part X, line 5, 6, or 22.

(a) Name of interested person	(b) Relationship with organization	(c) Purpose of loan	(d) Loan to or from the organization?		(e) Original principal amount	(f) Balance due	(g) In default?		(h) Approved by board or committee?		(i) Written agreement?	
			To	From			Yes	No	Yes	No	Yes	No
			(1)									
(2)												
(3)												
(4)												
(5)												
(6)												
(7)												
(8)												
(9)												
(10)												
Total ▶ \$ _____												

Part III Grants or Assistance Benefiting Interested Persons.

Complete if the organization answered "Yes" on Form 990, Part IV, line 27.

(a) Name of interested person	(b) Relationship between interested person and the organization	(c) Amount of assistance	(d) Type of assistance	(e) Purpose of assistance
(1)				
(2)				
(3)				
(4)				
(5)				
(6)				
(7)				
(8)				
(9)				
(10)				

For Paperwork Reduction Act Notice, see the Instructions for Form 990 or 990-EZ.

Schedule L (Form 990 or 990-EZ) 2013

Part IV Business Transactions Involving Interested Persons.

Complete if the organization answered "Yes" on Form 990, Part IV, line 28a, 28b, or 28c.

(a) Name of interested person	(b) Relationship between interested person and the organization	(c) Amount of transaction	(d) Description of transaction	(e) Sharing of organization's revenues?	
				Yes	No
(1) MELBOURNE IT	BRUCE TONKIN - DIRECTOR	502,886.	SEE PART V		X
(2) AUDA	CHRIS DISSPAIN - DIRECTOR	280,000.	SEE PART V		X
(3)					
(4)					
(5)					
(6)					
(7)					
(8)					
(9)					
(10)					

Part V Supplemental Information

Provide additional information for responses to questions on Schedule L (see instructions).

SCHEDULE L, PART IV

BUSINESS TRANSACTIONS WITH RELATED PERSONS

DR. BRUCE TONKIN IS A VOTING MEMBER OF THE BOARD OF DIRECTORS. DR. TONKIN IS ALSO CHIEF STRATEGY OFFICER OF MELBOURNE IT, AN ICANN ACCREDITED REGISTRAR. REVENUE FROM MELBOURNE IT AMOUNTED TO \$502,886 AND \$601,918 FOR THE YEARS ENDED JUNE 30, 2014 AND JUNE 30, 2013, RESPECTIVELY, UNDER THE FEE STRUCTURE OF THE STANDARD REGISTRAR ACCREDITATION AGREEMENT. TO AVOID ANY CONFLICT OF INTEREST BETWEEN ICANN AND MELBOURNE IT, DR. TONKIN ABSTAINS FROM VOTING ON ALL MATTERS HE IDENTIFIES AS POTENTIAL CONFLICTS OF INTEREST WHICH COME BEFORE THE BOARD.

MR. CHRIS DISSPAIN IS A VOTING MEMBER OF THE BOARD OF DIRECTORS. MR. DISSPAIN IS ALSO CHIEF EXECUTIVE OFFICER OF AUDA, THE POLICY AUTHORITY AND INDUSTRY SELF-REGULATORY BODY FOR .AU DOMAIN NAMES. REVENUE FROM AUDA AMOUNTED TO \$280,000 FOR THE YEAR ENDED JUNE 30, 2014, AND \$310,000 FOR THE YEAR ENDED JUNE 30, 2013, UNDER THE STRUCTURE OF THE CCTLD AGREEMENT. TO AVOID ANY CONFLICT OF INTEREST BETWEEN ICANN AND AUDA, MR. DISSPAIN ABSTAINS FROM VOTING ON ALL MATTERS HE IDENTIFIES AS POTENTIAL CONFLICTS OF INTEREST WHICH COME BEFORE THE BOARD.

Part IV Business Transactions Involving Interested Persons.

Complete if the organization answered "Yes" on Form 990, Part IV, line 28a, 28b, or 28c.

(a) Name of interested person	(b) Relationship between interested person and the organization	(c) Amount of transaction	(d) Description of transaction	(e) Sharing of organization's revenues?	
				Yes	No
(1)					
(2)					
(3)					
(4)					
(5)					
(6)					
(7)					
(8)					
(9)					
(10)					

Part V Supplemental Information

Provide additional information for responses to questions on Schedule L (see instructions).

IN ADDITION TO THE SPECIFIC DISCLOSURES ABOVE, ICANN MAY ENTER INTO OR CONSIDER PARTICIPATION IN SMALL ARM'S LENGTH TRANSACTIONS BETWEEN ICANN AND CERTAIN TAXABLE ORGANIZATIONS WITH WHICH CERTAIN ICANN DIRECTORS OR OFFICERS (OR MEMBERS OF THEIR FAMILIES) MAY HAVE AN AFFILIATION. UNDER ICANN'S CONFLICTS OF INTEREST POLICY, ALL OFFICERS AND DIRECTORS ARE REQUIRED TO DISCLOSE ANY POTENTIAL CONFLICTS OF INTEREST BEFORE ENTERING INTO DISCUSSION ON SUCH MATTERS. IN ADDITION, THE BOARD COMMITTEE RESPONSIBLE FOR CONFLICTS OF INTEREST REVIEWS ALL BOARD MEMBER CONFLICTS OF INTEREST STATEMENTS. SEE:

[HTTP://WWW.ICANN.ORG/EN/GROUPS/BOARD/DOCUMENTS/SOIS.](http://www.icann.org/en/groups/board/documents/sois)

SCHEDULE O
(Form 990 or 990-EZ)

Department of the Treasury
Internal Revenue Service

Supplemental Information to Form 990 or 990-EZ

Complete to provide information for responses to specific questions on
Form 990 or 990-EZ or to provide any additional information.
▶ Attach to Form 990 or 990-EZ.

OMB No. 1545-0047

2013

**Open to Public
Inspection**

Name of the organization

INTERNET CORP FOR ASSIGNED NAMES & NUMBERS

Employer identification number

95-4712218

FORM 990, PART I, LINE 1 AND PART III, LINE I

ORGANIZATION'S MISSION

THE MISSION OF THE INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS ("ICANN") IS TO PROMOTE THE GLOBAL PUBLIC INTEREST IN THE OPERATIONAL STABILITY OF THE INTERNET BY: (I) COORDINATING THE ASSIGNMENT OF INTERNET TECHNICAL PARAMETERS AS NEEDED TO MAINTAIN UNIVERSAL CONNECTIVITY ON THE INTERNET; (II) PERFORMING AND OVERSEEING FUNCTIONS RELATED TO THE COORDINATION OF THE INTERNET PROTOCOL ("IP") ADDRESS SPACE; (III) PERFORMING AND OVERSEEING FUNCTIONS RELATED TO THE COORDINATION OF THE INTERNET DOMAIN NAME SYSTEM ("DNS"), INCLUDING, SUPPORTING THE DEVELOPMENT OF, AND IMPLEMENTING POLICIES FOR DETERMINING THE CIRCUMSTANCES UNDER WHICH NEW TOP-LEVEL DOMAINS ARE ADDED TO THE DNS ROOT SYSTEM; (IV) OVERSEEING OPERATION OF THE AUTHORITATIVE INTERNET DNS ROOT SERVER SYSTEM; AND (V) ENGAGING IN ANY OTHER RELATED LAWFUL ACTIVITY IN FURTHERANCE OF ITEMS (I) THROUGH (IV).

SEE ADDITIONAL INFORMATION ABOUT ICANN'S PROGRAMS AND ACTIVITIES ON THE ICANN WEBSITE AND IN THE ICANN ANNUAL REPORT POSTED AT WWW.ICANN.ORG.

FORM 990, PART I, LINE 3 AND PART VI, LINE 1A

GOVERNING BODY

IN ADDITION TO THE VOTING MEMBERS OF THE BOARD OF DIRECTORS, ICANN'S BYLAWS AS OF JUNE 30, 2014 ALLOWED FOR FOUR (4) NON-VOTING LIAISONS. THE NON-VOTING LIAISONS ARE ENTITLED TO ATTEND BOARD MEETINGS, PARTICIPATE IN

Name of the organization INTERNET CORP FOR ASSIGNED NAMES & NUMBERS	Employer identification number 95-4712218
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BOARD DISCUSSIONS AND DELIBERATIONS, AND HAVE ACCESS (UNDER CONDITIONS ESTABLISHED BY THE BOARD) TO MATERIALS PROVIDED TO DIRECTORS FOR USE IN BOARD DISCUSSIONS, DELIBERATIONS AND MEETINGS.

THE FOLLOWING INDIVIDUALS SERVED AS NON-VOTING LIAISONS DURING THE FISCAL YEAR ENDING JUNE 30, 2014:

- 1) HEATHER DRYDEN (GOVERNMENTAL ADVISORY COMMITTEE, 2010 - OCTOBER 2014)
- 2) RAM MOHAN (SECURITY AND STABILITY ADVISORY COMMITTEE, 2009 - PRESENT)
- 3) THOMAS NARTEN (IETF, 2005 - JULY 2013)
- 4) FRANCISCO DA SILVA (TECHNICAL LIAISON GROUP, 2012 - NOVEMBER 2013)
- 5) JONNE SOININEN (IETF, 2013 - PRESENT)
- 6) SUZANNE WOOLF (ROOT SERVER SYSTEM ADVISORY COMMITTEE, 2004 - PRESENT)

NEW GTLD PROGRAM COMMITTEE

IN ORDER TO HAVE EFFICIENT MEETINGS AND TAKE APPROPRIATE ACTIONS WITH RESPECT TO THE NEW GTLD PROGRAM FOR THE CURRENT ROUND OF THE PROGRAM AND AS RELATED TO THE APPLICANT GUIDEBOOK, THE BOARD CREATED THE NEW GTLD PROGRAM COMMITTEE ("NGPC") IN ACCORDANCE WITH ARTICLE XII OF THE BYLAWS. THE NGPC CONSISTS OF ALL BOARD MEMBERS NOT CONFLICTED WITH RESPECT TO THE NEW GTLD PROGRAM. THE BOARD HAS DELEGATED FULL DECISION MAKING AUTHORITY TO THE NGPC AS IT RELATES TO THE CURRENT ROUND OF THE NEW GTLD PROGRAM, WHICH COMMENCED IN JANUARY 2012. ESTABLISHING THIS NEW COMMITTEE WITHOUT CONFLICTED MEMBERS, AND DELEGATING TO IT DECISION MAKING AUTHORITY, PROVIDES SOME DISTINCT ADVANTAGES. FIRST, IT HELPS ELIMINATE ANY UNCERTAINTY FOR CONFLICTED BOARD MEMBERS WITH RESPECT TO ATTENDANCE AT

Name of the organization INTERNET CORP FOR ASSIGNED NAMES & NUMBERS	Employer identification number 95-4712218
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BOARD MEETINGS AND WORKSHOPS SINCE THE NEW GTLD PROGRAM TOPICS CAN BE DEALT WITH AT THE COMMITTEE LEVEL. SECOND, IT ALLOWS FOR ACTIONS TO BE TAKEN WITHOUT A MEETING BY THE COMMITTEE. ACTIONS WITHOUT A MEETING CANNOT BE TAKEN UNLESS DONE VIA ELECTRONIC SUBMISSION BY UNANIMOUS CONSENT; SUCH UNANIMOUS CONSENT CANNOT BE ACHIEVED IF EVEN JUST ONE BOARD MEMBER IS CONFLICTED, AND THEREFORE NOT ALLOWED TO VOTE. THIRD, IT PROVIDES THE COMMUNITY WITH A TRANSPARENT VIEW INTO THE BOARD'S COMMITMENT TO DEALING WITH ACTUAL, POTENTIAL OR PERCEIVED CONFLICTS.

THE NGPC MEMBERS AS OF JUNE 30, 2014 INCLUDED:

CHERINE CHALABY (CHAIR)

FADI CHEHADÉ (MEMBER)

STEPHEN CROCKER (MEMBER)

CHRIS DISSPAIN (MEMBER)

HEATHER DRYDEN (NON-VOTING LIAISON)

BILL GRAHAM (MEMBER)

BRUNO LANVIN (MEMBER)

OLGA MADRUGA-FORTI (MEMBER)

ERIKA MANN (MEMBER)

GONZALO NAVARRO (MEMBER)

RAYMOND PLZAK (MEMBER)

GEORGE SADOWSKY (MEMBER)

MIKE SILBER (MEMBER)

KUO-WEI WU (MEMBER)

FORM 990, PART III, LINE 4A

PROGRAM SERVICE ACCOMPLISHMENTS

Name of the organization INTERNET CORP FOR ASSIGNED NAMES & NUMBERS	Employer identification number 95-4712218
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AS OF JUNE 30, 2014, THE INTERNET NAMESPACE CONSISTED OF 22 LEGACY, 322 NEW GENERIC TOP LEVEL DOMAINS (GTLDs) AND OVER 250 COUNTRY CODE TOP LEVEL DOMAINS (CCTLDs). EACH GTLD HAS A DESIGNATED "REGISTRY OPERATOR" AND, IN MOST CASES, A REGISTRY AGREEMENT BETWEEN THE OPERATOR (OR SPONSOR) AND ICANN. THE REGISTRY OPERATOR IS RESPONSIBLE FOR THE TECHNICAL OPERATION OF THE GTLD, INCLUDING ALL OF THE NAMES REGISTERED IN THAT TLD. OVER 1,000 ICANN ACCREDITED REGISTRARS INTERACT WITH REGISTRANTS (AND OTHERS) TO PERFORM DOMAIN NAME REGISTRATION AND OTHER RELATED SERVICES FOR NEW GTLDs. THE NEW GTLD PROGRAM HAS PROVIDED A MEANS FOR PROSPECTIVE REGISTRY OPERATORS TO APPLY FOR NEW GTLDs, AND CREATE NEW OPTIONS FOR CONSUMERS. THE PROGRAM OPENED ITS FIRST APPLICATION ROUND IN JANUARY 2012 AND ICANN RECEIVED 1930 APPLICATIONS.

ALL APPLICATIONS FOR NEW GTLDs THAT HAVE NOT BEEN WITHDRAWN HAVE COMPLETED INITIAL EVALUATION (IE) PHASE AND, WHERE APPLICABLE, EXTENDED EVALUATION (EE). DURING IE AND EE, ALL APPLICATIONS WERE EVALUATED FOR, AMONG OTHER THINGS, FINANCIAL, TECHNICAL/OPERATIONAL, GEOGRAPHIC NAMES, AND REGISTRY SERVICES. FOLLOWING COMPLETION AND PASSING OF IE, AND EE IF APPLICABLE, FOR EACH APPLICATION, THE REGISTRY AGREEMENT CONTRACTING PHASE OF THE NEW GTLD PROGRAM COMMENCED. CONTRACTING IS A PROCESS THAT RESULTS IN EACH ELIGIBLE APPLICANT ENTERING INTO A REGISTRY AGREEMENT WITH ICANN TO OPERATE A GTLD. NOTE THAT THERE ARE SOME CIRCUMSTANCES THAT EXIST THAT MAY DELAY THE START OF THE CONTRACTING PROCESS INCLUDING, BUT NOT LIMITED TO, PENDING OBJECTION PROCEEDINGS, PENDING ICANN ACCOUNTABILITY MECHANISMS, UNRESOLVED CONTENTION, OR DIRECTION FROM THE

Name of the organization INTERNET CORP FOR ASSIGNED NAMES & NUMBERS	Employer identification number 95-4712218
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ICANN BOARD'S NEW GTLD PROGRAM COMMITTEE.

AFTER COMPLETION OF THE CONTRACTING PHASE, THE APPLICANT CAN ELECT TO ENTER INTO PRE-DELEGATION TESTING. PRE-DELEGATION TESTING (PDT) ENSURES THAT AN APPLICANT HAS THE CAPACITY TO OPERATE A NEW GTLD IN A STABLE, SECURE MANNER. EVERY NEW REGISTRY MUST DEMONSTRATE THAT IT HAS ESTABLISHED OPERATIONS IN ACCORDANCE WITH THE TECHNICAL AND OPERATIONAL CRITERIA DESCRIBED IN THE APPLICANT GUIDEBOOK. AFTER PASSING PDT, A REGISTRY'S GTLD CAN BE INTRODUCED INTO THE ROOT ZONE OF THE INTERNET.

AS OF JUNE 30, 2014, 322 NEW GTLDS WERE DELEGATED IN THE ROOT ZONE.

ICANN IS A MULTISTAKEHOLDER ORGANIZATION THAT COORDINATES THE INTERNET DOMAIN NAME SYSTEM (DNS) AND ADDRESSING FOR THE BENEFIT OF INTERNET USERS WORLDWIDE, ENABLING A SINGLE, INTEROPERABLE INTERNET. ICANN IS RESPONSIBLE FOR THE GLOBAL TECHNICAL COORDINATION OF THE DNS. AS OF JUNE 30, 2014, THERE WERE OVER 240 MILLION INTERNET DOMAIN NAMES, INCLUDING APPROXIMATELY 133 MILLION INTERNET DOMAIN NAMES FOUND IN GENERIC TOP-LEVEL DOMAINS, MOST OF WHICH ARE GOVERNED BY ICANN'S COMMUNITY-DEVELOPED POLICIES. SEE ADDITIONAL INFORMATION ABOUT ICANN'S PROGRAMS AND ACTIVITIES ON THE ICANN WEBSITE AND IN THE ICANN ANNUAL REPORT POSTED AT WWW.ICANN.ORG.

NEW GTLD AUCTION

ON 4 JUNE 2014, ICANN, THROUGH ITS AUTHORIZED AUCTION SERVICES PROVIDER,

Name of the organization INTERNET CORP FOR ASSIGNED NAMES & NUMBERS	Employer identification number 95-4712218
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COMPLETED THE FIRST ICANN AUCTION TO RESOLVE A CONTENTION SET FOR A NEW GENERIC TOP-LEVEL DOMAIN (GTLD) STRING. CONTENTION SETS ARE GROUPS OF APPLICATIONS FOR IDENTICAL OR CONFUSINGLY SIMILAR STRINGS. IF TWO OR MORE APPLICANTS ARE UNABLE TO RESOLVE THEIR CONTENTION THROUGH OTHER MEANS, THEY PROCEED TO AN ICANN AUCTION, WHICH IS THE METHOD OF LAST RESORT TO RESOLVE STRING CONTENTIONS AS PRESCRIBED IN MODULE 4 OF THE APPLICANT GUIDEBOOK. THE FIRST ICANN AUCTION RESULTED IN A WINNING BID OF \$600,000. SUBSEQUENT AUCTIONS HAVE BEEN SCHEDULED TO OCCUR ON A MONTHLY BASIS THROUGHOUT 2014 AND INTO EARLY 2015.

FOR MORE INFORMATION ON AUCTIONS VISIT
[HTTP://NEWGTLDS.ICANN.ORG/EN/APPLICANTS/AUCTIONS](http://newgtlds.icann.org/en/applicants/auctions)

FORM 990, PART VI, LINE 4

SIGNIFICANT CHANGES TO GOVERNING DOCUMENTS

ON 7 FEBRUARY 2014, THE BOARD ADOPTED BYLAWS REVISIONS THAT ELIMINATED THE BOARD LIAISON SEAT THAT WAS HISTORICALLY APPOINTED ON A ROTATIONAL BASIS BY THE TECHNICAL LIAISON GROUP.

FORM 990, PART VI, LINE 7A

BODIES THAT APPOINT MEMBERS OF ICANN'S GOVERNING BODY

THE NOMINATING COMMITTEE (NOMCOM) IS RESPONSIBLE FOR THE SELECTION OF EIGHT ICANN VOTING BOARD MEMBERS AND FOR OTHER SELECTIONS AS ARE SET FORTH IN THE BYLAWS. (SEE BYLAWS ARTICLE VII, SECTION 1.) THE NOMCOM IS CHARGED WITH POPULATING A PORTION OF THE ICANN BOARD AS NOTED ABOVE, AS WELL AS THE AT-LARGE ADVISORY COMMITTEE ("ALAC"), THE COUNTRY CODE NAMES

Name of the organization INTERNET CORP FOR ASSIGNED NAMES & NUMBERS	Employer identification number 95-4712218
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SUPPORTING ORGANIZATION ("CCNSO") COUNCIL AND THE GENERIC NAMES SUPPORTING ORGANIZATION ("GNSO") COUNCIL. THE NOMCOM COMPLEMENTS THE OTHER MEANS FOR FILLING A PORTION OF KEY ICANN LEADERSHIP POSITIONS ACHIEVED WITHIN THE SUPPORTING ORGANIZATIONS AND ADVISORY COMMITTEES.

THE BYLAWS ALSO STATE THAT THE NOMCOM SHALL ADOPT SUCH OPERATING PROCEDURES AS IT DEEMS NECESSARY, WHICH SHALL BE PUBLISHED ON THE ICANN WEBSITE. THE NOMCOM IS DESIGNED TO FUNCTION INDEPENDENTLY FROM THE BOARD, THE SUPPORTING ORGANIZATIONS, AND ADVISORY COMMITTEES.

MEMBERS OF THE NOMCOM CONTRIBUTE BOTH THEIR UNDERSTANDING OF THE BROAD INTERESTS OF THE INTERNET AS A WHOLE AND THEIR KNOWLEDGE AND EXPERIENCE OF THE CONCERNS AND INTERESTS OF THE INTERNET STAKEHOLDERS THAT HAVE APPOINTED THEM. THE CHALLENGE FOR THE NOMCOM IS TO INTEGRATE THESE PERSPECTIVES AND DERIVE CONSENSUS IN ITS SELECTIONS. ALTHOUGH APPOINTED BY SUPPORTING ORGANIZATIONS AND OTHER ICANN BODIES, INDIVIDUAL NOMCOM MEMBERS ARE NOT ACCOUNTABLE TO THEIR APPOINTING CONSTITUENCIES BUT RATHER TO ICANN AS A WHOLE. NOMCOM MEMBERS ARE ACCOUNTABLE FOR ADHERENCE TO THE BYLAWS AND FOR COMPLIANCE WITH THE RULES AND PROCEDURES ESTABLISHED BY THE NOMCOM.

IN ADDITION, AND ALSO IN ACCORDANCE WITH ICANN'S BYLAWS, EACH OF THE FOLLOWING SUPPORTING ORGANIZATIONS NAME TWO VOTING BOARD MEMBERS TO THE ICANN BOARD, EACH FOR A THREE-YEAR TERM: THE ADDRESS SUPPORTING ORGANIZATION, THE CCNSO AND THE GNSO. FURTHER, THE AT-LARGE COMMUNITY

Name of the organization INTERNET CORP FOR ASSIGNED NAMES & NUMBERS	Employer identification number 95-4712218
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ALSO NAMES ONE VOTING BOARD MEMBER TO THE ICANN BOARD EVERY THREE YEARS.

FORM 990, PART VI, LINE 10A AND 10B

LOCAL CHAPTERS, BRANCHES AND AFFILIATES

DURING FISCAL 2014, ICANN HAD OFFICES OUTSIDE OF THE UNITED STATES IN BRUSSELS, BELGIUM; ISTANBUL, TURKEY; SINGAPORE, SINGAPORE; AND GENEVA, SWITZERLAND; ALL OF WHICH PROVIDED OPERATIONAL SUPPORT TO THEIR RESPECTIVE GEOGRAPHICAL REGIONS.

FORM 990, PART VI, LINE 11B

FORM 990 REVIEW PROCESS

A COPY OF THE FORM 990 IS PROVIDED TO ICANN'S BOARD MEMBERS BEFORE IT IS FILED. THE PROCESS BY WHICH THE FORM 990 IS PREPARED, REVIEWED AND RECEIVED IS AS FOLLOWS:

1. ICANN ENGAGES AN OUTSIDE TAX PREPARER TO ASSIST IN THE PREPARATION OF ITS FORM 990.
2. ICANN'S CHIEF FINANCIAL OFFICER (CFO), AND OFFICE OF THE GENERAL COUNSEL REVIEW THE FORM 990, AND THE CFO SIGNS OFF FOR APPROVAL.
3. THE FORM 990 IS PROVIDED TO THE ICANN BOARD MEMBERS.

FORM 990, PART VI, LINE 12C

CONFLICTS OF INTEREST POLICY

ICANN HAS WRITTEN CONFLICTS OF INTEREST POLICIES, WHICH ARE APPLICABLE TO ALL BOARD MEMBERS AND STAFF MEMBERS. THE OFFICE OF THE GENERAL COUNSEL MONITORS THE POLICIES WITH OVERSIGHT BY THE BOARD GOVERNANCE COMMITTEE AS

Name of the organization INTERNET CORP FOR ASSIGNED NAMES & NUMBERS	Employer identification number 95-4712218
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THEY RELATE TO THE BOARD. A CONFLICTS OF INTEREST DISCLOSURE STATEMENT IS COMPLETED ANNUALLY AND SIGNED BY EACH BOARD MEMBER, OFFICER AND KEY EMPLOYEE. THE STAFF MEMBER AND CONTRACTOR DISCLOSURE STATEMENTS ARE REVIEWED BY THE HEAD OF HUMAN RESOURCES AND DISCUSSED WITH GENERAL COUNSEL'S OFFICE IF ANY ISSUES ARISE; THE BOARD LEVEL DISCLOSURE STATEMENTS ARE REVIEWED BY THE OFFICE OF GENERAL COUNSEL AND THE BOARD GOVERNANCE COMMITTEE. THE BOARD MEMBER, OFFICER AND KEY EMPLOYEE CONFLICTS OF INTEREST POLICY CAN BE FOUND AT:
[HTTP://WWW.ICANN.ORG/EN/GROUPS/BOARD/GOVERNANCE/COI.](http://www.icann.org/en/groups/board/governance/coi)

THIS POLICY DESCRIBES THE DUTY TO DISCLOSE, THE PROCEDURES FOR ADDRESSING CONFLICTS OF INTEREST, THE DUTY TO ABSTAIN, HOW VIOLATIONS OF THE CONFLICTS OF INTEREST POLICY WILL BE HANDLED, THE PROCESS BY WHICH ALL COVERED PERSONS SIGN ANNUALLY THEIR AFFIRMATION OF THE POLICY AND DISCLOSE THEIR ACTUAL OR POTENTIAL CONFLICTS, AND THE REQUIREMENT AND NATURE OF PERIODIC REVIEWS.

A SUMMARY OF BOARD MEMBER AND OFFICER DISCLOSURE STATEMENTS ARE POSTED ON THE WEBSITE AT: [HTTP://WWW.ICANN.ORG/EN/GROUPS/BOARD/DOCUMENTS/SOIS](http://www.icann.org/en/groups/board/documents/sois)

FORM 990, PART VI, LINE 13 & 14

WHISTLEBLOWER POLICY AND DOCUMENT RETENTION AND DESTRUCTION POLICY ICANN MAINTAINS AN INTERNAL DOCUMENT RETENTION AND DESTRUCTION POLICY AND HISTORICALLY HAS FOLLOWED BEST INDUSTRY PRACTICES FOR RETENTION AND DESTRUCTION. ICANN ALSO MAINTAINS AN INTERNAL WHISTLEBLOWER (OR "ANONYMOUS HOTLINE") POLICY, THAT ALSO FOLLOWS INDUSTRY BEST PRACTICES.

Name of the organization INTERNET CORP FOR ASSIGNED NAMES & NUMBERS	Employer identification number 95-4712218
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FORM 990, PART VI, LINES 15A AND 15B

PROCESS FOR DETERMINING COMPENSATION

ICANN FOLLOWS PRINCIPLES OF ACCOUNTABILITY AND TRANSPARENCY AND DESCRIBES ITS REMUNERATION PLANS AND PRACTICES, WHICH ARE CONTINUALLY UPDATED. THE MOST CURRENT VERSION OF ICANN'S REMUNERATION PRACTICES REPORT IS POSTED AT:

[HTTPS://WWW.ICANN.ORG/EN/SYSTEM/FILES/FILES/REMUNERATION-PRACTICES-FY15-01
NOV14-EN.PDF](https://www.icann.org/en/system/files/files/remuneration-practices-fy15-01-nov14-en.pdf)

THE PROCESS FOR DETERMINING COMPENSATION, INCLUDING SURVEYS OF COMPARABLE POSITIONS AND OTHER MARKET STUDIES IS DESCRIBED IN THIS REMUNERATION PRACTICES REPORT. EXECUTIVE COMPENSATION IS DISCLOSED AS WELL. SALARIES OF ALL OFFICERS ARE REVIEWED AND APPROVED BY THE BOARD OF DIRECTORS FOLLOWING RECOMMENDATIONS BY THE BOARD COMPENSATION COMMITTEE, WHICH ARE INFORMED BY RECOMMENDATIONS AND COMPARABLE DATA PROVIDED BY INDEPENDENT COMPENSATION EXPERTS. CONFIDENTIAL MINUTES OF THESE MEETINGS ARE MAINTAINED BY THE BOARD SECRETARY AS PART OF THE CORPORATE SECRETARIAT FUNCTION. EACH YEAR THE APPOINTMENT FOR EACH OFFICER IS CONFIRMED BY THE BOARD OF DIRECTORS AT THE ANNUAL GENERAL MEETING.

FORM 990, PART VI, LINE 18

AVAILABILITY OF 990

ICANN POSTS ITS FORM 990 ON ITS WEBSITE. THE PRIOR YEAR POSTING IS LOCATED AT:

[HTTPS://WWW.ICANN.ORG/EN/SYSTEM/FILES/FILES/FY-2013-FORM-990-EN.PDF](https://www.icann.org/en/system/files/files/fy-2013-form-990-en.pdf)

Name of the organization INTERNET CORP FOR ASSIGNED NAMES & NUMBERS	Employer identification number 95-4712218
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IN ADDITION, THE FORM 990 IS POSTED ON THE WWW.GUIDESTAR.ORG WEBSITE.

FINALLY, HARD COPIES OF THE FORM 990 ARE AVAILABLE UPON REQUEST. REQUESTS SHOULD BE SUBMITTED TO ICANN'S CFO BY EMAIL TO XAVIER.CALVEZ@ICANN.ORG, OR BY PHONE AT +1.310.301.5838.

ICANN POSTS THE ORIGINAL FORM 1023 (APPLICATION FOR TAX-EXEMPT STATUS) ON ITS WEBSITE.

THE ORIGINAL FORM 1023 POST IS LOCATED AT:

[HTTPS://ARCHIVE.ICANN.ORG/EN/FINANCIALS/TAX/US/](https://archive.icann.org/en/financials/tax/us/)

FORM 990, PART VI, LINE 19

AVAILABILITY OF GOVERNING DOCS, CONFLICTS OF INTEREST, AND FINANCIAL STMTS

IN ACCORDANCE WITH ITS CORPORATE BYLAWS (SEE

[HTTP://WWW.ICANN.ORG/EN/ABOUT/GOVERNANCE/BYLAWS](http://www.icann.org/en/about/governance/bylaws)) AND THE AFFIRMATION OF

COMMITMENTS WITH THE UNITED STATES DEPARTMENT OF COMMERCE (SEE

[HTTPS://WWW.ICANN.ORG/RESOURCES/PAGES/AFFIRMATION-OF-COMMITMENTS-2009-09-30-EN](https://www.icann.org/resources/pages/affirmation-of-commitments-2009-09-30-en)), ICANN IS COMMITTED TO ACCOUNTABILITY AND TRANSPARENCY PRINCIPLES.

THIS INCLUDES PROVIDING EXTENSIVE ACCESS TO THE PUBLIC THROUGH THE ICANN

WEBSITE OF ITS GOVERNING DOCUMENTS, CONFLICTS OF INTEREST POLICY, AND

FINANCIAL STATEMENTS. SEE: [HTTP://WWW.ICANN.ORG/EN/ABOUT/GOVERNANCE](http://www.icann.org/en/about/governance) AND

[HTTPS://WWW.ICANN.ORG/RESOURCES/PAGES/GOVERNANCE/FINANCIALS-EN](https://www.icann.org/resources/pages/governance/financials-en)

[HTTPS://WWW.ICANN.ORG/RESOURCES/PAGES/GOVERNANCE/FINANCIALS-EN](https://www.icann.org/resources/pages/governance/financials-en)

FORM 990, PART VII

OFFICER/DIRECTOR SERVICE DATES

Name of the organization INTERNET CORP FOR ASSIGNED NAMES & NUMBERS	Employer identification number 95-4712218
--	--

IN PART VII, A DATE FOLLOWING AN OFFICER/DIRECTOR'S NAME INDICATES THE DATE ON WHICH THE OFFICER/DIRECTOR'S SERVICES ENDED. IF NO DATE IS INDICATED, THAT OFFICER/DIRECTOR WAS ACTIVE AS OF JUNE 30, 2014

FORM 990, PART VII, SECTION B

COMPENSATION OF INDEPENDENT CONTRACTORS PAID OVER \$1,000,000 AS OF JUNE 30, 2014

IN ADDITION TO THE DISCLOSURE IN FORM 990, PART VII, SECTION B OF THE COMPENSATION OF THE FIVE HIGHEST PAID INDEPENDENT CONTRACTORS, ICANN, BELOW, DISCLOSES THE COMPENSATION OF ALL INDEPENDENT CONTRACTORS PAID OVER \$1,000,000 AS OF JUNE 30, 2014.

NAME: ERNST & YOUNG U.S. LLP
ADDRESS: 200 PLAZA DRIVE, SECAUCUS, NJ 07094
DESCRIPTION OF SERVICES: NEW GTLD PROGRAM
COMPENSATION: 17,834,935
REFERENCE: SEE ATTACHMENT 2

NAME: KPMG LLP
ADDRESS: 3 CHESTNUT RIDGE ROAD, MONTVALE, NJ 07645-0435
DESCRIPTION OF SERVICES: NEW GTLD PROGRAM
COMPENSATION: 16,059,383
REFERENCE: SEE ATTACHMENT 2

NAME: JAS GLOBAL ADVISORS LLC
ADDRESS: 150 N. MICHIGAN AVE. SUITE 2800, CHICAGO, IL

Name of the organization INTERNET CORP FOR ASSIGNED NAMES & NUMBERS	Employer identification number 95-4712218
--	--

60601-7586

DESCRIPTION OF SERVICES: NEW GTLD PROGRAM

COMPENSATION: 8,183,122

REFERENCE: SEE ATTACHMENT 2

NAME: INTERCONNECT COMMUNICATIONS LTD

ADDRESS: MERLIN HOUSE, STATION ROAD NP16 5PB, CHEPSTOW,
UNITED KINGDOM

DESCRIPTION OF SERVICES: NEW GTLD PROGRAM

COMPENSATION: 4,436,571

REFERENCE: SEE ATTACHMENT 2

NAME: JONES DAY

ADDRESS: 555 S. FLOWER ST. 50TH FL. LOS ANGELES, CA
90071

DESCRIPTION OF SERVICES: LEGAL SERVICES

COMPENSATION: 3,964,736

REFERENCE: SEE ATTACHMENT 2

NAME: PRICEWATERHOUSECOOPERS LLP

ADDRESS: 300 MADISON AVE. NEW YORK, NY 10017

DESCRIPTION OF SERVICES: NEW GTLD PROGRAM

COMPENSATION: 2,851,260

NAME: CHAMBRE DE COMMERCE INTERNATIONALE

Name of the organization INTERNET CORP FOR ASSIGNED NAMES & NUMBERS	Employer identification number 95-4712218
--	--

ADDRESS: 33-43 AVENUE DU PRESIDENT WILSON, PARIS 75116,
FRANCE

DESCRIPTION OF SERVICES: NEW GTLD PROGRAM

COMPENSATION: 2,586,977

NAME: INTERISLE CONSULTING GROUP

ADDRESS: 4 TIFFANY TRAIL, HOPKINTON, MA 01748

DESCRIPTION OF SERVICES: NEW GTLD PROGRAM

COMPENSATION: 2,154,097

NAME: STIFTELSEN FOR INTERNETINFRASTRUKTUR.SE

ADDRESS: RINGVAGEN 100 A/BOX 7399, STOCKHOLM 103 91,
SWEDEN

DESCRIPTION OF SERVICES: NEW GTLD PROGRAM

COMPENSATION: 1,904,150

NAME: DANIEL J EDELMAN LTD

ADDRESS: SOUTHSIDE 105 VICTORIA ST. LONDON SW1E 6QT,
UNITED KINGDOM

DESCRIPTION OF SERVICES: COMMUNICATIONS

COMPENSATION: 1,229,004

NAME: NEO INNOVATION INC.

ADDRESS: 717 MARKET ST. STE. 100, SAN FRANCISCO, CA
94103

Name of the organization INTERNET CORP FOR ASSIGNED NAMES & NUMBERS	Employer identification number 95-4712218
--	--

DESCRIPTION OF SERVICES: SOFTWARE DEVELOPMENT

COMPENSATION: 1,217,800

NAME: RC HOTELS (PTE) LTD

ADDRESS: 2 STAMFORD ROAD, SINGAPORE 178882,
SINGAPORE

DESCRIPTION OF SERVICES: ICANN MEETINGS

COMPENSATION: 1,128,869

NAME: TERRA NOVA TOURS

ADDRESS: 72 ROODEBLOEM ROAD, CAPE TOWN 7945,
SOUTH AFRICA

DESCRIPTION OF SERVICES: ICANN MEETINGS

COMPENSATION: 1,072,206

FORM 990, PART IX, LINE 11G

FEES FOR SERVICES - OTHER

TRANSLATION SERVICES	3,952,429
COMMUNICATIONS	3,675,866
NEW GTLD FINANCIAL AND TECHNICAL EVALUATIONS	3,546,358
NEW GTLD PRE-DELEGATION TESTING	3,467,558
CONSULTING SERVICES	3,430,806
NEW GTLD TRADEMARK CLEARINGHOUSE	2,999,513
STRATEGIC INITIATIVES	2,049,069
TEMPORARY PERSONNEL	1,293,423

Name of the organization INTERNET CORP FOR ASSIGNED NAMES & NUMBERS	Employer identification number 95-4712218
--	--

RECRUITING SERVICES	749,567
CONTRACTUAL COMPLIANCE	665,743
GOVERNMENT ENGAGEMENT	509,796
INTERNET GOVERNANCE	490,000
POLICY DEVELOPMENT	450,446
DATA ESCROW SERVICES	443,824
NEW GTLD INDEPENDENT OBJECTORS	299,435

TOTAL	28,023,833

FORM 990, PART IX, LINE 24A

RISK COSTS - GTLD

RISK COSTS ARE EXPENSES THAT RELATE TO ANY CONTINGENCIES THAT MAY BE INCURRED BY ICANN AT ANY TIME THROUGHOUT OR AFTER THE NEW GTLD APPLICATION PROCESS. APPROXIMATELY ONE THIRD OF TOTAL FEES CHARGED TO APPLICANTS IN RELATION TO THE NEW GTLD PROGRAM ARE IN ANTICIPATION OF THESE COSTS.

FORM 990, PART XI, LINE 8

FISCAL JUNE 30, 2013 RESTATEMENT OF REVENUE - CHANGE IN TRANSACTION-BASED FEE REVENUE RECOGNITION

THROUGH THE YEAR ENDED JUNE 30, 2013, ICANN RECOGNIZED NONREFUNDABLE TRANSACTION-BASED FEES COLLECTED FROM REGISTRIES AND REGISTRARS AS EARNED IN THE YEAR THE BILLED FEE APPLIES (FOR EXAMPLE, 1/10TH OF A REGISTRATION TRANSACTION-BASED FEE WAS RECOGNIZED IN EACH YEAR OF A TEN YEAR DOMAIN NAME REGISTRATION). THIS RECOGNITION METHOD WAS BASED ON A PREVIOUS

Name of the organization INTERNET CORP FOR ASSIGNED NAMES & NUMBERS	Employer identification number 95-4712218
--	--

INTERPRETATION OF THE CONTRACTS THAT ICANN HAS OBLIGATIONS UNDER THOSE CONTRACTS THAT MUST BE FULFILLED OVER THE DURATION OF A SPECIFIC DOMAIN NAME REGISTRATION.

GIVEN THE NEW GTLD PROGRAM, AND THE PROSPECTIVE DELEGATION OF HUNDREDS OF NEW REGISTRIES UNDER A NEW BASE REGISTRY AGREEMENT, ICANN HAS CONDUCTED FURTHER ANALYSIS OF ITS REVENUE RECOGNITION METHOD THROUGH REVIEW OF THE EXISTING AND NEW AGREEMENTS WITH REGISTRIES AND REGISTRARS AND THE SPECIFIC ACCOUNTING TREATMENT OF THE TRANSACTION-BASED FEES. UPON THIS FURTHER REVIEW AND ANALYSIS, ICANN HAS DETERMINED THAT THE REGISTRY AND REGISTRAR AGREEMENTS DO NOT INCLUDE ANY OBLIGATIONS FOR ICANN THAT PERTAIN TO EACH SPECIFIC REGISTRATION OF A DOMAIN NAME. ICANN CONSIDERS THAT ITS CONTRACTUAL OBLIGATIONS ARE UNRELATED TO A SPECIFIC DOMAIN NAME REGISTRATION, WHICH THEREFORE DOES NOT CREATE SPECIFIC PERFORMANCE OBLIGATIONS WHICH WOULD REQUIRE A DEFERRAL OF REVENUE OVER THE DURATION OF THE REGISTRATION. AS A RESULT, ICANN HAS CHANGED ITS REVENUE RECOGNITION METHOD SO THAT THE TRANSACTION-BASED FEES ARE RECOGNIZED AS REVENUE WHEN EACH TRANSACTION OCCURS. ACCORDINGLY, ICANN HAS RESTATED THE OPENING BALANCE OF UNRESTRICTED NET ASSETS AS OF JULY 1, 2012 AND FINANCIAL STATEMENTS FOR THE YEAR ENDED JUNE 30, 2013.

FORM 990, PART XI, LINE 9

OTHER CHANGES IN NET ASSETS

FOREIGN EXCHANGE GAIN(LOSS) (132,076)

ROUNDING (9)

Name of the organization INTERNET CORP FOR ASSIGNED NAMES & NUMBERS	Employer identification number 95-4712218
--	--

\$(132,085)

ATTACHMENT 1

FORM 990, PART V, LINE 4B - FOREIGN COUNTRIES

BELGIUM

AUSTRALIA

ATTACHMENT 2

990, PART VII- COMPENSATION OF THE FIVE HIGHEST PAID IND. CONTRACTORS

<u>NAME AND ADDRESS</u>	<u>DESCRIPTION OF SERVICES</u>	<u>COMPENSATION</u>
ERNST & YOUNG U.S. LLP 200 PLAZA DRIVE SECAUCUS, NJ 07094	NEW GTLD PROGRAM	17,834,935.
KPMG LLP 3 CHESTNUT RIDGE ROAD MONTVALE, NJ 07645-0435	NEW GTLD PROGRAM	16,059,383.
JAS GLOBAL ADVISORS LLC 150 N. MICHIGAN AVE., STE 2800 CHICAGO, IL 60601-7586	NEW GTLD PROGRAM	8,183,122.
INTERCONNECT COMMUNICATIONS LTD MERLIN HOUSE, STATION ROAD NP16 5PB CHEPSTOW UNITED KINGDOM	NEW GTLD PROGRAM	4,436,571.
JONES DAY 555 S. FLOWER ST., 50TH FLOOR LOS ANGELES, CA 90071	LEGAL SERVICES	3,964,736.

Cumulative e-File History 2013	
Federal	
Locator:	11165W
Taxpayer Name:	INTERNET CORP FOR ASSIGNED NAMES & NUMBERS
Return Type:	990, 990
Submitted Date:	03/31/2015 15:00:37
Acknowledgement Date:	03/31/2015 15:26:31
Status:	Accepted
Submission ID:	33577420150905000000

Exhibit DIDP A95

Return of Organization Exempt From Income Tax

OMB No. 1545-0047

Form **990**

Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except private foundations)

2014

Department of the Treasury
Internal Revenue Service

▶ Do not enter Social Security numbers on this form as it may be made public.

Open to Public Inspection

▶ Information about Form 990 and its instructions is at www.irs.gov/form990.

A For the 2014 calendar year, or tax year beginning <u>07/01, 2014</u> , and ending <u>06/30, 2015</u>																													
B Check if applicable:	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 10%;"><input type="checkbox"/></td> <td>Address change</td> <td colspan="2">C Name of organization <u>INTERNET CORP FOR ASSIGNED NAMES & NUMBERS</u></td> <td>D Employer identification number <u>95 4712218</u></td> </tr> <tr> <td><input type="checkbox"/></td> <td>Name change</td> <td colspan="2">Doing Business As</td> <td>E Telephone number <u>(310) 301 5800</u></td> </tr> <tr> <td><input type="checkbox"/></td> <td>Initial return</td> <td>Number and street (or P.O. box if mail is not delivered to street address)</td> <td>Room/suite</td> <td rowspan="3">G Gross receipts \$ <u>224,330,416.</u></td> </tr> <tr> <td><input type="checkbox"/></td> <td>Terminated</td> <td colspan="2"><u>12025 WATERFRONT DRIVE, SUITE 300</u></td> </tr> <tr> <td><input type="checkbox"/></td> <td>Amended return</td> <td colspan="2">City or town, state or province, country, and ZIP or foreign postal code <u>LOS ANGELES, CA 90094 2536</u></td> </tr> <tr> <td><input type="checkbox"/></td> <td>Application pending</td> <td colspan="2">F Name and address of principal officer <u>FADI CHEHADE</u> <u>12025 WATERFRONT DR STE 300 LOS ANGELES, CA 90094</u></td> <td> H(a) Is this a group return for subordinates? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No H(b) Are all subordinates included? <input type="checkbox"/> Yes <input type="checkbox"/> No If "No," attach a list. (see instructions) </td> </tr> </table>	<input type="checkbox"/>	Address change	C Name of organization <u>INTERNET CORP FOR ASSIGNED NAMES & NUMBERS</u>		D Employer identification number <u>95 4712218</u>	<input type="checkbox"/>	Name change	Doing Business As		E Telephone number <u>(310) 301 5800</u>	<input type="checkbox"/>	Initial return	Number and street (or P.O. box if mail is not delivered to street address)	Room/suite	G Gross receipts \$ <u>224,330,416.</u>	<input type="checkbox"/>	Terminated	<u>12025 WATERFRONT DRIVE, SUITE 300</u>		<input type="checkbox"/>	Amended return	City or town, state or province, country, and ZIP or foreign postal code <u>LOS ANGELES, CA 90094 2536</u>		<input type="checkbox"/>	Application pending	F Name and address of principal officer <u>FADI CHEHADE</u> <u>12025 WATERFRONT DR STE 300 LOS ANGELES, CA 90094</u>		H(a) Is this a group return for subordinates? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No H(b) Are all subordinates included? <input type="checkbox"/> Yes <input type="checkbox"/> No If "No," attach a list. (see instructions)
<input type="checkbox"/>	Address change	C Name of organization <u>INTERNET CORP FOR ASSIGNED NAMES & NUMBERS</u>		D Employer identification number <u>95 4712218</u>																									
<input type="checkbox"/>	Name change	Doing Business As		E Telephone number <u>(310) 301 5800</u>																									
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<input type="checkbox"/>	Amended return	City or town, state or province, country, and ZIP or foreign postal code <u>LOS ANGELES, CA 90094 2536</u>																											
<input type="checkbox"/>	Application pending	F Name and address of principal officer <u>FADI CHEHADE</u> <u>12025 WATERFRONT DR STE 300 LOS ANGELES, CA 90094</u>		H(a) Is this a group return for subordinates? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No H(b) Are all subordinates included? <input type="checkbox"/> Yes <input type="checkbox"/> No If "No," attach a list. (see instructions)																									
I Tax-exempt status:	<input checked="" type="checkbox"/> 501(c)(3) <input type="checkbox"/> 501(c) () (insert no.) <input type="checkbox"/> 4947(a)(1) or <input type="checkbox"/> 527																												
J Website:	<u>WWW.ICANN.ORG</u>																												
K Form of organization:	<input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Trust <input type="checkbox"/> Association <input type="checkbox"/> Other ▶																												
L Year of formation:	<u>1998</u>																												
M State of legal domicile:	<u>CA</u>																												

Part I Summary

	1 Briefly describe the organization's mission or most significant activities: <u>SEE SCHEDULE O.</u>				
Activities & Governance	2 Check this box <input type="checkbox"/> if the organization discontinued its operations or disposed of more than 25% of its net assets.				
	3 Number of voting members of the governing body (Part VI, line 1a)	3		<u>16.</u>	
	4 Number of independent voting members of the governing body (Part VI, line 1b)	4		<u>15.</u>	
	5 Total number of individuals employed in calendar year 2014 (Part V, line 2a)	5		<u>257.</u>	
	6 Total number of volunteers (estimate if necessary)	6		<u>20.</u>	
	7a Total unrelated business revenue from Part VIII, column (C), line 12	7a		<u>0</u>	
	7b Net unrelated business taxable income from Form 990-T, line 34	7b		<u>0</u>	
Revenue	8 Contributions and grants (Part VIII, line 1h)		Prior Year	<u>2,072,140.</u>	Current Year
	9 Program service revenue (Part VIII, line 2g)			<u>2,044,258.</u>	
	10 Investment income (Part VIII, column (A), lines 3, 4, and 7d)			<u>121,311,659.</u>	<u>214,799,352.</u>
	11 Other revenue (Part VIII, column (A), lines 5, 6d, 8c, 9c, 10c, and 11e)			<u>4,430,521.</u>	<u>2,708,743.</u>
	12 Total revenue add lines 8 through 11 (must equal Part VIII, column (A), line 12)			<u>0</u>	<u>0</u>
				<u>127,814,320.</u>	<u>219,552,353.</u>
Expenses	13 Grants and similar amounts paid (Part IX, column (A), lines 1-3)			<u>1,864,400.</u>	<u>1,640,175.</u>
	14 Benefits paid to or for members (Part IX, column (A), line 4)			<u>0</u>	<u>0</u>
	15 Salaries, other compensation, employee benefits (Part IX, column (A), lines 5-10)			<u>46,194,171.</u>	<u>56,999,687.</u>
	16a Professional fundraising fees (Part IX, column (A), line 11e)			<u>0</u>	<u>0</u>
	b Total fundraising expenses (Part IX, column (D), line 25) ▶			<u>0</u>	
	17 Other expenses (Part IX, column (A), lines 11a-11d, 11f-24e)			<u>76,208,820.</u>	<u>72,978,782.</u>
18 Total expenses. Add lines 13-17 (must equal Part IX, column (A), line 25)			<u>124,267,391.</u>	<u>131,618,644.</u>	
19 Revenue less expenses. Subtract line 18 from line 12			<u>3,546,929.</u>	<u>87,933,709.</u>	
Net Assets or Fund Balances	20 Total assets (Part X, line 16)		Beginning of Current Year	<u>355,256,415.</u>	End of Year
	21 Total liabilities (Part X, line 26)			<u>162,152,075.</u>	<u>97,454,963.</u>
	22 Net assets or fund balances. Subtract line 21 from line 20			<u>193,104,340.</u>	<u>279,109,561.</u>

Part II Signature Block

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than officer) is based on all information of which preparer has any knowledge.

Sign Here	▶ Signature of officer	Date <u>10 MAY 2016</u>
	▶ XAVIER CALVEZ Type or print name and title	CFO

Preparer Use Only	Print/Type preparer's name <u>EVA NITTA</u>	Preparer's signature 	Date <u>05/03/16</u>	Check <input type="checkbox"/> if self-employed	PTIN <u>P01286320</u>	
	Firm's name ▶ <u>ERNST & YOUNG U.S. LLP</u>	Firm's EIN ▶ <u>34-6565596</u>				
	Firm's address ▶ <u>4370 LA JOLLA VILLAGE DRIVE STE 500 SAN DIEGO, CA 92122</u>	Phone no. <u>858-535-7200</u>				

May the IRS discuss this return with the preparer shown above? (see instructions) Yes No

For Paperwork Reduction Act Notice, see the separate instructions.

Form **990** (2014)

Part III Statement of Program Service Accomplishments

Check if Schedule O contains a response or note to any line in this Part III X

1 Briefly describe the organization's mission:
SEE SCHEDULE O.

2 Did the organization undertake any significant program services during the year which were not listed on the prior Form 990 or 990-EZ? Yes No
If "Yes," describe these new services on Schedule O.

3 Did the organization cease conducting, or make significant changes in how it conducts, any program services? Yes No
If "Yes," describe these changes on Schedule O.

4 Describe the organization's program service accomplishments for each of its three largest program services, as measured by expenses. Section 501(c)(3) and 501(c)(4) organizations are required to report the amount of grants and allocations to others, the total expenses, and revenue, if any, for each program service reported.

4a (Code:) (Expenses \$ 94,799,576. including grants of \$ 1,640,175.) (Revenue \$ 319,799,352.)
SEE SCHEDULE O.

4b (Code:) (Expenses \$ including grants of \$) (Revenue \$)

4c (Code:) (Expenses \$ including grants of \$) (Revenue \$)

4d Other program services (Describe in Schedule O.)
(Expenses \$ including grants of \$) (Revenue \$)

4e Total program service expenses 94,799,576.

Part IV Checklist of Required Schedules

Table with 3 columns: Question number, Yes, No. Rows include questions 1 through 20b regarding organizational requirements and financial reporting.

Part IV Checklist of Required Schedules (continued)

		Yes	No
21	Did the organization report more than \$5,000 of grants or other assistance to any domestic organization or domestic government on Part IX, column (A), line 1? <i>If "Yes," complete Schedule I, Parts I and II.</i>	X	
22	Did the organization report more than \$5,000 of grants or other assistance to or for domestic individuals on Part IX, column (A), line 2? <i>If "Yes," complete Schedule I, Parts I and III.</i>		X
23	Did the organization answer "Yes" to Part VII, Section A, line 3, 4, or 5 about compensation of the organization's current and former officers, directors, trustees, key employees, and highest compensated employees? <i>If "Yes," complete Schedule J.</i>	X	
24a	Did the organization have a tax-exempt bond issue with an outstanding principal amount of more than \$100,000 as of the last day of the year, that was issued after December 31, 2002? <i>If "Yes," answer lines 24b through 24d and complete Schedule K. If "No," go to line 25a.</i>		X
b	Did the organization invest any proceeds of tax-exempt bonds beyond a temporary period exception?		
c	Did the organization maintain an escrow account other than a refunding escrow at any time during the year to defease any tax-exempt bonds?		
d	Did the organization act as an "on behalf of" issuer for bonds outstanding at any time during the year?		
25a	Section 501(c)(3), 501(c)(4), and 501(c)(29) organizations. Did the organization engage in an excess benefit transaction with a disqualified person during the year? <i>If "Yes," complete Schedule L, Part I.</i>		X
b	Is the organization aware that it engaged in an excess benefit transaction with a disqualified person in a prior year, and that the transaction has not been reported on any of the organization's prior Forms 990 or 990-EZ? <i>If "Yes," complete Schedule L, Part I.</i>		X
26	Did the organization report any amount on Part X, line 5, 6, or 22 for receivables from or payables to any current or former officers, directors, trustees, key employees, highest compensated employees, or disqualified persons? <i>If "Yes," complete Schedule L, Part II.</i>		X
27	Did the organization provide a grant or other assistance to an officer, director, trustee, key employee, substantial contributor or employee thereof, a grant selection committee member, or to a 35% controlled entity or family member of any of these persons? <i>If "Yes," complete Schedule L, Part III.</i>		X
28	Was the organization a party to a business transaction with one of the following parties (see Schedule L, Part IV instructions for applicable filing thresholds, conditions, and exceptions):		
a	A current or former officer, director, trustee, or key employee? <i>If "Yes," complete Schedule L, Part IV.</i>		X
b	A family member of a current or former officer, director, trustee, or key employee? <i>If "Yes," complete Schedule L, Part IV.</i>		X
c	An entity of which a current or former officer, director, trustee, or key employee (or a family member thereof) was an officer, director, trustee, or direct or indirect owner? <i>If "Yes," complete Schedule L, Part IV.</i>		X
29	Did the organization receive more than \$25,000 in non-cash contributions? <i>If "Yes," complete Schedule M.</i>		X
30	Did the organization receive contributions of art, historical treasures, or other similar assets, or qualified conservation contributions? <i>If "Yes," complete Schedule M.</i>		X
31	Did the organization liquidate, terminate, or dissolve and cease operations? <i>If "Yes," complete Schedule N, Part I.</i>		X
32	Did the organization sell, exchange, dispose of, or transfer more than 25% of its net assets? <i>If "Yes," complete Schedule N, Part II.</i>		X
33	Did the organization own 100% of an entity disregarded as separate from the organization under Regulations sections 301.7701-2 and 301.7701-3? <i>If "Yes," complete Schedule R, Part I.</i>		X
34	Was the organization related to any tax-exempt or taxable entity? <i>If "Yes," complete Schedule R, Part II, III, or IV, and Part V, line 1.</i>		X
35a	Did the organization have a controlled entity within the meaning of section 512(b)(13)?		X
b	If "Yes" to line 35a, did the organization receive any payment from or engage in any transaction with a controlled entity within the meaning of section 512(b)(13)? <i>If "Yes," complete Schedule R, Part V, line 2.</i>		
36	Section 501(c)(3) organizations. Did the organization make any transfers to an exempt non-charitable related organization? <i>If "Yes," complete Schedule R, Part V, line 2.</i>		X
37	Did the organization conduct more than 5% of its activities through an entity that is not a related organization and that is treated as a partnership for federal income tax purposes? <i>If "Yes," complete Schedule R, Part VI.</i>		X
38	Did the organization complete Schedule O and provide explanations in Schedule O for Part VI, lines 11b and 19? Note. All Form 990 filers are required to complete Schedule O.	X	

Part V Statements Regarding Other IRS Filings and Tax Compliance

Check if Schedule O contains a response or note to any line in this Part V

Table with columns for question number, description, sub-part, and Yes/No columns. Includes questions 1a through 14b regarding IRS filings and tax compliance.

Part VI Governance, Management, and Disclosure For each "Yes" response to lines 2 through 7b below, and for a "No" response to line 8a, 8b, or 10b below, describe the circumstances, processes, or changes in Schedule O. See instructions. Check if Schedule O contains a response or note to any line in this Part VI

Section A. Governing Body and Management

	Yes	No
1a Enter the number of voting members of the governing body at the end of the tax year 1a 16 If there are material differences in voting rights among members of the governing body, or if the governing body delegated broad authority to an executive committee or similar committee, explain in Schedule O.		
b Enter the number of voting members included in line 1a, above, who are independent 1b 15		
2 Did any officer, director, trustee, or key employee have a family relationship or a business relationship with any other officer, director, trustee, or key employee?		X
3 Did the organization delegate control over management duties customarily performed by or under the direct supervision of officers, directors, or trustees, or key employees to a management company or other person? . .		X
4 Did the organization make any significant changes to its governing documents since the prior Form 990 was filed?		X
5 Did the organization become aware during the year of a significant diversion of the organization's assets?		X
6 Did the organization have members or stockholders?		X
7a Did the organization have members, stockholders, or other persons who had the power to elect or appoint one or more members of the governing body?	X	
b Are any governance decisions of the organization reserved to (or subject to approval by) members, stockholders, or persons other than the governing body?		X
8 Did the organization contemporaneously document the meetings held or written actions undertaken during the year by the following:		
a The governing body?	X	
b Each committee with authority to act on behalf of the governing body?	X	
9 Is there any officer, director, trustee, or key employee listed in Part VII, Section A, who cannot be reached at the organization's mailing address? If "Yes," provide the names and addresses in Schedule O		X

Section B. Policies (This Section B requests information about policies not required by the Internal Revenue Code.)

	Yes	No
10a Did the organization have local chapters, branches, or affiliates?	X	
b If "Yes," did the organization have written policies and procedures governing the activities of such chapters, affiliates, and branches to ensure their operations are consistent with the organization's exempt purposes? . . .	X	
11a Has the organization provided a complete copy of this Form 990 to all members of its governing body before filing the form? .	X	
b Describe in Schedule O the process, if any, used by the organization to review this Form 990.		
12a Did the organization have a written conflict of interest policy? If "No," go to line 13	X	
b Were officers, directors, or trustees, and key employees required to disclose annually interests that could give rise to conflicts?	X	
c Did the organization regularly and consistently monitor and enforce compliance with the policy? If "Yes," describe in Schedule O how this was done	X	
13 Did the organization have a written whistleblower policy?	X	
14 Did the organization have a written document retention and destruction policy?	X	
15 Did the process for determining compensation of the following persons include a review and approval by independent persons, comparability data, and contemporaneous substantiation of the deliberation and decision?		
a The organization's CEO, Executive Director, or top management official	X	
b Other officers or key employees of the organization	X	
If "Yes" to line 15a or 15b, describe the process in Schedule O (see instructions).		
16a Did the organization invest in, contribute assets to, or participate in a joint venture or similar arrangement with a taxable entity during the year?		X
b If "Yes," did the organization follow a written policy or procedure requiring the organization to evaluate its participation in joint venture arrangements under applicable federal tax law, and take steps to safeguard the organization's exempt status with respect to such arrangements?		

Section C. Disclosure

- 17** List the states with which a copy of this Form 990 is required to be filed ► CA, ---
- 18** Section 6104 requires an organization to make its Forms 1023 (or 1024 if applicable), 990, and 990-T (Section 501(c)(3)s only) available for public inspection. Indicate how you made these available. Check all that apply.
 Own website Another's website Upon request Other (explain in Schedule O)
- 19** Describe in Schedule O whether (and if so, how) the organization made its governing documents, conflict of interest policy, and financial statements available to the public during the tax year.
- 20** State the name, address, and telephone number of the person who possesses the organization's books and records: ►

KAVISH CALVEZ 12025 WATERFRONT DRIVE, SUITE 300 LOS ANGELES, CA 90094-2236 310-301-5838

Part VII Compensation of Officers, Directors, Trustees, Key Employees, Highest Compensated Employees, and Independent Contractors

Check if Schedule O contains a response or note to any line in this Part VII. X

Section A. Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees

1a Complete this table for all persons required to be listed. Report compensation for the calendar year ending with or within the organization's tax year.

- List all of the organization's **current** officers, directors, trustees (whether individuals or organizations), regardless of amount of compensation. Enter -0- in columns (D), (E), and (F) if no compensation was paid.
- List all of the organization's **current** key employees, if any. See instructions for definition of "key employee."
- List the organization's five **current** highest compensated employees (other than an officer, director, trustee, or key employee) who received reportable compensation (Box 5 of Form W-2 and/or Box 7 of Form 1099-MISC) of more than \$100,000 from the organization and any related organizations.
- List all of the organization's **former** officers, key employees, and highest compensated employees who received more than \$100,000 of reportable compensation from the organization and any related organizations.
- List all of the organization's **former** directors or trustees that received, in the capacity as a former director or trustee of the organization, more than \$10,000 of reportable compensation from the organization and any related organizations.

List persons in the following order: individual trustees or directors; institutional trustees; officers; key employees; highest compensated employees; and former such persons.

Check this box if neither the organization nor any related organization compensated any current officer, director, or trustee.

(A) Name and Title	(B) Average hours per week (list any hours for related organizations below dotted line)	(C) Position (do not check more than one box, unless person is both an officer and a director/trustee)						(D) Reportable compensation from the organization (W-2/1099 MISC)	(E) Reportable compensation from related organizations (W-2/1099 MISC)	(F) Estimated amount of other compensation from the organization and related organizations
		Individual trustee or director	Institutional trustee	Officer	Key employee	Highest compensated employee	Former			
(1) SEBASTIEN BACHOLLET DIRECTOR (THRU OCT 2014)	16.00 0	X					34,584.	0	0	
(2) CHERINE CHALABY DIRECTOR	16.00 0	X					48,750.	0	0	
(3) FADI CHEHADE CHIEF EXECUTIVE OFFICER	60.00 0	X	X				737,146.	0	58,230.	
(4) STEVE CROCKER DIRECTOR	16.00 0	X					37,500.	0	0	
(5) CHRIS DISSPAIN DIRECTOR	16.00 0	X					39,167.	0	0	
(6) WILLIAM RALPH GRAHAM DIRECTOR (THRU OCT 2014)	16.00 0	X					34,584.	0	0	
(7) ASHA HEMRAJANI DIRECTOR	16.00 0	X					9,577.	0	0	
(8) WOLFGANG KLEINWACHTER DIRECTOR	16.00 0	X					39,167.	0	0	
(9) MARKUS KUMMER DIRECTOR	16.00 0	X					9,577.	0	0	
(10) BRUNO LANVIN DIRECTOR	16.00 0	X					43,056.	0	0	
(11) OLGA MADRUGA-FORTI DIRECTOR (THRU OCT 2014)	16.00 0	X					31,666.	0	0	
(12) ERIKA MANN DIRECTOR	16.00 0	X					45,416.	0	0	
(13) GONZALO NAVARRO DIRECTOR	16.00 0	X					39,167.	0	0	
(14) RAYMOND A. PLZAK DIRECTOR	16.00 0	X					42,083.	0	0	

Part VII Section A. Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees (continued)

(A) Name and title	(B) Average hours per week (list any hours for related organizations below dotted line)	(C) Position (do not check more than one box, unless person is both an officer and a director/trustee)						(D) Reportable compensation from the organization (W-2/1099-MISC)	(E) Reportable compensation from related organizations (W-2/1099-MISC)	(F) Estimated amount of other compensation from the organization and related organizations
		Individual trustee or director	Institutional trustee	Officer	Key employee	Highest compensated employee	Former			
(15) RINALIA ABDUL RAHIM DIRECTOR	16.00 0	X					9,577.	0	0	
(16) GEORGE SADOWSKY DIRECTOR	16.00 0	X					42,083.	0	0	
(17) MIKE SILBER DIRECTOR	16.00 0	X					45,416.	0	0	
(18) BRUCE TONKIN DIRECTOR	16.00 0	X					0	0	0	
(19) KUO-WEI WU DIRECTOR	16.00 0	X					38,750.	0	0	
(20) AKRAM ATALLAH PRESIDENT, GLOBAL DOMAINS DIV	60.00 0			X			608,211.	0	62,230.	
(21) SUSANNA BENNETT CHIEF OPERATING OFFICER	60.00 0			X			425,190.	0	42,316.	
(22) XAVIER CALVEZ CHIEF FINANCIAL OFFICER	60.00 0			X			373,561.	0	58,228.	
(23) JOHN JEFFREY GENERAL COUNSEL AND SECRETARY	60.00 0			X			530,837.	0	52,969.	
(24) DAVID OLIVE VP, POLICY DEVELOPMENT	60.00 0			X			356,991.	0	57,875.	
(25) STEVE ANTONOFF SR. DIR, HR OPERATION SVCS	60.00 0				X		225,508.	0	42,310.	
1b Sub-total							1,191,440.	0	58,230.	
c Total from continuation sheets to Part VII, Section A							6,916,975.	0	982,149.	
d Total (add lines 1b and 1c)							8,108,415.	0	1,040,379.	

2 Total number of individuals (including but not limited to those listed above) who received more than \$100,000 of reportable compensation from the organization **132**

	Yes	No
3 Did the organization list any former officer, director, or trustee, key employee, or highest compensated employee on line 1a? If "Yes," complete Schedule J for such individual		X
4 For any individual listed on line 1a, is the sum of reportable compensation and other compensation from the organization and related organizations greater than \$150,000? If "Yes," complete Schedule J for such individual	X	
5 Did any person listed on line 1a receive or accrue compensation from any unrelated organization or individual for services rendered to the organization? If "Yes," complete Schedule J for such person		X

Section B. Independent Contractors

1 Complete this table for your five highest compensated independent contractors that received more than \$100,000 of compensation from the organization. Report compensation for the calendar year ending with or within the organization's tax year.

(A) Name and business address	(B) Description of services	(C) Compensation
ATTACHMENT 2		

2 Total number of independent contractors (including but not limited to those listed above) who received more than \$100,000 in compensation from the organization **118**

Part VII Section A. Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees (continued)

(A) Name and title	(B) Average hours per week (list any hours for related organizations below dotted line)	(C) Position (do not check more than one box, unless person is both an officer and a director/trustee)						(D) Reportable compensation from the organization (W-2/1099-MISC)	(E) Reportable compensation from related organizations (W 2/1099 MISC)	(F) Estimated amount of other compensation from the organization and related organizations
		Individual trustee or director	Institutional trustee	Officer	Key employee	Highest compensated employee	Former			
(26) ELISE GERICH VP, IANA & TECHNICAL OPERATIONS	60.00 0				X			293,131.	0	49,883.
(27) JAMES HEDLUND VP, STRATEGIC PROGRAMS	60.00 0				X			355,775.	0	57,908.
(28) TAREK KAMEL SR. ADVISOR TO PRES - GOV ENGM	60.00 0				X			250,308.	0	75,355.
(29) CYRUS NAMAZI VP, DNS INDUSTRY ENGAGEMENT	60.00 0				X			323,776.	0	48,088.
(30) ASHWIN RANGAN CHIEF INNOVATION AND INFO OFF.	60.00 0				X			295,847.	0	55,781.
(31) THERESA SWINEHART SR. ADVISOR TO PRES. ON STRAT.	60.00 0				X			421,022.	0	39,780.
(32) NICK TOMASSO VP MEETING OPS & INTL REAL EST	60.00 0				X			246,908.	0	49,175.
(33) CHRISTINE WILLETT VP, GTLD OPERATIONS	60.00 0				X			315,070.	0	53,866.
(34) ROBERT DUNCAN BURNS VP, GLOBAL COMMUNICATIONS	60.00 0					X		346,387.	0	57,933.
(35) CHRISTOPHER GIFT VP, ONLINE COMMUNITY SERVICES	60.00 0					X		286,438.	0	44,158.
(36) YU CHUANG KUEK VP, GLOBAL STAKEHOLDER ENGMT	60.00 0					X		508,564.	0	27,931.
1b Sub-total										
c Total from continuation sheets to Part VII, Section A										
d Total (add lines 1b and 1c)										

2 Total number of individuals (including but not limited to those listed above) who received more than \$100,000 of reportable compensation from the organization **132**

	Yes	No
3 Did the organization list any former officer, director, or trustee, key employee, or highest compensated employee on line 1a? If "Yes," complete Schedule J for such individual		X
4 For any individual listed on line 1a, is the sum of reportable compensation and other compensation from the organization and related organizations greater than \$150,000? If "Yes," complete Schedule J for such individual	X	
5 Did any person listed on line 1a receive or accrue compensation from any unrelated organization or individual for services rendered to the organization? If "Yes," complete Schedule J for such person		X

Section B. Independent Contractors

1 Complete this table for your five highest compensated independent contractors that received more than \$100,000 of compensation from the organization. Report compensation for the calendar year ending with or within the organization's tax year.

(A) Name and business address	(B) Description of services	(C) Compensation

2 Total number of independent contractors (including but not limited to those listed above) who received more than \$100,000 in compensation from the organization

Part VII Section A. Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees (continued)

(A) Name and title	(B) Average hours per week (list any hours for related organizations below dotted line)	(C) Position (do not check more than one box, unless person is both an officer and a director/trustee)						(D) Reportable compensation from the organization (W 2/1099-MISC)	(E) Reportable compensation from related organizations (W 2/1099-MISC)	(F) Estimated amount of other compensation from the organization and related organizations
		Individual trustee or director	Institutional trustee	Officer	Key employee	Highest compensated employee	Former			
(37) DENISE MICHEL VP STRAT INITIATIVES/PRES ADV	60.00 0					X		306,082.	0	62,151.
(38) AMY STATHOS DEPUTY GENERAL COUNSEL	60.00 0					X		311,543.	0	44,212.
1b Sub-total										
c Total from continuation sheets to Part VII, Section A										
d Total (add lines 1b and 1c)										

2 Total number of individuals (including but not limited to those listed above) who received more than \$100,000 of reportable compensation from the organization **132**

	Yes	No
3 Did the organization list any former officer, director, or trustee, key employee, or highest compensated employee on line 1a? <i>If "Yes," complete Schedule J for such individual</i>		X
4 For any individual listed on line 1a, is the sum of reportable compensation and other compensation from the organization and related organizations greater than \$150,000? <i>If "Yes," complete Schedule J for such individual</i>	X	
5 Did any person listed on line 1a receive or accrue compensation from any unrelated organization or individual for services rendered to the organization? <i>If "Yes," complete Schedule J for such person</i>		X

Section B. Independent Contractors

1 Complete this table for your five highest compensated independent contractors that received more than \$100,000 of compensation from the organization. Report compensation for the calendar year ending with or within the organization's tax year.

(A) Name and business address	(B) Description of services	(C) Compensation

2 Total number of independent contractors (including but not limited to those listed above) who received more than \$100,000 in compensation from the organization

Part VIII Statement of Revenue

Check if Schedule O contains a response or note to any line in this Part VIII

			(A) Total revenue	(B) Related or exempt function revenue	(C) Unrelated business revenue	(D) Revenue excluded from tax under sections 512-514	
Contributions, Gifts, Grants and Other Similar Amounts	1a	Federated campaigns					
	b	Membership dues					
	c	Fundraising events					
	d	Related organizations					
	e	Government grants (contributions)					
	f	All other contributions, gifts, grants, and similar amounts not included above	2,044,258.				
	g	Noncash contributions included in lines 1a-1f: \$					
	h	Total. Add lines 1a-1f	2,044,258.				
Program Service Revenue			Business Code				
	2a	NEW GTLD PROGRAM REVENUE	900099	114,721,002.	114,721,002.		
	b	REGISTRY/REGISTRAR FEES	900099	91,248,742.	91,248,742.		
	c	ACCREDITATION FEES	900099	5,138,333.	5,138,333.		
	d	ADDRESS REGISTRY FEES	900099	823,000.	823,000.		
	e	SPONSORSHIPS	900099	722,275.	722,275.		
	f	All other program service revenue		2,146,000.	2,146,000.		
g	Total. Add lines 2a-2f		214,799,352.				
Other Revenue	3	Investment income (including dividends, interest, and other similar amounts)		1,483,793.		1,483,793.	
	4	Income from investment of tax-exempt bond proceeds		0			
	5	Royalties		0			
	6a	Gross rents	(i) Real				
			(ii) Personal				
	b	Less: rental expenses					
	c	Rental income or (loss)					
	d	Net rental income or (loss)		0			
	7a	Gross amount from sales of assets other than inventory	(i) Securities	6,003,813.			
			(ii) Other				
	b	Less: cost or other basis and sales expenses		4,778,061.			
	c	Gain or (loss)		1,224,950.			
d	Net gain or (loss)		1,224,950.		1,224,950.		
8a	Gross income from fundraising events (not including \$ _____ of contributions reported on line 1c). See Part IV, line 18	a					
b	Less: direct expenses	b					
c	Net income or (loss) from fundraising events			0			
9a	Gross income from gaming activities. See Part IV, line 19	a					
b	Less: direct expenses	b					
c	Net income or (loss) from gaming activities			0			
10a	Gross sales of inventory, less returns and allowances	a					
b	Less: cost of goods sold	b					
c	Net income or (loss) from sales of inventory			0			
Miscellaneous Revenue		Business Code					
11a							
b							
c							
d	All other revenue						
e	Total. Add lines 11a-11d			0			
12	Total revenue. See instructions		219,593,353.	214,799,352.		2,708,743.	

Part IX Statement of Functional Expenses

Section 501(c)(3) and 501(c)(4) organizations must complete all columns. All other organizations must complete column (A).

Check if Schedule O contains a response or note to any line in this Part IX X

Do not include amounts reported on lines 6b, 7b, 8b, 9b, and 10b of Part VIII.	(A) Total expenses	(B) Program service expenses	(C) Management and general expenses	(D) Fundraising expenses
1 Grants and other assistance to domestic organizations and domestic governments. See Part IV, line 21	430,000.	430,000.		
2 Grants and other assistance to domestic individuals. See Part IV, line 22	0			
3 Grants and other assistance to foreign organizations, foreign governments, and foreign individuals. See Part IV, lines 15 and 16	1,210,175.	1,210,175.		
4 Benefits paid to or for members	0			
5 Compensation of current officers, directors, trustees, and key employees	7,153,414.	5,388,295.	1,765,119.	
6 Compensation not included above, to disqualified persons (as defined under section 4958(f)(1)) and persons described in section 4958(c)(3)(B)	0			
7 Other salaries and wages	37,358,489.	28,268,266.	9,090,223.	
8 Pension plan accruals and contributions (include section 401(k) and 403(b) employer contributions)	3,963,957.	2,999,431.	964,526.	
9 Other employee benefits	5,725,457.	3,842,589.	1,882,868.	
10 Payroll taxes	2,798,370.	2,117,459.	680,911.	
11 Fees for services (non-employees):				
a Management	0			
b Legal	8,228,904.	5,522,754.	2,706,150.	
c Accounting	1,675,946.		1,675,946.	
d Lobbying	605,420.	605,420.		
e Professional fundraising services. See Part IV, line 17.	0			
f Investment management fees	0			
g Other. (If line 11g amount exceeds 10% of line 25, column (A) amount, list line 11g expenses on Schedule O.)	20,858,865.	14,029,440.	6,829,425.	
12 Advertising and promotion	183,292.	123,015.	60,277.	
13 Office expenses	607,252.	407,552.	199,700.	
14 Information technology	7,402,656.	4,968,225.	2,434,431.	
15 Royalties	0			
16 Occupancy	5,448,765.	3,656,889.	1,791,876.	
17 Travel	12,898,956.	8,657,017.	4,241,939.	
18 Payments of travel or entertainment expenses for any federal, state, or local public officials	0			
19 Conferences, conventions, and meetings	5,623,859.	5,623,859.		
20 Interest	0			
21 Payments to affiliates	0			
22 Depreciation, depletion, and amortization	5,953,469.	3,995,617.	1,957,852.	
23 Insurance	608,303.	408,257.	200,046.	
24 Other expenses. Itemize expenses not covered above (List miscellaneous expenses in line 24e. If line 24e amount exceeds 10% of line 25, column (A) amount, list line 24e expenses on Schedule O.)				
a RISK COSTS - GTLD	1,967,367.	1,967,367.		
b BAD DEBT	550,000.	368,499.	181,501.	
c DUES & SUBSCRIPTIONS	322,155.	215,844.	106,311.	
d MISC (VAT, TAXES & LICENSE)	43,573.	38,606.	4,967.	
e All other expenses				
25 Total functional expenses. Add lines 1 through 24e	131,618,644.	94,844,576.	36,774,068.	
26 Joint costs. Complete this line only if the organization reported in column (B) joint costs from a combined educational campaign and fundraising solicitation. Check here <input type="checkbox"/> if following SOP 98 2 (ASC 958 720)	0			

Part X Balance Sheet

Check if Schedule O contains a response or note to any line in this Part X

		(A) Beginning of year		(B) End of year
Assets	1 Cash - non-interest-bearing	24,610,589.	1	89,718,881.
	2 Savings and temporary cash investments	0	2	0
	3 Pledges and grants receivable, net	0	3	0
	4 Accounts receivable, net	26,604,975.	4	28,918,931.
	5 Loans and other receivables from current and former officers, directors, trustees, key employees, and highest compensated employees. Complete Part II of Schedule L	0	5	0
	6 Loans and other receivables from other disqualified persons (as defined under section 4958(f)(1)), persons described in section 4958(c)(3)(B), and contributing employers and sponsoring organizations of section 501(c)(9) voluntary employees' beneficiary organizations (see instructions). Complete Part II of Schedule L	0	6	0
	7 Notes and loans receivable, net	0	7	0
	8 Inventories for sale or use	0	8	0
	9 Prepaid expenses and deferred charges	1,404,590.	9	2,047,321.
	10 a Land, buildings, and equipment: cost or other basis. Complete Part VI of Schedule D	10 a 35,326,692.		
	b Less: accumulated depreciation	10 b 17,094,485.	16,739,603.	10 c 18,232,207.
	11 Investments - publicly traded securities	285,063,325.	11	236,301,091.
	12 Investments - other securities. See Part IV, line 11	0	12	0
	13 Investments - program-related. See Part IV, line 11	0	13	0
	14 Intangible assets	0	14	0
	15 Other assets. See Part IV, line 11	833,333.	15	1,346,093.
16 Total assets. Add lines 1 through 15 (must equal line 34)	355,256,415.	16	376,564,524.	
Liabilities	17 Accounts payable and accrued expenses	16,224,238.	17	22,683,448.
	18 Grants payable	0	18	0
	19 Deferred revenue	145,927,837.	19	74,771,515.
	20 Tax-exempt bond liabilities	0	20	0
	21 Escrow or custodial account liability. Complete Part IV of Schedule D	0	21	0
	22 Loans and other payables to current and former officers, directors, trustees, key employees, highest compensated employees, and disqualified persons. Complete Part II of Schedule L	0	22	0
	23 Secured mortgages and notes payable to unrelated third parties	0	23	0
	24 Unsecured notes and loans payable to unrelated third parties	0	24	0
	25 Other liabilities (including federal income tax, payables to related third parties, and other liabilities not included on lines 17-24). Complete Part X of Schedule D	0	25	0
	26 Total liabilities. Add lines 17 through 25	162,152,075.	26	97,454,963.
Net Assets or Fund Balances	Organizations that follow SFAS 117 (ASC 958), check here <input checked="" type="checkbox"/> and complete lines 27 through 29, and lines 33 and 34.			
	27 Unrestricted net assets	193,104,340.	27	279,109,561.
	28 Temporarily restricted net assets	0	28	0
	29 Permanently restricted net assets	0	29	0
	Organizations that do not follow SFAS 117 (ASC 958), check here <input type="checkbox"/> and complete lines 30 through 34.			
	30 Capital stock or trust principal, or current funds		30	
	31 Paid-in or capital surplus, or land, building, or equipment fund		31	
	32 Retained earnings, endowment, accumulated income, or other funds		32	
33 Total net assets or fund balances	193,104,340.	33	279,109,561.	
34 Total liabilities and net assets/fund balances	355,256,415.	34	376,564,524.	

Part XI Reconciliation of Net Assets

Check if Schedule O contains a response or note to any line in this Part XI

1	Total revenue (must equal Part VIII, column (A), line 12)	1	219,552,353.
2	Total expenses (must equal Part IX, column (A), line 25)	2	131,618,644.
3	Revenue less expenses. Subtract line 2 from line 1	3	87,933,709.
4	Net assets or fund balances at beginning of year (must equal Part X, line 33, column (A))	4	193,104,340.
5	Net unrealized gains (losses) on investments	5	-1,319,001.
6	Donated services and use of facilities	6	0
7	Investment expenses	7	-371,528.
8	Prior period adjustments	8	0
9	Other changes in net assets or fund balances (explain in Schedule O)	9	-237,959.
10	Net assets or fund balances at end of year. Combine lines 3 through 9 (must equal Part X, line 33, column (B))	10	279,109,561.

Part XII Financial Statements and Reporting

Check if Schedule O contains a response or note to any line in this Part XII

		Yes	No
1	Accounting method used to prepare the Form 990: <input type="checkbox"/> Cash <input checked="" type="checkbox"/> Accrual <input type="checkbox"/> Other _____ If the organization changed its method of accounting from a prior year or checked "Other," explain in Schedule O.		
2a	Were the organization's financial statements compiled or reviewed by an independent accountant? If "Yes," check a box below to indicate whether the financial statements for the year were compiled or reviewed on a separate basis, consolidated basis, or both: <input type="checkbox"/> Separate basis <input type="checkbox"/> Consolidated basis <input type="checkbox"/> Both consolidated and separate basis		X
2b	Were the organization's financial statements audited by an independent accountant? If "Yes," check a box below to indicate whether the financial statements for the year were audited on a separate basis, consolidated basis, or both: <input checked="" type="checkbox"/> Separate basis <input type="checkbox"/> Consolidated basis <input type="checkbox"/> Both consolidated and separate basis	X	
2c	If "Yes" to line 2a or 2b, does the organization have a committee that assumes responsibility for oversight of the audit, review, or compilation of its financial statements and selection of an independent accountant? If the organization changed either its oversight process or selection process during the tax year, explain in Schedule O.	X	
3a	As a result of a federal award, was the organization required to undergo an audit or audits as set forth in the Single Audit Act and OMB Circular A-133?		X
3b	If "Yes," did the organization undergo the required audit or audits? If the organization did not undergo the required audit or audits, explain why in Schedule O and describe any steps taken to undergo such audits.		

SCHEDULE A
(Form 990 or 990-EZ)

Public Charity Status and Public Support

OMB No 1545-0047

2014

Open to Public Inspection

Department of the Treasury
Internal Revenue Service

Complete if the organization is a section 501(c)(3) organization or a section 4947(a)(1) nonexempt charitable trust.

▶ Attach to Form 990 or Form 990-EZ.

▶ Information about Schedule A (Form 990 or 990-EZ) and its instructions is at www.irs.gov/form990.

Name of the organization INTERNET CORP FOR ASSIGNED NAMES & NUMBERS	Employer identification number 95-4712218
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Part I Reason for Public Charity Status (All organizations must complete this part.) See instructions.

The organization is not a private foundation because it is: (For lines 1 through 11, check only one box.)

- 1 A church, convention of churches, or association of churches described in **section 170(b)(1)(A)(i)**.
- 2 A school described in **section 170(b)(1)(A)(ii)**. (Attach Schedule E.)
- 3 A hospital or a cooperative hospital service organization described in **section 170(b)(1)(A)(iii)**.
- 4 A medical research organization operated in conjunction with a hospital described in **section 170(b)(1)(A)(iii)**. Enter the hospital's name, city, and state: _____
- 5 An organization operated for the benefit of a college or university owned or operated by a governmental unit described in **section 170(b)(1)(A)(iv)**. (Complete Part II.)
- 6 A federal, state, or local government or governmental unit described in **section 170(b)(1)(A)(v)**.
- 7 An organization that normally receives a substantial part of its support from a governmental unit or from the general public described in **section 170(b)(1)(A)(vi)**. (Complete Part II.)
- 8 A community trust described in **section 170(b)(1)(A)(vi)**. (Complete Part II.)
- 9 An organization that normally receives: (1) more than 33 1/3 % of its support from contributions, membership fees, and gross receipts from activities related to its exempt functions - subject to certain exceptions, and (2) no more than 33 1/3 % of its support from gross investment income and unrelated business taxable income (less section 511 tax) from businesses acquired by the organization after June 30, 1975. See **section 509(a)(2)**. (Complete Part III.)
- 10 An organization organized and operated exclusively to test for public safety. See **section 509(a)(4)**.
- 11 An organization organized and operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more publicly supported organizations described in **section 509(a)(1)** or **section 509(a)(2)**. See **section 509(a)(3)**. Check the box in lines 11a through 11d that describes the type of supporting organization and complete lines 11e, 11f, and 11g.
 - a **Type I.** A supporting organization operated, supervised, or controlled by its supported organization(s), typically by giving the supported organization(s) the power to regularly appoint or elect a majority of the directors or trustees of the supporting organization. **You must complete Part IV, Sections A and B.**
 - b **Type II.** A supporting organization supervised or controlled in connection with its supported organization(s), by having control or management of the supporting organization vested in the same persons that control or manage the supported organization(s). **You must complete Part IV, Sections A and C.**
 - c **Type III functionally integrated.** A supporting organization operated in connection with, and functionally integrated with, its supported organization(s) (see instructions). **You must complete Part IV, Sections A, D, and E.**
 - d **Type III non-functionally integrated.** A supporting organization operated in connection with its supported organization(s) that is not functionally integrated. The organization generally must satisfy a distribution requirement and an attentiveness requirement (see instructions). **You must complete Part IV, Sections A and D, and Part V.**
 - e Check this box if the organization received a written determination from the IRS that it is a Type I, Type II, Type III functionally integrated, or Type III non-functionally integrated supporting organization.
 - f Enter the number of supported organizations: _____
 - g Provide the following information about the supported organization(s).

	(i) Name of supported organization	(ii) EIN	(iii) Type of organization (described on lines 1-9 above or IRC section (see instructions))	(iv) Is the organization listed in your governing document?		(v) Amount of monetary support (see instructions)	(vi) Amount of other support (see instructions)
				Yes	No		
(A)							
(B)							
(C)							
(D)							
(E)							
Total							

For Paperwork Reduction Act Notice, see the Instructions for Form 990 or 990-EZ. Schedule A (Form 990 or 990-EZ) 2014

Part II Support Schedule for Organizations Described in Sections 170(b)(1)(A)(iv) and 170(b)(1)(A)(vi) (Complete only if you checked the box on line 5, 7, or 8 of Part I or if the organization failed to qualify under Part III. If the organization fails to qualify under the tests listed below, please complete Part III.)

Section A. Public Support

Table with 7 columns: (a) 2010, (b) 2011, (c) 2012, (d) 2013, (e) 2014, (f) Total. Rows include: 1 Gifts, grants, contributions, and membership fees received; 2 Tax revenues levied for the organization's benefit; 3 The value of services or facilities furnished by a governmental unit; 4 Total. Add lines 1 through 3; 5 The portion of total contributions by each person; 6 Public support. Subtract line 5 from line 4.

Section B. Total Support

Table with 7 columns: (a) 2010, (b) 2011, (c) 2012, (d) 2013, (e) 2014, (f) Total. Rows include: 7 Amounts from line 4; 8 Gross income from interest, dividends, payments received on securities loans, rents, royalties and income from similar sources; 9 Net income from unrelated business activities; 10 Other income Do not include gain or loss from the sale of capital assets; 11 Total support. Add lines 7 through 10.

12 Gross receipts from related activities, etc. (see instructions) 12
13 First five years. If the Form 990 is for the organization's first, second, third, fourth, or fifth tax year as a section 501(c)(3) organization, check this box and stop here

Section C. Computation of Public Support Percentage

14 Public support percentage for 2014 (line 6, column (f) divided by line 11, column (f)) 14 %
15 Public support percentage from 2013 Schedule A, Part II, line 14 15 %
16a 33 1/3% support test - 2014. If the organization did not check the box on line 13, and line 14 is 33 1/3% or more, check this box and stop here. The organization qualifies as a publicly supported organization
b 33 1/3% support test - 2013. If the organization did not check a box on line 13 or 16a, and line 15 is 33 1/3% or more, check this box and stop here. The organization qualifies as a publicly supported organization
17a 10%-facts-and-circumstances test - 2014. If the organization did not check a box on line 13, 16a, or 16b, and line 14 is 10% or more, and if the organization meets the "facts-and-circumstances" test, check this box and stop here. Explain in Part VI how the organization meets the "facts-and-circumstances" test. The organization qualifies as a publicly supported organization.
b 10%-facts-and-circumstances test - 2013. If the organization did not check a box on line 13, 16a, 16b, or 17a, and line 15 is 10% or more, and if the organization meets the "facts-and-circumstances" test, check this box and stop here. Explain in Part VI how the organization meets the "facts-and-circumstances" test. The organization qualifies as a publicly supported organization.
18 Private foundation. If the organization did not check a box on line 13, 16a, 16b, 17a, or 17b, check this box and see instructions

Part III Support Schedule for Organizations Described in Section 509(a)(2)
 (Complete only if you checked the box on line 9 of Part I or if the organization failed to qualify under Part II.
 If the organization fails to qualify under the tests listed below, please complete Part II.)

Section A. Public Support

Calendar year (or fiscal year beginning in) ▶	(a) 2010	(b) 2011	(c) 2012	(d) 2013	(e) 2014	(f) Total
1 Gifts, grants, contributions, and membership fees received (Do not include any "unusual grants.")	1,990,805.	2,621,270.	656,512.	2,072,140.	2,014,358.	9,384,985.
2 Gross receipts from admissions, merchandise sold or services performed, or facilities furnished in any activity that is related to the organization's tax-exempt purpose	67,302,790.	69,791,646.	233,114,259.	121,311,659.	214,799,352.	706,319,706.
3 Gross receipts from activities that are not an unrelated trade or business under section 513						0
4 Tax revenues levied for the organization's benefit and either paid to or expended on its behalf						0
5 The value of services or facilities furnished by a governmental unit to the organization without charge						0
6 Total. Add lines 1 through 5	69,293,595.	72,412,916.	233,770,771.	123,383,799.	216,843,610.	715,704,691.
7a Amounts included on lines 1, 2, and 3 received from disqualified persons						0
b Amounts included on lines 2 and 3 received from other than disqualified persons that exceed the greater of \$5,000 or 1% of the amount on line 13 for the year	40,172,642.	43,321,965.	37,871,606.	37,543,078.	84,215,410.	243,124,701.
c Add lines 7a and 7b.	40,172,642.	43,321,965.	37,871,606.	37,543,078.	84,215,410.	243,124,701.
8 Public support (Subtract line 7c from line 6.)						472,579,990.

Section B. Total Support

Calendar year (or fiscal year beginning in) ▶	(a) 2010	(b) 2011	(c) 2012	(d) 2013	(e) 2014	(f) Total
9 Amounts from line 6.	69,293,595.	72,412,916.	233,770,771.	123,383,799.	216,843,610.	715,704,691.
10a Gross income from interest, dividends, payments received on securities loans, rents, royalties and income from similar sources	2,260,733.	551,635.	2,411,378.	2,783,804.	1,483,793.	9,491,343.
b Unrelated business taxable income (less section 511 taxes) from businesses acquired after June 30, 1975						0
c Add lines 10a and 10b	2,260,733.	551,635.	2,411,378.	2,783,804.	1,483,793.	9,491,343.
11 Net income from unrelated business activities not included in line 10b, whether or not the business is regularly carried on						0
12 Other income. Do not include gain or loss from the sale of capital assets (Explain in Part VI.)						
13 Total support. (Add lines 9, 10c, 11, and 12.)	71,554,328.	72,964,551.	236,182,149.	126,167,603.	218,327,403.	725,196,034.

14 First five years. If the Form 990 is for the organization's first, second, third, fourth, or fifth tax year as a section 501(c)(3) organization, check this box and **stop here.**

Section C. Computation of Public Support Percentage

15 Public support percentage for 2014 (line 8, column (f) divided by line 13, column (f)).	15	65.17%
16 Public support percentage from 2013 Schedule A, Part III, line 15.	16	63.94%

Section D. Computation of Investment Income Percentage

17 Investment income percentage for 2014 (line 10c, column (f) divided by line 13, column (f)).	17	1.31%
18 Investment income percentage from 2013 Schedule A, Part III, line 17	18	1.81%

19a 33 1/3% support tests - 2014. If the organization did not check the box on line 14, and line 15 is more than 33 1/3%, and line 17 is not more than 33 1/3%, check this box and **stop here.** The organization qualifies as a publicly supported organization

b 33 1/3% support tests - 2013. If the organization did not check a box on line 14 or line 19a, and line 16 is more than 33 1/3%, and line 18 is not more than 33 1/3%, check this box and **stop here.** The organization qualifies as a publicly supported organization

20 Private foundation. If the organization did not check a box on line 14, 19a, or 19b, check this box and see instructions

Part IV Supporting Organizations

(Complete only if you checked a box on line 11 of Part I. If you checked 11a of Part I, complete Sections A and B. If you checked 11b of Part I, complete Sections A and C. If you checked 11c of Part I, complete Sections A, D, and E. If you checked 11d of Part I, complete Sections A and D, and complete Part V.)

Section A. All Supporting Organizations

	Yes	No
1 Are all of the organization's supported organizations listed by name in the organization's governing documents? If "No," describe in Part VI how the supported organizations are designated. If designated by class or purpose, describe the designation. If historic and continuing relationship, explain.		
2 Did the organization have any supported organization that does not have an IRS determination of status under section 509(a)(1) or (2)? If "Yes," explain in Part VI how the organization determined that the supported organization was described in section 509(a)(1) or (2).		
3a Did the organization have a supported organization described in section 501(c)(4), (5), or (6)? If "Yes," answer (b) and (c) below.		
b Did the organization confirm that each supported organization qualified under section 501(c)(4), (5), or (6) and satisfied the public support tests under section 509(a)(2)? If "Yes," describe in Part VI when and how the organization made the determination.		
c Did the organization ensure that all support to such organizations was used exclusively for section 170(c)(2)(B) purposes? If "Yes," explain in Part VI what controls the organization put in place to ensure such use.		
4a Was any supported organization not organized in the United States ("foreign supported organization")? If "Yes" and if you checked 11a or 11b in Part I, answer (b) and (c) below.		
b Did the organization have ultimate control and discretion in deciding whether to make grants to the foreign supported organization? If "Yes," describe in Part VI how the organization had such control and discretion despite being controlled or supervised by or in connection with its supported organizations.		
c Did the organization support any foreign supported organization that does not have an IRS determination under sections 501(c)(3) and 509(a)(1) or (2)? If "Yes," explain in Part VI what controls the organization used to ensure that all support to the foreign supported organization was used exclusively for section 170(c)(2)(B) purposes.		
5a Did the organization add, substitute, or remove any supported organizations during the tax year? If "Yes," answer (b) and (c) below (if applicable). Also, provide detail in Part VI , including (i) the names and EIN numbers of the supported organizations added, substituted, or removed, (ii) the reasons for each such action, (iii) the authority under the organization's organizing document authorizing such action, and (iv) how the action was accomplished (such as by amendment to the organizing document).		
b Type I or Type II only. Was any added or substituted supported organization part of a class already designated in the organization's organizing document?		
c Substitutions only. Was the substitution the result of an event beyond the organization's control?		
6 Did the organization provide support (whether in the form of grants or the provision of services or facilities) to anyone other than (a) its supported organizations; (b) individuals that are part of the charitable class benefited by one or more of its supported organizations; or (c) other supporting organizations that also support or benefit one or more of the filing organization's supported organizations? If "Yes," provide detail in Part VI .		
7 Did the organization provide a grant, loan, compensation, or other similar payment to a substantial contributor (defined in IRC 4958(c)(3)(C)), a family member of a substantial contributor, or a 35-percent controlled entity with regard to a substantial contributor? If "Yes," complete Part I of Schedule L (Form 990).		
8 Did the organization make a loan to a disqualified person (as defined in section 4958) not described in line 7? If "Yes," complete Part I of Schedule L (Form 990).		
9a Was the organization controlled directly or indirectly at any time during the tax year by one or more disqualified persons as defined in section 4946 (other than foundation managers and organizations described in section 509(a)(1) or (2))? If "Yes," provide detail in Part VI .		
b Did one or more disqualified persons (as defined in line 9(a)) hold a controlling interest in any entity in which the supporting organization had an interest? If "Yes," provide detail in Part VI .		
c Did a disqualified person (as defined in line 9(a)) have an ownership interest in, or derive any personal benefit from, assets in which the supporting organization also had an interest? If "Yes," provide detail in Part VI .		
10a Was the organization subject to the excess business holdings rules of IRC 4943 because of IRC 4943(f) (regarding certain Type II supporting organizations, and all Type III non-functionally integrated supporting organizations)? If "Yes," answer (b) below.		
b Did the organization have any excess business holdings in the tax year? (Use Schedule C, Form 4720, to determine whether the organization had excess business holdings.)		

Part IV Supporting Organizations (continued)

	Yes	No
11 Has the organization accepted a gift or contribution from any of the following persons?		
a A person who directly or indirectly controls, either alone or together with persons described in (b) and (c) below, the governing body of a supported organization?	11a	
b A family member of a person described in (a) above?	11b	
c A 35% controlled entity of a person described in (a) or (b) above? If "Yes" to a, b, or c, provide detail in Part VI.	11c	

Section B. Type I Supporting Organizations

	Yes	No
1 Did the directors, trustees, or membership of one or more supported organizations have the power to regularly appoint or elect at least a majority of the organization's directors or trustees at all times during the tax year? If "No," describe in Part VI how the supported organization(s) effectively operated, supervised, or controlled the organization's activities. If the organization had more than one supported organization, describe how the powers to appoint and/or remove directors or trustees were allocated among the supported organizations and what conditions or restrictions, if any, applied to such powers during the tax year.	1	
2 Did the organization operate for the benefit of any supported organization other than the supported organization(s) that operated, supervised, or controlled the supporting organization? If "Yes," explain in Part VI how providing such benefit carried out the purposes of the supported organization(s) that operated, supervised, or controlled the supporting organization.	2	

Section C. Type II Supporting Organizations

	Yes	No
1 Were a majority of the organization's directors or trustees during the tax year also a majority of the directors or trustees of each of the organization's supported organization(s)? If "No," describe in Part VI how control or management of the supporting organization was vested in the same persons that controlled or managed the supported organization(s).	1	

Section D. All Type III Supporting Organizations

	Yes	No
1 Did the organization provide to each of its supported organizations, by the last day of the fifth month of the organization's tax year, (1) a written notice describing the type and amount of support provided during the prior tax year, (2) a copy of the Form 990 that was most recently filed as of the date of notification, and (3) copies of the organization's governing documents in effect on the date of notification, to the extent not previously provided?	1	
2 Were any of the organization's officers, directors, or trustees either (i) appointed or elected by the supported organization(s) or (ii) serving on the governing body of a supported organization? If "No," explain in Part VI how the organization maintained a close and continuous working relationship with the supported organization(s).	2	
3 By reason of the relationship described in (2), did the organization's supported organizations have a significant voice in the organization's investment policies and in directing the use of the organization's income or assets at all times during the tax year? If "Yes," describe in Part VI the role the organization's supported organizations played in this regard.	3	

Section E. Type III Functionally-Integrated Supporting Organizations

1 Check the box next to the method that the organization used to satisfy the Integral Part Test during the year (see instructions):			
a <input type="checkbox"/> The organization satisfied the Activities Test. Complete line 2 below.			
b <input type="checkbox"/> The organization is the parent of each of its supported organizations. Complete line 3 below.			
c <input type="checkbox"/> The organization supported a governmental entity. Describe in Part VI how you supported a government entity (see instructions).			
2 Activities Test. Answer (a) and (b) below.		Yes	No
a Did substantially all of the organization's activities during the tax year directly further the exempt purposes of the supported organization(s) to which the organization was responsive? If "Yes," then in Part VI identify those supported organizations and explain how these activities directly furthered their exempt purposes, how the organization was responsive to those supported organizations, and how the organization determined that these activities constituted substantially all of its activities.	2a		
b Did the activities described in (a) constitute activities that, but for the organization's involvement, one or more of the organization's supported organization(s) would have been engaged in? If "Yes," explain in Part VI the reasons for the organization's position that its supported organization(s) would have engaged in these activities but for the organization's involvement.	2b		
3 Parent of Supported Organizations. Answer (a) and (b) below.			
a Did the organization have the power to regularly appoint or elect a majority of the officers, directors, or trustees of each of the supported organizations? Provide details in Part VI.	3a		
b Did the organization exercise a substantial degree of direction over the policies, programs, and activities of each of its supported organizations? If "Yes," describe in Part VI the role played by the organization in this regard.	3b		

Part V Type III Non-Functionally Integrated 509(a)(3) Supporting Organizations

1 Check here if the organization satisfied the Integral Part Test as a qualifying trust on Nov. 20, 1970. See instructions. All other Type III non-functionally integrated supporting organizations must complete Sections A through E.

Section A - Adjusted Net Income		(A) Prior Year	(B) Current Year (optional)
1 Net short-term capital gain	1		
2 Recoveries of prior-year distributions	2		
3 Other gross income (see instructions)	3		
4 Add lines 1 through 3	4		
5 Depreciation and depletion	5		
6 Portion of operating expenses paid or incurred for production or collection of gross income or for management, conservation, or maintenance of property held for production of income (see instructions)	6		
7 Other expenses (see instructions)	7		
8 Adjusted Net Income (subtract lines 5, 6 and 7 from line 4)	8		
Section B - Minimum Asset Amount		(A) Prior Year	(B) Current Year (optional)
1 Aggregate fair market value of all non-exempt-use assets (see instructions for short tax year or assets held for part of year):			
a Average monthly value of securities	1a		
b Average monthly cash balances	1b		
c Fair market value of other non-exempt-use assets	1c		
d Total (add lines 1a, 1b, and 1c)	1d		
e Discount claimed for blockage or other factors (explain in detail in Part VI):			
2 Acquisition indebtedness applicable to non-exempt-use assets	2		
3 Subtract line 2 from line 1d	3		
4 Cash deemed held for exempt use. Enter 1-1/2% of line 3 (for greater amount, see instructions).	4		
5 Net value of non-exempt-use assets (subtract line 4 from line 3)	5		
6 Multiply line 5 by .035	6		
7 Recoveries of prior-year distributions	7		
8 Minimum Asset Amount (add line 7 to line 6)	8		
Section C - Distributable Amount			Current Year
1 Adjusted net income for prior year (from Section A, line 8, Column A)	1		
2 Enter 85% of line 1	2		
3 Minimum asset amount for prior year (from Section B, line 8, Column A)	3		
4 Enter greater of line 2 or line 3	4		
5 Income tax imposed in prior year	5		
6 Distributable Amount. Subtract line 5 from line 4, unless subject to emergency temporary reduction (see instructions)	6		
7 <input type="checkbox"/> Check here if the current year is the organization's first as a non-functionally-integrated Type III supporting organization (see instructions).			

Schedule A (Form 990 or 990-EZ) 2014

Part V Type III Non-Functionally Integrated 509(a)(3) Supporting Organizations (continued)

Section D - Distributions		Current Year
1	Amounts paid to supported organizations to accomplish exempt purposes	
2	Amounts paid to perform activity that directly furthers exempt purposes of supported organizations, in excess of income from activity	
3	Administrative expenses paid to accomplish exempt purposes of supported organizations	
4	Amounts paid to acquire exempt-use assets	
5	Qualified set-aside amounts (prior IRS approval required)	
6	Other distributions (describe in Part VI). See instructions.	
7	Total annual distributions. Add lines 1 through 6.	
8	Distributions to attentive supported organizations to which the organization is responsive (provide details in Part VI). See instructions.	
9	Distributable amount for 2014 from Section C, line 6	
10	Line 8 amount divided by Line 9 amount	

Section E - Distribution Allocations (see instructions)		(i) Excess Distributions	(ii) Underdistributions Pre-2014	(iii) Distributable Amount for 2014
1	Distributable amount for 2014 from Section C, line 6			
2	Underdistributions, if any, for years prior to 2014 (reasonable cause required-see instructions)			
3	Excess distributions carryover, if any, to 2014:			
a				
b				
c				
d				
e	From 2013			
f	Total of lines 3a through e			
g	Applied to underdistributions of prior years			
h	Applied to 2014 distributable amount			
i	Carryover from 2009 not applied (see instructions)			
j	Remainder. Subtract lines 3g, 3h, and 3i from 3f.			
4	Distributions for 2014 from Section D, line 7: \$			
a	Applied to underdistributions of prior years			
b	Applied to 2014 distributable amount			
c	Remainder. Subtract lines 4a and 4b from 4.			
5	Remaining underdistributions for years prior to 2014, if any. Subtract lines 3g and 4a from line 2 (if amount greater than zero, see instructions).			
6	Remaining underdistributions for 2014. Subtract lines 3h and 4b from line 1 (if amount greater than zero, see instructions).			
7	Excess distributions carryover to 2015. Add lines 3j and 4c.			
8	Breakdown of line 7:			
a				
b				
c				
d	Excess from 2013			
e	Excess from 2014			

Schedule A (Form 990 or 990-EZ) 2014

Part VI **Supplemental Information.** Provide the explanations required by Part II, line 10; Part II, line 17a or 17b; and Part III, line 12. Also complete this part for any additional information. (See instructions).

Schedule of Contributors

2014

▶ **Attach to Form 990, Form 990-EZ, or Form 990-PF.**

▶ Information about Schedule B (Form 990, 990-EZ, or 990-PF) and its instructions is at www.irs.gov/form990.

Name of the organization INTERNET CORP FOR ASSIGNED NAMES & NUMBERS	Employer identification number 95-4712218
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Organization type (check one):

Filers of:

Section:

- Form 990 or 990-EZ
 - 501(c)(3) (enter number) organization
 - 4947(a)(1) nonexempt charitable trust **not** treated as a private foundation
 - 527 political organization
- Form 990-PF
 - 501(c)(3) exempt private foundation
 - 4947(a)(1) nonexempt charitable trust treated as a private foundation
 - 501(c)(3) taxable private foundation

Check if your organization is covered by the **General Rule** or a **Special Rule**.

Note. Only a section 501(c)(7), (8), or (10) organization can check boxes for both the General Rule and a Special Rule. See instructions.

General Rule

- For an organization filing Form 990, 990-EZ, or 990-PF that received, during the year, contributions totaling \$5,000 or more (in money or property) from any one contributor. Complete Parts I and II. See instructions for determining a contributor's total contributions.

Special Rules

- For an organization described in section 501(c)(3) filing Form 990 or 990-EZ that met the 33 1/3 % support test of the regulations under sections 509(a)(1) and 170(b)(1)(A)(vi), that checked Schedule A (Form 990 or 990-EZ), Part II, line 13, 16a, or 16b, and that received from any one contributor, during the year, total contributions of the greater of (1) \$5,000 or (2) 2% of the amount on (i) Form 990, Part VIII, line 1h, or (ii) Form 990-EZ, line 1. Complete Parts I and II.
- For an organization described in section 501(c)(7), (8), or (10) filing Form 990 or 990-EZ that received from any one contributor, during the year, total contributions of more than \$1,000 *exclusively* for religious, charitable, scientific, literary, or educational purposes, or the prevention of cruelty to children or animals. Complete Parts I, II, and III.
- For an organization described in section 501(c)(7), (8), or (10) filing Form 990 or 990-EZ that received from any one contributor, during the year, contributions *exclusively* for religious, charitable, etc., purposes, but no such contributions totaled more than \$1,000. If this box is checked, enter here the total contributions that were received during the year for an *exclusively* religious, charitable, etc., purpose. Do not complete any of the parts unless the **General Rule** applies to this organization because it received *nonexclusively* religious, charitable, etc., contributions totaling \$5,000 or more during the year ▶ \$ _____

Caution. An organization that is not covered by the General Rule and/or the Special Rules does not file Schedule B (Form 990, 990-EZ, or 990-PF), but it **must** answer "No" on Part IV, line 2, of its Form 990; or check the box on line H of its Form 990-EZ or on its Form 990-PF, Part I, line 2, to certify that it does not meet the filing requirements of Schedule B (Form 990, 990-EZ, or 990-PF).

Name of organization INTERNET CORP FOR ASSIGNED NAMES & NUMBERS	Employer identification number 95-4712218
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Part I Contributors (see instructions). Use duplicate copies of Part I if additional space is needed.

(a) No.	(b) Name, address, and ZIP + 4	(c) Total contributions	(d) Type of contribution
1	----- ----- -----	\$ 250,000.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
2	----- ----- -----	\$ 17,000.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
3	----- ----- -----	\$ 5,000.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
4	----- ----- -----	\$ 125,000.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
5	----- ----- -----	\$ 85,000.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
6	----- ----- -----	\$ 25,000.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)

Name of organization INTERNET CORP FOR ASSIGNED NAMES & NUMBERS

Employer identification number
95-4712218

Part I Contributors (see instructions). Use duplicate copies of Part I if additional space is needed.

(a) No.	(b) Name, address, and ZIP + 4	(c) Total contributions	(d) Type of contribution
7	----- ----- -----	\$ ----- 25,000.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
8	----- ----- -----	\$ ----- 100,000.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
9	----- ----- -----	\$ ----- 130,000.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
10	----- ----- -----	\$ ----- 45,000.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
11	----- ----- -----	\$ ----- 14,000.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
12	----- ----- -----	\$ ----- 20,000.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)

Name of organization **INTERNET CORP FOR ASSIGNED NAMES & NUMBERS**

Employer identification number
95-4712218

Part I Contributors (see instructions). Use duplicate copies of Part I if additional space is needed.

(a) No.	(b) Name, address, and ZIP + 4	(c) Total contributions	(d) Type of contribution
13	----- ----- -----	\$ ----- 5,000.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
14	----- ----- -----	\$ ----- 95,000.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
15	----- ----- -----	\$ ----- 60,000.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
16	----- ----- -----	\$ ----- 18,000.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
17	----- ----- -----	\$ ----- 25,000.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
18	----- ----- -----	\$ ----- 10,000.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)

Name of organization INTERNET CORP FOR ASSIGNED NAMES & NUMBERS

Employer identification number
95 4712218

Part I Contributors (see instructions). Use duplicate copies of Part I if additional space is needed.

(a) No.	(b) Name, address, and ZIP + 4	(c) Total contributions	(d) Type of contribution
19	----- ----- -----	\$ 80,000.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
20	----- ----- -----	\$ 41,000.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
21	----- ----- -----	\$ 225,000.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
22	----- ----- -----	\$ 5,500.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
23	----- ----- -----	\$ 10,000.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
24	----- ----- -----	\$ 5,000.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)

Name of organization INTERNET CORP FOR ASSIGNED NAMES & NUMBERS

Employer identification number
95-4712218

Part I Contributors (see instructions). Use duplicate copies of Part I if additional space is needed.

(a) No.	(b) Name, address, and ZIP + 4	(c) Total contributions	(d) Type of contribution
25		\$ 450,000.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
26		\$ 70,000.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
27		\$ 45,757.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
28		\$ 25,000.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
29		\$ 15,000.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)
30		\$ 10,000.	Person <input checked="" type="checkbox"/> Payroll <input type="checkbox"/> Noncash <input type="checkbox"/> (Complete Part II for noncash contributions.)

Name of organization INTERNET CORP FOR ASSIGNED NAMES & NUMBERS

Employer identification number

95-4712218

Part II Noncash Property (see instructions). Use duplicate copies of Part II if additional space is needed.

(a) No. from Part I	(b) Description of noncash property given	(c) FMV (or estimate) (see instructions)	(d) Date received
-----	----- ----- -----	\$	-----
(a) No. from Part I	(b) Description of noncash property given	(c) FMV (or estimate) (see instructions)	(d) Date received
-----	----- ----- -----	\$	-----
(a) No. from Part I	(b) Description of noncash property given	(c) FMV (or estimate) (see instructions)	(d) Date received
-----	----- ----- -----	\$	-----
(a) No. from Part I	(b) Description of noncash property given	(c) FMV (or estimate) (see instructions)	(d) Date received
-----	----- ----- -----	\$	-----
(a) No. from Part I	(b) Description of noncash property given	(c) FMV (or estimate) (see instructions)	(d) Date received
-----	----- ----- -----	\$	-----
(a) No. from Part I	(b) Description of noncash property given	(c) FMV (or estimate) (see instructions)	(d) Date received
-----	----- ----- -----	\$	-----

Name of organization INTERNET CORP FOR ASSIGNED NAMES & NUMBERS

Employer identification number

95-4712218

Part III Exclusively religious, charitable, etc., contributions to organizations described in section 501(c)(7), (8), or (10) that total more than \$1,000 for the year from any one contributor. Complete columns (a) through (e) and the following line entry. For organizations completing Part III, enter the total of exclusively religious, charitable, etc., contributions of \$1,000 or less for the year. (Enter this information once. See instructions.) ▶ \$ _____
 Use duplicate copies of Part III if additional space is needed.

(a) No. from Part I	(b) Purpose of gift	(c) Use of gift	(d) Description of how gift is held
-----	----- ----- -----	----- ----- -----	----- ----- -----
(e) Transfer of gift			
Transferee's name, address, and ZIP + 4		Relationship of transferor to transferee	
----- ----- -----		----- ----- -----	
(a) No. from Part I	(b) Purpose of gift	(c) Use of gift	(d) Description of how gift is held
-----	----- ----- -----	----- ----- -----	----- ----- -----
(e) Transfer of gift			
Transferee's name, address, and ZIP + 4		Relationship of transferor to transferee	
----- ----- -----		----- ----- -----	
(a) No. from Part I	(b) Purpose of gift	(c) Use of gift	(d) Description of how gift is held
-----	----- ----- -----	----- ----- -----	----- ----- -----
(e) Transfer of gift			
Transferee's name, address, and ZIP + 4		Relationship of transferor to transferee	
----- ----- -----		----- ----- -----	
(a) No. from Part I	(b) Purpose of gift	(c) Use of gift	(d) Description of how gift is held
-----	----- ----- -----	----- ----- -----	----- ----- -----
(e) Transfer of gift			
Transferee's name, address, and ZIP + 4		Relationship of transferor to transferee	
----- ----- -----		----- ----- -----	

SCHEDULE C
(Form 990 or 990-EZ)

Political Campaign and Lobbying Activities

OMB No. 1545-0047

2014

For Organizations Exempt From Income Tax Under section 501(c) and section 527

Department of the Treasury
Internal Revenue Service

▶ **Complete if the organization is described below.** ▶ **Attach to Form 990 or Form 990-EZ.**
▶ **Information about Schedule C (Form 990 or 990-EZ) and its instructions is at www.irs.gov/form990.**

Open to Public Inspection

If the organization answered "Yes," to Form 990, Part IV, line 3, or Form 990-EZ, Part V, line 46 (Political Campaign Activities), then

- Section 501(c)(3) organizations: Complete Parts I A and B. Do not complete Part I C.
- Section 501(c) (other than section 501(c)(3)) organizations: Complete Parts I-A and C below. Do not complete Part I B.
- Section 527 organizations: Complete Part I A only.

If the organization answered "Yes," to Form 990, Part IV, line 4, or Form 990-EZ, Part VI, line 47 (Lobbying Activities), then

- Section 501(c)(3) organizations that have filed Form 5768 (election under section 501(h)): Complete Part II A. Do not complete Part II-B.
- Section 501(c)(3) organizations that have NOT filed Form 5768 (election under section 501(h)): Complete Part II B. Do not complete Part II-A.

If the organization answered "Yes," to Form 990, Part IV, line 5 (Proxy Tax) (see separate instructions) or Form 990-EZ, Part V, line 35c (Proxy Tax) (see separate instructions), then

- Section 501(c)(4), (5), or (6) organizations: Complete Part III.

Name of organization INTERNET CORP FOR ASSIGNED NAMES & NUMBERS	Employer identification number 95-4712218
--	--

Part I-A Complete if the organization is exempt under section 501(c) or is a section 527 organization.

- 1 Provide a description of the organization's direct and indirect political campaign activities in Part IV.
- 2 Political expenditures ▶ \$ _____
- 3 Volunteer hours _____

Part I-B Complete if the organization is exempt under section 501(c)(3).

- 1 Enter the amount of any excise tax incurred by the organization under section 4955. ▶ \$ _____
- 2 Enter the amount of any excise tax incurred by organization managers under section 4955 ▶ \$ _____
- 3 If the organization incurred a section 4955 tax, did it file Form 4720 for this year? Yes No
- 4a Was a correction made? Yes No
- b If "Yes," describe in Part IV.

Part I-C Complete if the organization is exempt under section 501(c), except section 501(c)(3).

- 1 Enter the amount directly expended by the filing organization for section 527 exempt function activities. ▶ \$ _____
- 2 Enter the amount of the filing organization's funds contributed to other organizations for section 527 exempt function activities. ▶ \$ _____
- 3 Total exempt function expenditures. Add lines 1 and 2. Enter here and on Form 1120-POL, line 17b ▶ \$ _____
- 4 Did the filing organization file Form 1120-POL for this year? Yes No
- 5 Enter the names, addresses and employer identification number (EIN) of all section 527 political organizations to which the filing organization made payments. For each organization listed, enter the amount paid from the filing organization's funds. Also enter the amount of political contributions received that were promptly and directly delivered to a separate political organization, such as a separate segregated fund or a political action committee (PAC). If additional space is needed, provide information in Part IV.

(a) Name	(b) Address	(c) EIN	(d) Amount paid from filing organization's funds. If none, enter 0 .	(e) Amount of political contributions received and promptly and directly delivered to a separate political organization. If none, enter 0 .
(1)				
(2)				
(3)				
(4)				
(5)				
(6)				

Part I A Complete if the organization is exempt under section 501(c)(3) and filed Form 5768 (election under section 501(h)).

A Check if the filing organization belongs to an affiliated group (and list in Part IV each affiliated group member's name, address, EIN, expenses, and share of excess lobbying expenditures).

B Check if the filing organization checked box A and "limited control" provisions apply.

Limits on Lobbying Expenditures (The term "expenditures" means amounts paid or incurred.)		(a) Filing organization's totals	(b) Affiliated group totals												
1 a	Total lobbying expenditures to influence public opinion (grass roots lobbying)														
b	Total lobbying expenditures to influence a legislative body (direct lobbying)														
c	Total lobbying expenditures (add lines 1a and 1b)														
d	Other exempt purpose expenditures														
e	Total exempt purpose expenditures (add lines 1c and 1d)														
f	Lobbying nontaxable amount. Enter the amount from the following table in both columns.														
<table border="1"> <thead> <tr> <th>If the amount on line 1e, column (a) or (b) is:</th> <th>The lobbying nontaxable amount is:</th> </tr> </thead> <tbody> <tr> <td>Not over \$500,000</td> <td>20% of the amount on line 1e.</td> </tr> <tr> <td>Over \$500,000 but not over \$1,000,000</td> <td>\$100,000 plus 15% of the excess over \$500,000.</td> </tr> <tr> <td>Over \$1,000,000 but not over \$1,500,000</td> <td>\$175,000 plus 10% of the excess over \$1,000,000.</td> </tr> <tr> <td>Over \$1,500,000 but not over \$17,000,000</td> <td>\$225,000 plus 5% of the excess over \$1,500,000.</td> </tr> <tr> <td>Over \$17,000,000</td> <td>\$1,000,000.</td> </tr> </tbody> </table>		If the amount on line 1e, column (a) or (b) is:	The lobbying nontaxable amount is:	Not over \$500,000	20% of the amount on line 1e.	Over \$500,000 but not over \$1,000,000	\$100,000 plus 15% of the excess over \$500,000.	Over \$1,000,000 but not over \$1,500,000	\$175,000 plus 10% of the excess over \$1,000,000.	Over \$1,500,000 but not over \$17,000,000	\$225,000 plus 5% of the excess over \$1,500,000.	Over \$17,000,000	\$1,000,000.		
If the amount on line 1e, column (a) or (b) is:	The lobbying nontaxable amount is:														
Not over \$500,000	20% of the amount on line 1e.														
Over \$500,000 but not over \$1,000,000	\$100,000 plus 15% of the excess over \$500,000.														
Over \$1,000,000 but not over \$1,500,000	\$175,000 plus 10% of the excess over \$1,000,000.														
Over \$1,500,000 but not over \$17,000,000	\$225,000 plus 5% of the excess over \$1,500,000.														
Over \$17,000,000	\$1,000,000.														
g	Grassroots nontaxable amount (enter 25% of line 1f)														
h	Subtract line 1g from line 1a. If zero or less, enter -0-														
i	Subtract line 1f from line 1c. If zero or less, enter -0-														
j	If there is an amount other than zero on either line 1h or line 1i, did the organization file Form 4720 reporting section 4911 tax for this year?		<input type="checkbox"/> Yes <input type="checkbox"/> No												

4-Year Averaging Period Under Section 501(h)

(Some organizations that made a section 501(h) election do not have to complete all of the five columns below. See the separate instructions for lines 2a through 2f.)

Lobbying Expenditures During 4-Year Averaging Period					
Calendar year (or fiscal year beginning in)	(a) 2011	(b) 2012	(c) 2013	(d) 2014	(e) Total
2a	Lobbying nontaxable amount				
b	Lobbying ceiling amount (150% of line 2a, column (e))				
c	Total lobbying expenditures				
d	Grassroots nontaxable amount				
e	Grassroots ceiling amount (150% of line 2d, column (e))				
f	Grassroots lobbying expenditures				

Part II-B Complete if the organization is exempt under section 501(c)(3) and has NOT filed Form 5768 (election under section 501(h)).

	(a)		(b)
	Yes	No	Amount
For each "Yes," response to lines 1a through 1i below, provide in Part IV a detailed description of the lobbying activity.			
1 During the year, did the filing organization attempt to influence foreign, national, state or local legislation, including any attempt to influence public opinion on a legislative matter or referendum, through the use of:			
a Volunteers?		X	
b Paid staff or management (include compensation in expenses reported on lines 1c through 1i)?	X		
c Media advertisements?		X	
d Mailings to members, legislators, or the public?		X	
e Publications, or published or broadcast statements?		X	
f Grants to other organizations for lobbying purposes?		X	
g Direct contact with legislators, their staffs, government officials, or a legislative body?	X		620,997.
h Rallies, demonstrations, seminars, conventions, speeches, lectures, or any similar means?		X	
i Other activities?		X	
j Total. Add lines 1c through 1i			620,997.
2a Did the activities in line 1 cause the organization to be not described in section 501(c)(3)?		X	
b If "Yes," enter the amount of any tax incurred under section 4912			
c If "Yes," enter the amount of any tax incurred by organization managers under section 4912			
d If the filing organization incurred a section 4912 tax, did it file Form 4720 for this year?		X	

Part III-A Complete if the organization is exempt under section 501(c)(4), section 501(c)(5), or section 501(c)(6).

	1	Yes	No
1 Were substantially all (90% or more) dues received nondeductible by members?	1		
2 Did the organization make only in-house lobbying expenditures of \$2,000 or less?	2		
3 Did the organization agree to carry over lobbying and political expenditures from the prior year?	3		

Part III-B Complete if the organization is exempt under section 501(c)(4), section 501(c)(5), or section 501(c)(6) and if either (a) BOTH Part III-A, lines 1 and 2, are answered "No," OR (b) Part III-A, line 3, is answered "Yes."

1 Dues, assessments and similar amounts from members	1	
2 Section 162(e) nondeductible lobbying and political expenditures (do not include amounts of political expenses for which the section 527(f) tax was paid).		
a Current year	2a	
b Carryover from last year	2b	
c Total	2c	
3 Aggregate amount reported in section 6033(e)(1)(A) notices of nondeductible section 162(e) dues	3	
4 If notices were sent and the amount on line 2c exceeds the amount on line 3, what portion of the excess does the organization agree to carryover to the reasonable estimate of nondeductible lobbying and political expenditure next year?	4	
5 Taxable amount of lobbying and political expenditures (see instructions)	5	

Part IV Supplemental Information

Provide the descriptions required for Part I-A, line 1; Part I-B, line 4; Part I-C, line 5; Part II-A (affiliated group list); Part II-A, lines 1 and 2 (see instructions); and Part II-B, line 1. Also, complete this part for any additional information.

LOBBYING EXPENDITURES

SCHEDULE C, PART II-B

THE ORGANIZATION UTILIZED THE SERVICES OF A STAFF REGISTERED LOBBYIST AND

THREE GOVERNMENT AFFAIRS FIRMS DURING THE YEAR ENDED JUNE 30, 2015, FOR A

COST OF \$620,997.

Part IV Supplemental Information *(continued)*

SCHEDULE D (Form 990)

Supplemental Financial Statements

OMB No. 1545-0047

2014

Open to Public Inspection

Complete if the organization answered "Yes" to Form 990, Part IV, line 6, 7, 8, 9, 10, 11a, 11b, 11c, 11d, 11e, 11f, 12a, or 12b.

Attach to Form 990.

Information about Schedule D (Form 990) and its instructions is at www.irs.gov/form990.

Department of the Treasury Internal Revenue Service

Name of the organization

Employer identification number

INTERNET CORP FOR ASSIGNED NAMES & NUMBERS

95-4712218

Part I Organizations Maintaining Donor Advised Funds or Other Similar Funds or Accounts.

Complete if the organization answered "Yes" to Form 990, Part IV, line 6.

Table with 2 columns: (a) Donor advised funds, (b) Funds and other accounts. Rows include: 1 Total number at end of year, 2 Aggregate value of contributions to (during year), 3 Aggregate value of grants from (during year), 4 Aggregate value at end of year, 5 Did the organization inform all donors and donor advisors in writing that the assets held in donor advised funds are the organization's property, subject to the organization's exclusive legal control?, 6 Did the organization inform all grantees, donors, and donor advisors in writing that grant funds can be used only for charitable purposes and not for the benefit of the donor or donor advisor, or for any other purpose conferring impermissible private benefit?

Part II Conservation Easements.

Complete if the organization answered "Yes" to Form 990, Part IV, line 7.

Table with 2 columns: Held at the End of the Tax Year. Rows include: 1 Purpose(s) of conservation easements held by the organization (check all that apply), 2 Complete lines 2a through 2d if the organization held a qualified conservation contribution in the form of a conservation easement on the last day of the tax year, 3 Number of conservation easements modified, transferred, released, extinguished, or terminated by the organization during the tax year, 4 Number of states where property subject to conservation easement is located, 5 Does the organization have a written policy regarding the periodic monitoring, inspection, handling of violations, and enforcement of the conservation easements it holds?, 6 Staff and volunteer hours devoted to monitoring, inspecting, and enforcing conservation easements during the year, 7 Amount of expenses incurred in monitoring, inspecting, and enforcing conservation easements during the year, 8 Does each conservation easement reported on line 2(d) above satisfy the requirements of section 170(h)(4)(B)(i) and section 170(h)(4)(B)(ii)?, 9 In Part XIII, describe how the organization reports conservation easements in its revenue and expense statement, and balance sheet, and include, if applicable, the text of the footnote to the organization's financial statements that describes the organization's accounting for conservation easements.

Part III Organizations Maintaining Collections of Art, Historical Treasures, or Other Similar Assets.

Complete if the organization answered "Yes" to Form 990, Part IV, line 8.

Table with 2 columns: Revenue and Assets. Rows include: 1a If the organization elected, as permitted under SFAS 116 (ASC 958), not to report in its revenue statement and balance sheet works of art, historical treasures, or other similar assets held for public exhibition, education, or research in furtherance of public service, provide, in Part XIII, the text of the footnote to its financial statements that describes these items, 1b If the organization elected, as permitted under SFAS 116 (ASC 958), to report in its revenue statement and balance sheet works of art, historical treasures, or other similar assets held for public exhibition, education, or research in furtherance of public service, provide the following amounts relating to these items, 2 If the organization received or held works of art, historical treasures, or other similar assets for financial gain, provide the following amounts required to be reported under SFAS 116 (ASC 958) relating to these items.

For Paperwork Reduction Act Notice, see the Instructions for Form 990.

Schedule D (Form 990) 2014

Part III Organizations Maintaining Collections of Art, Historical Treasures, or Other Similar Assets (continued)

- 3 Using the organization's acquisition, accession, and other records, check any of the following that are a significant use of its collection items (check all that apply):
a Public exhibition
b Scholarly research
c Preservation for future generations
d Loan or exchange programs
e Other
4 Provide a description of the organization's collections and explain how they further the organization's exempt purpose in Part XIII.
5 During the year, did the organization solicit or receive donations of art, historical treasures, or other similar assets to be sold to raise funds rather than to be maintained as part of the organization's collection?

Part IV Escrow and Custodial Arrangements. Complete if the organization answered "Yes" to Form 990, Part IV, line 9, or reported an amount on Form 990, Part X, line 21.

- 1a Is the organization an agent, trustee, custodian or other intermediary for contributions or other assets not included on Form 990, Part X?
b If "Yes," explain the arrangement in Part XIII and complete the following table:
Table with columns: Amount, 1c Beginning balance, 1d Additions during the year, 1e Distributions during the year, 1f Ending balance.
2a Did the organization include an amount on Form 990, Part X, line 21, for escrow or custodial account liability?
b If "Yes," explain the arrangement in Part XIII. Check here if the explanation has been provided in Part XIII.

Part V Endowment Funds. Complete if the organization answered "Yes" to Form 990, Part IV, line 10.

Table with 6 columns: (a) Current year, (b) Prior year, (c) Two years back, (d) Three years back, (e) Four years back. Rows include: 1a Beginning of year balance, b Contributions, c Net investment earnings, gains, and losses, d Grants or scholarships, e Other expenditures for facilities and programs, f Administrative expenses, g End of year balance.

- 2 Provide the estimated percentage of the current year end balance (line 1g, column (a)) held as:
a Board designated or quasi-endowment %
b Permanent endowment %
c Temporarily restricted endowment %
The percentages in lines 2a, 2b, and 2c should equal 100%.

- 3a Are there endowment funds not in the possession of the organization that are held and administered for the organization by:
(i) unrelated organizations
(ii) related organizations
b If "Yes" to 3a(ii), are the related organizations listed as required on Schedule R?
Table with Yes/No columns for 3a(i), 3a(ii), 3b.

Part VI Land, Buildings, and Equipment. Complete if the organization answered "Yes" to Form 990, Part IV, line 11a. See Form 990, Part X, line 10.

Table with 5 columns: (a) Cost or other basis (investment), (b) Cost or other basis (other), (c) Accumulated depreciation, (d) Book value. Rows include: 1a Land, b Buildings, c Leasehold improvements, d Equipment, e Other, Total. Add lines 1a through 1e. (Column (d) must equal Form 990, Part X, column (B), line 10(c).)

Part VII Investments - Other Securities.

Complete if the organization answered "Yes" to Form 990, Part IV, line 11b. See Form 990, Part X, line 12.

Table with 3 columns: (a) Description of security or category, (b) Book value, (c) Method of valuation. Rows include (1) Financial derivatives, (2) Closely-held equity interests, (3) Other (A-H), and Total.

Part VIII Investments - Program Related.

Complete if the organization answered "Yes" to Form 990, Part IV, line 11c. See Form 990, Part X, line 13.

Table with 3 columns: (a) Description of investment, (b) Book value, (c) Method of valuation. Rows (1) through (9) and Total.

Part IX Other Assets.

Complete if the organization answered "Yes" to Form 990, Part IV, line 11d. See Form 990, Part X, line 15.

Table with 2 columns: (a) Description, (b) Book value. Rows (1) through (9) and Total.

Part X Other Liabilities.

Complete if the organization answered "Yes" to Form 990, Part IV, line 11e or 11f. See Form 990, Part X, line 25.

Table with 2 columns: (a) Description of liability, (b) Book value. Row 1 includes (1) Federal income taxes, rows (2) through (9), and Total.

2. Liability for uncertain tax positions. In Part XIII, provide the text of the footnote to the organization's financial statements that reports the organization's liability for uncertain tax positions under FIN 48 (ASC 740). Check here if the text of the footnote has been provided in Part XIII [X]

Part XI Reconciliation of Revenue per Audited Financial Statements With Revenue per Return. Complete if the organization answered "Yes" to Form 990, Part IV, line 12a.

Table with 5 main rows and sub-rows (a-e) for adjustments. Total revenue reported as 219,552,353.

Part XII Reconciliation of Expenses per Audited Financial Statements With Expenses per Return. Complete if the organization answered "Yes" to Form 990, Part IV, line 12a.

Table with 5 main rows and sub-rows (a-e) for adjustments. Total expenses reported as 131,618,644.

Part XIII Supplemental Information.

Provide the descriptions required for Part II, lines 3, 5, and 9; Part III, lines 1a and 4; Part IV, lines 1b and 2b; Part V, line 4; Part X, line 2; Part XI, lines 2d and 4b; and Part XII, lines 2d and 4b. Also complete this part to provide any additional information.

SEE PAGE 5

Part XIII Supplemental Information (continued)

FORM 990, SCHEDULE D, PART X, LINE 2

ASC 740-10 FOOTNOTE

ICANN IS EXEMPT FROM FEDERAL AND STATE INCOME TAXES UNDER SECTION 501(C)(3) OF THE INTERNAL REVENUE CODE AND SECTION 23071(D) OF THE CALIFORNIA REVENUE AND TAXATION CODE. ACCORDINGLY, NO PROVISION FOR INCOME TAXES HAS BEEN MADE IN THE ACCOMPANYING FINANCIAL STATEMENTS. HOWEVER, ICANN IS SUBJECT TO INCOME TAXES ON ANY NET INCOME THAT IS DERIVED FROM A TRADE OR BUSINESS, REGULARLY CARRIED ON, AND NOT IN FURTHERANCE OF THE PURPOSES FOR WHICH ICANN WAS GRANTED EXEMPTION. NO INCOME TAX PROVISION HAS BEEN RECORDED; AS THE NET INCOME, IF ANY, FROM ANY UNRELATED TRADE OR BUSINESS, IN THE OPINION OF MANAGEMENT, IS NOT MATERIAL TO THE BASIC FINANCIAL STATEMENTS TAKEN AS A WHOLE.

ICANN BELIEVES IT IS IN COMPLIANCE WITH ALL APPLICABLE LAWS, HOWEVER, UPON AUDIT BY A TAXING AUTHORITY, IF AMOUNTS ARE FOUND DUE, ICANN MAY BE LIABLE FOR SUCH TAXES. MANAGEMENT HAS ANALYZED ICANN'S TAX POSITIONS TAKEN ON FEDERAL AND STATE INCOME TAX RETURNS FOR ALL OPEN TAX YEARS AND HAS CONCLUDED THAT, AS OF JUNE 30, 2015 AND 2014, NO LIABILITIES ARE REQUIRED TO BE RECORDED IN CONNECTION WITH SUCH TAX POSITIONS IN ICANN'S FINANCIAL STATEMENTS. THE FISCAL 2009 THROUGH 2014 TAX YEARS REMAIN OPEN FOR EXAMINATION BY THE TAXING AUTHORITIES. NO INTEREST OR PENALTIES ARE RECOGNIZED DURING THE YEAR AS ICANN HAS NOT RECORDED INCOME TAX CONTINGENCIES. ICANN IS NOT UNDER EXAMINATION BY THE INTERNAL REVENUE SERVICE FOR ANY OPEN TAX YEARS.

Part XII Supplemental Information (continued)

FORM 990, SCHEDULE D, PART XII, LINE 2D

FOREIGN EXCHANGE GAIN (LOSS) \$237,951

**SCHEDULE F
(Form 990)**

Statement of Activities Outside the United States

OMB No 1545-0047

- ▶ Complete if the organization answered "Yes" on Form 990, Part IV, line 14b, 15, or 16.
- ▶ Attach to Form 990.
- ▶ Information about Schedule F (Form 990) and its instructions is at www.irs.gov/form990.

2014

Open to Public Inspection

Department of the Treasury
Internal Revenue Service

Name of the organization

Employer identification number

INTERNET CORP FOR ASSIGNED NAMES & NUMBERS

95-4712218

Part I **General Information on Activities Outside the United States.** Complete if the organization answered "Yes" on Form 990, Part IV, line 14b.

1 For grantmakers. Does the organization maintain records to substantiate the amount of its grants and other assistance, the grantees' eligibility for the grants or assistance, and the selection criteria used to award the grants or assistance? Yes No

2 For grantmakers. Describe in Part V the organization's procedures for monitoring the use of its grants and other assistance outside the United States.

3 Activities per Region (The following Part I, line 3 table can be duplicated if additional space is needed)

(a) Region	(b) Number of offices in the region	(c) Number of employees, agents, and independent contractors in region	(d) Activities conducted in region (by type) (e.g., fundraising, program services, investments, grants to recipients located in the region)	(e) If activity listed in (d) is a program service, describe specific type of service(s) in region	(f) Total expenditures for and investments in region
(1) NORTH AMERICA		1.	PROGRAM SERVICES	SEE 990 PART III	1,260,193.
(2) CENTRAL AMERICA/CARIBBEAN		1.	PROGRAM SERVICES	SEE 990 PART III	525,812.
(3) SOUTH AMERICA		51.	PROGRAM SERVICES	SEE 990 PART III	4,776,726.
(4) EAST ASIA AND THE PACIFIC	1.	122.	PROGRAM SERVICES	SEE 990 PART III	8,690,796.
(5) SOUTH ASIA		2.	PROGRAM SERVICES	SEE 990 PART III	106,418.
(6) EUROPE	3.	37.	PROGRAM SERVICES	SEE 990 PART III	19,300,415.
(7) RUSSIA/INDEPENDENT STATES		1.	PROGRAM SERVICES	SEE 990 PART III	162,684.
(8) MIDDLE EAST AND NORTH AFRICA		3.	PROGRAM SERVICES	SEE 990 PART III	1,268,518.
(9) SUB-SAHARAN AFRICA		4.	PROGRAM SERVICES	SEE 990 PART III	1,100,365.
(10)					
(11)					
(12)					
(13)					
(14)					
(15)					
(16)					
(17)					
3a Sub-total	4.	183.			37,193,927.
b Total from continuation sheets to Part I					
c Totals (add lines 3a and 3b)	4.	183.			37,193,927.

For Paperwork Reduction Act Notice, see the Instructions for Form 990.

Schedule F (Form 990) 2014

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Part II Grants and Other Assistance to Organizations or Entities Outside the United States. Complete if the organization answered "Yes" on Form 990, Part IV, line 15, for any recipient who received more than \$5,000. Part II can be duplicated if additional space is needed.

1	(a) Name of organization	(b) IRS code section and EIN (if applicable)	(c) Region	(d) Purpose of grant	(e) Amount of cash grant	(f) Manner of cash disbursement	(g) Amount of non-cash assistance	(h) Description of non-cash assistance	(i) Method of valuation (book, FMV, appraisal, other)
(1)			SUB-SAHARAN AFRICA	AIS 2015 SPONSORSHIP	20,000.	WIRE/CASH			
(2)			EUROPE/ICELAND/GREENLAND	TEL CONF '15 SPONSORSHIP	20,000.	WIRE/CASH			
(3)			EAST ASIA/PACIFIC	COMMASTA '14 SPONSORSHIP	6,358.	WIRE/CASH			
(4)			SOUTH AMERICA	FUTURECOM 14 SPONSORSHIP	19,900.	WIRE/CASH			
(5)			CENT. AMERICA/CARIBBEAN	25TH ANNV 15 SPONSORSHIP	10,000.	WIRE/CASH			
(6)			CENT. AMERICA/CARIBBEAN	OCTLD WS '14 SPONSORSHIP	10,800.	WIRE/CASH			
(7)			EAST ASIA/PACIFIC	FRNDS IGF 15 SPONSORSHIP	51,000.	WIRE/CASH			
(8)			EUROPE/ICELAND/GREENLAND	CYBERSEC FORUM SPONSORSHIP	14,913.	WIRE/CASH			
(9)			EUROPE/ICELAND/GREENLAND	INT GOVNRCE SPONSORSHIP	30,000.	WIRE/CASH			
(10)			EUROPE/ICELAND/GREENLAND	EURODIG 2015 SPONSORSHIP	16,177.	WIRE/CASH			
(11)			SOUTH AMERICA	ITSERIO CS SPONSORSHIP	15,000.	WIRE/CASH			
(12)			EUROPE/ICELAND/GREENLAND	WORLD SUMMIT SPONSORSHIP	15,000.	WIRE/CASH			
(13)			EUROPE/ICELAND/GREENLAND	WRLD SUM YTH SPONSORSHIP	10,000.	WIRE/CASH			
(14)			EUROPE/ICELAND/GREENLAND	WSIS FORM 15 SPONSORSHIP	12,236.	WIRE/CASH			
(15)			EUROPE/ICELAND/GREENLAND	WELIS PARTNER SPONSORSHIP	5,306.	WIRE/CASH			
(16)			EUROPE/ICELAND/GREENLAND	IGESA DIRECT SPONSORSHIP	100,000.	WIRE/CASH			

2 Enter total number of recipient organizations listed above that are recognized as charities by the foreign country, recognized as tax-exempt by the IRS, or for which the grantee or counsel has provided a section 501(c)(3) equivalency letter.

3 Enter total number of other organizations or entities.

Part II Grants and Other Assistance to Organizations or Entities Outside the United States. Complete if the organization answered "Yes" on Form 990, Part IV, line 15, for any recipient who received more than \$5,000. Part II can be duplicated if additional space is needed.

1	(a) Name of organization	(b) IRS code section and EIN (if applicable)	(c) Region	(d) Purpose of grant	(e) Amount of cash grant	(f) Manner of cash disbursement	(g) Amount of non-cash assistance	(h) Description of non-cash assistance	(i) Method of valuation (book, FMV, appraisal, other)
(1)			EUROPE/ICELAND/GREENLAND	IGF FRANCE SPONSORSHIP	6,304.	WIRE/CASH			
(2)			EUROPE/ICELAND/GREENLAND	EU HACKATHON SPONSORSHIP	6,464.	WIRE/CASH			
(3)			EUROPE/ICELAND/GREENLAND	INT JUBSID PROJ SPNSRSH	50,000.	WIRE/CASH			
(4)			EAST ASIA/PACIFIC	KOREA PARTNER PRG SPNSRSH	100,000.	WIRE/CASH			
(5)			SOUTH AMERICA	22: LACNOG 14 SPONSORSHIP	12,000.	WIRE/CASH			
(6)			SOUTH AMERICA	LACNIC 23 SPONSORSHIP	9,000.	WIRE/CASH			
(7)			EUROPE/ICELAND/GREENLAND	IG SUMM SCHL SPONSORSHIP	14,933.	WIRE/CASH			
(8)			SUB SAHARAN AFRICA	AFRCA IGF 14 SPONSORSHIP	10,000.	WIRE/CASH			
(9)			EUROPE/ICELAND/GREENLAND	CRYPTTECH PROJ SPNSRSH	50,000.	WIRE/CASH			
(10)			EUROPE/ICELAND/GREENLAND	MENOG 2015 SPONSORSHIP	15,000.	WIRE/CASH			
(11)			EUROPE/ICELAND/GREENLAND	RIPE ATLS 15 SPONSORSHIP	30,000.	WIRE/CASH			
(12)			EUROPE/ICELAND/GREENLAND	NET CONF 15 SPONSORSHIP	11,315.	WIRE/CASH			
(13)			MIDDLE EAST/NORTH AFRICA	UN ESCWA PROJ SPNSRSH	45,000.	WIRE/CASH			
(14)			EUROPE/ICELAND/GREENLAND	REF 2014 SPONSORSHIP	103,977.	WIRE/CASH			
(15)			EUROPE/ICELAND/GREENLAND	WEF 2015 SPONSORSHIP	70,645.	WIRE/CASH			
(16)			EUROPE/ICELAND/GREENLAND	WEF ANN MEET 2015 SPNSRSH	26,470.	WIRE/CASH			

2 Enter total number of recipient organizations listed above that are recognized as charities by the foreign country, recognized as tax-exempt by the IRS, or for which the grantee or counsel has provided a section 501(c)(3) equivalency letter.

3 Enter total number of other organizations or entities.

32.

Part III Grants and Other Assistance to Individuals Outside the United States. Complete if the organization answered "Yes" on Form 990, Part IV, line 16.
Part III can be duplicated if additional space is needed.

(a) Type of grant or assistance	(b) Region	(c) Number of recipients	(d) Amount of cash grant	(e) Manner of cash disbursement	(f) Amount of non-cash assistance	(g) Description of non-cash assistance	(h) Method of valuation (book, FMV, appraisal, other)
(1) FELLOWSHIP PROGRAM	CENT. AMERICA/CARIBBIAN	21.	10,820.	WIRE/CASH	44,504.	AIRFARE/LODG	ACTUAL EXP
(2) FELLOWSHIP PROGRAM	EAST ASIA/PACIFIC	8.	3,680.	WIRE/CASH	24,691.	AIRFARE/LODG	ACTUAL EXP
(3) FELLOWSHIP PROGRAM	EUROPE/ICEL. ND/GREENLAND	13.	6,100.	WIRE/CASH	32,964.	AIRFARE/LODG	ACTUAL EXP
(4) FELLOWSHIP PROGRAM	MIDDLE EAST/NORTH AFRICA	13	5,680.	WIRE/CASH	29,527.	AIRFARE/LODG	ACTUAL EXP
(5) FELLOWSHIP PROGRAM	NORTH AMERICA	2.	500.	WIRE/CASH	1,861	AIRFARE/LODG	ACTUAL EXP
(6) FELLOWSHIP PROGRAM	RUSSIA/NEWLY IND. STATES	5.	3,200.	WIRE/CASH	13,715.	AIRFARE/LODG	ACTUAL EXP
(7) FELLOWSHIP PROGRAM	SOUTH AMERICA	23.	11,000.	WIRE/CASH	53,933.	AIRFARE/LODG	ACTUAL EXP
(8) FELLOWSHIP PROGRAM	SOUTH ASIA	24.	9,520.	WIRE/CASH	54,934.	AIRFARE/LODG	ACTUAL EXP
(9) FELLOWSHIP PROGRAM	SUB-SAHARAN AFRICA	40.	15,820.	WIRE/CASH	120,813.	AIRFARE/LODG	ACTUAL EXP
(10)							
(11)							
(12)							
(13)							
(14)							
(15)							
(16)							
(17)							
(18)							

Part IV Foreign Forms

- 1 Was the organization a U.S. transferor of property to a foreign corporation during the tax year? *If "Yes," the organization may be required to file Form 926, Return by a U.S. Transferor of Property to a Foreign Corporation (see Instructions for Form 926)* Yes No
- 2 Did the organization have an interest in a foreign trust during the tax year? *If "Yes," the organization may be required to file Form 3520, Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts, and/or Form 3520 A, Annual Information Return of Foreign Trust With a U.S. Owner (see Instructions for Forms 3520 and 3520 A; do not file with Form 990)* Yes No
- 3 Did the organization have an ownership interest in a foreign corporation during the tax year? *If "Yes," the organization may be required to file Form 5471, Information Return of U.S. Persons With Respect To Certain Foreign Corporations (see Instructions for Form 5471)* Yes No
- 4 Was the organization a direct or indirect shareholder of a passive foreign investment company or a qualified electing fund during the tax year? *If "Yes," the organization may be required to file Form 8621, Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund (see Instructions for Form 8621)* Yes No
- 5 Did the organization have an ownership interest in a foreign partnership during the tax year? *If "Yes," the organization may be required to file Form 8865, Return of U.S. Persons With Respect To Certain Foreign Partnerships (see Instructions for Form 8865)* Yes No
- 6 Did the organization have any operations in or related to any boycotting countries during the tax year? *If "Yes," the organization may be required to file Form 5713, International Boycott Report (see Instructions for Form 5713; do not file with Form 990)* Yes No

Part V**Supplemental Information**

Complete this part to provide the information required by Part I, line 2 (monitoring of funds); Part I, line 3, column (f) (accounting method; amounts of investments vs. expenditures per region); Part II, line 1 (accounting method); Part III (accounting method); and Part III, column (c) (estimated number of recipients), as applicable. Also complete this part to provide any additional information (see instructions).

SCHEDULE F, PART I, LINE 2

ORGANIZATION'S PROCEDURES FOR MONITORING USE OF GRANTS

AN ICANN FELLOWSHIP IS A GRANT OF SUPPORT THAT IS AWARDED TO ENABLE INDIVIDUALS FROM STAKEHOLDER GROUPS AROUND THE WORLD TO ATTEND ICANN PUBLIC MEETINGS. THIS IS A MEANS-TESTED PROGRAM. APPLICANTS MUST BE CITIZENS OF ECONOMICALLY ELIGIBLE COUNTRIES. ICANN USES THE WORLD BANK CLASSIFICATION OF LOW, LOWER-MIDDLE, AND UPPER-MIDDLE ECONOMIES. THE FELLOWSHIP COVERS THE COST OF ECONOMY CLASS AIRFARE AND HOTEL, AS WELL AS PROVIDING A STIPEND AFTER SUCCESSFUL COMPLETION OF THE PROGRAM, IN ORDER TO ASSIST IN COVERING SOME BASIC EXPENSES INCURRED BY THE FELLOW. RECIPIENTS ARE EXPECTED TO ACTIVELY CONTRIBUTE TO ICANN PROCESSES AND BE A PART OF THE NEXT GENERATION OF ICANN LEADERSHIP.

FELLOWSHIPS ARE AWARDED BY AN INDEPENDENT SELECTION COMMITTEE BASED ON A MIX OF CRITERIA INCLUDING APPLICANT EXPERIENCE AND REFERENCES, GEOGRAPHIC PROXIMITY TO MEETING, RECEIPT OF PAST FELLOWSHIPS, ETC. INDIVIDUALS MAY NOT RECEIVE THIS GRANT OF SUPPORT MORE THAN THREE TIMES. FOR EACH PUBLIC MEETING THAT INCORPORATES THE FELLOWSHIP PROGRAM, A LIST OF SELECTED FELLOWS TO ATTEND THE UPCOMING MEETING IS POSTED ON THE ICANN WEBSITE PRIOR TO THE MEETING. SUBSEQUENT TO THE PUBLIC MEETING, A LIST OF FELLOWS WHO ATTENDED THE MEETING IS POSTED ON THE ICANN WEBSITE.

TRAVEL AND HOTEL COSTS ASSOCIATED WITH FELLOWS PRE-SELECTED TO ATTEND THE PUBLIC MEETING ARE BOOKED AND PAID FOR DIRECTLY BY ICANN. ALL FELLOWS ARE ELIGIBLE TO RECEIVE A FLAT STIPEND NOT TO EXCEED U.S. \$500.00. STIPENDS

Part V Supplemental Information

Complete this part to provide the information required by Part I, line 2 (monitoring of funds); Part I, line 3, column (f) (accounting method; amounts of investments vs. expenditures per region); Part II, line 1 (accounting method); Part III (accounting method); and Part III, column (c) (estimated number of recipients), as applicable. Also complete this part to provide any additional information (see instructions).

ARE GENERALLY PROVIDED TO FELLOWS BY WIRE TRANSFER AND ARE PAID TO EACH FELLOW SUBSEQUENT TO THE MEETING AND AFTER THE FELLOW HAS DEMONSTRATED COMPLETION OF THE FELLOWSHIP PROGRAM. DURING THE TWELVE MONTHS ENDED JUNE 30, 2015, ICANN PAID \$444,643 TO ALLOW ONE HUNDRED AND FORTY-NINE (149) FELLOWSHIP PARTICIPANTS TO ATTEND THREE (3) ICANN PUBLIC MEETINGS.

ICANN ALSO PROVIDES TRAVEL SUPPORT TO OTHER MEMBERS OF THE VOLUNTEER COMMUNITY TO FACILITATE POLICY DEVELOPMENT EFFORTS AND OUTREACH IMPORTANT TO ICANN'S MISSION. THE PROCESS FOR SELECTION IS LARGELY BASED ON SPECIFIC CRITERIA ESTABLISHED BY EACH STAKEHOLDER/CONSTITUENCY GROUP. TRAVEL SUPPORT EXTENDED TO THESE GROUPS IS REPORTED AS PART OF TRAVEL EXPENSES IN PART IX, STATEMENT OF FUNCTIONAL EXPENSES. FOR OTHER CONTRIBUTIONS, STAKEHOLDER ENGAGEMENT STAFF DEVELOP REQUESTS BASED UPON ICANN'S STRATEGIC PLAN AND ICANN'S OPERATING PLAN. SPECIFIC NEEDS WITHIN SPECIFIC REGIONS OF THE WORLD ARE CONSIDERED. ICANN EXECUTIVES REVIEW THE LIST OF SUGGESTED CONTRIBUTIONS AND DECIDE ON WHICH CONTRIBUTIONS TO PURSUE. THE ICANN BOARD AND COMMUNITY CONSIDER THE CONTRIBUTIONS WITHIN THE OVERALL FISCAL YEAR OPERATING PLAN AND BUDGET PROCESS.

SCHEDULE F, PART I, LINE 3

AT JUNE 30, 2015, ICANN HAD INTERNATIONAL OFFICES LOCATED IN BRUSSELS, BELGIUM; ISTANBUL, TURKEY; SINGAPORE, SINGAPORE; AND GENEVA, SWITZERLAND.

THE NUMBER OF PEOPLE IN EACH REGION SHOWN IN PART I LINE 3 COL (C) OF

Part V Supplemental Information

Complete this part to provide the information required by Part I, line 2 (monitoring of funds); Part I, line 3, column (f) (accounting method; amounts of investments vs. expenditures per region); Part II, line 1 (accounting method); Part III (accounting method); and Part III, column (c) (estimated number of recipients), as applicable. Also complete this part to provide any additional information (see instructions).

SCHEDULE F INCLUDES EMPLOYEES AND LONG-TERM INDEPENDENT CONTRACTORS WORKING FOR ICANN.

THE TOTAL EXPENDITURES BY REGION SHOWN IN PART I, LINE 3 COL (F) OF SCHEDULE F INCLUDES:

A. THE AMOUNTS PAID (FOR COMPENSATION, TRAVEL REIMBURSEMENT, AND OTHER COSTS AND EXPENSES) FROM THE US ACCOUNTS PAYABLE DEPARTMENT APPLICABLE TO THE REGION.

B. ALL COSTS ASSOCIATED WITH TWO (2) OF A TOTAL OF THREE (3) ANNUAL PUBLIC MEETINGS (I.E. SINGAPORE, SINGAPORE, AND BUENOS AIRES, ARGENTINA) DURING FISCAL YEAR 2015.

C. AMOUNTS EXPENDED TO FUND THE BRUSSELS, TURKEY, SWITZERLAND AND SINGAPORE BRANCH/LIAISON/REPRESENTATIVE OFFICES, AND PERSONNEL COSTS INCLUDING OFFICE EXPENSES, TRAVEL-RELATED AND OTHER EXPENSES PAID BY THE US ACCOUNTS PAYABLE DEPARTMENT.

D. ALL PAYMENTS MADE TO INTERNATIONAL BASED EMPLOYEES AND CONTRACTORS WERE RECORDED IN US DOLLARS.

**SCHEDULE I
(Form 990)**

**Grants and Other Assistance to Organizations,
Governments, and Individuals in the United States**

OMB No. 1545-0047

2014

**Open to Public
Inspection**

Department of the Treasury
Internal Revenue Service

Complete if the organization answered "Yes" to Form 990, Part IV, line 21 or 22.
▶ Attach to Form 990.

▶ Information about Schedule I (Form 990) and its instructions is at www.irs.gov/form990.

Name of the organization

Employer identification number

INTERNET CORP FOR ASSIGNED NAMES & NUMBERS

95-4712218

Part I General Information on Grants and Assistance

- 1 Does the organization maintain records to substantiate the amount of the grants or assistance, the grantees' eligibility for the grants or assistance, and the selection criteria used to award the grants or assistance? Yes No
- 2 Describe in Part IV the organization's procedures for monitoring the use of grant funds in the United States.

Part II Grants and Other Assistance to Domestic Organizations and Domestic Governments. Complete if the organization answered "Yes" to Form 990, Part IV, line 21, for any recipient that received more than \$5,000. Part II can be duplicated if additional space is needed.

1 (a) Name and address of organization or government	(b) EIN	(c) IRC section if applicable	(d) Amount of cash grant	(e) Amount of non-cash assistance	(f) Method of valuation (book, FMV, appraisal, other)	(g) Description of non-cash assistance	(h) Purpose of grant or assistance
(1) ACCESS NOW PO BOX 10429 NEW YORK, NY 10001-3998	27-03597430	501(C)(3)	10,000.				SPONSORSHIP FOR RIGHTS CON SEA
(2) CENTER FOR DEMOCRACY & TECHNOLOGY 1401 K ST. NW, FLOOR 2, WASHINGTON, DC 20005	52-1905358	501(C)(3)	10,000.				SILVER TABLE SPONSORSHIP
(3) INTERNET SOCIETY 1775 WIEBLE AVE, STE 201 RESTON VA 20190 5108	54-1650477	501(C)(3)	20,000				DNS FORUM AFRICA 2013
(4) INTERNET SOCIETY 1775 WIEBLE AVE, STE 201 RESTON VA 20190 5108	54-1650477	501(C)(3)	10,000.				ISOC REGIONAL ROUND TABLE
(5) INTERNET SOCIETY 1775 WIEBLE AVE, STE 201 RESTON VA 20190 5108	54-1650477	501(C)(3)	100,000.				INTERNET PROTOCOL JOURNAL
(6) INTERNET SOCIETY 1775 WIEBLE AVE, STE 201 RESTON VA 20190-5108	54-1650477	501(C)(3)	20,000.				DNS FORUM MAIROBI 2013
(7) TECHNOLOGY MEDIA INC. 20 WEST 28ND ST, STE 502, NEW YORK NY 10010	27-5113545		10,000.				SPONSORSHIP - POLICY EVENT
(8) UNIVERSITY OF OREGON 1501 KINCAID ST OREGON, EUGENE, OR 97403	91-0015767	501(C)(3)	250,000.				NSFC CONTRIBUTION
(9)							
(10)							
(11)							
(12)							

- 2 Enter total number of section 501(c)(3) and government organizations listed in the line 1 table 4.
- 3 Enter total number of other organizations listed in the line 1 table 1.

For Paperwork Reduction Act Notice, see the Instructions for Form 990.

Schedule I (Form 990) (2014)

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Part III Grants and Other Assistance to Individuals in the United States. Complete if the organization answered "Yes" on Form 990, Part IV, line 22. Part III can be duplicated if additional space is needed.

(a) Type of grant or assistance	(b) Number of recipients	(c) Amount of cash grant	(d) Amount of non-cash assistance	(e) Method of valuation (book, FMV, appraisal, other)	(f) Description of non-cash assistance
1					
2					
3					
4					
5					
6					
7					

Part IV Supplemental Information. Complete this part to provide the information required in Part I, line 2, Part III, column (b), and any other additional information.

FORM 990, SCHEDULE I, PART I, LINE 2

ORGANIZATION'S PROCEDURES FOR MONITORING GRANTS IN THE UNITED STATES

THE GRANTS ARE PROVIDED TO QUALIFIED ORGANIZATIONS. ONCE FUNDS ARE

TRANSFERRED, ICANN DOES NOT MONITOR THE FUNDS. THE PURPOSE OF THE FUNDS

IS AT THE DISCRETION OF THE GRANTEE.

**SCHEDULE J
(Form 990)**

Department of the Treasury
Internal Revenue Service

Compensation Information

For certain Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees

▶ Complete if the organization answered "Yes" on Form 990, Part IV, line 23.

▶ Attach to Form 990.

▶ Information about Schedule J (Form 990) and its instructions is at www.irs.gov/form990.

OMB No. 1545-0047

2014

**Open to Public
Inspection**

Name of the organization

INTERNET CORP FOR ASSIGNED NAMES & NUMBERS

Employer identification number

95 4712218

Part I Questions Regarding Compensation

		Yes	No
1a	Check the appropriate box(es) if the organization provided any of the following to or for a person listed in Form 990, Part VII, Section A, line 1a. Complete Part III to provide any relevant information regarding these items.		
<input checked="" type="checkbox"/>	First-class or charter travel		
<input type="checkbox"/>	Travel for companions		
<input type="checkbox"/>	Tax indemnification and gross-up payments		
<input type="checkbox"/>	Discretionary spending account		
<input type="checkbox"/>	Housing allowance or residence for personal use		
<input type="checkbox"/>	Payments for business use of personal residence		
<input type="checkbox"/>	Health or social club dues or initiation fees		
<input type="checkbox"/>	Personal services (e.g., maid, chauffeur, chef)		
1b	If any of the boxes on line 1a are checked, did the organization follow a written policy regarding payment or reimbursement or provision of all of the expenses described above? If "No," complete Part III to explain	X	
2	Did the organization require substantiation prior to reimbursing or allowing expenses incurred by all directors, trustees, and officers, including the CEO/Executive Director, regarding the items checked in line 1a?	X	
3	Indicate which, if any, of the following the filing organization used to establish the compensation of the organization's CEO/Executive Director. Check all that apply. Do not check any boxes for methods used by a related organization to establish compensation of the CEO/Executive Director, but explain in Part III.		
<input checked="" type="checkbox"/>	Compensation committee		
<input checked="" type="checkbox"/>	Independent compensation consultant		
<input checked="" type="checkbox"/>	Form 990 of other organizations		
<input checked="" type="checkbox"/>	Written employment contract		
<input checked="" type="checkbox"/>	Compensation survey or study		
<input checked="" type="checkbox"/>	Approval by the board or compensation committee		
4	During the year, did any person listed in Form 990, Part VII, Section A, line 1a, with respect to the filing organization or a related organization:		
4a	Receive a severance payment or change-of-control payment?		X
4b	Participate in, or receive payment from, a supplemental nonqualified retirement plan?		X
4c	Participate in, or receive payment from, an equity-based compensation arrangement?		X
	If "Yes" to any of lines 4a-c, list the persons and provide the applicable amounts for each item in Part III.		
Only section 501(c)(3), 501(c)(4), and 501(c)(29) organizations must complete lines 5-9.			
5	For persons listed in Form 990, Part VII, Section A, line 1a, did the organization pay or accrue any compensation contingent on the revenues of:		
5a	The organization?		X
5b	Any related organization?		X
	If "Yes" to line 5a or 5b, describe in Part III.		
6	For persons listed in Form 990, Part VII, Section A, line 1a, did the organization pay or accrue any compensation contingent on the net earnings of:		
6a	The organization?		X
6b	Any related organization?		X
	If "Yes" to line 6a or 6b, describe in Part III.		
7	For persons listed in Form 990, Part VII, Section A, line 1a, did the organization provide any non-fixed payments not described in lines 5 and 6? If "Yes," describe in Part III	X	
8	Were any amounts reported in Form 990, Part VII, paid or accrued pursuant to a contract that was subject to the initial contract exception described in Regulations section 53.4958-4(a)(3)? If "Yes," describe in Part III		X
9	If "Yes" to line 8, did the organization also follow the rebuttable presumption procedure described in Regulations section 53.4958-6(c)?		

For Paperwork Reduction Act Notice, see the instructions for Form 990.

Schedule J (Form 990) 2014

Part II Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees. Use duplicate copies if additional space is needed.

For each individual whose compensation must be reported in Schedule J, report compensation from the organization on row (i) and from related organizations, described in the instructions, on row (ii). Do not list any individuals that are not listed on Form 990, Part VII.

Note. The sum of columns (B)(i) (iii) for each listed individual must equal the total amount of Form 990, Part VII, Section A, line 1a, applicable column (D) and (E) amounts for that individual.

(A) Name and Title		(B) Breakdown of W 2 and/or 1099-MISC compensation			(C) Retirement and other deferred compensation	(D) Nontaxable benefits	(E) Total of columns (B)(i)-(D)	(F) Compensation in column (B) reported as deferred in prior Form 990
		(i) Base compensation	(ii) Bonus & incentive compensation	(iii) Other reportable compensation				
1 STEVE ANTONOFF SR. DIR, HR OPERATION SVCS	(i)	192,261.	33,247.	0	22,797.	19,513.	267,818.	0
	(ii)	0	0	0	0	0	0	0
2 AKRAM ATALLAH PRESIDENT, GLOBAL DOMAINS DIV	(i)	470,292.	137,919.	0	34,500.	27,730.	670,441.	0
	(ii)	0	0	0	0	0	0	0
3 SUSANNA BENNETT CHIEF OPERATING OFFICER	(i)	328,882.	96,308.	0	34,500.	7,816.	467,506.	0
	(ii)	0	0	0	0	0	0	0
4 ROBERT DUNCAN BURNS VP, GLOBAL COMMUNICATIONS	(i)	289,001.	57,386.	0	30,500.	27,433.	404,320.	0
	(ii)	0	0	0	0	0	0	0
5 XAVIER CALVEZ CHIEF FINANCIAL OFFICER	(i)	287,898.	85,663.	0	30,500.	27,728.	431,789.	0
	(ii)	0	0	0	0	0	0	0
6 FADI CHEHADE CHIEF EXECUTIVE OFFICER	(i)	593,142.	144,004.	0	30,500.	27,730.	795,376.	0
	(ii)	0	0	0	0	0	0	0
7 ELISE GERICH VP, HR & TECHNICAL OPERATIONS	(i)	228,111.	65,020.	0	30,500.	19,383.	343,014.	0
	(ii)	0	0	0	0	0	0	0
8 CHRISTOPHER GIFT VP, ONLINE COMMUNITY SERVICES	(i)	243,501.	42,937.	0	34,500.	9,658.	330,596.	0
	(ii)	0	0	0	0	0	0	0
9 JAMES HEDLUND VP, STRATEGIC PROGRAMS	(i)	274,850.	80,925.	0	30,500.	27,408.	413,683.	0
	(ii)	0	0	0	0	0	0	0
10 JOHN JEFFREY GENERAL COUNSEL AND SECRETARY	(i)	410,976.	119,861.	0	25,239.	27,730.	583,806.	0
	(ii)	0	0	0	0	0	0	0
11 TAREK KAMEL SR. ADV SOR TO PRES - GOV ENGH	(i)	194,356.	55,952.	0	36,261.	39,094.	325,663.	0
	(ii)	0	0	0	0	0	0	0
12 YU CHUANG KUEK VP, GLOBAL SPANHOLDER ENRMNT	(i)	313,322.	195,242.	0	19,341.	8,590.	536,495.	0
	(ii)	0	0	0	0	0	0	0
13 DENISE MICHEL VP STRAT INITIATIVES/PRES ADV	(i)	237,389.	68,693.	0	34,500.	27,651.	368,233.	0
	(ii)	0	0	0	0	0	0	0
14 CYRUS NAMAZI VP, DNS INDUSTRY ENGAGEMENT	(i)	261,612.	62,164.	0	30,500.	17,588.	371,864.	0
	(ii)	0	0	0	0	0	0	0
15 DAVID OLIVE VP, POLICY DEVELOPMENT	(i)	283,335.	73,656.	0	30,500.	27,375.	414,866.	0
	(ii)	0	0	0	0	0	0	0
16 ASHWIN RANGAN CHIEF INNOVATION AND INFO OFF.	(i)	237,068.	58,779.	0	35,000.	20,781.	351,628.	0
	(ii)	0	0	0	0	0	0	0

Part II Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees. Use duplicate copies if additional space is needed.

For each individual whose compensation must be reported in Schedule J, report compensation from the organization on row (i) and from related organizations, described in the instructions, on row (ii). Do not list any individuals that are not listed on Form 990, Part VII.

Note. The sum of columns (B)(i)-(iii) for each listed individual must equal the total amount of Form 990, Part VII, Section A, line 1a, applicable column (D) and (E) amounts for that individual.

(A) Name and Title		(B) Breakdown of W 2 and/or 1099 MISC compensation			(C) Retirement and other deferred compensation	(D) Nontaxable benefits	(E) Total of columns (B)(i)-(D)	(F) Compensation in column (B) reported as deferred in prior Form 990
		(i) Base compensation	(ii) Bonus & incentive compensation	(iii) Other reportable compensation				
1 AMY STATHOS DEPUTY GENERAL COUNSEL	(i)	260,952.	50,591.	0	34,500.	9,712.	355,755.	0
	(ii)	0	0	0	0	0	0	0
2 THERESA SWINEHART SR. ADVISOR TO PRES. ON STRAT.	(i)	325,659.	95,363.	0	30,500.	9,280.	460,802.	0
	(ii)	0	0	0	0	0	0	0
3 NICK TOMASSO VP MEETING OPS & INTL REAL EST	(i)	207,839.	39,069.	0	29,831.	19,344.	296,083.	0
	(ii)	0	0	0	0	0	0	0
4 CHRISTINE WILLETT VP, GTED OPERATIONS	(i)	255,580.	59,490.	0	26,192.	27,674.	368,936.	0
	(ii)	0	0	0	0	0	0	0
5	(i)							
	(ii)							
6	(i)							
	(ii)							
7	(i)							
	(ii)							
8	(i)							
	(ii)							
9	(i)							
	(ii)							
10	(i)							
	(ii)							
11	(i)							
	(ii)							
12	(i)							
	(ii)							
13	(i)							
	(ii)							
14	(i)							
	(ii)							
15	(i)							
	(ii)							
16	(i)							
	(ii)							

Part III Supplemental Information

Complete this part to provide the information, explanation, or descriptions required for Part I, lines 1a, 1b, 3, 4a, 4b, 4c, 5a, 5b, 6a, 6b, 7, and 8, and for Part II. Also complete this part for any additional information.

FORM 990, SCHEDULE J, PART I, LINE 1A

AMOUNTS LISTED IN PART VII OF FORM 990 AND SCHEDULE J REPRESENT AMOUNTS FOR THE 2014 CALENDAR YEAR.

FORM 990, SCHEDULE J, PART I, LINE 7

REGARDING AT-RISK COMPENSATION:

THE OVERARCHING OBJECTIVE OF ICANN'S REMUNERATION FRAMEWORK IS TO ENSURE REMUNERATION PROVIDED IS COMPETITIVE GLOBALLY AND THAT IT PROVIDES STAFF WITH APPROPRIATE MOTIVATION FOR HIGH PERFORMANCE TOWARDS AGREED OBJECTIVES. THIS FRAMEWORK IS DESCRIBED IN DETAIL WITHIN THE DOCUMENT ENTITLED ICANN STAFF REMUNERATION PRACTICES.

[HTTPS://WWW.ICANN.ORG/EN/SYSTEM/FILES/FILES/REMUNERATION-PRACTICES-FY15-01 NOV14-EN.PDF](https://www.icann.org/en/system/files/files/remuneration-practices-fy15-01-nov14-en.pdf)

SCHEDULE J, PART II

ICANN'S OVERALL COMPENSATION PHILOSOPHY IS TO TARGET COMPENSATION BETWEEN THE 50TH AND 75TH PERCENTILE OF THE RELEVANT MARKET, TO ATTRACT AND RETAIN THE RIGHT STAFF. THE DRIVING ELEMENT OF THIS PHILOSOPHY IS THAT

Part III Supplemental Information

Complete this part to provide the information, explanation, or descriptions required for Part I, lines 1a, 1b, 3, 4a, 4b, 4c, 5a, 5b, 6a, 6b, 7, and 8, and for Part II. Also complete this part for any additional information.

ICANN'S COMPENSATION IS MARKET-BASED. ICANN HAS STAFF IN MANY DIFFERENT PARTS OF THE WORLD, AND STRIVES TO APPLY THIS PHILOSOPHY LOCALLY. EMPLOYMENT MARKETS AROUND THE WORLD ARE QUITE DIFFERENT, AND ALSO BRING DIFFERENT TAX, BENEFIT, AND OTHER LOCAL CONDITIONS TO BEAR. IN ADDITION, EXCHANGE RATE FLUCTUATIONS ALSO AFFECT THE U.S. DOLLAR EQUIVALENCE OF THE INTERNATIONAL STAFF.

SCHEDULE J, PART II, LINE 11, COLUMN D

NONTAXABLE BENEFITS FOR TAREK KAMEL INCLUDE BOTH HIS BENEFITS RECEIVED AS AN INDEPENDENT CONTRACTOR, AS WELL AS THOSE RECEIVED AS AN EMPLOYEE DURING THE CALENDAR YEAR.

SCHEDULE O
(Form 990 or 990-EZ)

Department of the Treasury
Internal Revenue Service

Supplemental Information to Form 990 or 990-EZ

Complete to provide information for responses to specific questions on
Form 990 or 990-EZ or to provide any additional information.
▶ Attach to Form 990 or 990-EZ.

OMB No 1545-0047

2014

**Open to Public
Inspection**

Name of the organization

INTERNET CORP FOR ASSIGNED NAMES & NUMBERS

Employer identification number

95-4712218

FORM 990, PART I, LINE 1 AND PART III, LINE I

ORGANIZATION'S MISSION

THE MISSION OF THE INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

("ICANN") IS TO COORDINATE, AT THE OVERALL LEVEL, AND TO ENSURE THE

STABLE AND SECURE OPERATIONS OF, THE GLOBAL INTERNET'S SYSTEM OF UNIQUE

IDENTIFIERS. IN PARTICULAR, ICANN FULFILLS ITS MISSION BY: (I)

COORDINATING THE ASSIGNMENT OF INTERNET TECHNICAL PARAMETERS AS NEEDED TO

MAINTAIN UNIVERSAL CONNECTIVITY ON THE INTERNET; (II) PERFORMING AND

OVERSEEING FUNCTIONS RELATED TO THE COORDINATION OF THE INTERNET PROTOCOL

("IP") ADDRESS SPACE; (III) PERFORMING AND OVERSEEING FUNCTIONS RELATED

TO THE COORDINATION OF THE INTERNET DOMAIN NAME SYSTEM ("DNS"),

INCLUDING, SUPPORTING THE DEVELOPMENT OF, AND IMPLEMENTING POLICIES FOR

DETERMINING THE CIRCUMSTANCES UNDER WHICH NEW TOP-LEVEL DOMAINS ARE ADDED

TO THE DNS ROOT NAME SERVER SYSTEM; (IV) OVERSEEING OPERATION OF THE

AUTHORITATIVE INTERNET DNS ROOT SERVER SYSTEM; AND (V) ENGAGING IN ANY

OTHER RELATED LAWFUL ACTIVITY IN FURTHERANCE OF ITEMS (I) THROUGH (IV).

SEE ADDITIONAL INFORMATION ABOUT ICANN'S PROGRAMS AND ACTIVITIES ON THE

ICANN WEBSITE AND IN THE ICANN ANNUAL REPORT POSTED AT WWW.ICANN.ORG.

FORM 990, PART I, LINE 3 AND PART VI, LINE 1A

GOVERNING BODY

IN ADDITION TO THE 16 VOTING MEMBERS OF THE BOARD OF DIRECTORS, ICANN'S

BYLAWS AS OF JUNE 30, 2015 ALLOWED FOR FOUR (4) NON-VOTING LIAISONS. THE

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INTERNET CORP FOR ASSIGNED NAMES & NUMBERS	95-4712218

NON-VOTING LIAISONS ARE ENTITLED TO ATTEND BOARD MEETINGS, PARTICIPATE IN BOARD DISCUSSIONS AND DELIBERATIONS, AND HAVE ACCESS (UNDER CONDITIONS ESTABLISHED BY THE BOARD) TO MATERIALS PROVIDED TO DIRECTORS FOR USE IN BOARD DISCUSSIONS, DELIBERATIONS AND MEETINGS.

THE FOLLOWING INDIVIDUALS SERVED AS NON-VOTING LIAISONS DURING THE FISCAL

YEAR ENDING JUNE 30, 2015:

- 1) RAM MOHAN (SSAC LIAISON, 2009 - PRESENT)
- 2) JONNE SOININEN (IETF LIAISON, 2013 - PRESENT)
- 3) SUZANNE WOOLF (RSSAC LIAISON, 2004 - PRESENT)
- 4) THOMAS SCHNEIDER (GAC LIAISON, 2015 - PRESENT)
- 5) HEATHER DRYDEN (GAC LIAISON, 2010 - OCTOBER 2014)

NEW GTLD PROGRAM COMMITTEE

IN ORDER TO HAVE EFFICIENT MEETINGS AND TAKE APPROPRIATE ACTIONS WITH RESPECT TO THE NEW GTLD PROGRAM FOR THE CURRENT ROUND OF THE PROGRAM AND AS RELATED TO THE APPLICANT GUIDEBOOK, THE BOARD CREATED THE NEW GTLD PROGRAM COMMITTEE ("NGPC") IN ACCORDANCE WITH ARTICLE XII OF THE BYLAWS. DURING THE FISCAL YEAR ENDING JUNE 30, 2015, THE NGPC CONSISTED OF ALL BOARD MEMBERS NOT CONFLICTED WITH RESPECT TO THE NEW GTLD PROGRAM. THE BOARD DELEGATED FULL DECISION MAKING AUTHORITY TO THE NGPC AS IT RELATES TO THE CURRENT ROUND OF THE NEW GTLD PROGRAM, WHICH COMMENCED IN JANUARY 2012. ESTABLISHING THIS NEW COMMITTEE WITHOUT CONFLICTED MEMBERS, AND DELEGATING TO ITS DECISION MAKING AUTHORITY, PROVIDED SOME DISTINCT

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ADVANTAGES. FIRST, IT HELPED ELIMINATE ANY UNCERTAINTY FOR CONFLICTED BOARD MEMBERS WITH RESPECT TO ATTENDANCE AT BOARD MEETINGS AND WORKSHOPS SINCE THE NEW GTLD PROGRAM TOPICS COULD BE DEALT WITH AT THE COMMITTEE LEVEL. SECOND, IT ALLOWED FOR ACTIONS TO BE TAKEN WITHOUT A MEETING BY THE COMMITTEE. ACTIONS WITHOUT A MEETING CANNOT BE TAKEN UNLESS DONE VIA ELECTRONIC SUBMISSION BY UNANIMOUS CONSENT; SUCH UNANIMOUS CONSENT CANNOT BE ACHIEVED IF EVEN JUST ONE BOARD MEMBER IS CONFLICTED, AND THEREFORE NOT ALLOWED TO VOTE. THIRD, IT PROVIDED THE COMMUNITY WITH A TRANSPARENT VIEW INTO THE BOARD'S COMMITMENT TO DEALING WITH ACTUAL, POTENTIAL OR PERCEIVED CONFLICTS.

THE NGPC MEMBERS AS OF JUNE 30, 2015 INCLUDED:

CHERINE CHALABY (CHAIR)

FADI CHEHADÉ (MEMBER)

STEPHEN D. CROCKER (MEMBER)

CHRIS DISSPAIN (MEMBER)

ASHA HEMRAJANI (MEMBER)

MARKUS KUMMER (MEMBER)

ERIKA MANN (MEMBER)

GONZALO NAVARRO (MEMBER)

RAYMOND A. PLZAK (MEMBER)

RINALIA ABDUL RAHIM (MEMBER)

GEORGE SADOWSKY (MEMBER)

THOMAS SCHNEIDER (NON-VOTING LIAISON)

MIKE SILBER (MEMBER)

Name of the organization INTERNET CORP FOR ASSIGNED NAMES & NUMBERS	Employer identification number 95-4712218
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KUO-WEI WU (MEMBER)

FORM 990, PART III, LINE 4A

PROGRAM SERVICE ACCOMPLISHMENTS

AS OF JUNE 30, 2015, THE INTERNET NAMESPACE CONSISTED OF 22 LEGACY, 600 NEW GENERIC TOP LEVEL DOMAINS (GTLDs) AND OVER 250 COUNTRY CODE TOP LEVEL DOMAINS (CCTLDs). EACH GTLD HAS A DESIGNATED "REGISTRY OPERATOR" AND, IN MOST CASES (EXCEPT FOR A FEW LEGACY TLDs), A REGISTRY AGREEMENT BETWEEN THE OPERATOR (OR SPONSOR) AND ICANN. THE REGISTRY OPERATOR IS RESPONSIBLE FOR THE TECHNICAL OPERATION OF THE GTLD, INCLUDING ALL OF THE NAMES REGISTERED IN THAT TLD. OVER 2,000 ICANN ACCREDITED REGISTRARS INTERACT WITH REGISTRANTS (AND OTHERS) TO PERFORM DOMAIN NAME REGISTRATION AND OTHER RELATED SERVICES FOR NEW GTLDs. THE NEW GTLD PROGRAM HAS PROVIDED A MEANS FOR PROSPECTIVE REGISTRY OPERATORS TO APPLY FOR NEW GTLDs, AND CREATE NEW OPTIONS FOR CONSUMERS. THE PROGRAM OPENED ITS FIRST APPLICATION ROUND IN JANUARY 2012 AND ICANN RECEIVED 1930 APPLICATIONS.

AS OF JUNE 30, 2015, ALL APPLICATIONS FOR NEW GTLDs THAT HAVE NOT BEEN WITHDRAWN HAVE COMPLETED INITIAL EVALUATION (IE) PHASE AND, WHERE APPLICABLE, EXTENDED EVALUATION (EE) (WITH ONE EXCEPTION). DURING IE AND EE, ALL APPLICATIONS WERE EVALUATED FOR, AMONG OTHER THINGS, FINANCIAL, TECHNICAL/OPERATIONAL, GEOGRAPHIC NAMES, AND REGISTRY SERVICES. FOLLOWING COMPLETION AND PASSING OF IE, AND EE IF APPLICABLE, FOR EACH APPLICATION NOT ON HOLD FOR SOME OTHER REASON, THE REGISTRY AGREEMENT CONTRACTING PHASE OF THE NEW GTLD PROGRAM COMMENCED. CONTRACTING IS A PROCESS THAT RESULTS IN EACH ELIGIBLE APPLICANT ENTERING INTO A REGISTRY AGREEMENT

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WITH ICANN TO OPERATE A GTLD. NOTE THAT THERE ARE SOME CIRCUMSTANCES THAT EXIST THAT MAY DELAY THE START OF THE CONTRACTING PROCESS INCLUDING, BUT NOT LIMITED TO, PENDING OBJECTION PROCEEDINGS, PENDING ICANN ACCOUNTABILITY MECHANISMS, UNRESOLVED CONTENTION, OR DIRECTION FROM THE ICANN BOARD'S NEW GTLD PROGRAM COMMITTEE.

AFTER COMPLETION OF THE CONTRACTING PHASE, THE APPLICANT CAN ELECT TO ENTER INTO PRE-DELEGATION TESTING. PRE-DELEGATION TESTING (PDT) ENSURES THAT AN APPLICANT HAS THE CAPACITY TO OPERATE A NEW GTLD IN A STABLE, SECURE MANNER. EVERY NEW REGISTRY MUST DEMONSTRATE THAT IT HAS ESTABLISHED OPERATIONS IN ACCORDANCE WITH THE TECHNICAL AND OPERATIONAL CRITERIA DESCRIBED IN THE APPLICANT GUIDEBOOK. AFTER PASSING PDT, A REGISTRY'S GTLD CAN BE INTRODUCED INTO THE ROOT ZONE OF THE INTERNET.

AS OF JUNE 30, 2015, 680 NEW GTLDS WERE DELEGATED IN THE ROOT ZONE.

ICANN IS A MULTISTAKEHOLDER ORGANIZATION THAT COORDINATES THE INTERNET DOMAIN NAME SYSTEM (DNS) AND ADDRESSING FOR THE BENEFIT OF INTERNET USERS WORLDWIDE, ENABLING A SINGLE, INTEROPERABLE INTERNET. ICANN IS RESPONSIBLE FOR THE GLOBAL TECHNICAL COORDINATION OF THE DNS. AS OF JUNE 30, 2015, THERE WERE OVER 240 MILLION INTERNET DOMAIN NAMES, INCLUDING APPROXIMATELY 133 MILLION INTERNET DOMAIN NAMES FOUND IN GENERIC TOP-LEVEL DOMAINS, MOST OF WHICH ARE GOVERNED BY ICANN'S COMMUNITY-DEVELOPED POLICIES. SEE ADDITIONAL INFORMATION ABOUT ICANN'S PROGRAMS AND ACTIVITIES ON THE ICANN WEBSITE AND IN THE ICANN ANNUAL

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REPORT POSTED AT WWW.ICANN.ORG.

NEW GTLD AUCTIONS

CONTENTION SETS ARE GROUPS OF APPLICATIONS FOR IDENTICAL OR CONFUSINGLY SIMILAR STRINGS. IF TWO OR MORE APPLICANTS ARE UNABLE TO RESOLVE THEIR CONTENTION THROUGH OTHER MEANS, THEY PROCEED TO AN ICANN AUCTION, WHICH IS THE METHOD OF LAST RESORT TO RESOLVE STRING CONTENTIONS AS PRESCRIBED IN MODULE 4 OF THE APPLICANT GUIDEBOOK. A TOTAL OF TWELVE (12) AUCTIONS WERE CONDUCTED DURING THE FISCAL YEAR ENDED JUNE 30, 2015.

FOR MORE INFORMATION ON AUCTIONS VISIT
[HTTP://NEWGTLD.ICANN.ORG/EN/APPLICANTS/AUCTIONS](http://NEWGTLD.ICANN.ORG/EN/APPLICANTS/AUCTIONS)

FORM 990, PART IV, LINES 28A-C

BUSINESS TRANSACTIONS WITH INTERESTED PARTIES

ICANN MAY ENTER INTO OR CONSIDER PARTICIPATION IN SMALL ARM'S LENGTH TRANSACTIONS BETWEEN ICANN AND CERTAIN TAXABLE ORGANIZATIONS WITH WHICH CERTAIN ICANN DIRECTORS OR OFFICERS (OR MEMBERS OF THEIR FAMILIES) MAY HAVE AN AFFILIATION. UNDER ICANN'S CONFLICTS OF INTEREST POLICY, ALL OFFICERS AND DIRECTORS ARE REQUIRED TO DISCLOSE ANY POTENTIAL CONFLICTS OF INTEREST BEFORE ENTERING INTO DISCUSSION ON SUCH MATTERS. IN ADDITION, THE BOARD COMMITTEE RESPONSIBLE FOR CONFLICTS OF INTEREST REVIEWS ALL BOARD MEMBER CONFLICTS OF INTEREST STATEMENTS.

SEE: [HTTP://WWW.ICANN.ORG/EN/GROUPS/BOARD/DOCUMENTS/SOIS](http://WWW.ICANN.ORG/EN/GROUPS/BOARD/DOCUMENTS/SOIS)

AS OF CALENDAR 2014, THE IRS HAS REVISED ITS STATUTORY DEFINITION OF

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"INTERESTED PERSONS", AS RELATES TO THE TAX FORM 990. AS SUCH, FOR THE PURPOSES OF THIS FILING, ICANN NO LONGER HAS ANY APPLICABLE TRANSACTIONS TO REPORT ON SCHEDULE L - TRANSACTIONS WITH INTERESTED PERSONS.

FORM 990, PART VI, LINE 7A

BODIES THAT APPOINT MEMBERS OF ICANN'S GOVERNING BODY THE NOMINATING COMMITTEE (NOMCOM) IS RESPONSIBLE FOR THE SELECTION OF EIGHT ICANN VOTING BOARD MEMBERS AND FOR OTHER SELECTIONS AS ARE SET FORTH IN THE BYLAWS. (SEE BYLAWS ARTICLE VII, SECTION 1.) THE NOMCOM IS CHARGED WITH POPULATING A PORTION OF THE ICANN BOARD AS NOTED ABOVE, AS WELL AS THE AT-LARGE ADVISORY COMMITTEE ("ALAC"), THE COUNTRY CODE NAMES SUPPORTING ORGANIZATION ("CCNSO") COUNCIL AND THE GENERIC NAMES SUPPORTING ORGANIZATION ("GNSO") COUNCIL. THE NOMCOM COMPLEMENTS THE OTHER MEANS FOR FILLING A PORTION OF KEY ICANN LEADERSHIP POSITIONS ACHIEVED WITHIN THE SUPPORTING ORGANIZATIONS AND ADVISORY COMMITTEES.

THE BYLAWS ALSO STATE THAT THE NOMCOM SHALL ADOPT SUCH OPERATING PROCEDURES AS IT DEEMS NECESSARY, WHICH SHALL BE PUBLISHED ON THE ICANN WEBSITE. THE NOMCOM IS DESIGNED TO FUNCTION INDEPENDENTLY FROM THE BOARD, THE SUPPORTING ORGANIZATIONS, AND ADVISORY COMMITTEES.

MEMBERS OF THE NOMCOM CONTRIBUTE BOTH THEIR UNDERSTANDING OF THE BROAD INTERESTS OF THE INTERNET AS A WHOLE AND THEIR KNOWLEDGE AND EXPERIENCE OF THE CONCERNS AND INTERESTS OF THE INTERNET STAKEHOLDERS THAT HAVE APPOINTED THEM. THE CHALLENGE FOR THE NOMCOM IS TO INTEGRATE THESE PERSPECTIVES AND DERIVE CONSENSUS IN ITS SELECTIONS. ALTHOUGH APPOINTED

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BY SUPPORTING ORGANIZATIONS AND OTHER ICANN BODIES, INDIVIDUAL NOMCOM MEMBERS ARE NOT ACCOUNTABLE TO THEIR APPOINTING CONSTITUENCIES BUT RATHER TO ICANN AS A WHOLE. NOMCOM MEMBERS ARE ACCOUNTABLE FOR ADHERENCE TO THE BYLAWS AND FOR COMPLIANCE WITH THE RULES AND PROCEDURES ESTABLISHED BY THE NOMCOM.

IN ADDITION, AND ALSO IN ACCORDANCE WITH ICANN'S BYLAWS, EACH OF THE FOLLOWING SUPPORTING ORGANIZATIONS NAME TWO VOTING BOARD MEMBERS TO THE ICANN BOARD, EACH FOR A THREE-YEAR TERM: THE ADDRESS SUPPORTING ORGANIZATION, THE CCNSO AND THE GNSO. FURTHER, THE AT-LARGE COMMUNITY ALSO NAMES ONE VOTING BOARD MEMBER TO THE ICANN BOARD EVERY THREE YEARS.

FORM 990, PART VI, LINES 10A & 10B
LOCAL CHAPTERS, BRANCHES AND AFFILIATES

DURING FISCAL 2015, ICANN HAD OFFICES OUTSIDE OF THE UNITED STATES IN BRUSSELS, BELGIUM; ISTANBUL, TURKEY; SINGAPORE, SINGAPORE; AND GENEVA, SWITZERLAND; ALL OF WHICH PROVIDED OPERATIONAL OR ENGAGEMENT SUPPORT TO THEIR RESPECTIVE GEOGRAPHICAL REGIONS AND/OR TIME ZONES.

FORM 990, PART VI, LINE 11B
FORM 990 REVIEW PROCESS

A COPY OF THE FORM 990 IS PROVIDED TO ICANN'S BOARD MEMBERS BEFORE IT IS FILED. THE PROCESS BY WHICH THE FORM 990 IS PREPARED, REVIEWED AND RECEIVED IS AS FOLLOWS:

1. ICANN ENGAGES AN OUTSIDE TAX PREPARER TO ASSIST IN THE PREPARATION OF

Name of the organization INTERNET CORP FOR ASSIGNED NAMES & NUMBERS	Employer identification number 95-4712218
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ITS FORM 990.

2. ICANN'S CHIEF FINANCIAL OFFICER (CFO), AND OFFICE OF THE GENERAL COUNSEL REVIEW THE FORM 990, AND THE CFO SIGNS OFF FOR APPROVAL.
3. THE FORM 990 IS PROVIDED TO THE ICANN BOARD MEMBERS.

FORM 990, PART VI, LINE 12C
CONFLICTS OF INTEREST POLICY

ICANN HAS WRITTEN CONFLICTS OF INTEREST POLICIES, WHICH ARE APPLICABLE TO ALL BOARD MEMBERS AND STAFF MEMBERS. THE OFFICE OF THE GENERAL COUNSEL MONITORS THE POLICIES WITH OVERSIGHT BY THE BOARD GOVERNANCE COMMITTEE (BGC) AS THEY RELATE TO THE BOARD. A CONFLICTS OF INTEREST DISCLOSURE STATEMENT IS COMPLETED ANNUALLY AND SIGNED BY EACH BOARD MEMBER, OFFICER AND EMPLOYEE. THE STAFF MEMBER AND CONTRACTOR DISCLOSURE STATEMENTS ARE REVIEWED BY THE HEAD OF HUMAN RESOURCES AND DISCUSSED WITH GENERAL COUNSEL'S OFFICE IF ANY ISSUES ARISE. THE BOARD LEVEL DISCLOSURE STATEMENTS ARE REVIEWED BY THE OFFICE OF GENERAL COUNSEL AND THE BGC. THE BOARD MEMBER, OFFICER AND KEY EMPLOYEE CONFLICTS OF INTEREST POLICY CAN BE FOUND AT:

[HTTP://WWW.ICANN.ORG/EN/GROUPS/BOARD/GOVERNANCE/COI.](http://www.icann.org/en/groups/board/governance/coi)

THIS POLICY DESCRIBES THE DUTY TO DISCLOSE, THE PROCEDURES FOR ADDRESSING CONFLICTS OF INTEREST, THE DUTY TO ABSTAIN, HOW VIOLATIONS OF THE CONFLICTS OF INTEREST POLICY WILL BE HANDLED, THE PROCESS BY WHICH ALL COVERED PERSONS SIGN ANNUALLY THEIR AFFIRMATION OF THE POLICY AND DISCLOSE THEIR ACTUAL OR POTENTIAL CONFLICTS, AND THE REQUIREMENT AND NATURE OF PERIODIC REVIEWS.

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A SUMMARY OF BOARD MEMBER AND OFFICER DISCLOSURE STATEMENTS ARE POSTED ON THE WEBSITE AT: [HTTP://WWW.ICANN.ORG/EN/GROUPS/BOARD/DOCUMENTS/SOIS](http://www.icann.org/en/groups/board/documents/sois)

FORM 990, PART VI, LINES 13 & 14

WHISTLEBLOWER POLICY AND DOCUMENT RETENTION AND DESTRUCTION POLICY

ICANN MAINTAINS AN INTERNAL DOCUMENT RETENTION AND DESTRUCTION POLICY AND HISTORICALLY HAS FOLLOWED BEST INDUSTRY PRACTICES FOR RETENTION AND DESTRUCTION. ICANN ALSO MAINTAINS AN INTERNAL WHISTLEBLOWER (OR "ANONYMOUS HOTLINE") POLICY, THAT ALSO FOLLOWS INDUSTRY BEST PRACTICES.

FORM 990, PART VI, LINES 15A & 15B

PROCESS FOR DETERMINING COMPENSATION

ICANN FOLLOWS PRINCIPLES OF ACCOUNTABILITY AND TRANSPARENCY AND DESCRIBES ITS REMUNERATION PLANS AND PRACTICES, WHICH ARE CONTINUALLY UPDATED. THE VERSION OF ICANN'S REMUNERATION PRACTICES APPLICABLE DURING FY2015 IS POSTED AT:

[HTTPS://WWW.ICANN.ORG/EN/SYSTEM/FILES/FILES/REMUNERATION-PRACTICES-FY15-01
NOV14-EN.PDF](https://www.icann.org/en/system/files/files/remuneration-practices-fy15-01-nov14-en.pdf)

THE PROCESS FOR DETERMINING COMPENSATION, INCLUDING SURVEYS OF COMPARABLE POSITIONS AND OTHER MARKET STUDIES IS DESCRIBED IN THIS REMUNERATION PRACTICES REPORT. OFFICER COMPENSATION IS DISCLOSED AS WELL. SALARIES OF ALL OFFICERS ARE REVIEWED AND APPROVED BY THE BOARD OF DIRECTORS FOLLOWING RECOMMENDATIONS BY THE BOARD COMPENSATION COMMITTEE, WHICH ARE INFORMED BY RECOMMENDATIONS AND COMPARABLE DATA PROVIDED BY INDEPENDENT

Name of the organization INTERNET CORP FOR ASSIGNED NAMES & NUMBERS	Employer identification number 95-4712218
--	--

COMPENSATION EXPERTS. CONFIDENTIAL MINUTES OF THESE MEETINGS ARE MAINTAINED BY THE BOARD SECRETARY AS PART OF THE CORPORATE SECRETARIAT FUNCTION. EACH YEAR THE APPOINTMENT FOR EACH OFFICER IS CONFIRMED BY THE BOARD OF DIRECTORS AT THE ANNUAL GENERAL MEETING. THE COMPENSATION REVIEW PROCESS OCCURS ANNUALLY; THE LAST REVIEW WAS COMPLETED IN JULY, 2014.

FORM 990, PART VI, LINE 18

AVAILABILITY OF 990

ICANN POSTS ITS FORM 990 ON ITS WEBSITE. THE PRIOR YEAR POSTING IS LOCATED AT:

[HTTPS://WWW.ICANN.ORG/EN/SYSTEM/FILES/FILES/FY_2014-FORM-990-31MAR15-EN.PD](https://www.icann.org/en/system/files/files/fy_2014-form-990-31mar15-en.pdf)

F

IN ADDITION, THE FORM 990 IS POSTED ON THE WWW.GUIDESTAR.ORG WEBSITE. FINALLY, HARD COPIES OF THE FORM 990 ARE AVAILABLE UPON REQUEST. REQUESTS SHOULD BE SUBMITTED TO ICANN'S CFO BY EMAIL TO XAVIER.CALVEZ@ICANN.ORG, OR BY PHONE AT +1.310.301.5838.

ICANN POSTS THE ORIGINAL FORM 1023 (APPLICATION FOR TAX-EXEMPT STATUS) ON ITS WEBSITE AT: [HTTPS://ARCHIVE.ICANN.ORG/EN/FINANCIALS/TAX/US/](https://archive.icann.org/en/financials/tax/us/)

FORM 990, PART VI, LINE 19

AVAILABILITY OF GOVERNING DOCUMENTS, CONFLICTS OF INTEREST, AND FINANCIAL STATEMENTS

IN ACCORDANCE WITH ITS CORPORATE BYLAWS

(SEE [HTTP://WWW.ICANN.ORG/EN/ABOUT/GOVERNANCE/BYLAWS](http://www.icann.org/en/about/governance/bylaws)) AND THE AFFIRMATION

Name of the organization INTERNET CORP FOR ASSIGNED NAMES & NUMBERS	Employer identification number 95 4712218
--	--

OF COMMITMENTS WITH THE UNITED STATES DEPARTMENT OF COMMERCE (SEE
 HTTPS://WWW.ICANN.ORG/RESOURCES/PAGES/GOVERNANCE/AOC-EN), ICANN IS
 COMMITTED TO ACCOUNTABILITY AND TRANSPARENCY PRINCIPLES. THIS INCLUDES
 PROVIDING EXTENSIVE ACCESS TO THE PUBLIC THROUGH THE ICANN WEBSITE OF ITS
 GOVERNING DOCUMENTS, CONFLICTS OF INTEREST POLICY, AND FINANCIAL
 STATEMENTS.SEE:HTTPS://WWW.ICANN.ORG/RESOURCES/PAGES/GOVERNANCE/FINANCIALS
 -EN

FORM 990, PART VII

OFFICER/DIRECTOR SERVICE DATES

IN PART VII, A DATE FOLLOWING AN OFFICER/DIRECTOR'S NAME INDICATES THE
 DATE ON WHICH THE OFFICER/DIRECTOR'S SERVICES ENDED. IF NO DATE IS
 INDICATED, THAT OFFICER/DIRECTOR WAS ACTIVE AS OF JUNE 30, 2015.

FORM 990, PART VII, SECTION A, LINE 4, COLUMN D

REPORTABLE COMPENSATION FOR STEVE CROCKER REPRESENTS SIX (6) MONTHS OF
 HIS TOTAL COMPENSATION OF \$75,000 FOR THE CALENDAR YEAR 2014. THE BALANCE
 OF HIS COMPENSATION IS NOT CONSIDERED REPORTABLE, AS IT WAS PAID TO MR.
 CROCKER'S CORPORATION, SHINKURO, INC.

FORM 990, PART VII, SECTION B

COMPENSATION OF INDEPENDENT CONTRACTORS PAID OVER \$1,000,000 AS OF JUNE
 30, 2015

IN ADDITION TO THE DISCLOSURE IN FORM 990, PART VII, SECTION B OF THE
 COMPENSATION OF THE FIVE HIGHEST PAID INDEPENDENT CONTRACTORS, ICANN,
 BELOW, DISCLOSES THE COMPENSATION OF ALL INDEPENDENT CONTRACTORS PAID

Name of the organization INTERNET CORP FOR ASSIGNED NAMES & NUMBERS	Employer identification number 95-4712218
--	--

OVER \$1,000,000 DURING THE CALENDAR YEAR ENDING WITHIN THE FISCAL YEAR
ENDED JUNE 30, 2015.

NAME: JONES DAY
ADDRESS: 555 S. FLOWER STREET, 50TH FLOOR
LOS ANGELES, CA 90071
DESCRIPTION OF SERVICES: LEGAL SERVICES
COMPENSATION: 3,905,497
REFERENCE: SEE ATTACHMENT 2

NAME: STIFTELSEN FOR INTERNETINFRASTRUKTUR.SE
ADDRESS: RINGVAGEN 100 A/BOX 7399
STOCKHOLM 103 91 SWEDEN
DESCRIPTION OF SERVICES: NEW GTLD PROGRAM
COMPENSATION: 2,943,900
REFERENCE: SEE ATTACHMENT 2

NAME: IBM BELGIUM SRL/BVBA
ADDRESS: AVENUE DU BOURGET / BOURGETLAAN 42
BRUSSELS 1130 BELGIUM
DESCRIPTION OF SERVICES: NEW GTLD PROGRAM
COMPENSATION: 2,831,021
REFERENCE: SEE ATTACHMENT 2

NAME: RC HOTELS (PTE) LTD

Name of the organization INTERNET CORP FOR ASSIGNED NAMES & NUMBERS	Employer identification number 95-4712218
--	--

ADDRESS: 2 STAMFORD ROAD
SINGAPORE 178882 SINGAPORE

DESCRIPTION OF SERVICES: ICANN MEETINGS

COMPENSATION: 1,836,525

REFERENCE: SEE ATTACHMENT 2

NAME: NEO INNOVATION INC.

ADDRESS: 717 MARKET STREET, SUITE 100
SAN FRANCISCO, CA 94103

DESCRIPTION OF SERVICES: SOFTWARE DEVELOPMENT

COMPENSATION: 1,737,767

REFERENCE: SEE ATTACHMENT 2

NAME: POWER AUCTIONS, LLC

ADDRESS: 3333 K STREET NW, SUITE 425
WASHINGTON, DC 20007

DESCRIPTION OF SERVICES: NEW GTLD PROGRAM

COMPENSATION: 1,728,569

NAME: HILTON LONDON METROPOLE

ADDRESS: 225 EDGWARE ROAD
LONDON W2 1JU UNITED KINGDOM

DESCRIPTION OF SERVICES: ICANN MEETINGS

COMPENSATION: 1,600,470

Name of the organization INTERNET CORP FOR ASSIGNED NAMES & NUMBERS	Employer identification number 95-4712218
--	--

NAME: ERNST & YOUNG U.S. LLP

ADDRESS: 200 PLAZA DRIVE
SECAUCUS, NJ 07094

DESCRIPTION OF SERVICES: NEW GTLD PROGRAM

COMPENSATION: 1,549,936

NAME: JAS GLOBAL ADVISORS LLC

ADDRESS: 150 N. MICHIGAN AVE., SUITE 2800
CHICAGO, IL 60601

DESCRIPTION OF SERVICES: NEW GTLD PROGRAM

COMPENSATION: 1,444,690

NAME: K2 PARTNERING SOLUTIONS, INC.

ADDRESS: 235 PROMENADE STREET, SUITE 104
PROVIDENCE, RI 02908

DESCRIPTION OF SERVICES: SOFTWARE DEVELOPMENT

COMPENSATION: 1,310,956

NAME: DANIEL J. EDELMAN, LTD

ADDRESS: SOUTHSIDE 105 VICTORIA STREET
LONDON SW1E 6QT UNITED KINGDOM

DESCRIPTION OF SERVICES: COMMUNICATIONS

COMPENSATION: 1,220,889

NAME: LS-PROS DBA MOORE-LE-PROS

Name of the organization INTERNET CORP FOR ASSIGNED NAMES & NUMBERS	Employer identification number 95-4712218
--	--

ADDRESS: BUENOS AIRES, ARGENTINA

DESCRIPTION OF SERVICES: TRANSLATION SERVICES

COMPENSATION: 1,199,917

NAME: HYATT REGENCY CENTURY PLAZA

ADDRESS: 2025 AVENUE OF THE STARS

LOS ANGELES, CA 90067

DESCRIPTION OF SERVICES: ICANN MEETINGS

COMPENSATION: 1,051,227

FORM 990, PART IX, LINE 11G

FEES FOR SERVICES - OTHER

TRANSLATION SERVICES 4,078,267

CONSULTING SERVICES 2,922,156

NEW GTLD AUCTION FEES 2,834,795

NEW GTLD PRE-DELEGATION TESTING 2,657,842

COMMUNICATIONS 1,478,313

TEMPORARY PERSONNEL 1,351,105

STUDIES & RESEARCH 1,330,096

STRATEGIC INITIATIVES 1,120,095

NEW GTLD FINANCIAL & TECHNICAL EVALUATIONS 1,103,710

NEW GTLD TRADEMARK CLEARINGHOUSE 1,033,971

DATA ESCROW SERVICES 580,173

REGISTRY & REGISTRAR SERVICES 368,342

TOTAL 20,858,865

Name of the organization INTERNET CORP FOR ASSIGNED NAMES & NUMBERS	Employer identification number 95-4712218
--	--

FORM 990, PART IX, LINE 24A

RISK COSTS - GTLD

RISK COSTS ARE EXPENSES THAT RELATE TO ANY CONTINGENCIES THAT MAY BE INCURRED BY ICANN AT ANY TIME THROUGHOUT OR AFTER THE NEW GTLD APPLICATION PROCESS. APPROXIMATELY ONE THIRD OF TOTAL FEES CHARGED TO APPLICANTS IN RELATION TO THE NEW GTLD PROGRAM ARE IN ANTICIPATION OF THESE COSTS.

FORM 990, PART XI, LINE 9

OTHER CHANGES IN NET ASSETS

FOREIGN EXCHANGE GAIN (LOSS) (237,951)

ROUNDING (8)

\$ (237,959)

ATTACHMENT 1

FORM 990, PART V, LINE 4B - FOREIGN COUNTRIES

BELGIUM

TURKEY

SWITZERLAND

SINGAPORE

ATTACHMENT 2

990, PART VII- COMPENSATION OF THE FIVE HIGHEST PAID IND. CONTRACTORS

<u>NAME AND ADDRESS</u>	<u>DESCRIPTION OF SERVICES</u>	<u>COMPENSATION</u>
JONES DAY 555 S. FLOWER STREET, 50TH FLOOR LOS ANGELES, CA 90071	LEGAL SERVICES	3,905,497.
STIFTELSEN FOR INTERNETINFRASTRUKTUR.SE	NEW GTLD PROGRAM	2,943,900.

Name of the organization INTERNET CORP FOR ASSIGNED NAMES & NUMBERS	Employer identification number 95-4712218
--	--

ATTACHMENT 2 (CONT'D)

990, PART VII- COMPENSATION OF THE FIVE HIGHEST PAID IND. CONTRACTORS

<u>NAME AND ADDRESS</u>	<u>DESCRIPTION OF SERVICES</u>	<u>COMPENSATION</u>
RINGVAGEN 100 A/BOX 7399 103 91 STOCKHOLM SWEDEN		
IBM BELGIUM SPRL/BVBA AVENUE DU BOURGET/BOURGETLAAN 42 1130 BRUSSELS BELGIUM	NEW GTLD PROGRAM	2,831,021.
RC HOTELS (PTE) LTD 2 STAMFORD ROAD 178882 SINGAPORE SINGAPORE	ICANN MEETINGS	1,836,525.
NE● INNOVATION INC 717 MARKET STREET, SUITE 100 SAN FRANCISCO, CA 94103	SOFTWARE DEVELOPMENT	1,737,767.

Exhibit DIDP A96



RELATED LINKS

[Applicants' Corner](#)

[GNSO Policy Work on New gTLDs](#)

[GNSO Final Report on the introduction of New gTLDs Part A](#)

[GNSO Final Report on the introduction of New gTLDs Part B](#)

[GNSO Quick Reference Guide](#)

[Year 2000 gTLD Application Round](#)

[Year 2003 gTLD Application Round](#)

QUALITY PROGRAM REPORT FOR INITIAL EVALUATION NOW AVAILABLE

Today CANN published the Quality Program report for Initial Evaluation. The Quality Program was designed and implemented to both improve and measure consistency/precision/accuracy and process fidelity during the Initial Evaluation phase of the New gTLD Program.

JAS Global Advisors was the firm selected to develop and implement the Quality Program. The JAS report is now published to inform the community of the objectives, methodology and findings of the Quality Program. The report also includes analysis and recommendations for areas of improvement.

The results of the Quality Program show that CANN achieved an important goal of consistency and quality in the evaluation of applications. A unified approach to preparing training, synchronizing and conducting pilot exercises with evaluation firms was cited as the most critical factor to this success.

[Download the Report Now >>](#) [PDF 346 KB]

Exhibit DIDP *A97*



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ICANN
 12025 Waterfront Drive, Suite 300
 Los Angeles, CA 90094-2536

By Email: didp@icann.org

April 29, 2016

RE: .MUSIC Community Priority Evaluation (“CPE”) for .MUSIC Application ID 1-1115-14110¹ Request under ICANN’s Documentary Information Disclosure Policy (“DIDP”)

Dear ICANN:

This request is submitted under ICANN’s Documentary Information Disclosure Policy by DotMusic Limited (“DotMusic” or “Requestor”) in relation to ICANN’s .MUSIC Community Priority Evaluation (“CPE”). The .MUSIC CPE Report² (the “CPE Report”) found that DotMusic’s community-based Application (the “Application”) did not prevail. DotMusic is investigating the numerous CPE process violations and the contravention of established procedures as set forth in the Reconsideration Request 16-5 (“RR”).³

Some of the ICANN violations of established procedures and policies include:

1. Disregarding International Laws and Conventions with respect to the defined Music Community’s “cohesion” in relation to music copyright;^{4 5}
2. Misapplication and disregard of “Community” Definition from 20A;
3. Misapplication and disregard of “logical alliance” “Community Definition that has “cohesion” and meets criteria according to the Applicant Guidebook (“AGB”);
4. Misapplication and disregard of Community “Name” in Nexus;
5. Misapplication and disregard of AGB “Majority” Criterion in Support;
6. Misapplication and disregard of AGB “Recognized” organizations recognized by both the United Nations (“UN”) and the World Intellectual Property Organization (“WIPO”);⁶

¹ DotMusic’s .MUSIC community Application (ID 1-1115-14110), <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1392>; Also See <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/downloadapplication/1392?t:ac=1392>, DIDP Ex.A1

² .MUSIC CPE Report, <https://icann.org/sites/default/files/tlds/music/music-cpe-1-1115-14110-en.pdf>, DIDP Ex.A2

³ See <https://icann.org/resources/pages/reconsideration-16-5-dotmusic-request-2016-02-25-en>

⁴ All music constituent types - regardless whether they are commercial or non-commercial in nature - are reliant on music copyright “cohesion” in one way or another for their activities and participate as a whole in a regulated sector with demonstrated activities tied to music that cohere to international copyright law, united under international treaties, agreements and conventions

⁵ Also See RR-related DotMusic Letter to ICANN Board Governance Committee (“BGC”), <https://icann.org/en/system/files/files/reconsideration-16-5-dotmusic-to-icann-bgc-28mar16-en.pdf>, DIDP Ex.A87

⁶ Also See RR-related IFPI Letter to ICANN Board Governance Committee (“BGC”), <https://icann.org/en/system/files/files/reconsideration-16-5-dotmusic-letter-ifpi-to-icann-24feb16-en.pdf>, DIDP Ex.88



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7. Disregard of global music federations “mainly” dedicated to Community recognized both by UN and WIPO;
8. Misapplication of the AGB’s “Organized” definition in Community Establishment based on false facts and lack of compelling evidence that the Music Community defined is not organized under a regulated sector, international law and international conventions/treaties;
9. Disregard that the Music Community defined existed before 2007 in Community Establishment;
10. Policy misapplication and disregard of ICANN-accepted GAC consensus Category 1 Advice in Community Establishment demonstrating the defined Community’s unity under a regulated sector;⁷
11. Failure to compare and apply consistent scoring across all CPE applications and implement the quality control process to ensure fairness, transparency, predictability and non-discrimination;
12. Economist Intelligence Unit (“EIU”) conflict of interest with competitor Google (Eric Schmidt was on The Economist Board during CPE) in violation of the ICANN-EIU Statement of Work (“SOW”) and Expression of Interest (“EOI”), the AGB and CPE Guidelines, ICANN’s Bylaws, and The Economist’s Guiding Principles; and
13. EIU’s failure to undertake appropriate (if any) research to support compelling conclusions in the CPE Report, despite DotMusic’s (and DotMusic’s supporters’) provision of thousands of pages of “*application materials and...research*” as “*substantive evidence*” of “*cohesion*,”^{8 9} including DotMusic’s in-depth response to the EIU’s Clarifying Questions.¹⁰

A. Context

ICANN’s Documentary Information Disclosure Policy (“DIDP”) is intended to ensure that information contained in documents concerning ICANN’s operational activities, and within ICANN’s possession, custody, or control, is made available to the public unless there is a compelling reason for confidentiality.¹¹ In responding to a request submitted pursuant to the DIDP, ICANN adheres to its *Process for Responding to ICANN’s Documentary Information Disclosure Policy (DIDP) Requests*.¹² According to ICANN, staff first

⁷ Also See RR-related DotMusic Letter to ICANN Board Governance Committee (“BGC”), <https://www.icann.org/en/system/files/files/reconsideration-16-5-dotmusic-to-icann-bgc-17mar16-en.pdf>, DIDP Ex.A89

⁸ Concluding that there is “*no substantive evidence*” that the Music Community defined in its entirety has no cohesion (i.e. does not unite cohesively under international music copyright or is reliant on international conventions) is not a compelling and defensible argument. No facts were presented by the EIU to refute DotMusic’s materials or prove that the Music Community defined has no cohesion under international music copyright or international conventions. In fact, it is a matter of international law, international conventions and government regulations that all of the Music Community depends on music copyright cohesion for its activities and could function as they do without them. In fact nearly all music constituent groups would not exist without cohesion and unity under music copyright.

⁹ DotMusic’s supporters submitted thousands of letters of support, each letter containing “*substantive evidence*” of “*cohesion*,” which the EIU ignored entirely. The EIU did not argue nor oppose DotMusic’s (and its supporters’) facts, materials and evidence in its CPE Report. The EIU chose to remain silent and falsely concluded that there was no evidence of cohesion, despite the overwhelming submission of evidence and supporting documents. According to ICANN, “*DotMusic Limited and its supporters have submitted a high volume of correspondence (hundreds of letters) to ICANN for the CPE Panel’s consideration.*” See <https://www.icann.org/en/system/files/correspondence/willett-to-roussos-zamek-04dec15-en.pdf>, DIDP Ex.86.

¹⁰ DotMusic Response to EIU’s Clarifying Questions, DIDP Ex.A92

¹¹ See Documentary Information Disclosure Policy, <https://icann.org/resources/pages/didp-2012-02-25-en>, DIDP Ex.A3

¹² Process for Responding to DIDP Requests,



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identifies all documents responsive to the DIDP request. Staff then reviews those documents to determine whether they fall under any of the DIDP's Nondisclosure Conditions, which include, among several others:

Internal information that, if disclosed, would or would be likely to compromise the integrity of ICANN's deliberative and decision-making process; and

Information exchanged, prepared for, or derived from the deliberative and decision-making process between ICANN, its constituents, and/or other entities with which ICANN cooperates.¹³

According to ICANN, if the documents do fall within any of those Nondisclosure Conditions, ICANN staff determines whether the public interest in the disclosure of those documents outweighs the harm that may be caused by such disclosure.¹⁴

It is also important to note that at the Meeting of the ICANN Board on March 10, 2016, the Board affirmed serious issues raised by a recent Independent Review Proceeding declaration (relating to the CPE of .ECO and .HOTEL) about the lack of consistency and predictability of the CPE process, and encouraged staff to respond to DIDP requests in the most specific and detailed manner possible. To that end, the Board resolved:

Resolved (2016.03.10.11), the Board notes the Panel's suggestions, and: (1) directs the President and CEO, or his designee(s), to ensure that the New gTLD Program Reviews take into consideration the issues raised by the Panel as they relate to the consistency and predictability of the CPE process and third-party provider evaluations; (2) encourages ICANN staff to be as specific and detailed as possible in responding to DIDP requests, particularly when not disclosing requested documents; (3) affirms that, as appropriate, ICANN will continue to ensure that its activities are conducted through open and transparent processes in conformance with Article IV of ICANN's Articles of Incorporation.¹⁵

Requester invokes ICANN's accountability mechanisms to request internal documentation to investigate ICANN's and the Panel's internal deliberation and decision-making process in determining the CPE Report that was grossly negligent as set forth in the RR, because it violated numerous established ICANN procedures and policies.

DotMusic would have passed CPE if the Panel followed established procedures and ICANN processes were managed "*in conformity with relevant principles of international law and applicable international conventions.*"¹⁶ The Panel and ICANN should have recognized music community cohesion through applicable international conventions (such as the 1886 Berne Convention that relates to the protection of

<https://icann.org/en/system/files/files/didp-response-process-29oct13-en.pdf> , DIDP Ex.A4

¹³ See ICANN DIDP, DIDP Ex.A3

¹⁴ Ibid

¹⁵ ICANN Board Resolution, March 10, 2016, <https://icann.org/resources/board-material/resolutions-2016-03-10-en#2.a>, DIDP Ex.A5

¹⁶ ICANN's Articles of Incorporation provide that: The Corporation shall operate for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and applicable international conventions and local law and, to the extent appropriate and consistent with these Articles and its Bylaws, through open and transparent processes that enable open competition and open entry in Internet-related markets. To this effect, the Corporation shall cooperate as appropriate with relevant international organizations, ICANN Articles of Incorporation, <https://icann.org/resources/pages/governance/articles-en>, Article 4, DIDP Ex.A45



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copyright signed by 171 countries¹⁷) and established international music copyright law. Indeed, The Economist, the parent company of the Economist Intelligence Unit CPE Panel (the “EIU”), also recognizes the Berne Convention because The Economist is reliant on copyright cohesion and international law protection¹⁸ to conduct its primary activities. According to The Economist:

Copyright is a property right that gives the creators of certain kinds of material rights to control the ways in which such material can be used. These rights are established as soon as the material has been created, with no need for official registration. Copyright applies globally and is regulated by a number of international treaties and conventions (including the Berne Convention, the Universal Copyright Convention, the Rome Convention and the Geneva Convention).¹⁹

The Economist’s own words invalidate the EIU’s CPE Report rationale that “*application materials and further research provide no substantive evidence of what the AGB calls “cohesion” – that is, that the various members of the community as defined by the application are ‘united or form a whole.’*”²⁰ Concluding that there is “no substantive evidence” that the music community defined in its entirety has no cohesion (i.e. does not unite cohesively under international music copyright or is reliant on international conventions) is not a compelling and defensible argument. It appears that the EIU failed to undertake appropriate (if any) research to support its conclusions. The decision was rendered despite DotMusic's provision of thousands of pages of “*application materials and...research*” as “*substantive evidence*” of “*cohesion,*” including citing in numerous materials the international Berne Convention. For example, DotMusic defined its Community and clarified in its Application materials that:

The requisite awareness of the community is clear: participation in the Community, the logical alliance of communities of similar nature related to music, -- a symbiotic, interconnected eco-system that functions because of the awareness and recognition of its members. The delineated community exists through its members participation within the logical alliance of communities related to music (the “Community” definition). Music community members participate in a shared system of creation, distribution and promotion of music with common norms and communal behavior e.g. commonly-known and established norms in regards to how music entities perform, record, distribute, share and consume music, including a shared legal framework in a regulated sector governed by common copyright law under the Berne Convention, which was established and agreed upon by over 167 international governments with shared rules and communal regulations.²¹

The importance of copyright and the cohesion of the Music Community was previously recognized by the members of the ICANN Board and the NGPC (who are also members of the BGC) through acceptance of GAC Category 1 Advice that .MUSIC is a “*string that is linked to regulated sector*” that “*should operate in a*

¹⁷ Berne Convention for the Protection of Literary and Artistic Works of 1886 with 171 contracting countries, See http://wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=15 and

http://www.wipo.int/wipolex/en/treaties/text.jsp?file_id=283693, DIDP Ex.A55

¹⁸ See The Economist website, *Terms of Use, “Governing Law and Jurisdiction,”* <http://economist.com/legal/terms-of-use>, (“*The Economist shall also retain the right to bring proceedings as to the substance of the matter in the courts of the country of your residence*”), DIDP Ex.A56

¹⁹ See The Economist website, *Copyright Information,* <https://economist.com/rights/copyright.html>, DIDP Ex.A53

²⁰ CPE Report, p.4, DIDP Ex.A2

²¹ See DotMusic Public Interest Commitments (“PIC”),

<https://gtldresult.icann.org/applicationstatus/applicationdetails:downloadpicposting/1392?t:ac=1392>, p.6, DIDP Ex.A16



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way that is consistent with applicable laws,”²² a Resolution that, in effect, agrees that all music groups that comprise the music community defined (“logical alliance of communities that relate to music”) participate as a whole in a regulated sector with demonstrated activities tied to music that cohere to international copyright law, united under international treaties, agreements and conventions.

B. Documentation Requested

Requester invokes ICANN’s accountability mechanisms to request documentation to determine whether the CPE Panel and ICANN followed established process and policies in the evaluation of the .MUSIC CPE: Among other things, it appears that the CPE Report was prepared in a manner that: i) did not apply criteria in a consistent manner; (ii) misapplied facts and evaluation criteria in the evaluation to establish conclusions that are not compelling nor defensible; and (iii) did not follow ICANN’s quality control process to ensure consistency of approach in scoring, non-discrimination, fairness, predictability and transparency.

Requestor notes that any links or documentation that are publicly available are not requested and do not satisfy this request. DotMusic has access to all publicly available documentation and policies and only requests for documentation that is currently unavailable i.e. internal ICANN documents.

DotMusic respectfully requests the following documentation from ICANN under the *Documentary Information Disclosure Policy*:

- 1) All non-public internal documents (including call records and minutes) of the communication between ICANN, the EIU and independent Quality Control service provider relating the EIU’s consistent, compelling and defensible decision-making process used in developing the CPE Report determination and showcasing how DotMusic’s application and CPE Process was compared to previous prevailing CPE determinations to ensure fairness, non-discrimination, transparency, predictability and consistency;**

Context:

The CPE Report was grossly negligent and violated numerous established procedures, including incorporating false facts, misapplying procedural instructions from the AGB and CPE Guidelines, and inconsistently scoring DotMusic’s Application in CPE in comparison to prevailing CPE determinations.²³

²² <https://icann.org/en/system/files/correspondence/crocker-to-schneider-23jun15-en.pdf>, pp.1-2, DIDP Ex.A41

²³ Also see RR-related letter from the IFPI stating: “We believe the finding to be flawed...Given the scale of the music community’s support for the Dot Music application, it is difficult to understand what level of support a CPE applicant would need to demonstrate to prevail, and this gives rise to serious misgivings about the transparency, consistency, and accountability of the CPE process...highlighting the disparity between the decisions of the EIU Panel. Unfortunately, these inconsistencies have continued in the EIU Panel’s evaluation of the DotMusic application...we note with concern the different criteria that appear to have been applied to the .HOTEL and . MUSIC CPE applications respectively. Also of concern is the EIU Panel’s finding that DotMusic failed to provide documented support from “recognised community institution(s)/member organization(s)”. IFPI is a globally recognised organization...Our members operate in 61 countries and IFPI has affiliated organisations, including national groups in 57 countries. We also administer the internationally recognised ISRC system. We therefore object to the EIU Panel’s finding,” DIDP Ex.88; Also see RR-related letter from the National Music Council, representing almost 50 music organizations and the International Music



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- 2) All the non-public internal *draft* CPE Reports and all related internal correspondence between ICANN and the EIU related to (i) DotMusic’s .MUSIC CPE; (ii) the prevailing .RADIO CPE; (iii) the prevailing .HOTEL CPE; (iv) the prevailing .SPA CPE; (v) the prevailing .ECO CPE; (vi) the prevailing .OSAKA CPE; (vii) the .GAY CPE;²⁴ and (viii) all non-public internal correspondence, reports, documents, emails and any other forms of other communication showcasing how DotMusic’s application and CPE Process was compared to other prevailing CPE determinations to ensure fairness, non-discrimination, transparency, predictability and consistency;

Context:

There is precedent to the disclosure of these types of documents. ICANN has publicly disclosed some *draft* CPE reports and deliberative and/or decision-making related emails between the EIU and ICANN concerning the CPE of .LLC, .INC, .LLP and .GMBH in the Dot Registry Independent Review Proceeding (“IRP”).²⁵ DotMusic requests the above-mentioned internal documents to investigate: (i) the CPE inconsistency issues between DotMusic’s CPE in comparison to the prevailing CPE Applications; (ii) the research and evidence used to determine Community Establishment “cohesion” for other prevailing CPE applications in comparison to DotMusic; and (iii) whether or not the Panel assessed DotMusic’s “*logical alliance*” community definition per the AGB and CPE Guidelines in its Determination (*Note*: The CPE Report did not assess nor identify DotMusic’s “*logical alliance*” community definition from DotMusic’s Application answer to 20A as required by the AGB, instead construed its own definition from DotMusic’s Application answer to 20D); and (iv) whether or not the

Council. The letter stated that: “*The international music community has come together across the globe to support the DotMusic application, and we cannot comprehend how the application could have failed on the community criteria... We therefore object to the decision noted above, the basis of which is an apparent inconsistency in the application of the governing rules,*” <https://www.icann.org/en/system/files/files/reconsideration-16-5-national-music-council-to-icann-bgc-28mar16-en.pdf>, DIDP Ex.A90

²⁴ See DIDP Ex.A60 for comparison between DotMusic’s CPE Report and the .RADIO, .HOTEL, .SPA, .ECO, .OSAKA and .GAY CPE Reports that reveals material inconsistencies, the appearance of discrimination, lack of fairness and lack of transparency in violation of both ICANN’s Bylaws and Articles of Incorporation: According to ICANN’s Bylaws “*ICANN shall not apply its standards, policies, procedures, or practices inequitably or single out any particular party for disparate treatment unless justified by substantial and reasonable cause*” under Article 2, Section 3, and “*ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness*” under Article 3, See

<https://icann.org/resources/pages/governance/bylaws-en>, DIDP Ex.A72. Under Article 4 of ICANN’s Articles of Incorporation: “*The Corporation shall operate for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and applicable international conventions and local law and, to the extent appropriate and consistent with these Articles and its Bylaws, through open and transparent processes that enable competition and open entry in Internet-related markets. To this effect, the Corporation shall cooperate as appropriate with relevant international organizations,*”

<https://icann.org/resources/pages/governance/articles-en>, DIDP Ex.A45; Also see RR for more detail on inconsistencies between CPE Report and CPE determinations for .HOTEL, .SPA, .OSAKA, .GAY, .ECO and .RADIO,

<https://icann.org/en/system/files/files/reconsideration-16-5-dotmusic-request-redacted-24feb16-en.pdf>, DIDP Ex.A91

²⁵ Dot Registry Independent Review Proceeding (“IRP”) documentation for examples of such released draft reports at <https://icann.org/en/system/files/files/additional-submission-exhibits-c35-13jul15-en.pdf>, C042 – C044; Also see RR, <https://www.icann.org/en/system/files/files/reconsideration-16-5-dotmusic-exhibits-a25-redacted-24feb16-en.pdf>, Ex.A25, Ex.A26 and A27



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Panel assessed the Applicant Guidebook's ("AGB") "majority" criterion in its deliberation process to determine the CPE Report (*Note*: The CPE Report did not assess nor mention the "majority" criterion as required by the AGB and CPE Guidelines).

According to the Statement of Work ("SOW") signed by ICANN and the EIU, the EIU agreed that its activities will be bound by ICANN's **Governance requirements and governance processes** relating to ICANN's Articles of Incorporation and Bylaws:²⁶

As part of the overall gTLD program, Panel Firm's project management team will work with the Program Office to ensure that the evaluations are completed consistently and completely in adherence to the Applicant Guidebook and in accordance with processes established by the Program Office...Panel Firm will establish a project management approach to manage, coordinate and monitor the evaluation activities based on...ICANN's gTLD Program Governance requirements. Panel Firm will tailor certain project management processes to directly support the Program Office governance processes.²⁷

Moreover, according to the Comparative Evaluation Panel Expressions of Interest ("EOI"), the EIU agreed that "*the evaluation process for selection of new gTLDs will respect the principles of fairness, transparency, avoiding potential conflicts of interest, and non-discrimination*"²⁸ and provided ICANN with a "*statement of the candidate's plan for ensuring fairness, nondiscrimination and transparency.*"²⁹

As such, ICANN's Core Values through its Bylaws were **contractually imposed** on the EIU.³⁰ Implementing a quality control process that compares all CPE results to provide consistent CPE results was a critical process that DotMusic relied upon when applying in 2012. Quality control that compares CPE determinations to ensure consistency would have been easy to incorporate because ICANN had already employed such quality control process throughout the New gTLD Program's Initial Evaluation process: ICANN hired JAS to perform quality control and ensure consistency across hundreds of applications during initial evaluation.³¹ For example, "*a statistically relevant number of technical/operational and financial evaluations were subject to half-blind Content Inspection reviews*

²⁶ Governance Documents that include ICANN's Bylaws and Articles of Incorporation and Bylaws, <https://icann.org/resources/pages/governance/governance-en>, DIDP Ex.A78

²⁷ EIU Contract and Statement of Work (SOW) with ICANN, <http://newgtlds.icann.org/en/applicants/cpe/eiu-contract-sow-information-08apr15-en.zip>, March 12, 2012 Statement of Work No:[2], p.8, DIDP Ex. A8

²⁸ New gTLDs: Call for Applicant Evaluation Panel Expressions of Interest ("EOI"), Comparative Evaluation Panel, <https://www.icann.org/en/topics/new-gtlds/eoi-comparative-evaluation-25feb09-en.pdf>, p.5, DIDP Ex.A79

²⁹ Ibid, p.6

³⁰ The EIU was also bound to The Economist's Guiding Principles that included "*commitment to independence, integrity...conducting business with common decency...and do not engage in corrupt practices...abide by strict guidelines governing...the disclosure of potential conflicts of interest. As an international company...conduct business in many different markets around the world...[and] abide by local laws and regulations.*" See The Economist, Guiding Principles, http://economistgroup.com/results_and_governance/governance/guiding_principles.html, DIDP Ex.85

³¹ JAS established that "*the existence of a visible and well-publicized proactive quality program properly incented all evaluation panel vendors to be appropriately cognizant of evaluation consistency, accuracy, and process fidelity, and perform accordingly.*" The .MUSIC CPE lacked a "*proactive quality control process*" similar to the one implemented by ICANN during Initial Evaluation to ensure a "*unified approach,*" which JAS confirmed "*substantially mitigated the risk of isolation and inconsistent or divergent evaluations,*" ICANN Initial Evaluation Quality Control Program Report, <https://newgtlds.icann.org/en/program-status/application-results/ie-quality-program-26aug14-en.pdf>, p.16, DIDP Ex.80



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performed on a *de novo* basis” by JAS, which sampled 274 applications (over 12 times the number of CPE applications that were processed by the EIU).³² According to JAS, a 100% “*Per Application Consistency Rating*” was accomplished for 274 applications that were entirely Consistent Post Outreach.³³ Out of the 1930 applications filed in March 2012,³⁴ only 22 have gone through CPE as of the .MUSIC CPE Report determination of February 2016 (i.e. about 1%). ICANN and the EIU also had nearly 4 years to review all 22 community applications and to ensure consistency of approach in determining the CPE Report. ICANN and the EIU were required to ensure equal treatment of similarly situated applicants when one considers that ICANN had already hired JAS to perform a similar function during the Initial Evaluation process that was over twelve (12) times the size of the number of applications going through CPE.

- 3) **All the non-public internal communication documents and non-public internal correspondence between ICANN and the EIU in formulating the CPE Guidelines that were “prepared by the Economist Intelligence Unit”³⁵ before and after the CPE Guidelines public comment period (nearly 1 ½ years after DotMusic’s 2012 Application filing);**

Context:

DotMusic would like to investigate the findings of the CPE Report to the extent that it disregarded the AGB and CPE Guidelines’ “*logical alliance*” criterion. This pertains to DotMusic’s community definition which relates to a “*logical alliance*” (“*delineated and organized logical alliance of communities that relate to music*”). According to the AGB (and CPE Guidelines), with respect to “*Delineation*” and “*Extension*” “*it should be noted that a community can consist of...a logical alliance of communities.*”^{36 37} The AGB and CPE Guidelines also allow communities that are supported and established through multiple organizations and institutions. The relevant provisions provide: “*with respect to “Support,” the plurals in brackets for a score of 2, relate to cases of multiple institutions/organizations. In such cases there must be documented support from institutions/organizations representing a majority of the overall community addressed in order to score 2.*”^{38 39}

The EIU was knowledgeable of both the “*logical alliance*” and “*majority*” criteria because the EIU prepared the CPE Guidelines in 2013. Yet the EIU did not consider either criterion in determining the DotMusic CPE Report. The EIU awarded the maximum *Community Establishment* score to the .HOTEL CPE prevailing applicant by applying the “*logical alliance*” criterion.⁴⁰ Furthermore, the EIU awarded the maximum *Community Support* score to the .RADIO CPE prevailing applicant by applying the

³² Ibid, p.7

³³ Ibid, Table 4, p.10

³⁴ New gTLD Program Statistics, <https://newgtlds.icann.org/en/program-status/statistics>, DIDP Ex.81

³⁵ CPE Guidelines, <https://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf>, p.1, DIDP Ex.A6; Also see other CPE Materials, DIDP Ex.A54

³⁶ AGB, <https://newgtlds.icann.org/en/applicants/agb/guidebook-full-11jan12-en.pdf>, §4.2.3, p. 4-12, DIDP Ex.A7

³⁷ CPE Guidelines, p.4 and p.6, DIDP Ex.A6

³⁸ AGB, §4.2.3, Module 4, p. 4-18, DIDP Ex.A7

³⁹ CPE Guidelines, p.18, DIDP Ex.A6

⁴⁰ See .HOTEL CPE Report, DIDP Ex.A57



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“majority” criterion.⁴¹ In contrast, the EIU disregarded these criteria in DotMusic’s CPE process and did not follow AGB and CPE Guidelines. By not applying these CPE process criteria, the EIU did not follow established procedure that would have resulted in a passing grade for DotMusic’s Application.

- 4) **All non-public internal documents and internal correspondence between ICANN staff that relate to the altering of the original AGB language pertaining to the *Notice of Changes of Information* section of the AGB;**⁴²

Context:

From 2012 to 2014 (after the Application was filed), ICANN introduced material new “change request” language numerous times that harmed the interests of community applicants and resulted in provided preferential treatment to non-community applicants without any formal policy development process.⁴³

- 5) **The names of all the EIU CPE evaluators pertaining to the .MUSIC, .ECO, .RADIO, .SPA, .HOTEL, .OSAKA and .GAY CPE processes and any correspondence between ICANN and Google’s Vice-President (also ex-ICANN chairman and ICANN Strategy Chair) Vinton Cerf to further investigate the appearance of a conflict of interest and ensure that the evaluators were qualified to evaluate a music-related CPE as explicitly required by the AGB and CPE Materials;**

Context:

During the CPE Evaluation process, Google Chairman Eric Schmidt was on the Board of Directors of the Economist Group, the parent company of the EIU. While not necessarily dispositive, the ten (10) community applicants that competed with Google did not prevail in CPE. With the exception of the CPE Process, the names of New gTLD Program Panelists that performed evaluations that could determine a contention set after the Initial Evaluation process (such as Community Objections, Legal Rights Objections, String Similarity Objections, and Public Interest Objections) were publicly disclosed. The CPE process lacked such transparency, increasing the probability of conflicts of interest and eliminating the opportunity for full accountability, and verifying that the panel was qualified as mandated:

All EIU evaluators undergo regular training to ensure full understanding of all CPE requirements as listed in the Applicant Guidebook, as well as to ensure consistent judgment. This process included a pilot training process, which has been followed by regular training sessions to ensure that all evaluators have the same understanding of the evaluation process and procedures. EIU evaluators are

⁴¹ See .RADIO CPE Report, DIDP Ex.A58

⁴² See AGB, §1.2.7, Module 1, p. 1-30: “If at any time during the evaluation process information previously submitted by an applicant becomes untrue or inaccurate, the applicant must promptly notify ICANN via submission of the appropriate forms. This includes applicant-specific information such as changes in financial position and changes in ownership or control of the applicant. ICANN reserves the right to require a re-evaluation of the application in the event of a material change. This could involve additional fees or evaluation in a subsequent application round. Failure to notify ICANN of any change in circumstances that would render any information provided in the application false or misleading may result in denial of the application,” DIDP Ex.A7

⁴³ See DIDP Ex.A52 for “Change Request” policy update changes from 2012 to 2014



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highly qualified... and have expertise in applying criteria and standardized methodologies across a broad variety of issues in a consistent and systematic manner."⁴⁴

The panel will be an internationally recognized firm or organization with significant demonstrated expertise in the evaluation and assessment of proposals in which the relationship of the proposal to a defined...community plays an important role...The provider must be able to convene a... panel capable... of evaluating Applications from a wide variety of different communities....The panel must be able to exercise consistent and somewhat subjective judgment in making its evaluations in order to reach conclusions that are compelling and defensible, and... The panel must be able to document the way in which it has done so in each case. ...EIU evaluators are selected based on their knowledge of specific countries, regions and/or industries, as they pertain to Applications....All Applications will subsequently be reviewed by members of the core project team to verify accuracy and compliance with the AGB, and to ensure consistency of approach across all applications."⁴⁵

- 6) **The name of “the appointed independent Quality Control service provider” per the SOW and all non-public internal documents and non-public internal correspondence between “the appointed independent Quality Control service provider for the purposes of helping it to verify that Panel Firm’s evaluation services have been and are performed in accordance with the Quality Control Guidelines” and ICANN and/or the EIU.**⁴⁶

Context:

The CPE Guidelines state that the “EIU will fully cooperate with ICANN’s quality control process.”⁴⁷ Given the CPE inconsistencies between DotMusic’s CPE Report and prevailing community applicants’ CPE Reports, and the grossly negligent process failures, DotMusic requests all non-public internal documents and non-public internal correspondence between ICANN, the EIU and the independent Quality Control service provider pertaining to DotMusic’s CPE Process and the development of the CPE Report “to ensure consistency of approach across all applications”⁴⁸ as explicitly mandated by the CPE Guidelines prepared by the EIU. DotMusic relied on an effective and accountable quality control process to ensure fairness, predictability, non-discrimination and consistency when applying in 2012.

If ICANN denies the disclosure of all the documents requested, DotMusic requests ICANN to:

- i. **Define “public interest” with respect to the DIDP process and explain in detail how “the harm in disclosing the information outweighs the public interest in disclosing the information” in relation to DotMusic’s statements supporting why it serves the public interest for ICANN to release all the documentation requested (See Section C: Why It Serves Public Interest to Release the Documentation Requested);**
- ii. **Provide DotMusic with Privileged Logs which clearly describe as to each document withheld the type of document, the general subject matter thereof, the date on which**

⁴⁴ EIU Panel Process document, <https://newgtlds.icann.org/en/applicants/cpe/panel-process-07aug14-en.pdf>, p.2, DIDP Ex.A82

⁴⁵ CPE Guidelines, <https://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf>, p.22, DIDP Ex.A6

⁴⁶ ICANN-EIU Contract and Statement of Work Information (SOW), <http://newgtlds.icann.org/en/applicants/cpe/eiu-contract-sow-information-08apr15-en.zip>, March 12, 2012 Statement of Work No:[2], p.12, DIDP Ex. A8

⁴⁷ CPE Guidelines, p.23, DIDP Ex.A6

⁴⁸ Ibid, p.22



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it was created, the authors of the document, all parties who were intended to be recipients of the document, and the legal privilege being claimed, referencing the law that recognizes such claim of privilege; and

- iii. Follow the ICANN Board Resolutions of March 10, 2016 to “*be as specific and detailed as possible in responding to DIDP requests, particularly when not disclosing requested documents.*”⁴⁹

C. Why It Serves Public Interest to Release the Documentation Requested

DotMusic and the Music Community (the defined “*logical alliance*” with members representing over 95% of music consumed globally) have been negatively affected by the CPE Report and ICANN’s actions/inactions in relation to the CPE process. If DotMusic is not awarded .MUSIC, DotMusic, will suffer material brand dilution⁵⁰ and be subject to expensive auctions which (as agreed upon by the European Commission⁵¹) were designed to favor deep pocketed Applicants, such as Google and Amazon. More importantly, the Music Community, Internet users and the global public interest will suffer material harm as evidenced below.

As set forth in the Application, DotMusic has an all-inclusive tent that is united by its core principles consistent with its articulated community-based purpose:

- Creating a trusted, safe online haven for music consumption and licensing
- Establishing a safe home on the Internet for Music Community (“Community”) members regardless of locale or size
- Protecting intellectual property & fighting piracy
- Supporting Musicians’ welfare, rights & fair compensation
- Promoting music and the arts, cultural diversity & music education
- Following a multi-stakeholder approach of fair representation of all types of global music constituents, including a rotating regional Advisory Committee Board working in the Community’s best interest. The global Music Community includes both reaching commercial and non-commercial stakeholders.⁵²

Per DotMusic’s Application and Public Interest Commitments (“PIC”),⁵³ .MUSIC will be launched as a safe haven for legal music consumption that ensures that .MUSIC domains are trusted and authenticated to benefit the interests of the Internet community and the global music community. DotMusic, its current and future music members and supporters will be adversely affected if the Report stands and DotMusic is awarded to any of the competing non-community applicants⁵⁴ (which will also be a disservice to the Internet user community in general) because competing applicants either: (i) lack the music community multi-

⁴⁹ ICANN Board Resolution, March 10, 2016, <https://icann.org/resources/board-material/resolutions-2016-03-10-en#2.a>, DIDP Ex.A5

⁵⁰ DotMusic holds the European community trademarks for “*DotMusic*” and “*MUSIC*,” See RR Ex.A35, A37 and A38

⁵¹ <http://forum.icann.org/lists/comments-new-gtld-auction-rules-16dec13/msg00016.html>, DIDP Ex.A9

⁵² Application, 18A. Also see 20C, <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails:downloadapplication/1392?t:ac=1392>, DIDP Ex.A1

⁵³ DotMusic PIC, <https://gtldresult.icann.org/applicationstatus/applicationdetails:downloadpicposting/1392?t:ac=1392>, DIDP Ex.A16

⁵⁴ All of the competing non-community applicants in DotMusic’s contention set are existing gTLD portfolio registries (Google, Amazon, Donuts/Rightside, Radix, Minds & Machines and Famous Four Media). Collectively, these registries have launched the overwhelming majority of all keyword-based new gTLDs.



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stakeholder governance model to represent the community's interests; and/or (ii) lack the extensive music-tailored safeguard policies that DotMusic has to protect consumers and serve the community.⁵⁵ Allowing the CPE Report to stand would turn .MUSIC into an open and unsafe, unreliable and untrusted string governed by non-community interests. **A non-community-based string will create material harm to the legitimate interests of the Music Community, Internet users and consumers, by increasing intellectual property infringement and other types of malicious abuse.** Music is a sensitive string driven by content and copyright protection that must be operated responsibly within its regulated sector as outlined in the Application.

Pirate sites distribute illegal content and continue to steal copyrighted content and siphon millions of dollars away from the creative community, making it much harder for artists to make a living.⁵⁶ Piracy sites are also *"being nurtured by revenues from both mainstream and high risk advertisements... These same sites – which are known to be popular with children and young people – are thereby exposing the latter to materials which are likely to be extremely damaging to them as well as to adults who might likewise be exposed."*⁵⁷ The Music Community is one of the Internet's most vulnerable communities given the adverse effects of mass piracy, intellectual property infringement and malicious abuse on the web and the inefficiencies of the outdated 1998 DMCA Law to provide adequate music copyright protection online.⁵⁸ The DMCA was signed into law in 1998 with a goal of updating copyright laws for the digital age, but it's now disturbingly out of date. Many famous artists and songwriters representing the Music Community filed public comments to the U.S Congress to reform the outdated DMCA:

One of the biggest problems confronting us as songwriters and recording artists today is the Digital Millennium Copyright Act. This law was written and passed in an era that is technologically out-of-date compared to the era in which we live. It has allowed major tech companies to grow and generate huge profits by creating ease of use for consumers to carry almost every recorded song in history in

⁵⁵ See Application 20E; Also See PIC, Commitments 1-8, pp.1-2; PIC, pp.22-27; Also see .MUSIC Applicant Comparison Chart, <https://icann.org/en/system/files/correspondence/schaeffer-to-crocker-et-al-2-redacted-12aug15-en.pdf>, Appendix C, pp.43-45, Ex.A32; Also see DIDP Ex.A17; For example, according to the KnujOn Report on Internet Consumer Trust and Abuse, the *"general trend is that certain new gTLDs are rapidly replacing exiting registries for spam and abuse...10 of these abused TLDs are sponsored by a single company: [.MUSIC] applicant Famous Four."* <http://www.knujon.com/knujon-icann-consumers-rygy-limbo-032016.pdf>, p.19, DIDP Ex.A48

⁵⁶ USC Annenberg Innovation Lab, Advertising Transparency Report, <http://annenberglab.com/projects/ad-piracy-report-0>, DIDP Ex.A14; It is noted that both .MUSIC applicants Google and Amazon have a prior history with the piracy of music: Google as a provider of ad networks to pirate sites and Amazon as a leading advertiser on pirate sites. See <http://billboard.com/biz/articles/news/digital-and-mobile/6106454/online-pirates-thrive-on-legitimate-ad-dollars> (DIDP Ex.A10), <http://venturebeat.com/2014/02/18/the-average-piracy-site-makes-4-4m-each-year-on-ads-from-amazon-lego-etc> (DIDP Ex.A11); Also see USC Annenberg Lab Ad Transparency Reports: Google's advertising networks placing second most advertisements to illicit sites at http://annenberglab.com/sites/default/files/uploads/USCAnnenbergLab_AdReport_Jan2013.pdf, p.1 (DIDP Ex.A12); and Amazon advertising on infringing sites at

http://annenberglab.com/sites/default/files/uploads/USCAnnenbergLab_AdReport_May2013.pdf, p.2 (DIDP Ex.A13)
⁵⁷ Dr. Paul A. Waters, *An Analysis of Piracy Website Advertising in Brazil and Its Linkages to Child Exploitation Material*, http://ecpat.net/sites/default/files/Piracy%20Website%20Advertising%20in%20Brazil_ENG.pdf, December 2015, p.14, DIDP Ex.A15

⁵⁸ <https://www.google.com/transparencyreport/removals/copyright/?hl=en> e.g. One single DotMusic supporter, BPI, filed over 2 million URL takedown requests to Google for the week of February 15, 2016, see <https://google.com/transparencyreport/removals/copyright/reporters/1847/BPI-British-Recorded-Music-Industry-Ltd>, DIDP Ex.A18



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their pocket via a smartphone, while songwriters' and artists' earnings continue to diminish. Music consumption has skyrocketed, but the monies generated by individual writers and artists for that consumption has plummeted. The growth and support of technology companies should not be at the expense of artists and songwriters. Section 512 of the DMCA has become the all-purpose shield that tech companies hide behind while they threaten the livelihood of music creators. The notice-and-takedown provision to which we refer allows ongoing infringements of the works we create since videos can immediately be re-posted, even after we have requested to have them removed. This outdated law forces us to stand by helplessly as billions of dollars in advertising is sold around illegal copies of our work. Most of the money goes to the tech services -- not to creators. In fact, according to a recently released report by the RIAA, U.S. vinyl sales generated more revenue for the music industry than ad-supported, free streaming by services like YouTube and Spotify over the past year. The DMCA actually thwarts the success of digital services that are prepared to pay musicians a living wage. These legitimate services are having a difficult time getting consumers to pay for music when illegal copies of our music are readily made available through services that hide behind the DMCA. In sum, the DMCA simply doesn't work. It's impossible for tens of thousands of individual songwriters and artists to muster the resources necessary to comply with its application. The tech companies who benefit from the DMCA today were not the intended protectorate when it was signed into law nearly two decades ago. We ask you to recommend sensible reform that balances our interests as creators with the interests of the companies who exploit our creations for their financial enrichment. It's only then that consumers will truly benefit.⁵⁹

19 major music organizations also submitted a joint brief explaining the myriad flaws in the DMCA -- a law passed during the dial-up era -- and how it harms the Music Community:

The Music Community's list of frustrations with the DMCA is long. A broken "notice-and-takedown" system. Toothless repeat infringer policies. Active services mischaracterized as passive intermediaries. Incentives for services to embrace willful blindness instead of preventing known and widespread infringement. The words "representative list" read out of the statute... Several factors have contributed to the failure of the DMCA to fulfill its purpose. To start, Congress enacted the DMCA in 1998 when dial-up Internet speeds and static web sites predominated. Soon thereafter, individuals could be worldwide publishers of content on peer-to-peer networks and service providers began to distribute massive amounts of content uploaded to their servers. And then came along more sophisticated search engines, social networks, and an explosion of smartphones and other mobile Internet access devices. The rules for service providers and tools for content creators set forth in the DMCA proved unsuitable for this new world. There is no evidence that Congress anticipated that Google or any service provider would receive and be required to respond to more than one billion takedown notices. Google wears this as a badge of honor, yet this fact emphasizes the failure of the DMCA to address the challenges faced by content owners today. Given all of these fundamental changes, a law that might have made sense in 1998 is now not only obsolete but actually harmful. The problem is compounded by the fact that, as courts, too, have struggled to apply this outdated law for the present day, DMCA has been shifted from its original intent through a series of judicial rulings to strip away adequate protection for content owners. To start, courts have expanded application of the

⁵⁹ Comments of Recording Artists & Songwriters to U.S. Copyright Office, Library of Congress, *RE: Section 512 Study: Notice and Request for Public Comment, Docket No. 2015-7*. Artists included Bryan Adams, Christina Aguilera, Tony Bennett, Jon Bon Jovi, Garth Brooks Chris Cornell, Dave Matthews Band, deadmau5, Mick Fleetwood, Don Henley, Billy Idol, Billy Joel, Maroon 5, Bruno Mars, John Mayer, Pearl Jam, Katy Perry, Lionel Richie, Gwen Stefani, Rod Stewart, Pete Townshend, Steven Tyler, Pharrell Williams and more. See <https://www.regulations.gov/contentStreamer?documentId=COLC-2015-0013-90800&attachmentNumber=1&disposition=attachment&contentType=pdf>, pp.2-3, DIDP Ex.A64; and DIDP Ex.A63



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safe harbors well beyond the passive service providers of 1998 to more active distributors of music that compete directly with services that must obtain licenses. The result: a Hobson's Choice for content owners, either to license content for much less than it's worth, or have the broken notice-and-takedown system as the only recourse. Is it any surprise that in this distorted marketplace revenue from sales of vinyl records outpaces revenue from on-demand, ad-supported video platforms making billions of transmissions annually? Courts have also given little meaning to key provisions for content owners in the DMCA bargain. Examples include "red flag" knowledge, repeat infringer policies and representative lists. The result: safe harbor status for services that choose to stick their heads in the sand rather than do their fair share, forcing content owners to divert valuable resources from away creating content to sending minimally effective take down notices, or for content owners with limited resources, to actually refrain from sending takedown notices at all. Content owners, especially those with limited resources, simply cannot take on the entire digital universe alone. At its worst, the DMCA safe harbors have become a business plan for profiting off of stolen content; at best, the system is a de facto government subsidy enriching some digital services at the expense of creators.⁶⁰

Many legal experts in the field of copyright law and music have reached the same conclusion:

The Safe Harbor Provisions were written to prevent isolated infringement by third parties through the use of ISPs and the notice-and-takedown provisions would have alone been an efficient alternative to legal proceedings if the Internet landscape had remained relatively same as it was in 1998. However, today, music creators are faced with the overwhelming burden of detecting these instances of infringement and notifying the service provider every single time a user posts and re-posts the work. Unfortunately, changes in the marketplace have presented the music community with the insurmountable burden of notifying ISPs for millions of instances of infringements which occur by the posting of links on thousands of unauthorized sources. After 18 years of changes in the marketplace, the balance of burdens placed on ISPs and creators to monitor for copyright infringement has greatly tipped in favor of the service providers.⁶¹

Although Music Community members can notify these services when their content is illegally posted, users (or the pirate websites) often repost the same content almost instantly, making it impossible for music community members to prevent the unauthorized distribution of their work. As such the music community is stuck using their own resources to police repeated abuse and in many cases are left bearing the costs of litigation if the service does not comply. To make matters worse, even if music community members are able to secure a judgment against rogue sites, the infringing actor responsible for hosting the site may be impossible to locate, which again leaves the music community without any remedy.⁶²

⁶⁰ Comments of "Music Community" to U.S. Copyright Office, Library of Congress, *Section 512 Study: Notice and Request for Public Comment, Docket No. 2015-7*, <https://www.regulations.gov/contentStreamer?documentId=COLC-2015-0013-89806&attachmentNumber=1&disposition=attachment&contentType=pdf>, pp.2-3, DIDP Ex.A65

⁶¹ Comments of LaPolt Law to U.S. Copyright Office, Library of Congress, *Section 512 Study: Notice and Request for Public Comment, Docket No. 2015-7*, <https://www.regulations.gov/contentStreamer?documentId=COLC-2015-0013-89896&attachmentNumber=1&disposition=attachment&contentType=pdf>, p.3, DIDP Ex.A66

⁶² The pirate operator usually changes domain names by continually switching to new domains under different gTLD or ccTLD extensions e.g. MP3Skull moved from MP3Skull.yoga to MP3Skull.mn to MP3Skull.vg (MP3Skull.vg is operating as of April 4th, 2016). See *RIAA Wins \$22 Million MP3Skull Judgment, But They'll Never See A Dime And The Site Is Still Online*, Hypebot.com, February 27, 2016, <http://www.hypebot.com/hypebot/2016/02/riaa-wins-22-million-mp3skull-judgement-but-theyll-never-see-a-dime-and-the-site-is-still-online.html> and *Music labels win \$22.2m damages from MP3Skull – if they can find its owners*, The Guardian, February 26, 2016, <https://www.theguardian.com/technology/2016/feb/26/music-labels-damages-mp3skull-owners>, DIDP Ex.A70



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According to the Content Creators Coalition:

The DMCA was primarily designed to prevent isolated infringement by third parties on specific online sites when connection speeds were slower than today and storage space was limited. In that environment, these third parties were not able to infringe on the massive scale that they do today, and the “takedown notice” provisions were thought to provide an alternative to lengthy and expensive legal proceedings. However, it has had the exact opposite effect, leaving artists with little recourse if a legitimate takedown notice is denied. Legal representation is expensive and Section 512 does not allow for damages in all but the most egregious circumstances.⁶³ ...Instead of sending a relatively small number of “take-down” notices to prevent isolated infringement in a manner that ensures the material doesn’t reappear, musicians are instead faced with the unprecedented burden of attempting to “take-down” literally billions of infringing copies of music and associated links from thousands of unauthorized sources in an environment where infringers feel free to simply continuously repost links to the infringing content. This mismatch between the amount of infringement and the burden of enforcement has increasingly led to the devaluation of music and the perception that there is no effective remedy against unauthorized infringement. Once a song is available, authorized or not, the law provides no means to effectively protect the musicians’ property.⁶⁴ The process doesn’t work for large-scale entities, and the problem is infinitely worse for small-scale entities and individual creators.... What is expensive and difficult for large copyright owners is an impossible challenge for small copyright owners seeking to protect the value of their works from indiscriminate sharing online.⁶⁵ As Maria Schneider, a three-time GRAMMY winning jazz and classical composer, bandleader and conductor noted in describing the frustration with the DMCA, “[t]he DMCA makes it my responsibility to police the entire Internet on a daily basis. As fast as I take my music down, it reappears again on the same site—an endless whack-a-mole game.”⁶⁶

As observed by Marquette University Law School Professor Bruce Boyden:

Even for the largest media companies with the most resources at their disposal, attempting to purge a site of even a fraction of the highest-value content is like trying to bail out an oil tanker with a thimble. . . . The expenses of locating, identifying, and then sending a notice for that many files is so significant that even large companies must limit their efforts.⁶⁷

This observation is confirmed by the world’s largest music company⁶⁸ Universal Music Group (“UMG”):

Like many other copyright owners, UMG has been compelled to devote extraordinary resources . . .and millions of dollars – including personnel expense, investments in computer hardware and software, third-party vendor expenses, and substantial contributions to trade associations – specifically and solely to protect its interests, and those of its recording artists and songwriters, against

⁶³ Comments of Content Creators Coalition to U.S. Copyright Office, Library of Congress, *Section 512 Study: Notice and Request for Public Comment*, Docket No. 2015-7,

<https://www.regulations.gov/contentStreamer?documentId=COLC-2015-0013-90917&attachmentNumber=1&disposition=attachment&contentType=pdf>, pp.10-11, DIDP Ex.A67

⁶⁴ Ibid, p.11

⁶⁵ Ibid, p.22

⁶⁶ See Section 512 of Title 17: Hearing Before the Subcomm. on Courts, Intell. Prop. and the Internet of the H. Comm on the Judiciary, 113th Cong. 57 (2014) (statement of Maria Schneider).

⁶⁷ For data on the quantity of notices sent by the Motion Picture Association of America, see Bruce Boyden, *The Failure of the DMCA Notice and Takedown System: A Twentieth Century Solution for a Twenty-First Century Problem*, CENTER FOR PROTECTION OF INTELL. PROP. (Dec. 5, 2013)

⁶⁸ UMG has 26.5% global market share in recorded music (2010). See UMG 2011 Investor Meeting presentation, <http://vivendi.com/wp-content/uploads/2011/11/umg-investor-presentation-november-2011-final.pdf>, p.3,DIDP Ex.A71



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online infringement. However, notwithstanding this investment and dedication by UMG, the extent of online infringement and the rate at which it is continuing to grow, coupled with the imbalance of burdens between copyright owners and service providers under the current legal system, have rendered it impossible to fully address the massive violations of UMG's intellectual property rights. UMG...owns or controls the copyright for millions of recordings and several million more compositions... Under the current legal regime, and the burdens it has imposed, UMG is simply unable to protect its entire catalog and the wealth of intellectual property that it represents. ...For purposes of illustration...UMG is the distributor of the Taylor Swift album "1989" which was released by her label, Big Machine Records...The magnitude of the online infringement of "1989" was massive and required significant additional steps. First, UMG adopted a policy of actively searching for and blocking the album and all but one of its tracks on YouTube, rather than monetizing that content on the YouTube platform. And second, UMG devoted additional efforts to taking the recordings down from two other sites – SoundCloud and Tumblr – which paid no royalty at all at the time, and which responded relatively quickly to takedown notices. These efforts came at a considerable cost to both UMG and Big Machine Records. A staff of UMG employees devoted essentially 100% of their time between November 2014 and February 2015 to manually search for infringements of "1989" and its tracks on YouTube and other sites, so that these unlawful uses could be blocked or taken down. These efforts were supplemented by approximately a dozen employees working for IFPI who devoted a significant portion of their work days to the same task. Since the release of the album and through March 11, 2016, UMG or its agents have had to send over 66,000 DMCA takedown notices to online sites hosting copies of "1989" or its tracks. This is in addition to nearly 114,000 blocks that were automatically put in place through YouTube's Content ID system (described in response to No. 15 below), and nearly 30,000 additional blocks or takedowns that UMG or its agents manually placed through online interfaces that YouTube and SoundCloud make available to copyright owners. In addition, trade associations working on UMG's behalf, including RIAA and IFPI, identified over half a million URLs that link to infringements of "1989" since the album was released, and requested that search engines delist those URLs.⁶⁹ On the positive side, these massive efforts bore some fruit. Almost immediately, UMG and Big Machine Records began seeing evidence that consumers looking for unlicensed online copies of "1989" were unable to find them, and were thus being driven to purchase the album.⁷⁰

According to the Copyright Alliance:

Sixty-eight percent of...creators.. have never filed a takedown notice before because (1) they have either never heard of it; (2) it would take too much effort; (3) the process is too difficult to navigate; or (4) they are skeptical it would do anything to stop online infringement.⁷¹ Individual creators who file notices lack the resources of larger copyright owners to make a meaningful impact. Eighty-five percent of those we surveyed said they issue takedown notices all by themselves, taking time away from their creative pursuits, which pushes many to give up enforcement efforts all together. These creators are defenseless against the volume and reach of online infringement, especially in light of how easy it is to re-post something nowadays.⁷²

⁶⁹ See 17 U.S.C. § 512(d), <http://www.copyright.gov/title17/92chap5.html#512>

⁷⁰ Comments of Universal Music Group to U.S. Copyright Office, Library of Congress, *Section 512 Study: Notice and Request for Public Comment, Docket No. 2015-7*, <https://www.regulations.gov/contentStreamer?documentId=COLC-2015-0013-90321&attachmentNumber=1&disposition=attachment&contentType=pdf>, pp5-7, DIDP Ex.A69

⁷¹ Comments of Copyright Alliance to U.S. Copyright Office, Library of Congress, *Section 512 Study: Notice and Request for Public Comment, Docket No. 2015-7*, <https://www.regulations.gov/contentStreamer?documentId=COLC-2015-0013-89991&attachmentNumber=1&disposition=attachment&contentType=pdf>, p.8, DIDP Ex.A68

⁷² Ibid, p.9



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Furthermore, according to the British Phonographic Industry (BPI):

Concerted efforts by the wider music community to build a healthy digital market have been held back by search engines and other intermediaries continuing to direct users and revenues towards sites that defraud artists and labels. The BPI has repeatedly called on Google and others to do more to ensure that consumers searching for recorded music are referred to legal services in preference to illegal sites, many of which pose risks from viruses, trojans or other harmful or inappropriate content.⁷³

Research data consistently shows that search placement plays an important role in determining where consumers go to acquire music and other entertainment. A 2014 study by the Technology Policy Institute highlighted that “*changing the prominence of pirate and legal links has a strong impact on user choices: users are more likely to consume legally (and less likely to infringe copyright) when legal content is more prominent in search results.*” The study also found that users whose initial search terms indicate an intention to consume pirated content are more likely to use legal channels when pirated content is harder to find in search results.⁷⁴

By not awarding .MUSIC to DotMusic, the Music Community will lose the only opportunity to offer assurance to Internet users that all .MUSIC sites are indeed trusted, safe and licensed. This would also benefit global consumers by helping search engines provide a better user experience by replacing unsafe, insecure pirate sites (that dominate music-themed web search results today) with relevant and higher quality .MUSIC sites.⁷⁵

By virtue of ICANN’s actions and inactions pertaining to the CPE Report and process, the public interest will be harmed and the multi-stakeholder Music Community will not be able to ensure trust and reliability in the DNS for Internet users because the Music Community will not be able to govern the last remaining music-themed gTLD,⁷⁶ in violation of ICANN’s “*key responsibilities is introducing and promoting competition*”⁷⁷ in the registration of domain names, while ensuring the security and stability of the domain name system (DNS).⁷⁸ Further, ICANN disregards its own 2007 Recommendations and Principles that stated

⁷³ <https://www.bpi.co.uk/media-centre/urgent-reform-needed-to-notice-and-takedown-as-removal-of-200-millionth-illegal-search-result-from-google-approaches.aspx>, DIDP Ex.A19

⁷⁴ <https://techpolicyinstitute.org/2014/09/15/search-impact-on-piracy>, DIDP Ex.A20

⁷⁵ See <http://theverge.com/2015/11/23/9781752/google-takedown-requests-2015> (DIDP Ex.A21) and <http://billboard.com/biz/articles/news/1083146/business-matters-legal-mp3-sites-are-still-buried-by-google-search-results> (DIDP Ex.A22)

⁷⁶ No community applicant has been awarded a music-themed string in the New gTLD Program.

⁷⁷ ICANN has awarded Amazon the .SONG and .TUNES music-themed strings, See <http://nic.song> and <http://nic.tunes> (DIDP Ex.A23 and DIDP Ex.A24). Amazon is also a competing applicant for .MUSIC. Allowing Amazon to possibly be awarded the three most relevant music-themed strings violates ICANN’s Bylaws with respect to “promoting competition;” The French government also has recently criticized the agreement to move the domain name system to ICANN because “*the move hands too much control to internet giants like Google and Amazon,*” see http://theregister.co.uk/2016/03/24/france_slams_us_govt_internet_transition, http://lemonde.fr/economie/article/2016/03/24/icann-paris-denonce-une-privatisation-de-la-gouvernance-d-internet_4889567_3234.html and <http://proxy-pubminefi.diffusion.finances.gouv.fr/pub/document/18/20672.pdf>, DIDP Ex.A25

⁷⁸ <https://newgtlds.icann.org/en/about/program>, DIDP Ex.A26



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“where an applicant lays any claim that the TLD is intended to support a particular community...that claim will be taken on trust.”⁷⁹

Without a reserved, safe and reliable zone on the Internet dedicated to the Music Community, the Internet community and the public interest will be harmed because the Music Community will be unable to promote a trusted and secure sector through enhanced safeguards.

According to WIPO, cybersquatting cases were up in 2015 driven by new gTLDs.⁸⁰ Spamhaus also revealed that “*world’s worst top-level domains*” are new gTLDs stating that “*unsurprisingly, most of the TLDs listed on this page are the “new gTLDs” recently introduced by ICANN.*” Spamhaus released these findings “*in hope that this data can help the “Good” Powers That Be (starting with ICANN) to better focus their attention on network abuse issues, aiming for a better tomorrow for our Internet.*”⁸¹

An ICANN-sponsored survey also reported that consumer trust in new gTLDs is much lower than in legacy TLDs, with approximately 50% of consumers reporting trust in new versus approximately 90% reporting trust in legacy TLDs.⁸² Researchers from the University of California, also found that new TLD domains are more than twice as likely as legacy TLDs to appear on a domain blacklist.⁸³ Further, according to the Anti-Phishing Working Group, malicious actors are testing the new gTLD space as a potential base for their activities.⁸⁴

Cybersecurity firm RiskIQ found that one out of every three content theft sites exposed users to malware. Internet users who visited content theft sites were 28 times more likely to get malware from these sites than from mainstream websites or licensed content providers.⁸⁵ According to the IP Commission Report, such abuse has significantly negative effects on consumers, economies, industry and government:⁸⁶

- *Effects on consumers.* Harm to health, harm to safety, costs incurred as a result of product failure, decreased or increased purchasing power;
- *Effects on economy as a whole.* Decline in economic growth as incentives to innovate are reduced, lost trade revenue, impact on the environment; increase in companies with substandard working conditions;

⁷⁹ <http://gns0.icann.org/en/issues/new-gtlds/summary-principles-recommendations-implementation-guidelines-22oct08.doc.pdf>, Implementation Guidelines (IG H), Mission and Core Values (CV 7-10), p.6, Ex.A4 (DIDP Ex.A27); Also see <http://gns0.icann.org/en/issues/new-gtlds/pdp-dec05-fr-part08aug07.htm>, RR Ex.A5 (DIDP Ex.A28)

⁸⁰ http://wipo.int/pressroom/en/articles/2016/article_0003.html, DIDP Ex.A29

⁸¹ <https://www.spamhaus.org/news/article/728/spamhaus-presents-the-worlds-worst-top-level-domains> and <https://www.spamhaus.org/statistics/tlds>, and <http://www.csoonline.com/article/3041346/security/maintainers-of-new-generic-top-level-domains-have-a-hard-time-keeping-abuse-in-check.html>, DIDP Ex.A30

⁸² ICANN Global Consumer Research, conducted by Nielsen, April 2015, <https://www.icann.org/news/announcement-2015-05-29-en>, DIDP Ex.A31

⁸³ “From .academy to .zone: An Analysis of the New TLD Land Rush,” University of California, San Diego, Department of Computer Science and Engineering, October 2015, doi: 10.1145/2815675.2815696, <http://www.sysnet.ucsd.edu/~voelker/pubs/newtlds-imc15.pdf>, p.12, DIDP Ex.A32

⁸⁴ Anti-Phishing Working Group, “Global Phishing Survey: Trends and Domain Name use in 1H2014,” 25 September 2014, http://docs.apwg.org/reports/APWG_Global_Phishing_Report_1H_2014.pdf; Also see <https://newgtlds.icann.org/en/reviews/dns-abuse/draft-safeguards-against-dns-abuse-15mar16-en.pdf>, p12, DIDP Ex.A33

⁸⁵ <http://www.digitalcitizensalliance.org/cac/alliance/content.aspx?page=digitalbait>, DIDP Ex.A34

⁸⁶ IP Commission Report, http://ipcommission.org/report/IP_Commission_Report_052213.pdf, 2013, p.29, DIDP Ex.A35



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- *Effects on industry.* Lost sales; lost brand value; reduced scope of operations; lost jobs and reduced ability to provide employee benefits; reduced ability to conduct R&D; increased IP protection expenses for prevention, remediation, and enforcement; increased costs from dealing with malware; reduced incentive to innovate; and
- *Effects on government.* Lost tax revenue; increased IP protection expenses for prevention, remediation, and enforcement, including costs to store, secure, and destroy seized assets; benefit to criminal networks looking to launder money or harm the public; impact on national security; and impact on civilian safety.

According to ICANN, DNS abuse refers to intentionally deceptive, conniving, or unsolicited activities that actively make use of the DNS⁸⁷ to “exploit human weaknesses in the forms of greed, carelessness, and/or naiveté. Thus, end-users tend to be the weakest links in the cyber-security chain.”⁸⁸ According to ICANN, “DNS abuse can take a number of forms, its typical aim is to distribute malware, which is used to disrupt computer operations, gather sensitive information, or gain access to private computer systems.”⁸⁹ According to cybersecurity organization IID, “most new gTLDs have failed to take off and many have already been riddled with so many fraudulent and junk registrations that they are being blocked wholesale.”⁹⁰

Google’s Transparency Report⁹¹ shows that there is widespread copyright infringement and millions of takedown requests for New gTLDs that have music-themed characteristics, such as .ROCKS (which only has 65,047 domain registrations⁹²). Infringing .ROCKS domain names include: *torrents.rocks* (with 1,145,272 copyright infringement takedown requests), *extratorrent.rocks* (940,971), *kickasstorrents.rocks* (561,065), *kickasstorrent.rocks* (507,161), *kickass-torrent.rocks* (434,016), *kickass-torrents.rocks* (348,910), *kickasstorrentz.rocks* (361,161), *thepiratebay.rocks* (264,147), *kickass.rocks* (263,673), *mp3song.rocks* (208,260) and many others retrieved on March 31 2016.⁹³ During the week of February 29, 2016 there were 21,064,571 URL takedown requests for copyright infringement removal (i.e. 125,384 takedowns per hour).⁹⁴

As noted by ICANN and GAC, .MUSIC is “string likely to invoke a level of implied trust from consumers, and carry higher levels of risk associated with consumer harm;” and (ii) that it is a “string that is linked to [a] regulated sector” that “should operate in a way that is consistent with applicable laws,”⁹⁵ As such, it is a certainty that .MUSIC, the most semantic music-themed gTLD in the New gTLD Program, will have exponentially more abuse and piracy than .ROCKS.⁹⁶ Such a result will not serve the public interest. Without community-based enhanced music safeguards in place, the popular .MUSIC string that invokes a high level

⁸⁷ <https://newgtlds.icann.org/en/reviews/dns-abuse/draft-safeguards-against-dns-abuse-15mar16-en.pdf>, p.3, Ex.A33

⁸⁸ Ibid p.10; Khonji, Mahmoud and Youssef Iraqi, “Phishing Detection: A Literature Survey,” IEEE Communications Surveys & Tutorials 15, no. 4 (Q4 2013), doi: 10.1109/SURV.2013.032213.00009, <http://ieeexplore.ieee.org/xpl/articleDetails.jsp?arnumber=6497928>

⁸⁹ “Implementation Advisory Group for Competition, Consumer Choice, and Consumer Trust (IAG-CCT): Final Recommendations on Metrics for CCT Review,” 26 September 2014, <https://newgtlds.icann.org/en/reviews/cct/iag-metrics-final-recs-26sep14-en.pdf>, p.4, DIDP Ex.A36.

⁹⁰ <http://internetidentity.com/press-release/iid-predicts-massive-botnet-takeover-of-iot-devices-by-2017>, DIDP Ex.A37

⁹¹ <https://www.google.com/transparencyreport/removals/copyright>

⁹² <https://ntldstats.com/tld/rocks>, Retrieved on March 16, 2016, DIDP Ex.A38

⁹³ See .ROCKS Google Transparency Reports, DIDP Ex.A39

⁹⁴ <https://google.com/transparencyreport/removals/copyright>, Retrieved March 19, 2016, DIDP Ex.A40; Also see <http://techtimes.com/articles/139220/20160307/google-copyright-takedowns-has-increased-about-one-billion-percent-since-2006.htm>, <https://torrentfreak.com/google-asked-remove-558-million-pirate-links-2015/> and <https://torrentfreak.com/google-asked-to-remove-100000-pirate-links-every-hour-160306/>, DIDP Ex.A40

⁹⁵ <https://icann.org/en/system/files/correspondence/crocker-to-schneider-23jun15-en.pdf>, pp.1-2, An.5,p.8,DIDP Ex.A41

⁹⁶ Rightside, the .ROCKS registry, is also an applicant for .MUSIC in partnership with Donuts



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of implied trust will be significantly abused by bad actors and experience rampant piracy to the detriment of the Internet as whole.

“The public good fully coincides...with the claims of individuals,” wrote James Madison of the Constitution’s Copyright Clause, which secures the exclusive rights of creators. These rights, like any form of private property, serve as the building blocks of a free market, promoting economic growth and individual liberty. Madison’s remarks remain just as true after more than two hundred years. *“The issues of authors are intertwined with the interests of the public,”* wrote Register of Copyrights Maria Pallante last year. *“As the first beneficiaries of the copyright law, authors are not a counterweight to the public interest but are instead at the very center of the equation.”* Pallante went on to note that *“A law that does not provide for authors would be illogical—hardly a copyright law at all. And it would not deserve the respect of the public.”*⁹⁷

Copyright benefits the public by creating a marketplace for creative and expressive works. [For example, in the U.S] this marketplace currently contributes over \$1 trillion a year to U.S. GDP, directly employs 5.4 million people (with average wages 33% higher than national average), and generates \$141 billion in exports. The existence of this marketplace further incentivizes the creation and dissemination of works which promote the progress of art, science, culture, and knowledge. Consumers experience this benefit firsthand. Millions of consumers are able to enjoy music on numerous platforms that did not exist even a decade ago.⁹⁸

The public benefits of a robust copyright system are not solely economic. Copyright protects human rights. Article 27 of the Universal Declaration of Human Rights (UDHR),⁹⁹ adopted in 1948 by the UN General Assembly, states:

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Copyright also advances free speech values. The Supreme Court has said that *“the Framers intended copyright itself to be the engine of free expression. By establishing a marketable right to the use of one’s expression, copyright supplies the economic incentive to create and disseminate ideas.”*¹⁰⁰ Indeed, creators and the creative communities are on the front lines defending their—and by extension everyone’s—right to free expression.

As indicated earlier, ICANN’s Articles of Incorporation commit ICANN to *“carrying out its activities in conformity with relevant principles of international law and applicable international conventions and local law.”* As such, ICANN’s Articles apply to .MUSIC, a *“string that is linked to regulated sector.”*¹⁰¹

Furthermore, ICANN has a number of policies and obligations concerning their relationship with the Internet user. These include issues such as *“competition, consumer protection, security, stability and resiliency,*

⁹⁷ https://copyrightalliance.org/2014/03/copyright_public_interest_and_free_trade, DIDP Ex.A42

⁹⁸ Ibid

⁹⁹ <http://www.un.org/en/universal-declaration-human-rights/index.html>, DIDP Ex.A43; Also see U.N Guiding Principles on Business and Human Rights, ‘Protect, Respect and Remedy’ Framework,

http://ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf, p. 5, DIDP Ex.A44

¹⁰⁰ http://scholar.google.com/scholar_case?case=12801604581154452950

¹⁰¹ <https://icann.org/en/system/files/correspondence/crocker-to-schneider-23jun15-en.pdf>, pp.1-2, DIDP Ex.A41



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*malicious abuse issues, sovereignty concerns, and rights protection.”*¹⁰² According to the KnjOn Report “Concerning issues of consumer trust on the Internet as they apply to ICANN, the ICANN Compliance function, ICANN registries, and ICANN registrars (March 2016):”

ICANN is not connecting to consumers, but the abusive parties are connecting to consumers. So what the consumer sees is the ugly side of the Internet. The actual access to ICANN’s complaint or compliance process is hidden. ICANN’s website structure appears designed to avoid accepting complaints from consumers and deflecting any responsibility to external entities. Whether by design or negligence, the problem needs to be addressed immediately. Obfuscation and misdirection are not strategies for gaining consumer trust.¹⁰³

Significant abuse and material harm to consumers and the Music Community will be prevented if DotMusic’s community initiative is granted .MUSIC. DotMusic’s community-based enhanced music safeguards will protect the popular and sensitive .MUSIC string. According to ICANN:

ICANN is not the content police.¹⁰⁴

Complaints regarding copyright infringement due to Internet and website content are outside of ICANN’s scope and authority.¹⁰⁵

However, such statements in relation to ICANN’s authority do not release ICANN of serious accountability and responsibility towards serving the public interest and making decisions within its control and authority to maximize consumer trust. As evidenced previously, if DotMusic is not delegated .MUSIC then pirates and bad actors will continue to materially abuse the Music Community and compromise consumer trust. Such malicious conduct will proliferate even further because of the loophole that deters meaningful copyright enforcement compliance because copyright protection is not within ICANN’s authority.

In agreement with the FTC (that “*expressed concerns about the need for more consumer protection safeguards...highlighting again the potential for significant consumer harm...magnify[ing] both the abuse of the domain name system and the...challenges...in tracking down Internet fraudsters*”¹⁰⁶), a safe, secure and trusted .MUSIC gTLD with music community-tailored enhanced safeguards that enforce copyright protection and protect the global music community and enhance consumer trust is of paramount significance.

¹⁰² See Competition, Consumer Trust and Consumer Choice Review (CCT), <https://icann.org/resources/reviews/aoc/cct>, DIDP Ex.A46 and ICANN Affirmation of Commitments, <https://icann.org/resources/pages/affirmation-of-commitments-2009-09-30-en>, DIDP Ex.A47

¹⁰³ KnjOn March 2016: Internet Limbo, <http://www.knujon.com/knujon-icann-consumers-rygy-limbo-032016.pdf>, p.56, DIDP Ex.A48

¹⁰⁴ <https://www.icann.org/news/blog/icann-is-not-the-internet-content-police>, DIDP Ex.49

¹⁰⁵ <https://www.icann.org/resources/pages/copyright-2013-05-03-en>, DIDP Ex.50

¹⁰⁶ See https://www.ftc.gov/sites/default/files/documents/public_statements/icanns-plan-increase-available-generic-top-level-domains/111216letter-icann.pdf and <https://www.ftc.gov/news-events/press-releases/2011/12/ftc-warns-rapid-expansion-internet-domain-name-system-could-leave>, DIDP Ex.A51



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D. Conclusion

As set forth in the RR, the CPE Report and .MUSIC CPE process present serious deficiencies and concerns of conflicts of interest that were publicly disclosed to the ICANN Board, the ICANN staff and the EIU before the commencement of CPE.¹⁰⁷ There are no compelling reasons for confidentiality in disclosing the requested documents because it would serve the global public interest to do so and ensure the integrity of ICANN's deliberative and decision-making process while protecting consumers and the Music Community. We also note that CPE has invoked the majority of ICANN accountability mechanisms (and ICANN resources) in the last few years. As such, it would serve the public interest to disclose all documents requested to ensure ICANN transparency, accountability, credibility, predictability and non-discrimination.

On April 12th, 2016, the ICANN Board responded to the GNSO's query concerning ICANN's definition of the "public interest." ICANN Chairman Dr. Steve Crocker clarified that "*historically at ICANN, there has been no explicit definition of the term "global public interest" and that "future conversation and work on exploring the public interest within ICANN's remit will require global, multistakeholder, bottom-up discussion."*¹⁰⁸

According to ICANN:

I. Board interpretation and consideration of the public interest

While, historically at ICANN, there has been no explicit definition of the term "global public interest," the Board has understood the term within the context of Paragraph 3 of the Articles of Incorporation: "*In furtherance of the foregoing purposes, and in recognition of the fact that the Internet is an international network of networks, owned by no single nation, individual or organization, the Corporation shall, except as limited by Article 5 hereof, pursue the charitable and*

¹⁰⁷ Before the .MUSIC CPE process commenced, DotMusic publicly informed the ICANN Board and the EIU (at ICANN 52 Public Forum) that: "[DotMusic has] some serious concerns. The chairman of Google, Eric Schmidt, is on the Board of "The Economist." Google is an applicant for .MUSIC. "The Economist" grades our CPE. This is a serious conflict of interest... [DotMusic] will proceed with CPE but with disclosed prejudice." See ICANN 52 Singapore Meeting Public Forum Transcript, February 12, 2015, <https://singapore52.icann.org/en/schedule/thu-public-forum/transcript-public-forum-12feb15-en.pdf>, DIDP Ex.A59; According to the EIU's Statement of Work agreement (the "SOW") with ICANN, the EIU had the opportunity to decline evaluating DotMusic's application in good faith after DotMusic publicly disclosed and raised the issue that there was a serious conflict of interest. According to the SOW, a mere "prospect" of a conflict of interest sufficed to decline the evaluation yet both ICANN and the EIU allowed the .MUSIC CPE to proceed (See EIU Contract and SOW at <http://newgtlds.icann.org/en/applicants/cpe/eiu-contract-sow-information-08apr15-en.zip>, March 12, 2012 Statement of Work No:[2]: "Panel Firm shall be entitled to decline any assigned application or applications it considers, in good faith, will raise the prospect of a conflict of interest," DIDP Ex. A8, Section 4, p.10); Disqualification from a proceeding because of an appearance of a conflict of interest (including cases in which a judge's impartiality might be reasonably questioned) is a globally-recognized requirement in proceedings to ensure fairness, non-discrimination and equal treatment. For example, Title 28 of the U.S. Code § 455 mandates that "*any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned*" See <https://gpo.gov/fdsys/pkg/USCODE-2011-title28/pdf/USCODE-2011-title28-partI-chap21-sec455.pdf>, DIDP Ex.61; Also see Liteky v. United States (92-6921), 510 U.S. 540 (1994): "*Recusal is required whenever there exists a genuine question concerning a judge's impartiality, and not merely when the question arises from an extrajudicial source.*" (p.552) "*The judge does not have to be subjectively biased or prejudiced, so long as he appears to be so.*" (p.554), DIDP Ex.A62

¹⁰⁸ Dr. Steve Crocker, ICANN Chair, ICANN Board Response to GNSO Query on Public Interest, <https://www.icann.org/en/system/files/correspondence/crocker-to-bladel-12apr16-en.pdf>, p.1 and p.3, DIDP Ex.A73



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*public purposes of lessening the burdens of government and promoting the global public interest in the operational stability of the Internet by (i) coordinating the assignment of Internet technical parameters as needed to maintain universal connectivity on the Internet; (ii) performing and overseeing functions related to the coordination of the Internet Protocol("IP") address space; (iii) performing and overseeing functions related to the coordination of the Internet domain name system ("DNS"), including the development of policies for determining the circumstances under which new top-level domains are added to the DNS root system; (iv) overseeing operation of the authoritative Internet DNS root server system; and (v) engaging in any other related lawful activity in furtherance of items (i) through (iv)."*¹⁰⁹

According to ICANN's DIDP "*Defined Conditions of Nondisclosure:*"¹¹⁰

Information...may still be made public if ICANN determines, under the particular circumstances, that the public interest in disclosing the information outweighs the harm that may be caused by such disclosure. Further, ICANN reserves the right to deny disclosure of information under conditions not designated above if ICANN determines that the harm in disclosing the information outweighs the public interest in disclosing the information.

Disclosure of the documents requested by DotMusic under the DIDP process does not impact nor influence the "operational stability of the Internet." As such, ICANN's interpretation and consideration of the *public interest* as it applies to Article 3 of ICANN's Articles of Incorporation cannot apply to DotMusic's DIDP Request. As such, ICANN Staff should interpret and consider "*public interest*" from a dictionary definitional perspective:

According to the Cambridge Dictionaries, *public interest* is defined as "*used when talking about people's rights to know the facts about a particular situation.*"¹¹¹

According to MacMillan Dictionary, *public interest* is defined as "*the fact that the public has a right to know about something because it affects them*" or "*the fact that people in general are interested in something.*"¹¹²

According to Oxford Dictionaries, *public interest* is defined as "*the benefit or advantage of the community as a whole; the public good.*"¹¹³

According to Dictionary.com, *public interest* is defined as "*the welfare or well-being of the general public*" and "*appeal or relevance to the general populace.*"¹¹⁴

On April 12, 2016, a California Federal Court ruled against ICANN granting DCA (one of the .AFRICA gTLD applicants) a preliminary injunction invalidating the AGB's covenant not to sue. Neutral Judge Gary Klausner's findings revealed that "*evidence suggests that ICANN intended to deny DCA's application based on pretext:*"

¹⁰⁹ Ibid, pp.1-2, DIDP Ex.A3; Also see Article 3 of ICANN Articles of Incorporation, <https://www.icann.org/resources/pages/governance/articles-en>, DIDP Ex.A45

¹¹⁰ See ICANN DIDP, <https://www.icann.org/resources/pages/didp-2012-02-25-en>, DIDP Ex.A3

¹¹¹ Cambridge Dictionaries definition of *public interest*, <http://dictionary.cambridge.org/us/dictionary/english/public-interest>, DIDP Ex.74

¹¹² MacMillan Dictionary definition of *public interest*, <http://www.macmillandictionary.com/us/dictionary/american/public-interest>, DIDP Ex.A75

¹¹³ Oxford Dictionaries definition of *public interest*, http://www.oxforddictionaries.com/us/definition/american_english/public-interest, DIDP Ex.A76

¹¹⁴ Dictionary.com definition of *public interest*, <http://www.dictionary.com/browse/public-interest>, DIDP Ex.A77



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The evidence suggests that ICANN intended to deny DCA's application based on pretext...As such, the Court finds serious questions regarding the enforceability of the Release due to California Civil Code § 1668. Because the Court finds serious questions regarding the enforceability of the Release due to California Civil Code § 1668, the Court need not address DCA's arguments regarding unconscionability or procurement by fraud.¹¹⁵

According to ICANN's Bylaws to "*operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness*"¹¹⁶ and in light of this U.S Court ruling that determined ICANN "*intended to deny DCA's application based on pretext*," DotMusic requests that ICANN disclose all the documents requested in this DIDP Request to serve the global public interest by showing that ICANN did not also intend to deny DotMusic's application from passing CPE.

If ICANN denies the disclosure of all the documents requested in this DIDP Request, DotMusic requests ICANN to:

- i) Define "*public interest*" with respect to the DIDP process and explain in detail how "*the harm in disclosing the information outweighs the public interest in disclosing the information*" in relation to DotMusic's statements supporting why it serves the public interest for ICANN to release all the documentation requested (*See Section C: Why It Serves Public Interest to Release the Documentation Requested*);
- ii) Provide DotMusic with Privileged Logs that clearly describe as to each document withheld the type of document, the general subject matter thereof, the date on which it was created, the authors of the document, all parties who were intended to be recipients of the document, and the legal privilege being claimed, referencing the law that recognizes such claim of privilege; and
- iii) Follow the ICANN Board Resolutions of March 10, 2016 to "*be as specific and detailed as possible in responding to DIDP requests, particularly when not disclosing requested documents.*"¹¹⁷

DotMusic requests the RR be placed on hold until the DIDP Request is fully resolved. Based on the information disclosures and documents requested in this DIDP Request, DotMusic expects to update its RR after the documentation requested is disclosed and gauged.

We thank you for your consideration of this important matter.

¹¹⁵ R. Gary Klausner, U.S. District Judge, *DotConnectAfrica Trust v. Internet Corporation for Assigned Names and Numbers & ZA Central Registry*, Case No. 16-CV-00862 RGK (JCx), April 12, 2016, <https://www.icann.org/en/system/files/files/litigation-dca-icann-motion-prelim-injunction-12apr16-en.pdf>, DIDP Ex.83; Also see Bloomberg BNA, *Judge Halts .Africa Domain; Lengthy Litigation Likely*, <http://bna.com/judge-halts-africa-n57982070034>, April 13, 2016, DIDP Ex.A84

¹¹⁶ ICANN Bylaws, Article 3, <https://www.icann.org/resources/pages/governance/bylaws-en>, DIDP Ex.A72; Also see Article 4 or Articles of Incorporation "*The Corporation shall operate for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and applicable international conventions and local law and, to the extent appropriate and consistent with these Articles and its Bylaws, through open and transparent processes that enable competition and open entry in Internet-related market.*" <https://www.icann.org/resources/pages/governance/articles-en>, DIDP Ex.A45

¹¹⁷ ICANN Board Resolution, March 10, 2016, <https://icann.org/resources/board-material/resolutions-2016-03-10-en#2.a>, DIDP Ex.A5



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Respectfully Submitted,

Constantine Roussos
Founder
DotMusic

Cc: Jason Schaeffer
Legal Counsel
DotMusic

Cc: Tina Dam
COO
DotMusic

Website: <http://www.music.us>
Supporting Organizations: <http://www.music.us/supporters>
Governance Board: <http://www.music.us/board>

Exhibit DIDP A98

Response to Documentary Information Disclosure Policy Request

To: Constantine Roussos on behalf of DotMusic Limited

Date: 15 May 2016

Re: Request No. 20160429-1

Thank you for your Amended Request for Documentary Information dated 29 April 2016 (Amended Request), which was submitted through the Internet Corporation for Assigned Names and Numbers' (ICANN's) Documentary Information Disclosure Policy (DIDP), on behalf of DotMusic Limited (DotMusic or Requester). As ICANN confirmed with DotMusic on 30 April 2016, the original DIDP was withdrawn and replaced by the Amended Request. For reference, a copy of your Amended Request is attached to the email forwarding this Response.

Items Requested

Your Amended Request seeks documentary information relating to the Community Priority Evaluation (CPE) of your application for the .MUSIC gTLD (Application ID: 1-1115-14110) and requests disclosure of:

1. "All non-public internal documents (including call records and minutes) of the communication between ICANN, the EIU and independent Quality Control service provider relating the EIU's consistent, compelling and defensible decision-making process used in developing the CPE Report determination and showcasing how DotMusic's application and CPE Process was compared to previous prevailing CPE determinations to ensure fairness, non-discrimination, transparency, predictability and consistency."
2. "All the non-public internal *draft* CPE Reports and all related internal correspondence between ICANN and the EIU related to (i) DotMusic's .MUSIC CPE; (ii) the prevailing .RADIO CPE; (iii) the prevailing .HOTEL CPE; (iv) the prevailing .SPA CPE; (v) the prevailing .ECO CPE; (vi) the prevailing .OSAKA CPE; (vii) the .GAY CPE; and (viii) all non-public internal correspondence, reports, documents, emails and any other forms of other communication showcasing how DotMusic's application and CPE Process was compared to other prevailing CPE determinations to ensure fairness, non-discrimination, transparency, predictability and consistency."
3. "All the non-public internal communication documents and non-public internal correspondence between ICANN and the EIU in formulating the CPE Guidelines that were "*prepared by the Economist Intelligence Unit*" before and after the CPE Guidelines public comment period (nearly 1 ½ years after DotMusic's 2012 Application filing)."

4. “All non-public internal documents and internal correspondence between ICANN staff that relate to the altering of the original AGB language pertaining to the *Notice of Changes of Information* section of the AGB.”
5. “The names of all the EIU CPE evaluators pertaining to the .MUSIC, .ECO, .RADIO, .SPA, .HOTEL and .OSAKA CPE processes and any correspondence between ICANN and Google’s Vice-President (also ex-ICANN chairman and ICANN Strategy Chair) Vinton Cerf to further investigate the appearance of a conflict of interest and ensure that the evaluators were qualified to evaluate a music-related CPE as explicitly required by the AGB and CPE Materials.”
6. “The name of “*the appointed independent Quality Control service provider*” per the SOW and all non-public internal documents and non-public internal correspondence between “*the appointed independent Quality Control service provider for the purposes of helping it to verify that Panel Firm's evaluation services have been and are performed in accordance with the Quality Control Guidelines*” and ICANN and/or the EIU.”

Response

CPE is a method to resolve string contention. The standards governing CPE are set forth in Module 4.2 of the New gTLD Applicant Guidebook (Guidebook), and are available at <http://newgtlds.icann.org/en/applicants/agb>. CPE will occur only if a community-based applicant in contention selects CPE, and after all applications in the contention set have completed all previous stages of the gTLD evaluation process. (See Guidebook, § 4.2.) CPEs are performed by independent CPE panels that are coordinated by the Economist Intelligent Unit (EIU), an independent third party provider, which contracts with ICANN to perform that coordination role. (See *id.*; see also, CPE webpage at <http://newgtlds.icann.org/en/applicants/cpe>.) The CPE panel’s role is to determine whether a community-based application fulfills the community priority criteria. (See *id.*) The Guidebook, CPE Panel Process Document, and the CPE Guidelines (all of which can be accessed at <http://newgtlds.icann.org/en/applicants/cpe>) set forth the guidelines, procedures, standards and criteria applied to CPEs, and make clear that the EIU and its designated panelists are the only persons or entities involved in the performance of CPEs.

As part of the evaluation process, the CPE panels review and score a community application submitted to CPE against the following four criteria: (i) Community Establishment; (ii) Nexus between Proposed String and Community; (iii) Registration Policies; and (iv) Community Endorsement. An application must score at least 14 out of a possible 16 points to prevail in a CPE; a high bar because awarding priority eliminates all non-community applicants in the contention set as well as any other non-prevailing community applicants. (See Guidebook at § 4.2; see also, CPE webpage at <http://newgtlds.icann.org/en/applicants/cpe>.)

To provide transparency of the CPE process, ICANN has established a CPE webpage on the New gTLD microsite, at <http://newgtlds.icann.org/en/applicants/cpe>, which provides

detailed information about CPEs. In particular, the following information can be accessed through the CPE webpage:

- CPE results, including information regarding to the Application ID, string, contention set number, applicant name, CPE invitation date, whether the applicant elected to participate in CPE, and the CPE status.
(<http://newgtlds.icann.org/en/applicants/cpe#invitations>)
- CPE Panel Process Document
(<http://newgtlds.icann.org/en/applicants/cpe/panel-process-07aug14-en.pdf>)
- EIU Contract and Statement of Work Information (SOW)
(<http://newgtlds.icann.org/en/applicants/cpe/eiu-contract-sow-information-08apr15-en.zip>)
- CPE Guidelines (<http://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf>)
- Draft CPE Guidelines
(<http://newgtlds.icann.org/en/applicants/cpe/guidelines-16aug13-en.pdf>)
- Community Feedback on Draft CPE Guidelines
(<http://newgtlds.icann.org/en/applicants/cpe#invitations>)
- Updated CPE Frequently Asked Questions
(<http://newgtlds.icann.org/en/applicants/cpe/faqs-10sep14-en.pdf>)
- CPE Processing Timeline
(<http://newgtlds.icann.org/en/applicants/cpe/timeline-10sep14-en.pdf>)

Item 1

Item 1 requests the disclosure of “[a]ll non-public internal documents (including call records and minutes) of the communication between ICANN, the EIU and independent Quality Control service provider” relating to the decision-making process used by the EIU relating to DotMusic’s CPE Report. As a preliminary matter, the Quality Control Program was a program that was implemented solely for the Initial Evaluation phase of the New gTLD Program to ensure that all 1930 applications have followed the same evaluation process and have been evaluated consistently. (See <https://newgtlds.icann.org/en/blog/preparing-evaluators-22nov11-en>.) The Quality Control Program did not extend to CPEs. ICANN therefore does not have any responsive documentation evidencing communication with an “independent Quality service provider” regarding DotMusic’s CPE Report.

As set forth in Module 4.2 of the Guidebook (<http://newgtlds.icann.org/en/applicants/agb/string-contention-procedures-04jun12-en.pdf>), the CPE Panel Process Document (<http://newgtlds.icann.org/en/applicants/cpe/panel-process-07aug14-en.pdf>), and the CPE Guidelines (<http://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf>), CPEs are performed by the CPE Panel, not ICANN. In response to this DIDP Request, ICANN will provide the email notification to begin CPE of DotMusic’s application that was provided to the EIU on 17 August 2015. As stated in the CPE Panel Process

Document, along with the notice to commence CPE, ICANN delivers to the EIU the public comment(s), if any, received on the application. (See CPE Process Document, Pg. 2, <http://newgtlds.icann.org/en/applicants/cpe/panel-process-07aug14-en.pdf>.)

Additionally, ICANN is also producing an email that was sent to the EIU on 9 December 2015 regarding correspondence to DotMusic concerning letters of support.

To the extent that ICANN has additional documentation that may be responsive to Item 1, those documents are subject to the following DIDP Defined Conditions for Nondisclosure and are not appropriate for disclosure:

- Internal information that, if disclosed, would or would be likely to compromise the integrity of ICANN's deliberative and decision-making process by inhibiting the candid exchange of ideas and communications, including internal documents, memoranda, and other similar communications to or from ICANN Directors, ICANN Directors' Advisors, ICANN staff, ICANN consultants, ICANN contractors, and ICANN agents.
- Information exchanged, prepared for, or derived from the deliberative and decision-making process between ICANN, its constituents, and/or other entities with which ICANN cooperates that, if disclosed, would or would be likely to compromise the integrity of the deliberative and decision-making process between and among ICANN, its constituents, and/or other entities with which ICANN cooperates by inhibiting the candid exchange of ideas and communications.
- Confidential business information and/or internal policies and procedures.
- Drafts of all correspondence, reports, documents, agreements, contracts, emails, or any other forms of communication.

Notwithstanding the applicable Defined Conditions of Nondisclosure, ICANN also evaluated the documents subject to these conditions to determine if the public interest in disclosing them outweighs the harm that may be caused by such disclosure. ICANN has determined that there are no particular circumstances for which the public interest in disclosing the information outweighs the harm that may be caused to ICANN, its contractual relationships, and its contractors' deliberative processes by the requested disclosure.

Item 2

Item 2 seeks the disclosure of “[a]ll the non-public internal *draft* CPE Reports and all related internal correspondence between ICANN and the EIU related to (i) DotMusic’s .MUSIC CPE; (ii) the prevailing .RADIO CPE; (iii) the prevailing .HOTEL CPE; (iv) the prevailing .SPA CPE; (v) the prevailing .ECO CPE; (vi) the prevailing .OSAKA CPE; (vii) the .GAY CPE; and (viii) all non-public internal correspondence, reports, documents, emails and any other forms of other communication showcasing how DotMusic’s application and CPE Process was compared to other prevailing CPE

determinations to ensure fairness, non-discrimination, transparency, predictability and consistency.”

To the extent that there are any documents responsive to Items 2(i) and 2(viii), those documents are subject to the following DIDP Defined Conditions for Nondisclosure and are not appropriate for disclosure:

- Internal information that, if disclosed, would or would be likely to compromise the integrity of ICANN's deliberative and decision-making process by inhibiting the candid exchange of ideas and communications, including internal documents, memoranda, and other similar communications to or from ICANN Directors, ICANN Directors' Advisors, ICANN staff, ICANN consultants, ICANN contractors, and ICANN agents.
- Information exchanged, prepared for, or derived from the deliberative and decision-making process between ICANN, its constituents, and/or other entities with which ICANN cooperates that, if disclosed, would or would be likely to compromise the integrity of the deliberative and decision-making process between and among ICANN, its constituents, and/or other entities with which ICANN cooperates by inhibiting the candid exchange of ideas and communications.
- Confidential business information and/or internal policies and procedures.
- Drafts of all correspondence, reports, documents, agreements, contracts, emails, or any other forms of communication.

With respect to your request for Items 2(ii) through 2(v) seeking documentary information regarding other applicants' CPEs, to the extent that there are any responsive documents, those documents are subject to the following DIDP Defined Conditions for Nondisclosure and are not appropriate for disclosure:

- Internal information that, if disclosed, would or would be likely to compromise the integrity of ICANN's deliberative and decision-making process by inhibiting the candid exchange of ideas and communications, including internal documents, memoranda, and other similar communications to or from ICANN Directors, ICANN Directors' Advisors, ICANN staff, ICANN consultants, ICANN contractors, and ICANN agents.
- Information exchanged, prepared for, or derived from the deliberative and decision-making process between ICANN, its constituents, and/or other entities with which ICANN cooperates that, if disclosed, would or would be likely to compromise the integrity of the deliberative and decision-making process between and among ICANN, its constituents, and/or other entities with which ICANN cooperates by inhibiting the candid exchange of ideas and communications.

- Information provided to ICANN by a party that, if disclosed, would or would be likely to materially prejudice the commercial interests, financial interests, and/or competitive position of such party or was provided to ICANN pursuant to a nondisclosure agreement or nondisclosure provision within an agreement.
- Confidential business information and/or internal policies and procedures.
- Drafts of all correspondence, reports, documents, agreements, contracts, emails, or any other forms of communication.

Notwithstanding the applicable Defined Conditions of Nondisclosure for Items 2(i) through 2(v), ICANN also evaluated the documents subject to these conditions to determine if the public interest in disclosing them outweighs the harm that may be caused by such disclosure. ICANN has determined that there are no particular circumstances for which the public interest in disclosing the information outweighs the harm that may be caused to ICANN, its contractual relationships, and its contractors' deliberative processes by the requested disclosure.

Item 3

Item 3 requests the disclosure of “[a]ll the non-public internal communication documents and non-public internal correspondence between ICANN and the EIU in formulating the CPE Guidelines that were *“prepared by the Economist Intelligence Unit” before and after the CPE Guidelines public comment period.*” In advance of CPE commencing, ICANN published the CPE Evaluation Guidelines to ensure quality, consistency and transparency in the evaluation process. The CPE Guidelines are an accompanying document to the Applicant Guidebook, and are meant to provide additional clarity around the process and scoring principles outlined in the AGB. The Guidelines do not modify the framework or standards laid out in the AGB. The CPE Guidelines were developed by the EIU. On 16 August 2013, ICANN posted a draft version of the CPE Guidelines for community comment. (<https://newgtlds.icann.org/en/applicants/cpe/guidelines-16aug13-en.pdf>; and <https://newgtlds.icann.org/en/announcements-and-media/announcement-4-16aug13-en>.) Twelve comments were received and published on the CPE web page including DotMusic Limited's comment, at <https://newgtlds.icann.org/en/applicants/cpe>. After careful consideration of the community feedback, the EIU finalized and ICANN published the CPE Guidelines on 27 September 2013. (<https://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf>.)

To the extent that there are any documents responsive to Item 3 that have not been published, those documents are subject to the following Defined Conditions of Nondisclosure and are not appropriate for disclosure:

- Internal information that, if disclosed, would or would be likely to compromise the integrity of ICANN's deliberative and decision-making process by inhibiting the candid exchange of ideas and communications, including internal documents, memoranda, and other similar communications to or from ICANN Directors,

ICANN Directors' Advisors, ICANN staff, ICANN consultants, ICANN contractors, and ICANN agents.

- Information exchanged, prepared for, or derived from the deliberative and decision-making process between ICANN, its constituents, and/or other entities with which ICANN cooperates that, if disclosed, would or would be likely to compromise the integrity of the deliberative and decision-making process between and among ICANN, its constituents, and/or other entities with which ICANN cooperates by inhibiting the candid exchange of ideas and communications.
- Information provided to ICANN by a party that, if disclosed, would or would be likely to materially prejudice the commercial interests, financial interests, and/or competitive position of such party or was provided to ICANN pursuant to a nondisclosure agreement or nondisclosure provision within an agreement.
- Confidential business information and/or internal policies and procedures.
- Drafts of all correspondence, reports, documents, agreements, contracts, emails, or any other forms of communication.

Notwithstanding the applicable Defined Conditions of Nondisclosure, ICANN also evaluated the documents subject to these conditions to determine if the public interest in disclosing them outweighs the harm that may be caused by such disclosure. ICANN has determined that there are no particular circumstances for which the public interest in disclosing the information outweighs the harm that may be caused to ICANN, its contractual relationships, and its contractors' deliberative processes by the requested disclosure.

Item 4

Item 4 seeks the disclosure of “[a]ll non-public internal documents and internal correspondence between ICANN staff that relate to the altering of the original [Applicant Guidebook] AGB language pertaining to the *Notice of Changes of Information* section of the AGB.” According to the explanation set forth in the Request, this Request stems from DotMusic’s belief that ICANN introduced “material new ‘change request’ language numerous times that harmed the interests of community applicants and resulted in provided preferential treatment to non-community applicants without any formal policy development.” This belief and mischaracterization of the Change Request Process misstates the facts and is contradicted by the Applicant Guidebook and the Change Request Process.

The Change Request Process was implemented pursuant to Section 1.2.7 of the Applicant Guidebook (Guidebook), which provides:

If at any time during the evaluation process information previously submitted by an applicant becomes untrue or inaccurate, the applicant

must promptly notify ICANN via submission of the appropriate forms. This includes applicant-specific information such as changes in financial position and changes in ownership or control of the applicant.

(Guidebook § 1.2.7, <https://newgtlds.icann.org/en/applicants/agb/intro-04jun12-en.pdf>.) This section of the AGB further states:

ICANN reserves the right to require a re-evaluation of the application in the event of a material change. This could involve additional fees or evaluation in a subsequent application round. Failure to notify ICANN of any change in circumstances that would render any information provided in the application false or misleading may result in denial of the application.

The Change Request Process was created during the application window in order to allow applicants to notify ICANN of changes to application materials, as required by Section 1.2.7 of the Guidebook.

In evaluating each change request, ICANN staff considers all available information concerning the change request against the following seven change request determination criteria:

1. ***Explanation*** – Is a reasonable explanation provided?
2. ***Evidence that original submission was in error*** – Are there indicia to support an assertion that the change merely corrects an error?
3. ***Other third parties affected*** – Does the change affect other third parties materially?
4. ***Precedents*** – Is the change similar to others that have already been approved? Could the change lead others to request similar changes that could affect third parties or result in undesirable effects on the program?
5. ***Fairness to applicants*** – Would allowing the change be construed as fair to the general community? Would disallowing the change be construed as unfair?
6. ***Materiality*** – Would the change affect the evaluation score or require re-evaluation of some or all of the application? Would the change affect string contention or community priority consideration?
7. ***Timing*** – Does the timing interfere with the evaluation process in some way? ICANN reserves the right to require a re-evaluation of the application in the event of a material change. This could involve additional fees or evaluation in a subsequent application round. (AGB §1.2.7.)

(See Change Request Determination Criteria, available at <https://newgtlds.icann.org/en/applicants/global-support/change-requests>.) As explained

in detail on the Change Request Process webpage (<https://newgtlds.icann.org/en/applicants/global-support/change-requests>) and the Applicant Advisory webpage (<https://newgtlds.icann.org/en/applicants/advisories/change-request-set-05sep14-en>), these seven criteria were carefully developed to enable applicants to make necessary changes to their applications while ensuring a fair and equitable process for all applicants. The weight of each criterion may vary on a case-by-case basis, depending on the facts and circumstances surrounding the change request, the application, and the string.

As it relates to community applications, as stated on the Change Request Advisory page, requested all changes to the community definition and registration policies are deferred until after the completion of CPE. (<https://newgtlds.icann.org/en/applicants/advisories/change-request-set-05sep14-en>). In considering these types of change requests, the most relevant criteria are criteria three through seven. Criteria three, five, six, and seven are related and are considered together. (*See id.*)

A change to update an application's community definition and registration policies prior to contracting is material because: (1) other parties' decisions on whether to file a community objection to the application were made on the basis of what was in the application at the time of the objection window; (2) the community definition and registration policies serve, among other things, as a basis for determining the merits of a community objection; and (3) they are evaluated during CPE. (*See id.*)

Approval of a change request to update an application's community definition and registration policies would allow a CPE-eligible applicant to update its application based on learnings from previously posted CPE results. This causes issues of unfairness to the first applicants that went through CPE and did not have the benefit of learning from others. Allowing such a change request would be intended to improve the CPE applicant's chances to prevail in CPE, which would negatively impact the other applicants in the same contention set. Therefore, although a CPE applicant may believe that updating its application's community definition and registration policies prior to completing CPE is necessary because subsequent information showed that it previously failed to set forth criteria in its application that would satisfy CPE criteria, allowing it to do so before CPE would cause issues of unfairness to other applicants. (*See id.*)

As ICANN strives to ensure fair and equitable treatment for all applicants, all change requests of these types have been deferred until after CPE. If an applicant successfully prevails in CPE and enters into contracting, ICANN will consider approving a change request to update the community definition and registration policies prior to execution of the Registry Agreement, provided there are no pending issues impacting the application (i.e., a pending accountability mechanism triggered on the string). (*See id.*)

Contrary to DotMusic's assertion, the language in the Guidebook regarding change requests have not been altered over time. (*See* Guidebook § 1.2.7. at <https://newgtlds.icann.org/en/applicants/agb/intro-04jun12-en.pdf>.) The language in Section 1.2.7 has remained intact since the Guidebook was adopted by the ICANN Board

in June 2011. (See <https://www.icann.org/resources/board-material/resolutions-2011-06-20-en#1>.) ICANN published the change request determination criteria on 5 September 2012. (<http://newgtlds.icann.org/en/applicants/customer-service/change-requests>.) The criteria have not changed since publication. Rather, ICANN has updated the Change Request page as well as published the Applicant Advisory page, to provide more detail about the criteria and how they relate to each other. (See Applicant Advisory at <http://newgtlds.icann.org/en/applicants/advisories/change-request-set-05sep14-en>.)

The Change Request Process page was also updated on 5 September 2014 to include the following additional explanatory information regarding the Change Request Criteria:

These criteria were carefully developed to enable applicants to make necessary changes to their applications while ensuring a fair and equitable process for all applicants.

In evaluating each change request, all available information is considered against the seven criteria above. The weight of each criterion may vary on a case-by-case basis, depending on the facts and circumstances surrounding the change request, the application, and the string.

Explanation – This criterion requires that the applicant provide an explanation for the requested changes. If an explanation is not provided, the applicant is given an opportunity to remediate. As such, this criterion is always met and does not bear as much weight as the other criteria.

Evidence that original submission was in error – This criterion is applicable in cases where the applicant requests a change to correct an error. In this case, the criterion requires that the applicant provide adequate information to support the request. There are few cases of change requests to correct an error. However, when such a case is submitted, this criterion is heavily weighted.

Other third parties affected – This criterion evaluates whether the change request materially impacts other third parties, particularly other applicants. In cases where a change to application material has the potential to materially impact the status of another applicant's application, this criterion is heavily weighted.

Precedents – This criterion assesses whether approval of the change request would create a new precedent, or if it would be in-line with other similar requests that have been approved. At this stage of the New gTLD Program, it is unlikely that a change request that would create a new precedent would be approved.

Fairness to applicants – This criterion evaluates whether approving a change request would put the applicant in a position of advantage or disadvantage compared to other applicants. This criterion is related to the "Other third parties affected" criterion, and if a change request is found to

materially impact other third parties, it will likely be found to cause issues of unfairness.

Materiality – This criterion assesses how the change request will impact the status of the application and its competing applications, the string, the contention set, and any additional Program processes that it or its competing applications must complete such as Community Priority Evaluation ("CPE"). A change that is determined to be material in and of itself will not cause a change request to be rejected. However, it will cause other criteria to weigh more when considered in conjunction with each other.

Timing – This criterion determines whether the timing of the change request impacts the materiality, fairness to applicants, and other third parties affected criteria. In cases where timing of the change request is found to impact these criteria, it will be heavily weighted.

(See <https://newgtlds.icann.org/en/applicants/global-support/change-requests/>.)

Based on the foregoing, ICANN therefore does not have any responsive documentation to this Item.

Item 5

Item 5 seeks the disclosure of “[t]he names of all the EIU CPE evaluators pertaining to the .MUSIC, .ECO, .RADIO, .SPA, .HOTEL and .OSAKA CPE processes and any correspondence between ICANN and Google’s Vice-President (also ex-ICANN chairman and ICANN Strategy Chair) Vinton Cerf to further investigate the appearance of a conflict of interest and ensure that the evaluators were qualified to evaluate a music-related CPE as explicitly required by the AGB and CPE Materials.” To help assure independence of the process and evaluation of CPEs, ICANN (either Board or staff) is not involved with the CPE Panel’s evaluation of criteria, scoring decisions, or underlying analyses. Accordingly, ICANN does not have any information regarding the names of the CPE panel evaluators for any evaluation. Therefore, ICANN does not have any documents responsive to this request.

Further, ICANN does not have any documents responsive to the request for “correspondence between ICANN and Google’s Vice-President (also ex-ICANN chairman and ICANN Strategy Chair) Vinton Cerf to further investigate the appearance of a conflict of interest.” As set forth in the CPE Process Document, as part of the evaluation process, “[a]ll EIU evaluators, including the core team, have ensured that no conflicts of interest exist.” (<https://newgtlds.icann.org/en/applicants/cpe/panel-process-07aug14-en.pdf>.)

With respect to the portion of the request seeking documents related to “ensur[ing] that the evaluators were qualified to evaluate a music-related CPE”, as stated in the CPE

Process Document “[a]ll EIU evaluators undergo regular training to ensure full understanding of all CPE requirements as listed in the Applicant Guidebook, as well as to ensure consistent judgment. This process included a pilot training process, which has been followed by regular training sessions to ensure that all evaluators have the same understanding of the evaluation process and procedures.” The CPE Process Document further states that “EIU evaluators are highly qualified, they speak several languages and have expertise in applying criteria and standardized methodologies across a broad variety of issues in a consistent and systematic manner.”

(<https://newgtlds.icann.org/en/applicants/cpe/panel-process-07aug14-en.pdf>.) As noted above, ICANN is not involved in the selection of CPE evaluators and therefore, ICANN does not have any documents responsive to this item.

Item 6

Item 6 requests the disclosure of “[t]he name of *“the appointed independent Quality Control service provider”* and all non-public internal documents and non-public internal correspondence between *“the appointed independent Quality Control service provider for the purposes of helping it to verify that Panel Firm’s evaluation services have been and are performed in accordance with the Quality Control Guidelines”* and ICANN and/or the EIU.” Your request quotes from Paragraph 12 of the EIU Statement of Work (SOW) No. 2 published on the CPE webpage at <http://newgtlds.icann.org/en/applicants/cpe/eiu-contract-sow-information-08apr15-en.zip>. As specified on page 1 of the SOW, the SOW applies to the EIU’s evaluation services for CPE and Geographic Names. As discussed above in response to Item 1, the Quality Control Program was a program that was implemented solely for the Initial Evaluation phase of the New gTLD Program to ensure that all 1930 applications have followed the same evaluation process and have been evaluated consistently. (See <https://newgtlds.icann.org/en/blog/preparing-evaluators-22nov11-en>.) The Quality Control Program did not extend to CPE. Because Geographic Names evaluation was a part of Initial Evaluation, the reference to the Quality Control Program in Paragraph 12 applied to the EIU’s evaluation services for Geographic Names, not CPE. For these reasons, ICANN does not have any documents responsive to this request.

About DIDP

ICANN’s DIDP is limited to requests for documentary information already in existence within ICANN that is not publicly available. In addition, the DIDP sets forth Defined Conditions of Nondisclosure. To review a copy of the DIDP, please see <http://www.icann.org/en/about/transparency/didp>. ICANN makes every effort to be as responsive as possible to the entirety of your Request. As part of its accountability and transparency commitments, ICANN continually strives to provide as much information to the community as is reasonable. We encourage you to sign up for an account at MyICANN.org, through which you can receive daily updates regarding postings to the portions of ICANN’s website that are of interest because, as we continue to enhance our reporting mechanisms, reports will be posted for public access.

We hope this information is helpful. If you have any further inquiries, please forward them to didp@icann.org.

Subject: Re: Notification to begin evaluation of 1-1115-14110 (.MUSIC)
Date: Monday, August 17, 2015 at 11:11:19 AM Pacific Daylight Time
From: Benjamin Parisi
To: Jared Erwin
CC: Hilary Ewing, Russ Weinstein

Thanks, Jared. We'll let you know if we have any questions about this.

On Mon, Aug 17, 2015 at 10:43 AM, Jared Erwin Contact Informat on Redacted wrote:

Hi Hilary and Ben,

This email serves as the EIU's notification that evaluation can begin on application 1-1115-14110 (DotMusic LTD), community applicant for MUSIC. As per other evaluations, the following are in scope:

- Application questions 1-30a
- Application comments (these have been loaded into the external share drive for your retrieval)
- Correspondence
- Objection outcomes
- Outside research (as necessary)

The CPE micro site (<http://newgtlds.icann.org/en/applicants/cpe>) will be updated later today to reflect that evaluation is now in progress for this applicant.

Please let me know if you have any questions.

Best,

Jared

Jared Erwin

Operations Specialist

Global Domains Division

Internet Corporation for Assigned Names and Numbers (ICANN)

Contact Information Redacted

www.icann.org

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Exhibit DIDP A99

**INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION
INDEPENDENT REVIEW PANEL**

Between:

Donuts, Inc. (Applicant)

-and-

**Internet Corporation for
Assigned Names and Numbers
(ICANN) (Respondent)**

ICDR Case No. 01-14-0001-6263

FINAL DECLARATION OF THE PANEL

Independent Review Panel:

PHILIP W. BOESCH

JACK J. COE, JR. (CHAIR)

RAYNER M. HAMILTON

LIST OF ACRONYMS AND ABBREVIATIONS

BGC: ICANN Board Governance Committee.

Donuts: Donuts Inc. (Claimant).

DRSP: Dispute Resolution Service Provider.

GAC: Government Advisory Committee.

gTLD: Generic Top-Level Domain.

Guidebook: gTLD Applicant Guidebook published by ICANN, September 19, 2011.¹

ICANN: Internet Corporation for Assigned Names and Numbers (Respondent).

ICANN Articles: Articles of Incorporation of Internet Corporation for Assigned Names and Numbers.

ICANN Board: Board of Directors of Internet Corporation for Assigned Names and Numbers.

ICANN Bylaws: Corporate Bylaws of Internet Corporation for Assigned Names and Numbers.

ICC: International Chamber of Commerce.

ICC Expertise Rules: International Chamber of Commerce Expertise Rules (2003 version).

IR: Independent Review (“IRP” in quoted material).

IRB: International Rugby Board (objector to .RUGBY application).

ITF: International Tennis Federation.

NGPC: New GTLD Program Committee.

RFR: Request for Reconsideration.

SA: SportAccord (objector to .SPORTS application).

LIST OF SHORT-FORM IR CASE NAMES

Booking.com IR: *Booking.com v. ICANN*, ICDR IR Case No. 50-20-1400-0247.

DCA IR: *DotConnectAfrica Trust v. ICANN*, ICDR IR Case No. 50-2013 001083.

¹ Citations to the Guidebook are to page numbers or section numbers, depending on the context.

ICM IR: *ICM Registry, LLC v. ICANN*, ICDR IR Case No. 50-117 T-00224-08.

Merck IR: *Merck KGaA v. ICANN*, ICDR IR Case No. 01-14-0000-9604.

Vistaprint IR: *Vistaprint Ltd. v. ICANN*, ICDR IR case No. 01-14-0000-6505.

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I. INTRODUCTION

1. This Declaration is the product of an Independent Review (IR) authorized under the Bylaws of the Internet Corporation for Assigned Names and Numbers (ICANN). Those Bylaws contemplate that:

ICANN shall have in place a separate process for independent third-party review of Board actions alleged by an affected party to be inconsistent with the Articles of Incorporation or Bylaws.²

2. Under those Bylaws, standing is conferred on: “[a]ny person materially affected by a decision or action by the Board that he or she asserts is inconsistent with the Articles of Incorporation or Bylaws.”³

3. These proceedings arise out of separate applications by subsidiaries of the complainant, Donuts, Inc., to manage specific gTLDs available under the New gTLD Program authorized by a decision of the ICANN Board in June 2011.⁴ That Program was designed to make available for use an extensive range of new gTLDs and constitutes, according to ICANN, “by far ICANN’s most ambitious expansion of the Internet’s naming system.”⁵ It was undertaken with a view to “enhancing competition and consumer choice, and enabling the benefits of innovation via the introduction of new gTLDs”⁶

4. The Program had been several years in development, and reflects diverse input from “representatives from a wide variety of stakeholder groups.”⁷ The resulting policies and details of implementation are largely consolidated in the “Applicant Guidebook” (Guidebook)⁸—an essential document to which reference will often be made below.

II. THE PARTIES

² ICANN Bylaws, Article IV, Section 3.

³ Id., para. 2.

⁴ Preamble to Guidebook.

⁵ Remarks attributed to ICANN by the Booking.com IR Panel, Declaration of March 3, 2015, para.16.

⁶ Id.

⁷ Specifically:

[G]overnments, individuals, civil society, business and intellectual property constituencies, and the technology community – were engaged in discussions for more than 18 months on such questions as the demand, benefits and risks of new gTLDs, the selection criteria that should be applied, how gTLDs should be allocated, and the contractual conditions that should be required for new gTLD registries going forward.

Guidebook, (Preamble).

⁸ Guidebook, at 1-1, states in relevant part: “ThisGuidebook is the implementation of Board approved consensus policy concerning the introduction of new gTLDs, and has been revised extensively via public comment and consultation over a two-year period.”

5. The entity requesting review in this proceeding, Donuts, Inc., (Donuts) is a Delaware corporation, having its principal place of business in Washington State. Donuts is the sole owner of Steel Edge, LLC and Atomic Cross LLC, the two applicants for the strings giving rise to this IR.

6. It is in the nature of an IR that ICANN is the responding party. ICANN is organized under California law as a “non-profit public benefit corporation” and has its principal place of business in California. By its articles of incorporation, ICANN is restricted to operating “exclusively for charitable, educational, and scientific purposes within the meaning of...the Internal Revenue Code.”⁹ Its Articles elaborate on these purposes and give a sense of ICANN’s distinctive character:

In furtherance of the foregoing purposes, and in recognition of the fact that the Internet is an international network of networks, owned by no single nation, individual or organization, the Corporation shall... pursue the... purposes of lessening the burdens of government and promoting the global public interest in the operational stability of the Internet by (i) coordinating the assignment of Internet technical parameters as needed to maintain universal connectivity on the Internet; (ii) performing and overseeing functions related to the coordination of the Internet Protocol ("IP") address space; (iii) performing and overseeing functions related to the coordination of the Internet domain name system ("DNS"), including the development of policies for determining the circumstances under which new top-level domains are added to the DNS root system; (iv) overseeing operation of the authoritative Internet DNS root server system; and (v) engaging in any other related lawful activity in furtherance of items (i) through (iv).¹⁰

7. As stated by the *ICM Registry Panel*, “ICANN is no ordinary non-profit California corporation. The Government of the United States vested regulatory authority of vast dimension and pervasive global reach in ICANN.”¹¹

III. THE PANEL’S MANDATE IN BRIEF

8. As more fully discussed below in connection with the Panel’s Analysis of the Parties’ arguments, the Panel’s mandate is highly limited. The Panel is called upon to evaluate only acts (and certain failures to act) of the ICANN Board. The Panel is asked to judge such conduct against ICANN’s Bylaws and Articles, and to do so in light of a prescribed standard of review. The Panel serving in the Merck IR¹² described the exercise as follows:

[T]he Independent Review Process is a bespoke process, precisely circumscribed. The precise language used in Article IV, Section 3.4 requires the party seeking to contest an action of the Board to identify exactly such action, and also identify exactly how such action is not consistent with the Articles of Incorporation and Bylaws. Thus, a panel is

⁹ ICANN Articles, Article 3.

¹⁰ ICANN Articles, Article 3.

¹¹ ICM Registry IR Declaration of Feb. 19, 2010, para. 136.

¹² Merck IR Declaration of Dec. 10, 2015.

required to consider only the precise actions contested. Such a contesting party also bears the burden of persuasion.¹³

IV. SOURCES OF PROCEDURAL AND SUBSTANTIVE GUIDANCE

9. This IR is administered by the International Centre for Dispute Resolution (ICDR) under its Arbitration Rules as augmented by the “ICDR Supplementary Procedures for [the ICANN] Independent Review Process.” The latter ICDR text was produced pursuant to a mandate, found in the ICANN Bylaws.¹⁴

10. Given the Panel’s mandate, substantive guidance necessarily comes from ICANN’s Articles and its Bylaws. Additional sources include the Guidebook, as the principal embodiment of ICANN’s documented policies, and “relevant principles of international law and applicable international conventions and local law.”¹⁵

11. The parties have debated underlying facts and the meaning of provisions within certain ICANN constituent sources, including, in particular, ICANN’s Articles, Bylaws and the Applicant Guidebook. They have not, however, appreciably relied on particular bodies of substantive law, and correspondingly have not offered any conflicts of law analyses.

V. PROCEDURAL HISTORY

A. Procedural Events before this Proceeding

12.

On June 13, 2012, Donuts, through its subsidiary Steel Edge, LLC, applied for the string .SPORTS.

On June 13, 2012, Donuts, through its subsidiary Atomic Cross, LLC, applied for the string .RUGBY.

On March 13, 2013, the International Rugby Board (IRB) filed a community objection to Donuts’ application to manage the .RUGBY registry.

On March 13, 2013, SportAccord (SA) filed a community objection to Donuts’ application to manage the .SPORTS registry.

On January 21, 2014, ICC Expert Jonathan Taylor issued his determination sustaining Sport Accord’s objection to Steel Edge’s application to administer the registry for .SPORTS.

On January 31, 2014, ICC Expert Mark Kantor issued his determination sustaining IRB’s objection to Atomic Cross’ application to administer the registry for .RUGBY.

¹³ Merck IR Declaration, para. 22.

¹⁴ See Bylaws, Article IV, Section 3, para. 8. In the event “there is any inconsistency between [the ICDR] Supplementary Procedures and the [ICDR] Rules, [the ICDR] Supplementary Procedures will govern. ICDR Supplemental Procedures, Section 2.

¹⁵ ICANN is charged with carrying out its activities in conformity with “relevant principles of international law and applicable international conventions and local law.” ICANN Articles, Article 4.

On March 24, 2014 (approximately), Donuts sought assistance from ICANN Ombudsman Chris LaHatte in connection with objection rulings including those pertaining to .SPORTS and .RUGBY.

On July 8, 2014, Ombudsman Chris LaHatte, in a letter opinion, ruled that his competency was limited to considering certain matters of process fairness, and thus was not authorized to review the complained-of interpretations of Guidebook principles and law.

B. Procedural Events during this Proceeding

13.

On October 8, 2014, Donuts filed a Request for IR with the ICDR.

On October 8, 2014 Donuts filed with the ICDR a request for relief under ICDR's emergency arbitrator Rules.

On November 14, 2014, ICANN filed a Consolidated Response to Donuts' Request.

On November 21, 2014, Donuts agreed to withdraw its request for emergency relief in exchange for certain undertakings by ICANN.

On July 14, 2015, between 10 and 11:30 a.m. the IR Panel convened with the Parties by phone to conduct an organization meeting.

On July 17, 2015, the Panel issued its Procedural Order No 1.

On August 7, 2015, the Panel issued its Procedural Order No. 2.

On August 11 and 12, 2015, the Panel received from the Parties "post-scripts" on the subject of ICANN Bylaws, Article XI-A, Section 1 and its bearing on Donuts' requests for document production.

On August 14, 2015, the Panel issued its Procedural Order No. 3.

On August 20, 2015, Donuts filed its Supplemental Memorandum in Support of its Request for Independent Review.

On September 7, 2015, the Panel issued its Procedural Order No. 4.

On September 21, 2015, ICANN filed its Response to Donut's Supplemental Memorandum in Support of Request for Independent Review.

On September 24, 2015, the Panel by letter ruling informed the Parties that it had decided not to admit the submissions of certain third parties.

On October 8, 2015, the Hearing for Argument was held at the AAA offices at 725 South Figueroa Street, Suite 400, Los Angeles, CA.

On October 29, 2015, the Parties submitted Post-Hearing Briefs.

By email correspondence between January 4 and January 22, 2016, the Panel put questions to, and received answers from, the Parties concerning, inter alia, aspects of the Record.

VI. ICANN GUIDING PRINCIPLES AND VALUES

14. Both parties to this IR rely on interpretations of ICANN’s Articles and Bylaws. IR Panels in turn are required to compare Board conduct to those constituent documents. It has become customary for IR Declarations to set out somewhat fully the more oft-relied upon provisions of those sources. This Declaration follows that pattern.

15. First, ICANN’s Articles contain the following mandate:

[ICANN] shall operate for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and applicable international conventions and local law and, to the extent appropriate and consistent with these Articles and its Bylaws, through open and transparent processes that enable competition and open entry in Internet-related markets. To this effect, the Corporation shall cooperate as appropriate with relevant international organizations.¹⁶

16. Article III of ICANN’s Articles requires ICANN constituent bodies to the “maximum extent feasible” to practice transparency and to pursue fairness.¹⁷

17. The ICANN Bylaws, Article II, Section 3, requires, inter alia, that disparate treatment be justified by a “substantial and reasonable” cause.

18. Finally, ICANN Bylaws, Article I, Section 2 enumerates “Core Values.” Those values are to guide decisions and actions of ICANN and its constituent bodies, but are not rules in a technical sense.¹⁸ The enumerated values relied upon by Donuts in particular, are Nos. 6 through 10, as follows:

./...

6. Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest.
7. Employing open and transparent policy development mechanisms that (i) promote well-informed decisions based on expert advice, and (ii) ensure that those entities most affected can assist in the policy development process.
8. Making decisions by applying documented policies neutrally and objectively, with integrity and fairness.
9. Acting with a speed that is responsive to the needs of the Internet while, as part of the decision-making process, obtaining informed input from those entities most affected.

¹⁶ ICANN Articles, Article 4.

¹⁷ ICANN Bylaws, Article III, Section 1, state: “ICANN...and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness.”

¹⁸ In this connection, the Bylaws advise:

[The enumerated] core values are deliberately expressed in very general terms, so that they may provide useful and relevant guidance in the broadest possible range of circumstances. Because they are not narrowly prescriptive, the specific way in which they apply, individually and collectively, to each new situation will necessarily depend on many factors that cannot be fully anticipated or enumerated; and because they are statements of principle rather than practice, situations will inevitably arise in which perfect fidelity to all eleven core values simultaneously is not possible.

10. Remaining accountable to the Internet community through mechanisms that enhance ICANN's effectiveness.

./....

VII. THE APPLICATION AND OBJECTION PROCESSES INVOLVED IN THIS CASE

A. Donuts' Applications

19. The Guidebook requires that all applicants specify if their application is “community-based” (as opposed to “standard” the default designation).¹⁹ A community-based gTLD is one that is “operated for the benefit of a clearly delineated community.”²⁰ The designation is intended “for applications where there are unambiguous associations among the applicant, the community served, and the applied-for gTLD string.”²¹ By contrast, a “standard” applicant “may or may not have a formal relationship with an exclusive registrant or user population [and it] may or may not employ eligibility or use restrictions.”²²

20. The Guidebook provides that “[a] standard gTLD can be used for any purpose consistent with the requirements of the application and evaluation criteria, and with the registry agreement.”²³

21. Rather than pursuing community-based applications in connection with .SPORTS and .RUGBY, Donuts made “standard” applications, as it was fully entitled to do. Consequently, it was not required to “substantiate [by written institutional endorsements in support of the application] its status as representative of [a] community it names in the application”²⁴ nor to “demonstrate an ongoing relationship with a clearly delineated community” nor to represent that it was applying for a string “strongly and specifically related to” a specific named community. Other community-related conditions also did not apply because Donuts' applications were of the standard type.²⁵

22. Importantly, as seen in these proceedings, the fact that an application is not designated as community-based does not preclude a “community objection” from being raised against it.

B. The Objections

1. In General

¹⁹ Guidebook, at 1-25 through 1-26.

²⁰ Guidebook, at 1-25.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ Donuts, for instance, was not required to formulate, for later formalization in its registry agreement, “dedicated registration and use policies for registrants in its proposed gTLD, including appropriate security verification procedures, commensurate with the community-based purpose it has named.” Guidebook, at 1-25. Similarly, unlike a successful community applicant, Donuts would not have been required, after delegation, to undertake “certain ...contractual obligations to operate the gTLD in a manner consistent with the restrictions associated with its community-based designation.” *Id.* at 1-27.

23. The Guidebook informs applicants that a formal objection may be filed against any application.²⁶ In contrast to earlier IRs to have arisen out of objections of different kinds, this IR originates in two “community” objections.²⁷ In pertinent part, the Guidebook provides:

Established institutions associated with clearly delineated communities are eligible to file a community objection. The community named by the objector must be a community strongly associated with the applied-for gTLD string in the application that is the subject of the objection.²⁸

24. Community objections are distinctive in several ways. They may be brought by a competing applicant, provided that entity has standing. They are marshaled by institutions, not natural persons.²⁹ Community objections are not based on a superior legal claim, but rather depend on there being the requisite level of opposition to the application by a “community”, and upon certain other factors outlined below.

25. As evidenced by this case, community opposition may well be a reaction to the applicant for the string (or the applicant’s intended registration policies). The right to object arises because the string in question is associated with the community represented by the objector and the application (or the applicant’s registration policies) creates a certain level of perceived risk that the community will suffer detriment.

2. Community Objector Standing and the Community Element

26. The successful objections prosecuted against .SPORT and .RUGBY were both of the community type. According to the Guidebook, a Community Objection is one expressing “substantial opposition to the gTLD application in question from a significant portion of the community to which the gTLD string may be explicitly or implicitly targeted.”³⁰

27. With respect to community objections, there are four elements to standing: 1] the objector must be an established institution;³¹ 2] the objector must have an “ongoing relationship” with the community in question;³² 3] the community in question must be “clearly delineated;”³³ and 4] the community in question must be “strongly associated with” the gTLD string involved.³⁴

²⁶ Guidebook, at 1-26.

²⁷ The four grounds upon which an objection may be filed include one alleging superior legal rights to the string, one invoking the public interest in the observance of norms of morality and public order, one based on confusing similarity between the applied-for string and an existing string, and the one involved in this IRP, which asserts the existence of substantial opposition to the gTLD application from a significant portion of a community to which the gTLD string may be explicitly or implicitly targeted—i.e., a “community objection”. Guidebook, at 3-4.

²⁸ Guidebook, at 1-25.

²⁹ Guidebook, at 3-7.

³⁰ Guidebook, at 3-4.

³¹ *Id.*, at 3-7 through 3-8.

³² *Id.*

³³ *Id.*

³⁴ *Id.*, at 3-7

28. The Guidebook provides two lists of factors that may be balanced to determine if standing requirements have been satisfied,³⁵ but notes that the lists are not exhaustive; that is, the expert appointed to decide the objection may consider “other relevant information.”³⁶ Nor is it “expected that an objector must demonstrate satisfaction of each and every factor considered in order to satisfy the standing requirements.”³⁷

29. The Guidebook references to community objections are somewhat at variance with each other on the question of whether a gTLD can target more than one community. On the one hand, it describes a community objection as being founded on “substantial opposition to the gTLD application from a significant portion of *the* community to which the gTLD string may be explicitly or implicitly targeted.”³⁸ Elsewhere, however, the Guidebook states that the objector must be an “established institution” with “an ongoing relationship with a clearly delineated community.”³⁹

30. The notion that there may be more than one community to which a string alludes is not inconsistent with guidance found in an Implementation Guideline included in the GNSO Final Report of August 8, 2007,⁴⁰ and with the Guidebook’s instructions that the decision maker (in this case, an ICC Expert) may balance numerous factors in determining if the “clearly delineated community” standing condition has been met.⁴¹

3. The Substantive Elements in Community Objections

31. The merits portion of the analysis requires the expert to determine whether there is substantial opposition from a significant portion of the community to which the string may be targeted. The expert is instructed to test the objection against four requirements. A successful objection requires that each be met, and the burden is on the objector to prove each of the four.⁴² They are, to paraphrase: 1] the community invoked by the objector is a clearly delineated

³⁵ As to whether the objector is an established institution the list consists in: [l]evel of global recognition of the institution; [l]ength of time the institution has been in existence; and public historical evidence of its existence, such as the presence of a formal charter or national or international registration, or validation by a government, inter-governmental organization, or treaty. The Guidebook adds: “The institution must not have been established solely in conjunction with the gTLD application process.” *Id.*, at 3-7.

Regarding whether there is the required on-going relationship with a clearly delineated community, the list includes: [t]he presence of mechanisms for participation in activities, membership, and leadership; [i]nstitutional purpose related to the benefit of the associated community; [p]erformance of regular activities that benefit the associated community; and [t]he level of formal boundaries around the community. *Id.*, at 3-8.

³⁶ *Id.*, at 3-8.

³⁷ *Id.*

³⁸ *Id.*, at 3-4 (emphasis added).

³⁹ *Id.*, at 3-7 (emphasis added).

⁴⁰ See Implementation Guideline P (“[C]ommunity should be interpreted broadly and will include, for example, an economic sector, a cultural community, or a linguistic community. It may be a closely related community which believes it is impacted”). In describing the notion of “community”, the Guideline does not seem to distinguish between the standing and merits contexts.

⁴¹ See Guidebook, at 3-8.

⁴² See *Id.*, at 3-22 through 3-25.

community; 2] that community’s opposition to the application is substantial;⁴³ [3] there is a strong association between the community invoked and the applied-for gTLD string (or ‘targeting’);⁴⁴ and [4] the application creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted.⁴⁵

32. The Guidebook instructs that if opposition by a number of people or entities is established, and yet the group represented by the objector is not clearly delineated community, the objection will fail.⁴⁶

⁴³ The objector’s burden is to demonstrate “substantial” opposition within the community it has identified itself as representing; the presence of less-than-substantial opposition must lead to the objection failing. To closely paraphrase the Guidebook at 3-23, the non-exhaustive list of factors an expert might consider in testing substantiality includes:

[n]umber of expressions of opposition relative to the composition of the community; [T]he representative nature of entities expressing opposition; Level of recognized stature or weight among sources of opposition; [d]istribution or diversity among sources of expressions of opposition (including: regional subsectors of community; leadership of community; membership of community; historical defense of the community in other contexts; and the costs incurred by objector in expressing opposition, including other channels the objector may have used to convey opposition.)

⁴⁴ Targeting—that is, a strong association between the applied-for gTLD string and the community represented by the objector—is essential for a community objection to prevail. It may be determined by considering, among other factors: [s]tatements contained in application or publically made by the applicant; and associations by the public. If there is some association, but not a strong one, the opposition must fail. Guidebook, at 3-24.

⁴⁵ The Guidebook notes that “[a]n allegation of detriment that consists only of the applicant being delegated the string instead of the objector will not be sufficient for a finding of material detriment.” Guidebook, at 3-24. As with the other four factors, the Guidebook, at 3-24 through 3-25, identifies, non-exhaustively, factors that might be considered by the expert. These are:

[n]ature and extent of damage to the reputation of the community represented by the objector that would result from the applicant’s operation of the applied-for gTLD string; [e]vidence that the applicant is not acting or does not intend to act in accordance with the interests of the community or of users more widely, including evidence that the applicant has not proposed or does not intend to institute effective security protection for user interests; [i]nterference with the core activities of the community that would result from the applicant’s operation of the applied-for gTLD string; [d]ependence of the community represented by the objector on the DNS for its core activities; [n]ature and extent of concrete or economic damage to the community represented by the objector that would result from the applicant’s operation of the applied-for gTLD string; and [l]evel of certainty that alleged detrimental outcomes would occur.

⁴⁶ Guidebook, at 3-13 (paraphrase). In determining whether the community expressing opposition can be regarded as a “clearly delineated”, an expert can balance many factors, according to the Guidebook. The non-exhaustive list provided by the Guidebook includes:

“[t]he level of public recognition of the group as a community at a local and/or global level; [t]he level of formal boundaries around the community and what persons or entities are considered to form the community; the length of time the community has been in existence; the global distribution of the community (this may not apply if the community is territorial); and the number of people or entities that make up the community.

Guidebook, at 3-22 through 3-23.

IIX. THE NATURE OF ICC OBJECTION PROCEEDINGS

A. The ICC-ICANN Relationship

33. The Guidebook contemplates that resolution of objection disputes will be overseen by outside institutions. In the case of “community” objections, duties of administration were committed to the ICC’s Center for Expertise, as evidenced in a Memorandum of Understanding (the MOU). The MOU is broken into a “whereas” introductory segment and a main body which restates agreed terms; these two lists overlap with each other and cite as authorization provisions in the Guidebook. Together they help understand the ICC’s role and its relationship with ICANN. They are accordingly excerpted at length:

Whereas:

ICANN has developed a program for the introduction of new generic top-level domain names (“gTLD” and the “New gTLD Program”); [and]

The rules and procedures for the New gTLD Program are set out in the Applicant Guidebook (the “Guidebook”), the most recent version of which was published by ICANN on 11 January 2012; [and whereas]

The Guidebook, Module 3, includes a procedure by which third parties may object to an application for a new gTLD; [and whereas]

A formal objection may be filed on any one of the following four grounds: (i) String Confusion Objection; (ii) Legal Rights Objection; (iii) Limited Public Interest Objection; and (iv) Community Objection;^[47] [and whereas]

Objections to applications for new gTLDs may be submitted after ICANN posts the public portions of all applications considered complete and ready for evaluation./...;^[48][and whereas]

A formal objection to an application triggers a dispute between the objector and the applicant that shall be heard and decided by an independent expert panel; [and whereas];

A Dispute Resolution Service Provider (“DRSP”) shall administer the proceedings, and shall appoint the panel of experts that will preside over the objection proceedings; [and whereas]

Disputes triggered by objections shall be resolved in accordance with the New gTLD Dispute Resolution Procedure (the “Procedure”) and the rules of procedure of a particular DRSP that have been identified as being applicable to specific objection proceedings under the Procedure (the “DRSP Rules”); [and whereas]

⁴⁷ Citing Guidebook, § 3.2.1.

⁴⁸ Citing Guidebook, §§ 1.1.2.2 & 1.1.2.6.

Upon publication by the DRSP, the findings of the panel will be considered an expert determination and advice that ICANN will accept within the dispute resolution process;^[49] [and whereas]

The DRSP Rules for Limited Public Interest Objections and Community Objections are the Rules for Expertise of the International Chamber of Commerce (the "ICC [Expertise] Rules"), including any applicable Appendices and other supplements to such Rules that may be adopted by the ICC; [and whereas]

The Centre shall select experts and administer dispute proceedings in accordance with the Procedure and the ICC [Expertise] Rules and any supplements to the Rules as adopted by ICC; [and whereas]

The Centre, with advice and support from ICANN, shall establish the necessary structure and procedures (comprising information technology, staffing, etc.) to perform its duties as DRSP in a timely and efficient manner; [and whereas]

ICANN and the Centre shall communicate regularly with each other and seek to optimize the service that the Centre provides as a DRSP in the New gTLD Program; [and whereas]

The International Centre for Expertise of the ICC (the "Centre") has agreed to act as DRSP for ...Community Objections for at least the first round of applications in the New gTLD Program.

ICANN and ICC therefore agree as follows:

[T]he Centre shall for at least the first Round of the New gTLD Program act as DRSP and administer all disputes arising from Limited Public Interest Objections and Community Objections, as foreseen by Guidebook § 3.2.3 and Procedure Article 3.

The DRSP Rules for...Community Objections are the Rules for Expertise of the International Chamber of Commerce (the "ICC [Expertise] Rules"), including any applicable Appendices and other supplements to such Rules that may be adopted by the ICC.

The Centre shall select experts and administer dispute proceedings in accordance with the Procedure and the ICC [Expertise] Rules and any supplements to the Rules as adopted by ICC.

The Centre, with advice and support from ICANN, shall establish the necessary structure and procedures (comprising information technology, staffing, etc.) to perform its duties as DRSP in a timely and efficient manner.

ICANN and the Centre shall communicate regularly with each other and seek to optimize the service that the Centre provides as a DRSP in the New gTLD Program.

B. The Procedural Framework Governing ICC Expert Evaluations

⁴⁹ Citing Guidebook, § 3.4.6.

34. Community objections to gTLD applications are filed directly with the ICC, which is charged with subjecting objections to an administrative review and checking for compliance with certain procedural rules. The Guidebook sets limits of form and length on such objections.⁵⁰ Under the Guidebook, applicants were required to file timely responses upon being notified of an objection.⁵¹

35. The ICC Expertise Rules contemplate that the ICC will appoint an expert only after considering “the prospective expert’s qualifications relevant to the circumstances of the case” and related factors.⁵²

36. Unless otherwise agreed in writing by the parties, experts are to be “independent of the parties involved in the expertise proceedings,” and are required to execute a “statement of independence” along with a written disclosure to the Centre of “any facts or circumstances which might be of such a nature as to call into question the expert’s independence in the eyes of the parties.”⁵³ Such disclosed information is communicated to the parties, who are entitled to object that the expert does not have the necessary qualifications, including independence.

37. The Applicant Guidebook provides that one expert will serve. The Rules identify the expert’s principal task as being to present findings in a written report “after giving the parties the opportunity to be heard and/or to make written submissions.”⁵⁴

38. The Rules as published by the ICC state that, unless otherwise agreed by the parties, “the findings of the expert shall not be binding upon [them].”⁵⁵ However, the ICC Practice Note on the Administration of Cases under the New gTLD Dispute Resolution Procedure (version 2012-01-11), which supplements the ICC Expertise Rules for use in community objection proceedings, reverses that provision; the parties are deemed to have agreed that the expert report is binding upon them. In this regard, the Guidebook also provides that:

“In filing an application for a gTLD, the applicant agrees to accept the applicability of this gTLD dispute resolution process. [Likewise,] an objector accepts the applicability of this gTLD dispute resolution process by filing its objection. Upon publication by the DRSP, the findings of the panel will be considered an expert determination and advice that ICANN will accept within the dispute resolution process.”⁵⁶

⁵⁰ Attachment to Guidebook Module 3, at Article 8.

⁵¹ Guidebook, at 3-11 through 3-14.

⁵² ICC Expertise Rules, Article 3(2).

⁵³ Id., Article 3.

⁵⁴ Id., Article 12(3).

⁵⁵ Id.

⁵⁶ “Guidebook, Section 3.2 (Public Objection and Dispute Resolution Process) citing Guidebook Section § 3.4.6. In turn, the ICC Practice Note states in relevant part: “By accepting the process as defined in Article 1(d) of the [New gTLD Dispute Resolution] Procedure, parties are deemed to have agreed that the expert determination shall be binding upon [them within the meaning of Article 12(3) of the ICC Expertise Rules]. See Practice Note, version 2012-01-11, item 8.

39. On the subject of immunity, the Rules provide the “neither the experts, nor the Centre, nor ICC and its employees...shall be liable to any person for any act or omission in connection with the expertise procedure.”⁵⁷

IX. THE EXPERT DECISIONS IN THIS CASE

A. In General

40. Broadly speaking, Donuts’ dissatisfaction with the performance of the ICC experts involved in this IR relates to two broad categories. First, it complains that the experts misapplied the grounds for community objections and consequently incorrectly found that the objector in each case had carried its burden with respect to them. The second type of flaw, by contrast, consists in what Donuts alleges was a failure by one of the experts to fully disclose relationships he had with organizations affiliated with the objector.

41. In this section, the Panel will describe, in summary fashion only, the two experts’ respective determinations on the merits. The Panel will defer to a later section its discussion of issues related to expert disclosures. Although the Panel will not recount in detail the arguments of both sides or the full reasoning of the respective ICC experts, it will endeavor to touch upon what Donuts characterizes as the errors giving rise to this proceeding.

B. The .RUGBY Objection Proceeding

42. Donuts applied for .RUGBY in competition with International Rugby Board (IRB). IRB lodged a community objection. Central to the objection was Donut’s stated policy with respect to the access it intended to accord to the string. It reflects the same general philosophy associated with all of Donut’s 307 applications. Donut’s intended:

[T]o make each domain open to all legitimate uses of the multiple meanings that Internet users may ascribe to the common, English-language words chosen for those strings.” ... [which along] with the other TLDs in the Donuts family, ... will provide Internet users with opportunities for online identities and expression that do not currently exist. In doing so, the TLD will introduce significant consumer choice and competition to the Internet namespace the very purpose of ICANN’s new TLD program.⁵⁸

43. With respect to .RUGBY in particular, Donuts also posited:

[.RUGBY] is a generic term and its second level names will be attractive to a variety of Internet users. Making this TLD available to a broad audience of registrants is con-

⁵⁷ The Guidebook includes a similar immunity provision, which is nevertheless broader:

Neither the experts, the DRSP, ICANN, nor their respective employees, directors, or consultants will be liable to any party in any action for damages or injunctive relief for any act or omission in connection with any proceeding under the dispute resolution procedures.

Article 22, New gTLD Dispute Resolution Procedure (version 2011-09-19).

⁵⁸ See Application of June 13, 2013 by Atomic Cross for. RUGBY, Item 18(a).

sistent with the competition goals of the New TLD expansion program, and consistent with ICANN's objective of maximizing Internet participation.⁵⁹

44. The expert ruled in favor of IRB. Donuts cites as error before this Panel the expert's analysis concerning the likelihood of material detriment⁶⁰ to the relevant community⁶¹ posed by Donut's proposed registration policies and practices.

45. An examination of the expert's reasoned determination shows that the expert considered several forms of potential detriment, and in assessing them was influenced by what it found to be a close association between the string and one or more communities. In this respect, the expert disagreed with Donut's characterization of the string as "generic." To closely paraphrase the expert's material detriment analysis:

Objector argues that granting the [Donuts] Application would be likely to cause material detriment...for several reasons.

First, Objector points out that...Donuts has applied for gambling-related strings [enumerated] ...[and] seeks to operate gambling-related strings along with ".RUGBY" and other sports-related strings, without limitations and protections to mitigate the adverse consequences...[and] argues that association [with gambling strings] would harm the rugby community.⁶²

46. The expert found the objector's gambling-related thesis "persuasive", in light of measures taken by the rugby community to minimize the adverse effects of gambling and certain regulations and codes of conduct precluding: "Unions, Associations, Rugby bodies, clubs and persons [from engaging] in conduct that would undermine the integrity of the sport or bring it into disrepute."⁶³ The expert observed additionally that "Host Union Agreements prohibit any improper association with gambling-related sponsorships".

He concluded:

[O]peration of the ".RUGBY" gTLD by [Donuts] will create a likelihood of material detriment to the rugby community due to Donuts' proposed cross-ownership of gambling strings and sports strings, and the absence of any meaningful controls and separation in the governance structure.⁶⁴

47. Considering the objector's further theories of material detriment, the expert continued:

[O]bjector claims that persons associated with [Donuts] have a track record for weak operation of domains. [It is objector's] understanding that "the founder and CEO of Donuts was formerly President of [a certain company] with a well-known [negative] track record in the ICANN Community.

⁵⁹ Id.

⁶⁰ Regarding this objection element, see notes 43-46, supra, and accompanying text.

⁶¹ Regarding the relevant community, see notes 30-34, 46, supra, and accompanying text.

⁶² Objection Expertise in IRB v. Atomic Cross, CASE No. EXP/517/ICANN/132 (c. EXP/519/ICANN/134), issued January 31, 2014, paras. 81-83.

⁶³ Id., para. 83.

⁶⁴ Id., para. 84.

[Objector further alleges] that the public record shows that [during his tenure there were] allegations of cybersquatting – the registration, trafficking in, or using [of] domain name[s] with bad-faith intent to profit from the goodwill of a trademark belonging to another [and that] [d]uring this time, [that company and its subsidiaries] lost twenty-six...domain names disputes brought under ICANN’s Uniform Dispute Resolution Policy rules [resulting in many findings].... that “the disputed domain name ha[d] been registered and used in bad faith.”⁶⁵

48. The ICC expert noted Donuts’ silence with respect those alleged former practices. For the expert, the CEO’s history in managing domains, while “not dispositive” did “weigh in the balance.”⁶⁶ He further reasoned that:

The [Donuts] Application [also]...does not propose protection for intellectual property interests other than registered trademarks.... [T]hat approach is insufficient protection for a worldwide community characterized by so many small participants, especially in resource-poor communities and in the developing world.

The [Donuts] Application also does not offer community members an enforceable voice in governance of a gTLD strongly associated with that community. The governance structure for a community-associated domain must necessarily be more protective of the interests of that community than the governance structure for a generic domain.

/...

[It is persuasive also that Donuts] has no links at all with the worldwide rugby community [and] seeks to operate gambling-related strings along with “.RUGBY” and other sports-related strings, without limitations and protections to mitigate the adverse consequences....Donuts has applied for gambling-related strings including .BET, .BINGO, .CARDS, .CASINO and .P●KER.” The failure to have links with a sports-related community with which the domain is strongly associated, together with the prospect of cross-linkage with gambling sites, is a topic that must be the object of discussion with leading voices in the rugby community, as well as the U.K. Government^[67] and other Governments and institutions with a strong interest in the integrity of the sport...

[Although Donuts] has committed to employ a compliance staff to enforce intellectual property protections and restrain fraudulent activity [and] points to “eight additional measures” to protect users... [a] review of the measures [Donuts enumerates as its program to protect intellectual property] shows that few, if any, are new and innovative....

⁶⁵ Id., para. 85.

⁶⁶ Id., para. 86.

⁶⁷ In a preceding portion of the ruling, the expert observed that the strong opposition to the application voiced by the UK was “an extremely important factor in the balance, in view of the substantial role the U.K. plays with respect to the rugby community.” In particular, it was the “unequivocal view...of the Government of the United Kingdom...that these Applicants do ‘not represent the global community of rugby players, supporters and stakeholders [and that they] should withdraw their application.’” See, Id., para. 49.

[Donuts] claims “its absence from the rugby industry enables it to ensure groups and individuals unaffiliated with Objector and its affiliates will have the same opportunity for expression on the TLD as those with incumbent interests.” [However, that response focuses] only on Objector and its affiliates, rather than the rugby community as a whole [and]...fails to take account of the strong association between the rugby community and the particular string “.RUGBY.”

[Donuts] argues that “a group without trademark status or comparable protection on existing gTLDs should not enjoy trademark-level protection in any TLD.” That ...presumes that only registered trademarks are properly entitled to protections. While that may be true for generic domains, it is an overstatement with respect to gTLDs strongly associated with a particular global community. Small, resource-poor and non-commercial participants in a community require protection as well as larger commercial enterprises....

Finally, ...[Donuts] asserts that Objector has failed to show any level of certainty that [Donuts’] operation of the string “.RUGBY” creates a likelihood of material detriment, and no reasonable quantification of such an outcome. There is no quantification threshold in the Procedure for a “material detriment” showing. Since the question is inherently forward-looking for new domains, quantification of likely future harms cannot reasonably be expected to be easy to show. The ICANN process does not require such a rigorous empirical showing.

In light of the foregoing, the [Donuts] Objection is successful and the Objector thus prevails with respect to that Objection.⁶⁸

C. The .SPORTS Objection Proceeding

49. SportAccord (SA)⁶⁹ opposed the application of Donuts based on an alleged material detriment to a delineated community likely to occur from Donuts’ registration policies. According to SA, the relatively free access to the .SP●ORTS registry contemplated by Donuts would allow registrants not sanctioned by organized sports to nonetheless convey the seeming imprimatur of that community (a community referred to by the expert as the “Organized Sports Movement”).⁷⁰

50. The objectors argued also that a perception of an association between a .SPORT registrant and the community would interfere with the community’s anti-drug, anti-gambling, anti-racism messaging by diluting such campaigns with unsanctioned messaging on the same topics.

⁶⁸ Id., paras. 87-100 (passim).

⁶⁹ SportAccord (SA) is described by the expert as a not-for profit “umbrella organization and representative body” formed under Swiss law in 1967. Its members are international sports federations and organizers of sporting events recognized by the International Olympic Committee. Objection Expertise in SportAccord v. Steel Edge, CASE No. EXP/486/ICANN/103 issued January 21, 2014, para. 13.2. SA applied for the gTLD “.SPORT” (as distinct from “.SPORTS”—the gTLD for which Donuts applied).

⁷⁰ Id., paras. 41.1.2 & 41.2.2.

Further, the objector asserted that the registry practices of Donuts would enable ambush marketing, brand-jacking, and use of sports themes in connection with pornography.⁷¹

51. Donuts' defense questioned both SA's standing⁷² and the merits of its objection; the delineated community requirement was central to both aspects of that defense. Donuts maintained that .SPORTS potentially targets a community nearly impossible to effectively delineate,⁷³ being much broader than merely those persons that identify with *organized* sports.

52. Accordingly, argued Donuts, while the putative community of the "Organized Sports Movement" (as the expert characterized it) might be sufficiently targeted by a gTLD denominated less generically, the more generic .SPORTS string implies associations so numerous and diverse that SA cannot claim to have an ongoing relationship with them; nor could the narrow subset consisting in "the Organized Sports Movement" claim to be strongly enough associated with the .SPORTS gTLD to have standing to object.⁷⁴

53. On the merits, the substantial opposition to its application among SA members was, according to Donuts, merely the opposition of a narrow subset of all those for whom sport (in all its forms and modes of appreciation) is a concept. For Donuts, the argument for "substantiality" was weakened accordingly. It followed in Donut's view that a likelihood of detriment to the subset of organized sports bodies and their members and patrons does not equate to a likelihood of detriment to the entire class of natural and juridical entities implicitly targeted by .SPORTS.

54. The expert's analysis differed with that of Donuts. On the critical question of community delineation, the expert interpreted the Guidebook and certain background materials to anticipate that there may be more than one community impliedly targeted by a given gTLD.⁷⁵ The expert interpreted SA's pleadings as referring to organized sports, rather than with all sports activities.⁷⁶ For the expert, .SPORTS readily conjured a strong association with the Organized Sports Movement, a community that could be identified with sufficient precision to confer standing, and likewise to be amenable to assessments of potential detriment and analyses of related objection requirements.

55. One consequence of the expert's finding of a close association between .SPORTS and the Organized Sports Movement was that the requirement of "a likelihood of material detriment" could be more easily satisfied, which ultimately it was deemed to be.⁷⁷

56. A recurrent theme in the expert's reasoning was that impairment of legitimate interests would likely result from Donuts' openly stated intention to "not limit eligibility or otherwise exclude legitimate registrants in second level names"⁷⁸ Not unlike the analysis applied by the expert in the .RUGBY objection proceeding, the .SPORTS expert report devotes several paragraphs to the

⁷¹ Id., paras. 41.2.1 through 41.2.5.

⁷² Id., paras. 13.3, 14.3, 14.6 15.3 and 16.2.

⁷³ Id., paras. 14.3, 14.6.

⁷⁴ Id., paras. 14.3.

⁷⁵ Id., paras. 14.1, 14.6, 15.3, 19 & 20.

⁷⁶ Id., paras. 14.2 & 14.4.

⁷⁷ Id., para. 43.

⁷⁸ Id., paras. 42.2, 43.2.

potential consequences for the relevant community of Donut's open policy.⁷⁹ In analysis broadly similar to that explicated by the .RUGBY expert, the .SPORTS expert also found such protections as are instituted through the registration agreement to not catch many of the practices that the objector fears will be promoted by Donuts' liberal approach to granting registrations.

X. ARGUMENTS OF THE PARTIES

A. Introduction

57. As more fully developed below, this proceeding is instituted to allow an independent panel to compare the actions and certain inactions of the ICANN Board to the obligations attaching to it under ICANN's Articles, its Bylaws and potentially other documents central to the new gTLD program. This Panel is not authorized to assess acts and omissions by other actors unless those can be attributed to the Board on some basis. A core disagreement between the parties is the extent to which any Board action or inaction cognizable by this Panel has been demonstrated by Donuts. Because the Board ordinarily is not directly involved in processing objections, Donuts has faced a difficult obstacle—the need to show an equivalency between the activities of the ICC and its appointed experts on the one hand, and the Board on the other, or alternatively, to show inaction by the Board that is inconsistent with the Articles or Bylaws.

58. What follows is a brief summary of the parties' submissions to help place in context the Panel's analysis below, which analysis will involve a further examination of the parties' positions.

59. The Panel views the arguments as falling under two broad headings. The first category focuses on the acts of the ICC, and more particularly, its experts and, impliedly, proceeds on the basis that those acts are equivalent to, or attributable to, the Board. As such, Donuts would have this Panel judge them directly against the prescriptions and value guides that govern Board conduct. According to Donuts, those acts include manifest errors by the experts in applying the grounds for community objections set out in the Guidebook⁸⁰ and, in the case of one expert, a failure to fully comply with disclosure requirements applicable to ICC Experts.⁸¹

60. Under the second heading are theories of recovery arising largely, but not fully, out of the same facts as the first category; these allege an unfulfilled duty on the Board's part to act in some remedial fashion, or to adjust the scope of remedial actions it has already taken in other contexts.

B. Alleged Misapplication of Community Objection Standards.

1. In General

61. Donuts alleges that it has been prejudiced by misapplications of the rules established for determining community objections. According to Donuts, several of the principles binding ICANN in executing its mandate⁸² have been abridged in the process. In particular, the invention of new rules by experts in sustaining objections constitutes disparate, discriminatory, treatment

⁷⁹ Id., para. 43.

⁸⁰ See, e.g., Donuts Request for IR, para. 3 (experts "completely misconstrued" community objections), and para 8 ("clear violations of the Guidebook" in application of the grounds).

⁸¹ See, e.g., id., paras. 41-42; Donuts Post-Hearing Brief, paras. 7-8.

⁸² See notes 16-18, supra, and accompanying text.

of Donuts, in violation of ICANN's non-discrimination policies;⁸³ correspondingly, Donuts has detrimentally relied on what it sees as Guidebook promises concerning who is entitled to manage registries. In turn, the unpredictability generated by what Donuts sees as expert fiat is a form of non-transparency; as such it is inconsistent with express Articles and Bylaws provisions.⁸⁴ Finally, the rules applied by experts, according to Donuts, have the effect of favoring "entrenched interests" in contravention of ICANN's undertaking to value competition.⁸⁵

2. The .RUGBY Expertise

62. Donuts asserts that the expert's analysis, in effect, imposes the duties of a community applicant on a standard applicant for the registry in question.⁸⁶ Donuts highlights the following passage in the expertise:

Donuts' application creates a likelihood of material detriment because it "does not offer community members an enforceable voice in governance of a gTLD strongly associated with that community [and] the governance structure for a community associated domain must necessarily be more protective of the interests of that community than [that]...for a generic domain."⁸⁷

63. Donuts maintains that the above reasoning reveals a misapplication of the Guidebook to favor certain objectors and a variation in rule application that promotes unequal treatment, and discrimination:

Donuts... applied for new gTLDs legitimately expecting that ICANN would honor the Guidebook. For its sizable investment, Donuts depends upon predictability and consistency in decision-making. Erratic application of Guidebook standards and divergent results in like cases undermine the system. The results have singled out Donuts for disparate treatment in violation of the Bylaws' anti-discrimination creed.⁸⁸

3. The .SPORTS Expertise

⁸³ The ICANN Bylaws, Article II, Section 3, require, inter alia, that disparate treatment be justified by a "substantial and reasonable" cause. See also ICANN Bylaws, Article I, Section 2, Core Value No. 8. ("Making decisions by applying documented policies neutrally and objectively, with integrity and fairness").

⁸⁴ Donuts relies, inter alia, upon ICANN's Articles. See especially, Article 4 ([ICANN] shall...carry[] out its activities ...to the extent appropriate and consistent with these Articles and its Bylaws, through open and transparent processes..."); See also Bylaws, Article III.1 ("ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness."); cf. ICANN Bylaws, Article I, Section 2, Core Value No.7 ("Employing open and transparent policy development mechanisms").

⁸⁵ See ICANN Articles, Article 4 (mandating processes...that enable competition and open entry in Internet-related markets.) See also ICANN Bylaws, Article I, Section 2, Core Value No. 6 (Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest).

⁸⁶ Donuts' Request for IR, para. 54 (.Rugby ruling "essentially requires Donuts to operate the TLD as a community"); and see *Id.*, para. 72 (under expert holdings, Donuts would have to operate as a community).

⁸⁷ Excerpt from ICC Expert determination in IRB objection (.Rugby) of January 31, 2014, para. 88.

⁸⁸ Donuts' Request for IR, October 8, 2014, para. 9.

64. Donuts’ submissions examine the reasoning of the .SPORTS expert in relative detail. Putting aside its allegation of bias (discussed below), Donuts asserts that the expert disregarded the strict standing and merits requirements established by the Guidebook for community objections, and failed to place the burden on the objector, as required by the Guidebook. Instead, states Donuts, the expert liberalized the requirements for successful objections in general and, in particular, in connection with what constitutes a “clearly-delineated-community.”⁸⁹

65. In community objection analysis, the manner in which the community is demarked affects both standing and success on the merits. Donuts’ alleges that the expert too readily found a close association between the .SPORTS gTLD and what Donuts maintains is a contrived community: organized sports (or the “Organized Sports Movement”).⁹⁰ For Donuts, the string has reference not only to organized sports, but to a much larger and more highly diffuse group of persons who identify with sporting activity in all the modes in which it is experienced.

66. Donuts also questions the experts’ approach to the other community objection requirements⁹¹ and stresses the expert’s apparent failure to apply the Guidebook’s admonition that “[a]n allegation of detriment that consists only of the applicant being delegated the string instead of the objector will not be sufficient for a finding of material detriment.”⁹²

C. Expert Procedural Misconduct; Bias: The .SPORTS Objection

67. Donuts asserts that the expert that decided the .SPORTS objection had represented organizations which are members of SportAccord (SA), the organization that brought the objection.⁹³ The disclosures he made at the time of his appointment were, according to Donuts, incomplete and misleading. In some of its submissions, Donuts combines that premise with what it regards as his one-sided reasoning on the merits to conclude that the expert was motivated by its affiliations with the objector to reach a result favorable to the objector.⁹⁴

D. Alleged Board Failures to Act

1. In General

⁸⁹ See notes 30-46, *supra*, and accompanying text.

⁹⁰ According to Donuts, the objector’s own definition of the relevant community was broad and diffuse—the opposite of clearly delineated. According to the objector, it included: “(i) “individuals and organizations who associate themselves with Sport;” (ii) “practitioners as well as organizers, supporters and audience;” (iii) “individual practitioners of sport, ... spectators, ... fans and sponsors;” and (iv) “any person in the world.” Donuts Request for IR, para. 63.

In its Request, Donuts complained that, rather than finding this capacious delineation to be fatal to the objection, “the expert “strain[ed] to find a ‘clearly delineated’ community, by proposing without providing evidentiary support, that:

“when the vast majority (many millions of organisations and individuals around the world) think of sports, they must obviously think predominantly (if not exclusively) of official, sanctioned forms of sport that are governed and regulated by means of the pyramid model [atop which SA claims to sit].” *Id.*

⁹¹ These will not be recited by the Panel.

⁹² Donuts’ Request for IR, October 8, 2014, para.73 (quoting Guidebook at 3-24).

⁹³ *Id.*, paras. 63-67.

⁹⁴ *Id.*, paras. 63-64.

68. Donuts maintains that although the Board must “‘apply[] documented policies neutrally and objectively, with integrity and fairness,’ it has allowed the .SPORTS...and RUGBY panels to exceed their authority and violate this mandate.” In like fashion, it avers:

[t]he expert decisions contested in this case allow community objections to be used “as anti-competitive weapons”, permitting the objectors to “hijack “generic” terms (“sports” and “rugby”) in a manner that ICANN did not intend.

69. Donuts has specified or alluded to three forms of Board inaction: 1] failure to train ICC experts on the proper application of community objection standards, which failure has led to errors in the application of that standard that prevented Donuts’ applications from advancing; 2] failure to institute a review mechanism to regulate the community objection decisions of ICC experts; and 3] failure to intervene in this individual case. These are taken in turn.

2. Failure to Train

70. Donuts failure-to-train argument relies in part on the DCA case summarized below⁹⁵ and endeavors to establish a duty to act to inform, to provide oversight, to ensure flowing from the powers and responsibilities it attributes to the Board with respect to the new gTLD program. The following excerpt is from a Donuts’ submission:

The facts and reasoning of the DCA Case similarly apply to the second primary point of Donuts’ Request namely, that the Board had an obligation to see to it that experts designated to hear new gTLD objections were “well informed,” applied the “documented policies” of the Guidebook concerning such objections “neutrally and objectively, with integrity and fairness,” and did not apply such standards so as to single out Donuts (or any applicant) for disparate treatment.... ICANN argues that “no ICANN Board Action was the cause” of the violations of which Donuts complains.

./...

Significantly, the DCA Case held the Board responsible for oversight of the acts of ICANN’s “constituent bodies,” such as the GAC, that share ICANN’s obligation to adhere to its Bylaws and other governing documents. GAC “advice” amounts to nothing unless and until ICANN acts upon it. Similarly, the [ICC expert] determinations of new gTLD objection panels constitute “expert advice” that have no effect until accepted by ICANN. Only the Board has the power to appoint or provide for the appointment of such experts. It also has ultimate authority over the new gTLD program. As such, the Board has an obligation to assure compliance with ICANN policies and procedures by DRSPs and experts ruling upon new gTLD objections.⁹⁶

ICANN’s argument to the contrary ignores the obligations of the Board and advisory bodies^[97] such as the DRSPs and their objection panelists. It further overlooks basic principles of causation and agency. ICANN may not view the Board itself as having actually caused Donuts’ injury, and instead prefers to hide behind the ICC and the

⁹⁵ See notes 116-28, *infra*, and accompanying text.

⁹⁶ Donuts’ Supplemental Memorandum of August 20, 2015, paras. 26-28.

⁹⁷ As to the premise that the ICC is an “advisory body”, see notes 183-89, *infra*, and accompanying text.

expert panelists who rendered the decisions that Donuts contends failed to comply with “documented policies” and other governing principles. Certainly, the Board could reasonably foresee that panels may not follow the sole grounds established by the Guidebook for sustaining community objections, or may not apply them consistently.

Donuts therefore asserts that the Board should have provided for training to “inform” DRSPs and experts retained by ICANN regarding the application of the standards for new gTLD objections, as well as requirements of the Bylaws and other governing documents pertaining to conflicts of interest and non-discrimination. Failing to do so would make the Board, under rudimentary legal principles, a proximate cause of harm to Donuts.⁹⁸

3. Failure to Install a Review Mechanism

71. According to Donuts’ Request for IR:

The Board [has also] failed to provide for review in cases of inconsistent results and clear violations of the Guidebook, [such as when] ...each panel finds “material detriment” on the perception that Donuts is not as valid a “steward” of the respective “communities” described...as the objectors themselves a ground which the Guidebook expressly forbids, and one not followed by other objection panelists.⁹⁹

72. Although this allegation can be examined in several ways, it seems to contain at least two theories of relief. One is that had such an appeals mechanism been in place, either its clarifying jurisprudence, or its availability to Donuts in the case at hand, would have prevented or mitigated the effects of what Donuts believes were errant expert determinations. The second thesis is that by failing to implement such a mechanism, the Board favored certain applicants (those facing certain string similarity objections) over Donuts. Donuts suggests:

The Board [proposed] in February 2014 an avenue to review certain perceived inconsistent “string confusion” objection results. Donuts commented in support of the proposal and urged its extension to inconsistent community objection determinations.

The Board refused to act on such requests. Instead, it adopted in October 2014 the limited review mechanism it had proposed eight months earlier. The Board cited its “ultimate responsibility” for the new gTLD program as authority for its action.¹⁰⁰

73. In its post-hearing submission, Donuts alleged:

While the Board has the same power over new gTLD objections, it admits to having chosen consciously not to use it. ICANN made that choice discriminatorily and despite specific and sustained exhortations to take action from a broad constituency including Donuts.

Specifically, Donuts joined with a number of other applicants, large and small, in a November 2013 letter urging the Board to act to correct and prevent community

⁹⁸ Donuts’ Supplemental Memorandum of August 20, 2015, paras. 29-30 (citations omitted).

⁹⁹ Donuts’ Request for IR, para. 8.

¹⁰⁰ Donuts’ Post-Hearing Brief, para. 14.

objection rulings exceeding or failing to apply documented Guidebook standards. The letter suggested, among other things, a review mechanism and panelist training. The Board did not respond.¹⁰¹

4. Failure to Act Remedially in .RUGBY and .SPORTS

74. It is suggested in some of Donuts' submissions that even if not acting programmatically to install safeguards, the Board might have acted in its individual case:

The Board knew how to act when presented with an inequity. It had acted in other contexts ...by establishing advance procedures or participating in decision making to maintain predictability for applicants. It did nothing to protect against *or rectify* the failure to apply the Guidebook's documented policies *in the case of .SPORTS and .RUGBY*, despite having notice of such failures and inconsistencies from Donuts and others.¹⁰²

E. ICANN's Position

75. ICANN's position is straight-forward. It maintains that the acts and omissions about which Donuts complains are not acts or omissions of the Board, and that they therefore are not subject matter falling within the proper scope of an IR:

Donuts has not identified any conduct by the ICANN Board that was inconsistent with ICANN's Articles or Bylaws. In fact, no Board action took place here at all.

Donuts argues that the Board had an obligation to create an appellate review of expert determinations, and that the failure to do so demonstrates the Board's lack of accountability. Yet, Donuts does not identify the source of such an obligation because none exists...Nothing in the Articles or Bylaws states that appellate mechanisms (or anything of the sort) are required for the New gTLD Program. At best, Donuts alleges Board *inaction* in this regard, but in the absence of an affirmative duty to create an appellate mechanism, the Board's failure to do so cannot result in a violation of the Articles or Bylaws.

Next, Donuts invokes Article I, Section 2.7 of the Bylaws, alleging that the Board failed to "promote well-informed decisions based on expert advice" as required therein, but...this portion of ICANN's "Core Values" refers to policy development (e.g., the policy recommendations that were implemented through the New gTLD Program), not expert determinations resolving objections administered by third-party dispute resolution providers. In short, the cited provision is inapplicable to the procedures at issue in this IRP, and Donuts has therefore failed to identify any violation of it (or any other Article or Bylaws provision).

Donuts does not allege any other action or inaction on the part of the ICANN Board. Instead, the remainder of Donuts' arguments challenge the substance of the community objection determination or the ICC's implementation of its own rules, such as those

¹⁰¹ Id., paras. 12-13.

¹⁰² Id., para. 16 (emphasis added).

related to purported conflicts of interest on the part of the expert panelist; however, there was no Board action related to the alleged conflict because the ICC is an independent dispute resolution provider that the Board is not required to oversee.

Moreover...Donuts did not file a reconsideration request, by which it might have brought to the Board's attention its concerns about the ICC's implementation of the objection proceedings, including (for example) whether the ICC should have disqualified an expert for bias.

Donuts does not identify any Board action in connection with Donuts' Applications for .SPORTS and .RUGBY that violates ICANN's Articles or Bylaws....¹⁰³

XI. PRECEDENTS

A. In General

76. This is not the first IR proceeding to have arisen out of the new gTLD program. Several declarations have been issued by other Panels. They are to enjoy "precedential value" according to ICANN's Bylaws.¹⁰⁴ The Panel takes that to mean that it should take account of the reasoning of other Panels in pursuing its own analysis, and should, to the extent warranted, seek consistency. It is not feasible or helpful to survey the existing Declarations in detail; a summary of each, however, will give important background to the Panel's analysis of the case before it.

B. Booking.com¹⁰⁵

77. Booking.com (Booking), is a limited liability that conducts an online hotel reservation service. Its principal focus is on English-language markets. It applied for the .HOTELS string. That string was placed in a contention set with .HOTEIS, with the result that neither applicant could proceed to delegation. That left Booking.com with the options of either privately negotiating with the applicant for .HOTEIS, or proceeding to an auction to settle the contention issue.¹⁰⁶

¹⁰³ Id., paras. 16-20.

¹⁰⁴ Article IV, Section 3.21 states, in part: "The declarations of the IRP Panel, and the Board's subsequent action on those declarations, are final and have precedential value."

¹⁰⁵ Booking.com v. ICANN, ICDR Case No. 50-20-1400-0247.

¹⁰⁶ According to the Guidebook, as traversed by the Booking.com panel (Booking.com IR Declaration, paras. 60-62), within the New gTLD Program, every applied-for string has been subjected to the String Similarity Review set out at Section 2.2.1.1 of the Guidebook. The String Similarity Review checks each applied-for string against existing TLDs, reserved names and other applied-for TLD strings (among other items) for "visual string similarities that would create a probability of user confusion" (Guidebook, at 2-21 et seq.). If applied-for strings are determined to be visually identical or similar to each other, the strings will be placed in a contention set, which is then resolved pursuant to the contention resolution processes in Module 4 of the Guidebook. If a contention set is created, only one of the strings within that contention set may be approved for delegation. In the specific case of Bookings, InterConnect Communications ("InterConnect") performed the string similarity review called for in the Applicant Guidebook. On 26 February 2013, ICANN posted InterConnect's report, which included two non-exact match contention sets (.hotels/.hoteis and .unicorn/.unicom) as well as 230 exact match contention sets. <http://www.icann.org/en/news/announcements/announcement-26feb13-en.htm>. The String Similarity

78. Booking.com unsuccessfully pursued a Request for Reconsideration (RFR) of the decision to place .HOTELS in a contention set with .HOTEIS. It viewed the two strings as quite distinguishable from each other. It subsequently sought an IR.

79. The IR Panel found that Booking.com's allegations of Board failings were of two kinds: 1] those that related to the string similarity review process, essentially as instituted by ICANN; and 2] those that related to the specific processing of the .HOTELS objection.

80. The first category addressed alleged Board conduct "in establishing and overseeing the process by which so-called string similarity reviews are conducted." In particular, it was alleged that the manner in which the Board set up, implemented and supervised "the entire...string similarity review process" and its related failure "to ensure due process and to respect its fundamental obligations to ensure good faith, transparency, fairness and non-discrimination" throughout were acts that were "inconsistent with applicable policies, procedures and rules as set out in ICANN's Articles of Incorporation, Bylaws and gTLD Applicant Guidebook ("Guidebook")."¹⁰⁷

81. As to the first category of allegations, the Panel underscored the distinction between challenges to "validity or fairness of the process as set out in the Guidebook" and those that address "the way in which that process was... implemented and supervised by (or under the authority of) the ICANN Board." That distinction disposed of many of Booking.com's allegations of Board misconduct.

[T]he time has long since passed for Booking.com or any other interested party to ask an IRP panel to review the actions of the ICANN Board in relation to the establishment of the string similarity review process, including Booking.com's claims that specific elements of the process and the Board decisions to implement those elements are inconsistent with ICANN's Articles and Bylaws. Any such claims, even if they had any merit, are long since time-barred by the 30-day limitation period set out in Article IV, Section 3(3) of the Bylaws.

[I]f Booking.com believed that there were problems with the Guidebook, it should have objected at the time the Guidebook was first implemented.....As did all stakeholders, [it had an opportunity to do so].¹⁰⁸

82. This was true despite the Panel's recognition that the process in place had weak elements, some of which it recounted:

[T]he Guidebook provides no definition of "visual similarity", nor any indication of how such similarity is to be objectively measured other than by means of the SWORD

Review was performed in accordance with documentation posted at <http://newgtlds.icann.org/en/program-status/evaluation-panels/geo-names-similarity-process-07jun13-en.pdf>. As part of ICANN's acceptance of the InterConnect's results, a quality assurance review was performed over a random sampling of applications to, among other things, test whether the process referenced above was followed.

¹⁰⁷ Booking.com IR Declaration, para. 67.

¹⁰⁸ *Id.*, paras. 129-30.

algorithm [and] it provides no definition of "confusion," nor any definition or description of an "average, reasonable Internet user."¹⁰⁹

83. Equally, noted the Panel:

The Guidebook mandates the SSP to develop and apply "its own review" of visual similarity and "whether similarities rise to the level of user confusion", in addition to SWORD algorithm, which is intended to be merely "indicative", yet provides no substantive guidelines in this respect.

Nor does the process as it exists provide for gTLD applicants to benefit from the sort of procedural mechanisms - for example, to inform the SSP's review, to receive reasoned determinations from the SSP, or to appeal the merits of those determinations - which Booking.com claims are required under the applicable rules.¹¹⁰

84. Nevertheless, ultimately, the Panel concluded:

[T]he fact is that the sort of mechanisms that Booking.com asserts are required (and which [certain] NGPC members believe should be required) are simply not part of the string similarity review process as currently established. As to whether they *should* be, it is not our place to express an opinion, though we note that such additional mechanisms surely would be consistent with the principles of transparency and fairness.¹¹¹

85. Under the second category of alleged Board failings, Booking.com cited the Board's failure to intervene in the Booking.com application process, either to reconsider and overturn a decision to place .HOTELS in a string contention set or to countermand the result of the Request for Reconsideration.

86. Before the Booking.com IR Panel, this line of argument also faltered. The Guidebook process had been followed with respect to the application in question and that process either did not call for the Board to act or gave the Board discretion not to act.

87. The analysis was not affected by the conclusions reached by Booking.com's expert, that: "[t]here is no probability of user confusion if both .hotels and .hoteis were delegated as gTLD strings into the Internet root zone."¹¹² Nor was it affected by the allegation that the Board was, or should have been, alerted to the errant determination and had ample time to reverse the alleged error "using the authority accorded it by Module 5-4 of the Guidebook to 'individually consider a gTLD application'".¹¹³

88. The IR Panel found that the Board had not failed to discharge any of its obligations of fairness and transparency. The Panel ruled that:

¹⁰⁹ Id., para. 127.

¹¹⁰ Id., paras. 127-28.

¹¹¹ Id., para. 129 (emphasis in original).

¹¹² Id., para. 140.

¹¹³ Id., para. 138.

[T]he Board's acceptance of the SSP's determination did not constitute Board action (or inaction), or a Board decision made (or not made), or by any other body to accept the SSP's determination. The Guidebook provides that when the applied-for strings are determined by the SSP to have the visual similarity likely to give rise to user confusion, they "will be placed in contention set".¹¹⁴

89. "Simply put," reasoned the Panel: "under the Guidebook the Board is neither required nor entitled to intervene at [that] stage to accept or not accept the SSP's determination."¹¹⁵

90. In turn, when acting through the BGC and, subsequently, through the NGCP in response to Booking.com's RFR, the Board discharged its duty to exercise due care and independent judgment. The IR Panel found the BGC's assessment to be detailed and carefully reasoned; the NGCP in turn had given extensive consideration to the BGC Recommendation before accepting it.¹¹⁶

91. The Panel agreed that in theory the Board could have stepped in under Section 5.1 (Module 5-4) of the Guidebook that is to "individually consider [the] application...to determine whether approval would be in the best interest of the Internet community." The Panel found no fault in its failure to do so, however. It observed:

"the fact that the ICANN Board enjoys such discretion and may choose to exercise it any time does not mean that it is bound to exercise it, let alone at the time and in the manner demanded by Booking.com."¹¹⁷

92. In the case at hand:

[T]he Panel [did] not believe that the Board's inaction...in this respect was inconsistent with ICANN's Articles of Incorporation or Bylaws or indeed with ICANN's guiding principles of transparency and fairness, given (1) Booking.com's concession that the string similarity review process was followed; (2) the indisputable conclusion that any challenge to the adoption of the SSP process itself is time-barred; (3) the manifestly thoughtful consideration given to Booking.com's Request for Reconsideration by the BGC; and (4), the fact that, notwithstanding its protestations to the contrary, Booking.com's real dispute seems to be with the process itself rather than how the process was applied in this case.

C. DCA Trust¹¹⁸

93. DCA Trust, was a non-profit organization established under the laws of the Republic of Mauritius for the charitable purpose of, "among other things, advancing information technology

¹¹⁴ Id.

¹¹⁵ Id.

¹¹⁶ Booking.com cited as compelling evidence of ICANN's failure in this regard statements made on the record by several members of the NGPC during its 10 September 2013 meeting at which Booking.com's RFR was denied. The Panel took those views into account, but concentrated its inquiry on whether the Guidebook process had, or had not, been followed.

¹¹⁷ Booking.com IR Declaration, para. 138.

¹¹⁸ DotConnectAfricaTrust (DCA Trust) v. ICANN, Case No. 50 2013 001083.

education in Africa and providing a continental Internet domain name to provide access to internet services for the people of Africa...”¹¹⁹ DCA Trust applied to ICANN for the delegation of the gTLD .AFRICA. It did so in competition with a South African company called ZACR. DCA Trust’s application was opposed by ICANN’s Governmental Advisory Committee (GAC), in a “Consensus Advice” that caused the NGPC to stop processing DCA Trust’s application.¹²⁰

94. Thereafter, DCA Trust pursued an RFR of NGPC’s decision to halt processing of the application. It was unsuccessful; in August of 2013 the BGC recommended to the NGPC that it deny DCA Trust’s Request, and the NGPC followed the BGC’s recommendation.”¹²¹

95. According to the Guidebook:

ICANN’s Governmental Advisory Committee was formed to consider and provide advice on the activities of ICANN as they relate to concerns of governments, particularly matters where there may be an interaction between ICANN’s policies and various laws and international agreements or where they may affect public policy issues.

The process for GAC Advice on New gTLDs is intended to address applications that are identified by governments to be problematic, e.g., that may violate national law or raise sensitivities.

GAC members can raise concerns about any application to the GAC. The GAC as a whole will consider concerns raised by GAC members, and agree on GAC advice to forward to the ICANN Board of Directors.¹²²

96. The GAC can offer advice on any application, and that advice can take several forms. The advice it gave in the DCA Trust case communicated that it was the consensus of the GAC that DCA Trust’s application “should not proceed.” According to the Guidebook, such an advice “will create a strong presumption for the ICANN Board that the application should not be approved.”¹²³

97. The established procedure calls for ICANN, upon receipt of such an Advice to publish it, and:

[E]ndeavor to notify the relevant applicant(s) promptly, [after which] [t]he applicant will have a period of 21 calendar days from the publication date in which to submit a response to the ICANN Board.¹²⁴

98. In considering the GAC Advice, the Board “may consult with independent experts, such as those designated to hear objections in the New gTLD Dispute Resolution Procedure...”¹²⁵

¹¹⁹ DCA Trust IR Declaration of July 9, 2015, para. 2.

¹²⁰ Id., para. 5.

¹²¹ Id., paras. 6, 107.

¹²² Guidebook, at 3-1 through 3-2.

¹²³ Guidebook, at 3-2.

¹²⁴ Id., at 3-3.

¹²⁵ Id.

99. In the IR, DCA Trust sought a declaration that ICANN Board violated ICANN's Articles of Incorporation, Bylaws and the Applicant Guidebook (AGB) by, inter alia: "failing to apply ICANN's procedures in a neutral and objective manner", with a level of transparency requisite to procedural fairness, when "without reasonable investigation" it accepted the supposedly consensus-based decision behind the GAC's Advice, and when it approved the Board Governance Committee's (BGC)'s recommendation not to reconsider the NGPC's acceptance of the GAC Objection Advice.

100. Ultimately, the DCA Trust Panel held that, indeed, by acts and failures to act attributable to the Board, it conducted itself in a manner "inconsistent with ICANN's Articles of Incorporation, Bylaws or the Applicant Guidebook."¹²⁶

101. Although the applicant advanced myriad allegations of deficient Board behavior, at the core of the Panel's dispositive analysis was Article III of ICANN's Bylaws (Transparency), Section 1 of which provides:

ICANN...and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness.

102. The Tribunal ruled that, the Article III transparency mandate applied to the GAC because under Article XI of the ICANN Bylaws the GAC was a "constituent body" of ICANN, albeit one performing only of an advisory function and having no power to bind the Board.¹²⁷

103. In finding that transparency had not been practiced, the Panel was influenced by testimony from the then-Chair of the GAC and other evidence tending to show that the GAC decision was the product of obscure political maneuvering and was accompanied by no rationale (e.g., analysis or findings explaining potential violations of national laws or reporting on sensitivities bearing on the application in question, as one might have expected from consulting the Guidebook).¹²⁸

104. Additionally:

DCA Trust was never given any notice or an opportunity... to make its position known or defend its own interests before the GAC reached consensus...and that the Board of ICANN did not take any steps to address this issue.¹²⁹

105. The acts and omissions chargeable to the Board consisted in the NGPC's uncritical acceptance of the GAC supposed consensus that DCA Trust's application should be opposed, the failure of BGC during the RFR to take account of GAC's deficient process when declining to recommend reconsideration (despite the BGC having been empowered to investigate and fact-find) and the NGPC's ultimate acceptance, again without critical examination, of the BGC's decision recommending against reconsideration.

106. The Panel observed:

The Panel understands that the GAC provides advice to the ICANN Board on matters of public policy, especially in cases where ICANN activities and policies may interact

¹²⁶ DCA Trust IR Declaration, para.148.

¹²⁷ DCA Trust IR Declaration, paras.101-02.

¹²⁸ Id., paras. 102-111.

¹²⁹ Id., para. 109.

with national laws or international agreements, ...that GAC advice is developed through consensus among member nations [and] that although the ICANN Board is required to consider GAC advice and recommendations, it is not obligated to follow those recommendations.

In light of the clear “Transparency” obligation[s]...found in ICANN’s Bylaws, the Panel would have expected the ICANN Board to, at a minimum, investigate the matter further before rejecting DCA Trust’s application [and][t]he Panel would have had a similar expectation with respect to the NGPC Response to the GAC Advice regarding .AFRICA.¹³⁰

D. Vistaprint¹³¹

107. The Vistaprint IR stemmed from a “string confusion” objection, in which the objector prevailed. Applying the Guidebooks criteria,¹³² the expert held that the gTLD .WEBS so nearly resembled .WEB “visually, aurally and in meaning” that it is likely to cause confusion in the mind of the average, reasonable Internet user.¹³³ As a consequence, Vistaprint’s applications (one standard, the other community-based) did not advance, but became subject to the contention set process.¹³⁴

108. There followed a RFR in which the conduct of the expert (treated as analogous to ICANN “staff” for RFR purposes¹³⁵) was evaluated.¹³⁶ The BGC (to whom RFRs are addressed) expressly limited its review to whether the expert violated any established policy or process in reaching its determination, a mandate that did not include performing an evaluation of the correctness of expert’s determinations on the merits.¹³⁷ The BGC concluded after a detailed analysis that there was no indication that the ICDR or the expert had violated any policy or process, or applied the wrong standard, in reaching its determination.¹³⁸

109. In the IR that followed, Vistaprint alleged that the ICDR expert was bound by ICANN’s articulated policies, which he purportedly violated by making certain procedural errors, misapplying the burden of proof,¹³⁹ and incorrectly and arbitrarily assessing the Guidebook’s standards governing string confusion objections.¹⁴⁰ Vistaprint also questioned the expert’s independence and impartiality (or, alternatively, his qualifications) based on “the cursory nature

¹³⁰ Id., paras. 113-14.

¹³¹ Vistaprint Ltd. v. ICANN, ICDR Case No. 01-14-0000-6505.

¹³² Under the Guidebook, Section 3.5.19 (at 3-18), the question is whether the applied-for gTLD string is likely to result in “string confusion”, which exists when “a string so nearly resembles another that it is likely to deceive or cause confusion.” For a likelihood of confusion to exist, it must be probable, not merely possible, that confusion will arise in the mind of the average, reasonable Internet user.

¹³³ Vistaprint IR Declaration of October 9, 2015, paras. 23-24.

¹³⁴ Id., para. 30.

¹³⁵ Id., para. 33.

¹³⁶ Id., paras. 31-39.

¹³⁷ Id., para. 38.

¹³⁸ Id., para. 37.

¹³⁹ Id., paras. 85 (vii), 166.

¹⁴⁰ Id., para.70.

of the Decision and the arbitrary and selective discussion of the parties' arguments...."¹⁴¹ It followed, according to Vistaprint, that it had not received a fair opportunity to present its case to the expert,¹⁴² and that accordingly the Board should not have accepted the expert's determination, but rather should have rejected it based on the Board's "ultimate responsibility for the New gTLD Program" and the right it reserved "to individually consider an application for a new gTLD to determine whether approval would be in the best interest of the Internet community."¹⁴³ Equally, acting through the BGC during the subsequent RFR, the Board, it was argued, should have intervened to address the process deficiencies in question.¹⁴⁴

110. The Vistaprint Panel ruled that it was not empowered "to review the actions or inactions of ICANN's staff or any third parties, such as the ICDR or [objection] experts, who provided services to ICANN."¹⁴⁵ By contrast, the Board's actions when acting through the BGC (which exercises delegated Board authority when considering a RFR), may be assessed in an IR according to the Panel.

111. The Panel reasoned additionally that when petitioned by an applicant to do so, "the ICANN Board has no affirmative duty to review the result in any particular [string confusion] case."¹⁴⁶ In a related observation, the Panel noted:

"[w]hile Guidebook...permits ICANN's Board to individually consider new gTLD applications, such as through the RFR mechanism, it does not require that the Board do so in each and every case, *sua sponte*."¹⁴⁷

112. In reaching the above conclusions, the Panel noted that the availability of the RFR procedure meant an applicant was not without recourse.¹⁴⁸ The Panel also consulted a fuller excerpt of the same Guidebook provision (§ 5.1) relied upon by Vistaprint:

The Board reserves the right to individually consider an application for a new gTLD to determine whether approval would be in the best interest of the Internet community. Under exceptional circumstances, the Board may individually consider a gTLD application. For example, the Board might individually consider an application as a result ... of the use of an ICANN accountability mechanism.

113. The Panel noted that the Guidebook example of the "exceptional circumstances" in which the Board might individually intervene was when the applicant had pursued an accountability mechanism, most notably an RFR.¹⁴⁹

114. Vistaprint also made discrimination claims; there were two related strands to these: One line of argument was that while its application had resulted in a contention set, other applications involving strings said by Vistaprint to be more likely to cause confusion were allowed to proceed

¹⁴¹ Id., para. 26.

¹⁴² Id., para. 83.

¹⁴³ Id., paras. 153, 156.

¹⁴⁴ Id., para. 70.

¹⁴⁵ Id., para. 150.

¹⁴⁶ Id., paras. 153, 157.

¹⁴⁷ Id., para. 156.

¹⁴⁸ Id., para. 154.

¹⁴⁹ Concerning Requests for Reconsideration, see notes 180-82, 227, *infra*, and accompanying text.

to delegation;¹⁵⁰ the second theory was that as to some string similarity cases involving inconsistent expert appraisals, the Board had authorized a further review mechanism selectively to operate, but did not accord Vistaprint the same opportunity.¹⁵¹

115. Vistaprint complained that the BGC had denied its RFR without considering whether such a review mechanism might also be appropriate for dealing with the string confusion determination involving .WEBS/.WEB.¹⁵²

116. The Panel concluded that the Board violated no Article or Bylaw by not establishing a generally available appeals mechanism for string cases, but concurrently found itself challenged by the question whether, on balance, the string cases before it were distinguishable from those in which selective review had been recently authorized. It resolved, however, that it would be premature to rule on that question disparate treatment claim:

The IRP Panel is mindful that it should not substitute its judgment for that of ICANN's Board. The Board has not yet considered Vistaprint's claim of disparate treatment, and the arguments that ICANN makes through its counsel in this IRP do not serve as a substitute for the exercise of independent judgment by the Board. Without the exercise of judgment by ICANN's Board on this question of whether there is any inequitable or disparate treatment regarding Vistaprint's .WEBS gTLD applications, the Board would risk violating its Bylaws, including its core values.¹⁵³

117. The Vistaprint Panel thus found:

[T]hat due to the timing and scope of Vistaprint's Reconsideration Request (and this IRP proceeding), and the timing of ICANN's consultation process and subsequent NGPC resolution authorizing an additional review mechanism for certain gTLD applications that were the subject of adverse SCO decisions, the ICANN Board has not had the opportunity to exercise its judgment on the question of whether, in view of ICANN's Bylaw concerning non-discriminatory treatment and based on the particular circumstances and developments noted above, such an additional review mechanism is appropriate following the SCO expert determination involving Vistaprint's .WEBS applications. Accordingly, it follows that in response to Vistaprint's contentions of disparate treatment in this IRP, ICANN's Board – and not this Panel – should exercise its independent judgment on this issue, in light of all of the foregoing considerations.¹⁵⁴

¹⁵⁰ Id., paras. 176 et seq.

¹⁵¹ See id., para. 181. This latter contention is separate from the question whether the Board should have established a general appeals mechanism to review the merits of string confusion determinations, which contention was rejected by the Vistaprint panel. See id., paras. 174, 175(5).

¹⁵² Id., para. 181. The principal provision implicated by this question was Article II, Section 3's of the Bylaws which prohibits ICANN from applying "its standards, policies, procedures, or practices inequitably or singl[ing] out any particular party for disparate treatment unless justified by substantial and reasonable cause..."

¹⁵³ Id., para. 190.

¹⁵⁴ Id., para. 191.

E. Merck KGaA¹⁵⁵

118. The Merck IR arose out of a Legal Rights Objection (LRO)¹⁵⁶ instituted by Merck with the WIPO Arbitration and Mediation Centre in accordance with the New gTLD Dispute Resolution Procedure.¹⁵⁷ Merck and another company, MSD, had each filed applications with ICANN for new gTLDs incorporating the word “Merck.” Both had objected to the other’s application. By determinations issued in 2013, the sole expert rejected both objections.

119. Merck then instituted an RFR. In that proceeding, the BGC ruled against Merck, concluding:

There is no evidence that the [expert] Panel either applied the improper standard or failed to properly evaluate the parties’ evidence. The expert had “correctly referenced and analyzed the eight factors set out in the Applicant Guidebook relevant to legal rights objections and considered [factors used under analogous regimes]) only as a means to further provide context to one of the eight factors.”¹⁵⁸

120. In the IR that followed, Merck argued, inter alia, that ICANN acted without due diligence and care when it “accepted” the expert determination reflecting what were alleged to be noticeable mistakes in applying ICANN’s LRO standards and that the BGC’s assessment of the relevant circumstances during the RFR was too narrow. Additionally, Merck maintained that the ICANN Board had discriminated against Merck by providing “the possibility for third-party review of some prima facie erroneous expert determinations” but denying the same to similarly situated parties such as Merck.¹⁵⁹ The IR Panel reflected on Merck’s complaints about the ICC expertise and the RFR process as follows:

Merck effectively wanted the BGC to overturn the Sole Panel Expert’s decisions and have the process re-run (which is what it, in substance, wants from this Panel). Its reasons for making that request of the BGC were that the Sole Panel

¹⁵⁵ Merck KGaA v. ICANN, Case No. 01-14-0000-9604.

¹⁵⁶ According to the Guidebook, a holder of existing legal rights (such as trademark) may object that those rights are infringed. Such objections are heard by one expert (unless the parties agree to have three) “with relevant experience in intellectual property rights disputes in proceedings involving an existing legal rights objection:” Guidebook, Section 3.4.4 (at 3-16). In circumstances such as that involved in Merck, the expert’s mandate is to determine “whether the potential use of the applied-for gTLD by the applicant takes unfair advantage of the distinctive character or the reputation of the objector’s registered or unregistered trademark or service mark”. When the objection is based on trademark rights, the panel is instructed to consider a list of non-exclusive factors enumerated in the Guidebook. These include, for example:

Whether the applicant’s intended use of the gTLD would create a likelihood of confusion with the objector’s mark as to the source, sponsorship, affiliation, or endorsement of the gTLD....

Whether the applicant has marks or other intellectual property rights in the sign corresponding to the gTLD, and, if so, whether any acquisition of such a right in the sign, and use of the sign, has been bona fide, and whether the purported or likely use of the gTLD by the applicant is consistent with such acquisition or use....

¹⁵⁷ Merck KGaA v. ICANN, IR Declaration of December 10, 2015.

¹⁵⁸ Determination of the Board Governance Committee (BGC) Reconsideration Request 14-9, April 29, 2014, at 1-2.

¹⁵⁹ Merck IR Declaration, para. 53.

Expert failed to decide the case on the basis of the correct and applicable LRO Standard, and moreover failed to decide the case on the basis of the true and accurate factual record which was presented to him in the course of the dispute. Merck then concludes from those points that it had ‘been denied fundamental due process, as its pleadings were not meaningfully taken into account in the course of the [expert] panel's deliberations, and the panel elected to decide the case on inapplicable grounds.’¹⁶⁰

121. The Merck IR Panel prefaced its analysis by underscoring its limited mandate, and in particular the role of the Standard of Review in confining that charge. Concerning the level of deference, the Panel noted that nothing in the governing disputes architecture required it to approach alleged Board action with deference. Nevertheless, in approaching the BGC’s determinations, it also was “clear that the Panel may not substitute its own view of the merits of the underlying dispute”¹⁶¹ The Merck IR Panel thus limited its mission to examining, not the expert’s performance in making the objection determination, but rather the conduct of the BGC in ruling on the RFR (indisputably ICANN Board conduct).¹⁶²

122. Applying the IR Standard of Review to the BGC’s processing of the RFR, the Panel concluded that there was no evidence that the BGC had failed to carefully and with due diligence equip itself with a reasonable amount of facts in making its assessment or that it failed to consider those facts fully. The Panel declined to assess whether the expert had applied the correct standards, or to perform a de novo review in place of that performed by the BGC. The BGC had determined that the expert had not applied the wrong standards; the Panel considered itself to be without jurisdiction to review the correctness of that finding. It reasoned:

Merck's complaints about the Sole Panel Expert's application, or in its view, non-application of the LRO Standards lack merit. The BGC determined that the Sole Panel Expert did not apply the wrong standards. That is a determination which this Panel does not, because of the precise and limited jurisdiction we have, have the power to second guess. Rather, the critical question for this Panel is whether the BGC exercised due diligence and care in having a reasonable amount of facts in front of them. Merck complains that the BGC did not have "sufficient and accurate facts", and that Merck was thus deprived of an "accurate review of its complaints". These formulations miss the point, and indeed misstate the applicable test in proceedings such as these. The BGC had to have a reasonable amount of facts in front of it, and to exercise due diligence and care in ensuring that it did so. There is no evidence that the BGC did not have a reasonable amount of facts in front of it or consider them fully. It plainly had everything which was before the Sole Panel Expert. Nothing seems to have been withheld from the BGC.

¹⁶⁰ Id., para. 46.

¹⁶¹ Id., para. 21.

¹⁶² To some extent, this followed from the fact that the BGC itself was not empowered to replace the expert’s merits determinations with its own, but rather was limited to verifying that certain processing standards had been met. The IR Panel thus observed: “None of these three bases for the Request for Reconsideration process requires or even permits this Panel to provide for a substitute process for exploring a different conclusion on the merits. Id., para. 47.

Merck's complaints are, in short, not focused upon the applicable test by which this Panel is to review Board action, but rather are focused on the correctness of the conclusion of the Sole Panel Expert. [T]his is not a basis for action by this Panel[.]¹⁶³

123. The Panel also found Merck's discrimination claim lacking. The Panel reasoned that:

[I]t was within the discretion of the BGC and Board...to conclude that the Sole Expert had applied the correct legal standard to the correctly found set of facts. Of course, in different cases, the BGC and Board are entitled to pursue different options depending upon the nature of the cases at issue. It is insufficient to ground an argument of discrimination simply to note that on different occasions the Board has pursued different options among those available to it.¹⁶⁴

XII. MANDATE OF THE PANEL

A. In General

124. The IR Process is one of two review mechanisms intended to ensure that ICANN remains accountable "to the community for operating in a manner that is consistent with [its] Bylaws, and with due regard for the core values set forth in Article I of [those] Bylaws."¹⁶⁵ Both are intended to "reinforce the various accountability mechanisms otherwise set forth in [the] Bylaws, including the transparency provisions of Article III and the Board and other selection mechanisms set forth throughout [the] Bylaws"¹⁶⁶

125. As an IR, the current process is to be distinguished from an RFR, the other accountability process authorized by the Bylaws (Article IV, Section 2), and featured in the IR precedents surveyed above. While both are types of review, the two processes are different in terms of the persons and subject matter falling within their respective remits.

126. The IR mechanism was established to allow "any person materially affected by a decision or action by the Board that he or she asserts is inconsistent with the Articles of Incorporation or Bylaws [to] submit a request for independent review of that decision or action."¹⁶⁷ As implied in that description of standing, under the Bylaws (Article IV, Section 3), an IR Panel must compare "contested actions of the Board to the Articles of Incorporation and Bylaws, and [must declare] whether the Board has acted consistently with the provisions of those Articles of Incorporation and Bylaws." Additionally, as an IR Panel, we are duty-bound to focus on three questions (the "Standard of Review"), as underscored by the Merck Panel in its Declaration, summarized above:

1] Did the Board act without conflict of interest in taking its decision;

¹⁶³ Id., paras. 49-50.

¹⁶⁴ Id., para. 61.

¹⁶⁵ ICANN Bylaws, Article IV, Section 1.

¹⁶⁶ Id.

¹⁶⁷ Id., Article IV, Sec. 3 ("In order to be materially affected, the person must suffer injury or harm that is directly and causally connected to the Board's alleged violation of the Bylaws or the Articles of Incorporation, and not as a result of third parties acting in line with the Board's action").

2] Did the Board exercise due diligence and care in having a reasonable amount of facts in front of them; and

3] Did the Board members exercise independent judgment in taking the decision, believed to be in the best interests of the company?¹⁶⁸

127. The ICDR Supplemental IRP Rules replicate the Bylaws as to the above focus questions, but add:

8. Standard of Review. ./... If a requestor demonstrates that the ICANN Board did not make a reasonable inquiry to determine it had sufficient facts available, ICANN Board members had a conflict of interest in participating in the decision, or the decision was not an exercise in independent judgment, believed by the ICANN Board to be in the best interests of the company, after taking account of the Internet community and the global public interest, the requestor will have established proper grounds for review.

128. Additionally, our ruling as a Panel must be “based solely on the documentation, supporting materials, and arguments submitted by the parties....”¹⁶⁹

B. Board Actions and Failures to Act

129. It seems to have become common ground between the parties to this IR that under some circumstances the requester may legitimately complain of the Board’s failure to take action as well as its affirmative acts. Other Panels are in accord.¹⁷⁰ Not all inaction is actionable, however. Rather, in the Panel’s view, “actionable inaction” is a failure that is inconsistent with a duty to act, whether that duty is formally established by ICANN’s constitutive documents, generated by some other explicit or clearly implied undertaking by the Board, or, powerfully suggested by all the circumstances present. In assessing alleged failures to act, the question is not whether the Board has the power to act, or whether to act would be consistent with the Articles and Bylaws, but whether the Board must act given all the circumstances.

C. Level of Deference

¹⁶⁸ The Bylaws contemplate that, at least sometimes, the complained-of Board action will be evidenced by “minutes of the Board meeting (and the accompanying Board Briefing Materials, if available) that the requesting party contends demonstrates that ICANN violated its Bylaws or Articles of Incorporation.” ICANN Bylaws, Article IV, Section 3.3.

¹⁶⁹ The Bylaws place page limits on Requests for IR and ICANN’s response thereto, but allow each party to submit “documentary evidence supporting [its position] without limitation.” See ICANN Bylaws, Article IV, Section 3, para. 5.

¹⁷⁰ See e.g., Vistaprint IR Declaration, paras.127-128:

It appears that ICANN’s focus in this statement is on affirmative action taken by the BGC in rejecting Vistaprint’s Reconsideration Request; however, this does not eliminate the IRP Panel’s consideration of whether, in the circumstances, inaction (or omission) by the BGC or the full ICANN Board in relation to the issues raised by Vistaprint’s application would be considered a potential violation of the Articles or Bylaws...[T]he Panel considers that a significant question in this IRP concerns one of “omission” – the ICANN Board, through the BGC or otherwise, did not provide relief to Vistaprint in the form of an additional review mechanism, as it did to certain other parties who were the subject of an adverse SCO determination.

130. The corporation laws in most states contain a rich and not fully consistent body of jurisprudence addressing the extent to which boards of directors should be protected in their decision making by one or more presumptions that they acted with due care and in good faith. The law of California, for example, has such jurisprudence.

131. If this were a matter of first impression, this Panel would be required to consider in some detail the applicability of such doctrines in this proceeding. The several Panels to have already addressed the question, however, have done so with relative consistency. In their view, IR Panels are not to accord normal Business Judgment Rule style deference to the work of the ICANN Board, but rather are to pursue “objective” review.¹⁷¹ This conclusion results from the implications of the word “independent”, the explicit standard of review to which the Panel is already bound (which functions in place of the more general Business Judgment Rule jurisprudence) and related justifications. This Panel finds those Declarations sufficiently persuasive that it need not depart from what seems to be the established trend and general approach.

132. Although an IR panel is not bound to accord the Board a presumption of requisite due care, good faith, and the like when examining acts and alleged actionable inaction, the notion that review is objective requires some clarification for the purposes of an IR. In particular, this Panel subscribes to the following furthers parameters:

133. First, whatever label one uses to describe the approach (e.g., “objective,” “de novo,” or “independent”) that approach does not allow the Panel to base its determinations on what it, itself, might have done, had it been the Board. The explicit standard of review—for better or worse—is much narrower than that. In the view of the Booking.com Panel:

[T]here can be no question but that the provisions of the ICANN Bylaws establishing the Independent Review Process and defining the role of an IRP panel specify that the ICANN Board enjoys a large degree of discretion in its decisions and actions. So long as the Board acts without conflict of interest and with due care, it is entitled - indeed, required - to exercise its independent judgment in acting in what it believes to be the best interests of ICANN. The only substantive check on the conduct of the ICANN Board is that such conduct may not be inconsistent with the Articles of Incorporation or Bylaws...[or] with the Guidebook. In that connection, the Panel notes that Article I, Section 2 of the Bylaws also clearly states that in exercising its judgment, the Board (indeed “[a]ny ICANN body making a recommendation or decision”) shall itself “determine which core values are most relevant and how they apply to the specific circumstances of the case at hand.”¹⁷²

134. The present Panel has developed a similar sense of the setting in which it must judge such Board action or inaction as may be identified. As did the Booking.com Panel, this Panel finds that, in the absence of a demonstrable conflict of interest, affording a margin of appreciation to Board action and inaction is to some extent dictated by the Bylaws themselves. As noted in the

¹⁷¹ See Vistaprint IR Declaration, para. 126:

The Panel considers that the question on this issue is now settled. Therefore, in this IRP the ICANN Board’s conduct is to be reviewed and appraised by this Panel objectively and independently, without any presumption of correctness.

¹⁷² Booking.com IR Declaration, para. 129.

above quote from Booking.com, those Bylaws contemplate that ICANN bodies are expected to assess relevance and strive for “an appropriate and defensible balance among competing values” while understanding that:

[T]he specific way in which they apply, individually and collectively, to each new situation will necessarily depend on many factors that cannot be fully anticipated or enumerated; and [that] because [the Core Values] are statements of principle rather than practice, situations will inevitably arise in which perfect fidelity to all eleven core values simultaneously is not possible.¹⁷³

135. Second, a measure of self-restraint is also dictated by the Standard of Review to which this Panel is bound, expressed as it is in terms of whether the Board made “a reasonable inquiry” as opposed to, for example, an “exhaustive” inquiry to determine if it had “sufficient facts available.”¹⁷⁴ Relatedly, to the extent possible given what may be the rather limited fact-finding that can be pursued in an IR, due account ought to be given to such contextual factors as the actual information available to the Board at the relevant time and the array of competing considerations with which it was faced.

136. Finally, complaints about the community objection process as adopted, however well-founded, must be viewed in light of the time bar established in the Bylaws¹⁷⁵ and applied by other Panels.¹⁷⁶ That said, this Panel believes that it may not always be improper to consider *the manner* in which the process, as established by ICANN, was conducted, and in particular the extent to which relevant actors deviated from that process.¹⁷⁷

XIIV. PANEL’S ANALYSIS REGARDING ACTS EQUATED TO BOARD ACTS

A. Panel’s Approach

137. ICANN has argued that the conduct of the ICC and the experts it appoints is neither tantamount to Board action nor properly the basis of any duty on the part of the Board to act. In light of Donuts’ arguments to the contrary, and this Panel’s mandate, the following multipart inquiry arises: should the actions of the ICC or its experts be deemed to be: 1] those of the Board, 2] attributable to the Board, or 3] such as to require the Board to take particular action, which action it in turn did not take.

B. The Extent of Direct or Imputed Equivalency between the Board and the ICC and its Experts

1. In General

¹⁷³ ICANN Bylaws, Article I, Section 2.

¹⁷⁴ See ICDR Supplemental Procedures for ICANN Independent Review Process, Article 8 (essentially restating the Standard of Review set forth in ICANN Bylaws, Article IV, Section 3.4).

¹⁷⁵ See ICANN Bylaws, Article IV, Sec 3(3).

¹⁷⁶ See Booking.com IR Declaration, at para. 129 (“Any such claims, even if they had any merit, are long since time-barred by the 30-day limitation period set out in Article IV, Section 3(3) of the Bylaws”). See note 108, *supra*, and accompanying text.

¹⁷⁷ This was the approach taken by the Bookings.com Panel. See, e.g., para. 163 “[O]ur role in this IRP includes assessing whether the applicable rules – in this case, the rules regarding string similarity review – were followed, not whether such rules are appropriate or advisable.”

138. Some of Donuts' arguments equate the acts of ICC experts, and of the ICC, with those of the Board. There is some variation in how Donuts' explains this equation, but the following, taken from Donuts' Request for an IR, is representative:

Only the Board has the power to appoint or authorize experts to help it make decisions. Under the Guidebook, in fact, it may directly "consult with ... experts ... designated to hear objections." The Board wields ultimate authority over the entire new gTLD program, including to consider any application individually. *As such, the ...objection rulings against Donuts amount to Board action* reviewable and reversible by this proceeding.¹⁷⁸

139. Similarly, in its Supplemental written submission, Donuts maintains:

ICANN contends that its Board has no obligation to ensure that *its* appointed experts act without conflict of interest. However, *appointment of an expert with conflict of interest is clearly a Board action* in violation of ICANN's Bylaws, which, as stated under Bylaws Art. IV § 3.4.a, makes that an express subject of IRP review...[*The Board*, in allowing] that panelist subsequently to rule on the same objector's case against .SPORTS transgresses not only the anti-conflict provision of the Bylaws, but also its non-discrimination mandate at Art. II § 3.¹⁷⁹

2. Do the Bylaws Support Treating as Equivalent to Board Actions those of the ICC and ICC-Appointed Experts?

140. The Panel starts by examining the Bylaws' Article IV (titled: Accountability and Review). With respect to IRs, the focus is on a "decision or action by the Board" alleged to be inconsistent with the Articles of Incorporation or Bylaws. The explicit focus on Board conduct coincides with the heading: "Independent Review of Board Action" and is redoubled in the ICDR Supplemental Rules developed for IRs; the latter Rules essentially repeat the Standard of Review by instructing this Panel to ask, inter alia: did the *ICANN Board*...make a reasonable inquiry to determine it had sufficient facts available; *did ICANN Board members ha[ve] a conflict of interest in participating in the decision*", or produce a decision not "believed *by the ICANN Board* to be in the best interests of the company..."¹⁸⁰

141. When that same accountability Article within the Bylaws authorizes RFRs, by contrast, it does so with a broader explicit reach. It makes the process available not only to address the acts and failures to act of the Board¹⁸¹ but also those of ICANN staff, to the extent conduct of the latter "contradict established ICANN policy(ies)". Consistent with this broader reach, ICANN

¹⁷⁸ Donuts' Request for IR, para. 5 (emphasis added).

¹⁷⁹ Emphasis added; bracketed insert inferred.

¹⁸⁰ ICDR Supplemental Rules for IRP, Article 8.

¹⁸¹ In particular:

[O]ne or more actions or inactions of the ICANN Board that have been taken or refused to be taken without consideration of material information, except where the party submitting the request could have submitted, but did not submit, the information for the Board's consideration at the time of action or refusal to act; or
[O]ne or more actions or inactions of the ICANN Board that are taken as a result of the Board's reliance on false or inaccurate material information.

has acknowledged that the acts and omissions of institutions administering objection proceedings and of the experts they appoint qualify as “staff” conduct, and thus may be the basis of a RFR.¹⁸²

142. No doubt the architects of the IR mechanism could have made the Board directly accountable for designated acts or omissions committed by the ICC and the experts it appoints, either by equating them to Board action or by opening the process to “staff” conduct. The close proximity within the Bylaws of the two accountability processes suggests that differences in the manner of delineating scope were purposeful, not accidental. This seemingly uncontroversial reading of the Bylaws would, however, not preclude attribution to the Board of the conduct of other actors under certain circumstances.

3. Deemed Equivalency; Attribution Theories

143. Donuts does not suggest that in delimiting IR jurisdiction the Bylaws expressly equate the Board with the ICC and its experts. Rather, its position seems to be that ICC experts, in effect, are appointed by the Board by virtue of a delegation of that power to the ICC, which specialized institution in turn makes the appointments on behalf of the Board. As the Panel understands Donuts’ theory, the Board is then accountable for prejudicial errors committed by the ICC or its experts in the course of discharging the mandates given them by the Board. Donuts reasons:

Only the Board has the power to appoint or authorize experts to help it make decisions. Under the Guidebook, in fact, it may directly “consult with ... experts ... designated to hear objections.” The Board wields ultimate authority over the entire new gTLD program, including to consider any application individually. As such, the ... objection rulings against Donuts amount to Board action reviewable and reversible by this proceeding.¹⁸³

144. Donuts relies in particular upon Bylaws Article XI-A, Section 1, Paragraph 4, which it interprets as establishing a close relationship between the experts appointed by the ICC and the Board. Section 1 of Article XI-A authorizes the Board to seek “external advice” from sources other than the Committees that may be available to it. The Section’s first paragraph states that “[t]he purpose of seeking external expert advice is to allow the policy-development process within ICANN to take advantage of existing expertise that resides in the public or private sector but outside of ICANN.” The Section refers to entities commissioned to give advice as “Expert Advisory Panels” which may consist in “public or private sector individuals or entities.” The Section provides that such panels may be appointed by the Board “on its own initiative or at the suggestion of any ICANN body.”

145. In relevant part, Paragraph 4 of Section 1, expressly relied upon by Donuts, states:

Any reference of issues not concerning public policy to an Expert Advisory Panel by the Board or President...shall be made pursuant to terms of reference describing the

¹⁸² See Vistaprint IR Declaration, at note 60 (citing BGC Recommendation on Reconsideration Request 14-5 dated February 27, 2014 (“BGC Determination”), at p. 7, n. 7, Request, Annex 26, and available at <https://www.icann.org/en/system/files/files/determination-vistaprint-27feb14-en.pdf> (last accessed on Sept. 14, 2015)).

¹⁸³ Donuts’ Request for IR, para. 5.

issues on which input and advice is sought and the procedures and schedule to be followed.

146. ICANN offered a different understanding of that provision:

[The relied upon provision] has nothing whatsoever to do with the retention of experts for objections under the Applicant Guidebook for the New gTLD Program or the Board's decision to outsource the objection process to entities such as the [ICC], which have experts that can be appointed to resolve objections asserted against individual gTLD applications. Accordingly, the ICANN Board did not retain the ICC pursuant to Article XI-A of the Bylaws for the New gTLD Program....

Article XI-A of the Bylaws applies to external expert advice sought for the purpose of "allow[ing] the policy-development process within ICANN to take advantage of existing expertise that resides in the public or private sector but outside of ICANN." (Bylaws, Art. XI-A, Section 1.1.). This "policy development process" is the process by which ICANN's various Supporting Organizations develop policy recommendations for ICANN (such as the recommendation by ICANN's Generic Names Supporting Organization to permit a broad expansion of the number of gTLDs).

147. The Panel understands why Donuts invites it to find that the work of ICC experts must have been authorized under Article XI-A. That would show a somewhat direct link between the Board and the ICC experts in this case, and would perhaps imply some level of focused Board processing of individual expert rulings in every case. This would follow from subsequent paragraphs in that article, which elaborate:

[E]xternal advice pursuant to this Section...is advisory and not binding, and is intended to augment the information available to the Board or other ICANN body in carrying out its responsibilities [and that] "prior to any decision by the Board" an opportunity to comment on such advice is to be given to "the Governmental Advisory Committee, in addition to the Supporting Organizations and other Advisory Committees."¹⁸⁴

148. The Panel agrees with Donuts that when the Guidebook states that an ICC expert's finding "will be considered an expert determination"¹⁸⁵ it is not illogical when finding no other specific Bylaw provision on point to assume that Bylaw XI-A may be relevant.

149. The Panel nevertheless agrees with ICANN that the more natural construction of Bylaws Article XI-A is that it authorizes the Board to engage outside experts to aid in policy development, and that by language and structure it appears not to have within its contemplation seriatim ICC appointments to settle objection disputes with a view to generating whatever incremental policy advice might be gleaned from such individual adjudications.

150. Equally, it is difficult to conceive of the MOU between ICANN and the ICC¹⁸⁶ as constituting a Board request for advice on a particular policy. In any event, determinations based on the distinctive set of facts that exists in each objection case seem ill-suited to providing such

¹⁸⁴ ICANN Bylaws, Article XI-A, Section 1, para. 5.

¹⁸⁵ See Guidebook, at 3-17.

¹⁸⁶ See notes 46-51, *supra*, and accompanying text.

“advice” in a form that promotes “the policy-development process within ICANN.”¹⁸⁷ The Guidebook account of the objection process also states that ICC expert rulings will be “...advice that ICANN will accept”, which diverges from Bylaw XI-A’s statement that “[e]xternal advice pursuant to this Section...is advisory and not binding, and is intended to augment the information available to the Board...”

151. Ultimately, of course, there is no need to fit the ICC and its expert regime under Bylaws Article XI-A for such activities to enjoy authorization, or otherwise to be consistent with ICANN’s constituent documents. The California statute under which ICANN operates provides that a corporation of the ICANN type:

[I]n carrying out its activities, shall have all of the powers of a natural person, including, without limitation, the power to: ... (j) Participate with others in any...association, transaction or arrangement of any kind whether or not such participation involves sharing or delegation of control with or to others.¹⁸⁸

152. Additionally, the Panel recalls that ICANN’s Articles entitle ICANN to “cooperate as appropriate with relevant international organizations.”¹⁸⁹

153. To rule, as we do, that Bylaws Article XI-A does not reveal a direct connection between the appointment of ICC experts and the Board, however, does not fully exhaust the ways in which the work of the ICC and its experts might be imputed to the Board. Under certain circumstances, general principles of agency might justify such attribution.

154. Although the precise basis upon which Donuts might wish the Panel to find an agency relationship has not been supplied by Donuts, Donuts’ broader argument in connection with Article XI-A and elsewhere seems to allude to the rudiments of such a theory. It notes, for example, that under AGB § 5.1 the Board “ultimate responsibility for the New gTLD Program” and “reserves the right to individually consider an application for a new gTLD ...”¹⁹⁰

155. Had the agency theory been more fully addressed by the parties,¹⁹¹ the propriety of imputing directly to the Board the acts of the ICC and its experts would most likely depend on how the relationship between the ICC and ICANN is characterized; under the general principles of law known to the Panel that would probably turn upon the level of control that ICANN exerts or is entitled to exert over the ICC’s operations in respect of objection proceedings.

¹⁸⁷ It is true that the decisions produced by ICC experts are “written” as required by Article XI-A, Section 1, para. 5, but they do not function with the ICANN system as “advisory and not binding [advice]... intended to augment the information available to the Board or other ICANN body in carrying out its responsibilities.” Nor do they seem to fit within an architecture that requires that “prior to any decision by the Board” an opportunity to comment on such advice is be given to “the Governmental Advisory Committee, Supporting Organizations and other Advisory Committees.”

¹⁸⁸ Cal. Corporations Code, Section 5140(j).

¹⁸⁹ ICANN Articles of Incorporation, Article 4.

¹⁹⁰ See Donuts Supplemental Memorandum, para. 21.

¹⁹¹ An antecedent step in elaborating such an argument would be to determine what body of law should be consulted by the Panel.

156. Given that the matter was not elaborated upon by Donuts, let alone briefed by the parties, the Panel will not do more than suggest why it considers that, on balance, there is not enough evidence of control in the record to attribute the acts of the ICC and its experts to the ICANN Board. In this regard, the Panel finds the terms of the ICANN-ICC MOU illuminating, if by no means conclusive.

157. Under the MOU, it is for the ICC to select experts and administer the proceedings according to the ICC Rules and any supplements thereto it. It is also for the ICC to “establish the necessary structure and procedures (comprising information technology, staffing, etc.) to perform its duties as DRSP in a timely and efficient manner” (although it is to do so with “with advice and support from ICANN”).

158. The MOU confirms that the ICC-ICANN relationship is a collaborative one under which the ICC enjoys many elements of independence in keeping with its established expertise with respect to the endeavors in question. Moreover, the persistent reference in official ICANN documents to the ICC as a “service provider” when viewed most favorably to Donuts is at most neutral on the question of whether it should be considered an independent contractor as distinct from an agent of ICANN.

159. This Panel concludes given the foregoing, and in accord with the reasoning of other Panels, that the relationship between ICANN and the ICC is not such as to allow an IR Panel “[to] review the actions or inactions of ICANN’s staff or any third parties, such as the [DRSP or objection experts] who provided services to ICANN.”¹⁹² The notion that administering institutions, such as the ICC, are third-party service providers, and not “constituent entities” of ICANN generally or alter egos of the ICANN Board in particular is consistent with most of what one finds in the reasoning other IR Panels.

4. The Theoretical Consequences of Attribution of Substantive Errors

160. Even if this Panel deemed itself authorized as Independent Reviewers to equate the work of ICC experts in their rulings on objections to that of the Board, however, it would stop well short of acting as a plenary review body concerned with errors of fact or the correct application of substantive standards. We would be required to consult the explicit Standard of Review to which we are bound. Thus, we would ask:

1] did the [expert] act without conflict of interest in taking its decision?;

2] did the [expert] exercise due diligence and care in having a reasonable amount of facts in front of [him]?; and

3] did the [expert] exercise independent judgment in taking the decision[.]

161. As to the .RUGBY application, Donuts does not offer an assessment of how the work of Mr. Kantor failed any of these tests; rather, Donuts argues that he misapplied the community objection standards adumbrated in the Guidebook. If in fact that is true—and the Panel’s review of the Mr. Kantor’s reasoning by no means leads to that conclusion—such errors on the merits would fall beyond the three lines of inquiry this Panel is obliged to pursue. In the absence of

¹⁹² Vistaprint IR Declaration, para.150.

further elaboration by Donuts, the .RUGBY proceeding seems readily to clear the hurdles posed by all three questions. Nothing established by Donuts, or apparent from or the record of that proceeding, indicates that a conflict of interest or a lack of independence was present in the work of Mr. Kantor. In turn, the ICC expertise process, which he followed, is one designed to acquaint him with a reasonable amount of facts. Ultimately, to impute Kantor's work to the ICANN Board is to impute conduct not at variance with the Articles or Bylaws, especially when that conduct is considered in light of the required Standard of Review.

162. If other circumstances were equal, the above Standard of Review analysis would apply with equal force to the objection ruling in .SPORTS. Assuming that Mr. Taylor were the agent (or sub-agent) of the Board, his putative errors in applying community objection standards would not be cognizable under the Standard of Review to which this Panel is bound.

163. As is true with respect to the report of the .RUGBY expert, on its face the .SPORT expert opinion shows good conversancy with the parties' arguments and the controlling texts. Whether Donuts agreed with it or not, the reasoning in both cases followed from what appeared to be reasonable fact finding, was lucid, and adopted plausible interpretations of the factual and legal elements involved in those community objections.¹⁹³

164. The .RUGBY and the .SPORTS ruling are not, however, on an equal footing. Donuts alleges that the .SPORTS process was materially defective by virtue of the expert's failure to make sufficient disclosures.

165. If such conduct were deemed by some theory of attribution to be that of the Board, this Panel would struggle with those prongs of the Standard of Review requiring independent, conflict-free, decision making. This Panel finds an insufficient basis, however, for such imputation, for reasons given above.¹⁹⁴ In particular, the deficient case for attribution is not improved merely because alleged conduct in question is the expert's non-disclosure rather than his misapplication of community objection standards. The Panel is not empowered to develop theories on behalf of a party, but must base its declaration on the documents and arguments before it.¹⁹⁵ That Record does not establish a basis for attribution.¹⁹⁶

166. The Panel examines below whether the Board had a duty to act in light of what Donuts alleges were insufficient disclosures by Mr. Taylor when accepting his appointment as the ICC expert for the .SPORTS objection.¹⁹⁷

¹⁹³ Putting aside the question of the expert's alleged conflicts of interest, which explains everything according to Donuts, the outcome in .SPORT expert proceeding seems in part attributable to the expert's firm disapproval of some of Donuts' arguments. See note 214, *infra*, and accompanying text.

¹⁹⁴ See notes 178-92, *supra*, and accompanying text.

¹⁹⁵ ICDR Supplemental ICANN IR Rules, Article 10(a).

¹⁹⁶ No submission by Donuts explains why Mr. Taylor should be regarded as other than an agent, employee or independent contractor of the ICC (itself an independent contractor of ICANN), under which alternative assumptions common law agency principles, absent more, would preclude attribution. Donuts ultimately had the burden of demonstrating under governing law how such attribution might be called for, and it did not do so.

¹⁹⁷ See notes 208-229, *infra*, and accompanying text.

XIV. PANEL'S ANALYSIS REGARDING BOARD FAILURES TO ACT

A. In General

167. Donuts has advanced an analytically distinct set of arguments, which faults the Board for failures to act remedially to ameliorate, prospectively or retroactively, prejudice resulting from errors of substance and procedure committed during the two objection determinations giving rise to this IR. To restate the three main allegations, ICANN failed: 1] to train ICC experts to correctly apply community objection standards; 2] to institute a secondary regime to reconcile inconsistent community objection rulings; and 3] to intervene in this individual case to correct what Donuts argues are obvious substantive errors and a failure of due process by reason of deficient expert disclosure.

168. As outlined above, the Panel considers that some but not all failures to act are cognizable by it. In the Panel's view, "actionable inaction" is a failure by the Board that is inconsistent with a duty to act, whether that duty is formally established by ICANN's constitutive documents, established by some other explicit or clearly implied undertaking by the Board, or, powerfully suggested by all the circumstances present.

169. It follows that not every circumstance in which the Board might be empowered to act gives rise to a duty to act. In particular, when the complaining party points not to an explicit promise to act or a specific obligation to act substantiated in ICANN's constituent documents, but rather relies on the circumstances and more general sources of obligation, actionable inaction would seem to assume circumstances: 1] that are, or ought be, known to the Board; 2] that forcefully impinge on relevant values and principles; and 3] that could reasonably have been expected to be mitigated by Board action. Importantly, even when the three factors just enumerated are present, the inaction must be judged in light of the Standard of Review (that is: it might be that determined inaction is well-informed, independent and conflict-free).

170. As outlined earlier, in accord with what other Panels have concluded,¹⁹⁸ at any given time the Board is confronted with the range of options and is entitled, indeed required, to balance the competing values listed in the Bylaws when deciding what, if anything, to do. The Board need not react merely because it has been petitioned to do so by a stakeholder, commentator or other observer.¹⁹⁹

B. Merits-Related Board Failures to Act

1. In General

171. To the extent that Donuts complains of jurisprudential errors and disarray, its arguments assume that timely action by the Board would have led to added legal certainty, more transparency, higher levels of due process and—by extension—unsuccessful objections in the specific cases here involved through the proper application of community objection standards.

¹⁹⁸ See, e.g., Booking.com IR Declaration, para. 138.

¹⁹⁹ See Id.

2. Failure to Train ICC Experts

172. It is common ground that ICC experts have access to the Applicant Guidebook and other documentation concerning the adaptation of the ICC Expert process for use in determining community objections, but that they received no specific training by ICANN concerning community objection standards. Equally, however, the Board is not specifically required by any constituent document known to the Panel to institute training; nor has it represented that it would perform such training. Consistent with this, Donuts does not argue that it somehow relied on assurances that any expert appointed to decide an objection filing would have received particular training by ICANN.

173. The Panel believes that Donuts has not carried its burdens on this allegation. It has considered several factors:

174. First, the situation is not one in which the Board simply provided no instruction to the experts. The Guidebook itself provides a considerable measure of guidance. It identifies myriad factors for experts to consider in processing community objections, repeats admonitions about an objector's burdens and adds caveats about the need to find all elements satisfied.

175. Further, the Guidebook requires that the experts appointed to each proceeding be appropriately qualified²⁰⁰ and this requirement is restated in the ICC Rules which require the ICC to consider the prospective appointees' qualifications to be considered before an appointment is made.²⁰¹

176. Second, it is to be expected given the Guidebook's multi-factor tests, diversity of factual patterns and the role of advocates that variations in way experts frame issues and apply the governing factors will be perceived; these may or may not reflect genuine differences of approach or the deficiency of one approach compared to another. As a general matter, it would be surprising if among the corpus of reasoned objections to have been issued thus far that a somewhat diverse marketplace of ideas had not developed; some variation is to be expected.

177. Moreover, the errors of which Donuts complains in the current case are said by it to be obvious under the Guidebook. If that is true, training would not necessarily have made any difference. An expert that would ignore the Guidebook would likely also ignore any subsequent training based on the Guidebook. In any event, the Panel's study of the reasoned opinions of the experts involved in this IR—done strictly for fact finding purposes²⁰²—found that neither expert failed to apply the Guidebook factors, nor reached an absurd result.

178. The Panel does not exclude the possibility that jurisprudential disarray might become so acute and prolonged with respect to community objections that the Board would be required to act to improve upon the original manner of equipping experts; Donuts has not demonstrated that such a state of affairs exists, however.

179. The Panel notes as well that, to a large extent, Donuts seems to complain of the system as it was originally instituted, one without training for experts beyond the instruction found in the

²⁰⁰ Guidebook, Section 3.4.4.

²⁰¹ ICC Expertise Rules, Article 3(2).

²⁰² The Panel is not entitled under the guise of an IR to propose an authoritative construction of the Guidebook's community objection standards.

Guidebook. As such, Donuts arguably faces the time bar applicable to such complaints, as recognized by other IR Panels.²⁰³

3. Failure to Institute Appellate Review

180. Similar considerations to those identified with respect to the training of experts apply in assessing the failure of the Board to inaugurate an appeals mechanism of some kind for community objection cases. Donuts argued:

Donuts and others had specifically urged the Board to implement a means for reviewing new gTLD objection rulings inconsistent with ICANN's "documented policies" governing such procedures in the Guidebook....Several months after that... the NGPC proposed...a mechanism for addressing perceived inconsistent results in certain [string confusion] objection cases.... The NGPC specifically cited, as authority for its determination, Guidebook section 5.1, which provides in part as follows:

ICANN's Board of Directors has ultimate responsibility for the New gTLD Program. The Board reserves the right to individually consider an application for a new gTLD to determine whether approval would be in the best interest of the Internet community. Under exceptional circumstances, the Board may individually consider a gTLD application.

181. The Panel believes that to install some sort appeals mechanism might add predictability of outcome and produce greater satisfaction with the process by some. The Panel assumes, without opining, that the Board has the power to institute such a mechanism, and it believes that to do so in a sound fashion after careful study would be consistent with ICANN's Articles and Bylaws.

182. Equally, however, absent jurisprudential disarray so urgently in need of a top-down remedy that the Board would not be entitled to establish other priorities, it may indeed refrain from exercising the power it has already exercised in connection with certain string similarity cases.

183. Even if the record reflected a concrete decision by the Board to take an incremental approach to the implementation of review mechanisms, perhaps delaying in-depth study of the possibility, that Board strategy would be judged against the Standard of Review, and the Board's duty to balance all relevant factors, including those that argue against wholesale adoption of some form of appeals mechanism. In the Panel's view, absent compelling facts to the contrary, the Board need not rush into adding another layer of adjudication or review, whether or not urged to do so by Donuts and others.

4. Failure to Intervene in the Individual Case

184. Relying on the Board's reserved "right to individually consider an application for a new gTLD to determine whether approval would be in the best interest of the Internet community," Donuts faults the Board for not intervening in its individual case.²⁰⁴ To the extent it relies on

²⁰³ See, e.g., reasoning of the Booking.com IR Panel, discussed at note 106, *supra*, and accompanying text.

²⁰⁴ Quoting Guidebook, Section 5.1.

putative errors in the application of the community objection standards, the above analysis applies; the Board can, in the Panel's view, pursue other priorities. Apart from questions about whether the errors alleged by Donuts are as obvious as it asserts, a hypothetical Board policy of ordinarily not responding to ad hoc petitions to intervene with respect to individual applications would seem prudent on its face.

185. Accordingly, the Panel agrees with the Vistaprint Panel, who ruled that “the ICANN Board has no affirmative duty to review the result in any particular...case.”²⁰⁵ As Donuts does in this case, Vistaprint had relied upon the Guidebook's reference to individual Board consideration of applications. As the Vistaprint Panel observed, however, the Guidebook's example of the “exceptional circumstances” that involve individual assessment by the Board is when the disappointed applicant engages the Board through an accountability process such as the RFR.²⁰⁶

186. True, the RFR example, being only that, does not preclude an ad hoc intervention by the Board; it does however remind one of context, and to consider Board inaction in light of the other grievance mechanisms available to applicants, most notably in this case the RFR option.²⁰⁷

XV. PANEL'S ANALYSIS REGARDING FAILURE TO INTERVENE IN THE .SPORTS PROCESS TO ACCOUNT FOR DEFICIENT EXPERT DISCLOSURE.

A. The Disclosure Standard

187. With respect to the .SPORTS objection, Donuts relies heavily on what it considers to have been Mr. Taylor's deficient disclosure. The Panel has suggested above that it does not equate any such failing to direct Board conduct, but Donuts also has advanced a failure to act argument.

188. The ICC Expertise Rules in force at the relevant time contemplated that the ICC would appoint an expert only after considering “the prospective expert's qualifications relevant to the circumstances of the case”²⁰⁸ and that, unless the parties agree otherwise in writing, the experts appointed are to be “independent of the parties involved in the expertise proceedings.”²⁰⁹

189. Experts are to execute a “statement of independence” along with a written disclosure to the Centre of “any facts or circumstances which might be of such a nature as to call into question the expert's independence in the eyes of the parties.” Such disclosed information is communicated to the parties, who are entitled to object that the expert does not have the necessary qualifications, including independence.²¹⁰

190. There is an obvious tension between the desire to find experts with suitable qualifications (which often implies experience in the relevant sector) and the default rule that experts are to be independent of the parties. To a large extent this struggle of opposing considerations is resolved by the expert making the required disclosures, and the system thus heavily depends on the expert to do so.

²⁰⁵ Vistaprint IR Declaration, para. 157.

²⁰⁶ *Id.*, para. 156 (“For example, the Board might individually consider an application as a result ... of the use of an ICANN accountability mechanism.”).

²⁰⁷ See notes 181-82, *supra*, and 227 *infra*, and accompanying text.

²⁰⁸ ICC Expertise Rules, Article 3(2).

²⁰⁹ *Id.*, Article 3(3).

²¹⁰ *Id.*

191. An examination of the disclosure rule as formulated confirms that disclosure is intended to be relatively broad. It is not, for example, limited to circumstances “likely to call into question” the appointee’s independence, but refers instead to matters that “might” do so. Nor is it to be judged in terms of objective, reasonable, parties; the test, instead, is a subjective one asking the prospective expert to determine what should be disclosed when viewed through “the eyes of the[se] parties”.²¹¹

B. The Respective Actors’ Roles in Disclosure

192. It might be argued that Donuts has mainly itself to thank for not being prompted to investigate Mr. Taylor further by what one finds on his resume. His c.v., after all, records in several places that he has represented “sports bodies”, and in diverse contexts.²¹² Given the wide membership enjoyed by SA, it is reasonable to expect that Donuts would have been cued to investigate Mr. Taylor’s background more fully by these disclosures; there would seem to have been a high probability that he had acted on behalf of one or more of SA’s members. Additionally, Donuts should have come to know his c.v. in detail by virtue of its unsuccessful, contemporaneous, attempt to challenge Mr. Taylor in connection with the .SKI objection proceeding.²¹³

193. The sophistication with which Donuts is capable of operating during the appointment process is evidenced moreover by its successful challenge of Mr. McClaren in connection with .RUGBY objection proceeding.²¹⁴ One might also note that essentially the same Taylor resume supplied to Donuts led dot SPORT’S representative, Mr. Young, to seek disqualification of Mr. Taylor based on Taylor’s connections to SA, the same objecting entity against whom Donuts defended in the present case. Moreover, in doing so, Mr. Young seems to have relied on information largely available through a rudimentary internet search.²¹⁵

194. When a disputant fails to discover, or under appreciates, putative conflicts until after receiving an unfavorable result, questions naturally arise about that party’s level of due diligence during the appointment process. Concurrently, Mr. Taylor, to be fair, may well have had in mind rules of disclosure pertaining to other systems, such as those governing under a national arbitration law, while assuming that those standards equaled or surpassed the ICC standard. Nor does it follow, necessarily, from what this Panel regards as his impermissibly abridged disclosures that Taylor was a partisan, such that his determination was the product of bias. While it is true that Mr. Taylor was critical in some respects of the manner in which Donuts’ conducted its defense, the irritation expressed by him may well have been heart-felt, and perhaps justified, rather than an expression of partisanship (the Panel is not in a position to judge).²¹⁶

²¹¹ This would not in every case lead to a duty to err on the side of disclosure; the parties may by involvement in the field both know well the expert and any relevant affiliations he or she has.

²¹² Taylor c.v. as attached to ICC Statement of Independence and Impartiality.

²¹³ Recounted by Donuts in its Request for Independent Review of October 8, 2014, paras. 41, 46- 48.

²¹⁴ Recounted by Donuts at id., para. 53.

²¹⁵ July 1, 2013 letter to ICC by Mr. Young challenging Mr. Taylor’s appointment in relation to .SPORT objection by Sport Accord.

²¹⁶ See Taylor expertise, paras. 16.4-16.5. The expert characterized as “extremely misleading” and “(at the very least) unfortunate” that, upon investigation, a document said by Donuts to establish the policy of ICANN and the Guidebook in fact represented the not-adopted view of a certain private entity, and

195. As for Mr. Taylor’s reasoned determination on the merits, at least on its face, it seems to be a thorough, balanced, and lucid examination of the community objection grounds that flows logically to a conclusion. Whether he was correct in his appreciation of the merits is not for this Panel to assess.

196. Whatever obligations a party has to investigate a potential appointee (and the Panel believes these are not negligible) ultimately it is primarily the ICC expert’s disclosure practices, and not the parties’ due diligence, upon which the integrity of the ICC expertise system depends. A prospective appointee’s failure to be forthcoming, combined with selective disclosures capable of assuaging the concerns of one of the parties, allows the later-dissatisfied party to complain justifiably about the process while also giving it a plausible reason for not itself investigating more deeply.

197. Even without consulting the IBA Conflicts Rules relied on by Donuts’ expert, (which do not apply formally to an ICC Expert proceeding), the Panel would have expected Mr. Taylor to have been more specific in making disclosures based on the above analyzed ICC disclosure formula. He should have identified the members of SA for whom he had recently acted. That would have included listing his advocacy on behalf of the International Tennis Federation (ITF), the conflict which Donuts’ expert found to be most troubling.²¹⁷ In this respect, the Panel notes that the ICC disclosure statement he signed advises, in underscored text, that “any doubt must be resolved in favour of disclosure.”²¹⁸

C. Partial Dissent

198. In light of what all three Panel members regard as disclosure by Mr. Taylor that was on its face insufficient, one member would declare Donuts the prevailing party with respect to the .SPORTS application. He explains why he so holds in a separate document not forming part of this Declaration. Although the majority proceeds on a different basis, it understands how reasonable minds could conclude that the ICC expertise system, as adapted for use in community objection cases, has a systemic defect evident in the case at hand. That defect may allow conflicts to go undetected, and un-remedied, at critical times given that the system combines heavy reliance on adequate candidate disclosure, the absence of court review,²¹⁹ single-member

constituted on the part of Donuts “a contrived argument” intended to defeat the objection but which instead gave rise to a negative inference and questions about Donut’s credibility.

²¹⁷ Savarian Report of October 7, 2014, at para. 32 (ongoing representation of ITF a ‘Waivable Red List’ conflict).

²¹⁸ ICC Disclosure Form (“Statement of Impartiality and Independence”) completed by Jonathan Taylor, June 17, 2013.

²¹⁹ Whether a binding expert determination would be regarded as subject to a set aside proceeding is likely to vary with the national arbitration law in question. With respect to potential lawsuits against ICANN itself, the Guidebook stipulates (emphasis in the original) that:

APPLICANT AGREES NOT TO CHALLENGE, IN COURT OR IN ANY OTHER JUDICIAL FORA, ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION, AND IRREVOCABLY WAIVES ANY RIGHT TO SUE OR PROCEED IN COURT OR ANY OTHER JUDICIAL FORA ON THE BASIS OF ANY OTHER LEGAL CLAIM AGAINST ICANN AND ICANN AFFILIATED PARTIES WITH RESPECT TO THE APPLICATION. APPLICANT ACKNOWLEDGES AND ACCEPTS THAT APPLICANT’S NONENTITLEMENT TO PURSUE ANY RIGHTS, REMEDIES, OR LEGAL CLAIMS AGAINST ICANN OR THE ICANN AFFILIATED PARTIES IN COURT OR ANY OTHER JUDICIAL FORA WITH RESPECT TO THE APPLICATION SHALL MEAN THAT APPLICANT WILL FOREGO ANY RECOVERY OF ANY APPLICATION FEES, MONIES INVESTED IN BUSINESS INFRASTRUCTURE OR OTHER STARTUP

expert tribunals, and a binding process in substitution for the original ICC default rule under which expert determinations are merely advisory.²²⁰

199. Language in at least one precedent, in turn, arguably condones a more plenary review than that which the majority pursues in this case. The Booking.com Panel summarized its investigation as follows:

The Panel finds that Booking.com has failed to identify any instance of Board action or inaction, *including any action or inaction of ICANN staff or a third party (such as ICC, acting as the SSP)*, that could be considered to be inconsistent with ICANN's Articles of Incorporation or Bylaws or with the policies and procedures established in the Guidebook. This includes the challenged actions of the Board (*or any staff or third party*) in relation to what Booking.com calls the implementation and supervision of the string similarity review process generally, as well as the challenged actions of the Board (*or any staff or third party*) in relation to the string similarity review of .hotels in particular.²²¹

200. A similar search in the case at hand might well support a finding that, unlike what was resolved in Booking.com, conduct of certain third parties (Mr. Taylor) was “inconsistent with ICANN's Articles of Incorporation or Bylaws or with the policies and procedures established in the Guidebook” to quote again Booking.com. At least arguably, moreover, no time bar would operate because the complaint is not about the system as installed by ICANN, but rather concerns a failure of the system as designed to be followed in this particular case.

D. The Majority's Position

1. In General

201. The Panel majority finds the views expressed by our colleague to be cogent—indeed, forceful. We take a somewhat different approach, however, and reach a different conclusion.

202. We start by recalling how very narrow our mandate is, and how that confinement is redoubled by the standard of review. Our task is not to assess whether everything worked perfectly in the objection process, but rather whether or not the Board can be said to have violated ICANN's Articles and Bylaws. For reasons discussed above, the requisite Board action cannot be established by equating directly the expert's deficient disclosure, or the ICC's failure to require better disclosure, to a Board failure to disclose or require disclosure, even though some of

COSTS AND ANY AND ALL PROFITS THAT APPLICANT MAY EXPECT TO REALIZE FROM THE OPERATION OF A REGISTRY FOR THE TLD; PROVIDED, THAT APPLICANT MAY UTILIZE ANY ACCOUNTABILITY MECHANISM SET FORTH IN ICANN'S BYLAWS FOR PURPOSES OF CHALLENGING ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION. APPLICANT ACKNOWLEDGES THAT ANY ICANN AFFILIATED PARTY IS AN EXPRESS THIRD PARTY BENEFICIARY OF THIS SECTION 6 AND MAY ENFORCE EACH PROVISION OF THIS SECTION 6 AGAINST APPLICANT.

Guidebook, at 6-3.

²²⁰ See notes 56. *supra*, and accompanying text.

²²¹ Booking.com IR Declaration, paras. 144-45 (emphasis added).

Donuts' submissions have made that leap. More would be needed before this Panel's majority could consider either the ICC or Mr. Taylor to be a partner or agent of the Board.

203. Nor has the ICC been shown by Donuts to be sufficiently analogous to the GAC to warrant Donuts' somewhat heavy reliance on the DCA IR Declaration. Donuts argues:

[T]he DCA Case held the Board responsible for oversight of the acts of ICANN's "constituent bodies," such as the GAC, that share ICANN's obligation to adhere to its Bylaws and other governing documents....GAC "advice" amounts to nothing unless and until ICANN acts upon it. Similarly, the [ICC expert] determinations of new gTLD objection panels constitute "expert advice" that have no effect until accepted by ICANN.²²²

204. This Panel's majority disagrees. It cannot, absent more, regard the ICC as a "constituent body" of ICANN. The DCA IR panel's analysis, by contrast, proceeded from its explicit finding that the GAC is a "constituent entity" of ICANN, and thus subject to its transparency undertakings. That question was the subject of considerable attention at the DAC IR hearing. Ultimately, the Panel formed a solid view of how the GAC fit within ICANN's constitutional structure.²²³ In our case, with so many indications pointing a different direction, the case for considering the ICC a "constituent entity" is far from obvious, and in the majority's view, Donuts has not made its case on that point.

205. The majority also considers that the Booking.com Panel's recounting of its broad but fruitless search for actionable missteps was not a conclusive statement of the proper scope of an IR, but rather reasoning that obviated further inquiry because no missteps were found—process wide. The Panel's report also had the byproduct of not leaving unanswered allegations that experts and service providers had been sub-standard in their work.

2. In Light of Mr. Taylor's Disclosure Practices, Was the Board Required to Act?

206. Donuts, nevertheless, argues that the Board was obliged to act under the circumstances, referred to by it as "egregious." The record does not contain evidence of formal Board consideration of Mr. Taylor's conduct as an expert for this Panel to test against the governing standard of review. Nor does Donuts point to a Board undertaking, or other formal source, that expressly or by clear implication requires the Board to exercise oversight with respect to individual ICC appointments or the sufficiency of an expert's disclosure (although the RFR process arguably provides access to such oversight).

207. Donuts instead posits a duty flowing from the Board's ultimate responsibility for the new gTLD program, its reserved authority to consider individual applications, and an allegation that ICANN officers had been made aware of troubling facts concerning Mr. Taylor. In particular, Donuts avers that there were communications between ICANN and the ICC about Taylor in connection with a proceeding to which Donuts was not party, but which involved SA. Donuts alleged:

²²² Donuts' Supplemental Memorandum of August 20, 2015, para.28.

²²³ See DCA Trust IR Declaration, para.101.

Though the ICC did not provide other applicants with information regarding Mr. Taylor's potential conflicts, it certainly brought the dot Sport request to disqualify Mr. Taylor to ICANN's attention. In turn, ICANN made detailed inquiries of the ICC regarding dot Sport's conflict allegations. Dot Sport began to include ICANN Board members Fadi Chehadé and Cherine Chalaby, as well as Chris LaHatte, ICANN's Ombudsman, on its communications, after which ICANN staff made further inquiries of the ICC.²²⁴

208. In its Post-Hearing brief, Donuts reiterates: “[t]he Board has failed to act upon specific information of which it had express notice regarding the SPORTS panelist's conflict of interest.”²²⁵

209. The chain of emails Donuts cites in support of its allegation that ICANN had become aware of Mr. Taylor's conflicts nevertheless do not support the proposition. Those communications related not to Mr. Taylor, but to a different expert's potential conflicts of interest, and correspondingly do not demonstrate active consideration by ICANN of circumstances related to Mr. Taylor's appointment in the .SPORTS objection proceeding.²²⁶

210. There are also problems with any suggestion that timely Board action to effect Taylor's disqualification—assuming the ICC would have allowed ICANN to so intervene in that fashion—would have led to the appointment of an expert who would have agreed with Donuts' interpretation of the community objection standards. The majority can't help but notice that both Mr. Kantor and Mr. Taylor were persuaded by similar lines of argument, flowing from Donuts' welcoming registration policy, and yet no conflicts have been attributed to Mr. Kantor.

211. In the view of this Panel's majority, however, even if the alleged biases of a particular expert are made known to ICANN officers in the ordinary course of interacting with the ICC, or because ICANN was petitioned by an applicant asking it to intervene, the Board's failure to intervene would have to be considered in light of the range of defensible options available to it and the existing ICANN mechanisms that offer a complaining applicant potential redress. Chief among these alternatives to ad hoc Board intervention is the RFR mechanism, which Donuts elected to forgo in this case.

212. Without purporting to predict the likely outcome of the RFR forgone by Donuts, the majority of this Panel does believe that it would have been an appropriate vehicle by which to address an expert's seemingly insufficient disclosure. The RFR process would have allowed an organ of the Board, with certain fact finding powers, to evaluate Mr. Taylor's conduct, and the ICC's handling of it, to determine if it amounted to: “one or more staff actions or inactions that

²²⁴ Donuts' Post-Hearing Brief of Supplemental Memorandum of August 20, 2015, para.8.

²²⁵ *Id.*, para. 6.

²²⁶ The Panel can only conclude that the compressed briefing schedule involved in this proceeding and the large volume of documents exchanged late in the process left Donuts insufficient time to study, or perhaps identify correctly, the correspondence upon which it relied. The Panel, nevertheless, spent considerable time in pursuing justification for arguments that, while asserted and repeated, proved to be unsupported by the documents to which the Panel was directed by Donuts.

contradict established ICANN policy(ies)”, to quote from the RFR grounds for seeking reconsideration.²²⁷

213. Had Donuts pursued an RFR, not only might some relief have been forthcoming (perhaps obviating this IR) but any RFR recommendation and subsequent processing of it would involve activities likely to fall properly within the jurisdiction of an IR Panel. Indeed, the RFR path is the one routinely taken by other disappointed applicants before resorting to the IR machinery. The Board was entitled to expect that Donuts would do likewise given the architecture in place. Correspondingly, in the view of this Panel’s majority, the Board simply was not required to pursue some other form application-specific intervention in the process.

214. Donuts is no doubt correct that it is not required to pursue an RFR. It is also correct that to the extent it sought a review of the merits, the RFR process would not be appropriate, and to that extent would be futile. The same cannot be so easily said when there is alleged conduct directly implicating the fairness and transparency of ICANN’s “staff”.

215. To its credit, Donuts engaged in an energetic effort to enlist the help of the Ombudsman, Mr. LaHatte. Despite being invited several times by LaHatte to identify some procedural unfairness, Donuts did not, as far as this Panel can ascertain, pin-point the weakness of Taylor’s disclosure. Donuts instead persisted in asking LaHatte to review the merits and to infer bias largely from the way in which Taylor reasoned and his connections²²⁸—to a large extent seeking the very merits review that LaHatte insisted he was not authorized to perform.²²⁹ That is, based on the Donuts’ correspondence with Mr. LaHatte, fairness of process was LaHatte’s concern; given Donuts’ heavy emphasis on the disclosure question in these proceedings, that Donuts appears not to have asked LaHatte to consider the fairness implications of Taylor’s weak disclosure is surprising.

216. Ultimately, on the question of the Board’s alleged failure to act to ameliorate the consequences of Mr. Taylor’s seemingly insufficient disclosure, the majority concludes that the circumstances did not so powerfully suggest a need to act that the Board’s failure to do so transgresses the Articles or the Bylaws or otherwise raises doubts under the Standard of Review. Those circumstances include but are not limited to the availability to Donuts of the RFR process and the Board’s apparent lack of knowledge of any conflicts potentially impairing Taylor’s impartiality that remained both undisclosed and unknown to Donuts.

XVI. DISPARATE TREATMENT CLAIM

217. As noted above, Donuts asserts that the Board has engaged in unjustified discrimination by virtue of its selectivity in installing a mechanism designed to address inconsistent “string

²²⁷ See notes 181-181, *supra*, and accompanying text.

²²⁸ See LaHatte Letter Ruling (Report) of May 25, 2014 finding no jurisdiction to examine merits of expert’s objection ruling. (“The essence of the complaint is that the dispute resolution providers have made errors in the various decisions relating to the names sought by Donuts, where they lost the dispute resolution processes.”); Letter of June 5, 2014 to from Donuts to Chris La Hatte (complaining of conflicts, bias, but not a failure of disclosure).

²²⁹ See email correspondence sent by Chris Lahatte to Jonathon Nevett, May 25, 2014

confusion” objection results. Although Donuts formally supports the initiative, it urges that it should have been extended to inconsistent community objection determinations. Donuts avers:

[T]he Board...admits to having chosen consciously not to use [its power to reach community objection cases]. ICANN made that choice discriminatorily and despite specific and sustained exhortations to take action from a broad constituency including Donuts.²³⁰

218. Donuts relies on Bylaw’s Article II, Section 3. The latter commands that ICANN:

[S]hall not apply its standards, policies, procedures, or practices inequitably or single out any particular party for disparate treatment unless justified by substantial and reasonable cause, such as the promotion of effective competition.

219. By its terms, Article II, Section 3 is not violated if ICANN is justified in its line drawing by “substantial and reasonable” cause. Albeit with a slightly different application of the principle, the Panel agrees with Vistaprint IR Panel that temporal context is important. It is obvious that a fresh phase of study begins when a regime with the many operational features of the new gTLD program moves from planning to implementation. There having been extensive study and stakeholder participation before implementation of the gTLD program, the Board is more likely to violate its duties if acting precipitously rather than with deliberateness.

220. The benefits of deliberateness will in the majority’s view often constitute “substantial and reasonable cause” for selective application of new policies and new mechanisms. Moreover, in the majority’s opinion, the only differences in treatment that implicate Bylaws Article II, Section 3 are those which occur in like circumstances. The record does not allow the Panel to conclude that the considerable consistency issues raised in connection with string similarity cases have emerged in connection with community objection cases as a whole, or with respect to the two expert decisions giving rise to this IR.

221. On the contrary, the materials produced in this case afford ample justification for giving a priority to the string confusion cases,²³¹ which readily give the impression of containing a certain percentage of irreconcilable outcomes. The opprobrium raised among observers, stakeholders and others in reaction to the string confusion cases, correspondingly, seems to have been of a kind and a degree not occurring with respect to community objections.²³²

XVII DONUTS’ CONTRACT THEORIES

222. In its pleadings, Donuts made reference to contractual theories by which it was entitled to relief; these were left under-developed by Donuts.²³³ Nevertheless, for the sake of completeness, the majority observes that no contractual analysis it has considered would lead to a different result than that reached above. Under Donuts’ occasional characterization of itself as being a

²³⁰ Donuts’ Post-Hearing Brief of Oct. 29, 2015, para. 12.

²³¹ See, e.g., Booking.com IR Declaration, paras. 119-30.

²³² Cf. Vistaprint IR Declaration, paras. 188-92.

²³³ In its Request for IR, para. 80, Donuts provided its most complete explanation of its contract theory (“Applicant agrees to the terms of the Guidebook by applying for a new gTLD, thus forming a contract on those terms with ICANN”). The jurisprudential support for its contract formation thesis was not supplied, however.

contracting party, with ICANN being its counter-party, it is the premise that Board conduct that is not consistent with the Guidebook would be a breach of contract. It follows from the analysis adopted above that, assuming arguendo the existence of a contract, no breach has occurred, including no violation of duties of good faith. The same is true of any reliance-based theory the Panel can envision in the absence of focused pleading on the question.

XIIX DECLARATION

223. To a great extent, Donuts' own initial pleading foreshadowed the majority's rulings in this case. It referred to certain post-ICM case "obstacles" instituted by ICANN, such as "subjecting only Board action to scrutiny, and attempting to narrow the scope of review."²³⁴ Perhaps this was intended by Donuts to suggest that ICANN had acted unfairly to insulate itself from accountability. Whatever the intimation, these are not "obstacles" this Panel is free to ignore. As the Bookings.com IR panel observed in considering the case of another disappointed applicant:

In launching this IRP, [the applicant] no doubt realized that it faced an uphill battle. The very limited nature of IRP proceedings is such that any applicant will face significant obstacles in establishing that the ICANN Board acted inconsistently with ICANN's Articles of Incorporation or Bylaws.²³⁵

224. As an IR Panel, we are required under the ICANN Bylaws²³⁶ to:

[D]eclare whether an action or inaction of the Board was inconsistent with the Articles of Incorporation or Bylaws²³⁷

225. Pursuant to this authority, the Panel (by a majority) declares that Donuts has not met its burden to demonstrate action or inaction by the Board that violated ICANN's Articles or its Bylaws.

226. The Panel also has authority to:

[R]ecommend that the Board stay any action or decision, or that the Board take any interim action, until such time as the Board reviews and acts upon the opinion of the IRP[.]

227. There is precedent for taking a broad view of this prerogative.²³⁸ Even though an IR is an accountability mechanism, it also has the potential to serve an advisory function, inasmuch as it represents the views of three independent neutrals. These considerations prompt the majority to offer the following further thoughts.

228. First, the majority cannot say that the .SPORTS expert was motivated by partiality favoring the objector, only that his failure to elaborate on what he may have thought was already implied in his resume erred too heavily on the side of non-disclosure, and was thus unhelpful to the process. Opting for less than robust disclosure is harmful because, at a minimum, when discovered it may create the impression of bias and thus undercut a party's confidence in the

²³⁴ Donuts' Request for IR, para. 21.

²³⁵ Booking.com IR Declaration, para. 141.

²³⁶ ICANN Bylaws, Article IV, Section 3.

²³⁷ Id., Section 3, para. 1(d).

²³⁸ See Booking.com IR Declaration, para. 4; Vistaprint IR Declaration, paras. 186-90.

system. A more substantial peril is realized when weak disclosure is only a precursor to a determination in fact motivated by partisanship.

229. The majority believes that rather than using single expert panels, the community objection process might to advantage employ panels composed of three experts. In such circumstances, partisans can only do limited damage and, correspondingly, any party concerned about the prospect of biased expert determinations should be reassured to a considerable extent by three-person tribunals. In the majority's view, even with the added costs involved, it would be economically justifiable in the long term and not inconsistent with ICANN's values and principles to adopt a three-neutral model as the default in community objection cases.

230. Concerning the community objection proceeding brought by SportAccord in connection with .SPORTS, the majority believes it would not be inconsistent with ICANN's values and principles to provide for a rehearing of that objection, by a different expert (or three experts). In the event that should happen, the applicant and objector would presumably be highly efficient in presenting their respective cases, having already prepared them fully once.

231. The majority also considers that the cases before this Panel involve a predictable conflict of expectations. The Guidebook authorizes a prospective applicant, who espouses a relatively open registration policy, to pursue a standard application to administer a string prone to be associated with one or more communities; not uncharacteristically, those communities will espouse and be galvanized by formal policies and common perspectives that are likely to be incompatible with unrestrained access to the string involved. The majority suggests that the assumptions and policies that lead to this kind of tension warrant further study.

XIX COSTS

232. The Supplemental Rules, which augment the ICDR arbitration Rules for IR proceedings, state:

The IRP PANEL shall fix costs in its DECLARATION. The party not prevailing in an IRP shall ordinarily be responsible for bearing all costs of the proceedings, but under extraordinary circumstances the IRP PANEL may allocate up to half of the costs to the prevailing party, taking into account the circumstances of the case, including the reasonableness of the parties' positions and their contribution to the public interest.

In the event the Requestor has not availed itself, in good faith, of the cooperative engagement or conciliation process, and the requestor is not successful in the Independent Review, the IRP PANEL must award ICANN all reasonable fees and costs incurred by ICANN in the IRP, including legal fees.²³⁹

233. The majority of this Panel has determined that Donuts has not prevailed. The majority does not find that the circumstances warrant departing from the general rule that, ordinarily, "the party not prevailing in an IRP shall...be responsible for bearing all costs of the proceedings."

²³⁹ Supplementary Procedures for ICANN Independent Review Process, Article 11.

234. The majority considers that any contribution to the public interest Donuts might have made by focusing attention on the proper level of disclosure by ICC experts and related matters has been offset by the tenuousness of some of Donuts' positions.²⁴⁰

235. Accordingly, Donuts is to bear all of the fees and expenses of each Member of this Panel, all of the fees and expenses of the ICDR in this IRP, and all expenses of the hearing in Los Angeles on October 8, 2015, including hearing room costs, the fees and expenses of the reporter, and the cost of the transcript.

236. The administrative fees and expenses of the International Centre for Dispute Resolution (ICDR) totaling US\$4,840.00 shall be borne by Donuts, and the compensation and expenses of the Panelists totaling US\$165,895.34 shall be borne by Donuts. Therefore, Donuts shall reimburse ICANN the sum of US\$83,067.66, representing that portion of said fees and expenses in excess of the apportioned costs previously incurred by ICANN.

237. As to legal fees and similar costs incurred by ICANN, because Donuts availed itself of the cooperative engagement process, the Panel is not *required* to "award ICANN all reasonable fees and costs incurred by ICANN in the IRP, including legal fees." The Panel interprets Article 34 of the ICDR Rules as according it discretion to hear the parties on the question of legal fees and to make an award of such fees in whole or in part.²⁴¹

238. Nevertheless, recent precedents—notably Booking.com, Vistaprint, and Merck—(while taking different approaches to the allocation of DRSP and Panel fees) have seemingly established the practice of leaving each party to shoulder its own legal fees. This Panel, in keeping with that trend, unanimously decides that each side should bear its own legal fees and similar costs. It will thus not ask the parties to address through further briefing the proper allocation of such fees in this case.

239. This Final Declaration may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute the final Declaration of this IR Panel.

240. As contemplated in Article 30 (2) of the ICDR Arbitration Rules, this Declaration carries two signatures instead of the usual three. Mr. Boesch dissents, in part, and has written separate remarks.

²⁴⁰ See, e.g., notes 183-89, 226, *supra*, and accompanying text.

²⁴¹ The ICDR Rules, Article 34, state in pertinent part:

The arbitral tribunal shall fix the costs of arbitration in its award(s). The tribunal may allocate such costs among the parties if it determines that allocation is reasonable, taking into account the circumstances of the case. Such costs may include: . . . d. the reasonable legal and other costs incurred by the parties; . . .

Philp W. Boesch _____ Rayner M. Hamilton _____

Date:

Date:

Professor Jack J. Coe, Jr. (Panel Chair) _____

Date:

Philp W. Boesch _____ Rayner M. Hamilton _____

Date:

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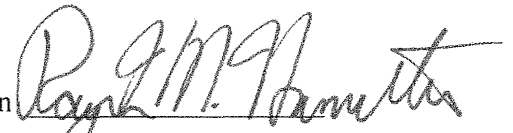
Professor Jack J. Coe, Jr. (Panel Chair)

A handwritten signature in cursive script, appearing to read "J.J. Coe, Jr.", written over a horizontal line.

Date: *May 5, 2016*

Philp W. Boesch _____

Rayner M. Hamilton



Date:

Date:

May 5, 2016

Professor Jack J. Coe, Jr. (Panel Chair) _____

Date:

I, Philip W. Boesch, Jr., Panel Member, decline to sign the Final Declaration of the Panel, for the reasons outlined in this statement, which I respectfully request be attached to and incorporated with the Declaration executed by the other two Members of this Panel.

A. The Promise of Independence, Transparency and Accountability Has Been Violated. There is no disagreement on this Panel and on any Panel considering previous matters, that ICANN is “no ordinary non-profit,” but instead is a “regulatory authority of vast dimension and pervasive global reach.” The very origin of ICANN’s authority relies upon ICANN’s “Affirmation of Commitments” with and to the United States Department of Commerce, which lists as the first “key commitment” by ICANN, to “ensure” that decisions are made in the public interest “and are accountable and transparent.”¹ (Emphasis Added). ICANN Article Section 4 sets forth ICANN’s commitment to “open and transparent processes.” (Emphasis Added). Article 3, Section 1 requires that ICANN “shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness.” (Emphasis Added). The ICANN Guidebook requires the decisions to be made by “an independent expert Panel.” (Emphasis Added).

It is the independence of judgment, transparency, and accountability, which ensure fairness and which lay the basic foundation of ICANN’s vast regulation authority. These essential principles, in this Member’s opinion, should be at the forefront of this Panel’s review, because ICANN’s position in this review seeks a rubberstamping of decision-making that was not independent, that was not transparent, and that has not been held accountable. This Member cannot abide the Expert decision in the .SPORTS Application and would not sustain the Objection filed to that Application.

The Expert who decided the .SPORTS Objection, “impermissibly abridged disclosures,” the Majority holds, but then the Majority accommodates by stating that there is no evidence that the Expert really was a “partisan,” and by accepting ICANN’s speculation that the Expert’s decision-making “may” have been “heart-felt.” When ICANN receives its extraordinary power and authority, based on the promise of independent judgment, transparency, and accountability, there is no room for whitewashing the egregious failure of disclosure here. The decision-maker was the lawyer for undisclosed clients directly benefited by his ruling. ICANN argues to let this

¹ Affirmation of Commitments No. 3.

stand because the procedures it argues are applicable do not permit any other options. This Member disagrees. This is the failure of the promise of independent, transparent, accountable decision-making and it should not stand.

B. The Requirement of Conformity With Law. This Panel accepts the notion that ICANN must carry out its activities in conformity with “relevant principles of international law and applicable conventions and local law.” But in this context the Majority discusses the “California business judgment rule,” finds it inapplicable and discusses no other laws, relying on the arguable lack of briefing on conflicts of law. Because the procedures in this case cloak the “expert” with the decision-making power of a judge or arbitrator, the “relevant principles of international law” and “local law” should be those which apply to independent, transparent and accountable decision-making. Conflicts of laws would not seem to deserve much discussion on this point, because there likely are no conflicting laws that permit an arbitrator to decide matters where the arbitrator’s undisclosed clients or business associates would directly benefit from his or her ruling. Laws and rules governing disclosures and the independence of the judiciary and the transparency of decision-making, even AAA and ICDR Rules, do not focus on the need to prove that the decision-maker actively promoted the interests of undisclosed clients as direct beneficiaries of his or her judicial ruling. It is the necessity to avoid the appearance of impropriety that dictates the fullest disclosures.

C. There is and There Should Be A Remedy for “Impermissible” Non-Disclosures. Ultimately it should be the ICC experts’ disclosures and not the parties’ private investigation into the expert’s background, upon which the integrity of the ICC expertise system depends. This also is true for judges, and for arbitrators acting pursuant to the California Arbitration Act or in compliance with the Federal Arbitration Act, or in compliance with ICDR Rules. In fact, this Expert’s signature on his “impermissibly abridged disclosures” actually appears just below the ICC Disclosures Statement, which advises in underscored text that “any doubt must be resolved in favour of disclosure.”

Even though the Expert’s conduct in failing to disclose was “impermissible,” the Majority suggests for a variety of reasons that there is no remedy for this failure—even while the integrity of the ICC expertise system depends on it. With the very integrity of ICANN’s system at issue, this Majority has determined that there are no remedies. If there is no remedy for such a fundamental failure of the independence, transparency and accountability requirements, then this is a systemic defect that required and requires Board action.

This Panel Member also believes, however, that there is and should be a remedy, even within the standards of review, interpretations, and procedures outlined by ICANN and by the Majority.

D. Application of The “Standards of Review” Should Permit a Remedy in This Case.

This Panel, as with all Panels, discusses the “standard of review” typically by focusing on whether the Board acted “without conflict of interest,” whether the Board exercised “due diligence and care” and whether the Board exercised “independent” judgment. Though this Member takes issue with the narrow interpretation by the Majority of “actionable inaction,” it is clear enough from other decisions and even from the Majority in this case, that inaction as well as action may form the basis for the review. In this case, the Board’s inaction was not without conflict of interest; the failure of a remedy affecting the integrity of the IRP system does not suggest due diligence; and allowing this Expert opinion to stand is not the achievement of independent judgment.

The Majority finds many reasons not to act, holding that its mandate is so “very narrow” as to be almost non-existent, and how that “confinement” must be “redoubled by the standard of review.” Opinion at 57.

But the Panel majority also states: “Concerning the community objection proceeding brought by SportAccord in connection with .SPORTS, the majority believes it would not be inconsistent with ICANN’s values and principles to provide for a rehearing of that objection, by a different expert (or three experts).” This seems to be an advisory opinion that Donuts can and perhaps should petition for a rehearing, and that it would “not be inconsistent” with ICANN principles for a rehearing to be granted by some entity in authority.

For the Panel to find that it cannot act except at best in an advisory capacity, and that its neutered role is not a systemic problem, is unsatisfactory and unsatisfying. To this Member, after hundreds of thousands of invested dollars in filing fees and in these proceedings, the advice to Donuts to seek a rehearing (“[a]t least arguably, moreover, no time bar would operate”) is analogous to a punt on first down if not an abdication of responsibility.

Although the Majority analyzes the deference to be or not to be accorded the Board’s actions or inactions, the first question, whether the Board action or inaction is “without conflict of interest,” is a flawed inquiry in the context of this case. Every time the Board or its agents or delegated decision-makers consider action or inaction of any kind, in addressing the decision of the Board’s delegated decision-maker, the Board is acting with and not without conflict of

interest. If the Board promulgates or leaves in place a procedure or standard of review, stacked in favor of its delegated decision-maker, the Board is acting with and not without a conflict of interest. If ICANN's argument is that the standard of review only refers to "certain kinds of conflicts of interests," that is not an apparent conclusion to draw from the language of the Guidebook or the Articles. Not only should no deference be accorded the decision under review, but also the basic principles justifying ICANN's authority—independent judgment, transparency, and accountability—mandate that the procedures and standards for review not be stacked in any way in favor of ICANN's delegated decision-maker, or applied in a manner that suggests that they are. This Panel Member would find that a remedy is available within the existing standards of review, however the Majority seeks to narrow or "confine them."

E. Application of Contract Law Confirms a Remedy. The promise of independent judgment, transparency and accountability, as to decision-making that is essentially judicial in nature, regarding matters of extreme public import and interest, should not be set aside by resort to technical rules of construction contrary both to equity and to applicable principles of law.

Donuts argues, among other things, that it entered into a simple contract by paying its \$185,000 and by filing its Application in accordance with the ICANN Guidebook. No conflicts of laws issues were raised with respect to the basic formation of a contract, and the substantial amounts involved do not suggest anything other than a significant business relationship and mutual commitment. Part of a mutual commitment like this includes, under California law, a covenant of good faith and fair dealing to make certain that the benefits of the contract are achievable by both sides. With the promise of fair dealing, the applicant had every right to expect independent decision-making, transparent decision-making, and accountability of the decision-making, in accordance with fair and reasonable processes. That is a clear covenant by and responsibility of the ICANN Board. This Member also is of the opinion that the applicant had the right to expect that its application would be handled as represented in the Guidebook, without additional terms imposed upon it, including that it operate for the benefit of any one community. ICANN does not persuasively reply and does not reply at all to the substance of this argument.

F. This Case Should Not Turn on the Majority's View of Agency Law. The Panel Majority bases its opinion on the fiction that the Board's delegated decision-maker is a "third-party," even though it is the Board's delegation that sets up this isolation. And, the Majority posits, the outcome of this proceeding might have been different "[h]ad the agency theory been

more fully addressed by the Parties...” (Opinion 48, ¶155). Because this Panel’s century of experience leaves it capable of dealing with the briefings on “agency theory,” this again seems to this Member more like an abdication of responsibility than its articulated focus on burden of proof.

Trying to draw narrow distinctions between whether delegated decision-making is the work of an agent or an independent contractor is just such a technical nicety that would not be acceptable in the simplest workers compensation case, much less acceptable in a matter of extraordinary public interest. The Guidebook makes no such distinction. It acknowledges that experts appointed by or under authority of the Board, pursuant to the Bylaws, shall determine Objections. “The findings of the panel will be considered an expert determination and advice that ICANN will accept within the dispute resolution process.” See Guidebook, §3.4.6.

In its analysis in the Booking.com IRP, that Panel summarized its investigation:

The Panel finds that Booking.com has failed to identify any instance of Board action or inaction, *including any action or inaction of ICANN staff or a third party (such as ICC, acting as the SSP), that could be considered to be inconsistent with ICANN's Articles of Incorporation or Bylaws or with the policies and procedures established in the Guidebook.* This includes the challenged actions of the Board (*or any staff or third party*) in relation to what Booking.com calls the implementation and supervision of the string similarity review process generally, as well as the challenged actions of the Board (*or any staff or third party*) in relation to the string similarity review of .hotels in particular.² (Emphasis Added)

In this case, the conduct of the delegated decision-maker was “inconsistent with ICANN’s Articles of Incorporation [and] Bylaws [and] with the policies and procedures established in the Guidebook,” and it is the opinion of this Member that it disserves the integrity of the system for an opinion to rely upon whether the delegated decision-maker is an agent of the Board, a staff member reporting to the Board, a Board member, or an “independent contractor” of the Board.

² Booking.com Declaration, paras. 144-45.

G. The DCA Case is Not Only Instructive: It Addressed as This Panel Should, the Fundamental Integrity of the System. Similarly, the distinction that is made regarding the DCA case is not only a technical one but one that exalts form over substance. There seems to be very little question that the odor of corruption and impropriety hung over the air of the DCA review; it was the fact that the decision presented a direct and blunt assault on the integrity of the entire process, that led to the DCA conclusion, not the distinctions that might be presented in some state's law between constituents, affiliates, agents, independent contractors, and the like. As stated by the DCA Panel, the Board's failure to maintain its own accountability in any other way leaves the IRP as "the only and ultimate 'accountability' remedy for an applicant."³

In this case, all Panel members agree that the integrity of the system is predicated upon the fullest and complete disclosures by the experts. If experts are appointed who are, charitably, unaware of the requirements of disclosure, unaware of the need to avoid the appearance of impropriety, or aware only of some allegedly lesser standard of disclosure, then that is the system's failure. Whether that is an inadequacy in training, as Donuts argues, whether that result is the failure to intervene in an egregious action, as Donuts argues, or whether that is the emergence of bias over reason, as Donuts argues, or all three, the result of this review should be the same. It is not acceptable to the integrity of the process to speculate that the expert's decision "might have been heart-felt." It is not acceptable for a lawyer, whose undisclosed clients shall directly benefit from his decision, to issue the judgment that he did.⁴

H. This Member Would Not Uphold the Objection to Donuts' Application for .SPORTS. This Member of the Panel would furthermore reverse and deny the Objection. It is incredulous to the Panel Member that this Expert construed "community" in a way that SportAccord explicitly had *not* defined it, stating that it was "self-evident" the community "refer[s] to the individuals and organisations who associate themselves with organized sport," which he calls the "Organised Sports Movement." This Expert strained to find a "clearly delineated" community, even though the objecting party itself had "delineated" it to include: (i) "individuals and organizations who associate themselves with Sport;" (ii) "practitioners as well

³ DCA Declaration, para. 15

⁴ This Member finds it persuasive that this same Expert was disqualified in virtually an identical context and matter. This Member also finds the discussion essentially blaming Donuts' investigation and response not only to be unpersuasive but a slap at the integrity of the system that depends on disclosure.

as organizers, supporters and audience;” (iii) “individual practitioners of sport, ... spectators, ... fans and sponsors;” and (iv) “any person in the world.”

Nevertheless, without any evidence, the Expert made up his own definition of the “community”:

...[W]hen the vast majority (many millions of organisations and individuals around the world) think of sports, they must obviously think predominantly (if not exclusively) of official, sanctioned forms of sport that are governed and regulated by means of the pyramid model [atop which SportAccord claimed it sat].

This Expert also cited as evidence of “substantial opposition” a letter from one of his own clients, and cited as legal authority for one of his conclusions a case in which he acted as counsel for another of his clients. Without any evidence to support his “self-evident” community definition, and plenty of evidence that undisclosed “organized sports” clients are served by the lawyer acting as decision-maker, this Member is left with the self-evident proposition that there is no other excuse for it than allegiance to the entrenched “organized sport organizations” which the Expert and his lawfirm serve as counsel.

The conclusion that the Objection should be denied is reasonable and consistent with the goals and responsibilities of independence, accountability and transparency. The delegated decision-making process, in this case without adequate accountability and independent review, should not be promoted as a fair process. To this Panel Member, it wasn't.

I. This Member Agrees With the Majority Decision to Donuts Application for .RUGBY Affirming the Objection. The integrity of the system is not implicated by the decision on the .RUGBY Objection in the same manner and to the same degree in which it was and is with respect to the .SPORTS Objection. Notwithstanding the opinions presented here that would apply to both Objections, this Member cannot conclude on this record that the delegated decision-making resulted in violation of fundamental principles or covenants, or that the Expert should have reached a different conclusion for other reasons; and therefore this Member does not disagree with the conclusion reached by the Majority with respect to the .RUGBY application.

J. The Awarding of Costs. Because this Member believes that the SportAccord Objection should not have been decided by this Expert in favor of the objecting party, it seems neither fair nor reasonable to award costs and attorneys' fees to ICANN. The Majority further

takes the position that “any contribution to the public interest Donuts might have made by focusing attention on the proper level of disclosure by ICC experts and related matters has been offset by the tenuousness of some of Donuts’ positions” (Opinion 64). What this Member finds even more tenuous than this vague reference are the IRP Panel’s conclusions that it would not be inconsistent with ICANN principles to award a rehearing of the SportAccord Objection, that the IRP Panel can do nothing about the problem it sees, and that even though the Panel cannot act, the problem really is not systemic in nature. The lack of accountability here, to address a blatant failure of disclosure that cuts at the integrity of the process, exposes the failed promises of independence, transparency and accountability and frankly discourages justifiable challenges to ICANN in the future. This Member would have each side bear its own costs and fees under the circumstances.

Dated: May 5, 2016

Respectfully submitted,



Philip W. Boesch, Jr.
Member of the Panel

Exhibit DIDP A100



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Ben Parisi

3rd

Researcher, Analyst, Organizer, Translator

Turkey | International Affairs

Current Chemonics International

Previous The Economist Intelligence Unit (The EIU), Various, John Snow, Inc. (JSI)

Education Columbia University in the City of New York

[Send Ben InMail](#)

500+
connections

<https://tr.linkedin.com/in/benparisi>

Background



Summary

An experienced campaign organizer, research analyst, and project manager, I seek work environments where I will learn constantly from my colleagues and lead projects with high social value that contribute directly to progressive change.



Experience

Manager of Research, Monitoring, and Evaluation - Syria Regional Program

Chemonics International

November 2015 – Present (7 months) | Gaziantep, Turkey



Senior Project Coordinator

The Economist Intelligence Unit (The EIU)

May 2012 – January 2016 (3 years 9 months)

Various custom research projects for large corporate and nonprofit clients.



Arabic Translator

Various

June 2007 – October 2015 (8 years 5 months)

Management Associate

John Snow, Inc. (JSI)

May 2013 – June 2014 (1 year 2 months) | Rosslyn, VA

USAID | DELIVER a multibillion USD global public health program

Director of Community Engagement

CrowdTrust

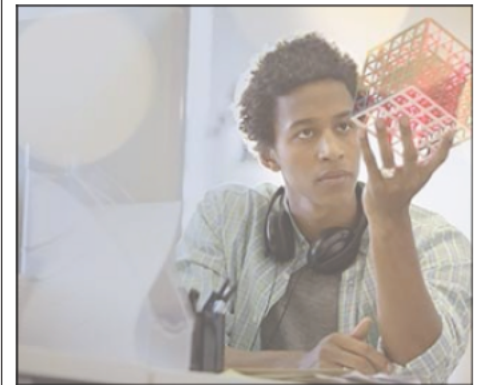
April 2013 – January 2014 (10 months) | Washington D.C. Metro Area

Business development and crowdfunding community-building.

Organizer, Child Care for All Campaign

Empower DC

June 2009 – December 2011 (2 years 7 months)



People Also Viewed



Andrei Franklin

Indexing Officer at Royal
Anthropological Institute



Sara Constantino

PhD Candidate, New York University



Conrad Heine

Journalist, Researcher and Editor at
Freelance



Jimena Serrano Pardo

Consultora en Género en la
Corporación Interamericana de
Inversiones



Leila Butt

Economist/Sovereign Analyst



Binhee Shon

Associate Attorney - Yulchon Law
Firm



Beverly McCoy

Executive Assistant at FRLS

Benjamin Patchen

—

Binwei Zheng

Attended Simon Fraser University

Ethel Zelenske

Director of Government Affairs at
NOSSCR

- Organized parents and child care providers to advocate for an affordable high-quality child care subsidy program in DC employing a comprehensive strategy with a wide range of organizing tactics.
- Contributed to efforts to unionize DC's home- and center-based child care providers.
- Taught trainings on topics including community organizing, child care policy and funding, the DC budget and legislative process, successful outreach, and strategic campaign planning.
- Succeeded in directing efforts of directly impacted residents to restore funding to DC's child care subsidy program, allowing low-income parents to afford child care to maintain their employment.

Steering Committee Member

Save Our Safety Net DC

2009 – 2011 (2 years) | Washington D.C. Metro Area

Helped lead and manage a campaign to bring progressive income tax reform to DC's local tax code.

Research Analyst

CENTRA Technology, Inc

April 2009 – October 2009 (7 months)

Focus on the Middle East

Consultant

The Egyptian Center for Culture and the Arts

January 2008 – January 2009 (1 year 1 month) | Cairo, Egypt

- Wrote and edited grant proposals to international foundations and managed relationships with them.
- Protected resident artists' rights as professionals in negotiating compensation for performances.
- Wrote, edited, and translated website content, grant reports, publicity and other materials as needed.

 Organizations

Empower DC

Vice President, Board of Directors

Starting November 2013

 Languages

Arabic

Professional working proficiency

French

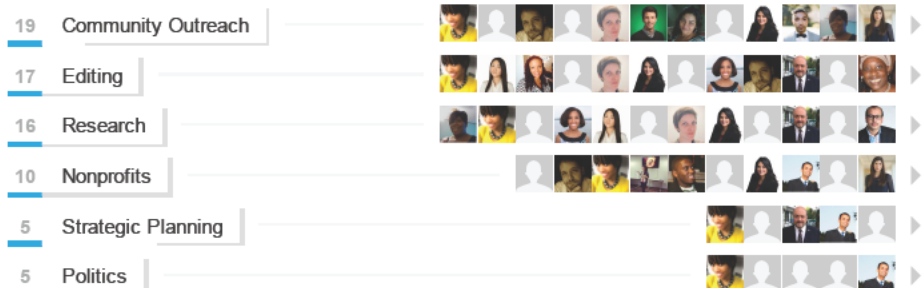
Limited working proficiency


English


Native or bilingual proficiency


 Skills


Top Skills



5 Policy 

4 Policy Analysis 

4 Grant Writing 

3 Arabic 

Ben also knows about...

3 Data Analysis | 3 Training | 3 Teaching | 3 Community Organizing

3 Public Policy | 2 Fundraising | 2 Public Speaking | 2 Microsoft Excel

2 Qualitative Research | 2 Microsoft Word | 1 Project Management

1 PowerPoint | 1 Event Planning | 1 Microsoft Office | 1 Grants | [See 3+](#)



Education

Columbia University in the City of New York

BA, Philosophy, Middle East Studies
2003 – 2007

The American University in Cairo

CASA II, Arabic Language and Literature, Labor History of Egypt
2012 – 2012

Granted CASA II Fellowship for individualized one-on-one readings in Egyptian labor history and Arabic literature.

The American University in Cairo

Arabic, Center for Arabic Studies Abroad (CASA)
2007 – 2008

Graduate fellowships for intensive study of advanced Arabic and Arab politics, history, and media.

Activities and Societies: [The Binational Fulbright Commission in Egypt](#)



Honors & Awards

Additional Honors & Awards

Fulbright Scholarship, Egypt, 2007-2008

Exhibit DIDP A101

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Hilary Steiner

2nd

Director, North America, Public Policy, Economics and Politics at The Economist Intelligence Unit

San Francisco Bay Area | Research

Current The Economist
 Previous The Economist
 Education London School of Economics and Political Science

[Connect](#) [Send Hilary InMail](#)

333 connections

<https://www.linkedin.com/in/hilary-steiner-9633a91a>

Contact Info

Background

Summary

Experienced project manager, researcher and people manager with a focus on operational risk and economic analysis.

Responsible for developing and executing customized projects spanning economic, industry, country and policy research and business advisory for The Economist Intelligence Unit's clients.

Recent projects include research and analysis leading to the development of benchmarking tools in two areas: the Nuclear Threat Initiative's nuclear materials security indices covering 176 countries; an index to assess the attractiveness of manufacturing locations for a major technology firm. In addition, she executed a market assessment and forecasting research program for a major beverages firm that addressed the economic and political outlook, and also provided forecasts by beverage segment for select markets in Latin America.

Hilary also collaborates on business development throughout the Americas and manages a team of analysts.

She was previously based in London where she worked as an economist responsible for economic and political forecasting for selected emerging and developed markets in Asia.

Experience

Principal, Custom Research

The Economist
 May 2013 – Present (3 years 1 month) | San Francisco Bay Area

Senior Analyst/Project Manager, Custom Research

The Economist
 October 2010 – April 2013 (2 years 7 months)

Product Manager, Country Forecast

The Economist
 January 2010 – October 2010 (10 months)

Editor/Economist, Asia

The Economist
 February 2007 – October 2010 (3 years 9 months)

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- Leo Abruzzese**
 Director of Public Policy at he Economist Intelligence Unit; Deputy Editor, The Economist's "World in 2016"
- Ken Lane**
 Global Commercial Director at The Economist Intelligence Unit (The EIU)
- Lucy Hurst**
 Associate Director, Custom Research at The Economist Group
- David C. Humphreys**
 Custom Research Director, Americas at The Economist Intelligence Unit
- Robin Bew**
 Managing Director at The Economist Intelligence Unit
- Eva Blaszczyński**
 Senior Analyst/Senior Project Manager at Economist Intelligence Unit
- Katherine Stewart**
 Research Associate at the Economist Intelligence Unit (EIU)
- Alice Nawfal**
 MBA | MPA Dual-Degree Candidate at Wharton | Harvard
- Jaime Jochums**
 Business Development Sr. Manager, Technology at The Economist
- Stefano Scuratti**
 Senior Consultant | Public Policy, Economics and Politics at The Economist Intelligence Unit

 Publications

2014 Nuclear Materials Security Index

Nuclear Threat Initiative; developed with the Economist Intelligence Unit

January 8, 2014

The 2014 NTI Index, developed with the Economist Intelligence Unit, highlights positive trends and dangerous gaps in the use, storage and transport of weapons-usable nuclear materials. The Index scores and ranks countries across more than 50 security indicators, with the goal of keeping nuclear materials out of the hands of terrorists.

▶ 6 authors, including:

Hilary Steiner

Director, North America, Public Policy, E...

Leo Abruzzese

Director of Public Policy at the Economis...

Page Stoutland

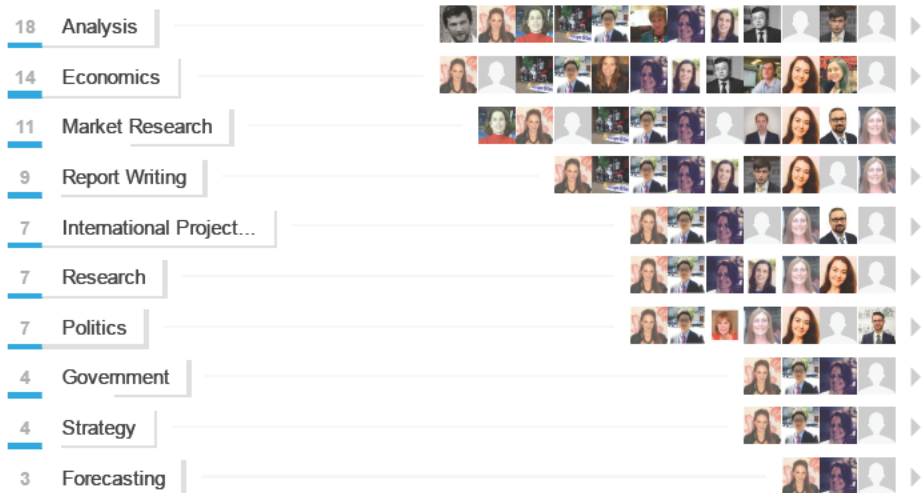
Vice President - Scientific and Technical...

Samantha Pitts-Kiefer

Director, Global Nuclear Policy Program...

 Skills

Top Skills



Hilary also knows about...



 Education

London School of Economics and Political Science

MSc, International Political Economy

Purdue University

BA Honors, Political Science

Activities and Societies: [Phi Beta Kappa](#)

Sophia University

Study Abroad

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Details

ICANN (Internet Corporation for Assigned Names and Numbers) Blog

Author: Steve Crocker

27 May 2016

New ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws



Today, on behalf of the [ICANN \(Internet Corporation for Assigned Names and Numbers\) Board](#), I am pleased to announce the [adoption](#) (<http://www.icann.org/resources/board-material/resolutions-2016-05-27-en>) of the [new ICANN \(Internet Corporation for Assigned Names and Numbers\) Bylaws](#) (<https://www.icann.org/en/system/files/files/adopted-bylaws-27may16-en.pdf>), which reflect changes made as a result of the [IANA \(Internet Assigned Numbers Authority\) Stewardship Transition package of proposals](#) (<https://www.icann.org/stewardship-accountability>). The new Bylaws are the result of hundreds of hours of work by the community and the legal teams. The Regional Internet Registries Service Level Agreement and Internet Engineering Task Force Memorandum of Understanding Supplemental Agreement have also been approved for signing and will go into effect after the transition.

Later today, [ICANN \(Internet Corporation for Assigned Names and Numbers\)](#) will be transmitting the new Bylaws to the U.S. Department of Commerce's National Telecommunications and Information Administration ([NTIA \(US National Telecommunications and Information Agency\)](#)). [NTIA \(US National Telecommunications and Information Agency\)](#) has previously stated that adoption of the new Bylaws is required for them to complete their review of the proposals.

which is expected to occur in June.

This is an important milestone for ICANN (Internet Corporation for Assigned Names and Numbers) and the community. As we await the release of NTIA (US National Telecommunications and Information Agency)'s report, we continue to prepare for implementation of the transition proposals. We thank everyone for their continued hard work and support during this transition process.

Comments

Constantine Roussos (/profiles/constantine-roussos) 13:52 UTC on 27 May 2016

Dear Chairman Dr. Crocker,

DotMusic commends the community for all their work.

DotMusic has submitted numerous public comments during the public comment period (<https://icann.org/public-comments/draft-new-bylaws-2016-04-21-en>) relating to the draft new ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws to increase ICANN (Internet Corporation for Assigned Names and Numbers)'s transparency and accountability (See DotMusic public comments at <https://forum.icann.org/lists/comments-draft-new-bylaws-21apr16/pdf1IMXmjQQ05.pdf>). ICANN (Internet Corporation for Assigned Names and Numbers) staff created a report on the public comments (See <https://icann.org/en/system/files/files/report-comments-draft-new-bylaws-25may16-en.pdf>) but did not indicate why some revisions were accepted while others that ensured ICANN (Internet Corporation for Assigned Names and Numbers) increased its accountability and transparency were not.

It is clear that the ICANN (Internet Corporation for Assigned Names and Numbers) Board hurried to accept the new Bylaws. 6 days is not reasonable time to assess and adequately take into consideration over 30 public comments, some of which were quite detailed.

Moreover, there was no clarification or discussion by Staff or the Board why some public comments to increase ICANN (Internet Corporation for Assigned Names and Numbers)'s accountability and transparency were not adopted. While ICANN (Internet Corporation for Assigned Names and Numbers) takes on the position of multi-stakeholder bottom up decision-making, it means nothing if comments by certain organizations are always shunned, ignored and dismissed at the gain of certain special interests or to provide ICANN (Internet Corporation for Assigned Names and Numbers) wiggle room to escape true accountability and transparency during the Independent Review Process or Reconsideration Request process. Certain aspects of the new Bylaws pertaining to accountability mechanisms remain problematic and once again are riddled with the appearance of conflicts of interest in favor of ICANN (Internet Corporation for Assigned Names and Numbers).

The new ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws urgently require significantly more responsible, meaningful and impactful revisions to hold ICANN (Internet Corporation for Assigned Names and Numbers) accountable and increase transparency. In fact, internet users and public interest demand it. Thus far, the Internet community has been ineffective in holding ICANN (Internet Corporation for Assigned Names and Numbers) accountable and transparent. It appears this will continue.

Constantine Roussos
DotMusic

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of-directors-2014-03-19-en)	Authority	Ombudsman	Document	Problems
President's	Registry Liaison	Reviews	Disclosure	06mar07-en.htm)
Corner	AOC Review	Request a	Planning	WHOIS
Staff	AOC Review	Speaker	Dashboard Beta	(http://whois.icann.org/)
Careers	AOC Review	Request a	RFPs	
openhire.silkroad.com/en/organizations/cfm?fuseaction=app.allpositions&company_id=16025&version=1)	AOC Review	Request a	Litigation	
Newsletter	Request a	Request a	Correspondence	
Development and	Request a	Request a	Correspondence	
Public	Request a	Request a		
Responsibility	Request a	Request a		
and-public-responsibility)	Request a	Request a		

Exhibit DIDP A103



The Internet Corporation for Assigned Names and Numbers

11 May 2016

Mr. Flip Petillion
Crowell Moring
7, Rue Joseph Stevens
B 1000 Brussels
Belgium

Re: New gTLD Applications for .HOTEL and .ECO

Dear Mr. Petillion:

Thank you for your letter to the members of the ICANN Board and Mr. Akram Atallah, dated 27 April 2016. We have published the letter to the gTLD correspondence page (see <https://www.icann.org/en/system/files/correspondence/petillion-to-atallah-icann-board-27apr16-en.pdf>), and we have addressed your questions below.

As you are aware, on 10 March 2016, the ICANN Board took a resolution to accept the Independent Review Process (IRP) Panel's Final Declaration on the IRP relating to the applications for .HOTEL and .ECO (see <https://www.icann.org/resources/board-material/resolutions-2016-03-10-en#2.a>).

Resolved (2016.03.10.10), the Board accepts the following findings of the Panel's Final Declaration: (1) ICANN is the prevailing party in the Despegar Online SRL, Donuts Inc., Famous Four Media Limited, Fegistry LLC, and Radix FZC v. ICANN IRP; (2) ICANN is the prevailing party in the Little Birch, LLC and Minds + Machines Group Limited v. ICANN IRP; (3) the IRP Panel's analysis is limited to declaring whether the Board has acted consistently with the provisions of ICANN's Articles of Incorporation and Bylaws; (4) the Board (including the Board Governance Committee) acted consistently with the Articles of Incorporation and Bylaws; (5) the parties shall each bear their own expenses including legal fees; and (6) the IRP costs shall be divided between the parties in a 50% (claimants) / 50% (ICANN) proportion.

Resolved (2016.03.10.11), the Board notes the Panel's suggestions, and: (1) directs the President and CEO, or his designee(s), to ensure that the New gTLD Program Reviews take into consideration the issues raised by the Panel as they relate to the consistency and predictability of the CPE process and third party provider evaluations; (2)

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encourages ICANN staff to be as specific and detailed as possible in responding to DIDP requests, particularly when not disclosing requested documents; (3) affirms that, as appropriate, ICANN will continue to ensure that its activities are conducted through open and transparent processes in conformance with Article IV of ICANN's Articles of Incorporation; and (4) directs the President and CEO, or his designee(s), to complete the investigation of the issues alleged by the .HOTEL Claimants regarding the portal configuration as soon as feasible and to provide a report to the Board for consideration following the completion of that investigation.

The Board further explained in its rationale (see <https://www.icann.org/resources/board-material/resolutions-2016-03-10-en#2.a.rationale>),

Finally, with respect to the Panel's recommendation that ICANN respond to a letter from the .HOTEL Claimants regarding the portal configuration issue as soon as feasible, the Board notes that staff has informed the Board that it is nearing the end of its investigation of this matter. The Board is recently in receipt of two letters from Claimants regarding the portal configuration issue, dated 1 March 2016 and 8 March 2016, respectively. Staff has provided the Board with an update of its investigation into the issues set forth in the letters. The Board has directed the President and CEO, or his designee(s) to complete its investigation into this matter as soon as feasible. The Board notes that out of a matter of equity and fairness, the investigation should include the opportunity for all relevant parties to be heard. The Board expects the staff will prepare a report for the Board following the completion of its investigation, at which time the Board will consider the .HOTEL Claimants request for cancellation of HOTEL Top-Level Domain S.a.r.l.'s application for .HOTEL.

With reference to this resolution, your letter asked,

In view of the limited rationale supporting the Board's resolution, the ultimate goal of ICANN's consideration of these issues is not entirely clear to my clients. I therefore ask you 1) to clarify whether ICANN's consideration will involve the re evaluation process as requested in my letter of 8 March 2016, and 2) to specify what measures ICANN will take pending the New gTLD Program Reviews to ensure that a re evaluation of the CPE process involving the .hotel (to the extent necessary) and .eco contention sets remains meaningful.

Your question conflates two aspects of the resolution. With respect to the portion of the resolution that "directs the President and CEO, or his designee(s), to ensure that the New gTLD Program Reviews take into consideration the issues raised by the Panel as they relate to



the consistency and predictability of the CPE process and third party provider evaluations,” the ICANN community is currently in the process of reviewing the New gTLD Program, and it will take into consideration the issues raised by the IRP Panel. However, it is not anticipated that the findings of these reviews would impact the processing of applications from the 2012 application round. Such findings from the New gTLD Program Reviews would be considered in the development of future application rounds. With respect to your inquiry concerning the re evaluation of the .HOTEL and .ECO applications within Community Priority Evaluation, nothing in the Board’s resolution speaks to the re evaluation of .HOTEL or .ECO.

We hope that this information provides appropriate clarification on this matter. If you have any questions, please contact our Global Support Center at globalsupport@icann.org.

Sincerely,

A handwritten signature in black ink that reads "Christine A. Willett". The signature is fluid and cursive.

Christine A. Willett
Vice President, GDD Operations

Exhibit DIDP A104

[English \(/translations\)](#) [العربية \(/ar\)](#) [Español \(/es\)](#) [Français \(/fr\)](#)

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[ANA STEWARDSHIP & ACCOUNTABILITY \(/STEWARDSHIP ACCOUNTABILITY\)](#)

Resources

- ▶ [About ICANN \(Internet Corporation for Assigned Names and Numbers\) \(/resources/pages/welcome-2012-02-25-en\)](#)

- ▶ [Board \(/resources/pages/board-of-directors-2014-03-19-en\)](#)

- ▶ [Accountability \(/resources/accountability\)](#)

- ▶ [Governance \(/resources/pages/governance-2012-02-25-en\)](#)

- ▶ [Groups \(/resources/pages/groups-2012-02-06-en\)](#)

- ▶ [Business \(/resources/pages/business\)](#)

- ▶ [Civil Society \(/resources/pages/civil-society-2016-05-24-en\)](#)

- ▶ [Contractual Compliance \(/resources/pages/compliance-2012-02-25-en\)](#)

- ▶ [Registrars \(/resources/pages/registrars-0d-2012-02-25-en\)](#)

- ▶ [Registries \(/resources/pages/registries-46-2012-02-25-en\)](#)

- ▶ [Operational Metrics \(/resources/pages/metrics-gdd-2015-01-30-en\)](#)

- ▶ [Identifier Systems Security, Stability \(Security, Stability\)](#)

Approved Board Resolutions | Regular Meeting of the ICANN (Internet Corporation for Assigned Names and Numbers) Board

15 May 2016

1. Consent Agenda:

- a. [Approval of Board Meeting Minutes](#)
- b. [Security & Stability \(Security, Stability and Resiliency\) Advisory Committee \(Advisory Committee\) \(SSAC \(Security and Stability Advisory Committee\)\) Appointment Rationale for Resolution 2016.05.15.02](#)
- c. [GNSO \(Generic Names Supporting Organization\) gTLD \(generic Top Level Domain\) Registries Stakeholder Group Charter Amendments \(2016\) Rationale for Resolution 2016.05.15.03](#)
- d. [Conduct at ICANN \(Internet Corporation for Assigned Names and Numbers\) Meetings Rationale for Resolutions 2016.05.15.04 – 2016.05.15.05](#)
- e. [Board Working Group on Internet Governance \(BWG-IG\)](#)

2. Main Agenda:

- a. [Consideration of GNSO \(Generic Names Supporting Organization\) Policy Recommendations concerning the Accreditation of Privacy and Proxy Services Rationale for Resolutions 2016.05.15.07 – 2016.05.15.08](#)
- b. [Report re: .HOTEL](#)
- c. [SO \(Supporting Organization\)/AC \(Advisory Committee; or Administrative Contact \(of a domain registration\)\) FY17 Additional Budget Requests Approval Rationale for Resolution 2016.05.15.09](#)
- d. [October 2016 ICANN \(Internet Corporation for Assigned Names and Numbers\) Meeting Venue Contracting Rationale for Resolutions 2016.05.15.10 – 2016.05.15.11](#)
- e. [USG IANA \(Internet Assigned Numbers Authority\) Stewardship Transition – Additional FY16 Expenses and Funding Rationale for Resolution 2016.05.15.12](#)
- f. [AOB](#)
 - i. [Enhancing Openness and Transparency – Board Deliberations Rationale for Resolution 2016.05.15.13 – 2016.05.15.14](#)

and Resiliency) and Resiliency (IS-SSR) (/resources/pages/is-ssr-2014-11-24-en)

- ▶ [ccTLDs](#)
(/resources/pages/cctlds-21-2012-02-25-en)
- ▶ [Internationalized Domain Names](#)
(/resources/pages/idn-2012-02-25-en)
- ▶ [Universal Acceptance Initiative](#)
(/resources/pages/universal-acceptance-2012-02-25-en)
- ▶ [Policy](#)
(/resources/pages/policy-01-2012-02-25-en)
- ▶ [Public Comment](#) (/public-comments)
- [Root Zone \(Root Zone\) KSK Rollover](#)
(/resources/pages/ksk-rollover-2016-05-06-en)
- ▶ [Technical Functions](#)
(/resources/pages/technical-functions-2015-10-15-en)
- ▶ [Contact](#)
(/resources/pages/contact-2012-02-06-en)
- ▶ [Help](#)
(/resources/pages/help-2012-02-03-en)

3. Executive Session – CONFIDENTIAL

1. Consent Agenda:

a. Approval of Board Meeting Minutes

Resolved (2016.05.15.01), the Board approves the minutes of the 3, 9 and 10 March 2016 Meetings of the ICANN (Internet Corporation for Assigned Names and Numbers) Board.

b. Security & Stability (Security, Stability and Resiliency) Advisory Committee (Advisory Committee) (SSAC (Security and Stability Advisory Committee)) Appointment

Whereas, the Security (Security – Security, Stability and Resiliency (SSR)) and Stability (Security, Stability and Resiliency) Advisory Committee (Advisory Committee) (SSAC (Security and Stability Advisory Committee)) reviews its membership and makes adjustments from time-to-time.

Whereas, the SSAC (Security and Stability Advisory Committee) Membership Committee, on behalf of the SSAC (Security and Stability Advisory Committee), requested that the Board should appoint John R. Levine to the SSAC (Security and Stability Advisory Committee) for a three-year term beginning immediately upon approval by the Board and ending on 31 December 2019.

Resolved (2016.05.15.02), the Board appoints John R. Levine to the SSAC (Security and Stability Advisory Committee) for a three-year term beginning immediately and ending on 31 December 2019.

Rationale for Resolution 2016.05.15.02

The SSAC (Security and Stability Advisory Committee) is a diverse group of individuals whose expertise in specific subject matters enables the SSAC (Security and Stability Advisory Committee) to fulfill its charter and execute its mission. Since its inception, the SSAC (Security and Stability Advisory Committee) has invited individuals with deep knowledge and experience in technical and security areas that are critical to the security and stability of the Internet's naming and address allocation systems.

The SSAC (Security and Stability Advisory Committee)'s continued operation as a competent body is dependent on the accrual of talented subject matter experts who have consented to volunteer their time and energies to the execution of the SSAC (Security and Stability Advisory Committee) mission. John R. Levine brings a breadth of technical expertise and a well-deserved reputation for excellent technical debate. The SSAC (Security and Stability Advisory Committee) believes he would be a significant contributing member of the SSAC (Security and Stability Advisory Committee), and the Board accepts the SSAC (Security and Stability Advisory Committee) recommendation to appoint John R. Levine to the SSAC (Security and Stability Advisory Committee).

c. GNSO (Generic Names Supporting Organization) gTLD (generic Top Level Domain) Registries Stakeholder Group Charter Amendments (2016)

Whereas, the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws (Article X, Section 5.3) state, "Each [GNSO (Generic Names Supporting Organization)] Stakeholder Group shall maintain recognition with the ICANN (Internet Corporation for Assigned Names and Numbers) Board."

Whereas, the Board has established a Process For Amending GNSO (Generic Names Supporting Organization) Stakeholder Group and Constituency Charters (the "Process").

Whereas, the GNSO (Generic Names Supporting Organization) gTLD (generic Top Level

Domain) Registries Stakeholder Group (RySG (Registries Stakeholder Group)), ICANN (Internet Corporation for Assigned Names and Numbers) staff, and the Organizational Effectiveness Committee (OEC) have completed all steps identified in the Process.

Whereas, the amendments appear to address a number of matters the Board directed to the RySG (Registries Stakeholder Group)'s attention in previous Board Resolution Number 2015.10.22.14.

Resolved (2016.05.15.03), the ICANN (Internet Corporation for Assigned Names and Numbers) Board approves the RySG (Registries Stakeholder Group) Charter Amendments as documented in the briefing materials submitted to the Board. The RySG (Registries Stakeholder Group) and ICANN (Internet Corporation for Assigned Names and Numbers) staff are directed to provide access to the new governing document on the appropriate web pages for the RySG (Registries Stakeholder Group). The Board directs the RySG (Registries Stakeholder Group) to review the changes within one year to determine if they are having the intended impacts. ICANN (Internet Corporation for Assigned Names and Numbers) staff is further directed to share this resolution with the leadership of the RySG (Registries Stakeholder Group).

Rationale for Resolution 2016.05.15.03

Why is the Board addressing this issue now?

ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws (Article X, Section 5.3) state, "Each Stakeholder Group shall maintain recognition with the ICANN (Internet Corporation for Assigned Names and Numbers) Board." The Board has interpreted this language to require that the ICANN (Internet Corporation for Assigned Names and Numbers) Board formally approve any amendments to the governing documents of Stakeholder Groups (SG (Stakeholder Group)) and/or Constituencies in the Generic Names Supporting Organization (Supporting Organization) (GNSO (Generic Names Supporting Organization)).

In September 2013, the Board established a *Process For Amending GNSO (Generic Names Supporting Organization) Stakeholder Group and Constituency Charters* (<http://gns0.icann.org/en/about/stakeholders-constituencies/rsg>) ("Process") to provide a streamlined methodology for compliance with the Bylaws requirement.

Earlier this year, the gTLD (generic Top Level Domain) Registries Stakeholder Group (RySG (Registries Stakeholder Group)) of the GNSO (Generic Names Supporting Organization) approved amendments to its governing documents and availed itself of the Process.

What are the proposals being considered?

The Stakeholder Group has amended its existing Charter document to adjust to an evolving composition of membership and to enable it to more effectively undertake its policy development responsibilities. Among a number of amendments, the most substantial charter changes are in the following areas:

- Creation of a new class of "Association" members;
- Changes to the weighted voting categories and measures of the group; and
- Adjustments to the community fee structure to accommodate the addition of association members.

What stakeholders or others were consulted?

In addition to extensive community deliberations within the RySG (Registries Stakeholder Group), the proposed amendments were subjected to a 43-day Public Comment period (22 February – 4 April 2016). When the period was completed, staff produced a Summary Report for community and Board review on 15 April 2016.

What significant materials did the Board review?

The Board reviewed a redline formatted document of the proposed charter amendments and a copy of the Staff Summary Report summarizing community comments.

What factors did the Board find to be significant?

The GNSO (Generic Names Supporting Organization) Registries Stakeholder Group, ICANN (Internet Corporation for Assigned Names and Numbers) staff, and the Organizational Effectiveness Committee completed all steps identified in the Process. The publication of the amendments for community review and comment resulted in support for the changes.

Are there Positive or Negative Community Impacts?

The Stakeholder Group has amended its existing Charter document to adjust to an evolving composition of membership and to enable it to more effectively undertake its policy development responsibilities.

Are there fiscal impacts/ramifications on ICANN (Internet Corporation for Assigned Names and Numbers) (Strategic Plan, Operating Plan, Budget); the community; and/or the public?

The amendments include adjustments to the RySG (Registries Stakeholder Group) fee structure which could impact individual community members.

Are there any Security, Stability (Security, Stability and Resiliency) or Resiliency (Security Stability & Resiliency (SSR)) issues relating to the DNS (Domain Name System)?

There is no anticipated impact from this decision on the security, stability and resiliency of the domain name system as a result of this decision.

Is this either a defined policy process within ICANN (Internet Corporation for Assigned Names and Numbers)'s Supporting Organizations (Supporting Organizations) or ICANN (Internet Corporation for Assigned Names and Numbers)'s Organizational Administrative Function decision requiring public comment or not requiring public comment?

The proposed amendments were subjected to a 43-day Public Comment period (22 February – 4 April 2016).

d. Conduct at ICANN (Internet Corporation for Assigned Names and Numbers) Meetings

Whereas, during and after ICANN55, the issue of certain community-member conduct toward one another has been raised in various sessions and lists.

Whereas, the Board Governance Committee (BGC) has reviewed proposed revisions to the language of the Expected Standards of Behavior that align with generally accepted broad standards for areas of protection, and recommended that the Board authorize the revised version be posted for public comment.

Whereas, the BGC also has recommended that the Board direct the President and CEO, or his designee(s), to retain an expert, as appropriate, with experience in drafting and implementing relevant anti-harassment policies to assist in the development of a Community anti-harassment policy/procedure to be followed at ICANN (Internet Corporation for Assigned Names and Numbers) Public Meetings.

Resolved (2016.05.15.04), the Board hereby authorizes the posting for public comment of the proposed revised Expected Standards of Behavior.

Resolved (2016.05.15.05), the Board hereby directs the President and CEO, or his designee(s), to retain an expert, as appropriate, with experience in drafting and implementing relevant anti-harassment policies to assist in the development of a Community anti-harassment policy/procedure to be followed at ICANN (Internet Corporation for Assigned Names and

Numbers) Public Meetings, which could include items such as complaints handling and resolution and enforcement processes.

Rationale for Resolutions 2016.05.15.04 – 2016.05.15.05

During and after ICANN55, the issue of certain community-member conduct toward one another has been raised in various sessions and lists, and the Board agreed to address this matter. In response, the Board has confirmed and reiterated that ICANN (Internet Corporation for Assigned Names and Numbers)'s Board and staff take the issue of harassment or other improper conduct at its meetings very seriously. ICANN (Internet Corporation for Assigned Names and Numbers) and members of the community share the goal of ensuring that ICANN (Internet Corporation for Assigned Names and Numbers) community members are able to participate and contribute within an environment that does not tolerate discrimination and that remains free from harassment.

As an organization, ICANN (Internet Corporation for Assigned Names and Numbers) has robust internal policies regarding the issue, including mandatory training for staff and Board members. While ICANN (Internet Corporation for Assigned Names and Numbers) community members are not bound to the same policies and rules as the ICANN (Internet Corporation for Assigned Names and Numbers) Board and staff, ICANN (Internet Corporation for Assigned Names and Numbers) does expect community members to adhere to certain Expected Standards of Behavior (/resources/pages/expected-standards-2012-05-15-en) ("Standards"). The current language of these Standards does not specifically address harassment, but does provide a set of high-level guidelines for interacting with one another. As the Board previously committed, the Board Governance Committee (BGC) was tasked with considering possible enhancements to the language of these Standards. Accordingly, revisions to the Standards have been proposed that are based on generally accepted broad standards for protection, and the BGC has reviewed these and recommended that the Board authorize the posting for public comment of the proposed revised Standards.

In parallel, staff has initiated discussions with community leaders, and the Board and staff have received input from various aspects of the community, about the process for developing a Community anti-harassment policy. It appears from the input received to date that Community members (at least those that have publicly commented) would like to ask ICANN (Internet Corporation for Assigned Names and Numbers) to work with experts, as needed and appropriate, to help develop a proposed Community anti-harassment policy/procedure to be followed at ICANN (Internet Corporation for Assigned Names and Numbers) Public Meetings, which would in turn be presented to the community for further discussion and input. Further, various Community leaders and members, either as part of group calls on the topic or individually, provided a number of specific examples that can inform the drafting of a proposed policy/procedure. These include:

- i. The Ada Initiative (<https://adainitiative.org/continue-our-work/ada-initiative-event-anti-harassment-policy/> (<https://adainitiative.org/continue-our-work/ada-initiative-event-anti-harassment-policy/>));
- ii. The IETF (Internet Engineering Task Force) (<https://www.ietf.org/iesg/statement/ietf-anti-harassment-policy.html> (<https://www.ietf.org/iesg/statement/ietf-anti-harassment-policy.html>));
- iii. The Internet Governance Forum (<http://www.intgovforum.org/cms/aboutigf/igf-code-of-conduct> (<http://www.intgovforum.org/cms/aboutigf/igf-code-of-conduct>));
- iv. The NTEN (Nonprofit Technology Network) (<http://www.nten.org/ntc/about-the-ntc/code-of-conduct/> (<http://www.nten.org/ntc/about-the-ntc/code-of-conduct/>));
- v. RIPE (Rseaux IP Europens) (<https://ripe72.ripe.net/on-site/code-of-conduct/> (<https://ripe72.ripe.net/on-site/code-of-conduct/>));
- vi. The United Nations and its specialized agencies' anti-harassment staff policies (some of these are collected at <http://www.ficsa.org/component/sobipro/?task=download.file&fid=37.1329&sid=1266&Itemid=0>

<http://www.ficsa.org/component/sobipro/?task=download.file&fid=37.1329&sid=1266&Itemid=0>) [DOCX, 36 KB]

In addition, the GNSO (Generic Names Supporting Organization) Chair and Vice Chairs sent a letter on behalf of the GNSO (Generic Names Supporting Organization) Council and suggested a number of considerations to be taken into account in developing an anti-harassment policy and procedure for the Community. A copy of the letter can be viewed at <http://gns0.icann.org/en/correspondence/bladel-to-atallah-25apr16-en.pdf> (<http://gns0.icann.org/en/correspondence/bladel-to-atallah-25apr16-en.pdf>) [PDF, 299 KB].

The BGC therefore also has recommended that the Board direct the President and CEO, or his designee(s), to retain an expert, as appropriate, with experience in drafting and implementing relevant anti-harassment policies to assist in the development of a Community anti-harassment policy/procedure to be followed at ICANN (Internet Corporation for Assigned Names and Numbers) Public Meetings, which could include items such as complaints handling and resolution and enforcement processes. The Board agrees with this approach.

There will be a minor fiscal impact on ICANN (Internet Corporation for Assigned Names and Numbers), which is not anticipated to exceed already budgeted amounts, and it will not have any impact on the security, stability or resiliency of the domain name system.

This decision is an Organizational Administrative Function that does not require public comment.

e. Board Working Group on Internet Governance (BWG-IG)

Whereas, the Internet governance landscape continues to evolve, and ICANN (Internet Corporation for Assigned Names and Numbers)'s role within the Internet governance ecosystem will also continue to evolve and will benefit from an enhanced dialogue between the Board and management working on Internet governance issues.

Whereas, the Board Governance Committee (BGC) has recommended that the Board form a Board Working Group on Internet Governance (BWG-IG) to provide consultation and advice on ICANN (Internet Corporation for Assigned Names and Numbers)'s efforts related to involvement in Internet governance work, as appropriate within ICANN (Internet Corporation for Assigned Names and Numbers)'s mission and in service of ICANN (Internet Corporation for Assigned Names and Numbers)'s strategic plan, which includes providing consultation with ICANN (Internet Corporation for Assigned Names and Numbers) staff on collaboration and engagement in Internet governance activities.

Whereas, the BGC has recommended that the Board appoint the following Board members to the BWG-IG: Rinalia Abdul Rahim, Ron da Silva, Chris Disspain, Markus Kummer (Chair), Erika Mann, George Sadowsky and Lousewies van der Laan.

Resolved (2016.05.15.06), the Board hereby approves the establishment of a Board Working Group on Internet Governance (BWG-IG) in accordance with the Charter recommended by the BGC with the following membership: Rinalia Abdul Rahim, Ron da Silva, Chris Disspain, Markus Kummer (Chair), Erika Mann, George Sadowsky and Lousewies van der Laan.

2. Main Agenda:

a. Consideration of GNSO (Generic Names Supporting Organization) Policy Recommendations concerning the Accreditation of Privacy and Proxy Services

Whereas, on 31 October 2013, the GNSO (Generic Names Supporting Organization) Council approved the charter for a Working Group to conduct a Policy Development Process that had been requested by the ICANN (Internet Corporation for Assigned Names and Numbers) Board concerning the accreditation by ICANN (Internet Corporation for Assigned Names and Numbers) of privacy and proxy domain name registration service providers, as further described

at <http://gnso.icann.org/en/drafts/raa-pp-charter-22oct13-en.pdf> (<http://gnso.icann.org/en/drafts/raa-pp-charter-22oct13-en.pdf>) [PDF, 463 KB].

Whereas, the PDP (Policy Development Process) followed the prescribed PDP (Policy Development Process) steps as stated in the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws, resulting in a Final Report being delivered to the GNSO (Generic Names Supporting Organization) Council on 8 December 2015.

Whereas, the Privacy & Proxy Services Accreditation Issues PDP (Policy Development Process) Working Group (WG (Working Group)) reached Full Consensus (Consensus) on all its final recommendations (see <http://gnso.icann.org/en/issues/raa/ppsai-final-07dec15-en.pdf> (<http://gnso.icann.org/en/issues/raa/ppsai-final-07dec15-en.pdf>)) [PDF, 1.2 MB].

Whereas, the GNSO (Generic Names Supporting Organization) Council reviewed and discussed the final recommendations of the Privacy & Proxy Services Accreditation Issues PDP (Policy Development Process) WG (Working Group), and adopted the recommendations on 21 January 2016 by a unanimous vote (see: <http://gnso.icann.org/en/council/resolutions#201601> (<http://gnso.icann.org/en/council/resolutions#201601>)).

Whereas, the GNSO (Generic Names Supporting Organization) Council vote met and exceeded the required voting threshold (i.e. supermajority) to impose new obligations on ICANN (Internet Corporation for Assigned Names and Numbers) contracted parties.

Whereas, in accordance with the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws, a public comment period was opened on the approved recommendations to provide the community with a reasonable opportunity to comment on their adoption prior to action by the ICANN (Internet Corporation for Assigned Names and Numbers) Board, and the comments received have been summarized and reported (see <https://www.icann.org/en/system/files/files/report-comments-ppsai-recommendations-31mar16-en.pdf> ([/en/system/files/files/report-comments-ppsai-recommendations-31mar16-en.pdf](https://www.icann.org/en/system/files/files/report-comments-ppsai-recommendations-31mar16-en.pdf))) [PDF, 299 KB].

Whereas, the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws provide that the Board is to request the GAC (Governmental Advisory Committee)'s opinion regarding "any policies that are being considered by the Board for adoption that substantially affect the operation of the Internet or third parties, including the imposition of any fees or charges" and "take duly into account any advice timely presented" as a result.

Whereas, the Board notified the GAC (Governmental Advisory Committee) of the publication of the GNSO (Generic Names Supporting Organization)'s final recommendations for public comment on 19 February 2016 (see [https://gacweb.icann.org/download/attachments/27492514/2016-02-19-Steve-Crocker-to-Thomas-Schneider-GNSO-\(Generic-Names-Supporting-Organization\)-PDP-\(Policy-Development-Process\).pdf?version=1&modificationDate=1456046942000&api=v2](https://gacweb.icann.org/download/attachments/27492514/2016-02-19-Steve-Crocker-to-Thomas-Schneider-GNSO-(Generic-Names-Supporting-Organization)-PDP-(Policy-Development-Process).pdf?version=1&modificationDate=1456046942000&api=v2) (<https://gacweb.icann.org/download/attachments/27492514/2016-02-19-Steve-Crocker-to-Thomas-Schneider-GNSO-PDP.pdf?version=1&modificationDate=1456046942000&api=v2>)) [PDF, 819 KB].

Whereas, in its Marrakech Communique issued on 9 March 2016 the GAC (Governmental Advisory Committee) advised the ICANN (Internet Corporation for Assigned Names and Numbers) Board that it needed more time to consider potential public policy concerns relating to the adoption of the final PDP (Policy Development Process) recommendations, and identifying that the June 2016 ICANN56 meeting would be an appropriate opportunity to further consider these items (see [https://gacweb.icann.org/download/attachments/28278854/GAC-\(Governmental-Advisory-Committee\)%20Morocco%2055%20Communique%20FINAL.pdf?version=1&modificationDate=1458046221000&api=v2](https://gacweb.icann.org/download/attachments/28278854/GAC-(Governmental-Advisory-Committee)%20Morocco%2055%20Communique%20FINAL.pdf?version=1&modificationDate=1458046221000&api=v2) (<https://gacweb.icann.org/download/attachments/28278854/GAC%20Morocco%2055%20Communique%20FINAL.pdf?version=1&modificationDate=1458046221000&api=v2>)) [PDF, 567 KB].

Resolved (2016.05.15.07), the Board thanks the GNSO (Generic Names Supporting

Organization) for completing the Board-requested Policy Development Process (PDP (Policy Development Process)) and acknowledges receipt of the PDP (Policy Development Process) Final Report and the GNSO (Generic Names Supporting Organization) Council's Recommendations Report concerning the final PDP (Policy Development Process) recommendations.

Resolved (2016.05.15.08), the Board identifies that more time is required to consider the final PDP (Policy Development Process) recommendations, including time for the provision and consideration of GAC (Governmental Advisory Committee) advice, if any will be provided. The Board anticipates taking further action on the recommendations at the first Board meeting following the ICANN56 Public Meeting in Helsinki, Finland.

Rationale for Resolutions 2016.05.15.07 – 2016.05.15.08

Why is the Board addressing the issue now?

In its October 2011 initiation of negotiations with the Registrar Stakeholder Group for a new form of Registrar Accreditation Agreement (RAA (Registrar Accreditation Agreement)), the ICANN (Internet Corporation for Assigned Names and Numbers) Board also requested an Issue Report from the GNSO (Generic Names Supporting Organization) to start a GNSO (Generic Names Supporting Organization) PDP (Policy Development Process) addressing remaining issues not dealt with in the RAA (Registrar Accreditation Agreement). In June 2013, the ICANN (Internet Corporation for Assigned Names and Numbers) Board approved a new 2013 RAA (Registrar Accreditation Agreement), and the topic of accrediting privacy and proxy services was identified as the sole issue to be resolved through a GNSO (Generic Names Supporting Organization) PDP (Policy Development Process). This topic had also been noted by the Whois Review Team in its Final Report, published in May 2012, in which the Review Team had highlighted the current lack of clear and consistent rules regarding these services, resulting in unpredictable outcomes for stakeholders. The Review Team thought that appropriate oversight over such services would address stakeholder needs and concerns, and recommended that ICANN (Internet Corporation for Assigned Names and Numbers) consider an accreditation system. Until the development of an accreditation program, only certain aspects of such services are covered by an interim specification to the 2013 RAA (Registrar Accreditation Agreement), which is due to expire on 1 January 2017 or the implementation by ICANN (Internet Corporation for Assigned Names and Numbers) of an accreditation program, whichever first occurs.

The GNSO (Generic Names Supporting Organization) Council approved all the final recommendations from the PDP (Policy Development Process) Working Group's Final Report dated 8 December 2015 at its meeting on 21 January 2016, and a Recommendations Report from the Council to the Board on the topic in February 2016. In accordance with the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws, a public comment period was opened to facilitate public input on the adoption of the recommendations. The public comment period closed on 16 March 2016. As outlined in Annex A of the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws, the PDP (Policy Development Process) recommendations are now being forwarded to the Board for its review and action.

What is the proposal being considered?

The GNSO (Generic Names Supporting Organization)'s policy recommendations include minimum mandatory requirements for the operation of privacy and proxy services; the maintenance of designated contact points for abuse reporting and the publication of a list of accredited providers; requirements related to the handling of requests for disclosure and/or publication of a customer's contact details by certain third party requesters; conditions regarding the disclosure and publication of such details as well as the refusal to disclose or publish; and principles governing the de-accreditation of service providers. The full list and scope of the final recommendations can be found in Annex A of the GNSO (Generic Names Supporting Organization) Council's Recommendations Report to the Board (see <http://gns0.icann.org/en/drafts/council-board-ppsai-recommendations-09feb16-en.pdf> (<http://gns0.icann.org/en/drafts/council-board-ppsai-recommendations-09feb16-en.pdf>)) (PDF,

491 KB].

Which stakeholders or others were consulted?

As required by the GNSO (Generic Names Supporting Organization)'s PDP (Policy Development Process) Manual, the Working Group reached out to all GNSO (Generic Names Supporting Organization) Stakeholder Groups and Constituencies as well as other ICANN (Internet Corporation for Assigned Names and Numbers) Supporting Organizations (Supporting Organizations) and Advisory Committees (Advisory Committees) for input during the early phase of the PDP (Policy Development Process). The Working Group also held open community sessions at all the ICANN (Internet Corporation for Assigned Names and Numbers) Public Meetings that occurred during the lifetime of this PDP (Policy Development Process). It also sought input on potential implementation issues from ICANN (Internet Corporation for Assigned Names and Numbers)'s Registrar Services and Compliance teams. Public comment periods were opened for the Preliminary Issue Report that preceded the PDP (Policy Development Process), the Working Group's Initial Report, and the GNSO (Generic Names Supporting Organization) Council's adoption of the Working Group's Final Report. The final recommendations as detailed in the Final Report were completed based on the Working Group's review and analysis of all the public comments and input received in response to its Initial Report.

What concerns or issues were raised by the community?

A significant number of public comments were received by the Working Group concerning the possibility that a distinction might be made between domain name registrants with domains serving non-commercial purposes and registrants who conduct online financial transactions. This had been an open question in the Working Group's Initial Report, as at the time a number of Working Group members had supported that distinction. As a result of further Working Group deliberations following review of the public comments received, the Working Group reached consensus on a recommendation that no such distinction be made for purposes of accrediting services.

Concerns had also been expressed over the need to ensure that there are adequate safeguards in place for maintaining the privacy of customer data, and that a reasonable balance is struck as between a legitimate need for access to information (e.g. by law enforcement and intellectual property rights-holders) and that of protecting privacy. Many public comments received in response to the Working Group's Initial Report also highlighted the potential dangers of disclosing private information without cause, including the threat to the physical safety of certain groups of domain name registrants and privacy/proxy customers. The Working Group's final recommendations include a number of suggested principles and policies that aim to provide more concrete guidance than exists at present for privacy and proxy services, third party requesters of customer information, and domain name registrants in relation to topics such as the handling of customer notifications, information requests and domain name transfers.

The Working Group also received several comments concerning the lack of a detailed framework for the submission and confidential handling of disclosure requests from law enforcement authorities, including from the GAC (Governmental Advisory Committee)'s Public Safety Working Group. In its Initial Report, the Working Group sought community input on the question as to whether and how such a framework might be developed as well as on more specific questions such as whether it should be mandatory for accredited providers to comply with express requests from law enforcement authorities in the provider's jurisdiction not to notify a customer. Based on input received, the Working Group agreed that accredited privacy and proxy service providers should comply with express law enforcement requests not to notify a customer where this is required by applicable law. Providers would be free to voluntarily adopt more stringent standards or otherwise cooperate with law enforcement authorities. As the Working Group did not receive concrete proposals on how a specific framework applicable to law enforcement requests could be developed, its Final Report contains a suggestion for certain minimum requirements that could be included if such a framework is developed in the future.

What significant materials did the Board review?

The Board reviewed the PDP (Policy Development Process) Working Group's Final Report, the GNSO (Generic Names Supporting Organization) Council's Recommendations Report on the topic to the Board, the summary of public comments received in response to the public comment period that was opened following the GNSO (Generic Names Supporting Organization) Council's adoption of the recommendations contained in the Final Report, and GAC (Governmental Advisory Committee) advice received on the topic.

What factors did the Board find to be significant?

The recommendations were developed following the GNSO (Generic Names Supporting Organization) Policy Development Process as set out in Annex A of the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws and have received the unanimous support of the GNSO (Generic Names Supporting Organization) Council. As outlined in the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws, the Council's supermajority support obligates the Board to adopt the recommendations unless, by a vote of more than two-thirds, the Board determines that the recommended policy is not in the best interests of the ICANN (Internet Corporation for Assigned Names and Numbers) community or ICANN (Internet Corporation for Assigned Names and Numbers).

The Bylaws also allow for input from the GAC (Governmental Advisory Committee) in relation to public policy concerns that might be raised if a proposed policy is adopted by the Board. The GAC (Governmental Advisory Committee) has noted that public policy concerns might be raised in the adoption of these policy recommendations, and as such the Board is obliged to take into account any advice that the GAC (Governmental Advisory Committee) may provide in a timely manner on the topic. Therefore, it is prudent for the Board to allow time for the GAC (Governmental Advisory Committee) to provide that advice as indicated in its March 2016 Communiqué.

Are there positive or negative community impacts?

Developing a full accreditation program for privacy and proxy service providers will require significant resources and take a substantial period of time. Deferring adoption of the PDP (Policy Development Process) recommendations will also mean that the need to extend the interim specification in the 2013 RAA (Registrar Accreditation Agreement) beyond its current expiration date will become more urgent.

At present, there is no accreditation scheme in place for privacy and proxy services and no agreed community-developed set of best practices for the provision of such services. This PDP (Policy Development Process) represents an attempt to develop a sound basis for the development and implementation of a proxy/privacy accreditation framework by ICANN (Internet Corporation for Assigned Names and Numbers). This is part of ICANN (Internet Corporation for Assigned Names and Numbers)'s ongoing efforts to improve the Whois system, including implementing recommendations made previously by the Whois Review Team. Implementing many of the GNSO (Generic Names Supporting Organization) recommendations would create a more uniform set of standards for many aspects of privacy and proxy services, including more consistent procedures for the handling, processing and determination of third party requests by accredited providers, into which reasonable safeguards to protect consumer privacy can be incorporated.

Nevertheless, as highlighted above, the implementation of all the recommendations from the PDP (Policy Development Process) will be time- and resource-intensive due to the scale of the project and the fact that this will be the first time ICANN (Internet Corporation for Assigned Names and Numbers) has implemented such a program for this industry sector. While the RAA (Registrar Accreditation Agreement) may serve as a useful reference point for this program, the Working Group's Final Report acknowledged that this may not be the most appropriate model for a number of reasons.

The Working Group's Final Report also notes a few areas where additional work may be required, which could increase the community's workload in the near term. For example, the issue of privacy and proxy services in the context of domain name transfers will need to be

addressed in the next review of the Inter-Registrar Transfer Policy. To the extent that the GAC (Governmental Advisory Committee) provides the Board with timely advice of relevant public policy concerns and the Board accepts such advice, the development of a disclosure framework for law enforcement authorities and other third parties may also need to be considered, possibly in parallel with implementation of the overall accreditation program.

Are there fiscal impacts or ramifications on ICANN (Internet Corporation for Assigned Names and Numbers) (strategic plan, operating plan, budget); the community; and/or the public?

There may be fiscal impacts on ICANN (Internet Corporation for Assigned Names and Numbers) associated with the creation of a new accreditation program specifically covering providers of privacy and proxy services if the PDP (Policy Development Process) recommendations are adopted, regardless of whether this occurs immediately or in the future. However, as the current interim specification in the RAA (Registrar Accreditation Agreement) applicable to such services is due to expire on 1 January 2017, consideration will need to be given to either extending its duration (e.g. to allow for implementation should the PDP (Policy Development Process) recommendations be adopted) or amending and updating it in the event that the PDP (Policy Development Process) recommendations are not adopted.

Are there any security, stability or resiliency issues relating to the DNS (Domain Name System)?

There are no security, stability or resiliency issues relating to the DNS (Domain Name System) that can be directly attributable to the implementation of the PDP (Policy Development Process) recommendations. While the accreditation of privacy and proxy service providers is part of the overall effort at ICANN (Internet Corporation for Assigned Names and Numbers) to improve the Whois system, it does not affect or change either the Whois protocol (including the rollout of the new RDAP, or Registration Data Access Protocol (Protocol)) or the current features of the Whois system. The Working Group made its final recommendations with the understanding that implementation of its recommendations would be done in the context of any other policy or technical changes to the Whois system, which are outside the scope of this PDP (Policy Development Process).

Is this either a defined policy process within ICANN (Internet Corporation for Assigned Names and Numbers)'s Supporting Organizations (Supporting Organizations) or ICANN (Internet Corporation for Assigned Names and Numbers)'s Organizational Administrative Function decision requiring public comment or not requiring public comment?

The recommendations at issue are a result of the defined GNSO (Generic Names Supporting Organization) Policy Development Process. No public comment is required for this deferral action.

b. Report re: .HOTEL

No resolution taken.

c. SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) FY17 Additional Budget Requests Approval

Whereas, prior discussions between community members and ICANN (Internet Corporation for Assigned Names and Numbers) staff members identified the need for an earlier decision on the funding of additional budget requests from ICANN (Internet Corporation for Assigned Names and Numbers)'s Supporting Organizations (Supporting Organizations) (SO (Supporting Organization)) and Advisory Committees (Advisory Committees) (AC (Advisory Committee; or Administrative Contact (of a domain registration))).

Whereas, the staff created an SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) additional budget requests process, to collect,

review and submit for Board approval funding requests from the SOs and ACs.

Whereas, requests were submitted by the ICANN (Internet Corporation for Assigned Names and Numbers) community by the set deadline, and were reviewed by a panel of staff members representing the Policy, Stakeholder Engagement and Finance departments.

Whereas, the review panel recommended the approval of requests representing \$643,700 for approval.

Whereas the Board Finance Committee, reviewed the process followed and the staff proposal, and has recommended that the Board approve the staff recommendation.

Resolved (2016.05.15.09), the Board approves committing \$643,700 during Fiscal Year 2017 to cover the costs associated with the adopted SO (Supporting Organization)/AC (Advisory Committee; or Administrative Contact (of a domain registration)) additional budget requests.

Rationale for Resolution 2016.05.15.09

The budget approval earlier in the year is a reasonable accommodation of the established budget approval process and timeline, that facilitate the work of the ICANN (Internet Corporation for Assigned Names and Numbers) community and of the ICANN (Internet Corporation for Assigned Names and Numbers) staff, and does not create additional expenses. The amount of the committed expenses resulting from this resolution is considered sufficiently small to not require that funding resources are specifically identified for each request.

There is no anticipated impact from this decision on the security, stability and resiliency of the domain name system as a result of this decision.

The approval process is an Organizational Administrative process that has already been subject to significant input from the community.

d. October 2016 ICANN (Internet Corporation for Assigned Names and Numbers) Meeting Venue Contracting

Whereas, ICANN (Internet Corporation for Assigned Names and Numbers) intended to hold its third Public Meeting of 2016 in San Juan, Puerto Rico, in the North America region.

Whereas, the Zika Virus outbreak in Puerto Rico has caused the need for a relocation of the Public Meeting.

Whereas, ICANN (Internet Corporation for Assigned Names and Numbers) must identify an alternative venue.

Resolved (2016.05.15.10), the Board authorizes the President and CEO, or his designee(s), to engage in and facilitate all necessary contracting and disbursements for ICANN (Internet Corporation for Assigned Names and Numbers) 57 in an amount [REDACTED FOR NEGOTIATION PURPOSES].

Resolved (2016.05.15.11), specific items within this resolution shall remain confidential for negotiation purposes pursuant to Article III, section 5.2 of the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws until the President and CEO determines that the confidential information may be released.

Rationale for Resolutions 2016.05.15.10 – 2016.05.15.11

As part of ICANN (Internet Corporation for Assigned Names and Numbers)'s Public Meeting schedule, presently three times a year, ICANN (Internet Corporation for Assigned Names and Numbers) hosts a meeting in a different geographic region (as defined in the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws). ICANN (Internet Corporation for Assigned Names and Numbers) 57, originally scheduled for 29 October - 4 November 2016,

was to occur in the North America geographic region. San Juan, Puerto Rico was originally selected. Since the Zika Virus outbreak made it unsuitable for an ICANN (Internet Corporation for Assigned Names and Numbers) Meeting in 2016, staff is tasked with performing a search for suitable, alternative venues for ICANN (Internet Corporation for Assigned Names and Numbers) 57 in all geographic regions of the world, even if the originally scheduled dates must change.

As per the process, the staff will perform a thorough analysis of the meeting facilities to ensure they have met the Meeting Selection Criteria (see <http://meetings.icann.org/location-selection-criteria> (<http://meetings.icann.org/location-selection-criteria>)) to ensure that the identified alternative location for ICANN (Internet Corporation for Assigned Names and Numbers) 57 is appropriate.

There will be a financial impact on ICANN (Internet Corporation for Assigned Names and Numbers) in hosting the meeting and providing travel support as necessary, as well as on the community in incurring costs to travel to the meeting. But such impact would be faced regardless of the location and venue of the meeting. This action will have no impact on the security or the stability of the DNS (Domain Name System).

This is an Organizational Administrative function that does not require public comment.

e. USG IANA (Internet Assigned Numbers Authority) Stewardship Transition – Additional FY16 Expenses and Funding

Whereas, the Board has approved expense budget envelopes to support the IANA (Internet Assigned Numbers Authority) Stewardship Transition Project ("Project") during FY15 and FY16, and all approved budget envelopes will have been used after the ICANN (Internet Corporation for Assigned Names and Numbers) Meeting 55 in Marrakech.

Whereas, a Project Cost Support Team was implemented to produce Project expense estimates for the remainder of FY16 and for FY17 for the Project.

Whereas, Project Cost Support Team produced expense estimates for the Project expenses of up to approximately US\$5.4 million to be incurred through the remainder of FY16.

Whereas, the Board Finance Committee met on 3 March 2016 and has approved to recommend to the Board to approve an additional Project expense budget envelope of up to US\$5.4 million to cover Project expenses through the remainder of FY16.

Resolved (2016.05.15.12), the Board approves a budget envelope of up to US\$5.4 million to cover the costs of the Project to be incurred through the remainder of FY16 to be funded through a fund release from the Reserve Fund.

Rationale for Resolution 2016.05.15.12

The IANA (Internet Assigned Numbers Authority) Stewardship Transition is a major initiative to which the ICANN (Internet Corporation for Assigned Names and Numbers) Community as a whole is dedicating a significant amount of time and resources. ICANN (Internet Corporation for Assigned Names and Numbers)'s support for the community's work towards a successful completion of the Project (including both the USG IANA (Internet Assigned Numbers Authority) Stewardship transition proposal development and the Cross-Community Working Group on Enhancing ICANN (Internet Corporation for Assigned Names and Numbers) Accountability's work), as well as supporting ICANN (Internet Corporation for Assigned Names and Numbers)'s implementation planning efforts is critical for ICANN (Internet Corporation for Assigned Names and Numbers).

Considering its exceptional nature and the significant amount of costs anticipated to be incurred, the funding of this Project could not be provided through the Operating Fund. Accordingly, when the Board approved the FY15 and FY16 Operating Plans and Budgets, it included the anticipated funding of the transition initiative costs through a corresponding withdrawal from the Reserve Fund.

The Board previously approved the FY16 Operating Plan and Budget, which included an estimated budget envelope of US\$7 million for the USG IANA (Internet Assigned Numbers Authority) Stewardship Transition ("Project") to be funded by the Reserve Fund. As the Project used this entire budget envelope by the end of November 2015, the Board approved additional funding of US\$4.5 million on 2 February 2016 to allow the project to be funded through the ICANN (Internet Corporation for Assigned Names and Numbers) Meeting 55 in Marrakech. At ICANN (Internet Corporation for Assigned Names and Numbers) 55 in Marrakech, the Board approved additional funding of US\$1.5 million on 2 February 2016 to allow the project to be funded through the period of time until the PCST team had worked on a FY16 forecast.

The Board reiterated on its 25 June 2015 statement that the Board is "committed to supporting the community in obtaining the advice it needs in developing recommendations in support of the transition process, and also notes the importance of making sure that the funds entrusted to ICANN (Internet Corporation for Assigned Names and Numbers) by the community are used in responsible and efficient ways. Assuring the continuation of cost-control measures over the future work of the independent counsel is encouraged." (See <https://www.icann.org/resources/board-material/resolutions-2015-06-25-en#2.c> ([/resources/board-material/resolutions-2015-06-25-en#2.c](https://www.icann.org/resources/board-material/resolutions-2015-06-25-en#2.c))).

As the community work relative to the accountability track of the Project is expected to continue, further expenses are expected through the remainder of FY16 and during FY17. The implementation planning for other parts of the Project will also continue. Separately, in order to improve visibility on and control of the expenses for this type of project in partnership with the community, a project costs support team is being formed to produce costs estimates for future work.

The Board Finance Committee has determined that an additional budget envelope of approximately US\$5.4 million needs to be approved by Board to allow ICANN (Internet Corporation for Assigned Names and Numbers) to incur further Project expenses for the remainder of FY16.

As this initiative's expenses and funding are approved by the Board, the ICANN (Internet Corporation for Assigned Names and Numbers) Board is now being asked to approve a budget envelope of US\$5.4 million to be funded through a release from the Reserve Fund as an additional expense budget envelope for the remainder of FY16.

This action will not have a direct impact on the security, stability and resiliency of the domain name system.

This is an Organizational Administrative Function that does not require public comment.

f. AOB

i. Enhancing Openness and Transparency – Board Deliberations

Whereas, the Board believes that providing increased access to Board deliberations is important, and that increased openness is an important means of working toward that goal.

Whereas, the ICANN (Internet Corporation for Assigned Names and Numbers) Board discussed at its Amsterdam workshop how to improve its functioning and agreed that enhancing the visibility into the Board deliberations and decision-making processes was an important part of becoming more accountable and more transparent.

Whereas, the Board noted the call from the community for increased openness and transparency.

Whereas, the Board believes that a positive first step towards increased openness is publicly posting transcripts and/or recordings of its deliberative sessions to the extent that such information or dialogue is not subject to confidentiality restrictions or privilege.

Resolved (2016.05.15.13), the Board directs the President and CEO, or his designee(s), to work with the Board to develop a proposed plan for the publication of transcripts and/or recordings of Board deliberative sessions, with such plan to include an assessment of possible resources costs and fiscal impact, and draft processes to: (i) ensure the accuracy of the transcript; and (ii) for redaction of portions of the transcript that should be maintained as confidential or privileged.

Resolved (2016.05.15.14), the Board expects to evaluate the plan in Helsinki, and if satisfactory to begin testing of the proposed processes relating to publication of transcripts and/or recordings of the Board's deliberative sessions as soon as practicable after Helsinki.

Rationale for Resolution 2016.05.15.13 – 2016.05.15.14

In support of the continued call for visibility into Board deliberations and processes, the Board has determined to make available transcripts or recordings, where appropriate, of the Board's deliberative sessions. This effort to enhance openness is likely to also support the ICANN (Internet Corporation for Assigned Names and Numbers) community in enhancing ICANN (Internet Corporation for Assigned Names and Numbers)'s accountability, as it will reduce questions of how and why the Board reaches its decisions. This decision also directly supports ICANN (Internet Corporation for Assigned Names and Numbers)'s previous efforts and the continued goal of operating as openly and transparently in its decision-making. ICANN (Internet Corporation for Assigned Names and Numbers) is also acting consistently with the ICANN (Internet Corporation for Assigned Names and Numbers)'s Bylaws, as set out in Article III, section 1 of the ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws, that, "ICANN (Internet Corporation for Assigned Names and Numbers) and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness." (ICANN (Internet Corporation for Assigned Names and Numbers) Bylaws at <https://www.icann.org/resources/pages/governance/bylaws-en-III> ([/resources/pages/governance/bylaws-en#III](https://www.icann.org/resources/pages/governance/bylaws-en#III)).

There will be issues before the Board for which confidentiality is still required, and that may require redaction of parts or withholding of full transcripts, and it is important that the community and the Board understand how those decisions will be taken. To that end, the Board is directing the development of a plan, which would include proposed processes by which those redaction decisions for confidentiality and privilege are to be made. That plan should be developed as soon as practicable, and should be ready for Board consideration during ICANN56 in Helsinki.

This decision will not have any impact on the security, stability or resiliency of the DNS (Domain Name System). Implementation of this decision may involve increased costs, including, risk and fiscal impact for ICANN (Internet Corporation for Assigned Names and Numbers).

This is an organizational administrative function for which public comment is not required, but such input may be useful at a later point depending upon the plan.

3. Executive Session – CONFIDENTIAL

The Board held a confidential portion of the session relating to employment matters.

Published on 17 May 2016



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[ICANN Blog \(/news/blog\)](#)

(<http://www.youtube.com/icann>)(<https://www.twitter.com/icann>)(<https://www.linkedin.com/company/icann>)(<http://www.flickr.com/photos/icann/>)(<http://www.facebook.com/icannorg>)

(<https://community.icann.org>)

Who We Are

[Get Started \(/get-started\)](#)

[Learning \(/en/about/learning\)](#)

[Participate \(/en/about/participate\)](#)

[Groups \(https://www.icann.org/resources/pages/groups-2012-02-06-en\)](#)

[Board \(/resources/pages/board-of-directors-2014-03-19-en\)](#)

[President's Corner \(/presidents-corner\)](#)

[Staff \(/en/about/staff\)](#)

[Careers \(https://icann-openhire.silkroad.com/epostings/index.cfm?fuseaction=app.allpositions&organization_id=16025&.version=1\)](#)

[Newsletter \(/en/news/newsletter\)](#)

[Development and Public Responsibility \(https://www.icann.org/dev/development-and-public-responsibility\)](#)

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[Offices \(https://forms.icann.org/en/about/offices\)](#)

[Global Support \(/resources/pages/customer-support-2015-06-22-en\)](#)

[Security Team \(/about/staff/security\)](#)

[PGP Keys \(/en/contact/pgp-keys\)](#)

[Certificate Authority \(/contact/certificate-authority\)](#)

[Registry Liaison \(/resources/pages/contact-f2-2012-02-25-en\)](#)

[AOC Review \(http://forms.icann.org/en/about/aoc-review/contact\)](#)

[Reviews \(http://forms.icann.org/en/groups/reviews/contact\)](#)

[Request a Speaker \(http://forms.icann.org/en/contact/speakers\)](#)

[For Journalists \(/en/news/press\)](#)

Accountability & Transparency

[Accountability](#)

[Mechanisms \(/en/news/in-focus/accountability/mechanisms\)](#)

[Independent Review Process \(/resources/pages/irp-2012-02-25-en\)](#)

[Request for Reconsideration \(/groups/board/governance/reconsideration\)](#)

[Ombudsman \(/help/ombudsman\)](#)

Governance

[Documents \(/en/about/governance\)](#)

[Agreements \(/en/about/agreements\)](#)

[AOC Review \(/en/about/aoc-review\)](#)

[Annual Report \(/about/annual-report\)](#)

[Reconsideration \(/en/about/financials\)](#)

[Document Disclosure \(/en/about/transparency\)](#)

[Planning \(/en/about/planning\)](#)

[Dashboard Beta \(https://www.icann.org/dashboard\)](#)

[RFPs \(/en/news/rfps\)](#)

[Litigation \(/en/news/litigation\)](#)

[Correspondence \(/en/news/correspondence\)](#)

Help

[Dispute Resolution \(/en/help/dispute-resolution\)](#)

[Domain Name Dispute Resolution \(/en/help/dndr\)](#)

[Name Collision \(/en/help/name-collision\)](#)

[Registrar Problems \(/en/news/announcements/announcement-06mar07-en.htm\)](#)

[WHOIS \(http://whois.icann.org/\)](#)

Exhibit DIDP A105

2016 Reconsideration Requests – Status Update – 29 April 2016

No:	Requester:	Filing Date:	BGC Action Date: ^{1 2}	NGPC/Board Action Date:	Comments:
16-1	Commercial Connect, LLC	26-Jan-2016	25 February 2016 (Determination); Total days from Request: 30	N/A	
16-2	Commercial Connect, LLC	10-Feb-2016	25 February 2016 (Determination); Total days from Request: 15	N/A	
16-3	dotgay LLC	17-Feb-2016	Tentatively scheduled for May 2016; Total days from Request: TBD		
16-4	Roman Belichenko	9-Feb-2016	Tentatively scheduled for May 2016; Total days from Request: TBD		
16-5	DotMusic Limited	24-Feb-2016	Total days from Request: TBD		Requester requested that consideration of Reconsideration Request 16-5 be placed on hold pending a response to Requester's DIDP Request.

¹ Article IV, Section 2.16 of the Bylaws provide that “[t]he Board Governance Committee shall make a final determination or a recommendation to the Board with respect to a Reconsideration Request *within thirty days following its receipt of the request, unless impractical, in which case it shall report to the Board the circumstances that prevented it from making a final recommendation and its best estimate of the time required to produce such a final determination or recommendation.*” (Bylaws, Art. IV, § 2.16.) Article IV, Section 2.17 of the Bylaws state that the Board (or the NGPC) “shall issue its decision on the recommendation of the Board Governance Committee *within 60 days of receipt of the Reconsideration Request or as soon thereafter as feasible.*” (Bylaws, Art. IV, §2.17.) Requestors are regularly notified at each step of the proceedings, including whether there will be a delay beyond the suggested response deadlines, and whether the matter will be submitted to the NGPC and/or the Board.

² For Reconsideration Requests brought regarding staff action or inaction, and actions by third party panels in the New gTLD Program (including the expert dispute resolution panels) that are being treated as staff actions, the BGC has the option to issue final Determinations or to issue Recommendations to the Board or the NGPC. (*See* Article IV, Section 2.16 of the Bylaws; *see also*, BGC Recommendation on Reconsideration Request 13-5 at <http://www.icann.org/en/groups/board/governance/reconsideration/recommendation-booking-01aug13-en.doc>.)

DIDP Exhibit A106

INDEPENDENT REVIEW PROCESS (IRP)
INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION

ICDR Case No. 01-15-0002-8061

Despegar Online SRL

Donuts, Inc.

Famous Four Media Limited

Fegistry, LLC

Radix FZC

-vs

ICANN

vs

Little Birch, LLC

Minds + Machines Group Limited

Final Declaration

IRP Panel

Thomas H. Webster

Dirk P. Tirez

Peter J. Rees QC (Chair)

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A. Introduction and Procedural History

1. This Final Declaration is issued by this Independent Review Process (“IRP”) Panel pursuant to the Bylaws of the Internet Corporation for Assigned Names and Numbers (“ICANN”). This IRP has been administered under the International Centre for Dispute Resolution (“ICDR”) International Dispute Resolution Procedures as amended and in effect as of 1 June 2014 along with ICANN’s Supplementary Procedures.
2. On 4 March 2015, following a failed Cooperative Engagement Process with ICANN, Despegar Online SRL, Donuts Inc., Famous Four Media Limited, Fegistry LLC and Radix FZC submitted a Request for IRP in relation to ICANN’s treatment of the generic top level domain (“gTLD”) string .hotel (“the .hotel IRP”).
3. On 17 April 2015, ICANN submitted its Response to this Request.
4. On 15 March 2015, following a failed Cooperative Engagement Process with ICANN, Little Birch, LLC and Minds + Machines Group Limited submitted a Request for IRP in relation to ICANN’s treatment of the gTLD string .eco (“the .eco IRP”).
5. On 27 April 2015, ICANN submitted its Response to this Request.
6. On 12 May 2015, the ICDR confirmed to the parties that the cases regarding .hotel IRP and .eco IRP would be merged and the parties agreed to keep written submissions separate but recognized that the issues presented by the two cases were closely linked and that the parties’ interests in the proceedings were so similar that both should be dealt with during a single hearing.
7. Despegar Online SRL, Donuts Inc., Famous Four Media Limited, Fegistry LLC, Radix FZC, Little Birch, LLC and Minds + Machines Group Limited are all represented by Flip Petillion and Jan Janssen of Crowell & Moring LLP and ICANN is represented by Jeffrey A. LeVee and Rachel Zernik of Jones Day.
8. The IRP Panel consisting of Thomas H. Webster, Dirk P. Tirez and Peter J. Rees QC (Chair) (“Panel”), having been duly constituted to consider these two Requests, conducted a preparatory conference with the party representatives on 25 August 2015 at which, and following consultation with the party representatives, the procedure was fixed by the Panel for the further conduct of the IRP.

9. On 7 October 2015, the Panel received a letter from Fasken Martineau seeking to make submissions to the Panel on behalf of Big Room Inc. (“Big Room”) whilst acknowledging that Big Room was not a party to the IRP.
10. On 19 October 2015, Despegar Online SRL, Donuts Inc., Famous Four Media Limited, Fegistry LLC, Radix FZC, and Minds + Machines Group Limited submitted a Reply to ICANN’s Response in the .hotel IRP matter, and Little Birch, LLC and Minds + Machines Group Limited submitted a Reply to ICANN’s Response in the .eco IRP matter.
11. On 10 November 2015, ICANN submitted its Sur Replies in both the .hotel IRP and the .eco IRP matters.
12. On 20 November 2015, the Panel received an e mail from HOTREC seeking to make submissions to the Panel whilst acknowledging that HOTREC was not a party to the IRP.
13. On 2 December 2015, in advance of the telephone hearing due to take place on 7 December 2015, the Panel sent an e mail to the representatives of the parties asking a number of questions.
14. On 4 December 2015, the parties responded in writing to the Panel’s questions.
15. On 7 December 2015, a telephone hearing took place at which the representatives of all the parties made their submissions to the Panel.

B. Factual Background - General

16. In 2005, ICANN’s Generic Names Supporting Organization (“GNSO”) began a policy development process to consider the introduction of new gTLDs. As part of this process the New gTLD Applicant Guidebook (“Guidebook”) was developed and was approved by the Board of ICANN in June 2011 and the New gTLD Program was launched.
17. The final version of the Guidebook was published on 4 June 2012. It provides detailed instructions to gTLD applicants and sets out the procedures for evaluating new gTLD applications. The Guidebook provides that new gTLD applicants may designate their applications as either standard or community based, the latter to be “operated for the benefit of a clearly delineated community” (Guidebook § 1.2.3.1).
18. If more than one standard application was made for the same gTLD applicants were asked to try and achieve an amicable agreement under which one or more

of them withdrew their applications. If no amicable solution could be found, applicants in contention for the same gTLD would be invited to participate in an auction for the gTLD.

19. If a community based application was made for a gTLD for which other applicants had made standard applications, the community based applicant was invited to elect to proceed to Community Priority Evaluation (“CPE”) whereby its application would be evaluated by a CPE Panel in order to establish whether the application met the CPE criteria. The CPE Panel could award up to a maximum of 16 points to the application on the basis of the CPE criteria. If an application received 14 or more points the applicant would be considered to have prevailed in CPE (Guidebook § 4.2.2). The four CPE criteria are: (i) community establishment; (ii) nexus between proposed string and community; (iii) registration policies; and (iv) community endorsement. Each criterion is worth a maximum of 4 points (Guidebook § 4.2.3).
20. If an applicant prevails in CPE, it will proceed to the next stage of evaluation and other standard applications for the same gTLD will not proceed because the community based application will be considered to have achieved priority (Guidebook § 4.2.2).
21. ICANN appointed an external provider, the Economic Intelligence Unit (“EIU”) to constitute the CPE Panel.
22. ICANN has a Documentary Information Disclosure Policy (“DIDP”), which permits requests to be made to ICANN to make public documents “concerning ICANN’s operational activities, and within ICANN’s possession, custody or control”.
23. ICANN also has in place a process by which any person or entity, materially affected by an action of ICANN, may request review or reconsideration of that action by the Board of ICANN (“Reconsideration Request”) (Art IV.2 of ICANN’s Bylaws).
24. ICANN also has in place a process for independent third party review of Board actions alleged by an affected party to be inconsistent with the Articles of Incorporation or Bylaws of ICANN (Art IV.3 of ICANN’s Bylaws), namely the IRP Process.
25. Article IV.3.4 of ICANN’s Bylaws provides:

“Requests for such independent review shall be referred to an Independent Review Process Panel (“IRP Panel”), which shall be charged with comparing contested actions of the Board to the Articles of Incorporation and Bylaws,

and with declaring whether the Board has acted consistently with the provisions of those Articles of Incorporation and Bylaws. The IRP Panel must apply a defined standard of review to the IRP request, focusing on:

- a. did the Board act without conflict of interest in taking its decision?*
- b. did the Board exercise due diligence and care in having a reasonable amount of facts in front of them?; and*
- c. did the Board members exercise independent judgment in taking the decision, believed to be in the best interests of the company?"*

C. Factual Background - Specific

- 26. Despegar Online SRL, Donuts Inc., Famous Four Media Limited, Fegistry LLC and Radix FZC each submitted standard applications for .hotel. HOTEL Top Level Domain s.a.r.l. ("HTLD") submitted a community based application for .hotel.
- 27. Little Birch, LLC and Minds + Machines Group Limited each submitted standard applications for .eco. Big Room submitted a community based application for .eco.
- 28. On 19 February 2014, HTLD was invited to elect to proceed to CPE, which it did, and its application was forwarded to the EIU for evaluation.
- 29. On 12 March 2014, Big Room was invited to elect to proceed to CPE, which it did, and its application was forwarded to the EIU for evaluation.
- 30. On 11 June 2014, the CPE Panel from EIU issued its report, which determined that HTLD's application should receive 15 points on the CPE criteria, thereby prevailing in CPE with the consequence that the standard applications for .hotel would not proceed.
- 31. On 28 June 2014, Despegar Online SRL, DotHotel Inc., dot Hotel Limited, Fegistry LLC, Spring McCook LLC and Top Level Domain Holdings Limited submitted a Reconsideration Request *"to have that decision by the Community Priority Evaluation panel reconsidered"*, and, on 4 August 2014, Donuts Inc., Fair Winds Partners, LLC, Famous Four Media Limited, Minds + Machines Group Limited and Radix FZC submitted a request to ICANN pursuant to its DIDP for certain documents related to the decision of the CPE Panel.
- 32. On 22 August 2014, the Board Governance Committee ("BGC") of ICANN denied the Reconsideration Request to have the CPE Panel decision reconsidered and, on 3 September 2014, ICANN responded to the DIDP request

by referring to certain correspondence that was publicly available, but not providing any other documentation sought in the DIDP request.

33. On 22 September 2014, Despegar Online SRL, Radix FZC, Famous Four Media Limited, Fegistry LLC, Donuts Inc., and Minds + Machines Group Limited submitted a Reconsideration Request to “*seek reconsideration of ICANN staff’s response to the Requesters’ request for documents pursuant to ICANN’s Document Information Disclosure Policy (“DIDP”)*”, and, on 11 October 2014, the BGC of ICANN denied that Reconsideration Request.
34. On 6 October 2014, the CPE Panel from EIU issued its report, which determined that Big Room’s application should receive 14 points on the CPE criteria, thereby prevailing in CPE with the consequence that the standard applications for .eco would not proceed.
35. On 22 October 2014, Little Birch, LLC and Minds + Machines Group Limited submitted a Reconsideration Request seeking “*the reconsideration of ICANN’s Community Priority Evaluation Panel’s determination whereby [Big Room’s application] prevailed in Community Priority Evaluation*”, They also submitted a request to ICANN pursuant to its DIDP for certain documents related to the decision of the CPE Panel.
36. On 31 October 2014, ICANN responded to the DIDP request by referring to certain correspondence that was publicly available, but not providing any other documentation sought in the DIDP request, and, on 18 November 2014, the BGC of ICANN denied the Reconsideration Request to have the CPE Panel decision reconsidered.
37. On 27 February 2015, ICANN staff became aware of a configuration issue with ICANN’s online New gTLD Applicant and Global Domains Division (“GDD”) portals. It appears that, between 17 March 2014 and 27 February 2015, user credentials were used to obtain sensitive and confidential business information concerning several of the .hotel applicants.
38. On 5 June 2015, Crowell & Moring LLP wrote to the ICANN Board and the President of ICANN’s GDD “*on behalf of Travel Reservations SRL (formerly, Despegar Online SRL), Donuts Inc. (and its subsidiary applicant Spring McCook, LLC), Famous Four Media Limited (and its subsidiary applicant dot Hotel limited), Fegistry LLC, Minds + Machines Group Limited (formerly Top Level Domain Holdings Limited), and Radix FZC (and its subsidiary applicant DotHotel Inc.)*”. The letter requested “*full information concerning this data exposure issue and the actions that have been taken by ICANN to limit damages for the affected parties*” and set out a list of information sought.

39. On 5 July 2015, ICANN responded to the letter of 5 June 2015 under the heading “*Response to Documentary Information Disclosure Policy Request*”. ICANN provided further information concerning the issue and referred to certain information that was publicly available, but did not provide any other documentation.
40. Neither the Board of ICANN nor the President of ICANN’s GDD has responded to the letter of 5 June 2015.

D. Relief Requested

41. The relief requested by the Claimants in both the .hotel and .eco Requests for IRP was, essentially, the same, namely:
- Declare that ICANN breached its Articles of Incorporation, its Bylaws, and or the gTLD Guidebook;
 - Declare that ICANN must reject the determination that HTLD’s application for .hotel and Big Room’s application for .eco be granted community priority;
 - Award Claimants their costs in this proceeding; and
 - Award such other relief as the Panel may find appropriate in order to ensure that the ICANN Board follow its Bylaws, Articles of Incorporation, or other policies, or other relief that Claimants may request after further briefing or argument.
42. In the Reply to ICANN’s Response in the .hotel IRP a further request for relief was added, namely:
- Declare that ICANN must reject HTLD’s application for .hotel.
43. In response to the questions raised by the Panel on 2 December 2015, the Claimants’ representative also asked for the following relief:
- i. That the Panel consider declaring that ICANN continues to act inconsistently with its Articles of Incorporation, its Bylaws, and or the Guidebook by:
 - upholding the determination that HTLD’s application for .hotel be granted community priority;
 - upholding HTLD’s application for .hotel; and
 - upholding the determination that Big Room’s application for .eco be granted community priority.
 - ii. That the Panel declare that ICANN has breached and continues to breach its Articles of Incorporation and/or Bylaws by upholding the

provisions of the gTLD Applicant Guidebook or of the new gTLD policy which are in violation of the Articles of Incorporation and/or Bylaws.

- iii. That the Panel examine the consistency with ICANN's Articles of Incorporation and Bylaws of;
 - the contents of the Guidebook
 - the CPE process itself
 - the selection and appointment process of the EIU as the CPE Panel, and
 - the implementation of the CPE process that has led to ICANN accepting community priority for .hotel and .eco.

E. Claimants' Submissions

44. In their submissions, the Claimants, in both the .hotel and .eco IRPs matters, criticise the CPE process as a whole and complain that the ICANN Board failed to establish, implement and supervise a fair and transparent CPE process in the selection of the CPE Panel. They also complain that the CPE process is unfair, non transparent and discriminatory due to the use of anonymous evaluators, and that no quality review process exists for CPE Panel decisions.
45. In relation to the CPE process as a whole, the Claimants also argue that, as no opportunity is given for applicants to be heard on the substance of a CPE determination (by either the CPE Panel itself, or by ICANN upon receiving the Panel's decision), CPE determinations are made without due process.
46. However, relief in respect of these wider issues was not requested by the Claimants in either the .hotel or .eco Requests, and, although such relief was referred to by the Claimants in their response to the Panel's questions of 2 December 2015, it was confirmed by the Claimants at the hearing on 7 December 2015 that the Claimants were not, in fact, asking the Panel to make a declaration as to the selection process of the CPE Panel by ICANN, nor any declaration as to the CPE process as a whole, nor whether that process breaches ICANN's Articles of Incorporation or Bylaws, nor whether the Guidebook breaches ICANN's Articles of Incorporation or Bylaws.
47. Accordingly, for the purposes of this IRP, it is the submissions made by the Claimants which address the specific relief sought by the Claimants in relation to the granting of CPE in the .hotel and .eco applications that are relevant for the Panel.
48. In the .hotel and .eco Requests and Replies, the Claimants make the following submissions in relation to the CPE Panel's determinations on CPE:

- i. *“By accepting a third-party determination that is contrary to its policies, ICANN has failed to act with due diligence and failed to exercise independent judgment” (.hotel Request § 9, .eco Request § 9)*
- ii. *“The extraordinary outcomes for Big Room’s application for .eco and HTLD’s application for .hotel were only possible due to a completely different and clearly erroneous application of the evaluation criteria in the .eco and .hotel CPE” (.eco Request § 48)*
- iii. *“If the CPE Panel used the same standard as, e.g., in the .gay, .immo and .taxi CPEs, it would never have decided that the requirements for nexus were met” (.hotel Request § 52, .eco Request § 50)*
- iv. *“The abovementioned examples of disparate treatment in the CPE process also show that the CPE process was performed in violation of ICANN’s CPE policy” (.hotel Request § 53, .eco Request § 51)*
- v. *“the CPE Panel in the .hotel CPE committed several additional policy violations. It did not analyze whether there was a ‘community’ within the definition of that term under the rules of the Applicant Guidebook” (.hotel Request § 53)*
- vi. *“the CPE Panel in the .eco CPE committed several additional policy violations. It did not analyze whether there was a ‘community’ within the definition of that term under the rules of the Applicant Guidebook” (.eco Request § 51)*
- vii. *“The requirement of a pre existing community and the suspicious date of incorporation of Big Room have never been examined by the CPE Panel” (.eco Request § 53)*
- viii. *“The CPE Panel also did not provide meaningful reasoning for its decision. It even went as far as inventing facts” (.hotel Request § 55)*
- ix. *“The CPE Panel also did not provide meaningful reasoning for its decision. It even went as far as neglecting obvious facts” (.eco Request § 56)*
- x. *“However, the CPE Panel’s reliance on the support of a distinct, yet undefined, community shows that the support for the .hotel gTLD came from a ‘community’ other than the one that was defined by the applicant. The need to introduce a distinct and undefined community goes against the exact purpose of the CPE policy, requiring support of the community targeted by the string. It is at odds with the CPE Panel’s findings on organization and nexus between the proposed string and the ‘community.’” (.hotel Request § 56)*
- xi. *“the CPE Panel disregarded the obvious point that the .eco string does not identify a community and that it has numerous other meanings beyond the definitions in the OED.....Big Room would not have qualified for community priority if the CPE Panel had not granted the maximum score for uniqueness of the string.” (.eco Request § 58)*
- xii. *“The CPE Panel has never considered the appropriateness of [Big Room’s] appeal process. In contrast, however, the CPE Panel did investigate the*

- appropriateness of proposed appeal processes in other CPEs requiring that the appeals processes be clearly described, failing which the application would score zero on the enforcement requirement.” (.eco Request § 59)*
- xiii. *“The Applicant Guidebook explicitly calls on the Board to individually consider an application under an ICANN accountability mechanism...such as a Request for Reconsideration” (.hotel Request § 64, .eco Request § 67) NB the Panel notes that this is not actually what the Guidebook says. It says that the “Board reserves the right to individually consider an application for a new gTLD....under exceptional circumstances”*
 - xiv. *“Claimants showed that the CPE Panel manifestly misapplied ICANN’s defined standards in the CPE. It is unclear how else to interpret such a fundamental misapplication other than as an obvious policy violation” (.eco Request § 69)*
 - xv. *“Claimants were merely asking that ICANN comply with its own policies and fundamental obligations in relation to the performance of the CPE process” (.hotel Request § 66, .eco Request § 69)*
 - xvi. *“The IRP Panel’s task is to look at whether ICANN’s unquestioning acceptance of the CPE Panel’s advice and ICANN’s refusal to review the issue raised by Claimants are compatible with ICANN’s fundamental obligations” (.hotel Reply § 4, .eco Reply § 3)*
 - xvii. *“ICANN’s reasoning would logically result in any review of the CPE being denied, no matter how arbitrary the original evaluation may be” (.hotel Reply § 4, .eco Reply § 8)*
 - xviii. *“the ICANN Board decided not to check whether or not the evaluation process had been implemented in compliance with principles of fairness, transparency, avoiding conflicts of interest and non-discrimination.” (.hotel Reply § 34, .eco Reply § 33)*
 - xix. *“One cannot investigate whether a standard was applied fairly and correctly without looking into how the standard was applied.....the ICANN Board deliberately refused to examine whether the standard was applied correctly, fairly, equitably and in a non-discriminatory manner” (.hotel Reply § 39, .eco Reply § 38)*
 - xx. *“As the IRP Panel’s task includes a review as to whether ICANN discriminated in the application of its policies and standards, the IRP Panel is obliged to consider how the standards were applied in different cases” (.hotel Reply § 45, .eco Reply § 44)*

49. In the .hotel Reply, the Claimants also make the following submissions in relation to the declaration they are seeking that ICANN must reject HTLD’s application for .hotel:

- i. *“The IRP Panel is also requested to assess ICANN’s refusal to take appropriate action to offer redress to parties affected by the data exposure issue. In coming to its conclusion, the IRP Panel may examine all the*

- relevant information that was available to ICANN in relation to the question of taking action” (.hotel Reply § 4)*
- ii. *“ICANN never showed any willingness to take appropriate measures” (.hotel Reply § 49)*
 - iii. *“In this case a crime was committed seemingly with the specific purpose of obtaining a better position within the new gTLD program, and the crime was made possible due to misuse of user credentials for which HTLD (or an individual associated to HTLD) was responsible....It would indeed not be in the public interest to allocate a critical Internet resource to an entity that is closely linked with individuals who have misused, or who have permitted the misuse of, their user credentials” (.hotel Reply § 50)*

50. Also in the .hotel Reply the Claimants submit:

“Second Claimant in the .eco case, Minds + Machines Group Limited (Minds + Machines), also applied for the .hotel gTLD. Minds + Machines fully supports the claim initiated by Claimants in this case and joins their request. That Minds + Machines join the proceedings is accepted by all Claimants” (.hotel Reply § 2)

F. ICANN’s Submissions

51. In the .hotel and .eco Responses and Sur Replies, ICANN makes the following submissions in relation to the CPE Panel’s determinations on CPE:

- i. *“Claimants did not state a proper basis for reconsideration as defined in ICANN’s Bylaws” (.hotel Response § 4, .eco Response § 4)*
- ii. *“ICANN’s Board....has no obligation to review (substantively or otherwise) any such report” (.hotel Response § 9, .eco Response § 9)*
- iii. *“nothing in the Articles or Bylaws requires the Board [to conduct a substantive review” (.hotel Response § 9, .eco Response § 10)*
- iv. *“neither the creation nor the acceptance of the CPE Panel’s Report regarding HTLD’s Application for .HOTEL constitutes Board action” (.hotel Response § 12)*
- v. *“neither the creation nor the acceptance of the CPE Panel’s Report regarding Big Room’s Application for .ECO constitutes Board action” (.eco Response § 13)*
- vi. *“in making those decisions [acceptance of the Guidebook and the decisions by the Board to reject Claimants’ Reconsideration Request], the Board followed ICANN’s Articles and Bylaws” (.hotel Response § 13, .eco Response § 14)*
- vii. *“BGC denied Claimants’ Reconsideration Request finding that Claimants had ‘failed to demonstrate that the CPE Panel acted in contravention of*

- established policy or procedure' in rendering the Report" (.eco Response § 29)*
- viii. *"BGC denied Claimants' Reconsideration Request [in respect of the DIDP Request] finding that the Claimants had 'failed to demonstrate that ICANN staff acted in contravention of established policy or procedure' in responding to the DIDP Request" (.hotel Response § 28)*
 - ix. *"the reconsideration process does not call for the BGC to perform a substantive review of CPE Reports" (.hotel Response § 49, .eco Response § 49)*
 - x. *"Claimants do not identify any ICANN Article or Bylaws provision that the BGC allegedly violated in reviewing their Reconsideration Request" (.hotel Response § 51, .eco Response § 50)*
 - xi. *"It is not the role of the BGC (or, for that matter, this IRP Panel) to second-guess the substantive determinations of independent, third-party evaluators." (.hotel Response § 53, .eco Response § 52)*
 - xii. *"Claimants' only evidence that the CPE Panel in fact erred is the bare allegation that because certain other, completely separate, applications for entirely different strings did not prevail in CPE then .HOTEL TLD's application also should not have prevailed. Claimants' argument is baseless. The outcome of completely unrelated CPEs does not, and should nor, have any bearing on the outcome of the CPE regarding .HOTEL TLD's Application" (.hotel Response § 55)*
 - xiii. *"Claimants' only evidence that the CPE Panel in fact erred is the bare allegation that because certain other, completely separate, applications for entirely different strings did not prevail in CPE, Big Room's application also should not have prevailed. Claimants' argument is baseless. The outcome of completely unrelated CPEs does not, and should nor, have any bearing on the outcome of the CPE regarding Big Room's Application" (.eco Response § 54)*
 - xiv. *"there is not nor is it desirable to have a process for the BGC or the Board (through the NGPC) to supplant its own determinationover the guidance of an expert panel formed for that particular purpose" (.hotel Sur Reply § 11, .eco Sur Reply § 10)*

52. In the .hotel Sur Reply, ICANN also makes the following submissions in relation to the declaration the Claimants are seeking that ICANN must reject HTLD's application for .hotel:

- i. *"Claimants argue that the Portal Configuration is relevant to this IRP, but they have not identified any Board action or inaction with respect to this issue that violates ICANN's Articles or Bylaws such that it is subject to independent review, now or ever" (.hotel Sur Reply § 23)*

- ii. *“The ICANN Board took no action (and was not required to take action under either the ICANN Articles or Bylaws) with respect to Claimant’s letter and DIDP request” (.hotel Sur Reply § 24)*
- iii. *“Claimants have failed to demonstrate that the Board has a duty to act with respect to Claimants’ belief as to what the Board should do. Again Claimants have also failed to show that the Board’s conduct in this regard has in any way violated ICANN’s Articles or Bylaws” (.hotel Sur Reply § 25)*

53. Also in the .hotel Sur Reply ICANN submits:

*“Minds + Machines Limited (“Minds + Machines”) is not a Claimant in this proceeding but, nevertheless signed the Reply and now seeks to join as an additional claimant. Article 7 of the International Center for Dispute Resolution’s International Dispute Resolution Procedures explicitly provides that “[n]o additional party may be joined after the appointment of any [neutral], unless **all parties**, including the additional party, otherwise agree” (ICDR International Dispute Resolution Procedures, Art. VII (emphasis added)). ICANN does not consent to the joinder of Minds + Machines because any claims Minds + Machines may have with respect to the CPE Report or ICANN’s response to that Report are time-barred (Bylaws, Art. IV, § 3.3 (30 day deadline to file IRP request)” (.hotel Sur-Reply § 35)*

G. The Issues

54. As has already been stated, Article IV.3.4 of ICANN’s Bylaws provides:

“Requests for such independent review shall be referred to an Independent Review Process Panel (“IRP Panel”), which shall be charged with comparing contested actions of the Board to the Articles of Incorporation and Bylaws, and with declaring whether the Board has acted consistently with the provisions of those Articles of Incorporation and Bylaws. The IRP Panel must apply a defined standard of review to the IRP request, focusing on:

- a. did the Board act without conflict of interest in taking its decision?*
- b. did the Board exercise due diligence and care in having a reasonable amount of facts in front of them?; and*
- c. did the Board members exercise independent judgment in taking the decision, believed to be in the best interests of the company?”*

55. Given that the wider issues of the CPE process as a whole, the appointment of EIU and the provisions of Guidebook are not being pursued, the Panel has concluded that the contested actions of the Board of ICANN in this IRP are:
- i. The denial by the BGC on 22 August 2014, of the Reconsideration Request to have the CPE Panel decision in .hotel reconsidered.
 - ii. The denial by the BGC on 11 October 2014 of the Reconsideration Request to seek reconsideration of ICANN staff's response to the DIDP request in relation to the .hotel CPE decision.
 - iii. The denial by the BGC on 18 November 2014, of the Reconsideration Request to have the CPE Panel decision in .eco reconsidered.
 - iv. The continued upholding of HTLD's application for .hotel in the light of the matters raised in Crowell & Moring's letter of 5 June 2015.
56. In addition, the Panel has the procedural issue to deal with of the attempt by Minds + Machines Group Limited to join the .hotel IRP.

H. Analysis - General

57. Before turning to the specific analysis of each of the issues stated above, there are some general points which the Panel wishes to highlight, which have application to one or more of the issues in question.
58. The analysis, which the Panel is charged with carrying out in this IRP, is one of comparing the actions of the Board with the Articles of Incorporation and Bylaws, and declaring whether the Board has acted consistently with the provisions of those Articles of Incorporation and Bylaws. The Panel has identified the following relevant provisions of the Articles of Incorporation and Bylaws against which the actions, or inactions, of the Board should be compared.

Articles of Incorporation

Article 4

The Corporation shall operate for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and applicable international conventions and local law and, to the extent appropriate and consistent with these Articles and its Bylaws, through open and transparent processes that enable competition and open entry in Internet-related markets. To this effect, the Corporation shall cooperate as appropriate with relevant international organizations.

Bylaws

Article I.2

In performing its mission, the following core values should guide the decisions and actions of ICANN:

- 1. Preserving and enhancing the operational stability, reliability, security, and global interoperability of the Internet.*
- 2. Respecting the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN's activities to those matters within ICANN's mission requiring or significantly benefiting from global coordination.*
- 3. To the extent feasible and appropriate, delegating coordination functions to or recognizing the policy role of other responsible entities that reflect the interests of affected parties.*
- 4. Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making.*
- 5. Where feasible and appropriate, depending on market mechanisms to promote and sustain a competitive environment.*
- 6. Introducing and promoting competition in the registration of domain names where practicable and beneficial in the public interest.*
- 7. Employing open and transparent policy development mechanisms that (i) promote well-informed decisions based on expert advice, and (ii) ensure that those entities most affected can assist in the policy development process.*
- 8. Making decisions by applying documented policies neutrally and objectively, with integrity and fairness.*
- 9. Acting with a speed that is responsive to the needs of the Internet while, as part of the decision-making process, obtaining informed input from those entities most affected.*
- 10. Remaining accountable to the Internet community through mechanisms that enhance ICANN's effectiveness.*
- 11. While remaining rooted in the private sector, recognizing that governments and public authorities are responsible for public policy and duly taking into account governments' or public authorities' recommendations.*

These core values are deliberately expressed in very general terms, so that they may provide useful and relevant guidance in the broadest possible range of circumstances. Because they are not narrowly prescriptive, the specific way in which they apply, individually and collectively, to each new situation will necessarily depend on many factors that cannot be fully anticipated or enumerated; and because they are statements of principle rather than practice,

situations will inevitably arise in which perfect fidelity to all eleven core values simultaneously is not possible. Any ICANN body making a recommendation or decision shall exercise its judgment to determine which core values are most relevant and how they apply to the specific circumstances of the case at hand, and to determine, if necessary, an appropriate and defensible balance among competing values.

Article II.3

ICANN shall not apply its standards, policies, procedures, or practices inequitably or single out any particular party for disparate treatment unless justified by substantial and reasonable cause, such as the promotion of effective competition.

Article III.1

ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness.

Article IV.1

In carrying out its mission as set out in these Bylaws, ICANN should be accountable to the community for operating in a manner that is consistent with these Bylaws, and with due regard for the core values set forth in Article I of these Bylaws. The provisions of this Article, creating processes for reconsideration and independent review of ICANN actions and periodic review of ICANN's structure and procedures, are intended to reinforce the various accountability mechanisms otherwise set forth in these Bylaws, including the transparency provisions of Article III and the Board and other selection mechanisms set forth throughout these Bylaws.

Article IV.3

The Board has designated the Board Governance Committee to review and consider any such Reconsideration Requests. The Board Governance Committee shall have the authority to:

- a. evaluate requests for review or reconsideration;*
- b. summarily dismiss insufficient requests;*
- c. evaluate requests for urgent consideration;*
- d. conduct whatever factual investigation is deemed appropriate;*
- e. request additional written submissions from the affected party, or from other parties;*
- f. make a final determination on Reconsideration Requests regarding staff action or inaction, without reference to the Board of Directors; and*
- g. make a recommendation to the Board of Directors on the merits of the request, as necessary.*

59. In response to the questions posed by the Panel on 2 December 2015, ICANN confirmed its position as follows:

- i. The EIU's determinations are presumptively final. The Board's review on reconsideration is not substantive, but rather is limited to whether the EIU followed established policy or procedure.
- ii. ICANN has an obligation to adhere to all of its obligations under its Articles of Incorporation and its Bylaws.
- iii. The Bylaws, and the BGC's determinations on prior Reconsideration Requests, have established a specific standard for when it is appropriate to reconsider CPE determinations (i.e., when the CPE Panel violated established policy or procedure).
- iv. When considering the Reconsideration Requests in the .eco and .hotel matters, the BGC had before it the EIU's determination and the "facts" that the Claimants had submitted with their Reconsideration Requests. The BGC also considered the Guidebook as well as other published CPE procedures. This was all the information required for the BGC to determine that the EIU had followed established policy and procedure in rendering the CPE determinations.
- v. The Board is not aware (whether through the BGC or otherwise) as to whether EIU makes any comparative analysis of other CPE determinations it has made when considering individual community priority applications.

60. During the hearing on 7 December 2015, ICANN further confirmed its position as follows:

- i. The Claimants (save for Minds + Machines Group Limited in the .hotel IRP) are not time barred from seeking IRP of:
 - a. The denial by the BGC on 22 August 2014 of the Reconsideration Request to have the CPE Panel decision in .hotel reconsidered.
 - b. The denial by the BGC on 11 October 2014 of the Reconsideration Request to seek reconsideration of ICANN staff's response to the DIDP request in relation to the .hotel CPE decision.
 - c. The denial by the BGC on 18 November 2014 of the Reconsideration Request to have the CPE Panel decision in the .eco matter reconsidered.
- ii. There is no ICANN quality review or control process, which compares the determinations of the EIU on the various CPE applications.

- iii. The core values, which apply to ICANN by virtue of its Bylaws, have not been imposed contractually on the EIU, and the EIU are not, in consequence, subject to them.
- iv. The CPE process operated by the EIU involves 5 core EIU staff and 2 independent evaluators. The independent evaluators separately score each CPE application and submit their separate scores to the EIU core staff. The independent evaluators do not confer on the scoring. The independent evaluators are not the same for each CPE application; sometimes both are different and sometimes one is different.
- v. ICANN considers there is nothing in its Articles of Incorporation or Bylaws, which requires ICANN to comply with due process.
- vi. ICANN does not believe that it is subject to any general international law principle requiring it to comply with due process.
- vii. Upon receipt of a Reconsideration Request, ICANN expects the BGC to carry out a procedural review of the CPE determination, not a substantive review and that this procedural review should look at whether the EIU had followed the correct procedure and had correctly applied ICANN policies.

61. In the light of the relevant provisions of the Articles of Incorporation and Bylaws identified above, and the clarifications provided by ICANN as to its position in relation to CPE applications and Reconsideration Requests made in respect of them, the Panel will now consider each of the contested actions of the Board of ICANN in this IRP. In doing so, the Panel has taken into account, where relevant, all the submissions of the parties, including, without limitation, those specifically set out in sections E. and F. above.

62. Given the confirmation by ICANN, that a time bar is not being raised in relation to the substantive issues in this IRP, the Panel does not have to discuss this question save for when it considers Minds + Machines Group Limited's attempt to join in the .hotel IRP.

I. Analysis Specific

1. The denial by the BGC, on 22 August 2014, of the Reconsideration Request to have the CPE Panel decision in .hotel reconsidered.

63. In conducting this analysis, the Panel have carefully considered the CPE report dated 11 June 2014, which determined that HTLD's community based application had prevailed, the Reconsideration Request dated 28 June 2014 and the BGC denial of the Reconsideration Request dated 22 August 2014. In doing so, the Panel has considered whether the Board (through the BGC) has acted consistently with the provisions of ICANN's Articles of Incorporation and Bylaws.

64. The Panel is clear that, in doing so, it is required by ICANN's Bylaws to apply a defined standard of review focusing on:

- a. whether the BGC acted without conflict of interest in taking its decision?
- b. whether the BGC exercised due diligence and care in having a reasonable amount of facts in front of them?; and
- c. whether the BGC exercised independent judgment in taking the decision, believed to be in the best interests of the company?

65. No allegation of conflict of interest has been made by the Claimants and the Panel has no information or documentation upon which it could reach any view as to whether a conflict of interest existed or not. In conclusion, so far as that requirement is concerned, the Panel can make no finding.

66. As to the requirements of due diligence and care, and the exercise of independent judgment, ICANN's position is that the review undertaken by the BGC should be a procedural review of the CPE determination, not a substantive review, and that this procedural review should look at whether the EIU had followed the correct procedure and had correctly applied ICANN policies.

67. That appears to the Panel to be correct, but what is of critical importance is the manner in which the review of whether the EIU has followed the correct procedure and has correctly applied ICANN's policies is conducted.

68. In their Reply in the .hotel IRP at §39 the Claimants submit:

“One cannot investigate whether a standard was applied fairly and correctly without looking into how the standard was applied....The ICANN Board instead limited its review to the question of whether the CPE Panel had made mention of the applicable standard. Such a limited review is not a meaningful one.”

69. The Panel agrees that if the BGC is charged with considering whether the EIU correctly applied ICANN policies (which ICANN accepts it is), then it needs to look into how the standard was applied. It is not sufficient to limit the review to the question of whether mention was made of the relevant policy. The BGC needs to have a reasonable degree of assurance that the EIU has correctly applied the policy.

70. This is particularly so given that the EIU is not subject to ICANN's core values, the EIU independent evaluators are not the same for each CPE application, there is no ICANN quality review or control process which compares the

determinations of the EIU on the various CPE applications and ICANN is not aware as to whether EIU makes any comparative analysis of other CPE determinations it has made when considering individual community priority applications.

71. In their Reconsideration Request of 28 June 2014, at page 5, the Claimants say:

“In this case, however, there are 3 instances where the Panel has not followed the [Guidebook] policy and processes for conducting CPE. Further, the Panel, and ICANN staff have breached more general ICANN policies and procedures in the conduct of this CPE.”

72. The three instances of failure to follow the Guidebook policy alleged by the Claimants are:

1. Failure to identify a “Community”;
2. Failure to consider self awareness and recognition of the community; and
3. Failure to apply the test for Uniqueness.

73. In their Reconsideration Request, the Claimants then go into significant detail as to the ways in which they allege the EIU failed to follow the Guidebook policy. However, in the BGC denial of 22 August 2014, the BGC state:

“...while the Request is couched in terms of the Panel’s purported violations of various procedural requirements, the Requesters do not identify any misapplication of a policy or procedure, but instead challenge the merits of the Panel’s Report, which is not a basis for reconsideration”

74. The BGC’s comment quoted above is plainly wrong as any detailed reading of the Reconsideration Request shows. It is unfortunate that the BGC should have included such comments in its determination as, in the Panel’s view, this has contributed to this IRP and the clear feeling, on the part of the Claimants, that their Reconsideration Request was not treated appropriately by the BGC.

75. In their Reconsideration Request, the Claimants argue that the first question to be asked by the EIU in following the policy and procedure in the Guidebook is whether there is a community that meets the definition of a community under the Guidebook. They say:

“The Panel did not attempt this analysis, in breach of the requirements of the policy and process for CPE.... This is not a disagreement about a finding by the Panel on this topic; the Panel did not consider this definition, nor apply the test for “community” required.... Had it

considered the matter, it would have appreciated that the applicants definition, rather than showing cohesion, depended instead on coercion.”

76. In dealing with this allegation the BGC gave consideration to the definition of community in the Guidebook and stated:

“However, the Requesters point to no obligation to conduct any inquiry as to the definition of community other than those expressed in section 4.2.3 of the Guidebook.....As such, the Requesters fault the Panel for adhering to the Guidebook’s definition of a “community” when evaluating the Application. Given that the Panel must adhere to the standards laid out in the Guidebook, this ground for reconsideration fails.

The Requesters also contend the Applicant’s proposed community, i.e., the “Hotel Community” does not qualify as a community for CPE purposes because “rather than showing cohesion, [it] depend[s] on coercion....But the Panel reached the contrary conclusion... As even the Requesters note, a request for reconsideration cannot challenge the substance of the Panel’s conclusions, but only its adherence to the applicable policies and procedures”

77. In their Reconsideration Request, the Claimants argue that the second question to be asked by the EIU in following the policy and procedure in the Guidebook is whether there was a failure to consider self awareness and recognition of the community. They say:

“...the Panel has imported the test for determining whether there is a “community” self-awareness that the group is a community- into the test for “delineation”. With respect, that is an error of process that further invalidates the findings.

Even if it were not, and self-awareness and recognition are considered with Delineation, the actual response given under that enquiry about “self-awareness and recognition” shows that the Panel does not understand the test that is to be applied....

What is required is a showing by evidence that the members of the alleged community regard themselves as members of a defined community, which is recognised as such by the members, and by people outside the community.

It is important to note that the Panel finds that the alleged community is clearly delineated, because there is an ISO definition of “hotel”, and because every hotel is a member of the alleged community....

The Panel then proceeds through the proper requirements of delineation, which it names accurately organisation and existence before 2007.”

78. In dealing with this allegation, the BGC gave consideration to the definition of delineation in the Guidebook and stated:

“The Panel began its assessment of the test for delineation by noting: “Two conditions must be met to fulfil the requirements for delineation; there must be a clear, straightforward membership definition, and there must be awareness and recognition of a community (as defined by the applicant) among its members” (Report, Pg. 1.) As the Requesters admit, the Panel then “proceeds through the proper requirements of Delineation, which it names accurately....The Requesters thus defeat their own argument, as they squarely concede the Panel assessed the “proper requirements” of the test for delineation.

Again the Requesters dispute the Panel’s allusion to the “awareness and recognition” of the Hotel Community’s members not because that reference constitutes any procedural violation, but because the Requesters simply disagree whether there is any such recognition amongst the Hotel Community’s members.....Disagreement with the Panel’s substantive conclusions, however, is not a proper basis for reconsideration”

79. In their Reconsideration Request, the Claimants argue that the third question to be asked by the EIU in following the policy and procedure in the Guidebook is whether there was a failure properly to apply the test for Uniqueness. They say:

“The Panel has not followed ICANN policy or process in arriving at the conclusion that the string has “no other significant meaning beyond identifying the community” because it has itself cited a significant other meaning and relied on that other meaning (that the word means “an establishment with services and additional facilities where accommodation and in most cases meals are available”) in order to measure and find Delineation.

This is not a disagreement about a conclusion – this is a demonstration of a failure of process by the Panel. It cannot use the significant meaning of “hotel” under an ISO definition for one purpose (a finding under delineation), then deny that meaning and say there is “no other significant meaning” for the purpose of finding Uniqueness....

The word “hotel” means to most of the world what the ISO definition says it means a place for lodging and meals. To assert that it means to most

people the association of business enterprises that run the hotels is unsubstantiated and absurd.”

80. In dealing with this allegation the BGC gave consideration to the definition of uniqueness in the Guidebook and stated:

“The Requesters have identified no procedural deficiency in the Panel’s determination that the uniqueness requirement was met. The Requesters concede that “HOTEL” has the significant meaning of a place for lodging and meals, and common sense dictates that the Hotel Community consists of those engaged in providing those services. The attempt to distinguish between those who run hotels and hotels themselves is merely a semantic distinction. Again, while the Requesters may disagree with the Panel’s substantive conclusion, that is not a proper basis for reconsideration.

81. As for the alleged breaches of more general ICANN policies and procedures in the conduct of the .hotel CPE, the Claimants refer to Article 7 of ICANN’s Affirmation of Commitments and Articles I.2.8, III.1 and IV.2.20 of ICANN’s Bylaws and say:

“Requestor submits that various aspects of the CPE process breach, or risk breaching, these fundamental provisions...there are a number of features which are prejudicial to standard applicants, including:

(a) Insufficient material was made available to them as to who the Panelist was, and their qualifications....

(b) There is no publication of materials to be examined by the Panel....

(c) Insufficient analysis and reasons were given on how the Panelist reached their CPE report....”

82. In dealing with this allegation the BGC stated:

“None of these concerns represent a policy or procedure violation for the purposes of reconsideration under ICANN’s Bylaws. The Guidebook does not provide for any of the benefits that the Requesters claim they did not receive during CPE of the Application. In essence, the Requesters argue that because the Guidebook’s CPE provisions do not include Requester’s “wish list” of procedural requirements, the Panel’s adherence to the Guidebook violates the broadly-phrased fairness principles embodied in ICANN’s foundational documents. Were this a proper ground for reconsideration, every standard applicant would have the ability to rewrite the Guidebook via a reconsideration request.”

- 83.** In considering the original CPE report of 11 June 2014, the Reconsideration Request dated 28 June 2014 and the BGC denial of the Reconsideration request dated 22 August 2014, the Panel have looked closely at whether the BGC simply undertook an administrative “box ticking” exercise to see whether mention was made of the relevant policy or procedure in denying the Reconsideration Request, or whether, as the Panel considers the BGC is required to do, it looked into how the relevant policy or procedure was actually applied by the EIU, and whether, in doing so, the BGC could have a reasonable degree of assurance that the EIU had correctly the applied the policy or procedure.
- 84.** Taking, first of all, the three instances of failure to follow the Guidebook policy alleged by the Claimants, it is clear from the BGC determination document of 22 August 2014 as a whole and, particularly, from those extracts quoted above that each one was carefully considered by the BGC in its determination, and that the BGC did properly consider how the relevant policy or procedure was actually applied by the EIU, and whether, in doing so, the BGC could have a reasonable degree of assurance that the EIU had correctly the applied the policy or procedure.
- 85.** In doing so, the Panel is satisfied that the BGC acted consistently with the provisions of ICANN’s Articles of Incorporation and Bylaws and that the Claimants complaints in this regard are not made out.
- 86.** As for the alleged breaches of more general ICANN policies and procedures in the conduct of the .hotel CPE claimed by the Claimants in the Reconsideration Request, it is clear from the face of these allegations that these are complaints about the CPE process as a whole and are not specific to the .hotel CPE. In consequence of the Claimants’ confirmation at the hearing on 2 December 2015, that relief in respect of the CPE process as a whole is not being pursued, it is not strictly necessary for the Panel to consider this further. However, the Panel wishes to put on record that it considers that the BGC, in denying the Claimants’ Reconsideration Request, acted consistently with the provisions of ICANN’s Articles of Incorporation and Bylaws and that the Claimants’ complaints in this regard are also not made out.

2. The denial by the BGC, on 11 October 2014, of the Reconsideration Request to seek reconsideration of ICANN staff’s response to the DIDP request in relation to the .hotel CPE decision.

- 87.** In conducting this analysis, the Panel has carefully considered the DIDP Request dated 4 August 2014, the Response from ICANN of 3 September 2014, the Reconsideration Request dated 19 September 2014 and the BGC denial of the Reconsideration Request dated 11 October 2014. In doing so, the Panel has

considered whether the Board (through the BGC) has acted consistently with the provisions of ICANN's Articles of Incorporation and Bylaws.

- 88.** The Panel knows that, in doing so, it is required by ICANN's Bylaws to apply a defined standard of review focusing on:
- a. whether the BGC acted without conflict of interest in taking its decision?
 - b. whether the BGC exercised due diligence and care in having a reasonable amount of facts in front of them?; and
 - c. whether the BGC exercised independent judgment in taking the decision, believed to be in the best interests of the company?
- 89.** As with the previous issue, no allegation of conflict of interest has been made by the Claimants and the Panel has no information or documentation upon which it could reach any view as to whether a conflict of interest existed or not. In conclusion, so far as that requirement is concerned, the Panel can make no finding.
- 90.** In line with the approach taken in the previous issue, the Panel consider that the review undertaken by the BGC should look at whether the ICANN staff, in responding to the DIDP Request, followed the correct procedure and correctly applied ICANN policies, and that, in doing so, the BGC needs to look into how the procedure was followed and how policy was applied so that the BGC has a reasonable degree of assurance that the ICANN staff correctly followed the requisite procedure and correctly applied ICANN policies.
- 91.** In their DIDP Request of 4 August 2014, the Claimants asked for four categories of documents, namely:
- 1) *“All correspondence, reports, documents, agreements, contracts, emails, or any other forms of communication (“Communications”) between individual member of ICANN’s Board or any member of ICANN Staff and the [EIU] or any other organisation or third party involved in the selection or organisation of the CPE Panel for the Report, relating to the appointment of the Panel that produced the Report, and dated within the 12 month period preceding the date of the Report;*
 - 2) *The curriculum vitae (“CVs”) of the members appointed to the CPE Panel;*
 - 3) *All Communications (as defined above) between individual members of the CPE Panel and/or ICANN, directly relating to the creation of the Report; and*
 - 4) *All Communications (as defined above) between the CPE Panel and/or Hotel TLD or any other party prior with a material bearing on the creation of the Report.”*

92. In ICANN's Response of 3 September 2014 it was explained that ICANN, whether at Board or staff level, is not involved with the selection to the CPE Panel of the two individual evaluators that perform the scoring in the CPE process and that ICANN is not provided with information about who the evaluators on any individual CPE Panel may be. As this is all done within the EIU, ICANN, it was stated, did neither have the documentation sought in numbered request 1) above, nor did it have the CVs sought in numbered request 2) above. These are clear statements that no such documentation exists.
93. However, the Response goes on to say that to *"the extent that ICANN has documentation with the EIU for the performance of its role as the coordinating firm as it relates to the .HOTEL CPE, those documents are subject to certain of the Defined Conditions of Non-Disclosure set forth in the DIDP."* It then goes on to state the defined Conditions for Nondisclosure upon which ICANN is relying to justify nondisclosure. Five separate Conditions for Nondisclosure are listed.
94. The Response does not give any more detail as to what documents it actually has *"for the performance of its role as the coordinating firm"*, nor which specific Conditions for Nondisclosure apply to which specific documents or category of documents it actually has, and, in consequence, it is not possible to judge whether the policy for nondisclosure has been correctly applied.
95. In dealing with the documentation sought in numbered request 3) above, the Response states *"Because of the EIU's role as the panel firm, ICANN does not have any communications (nor does it maintain any communications) with the evaluators that identify the scoring for any individual CPE. As a result, ICANN does not have documents of this type."* That is a clear and comprehensive statement that such documentation does not exist.
96. However, the Response goes on to say that to *"the extent that ICANN has communications with persons from EIU who are not involved in the scoring of a CPE, but otherwise assist in a particular CPE, (as anticipated in the CPE Panel Process Document), those documents are subject to the following Defined Conditions of Nondisclosure set forth in the DIDP"*. It then goes on to state the defined Conditions for Nondisclosure upon which ICANN is relying to justify nondisclosure. Four separate Conditions for Nondisclosure are listed.
97. The Response does not give any more detail as to what *"communications with persons from EIU who are not involved in the scoring of a CPE"*, nor which specific Conditions for Nondisclosure apply to which specific documents or category of documents it actually has and, in consequence, it is not possible to judge whether the policy for nondisclosure has been correctly applied.

98. In dealing with the documentation sought in numbered request 4) above, the Response states:

“In order to maintain the independence and neutrality of the CPE Panels as coordinated by the EIU, ICANN has limited the ability for requesters or other interested parties to initiate direct contact with the panels the CPE Panel goes through a validation process regarding letters of support or opposition (as described in the CPE Panel Process document) but that is the extent of direct communications that the CPE Panel is expected to have. For process control purposes, from time to time ICANN is cc’d on the CPE Panel’s verification emails. These emails are not appropriate for disclosure pursuant to the following Defined Conditions of Nondisclosure set forth in the DIDP”.

It then goes on to state the single defined Condition for Nondisclosure upon which ICANN is relying to justify nondisclosure.

99. In this instance, unlike those for numbered requests 1), 2) and 3) above, ICANN has described a single category of documents and the single Condition for Nondisclosure upon which it relies, thus making it possible to judge whether the policy for nondisclosure has been correctly applied.

100. In the Panel’s view, it is unfortunate that the ICANN staff did not adopt the same approach to dealing with documents which ICANN was not prepared to disclose when responding to numbered requests 1), 2) and 3) as was adopted with numbered request 4). Simply to say that “*to the extent*” ICANN has documents which fall within the categories requested in numbered requests 1), 2) and 3) such documents are not disclosable, for a variety of reasons, without making any attempt to link categories of document to particular Conditions for Nondisclosure, gives the impression of a process not properly conducted.

101. Such an approach does not provide the confidence that those requesting disclosure of documents are entitled to have, namely that a collection of potentially responsive documents has taken place and a review has actually been conducted by the ICANN staff as to whether any of the documents identified as responsive to the request are subject to any of the Conditions of Nondisclosure, as is required by ICANN’s published policy for responding to DIDP requests. If the ICANN staff had made this clear in the response it could well have provided the Claimants with the reassurance that both procedure and policy had been followed and applied.

102. In the Reconsideration Request of 19 September 2014, the Claimants say:

“ICANN should not interpose such obstacles to access without providing a factual basis to determine if its claimed privileges have any merit. At

minimum, the BGC should review the asserted protections and independently determine if they have any supportable grounds”.

103. Such a request is understandable in the circumstances. Article 4 of ICANN’s Articles of Incorporation require it to carry out its activities *“through open and transparent processes”*. Its Core Values include:

“Making decisions by applying documented policies neutrally and objectively, with integrity and fairness”, its Bylaws include the requirement to “operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness”.

104. The Panel is, of course, charged with reviewing the action of ICANN’s Board, rather than its staff, but the Panel wishes to make clear that, in carrying out its activities, the Board should seek to ensure that ICANN’s staff comply with the Articles of Incorporation and Bylaws of ICANN, and that a failure of the Board to ensure such compliance is a failure of the Board itself.

105. Although the Reconsideration Request said that *“the BGC should review the asserted protections and independently determine if they have any supportable grounds”*, it is the view of the Panel that this should not have been the starting point for the BGC in looking at the actions of the ICANN staff in dealing with the DIDP Request. As has already been said, the BGC does need to have a reasonable degree of assurance that the ICANN staff has correctly followed the requisite procedure and correctly applied ICANN policies. If the BGC considers it has that assurance, the Panel does not consider the BGC is required to conduct any form of independent determination as to the decisions made by the ICANN staff. The BGC would only need to go that far if it came to the conclusion that the ICANN staff had not followed the requisite procedure and/or had not correctly applied ICANN policies.

106. It is obvious, from the face of the denial of the Reconsideration Request issued by the BGC on 11 October 2014, that such an independent determination did not take place, and it appears that the BGC were satisfied that the ICANN staff had correctly followed procedure and applied policy. In the denial the BGC quite correctly state:

“It is ICANN’s responsibility to determine whether requested documents fall within those Nondisclosure Conditions. Specifically, pursuant to the DIDP process “a review is conducted as to whether the documents identified as responsive to the Request are subject to any of the [Nondisclosure Conditions]...Here, in finding that certain requested

documents were subject to Nondisclosure Conditions, ICANN adhered to the DIDP process.

- 107.** Whilst the BGC does not explicitly say that a collection process occurred, it is implicit in the BGC denial that the BGC does believe that process was followed. In dealing specifically with numbered requests 1), 2) and 3), the denial says:

“Here, in finding that certain requested documents were subject to Nondisclosure Conditions, ICANN adhered to the DIDP process. Specifically, as to “documentation with the EIU for the performance of its role” and “communications with persons from EIU who are not involved in the scoring of a CPE,” ICANN analysed the Requesters’ requests in view of the DIDP Nondisclosure Conditions, including those covering “information exchanged, prepared for, or derived from the deliberative and decision-making processes” and “confidential business information and/or internal policies and procedures.”

- 108.** The denial quotes from the DIDP response as follows:

“ICANN must independently undertake the analysis of each Condition as it applies to the documentation at issue, and make the final determination as to whether any Nondisclosure Conditions apply”

The denial then goes on to say:

In conformance with the publicly posted DIDP process.... ICANN undertook such analysis, as noted above, and articulated its conclusions in the DIDP Response. While the Requesters may not agree with ICANN’s determination that certain Nondisclosure Conditions apply here, the requesters identify no policy or procedure that ICANN staff violated in making its determination, and the Requesters’ substantive disagreement with that determination is not a basis for reconsideration.”

- 109.** The denial also reaches a similar conclusion as to the adherence by the ICANN staff to the DIDP process in determining that the potential harm caused by disclosure outweighed the public interest in disclosure.

- 110.** Whilst the Panel considers that the ICANN staff could, and should, have been more explicit as to the process they had followed in refusing disclosure, the BGC determination document of 11 October 2014 provides the requisite degree of confirmation that the correct procedure was actually followed, that the BGC did, properly, consider whether the relevant policy or procedure was actually applied by the ICANN staff and whether, in doing so, the BGC could have a reasonable degree of assurance that the ICANN staff had correctly the applied the policy or procedure.

111. In doing so, the Panel is satisfied that the BGC acted consistently with the provisions of ICANN's Articles of Incorporation and Bylaws and that the Claimants complaints in this regard are not made out.

3. The denial by the BGC, on 18 November 2014, of the Reconsideration Request to have the CPE Panel decision in .eco reconsidered.

112. In conducting this analysis, the Panel has carefully considered the CPE report dated 6 October 2014, which determined that Big Room's community based application had prevailed, the Reconsideration Request dated 22 October 2014 and the BGC denial of the Reconsideration request dated 18 November 2014. In doing so, the Panel has considered whether the Board (through the BGC) has acted consistently with the provisions of ICANN's Articles of Incorporation and Bylaws.
113. The Panel is clear that, in doing so, it is required by ICANN's Bylaws to apply a defined standard of review focusing on:
- a. whether the BGC acted without conflict of interest in taking its decision?
 - b. whether the BGC exercised due diligence and care in having a reasonable amount of facts in front of them?; and
 - c. whether the BGC exercised independent judgment in taking the decision, believed to be in the best interests of the company?
114. As with the previous two issues, no allegation of conflict of interest has been made by the Claimants and the Panel has no information or documentation upon which it could reach any view as to whether a conflict of interest existed or not. In conclusion, so far as that requirement is concerned, the Panel can make no finding.
115. As it did in considering the first issue, and for the reasons stated there, the Panel considers that if the BGC is charged with considering whether the EIU correctly applied ICANN policies (which ICANN accepts it is), then it needs to look into how the standard was applied. It is not sufficient to limit the review to the question of whether mention was made of the relevant policy. The BGC needs to have a reasonable degree of assurance that the EIU has correctly the applied the policy.
116. In their Reconsideration Request of 22 October 2014, at page 10, the Claimants say:

“Requester therefore requests ICANN in accordance with its Reconsideration Request process to:

- Reconsider the Determination, and in particular not award a passing score in view of the [CPE] criteria set out in the [Guidebook] for the reasons expressed in this Reconsideration Request and any reasons, arguments and information to be supplemented to this Request or forming part of a new Reconsideration Request in the future;*
- Reconsider ICANN’s decision that the Requester’s application for the .eco gTLD “Will not Proceed” to contracting; and*
- Restore the “Application Status” of the Requester’s application and the Application submitted by the Applicant to “Evaluation Complete”, their respective “Contention Resolution Statuses” to “Active”, and their “Contention Resolution Result” to “In Contention”.*”

117. Earlier in the Reconsideration Request (at pages 2 and 3), the Claimants argue that the concept “eco” is much broader than the community definition provided by Big Room in its community based application and say:

“the community definition contained in the Application...- in Requester’s opinion does not meet the criteria for community-based gTLDs that have been set out in ICANN’s Applicant Guidebook”

118. The Reconsideration Request goes on to give the reasons for this assertion, which can be summarised as:

- there is no clear and unambiguous definition of the community that Big Room’s community based application is intended to serve;
- the string .eco does not closely describe the community or the community members and over reaches substantially beyond the community referred to in the application;
- the term .eco has various meanings that are completely unrelated to the community determined in Big Room’s application; and
- the CPE Panel failed to detail the letters of opposition received.

119. The BGC’s denial states:

“The Requesters do not identify any misapplication of any policy or procedure by ICANN or the CPE Panel. Rather the Requesters simply disagree with the CPE Panel’s determination and scoring of the Application, and challenge the substantive merits of the CPE Panel’s Report. Specifically, the Requesters contend that the CPE Panel improperly applied the first, second and fourth CPE criteria set forth in the [Guidebook].

Substantive disagreement with the CPE Panel's Report, however, is not a basis for reconsideration. Since the Requesters have failed to demonstrate that the CPE Panel acted in contravention of any established policy or procedure in rendering the Report, the BGC concludes that [the Reconsideration Request] be denied"

120. The BGC denial then goes on to examine whether the EIU properly applied the Guidebook scoring guidelines and CPE Guidelines in respect of each of the items raised by the Claimants and concludes, in respect of each one, that *"the CPE Panel accurately described and applied the Guidebook scoring guidelines and CPE Guidelines"*.
121. In considering the original CPE report of 6 October 2014, the Reconsideration Request dated 22 October 2014 and the BGC denial of the Reconsideration Request dated 18 November 2014, the Panel has looked closely at whether the BGC simply undertook an administrative "box ticking" exercise to see whether mention was made of the relevant policy or procedure in denying the Reconsideration Request, or whether, as the Panel considers the BGC is required to do, it looked into how the relevant policy or procedure was actually applied by the EIU, and whether, in doing so, the BGC could have a reasonable degree of assurance that the EIU had correctly the applied the policy or procedure.
122. Unlike the Reconsideration Request in respect of the .hotel CPE determination, this Reconsideration Request does not raise questions as to whether the EIU followed ICANN policy and procedure. It is, indeed, correctly categorised by the BGC in its denial as a statement of substantive disagreement with the EIU's determination. Nevertheless, it is clear from the BGC determination document of 18 November 2014 as a whole that the BGC did, properly, consider how the relevant policy or procedure was actually applied by the EIU, and whether, in doing so, the BGC could have a reasonable degree of assurance that the EIU had correctly the applied the policy or procedure.
123. In doing so, the Panel is satisfied that the BGC acted consistently with the provisions of ICANN's Articles of Incorporation and Bylaws and that the Claimants complaints in this regard are not made out.

4. The continued upholding of HTLD's application for .hotel in the light of the matters raised in Crowell & Moring's letter of 5 June 2015.

124. Crowell & Moring's letter of 5 June 2015 is addressed for the attention of the Members of the ICANN Board and to Mr Akram Atallah, the President of ICANN's GDD. It makes a number of serious allegations arising from a portal

configuration issue, which ICANN has admitted occurred, and which can be summarised as follows:

- The user credentials of someone called D. Krischenowski were used to conduct over 60 searches resulting in over 200 unauthorized access incidents across an unknown number of gTLDs;
- these searches resulted in the obtaining of sensitive and confidential business information concerning several of the .hotel applicants;
- D. Krischenowski is associated with HTLD; and
- the user of those credentials was deliberately looking for sensitive and confidential business information concerning competing applicants.

125. The letter then goes on to ask for certain information in relation to the portal configuration issue.

126. The letter is clearly addressed to the Members of the Board of ICANN and its President of GDD and asks, largely, for information and not documentation. It appears that the letter was also submitted through ICANN's DIDP and, in consequence, ICANN appears solely to have treated the letter as a DIDP request. Accordingly, on 5 July 2015, the ICANN staff responded in a document entitled "*Response to Documentary Information Disclosure Policy Request*" and stated:

"ICANN's DIDP is limited to requests for documentary information already in existence within ICANN that is not publicly available. Simple requests for non documentary information are not appropriate DIDP requests".

127. As is clear from the face of the letter itself, it is not simply a DIDP request. The attempt by ICANN to treat it solely as such represents, at best, a basic error on its part and, at worst, an attempt by the Board to avoid dealing with what is clearly a serious and sensitive issue, which goes to the integrity of the application process for the .hotel gTLD.

128. To be fair, the DIDP Response goes on to provide much detail as to what ICANN has done in the way of forensic investigation and what that has revealed. It does not, however, state whether any consideration has been given as to the impact on the integrity of the application process for the .hotel gTLD.

129. In the Reply in the .hotel IRP, the Claimants have argued that, in the circumstances, HTLD's application for .hotel must be denied and have asked the Panel to declare that ICANN must reject HTLD's application.

130. In its Sur Reply, ICANN argues that the Claimants have failed to identify any Board action or inaction in this regard that violates any of ICANN's Articles of Incorporation or Bylaws. ICANN states in the Sur Reply that:

“The only Board action (or inaction) that the Claimants vaguely allude to in their Reply is that the Board did not directly respond to a letter addressed to both ICANN Board and staff requesting disclosure of information regarding the Portal Configuration issue. But, it was not the Board's responsibility to do so, and ICANN's Articles and Bylaws do not mandate that the Board reply to every letter it receives”.

131. In the context of the clear problems caused by ICANN's portal configuration problem, and the serious allegations contained in the letter of 5 June 2015, this is, in the view of the Panel, a specious argument.

132. In its Sur Reply, ICANN goes on to say:

“Although Claimants Argue that [HTLD] “is closely linked with individuals who have misused, or have permitted the misuse of, their user credentials...this argument is unsupported and asserts no conduct by the ICANN Board. Claimants have failed to demonstrate that the Board has a duty to act with respect to Claimants' beliefs as to what the Board should do.”

133. Article III.1 of ICANN's Bylaws provides that *“ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness.”*

134. The approach taken by the ICANN Board so far in relation to this issue does not, in the view of the Panel, comply with this Bylaw. It is not clear if ICANN has properly investigated the allegation of association between HTLD and D. Krischenowski and, if it has, what conclusions it has reached. Openness and transparency, in the light of such serious allegations, require that it should, and that it should make public the fact of the investigation and the result thereof.

135. The fact that no such investigation has taken place, or if it has the results have not been published, could, in the view of the Panel, amount to Board inaction and fall within the remit of the Panel. However, at the hearing, the Panel was assured by ICANN's representative, that the matter was still under consideration by the Board and that the Panel should not view a failure to act, as at the date of the hearing, as inaction on the part of the Board.

136. In view of the fact that this issue was raised on 5 June 2015 by the Claimants, the Panel is of the view that it cannot remain under consideration by the Board

of ICANN for much longer and that, if no further, appropriate action has been taken by the date of this Declaration, the failure of the Board to act could well amount to inaction on its part.

137. This issue was raised after this IRP process had commenced and has only been the subject of relatively brief argument by the Claimants in their Reply and by ICANN in its Sur Reply. At the hearing, not only did ICANN's representative inform the Panel that the issue was still under consideration by the Board of ICANN, but he also gave an undertaking on behalf of ICANN that if a subsequent IRP was brought in relation to this issue, ICANN would not seek to argue that it had already been adjudicated upon by this Panel.

138. In all the circumstances, the Panel has concluded it should not make a declaration on this issue in this IRP, but that it should remain open to be considered at a future IRP should one be commenced in respect of this issue.

5. The attempt by Minds + Machines Group Limited to join in the .hotel IRP.

139. As has already been stated, in the Claimants' Reply in the .hotel IRP, Minds + Machines Group Limited stated it wished to join in the proceedings and, in its Sur Reply, ICANN objected, relying on Article 7 of the ICDR International Dispute Resolution Procedures.

140. Article 7 provides that "[n]o *additional party may be joined after the appointment of any arbitrator, unless all parties, including the additional party, otherwise agree*". There is nothing in the ICANN Supplementary Procedures that is inconsistent with this provision and, accordingly, it governs the procedure of this IRP.

141. Minds + Machines Group Limited applied for the .hotel gTLD and there does not appear to be any reason why, should it have so wished, it could not have joined with the Claimants in bringing the .hotel IRP. It did not do so and no reason has been given for its failure to do so. Accordingly, pursuant to Article IV.3.3 of ICANN's Bylaws, it is now time barred from doing so.

142. In all the circumstances, the Panel rejects the request of Minds + Machines Group Limited to join this IRP.

J. Conclusion

143. Many general complaints were made by the Claimants as to ICANN's selection process in appointing EIU as the CPE Panel, the process actually followed by

EIU in considering community based applications, and the provisions of the Guidebook. However, the Claimants, sensibly, agreed at the hearing on 7 December 2015 that relief was not being sought in respect of these issues.

144. Nevertheless, a number of the more general issues raised by the Claimants and, indeed, some of the statements made by ICANN at the hearing, give the Panel cause for concern, which it wishes to record here and to which it trusts the ICANN Board will give due consideration.
145. At the hearing, ICANN submitted that it was not subject to a due process obligation neither pursuant to its Articles of Incorporation and Bylaws, nor pursuant to general international legal principles, notwithstanding Article 4 of its Articles of Incorporation. If this was intended as a general statement, the Panel finds this most surprising in the context of the role ICANN fulfils and the language of Article 4 itself. ICANN is a California non profit corporation but Article 4 of the Articles of Incorporation refers to the principles of international law and local law and to the use of open and transparent processes to enable competition and open entry in Internet markets. The Panel understands the importance of administrative procedures, such as the CPE discussed below. The Panel also understands that the EIU and the BGC themselves are not adjudicatory but administrative bodies. Nevertheless, the Panel invites the Board to affirm that, to the extent possible, and compatible with the circumstances and the objects to be achieved by ICANN, transparency and administrative due process should be applicable.
146. Also, at the hearing, ICANN confirmed that, notwithstanding that different individual evaluators can be used to consider different CPE applications, the EIU has no process for comparing the outcome of one CPE evaluation with another in order to ensure consistency. It further confirmed that ICANN itself has no quality review or control process, which compares the determinations of the EIU on CPE applications. Much was made in this IRP of the inconsistencies, or at least apparent inconsistencies, between the outcomes of different CPE evaluations by the EIU, some of which, on the basis solely of the arguments provided by the Claimants, have some merit.
147. The CPE process for this round of gTLDs is almost at an end, so there is little or nothing that ICANN can do now, but the Panel feels strongly that there needs to be a consistency of approach in making CPE evaluations and if different applications are being evaluated by different individual evaluators, some form of outcome comparison, quality review or quality control procedure needs to be in place to ensure consistency, both of approach and marking, by evaluators. As was seen in the .eco evaluation, where a single mark is the difference between prevailing at CPE and not, there needs to be a system in

place that ensures that marks are allocated on a consistent and predictable basis by different individual evaluators.

148. Further, as has already been stated:

In its letter of 4 December 2015, ICANN confirmed that the EIU's determinations are presumptively final, and the Board's review on reconsideration is not substantive, but rather is limited to whether the EIU followed established policy or procedure.

At the hearing on 7 December 2015, ICANN confirmed that the core values, which apply to ICANN by virtue of its Bylaws, have not been imposed contractually on the EIU, and the EIU are not, in consequence, subject to them.

149. The combination of these statements gives cause for concern to the Panel. As has already been noted, Article I.2 of the Bylaws states:

“Any ICANN body making a recommendation or decision shall exercise its judgment to determine which core values are most relevant and how they apply to the specific circumstances of the case at hand, and to determine, if necessary, an appropriate and defensible balance among competing values.”

150. The Panel fails to see why the EIU is not mandated to apply ICANN's core values in making its determinations whilst, obviously, taking into account the limits on direct application of all the core values as reflected in that paragraph of the Bylaws. Accordingly, the Panel suggests that the ICANN Board should ensure that there is a flow through of the application of ICANN's core values to entities such as the EIU.

151. Having expressed the Panel's concern at these general issues, the Panel now turns to the specific issues which, ultimately, it was asked to consider in this IRP. The Panel has found, in relation to each of the specific issues raised in the .hotel and .eco IRPs that it is satisfied that the BGC acted consistently with the provisions of ICANN's Articles of Incorporation and Bylaws, and that the Claimants' complaints have not been made out.

152. In consequence, the Panel will not be making any of the declarations sought by the Claimants.

K. The Prevailing Party and Costs

153. Article IV.3.18 of the Bylaws states:

“The IRP Panel shall make its declaration based solely on the documentation, supporting materials, and arguments submitted by the parties, and in its declaration shall specifically designate the prevailing party. The party not prevailing shall ordinarily be responsible for bearing all the costs of the IRP Provider, but in an extraordinary case the IRP Panel may in its declaration allocate up to half of the costs of the IRP Provider to the prevailing party based upon the circumstances including a consideration of the reasonableness of the parties positions and their contribution to the public interest. Each party to the IRP shall bear its own expenses.”

154. The Panel confirms that it makes its declaration based solely on the documentation, supporting materials and arguments submitted by the parties and that on the basis of that documentation, supporting material and arguments, has concluded that ICANN is the prevailing party, both in respect of the .hotel IRP and the .eco IRP.

155. Although the Claimants have raised some general issues of concern as to the CPE process, the IRP in relation to the .hotel CPE evaluation was always going to fail given the clear and thorough reasoning adopted by the BGC in its denial of the Reconsideration Request and, although the ICANN staff could have responded in a way that made it explicitly clear that they had followed the DIDP Process in rejecting the Claimants’ DIDP request in the .hotel IRP, again the IRP in relation to that rejection was always going to fail given the clarification by the BGC, in its denial of the Reconsideration Request, of the process that was followed.

156. As for the .eco IRP, it is clear that the Reconsideration Request was misconceived and was little more than an attempt to appeal the CPE decision. Again, therefore, the .eco IRP was always going to fail.

157. Finally, although the letter from Crowell & Moring of 5 June 2015 raises some very serious issues, which the Panel considers the ICANN Board needs to address, in the end, the Panel has not had to adjudicate on this issue.

158. In conclusion, therefore, whilst the Panel has declared ICANN to be the prevailing party, the Claimants in this IRP have raised a number of serious issues which give cause for concern and which the Panel considers the Board need to address. In the circumstances, the Panel considers that the Claimants’

contribution to the public interest merits ICANN bearing half of the costs of the IRP Provider, which is the ICDR.

159. Article IV.3.18 provides that “[e]ach party to the IRP shall bear its own expenses”. Rule 11 of ICANN’s Supplementary Procedures provides:

“In the event the Requestor has not availed itself, in good faith, of the cooperative engagement or conciliation process, and the Requestor is not successful in the Independent Review, the IRP Panel must award ICANN all reasonable fees and costs incurred by ICANN in the IRP, including legal fees”

160. ICANN has not sought to argue that any of the Claimants failed to enter into the Cooperative Engagement Process in good faith, and there is no evidence of this in the materials before the Panel. In consequence, the panel considers that, in accordance with Article IV.3.18 of the Bylaws, each side shall bear their own expenses including legal fees.

FOR THE FORGOING REASONS, the Panel hereby:

- (1) Declares that the IRP Request made in relation to the .hotel gTLD by Despegar Online SRL, Donuts Inc., Famous Four Media Limited, Fegistry LLC and Radix FZC is denied;
- (2) Designates ICANN as the prevailing party in the .hotel IRP;
- (3) Declares that the IRP Request made in relation to .eco gTLD by Little Birch, LLC and Minds + Machines Group Limited is denied;
- (4) Designates ICANN as the prevailing party in the .eco IRP;
- (5) Declares that the fees and expenses of the IRP Panel members, totalling US\$113,351.52, and the fees and expenses of the ICDR, totalling US\$11,500.00, shall be born as to half by ICANN, and as to the other half collectively by Despegar Online SRL, Donuts Inc., Famous Four Media Limited, Fegistry LLC, Radix FZC, Little Birch, LLC and Minds +Machines Group Limited (“Applicants”). Therefore, ICANN shall reimburse the Applicants collectively the sum of \$5,750.00 representing that portion of said fees and expenses in excess of the apportioned costs previously incurred by the Applicants; and
- (6) This Final Declaration may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute the Final Declaration of this IRP Panel.



Dirk P. Tirez
Date: 11 FEBRUARY 2016



Thomas H. Webster
Date: 11 FEBRUARY 2016



Peter J. Rees QC
Chair of the IRP Panel
Date: 11 FEBRUARY 2016

Exhibit DIDP A107

[English \(/translations\)](#) [العربية \(/ar\)](#) [Español \(/es\)](#)

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Details

ICANN (Internet Corporation for Assigned Names and Numbers) Announcements

14 Oct 2013

Announcement

Planning

ICANN (Internet Corporation for Assigned Names and Numbers) Announces Strategy Panel Members

This page is available in:

English | [Русский \(http://www.icann.org/news/announcement-2013-10-14-ru\)](http://www.icann.org/news/announcement-2013-10-14-ru) | [العربية \(http://www.icann.org/news/announcement-2013-10-14-ar\)](http://www.icann.org/news/announcement-2013-10-14-ar) | [中文 \(http://www.icann.org/news/announcement-2013-10-14-zh\)](http://www.icann.org/news/announcement-2013-10-14-zh) | [Français \(http://www.icann.org/news/announcement-2013-10-14-fr\)](http://www.icann.org/news/announcement-2013-10-14-fr) | [Español \(http://www.icann.org/news/announcement-2013-10-14-es\)](http://www.icann.org/news/announcement-2013-10-14-es)



ICANN (Internet Corporation for Assigned Names and Numbers) welcomes over 40 diverse practitioners, subject matter experts, and thought leaders as members of the [ICANN \(Internet Corporation for Assigned Names and Numbers\) Strategy Panels \(Strategy Panels\) \(/en/news/announcements/announcement-15jul13-en.htm\)](#) to support development of ICANN (Internet Corporation for Assigned Names and Numbers)'s strategic and operational plans.

ICANN (Internet Corporation for Assigned Names and Numbers) Strategy Panels (Strategy Panels) will serve as an integral part of a framework for cross-community dialogue on strategic matters. Designed to conduct work in critical strategic [areas identified by the community, Board, and staff \(/en/about/planning/strategic-engagement/conversation-input-24jun13-en.pdf\)](#) [PDF, 209 KB], the work of these

panels will build on public input being generated to inform a new, overarching

vision and five-year strategic plan. As [illustrated \(/sites/default/files/strategy-panels-timeline-1400x667-14oct13-en.png\)](/sites/default/files/strategy-panels-timeline-1400x667-14oct13-en.png), there will be extensive information sharing and community engagement with the Panels. Panel output will be posted for public comments and community discussion online and at ICANN (Internet Corporation for Assigned Names and Numbers) meetings, before being factored into ICANN (Internet Corporation for Assigned Names and Numbers)'s [strategic and/or operating plans \(/en/about/planning/strategic-engagement\)](/en/about/planning/strategic-engagement), as appropriate.

A video interview with Theresa Swinehart, Senior Advisor to the President on Strategy, is available [here \(/en/news/press/kits/video-swinehart-strategy-14oct13-en.htm\)](/en/news/press/kits/video-swinehart-strategy-14oct13-en.htm).

[Identifier Technology Innovation \(/en/about/planning/strategic-engagement/identifier-technology\)](/en/about/planning/strategic-engagement/identifier-technology)

Chair

[Paul Mockapetris \(/en/about/planning/strategic-engagement/bios#paul-mockapetris\)](/en/about/planning/strategic-engagement/bios#paul-mockapetris) — Inventor, Domain Name (Domain Name) System

Members

[Jari Arkko \(/en/about/planning/strategic-engagement/identifier-technology/bios#arkko\)](/en/about/planning/strategic-engagement/identifier-technology/bios#arkko) — Chair, Internet Engineering Task Force

[Rick Boivie \(/en/about/planning/strategic-engagement/identifier-technology/bios#boivie\)](/en/about/planning/strategic-engagement/identifier-technology/bios#boivie) — IBM Thomas J. Watson Research Center¹

[Anne-Marie Eklund-Löwinder \(/en/about/planning/strategic-engagement/identifier-technology/bios#eklund-lowinder\)](/en/about/planning/strategic-engagement/identifier-technology/bios#eklund-lowinder) — Security (Security – Security, Stability and Resiliency (SSR))Manager, The Internet Infrastructure Foundation

[Geoff Huston \(/en/about/planning/strategic-engagement/identifier-technology/bios#huston\)](/en/about/planning/strategic-engagement/identifier-technology/bios#huston) — Chief Scientist, Asia-Pacific Network Information Center

[James Seng \(/en/about/planning/strategic-engagement/identifier-technology/bios#seng\)](/en/about/planning/strategic-engagement/identifier-technology/bios#seng) — CEO, Zodiac Holdings

[Paul Vixie \(/en/about/planning/strategic-engagement/identifier-technology/bios#vixie\)](/en/about/planning/strategic-engagement/identifier-technology/bios#vixie) — CEO, Farsight Security

[Lixia Zhang \(/en/about/planning/strategic-engagement/identifier-technology/bios#zhang\)](/en/about/planning/strategic-engagement/identifier-technology/bios#zhang) — Postel Chair of Computer Science, University of California Los Angeles

This panel is dedicated to strategizing engagement with the ICANN (Internet Corporation for Assigned Names and Numbers) community and public on technology matters. Its objectives include developing a technology roadmap for DNS (Domain Name System) and other identifiers, and providing a technology roadmap for ICANN (Internet Corporation for Assigned Names and Numbers) technical and security operations, including best practice recommendations and reference objects.

reference objects.

[ICANN \(Internet Corporation for Assigned Names and Numbers\) Multistakeholder Innovation \(/en/about/planning/strategic-engagement/multistakeholder-innovation\)](#)

Chair

[Beth Simone Noveck \(/en/about/planning/strategic-engagement/bios#beth-simone-noveck\)](#) — Founder and Director, The Governance Lab

Members

[Alison Gillwald \(/en/about/planning/strategic-engagement/multistakeholder-innovation/bios#gillwald\)](#) — Executive Director, Research ICT Africa

[Joi Ito \(/en/about/planning/strategic-engagement/multistakeholder-innovation/bios#ito\)](#) — Director, Massachusetts Institute of Technology Media Lab

[Karim Lakhani \(/en/about/planning/strategic-engagement/multistakeholder-innovation/bios#lakhani\)](#) — Lumry Family Associate Professor of Business Administration, Harvard University

[Guo Liang \(/en/about/planning/strategic-engagement/multistakeholder-innovation/bios#liang\)](#) — Director, China Internet Project

[Geoff Mulgan \(/en/about/planning/strategic-engagement/multistakeholder-innovation/bios#mulgan\)](#) — Chief Executive, National Endowment for Science Technology and the Arts

[Bitange Ndemo \(/en/about/planning/strategic-engagement/multistakeholder-innovation/bios#ndemo\)](#) — Former PS of the Ministry of Communications

This panel is tasked with examining how Internet policy related to unique identifiers might be best managed. It will propose new models for broad, inclusive engagement, consensus-based policymaking, and institutional structures to support such enhanced functions. In addition, it will design processes, tools and platforms to enable the global [ICANN \(Internet Corporation for Assigned Names and Numbers\)](#) community to engage in these new forms of participatory decision-making.

[Public Responsibility Framework \(/en/about/planning/strategic-engagement/public-responsibility\)](#)

Chair

[Nii Quaynor \(/en/about/planning/strategic-engagement/bios#nii-quaynor\)](#) — Founding Chairman, [AfriNIC \(African NIC\)](#)

Members

[Tim Berners-Lee \(/en/about/planning/strategic-engagement/public-responsibility/bios#berners-lee\)](/en/about/planning/strategic-engagement/public-responsibility/bios#berners-lee) — Director, World Wide Web Consortium

[Soumitra Dutta \(/en/about/planning/strategic-engagement/public-responsibility/bios#dutta\)](/en/about/planning/strategic-engagement/public-responsibility/bios#dutta) — Dean of Johnson Graduate School of Management, Cornell University

[Bob Hinden \(/en/about/planning/strategic-engagement/public-responsibility/bios#hinden\)](/en/about/planning/strategic-engagement/public-responsibility/bios#hinden) — Check Point Fellow, Check Point Software Technologies

[Blake Irving \(/en/about/planning/strategic-engagement/public-responsibility/bios#irving\)](/en/about/planning/strategic-engagement/public-responsibility/bios#irving) — CEO, Go Daddy

[Nevine Tewfik \(/en/about/planning/strategic-engagement/public-responsibility/bios#tewfik\)](/en/about/planning/strategic-engagement/public-responsibility/bios#tewfik) — Director, Cyber Peace Initiative

[Ra \(Registrar\)úl Zambrano \(/en/about/planning/strategic-engagement/public-responsibility/bios#zambrano\)](/en/about/planning/strategic-engagement/public-responsibility/bios#zambrano) — Team Leader, Inclusive Participation and Global Policy Adviser in the ICT for Development and e-governance team, United Nations Development Program

This panel will propose ICANN (Internet Corporation for Assigned Names and Numbers)'s role and five-year strategic objectives and milestones in promoting the global public interest. It will examine ways of building out ICANN (Internet Corporation for Assigned Names and Numbers)'s base of internationally diverse, knowledgeable and engaged stakeholders, especially within the developing world. It will also propose a framework for achieving those objectives and milestones as well providing advice on specific programs and initiatives.

ICANN (Internet Corporation for Assigned Names and Numbers)'s Role in the Internet Governance Ecosystem (Internet Governance Ecosystem) (/en/about/planning/strategic-engagement/governance-ecosystem)

Chair

[Vinton Cerf \(/en/about/planning/strategic-engagement/bios#vinton-cerf\)](/en/about/planning/strategic-engagement/bios#vinton-cerf) — VP and Chief Internet Evangelist, Google

Members

[Adiel Akplogan \(/en/about/planning/strategic-engagement/governance-ecosystem/bios#akplogan\)](/en/about/planning/strategic-engagement/governance-ecosystem/bios#akplogan) — CEO, AfriNIC (African NIC) Ltd

[Michael Barrett \(/en/about/planning/strategic-engagement/governance-ecosystem/bios#barrett\)](/en/about/planning/strategic-engagement/governance-ecosystem/bios#barrett) — President, The FIDO Alliance

[Hartmut Glaser \(/en/about/planning/strategic-engagement/governance-ecosystem/bios#glaser\)](/en/about/planning/strategic-engagement/governance-ecosystem/bios#glaser) — Executive Secretary, Brazilian Internet Steering Committee/CGI.br

[Erik Huizer \(/en/about/planning/strategic-engagement/governance-ecosystem/bios#huizer\)](/en/about/planning/strategic-engagement/governance-ecosystem/bios#huizer)

[ecosystem/bios#huizer](#) — Chief Technology Officer, SURFnet
[Hagen Hultsch \(/en/about/planning/strategic-engagement/governance-ecosystem/bios#hultsch\)](#) — Zimory Chairman of the Board
[Janis Karklins \(/en/about/planning/strategic-engagement/governance-ecosystem/bios#karklins\)](#) — Assistant Director General of Communication and Information, United Nations Educational, Scientific & Cultural Organization
[Wolfgang Kleinwächter \(/en/about/planning/strategic-engagement/governance-ecosystem/bios#kleinwachter\)](#) ² — Professor of International Communication Policy and Regulation, University of Aarhus
[Luis Magalhães \(/en/about/planning/strategic-engagement/governance-ecosystem/bios#magalhaes\)](#) — Professor at Instituto Superior Técnico, University of Lisbon
[Debbie Monahan \(/en/about/planning/strategic-engagement/governance-ecosystem/bios#monahan\)](#) — Domain Names Commissioner, Domain Name (Domain Name) Commission Ltd, part of the InternetNZ Group
[Alice Munyua \(/en/about/planning/strategic-engagement/governance-ecosystem/bios#munyua\)](#) — Chair of the Kenya Internet Governance Steering Committee
[P.J. Narayanan \(/en/about/planning/strategic-engagement/governance-ecosystem/bios#narayanan\)](#) — Director, Hyderabad International Institute of Information Technology
[Alejandro Pisanty \(/en/about/planning/strategic-engagement/governance-ecosystem/bios#pisanty\)](#) — Director General, Academic Computing Service of the National University of Mexico
[Carlton Samuels \(/en/about/planning/strategic-engagement/governance-ecosystem/bios#samuels\)](#) — Former Secretariat, Latin America and Caribbean Regional At-Large Advisory Organization
[Ismail Serageldin \(/en/about/planning/strategic-engagement/governance-ecosystem/bios#serageldin\)](#) — Director, Library of Alexandria
[Pindar Wong \(/en/about/planning/strategic-engagement/governance-ecosystem/bios#wong\)](#) — Chairman VeriFi (Hong Kong) Ltd

The [previously announced \(/en/news/announcements/announcement-15jul13-en.htm\)](#) "Strategy Panel on [ICANN \(Internet Corporation for Assigned Names and Numbers\)](#)'s Role in the Internet Organizations' Ecosystem" and the "Strategy Panel on the Role of [ICANN \(Internet Corporation for Assigned Names and Numbers\)](#) in the Future of Internet Governance" have been integrated given the topics, and are now covered under this Strategy Panel on "[ICANN \(Internet Corporation for Assigned Names and Numbers\)](#)'s Role in the Internet Governance Ecosystem (Internet Governance Ecosystem)." This panel will review the assumptions, linkages and frameworks that dictate [ICANN \(Internet Corporation for Assigned Names and Numbers\)](#)'s responsibilities in the current Internet ecosystem. It will seek insights into ways to maintain and enhance [ICANN \(Internet Corporation for Assigned Names and Numbers\)](#)'s stewardship of the evolving ecosystem while cultivating thought leadership on ways in which [ICANN \(Internet Corporation for Assigned Names and Numbers\)](#) can serve a complex set of Internet constituencies

CONTRIBUTORS

The 5th panel originally identified will be refocused and is expected to be forthcoming later this year.

¹ Joined the panel on *25 October 2013*.

² With Wolfgang Kleinwächter's selection to the ICANN (Internet Corporation for Assigned Names and Numbers) Board, Wolfgang Kleinwächter has stepped down from the panel and we look forward to his and others contributions to the public participation of this panel (16 November 2013).

More Announcements

[Draft Restated Articles of Incorporation \(/news/announcement-2016-05-27-en\)](#)

[ICANN \(Internet Corporation for Assigned Names and Numbers\) Hires DNS \(Domain Name System\) Expert to Lead Research \(/news/announcement-2016-05-25-en\)](#)

[Call for Expressions of Interest for 2017 Nominating Committee Chair and Chair-Elect \(/news/announcement-2016-05-24-en\)](#)

[Revisions to ICANN \(Internet Corporation for Assigned Names and Numbers\) Expected Standards of Behaviors \(/news/announcement-2016-05-16-en\)](#)



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Development and Public Responsibility (https://www.icann.org/development-and-public-responsibility)				

Exhibit DIDP A108

CV of The Rt. Hon. Professor Sir Robin Jacob

1. I am the Hugh Laddie Professor of Intellectual Property Law at University College London.

Academic studies and early legal career (1960-1967)

2. From 1960 to 1963 I read Natural Sciences (mainly physics) at Trinity College, Cambridge. I then read for the Bar and simultaneously took a law degree. I was called to the Bar by Grays Inn in 1965 and graduated from the London School of Economics (of which I have been a Governor for about 15 years) in 1967.
3. After pupillage (the Bar's name for an apprenticeship) I entered practice as a barrister practising mainly but not exclusively in all forms of intellectual property in 1968. I was in the Chambers of Thomas Blanco White QC and succeeded him as Head of Chambers when he eventually retired in about 1989.

Legal career as a barrister (1965-1993)

4. In 1976 I was appointed by the Attorney-General as the Junior Counsel to the Treasury in Patent matters. In practice this meant that I handled all the Government's intellectual property cases. I represented the Patent Office in all court proceedings up to and including the House of Lords (which is what our highest court was then called) as well as the UK Government in IP cases before the European Court of Justice. I was also the principal advisor for all Government departments in relation to intellectual property cases.
5. In 1981 I 'took silk', that is to say was appointed a Queen's Counsel. I continued in practice at the Patent Bar acting for private clients. In about 1987 I was elected Chairman of the Patent Bar Association (now more appropriately called the Intellectual Property Bar Association). My practice became quite international: I represented clients before the courts of Hong Kong, Singapore and Australia (I am a Queen's Counsel of New South Wales, Australia) as well as the Competition-Directorate of the European Commission. I often

visited the USA to see clients (my first visit was in 1974). In 2007 I was appointed to hear appeals from the Trade Marks Office against refusals to register trade marks and in 1989 I was appointed Deputy Chairman of the Copyright Tribunal (both of these were part-time only). I continued in practice meanwhile.

Career as a High Court Judge (1993-2003)

6. In 1993 I was appointed a High Court judge. I sat in the Chancery Division, part of which consists of the Patents Court (the main judges of that court have particular experience in patents and almost invariably a science degree). The Chancery Division deals with a wide variety of commercial and property related matters such as tax, company law, insolvency, trusts, wills, land law and probate. It also deals with many contractual disputes and of course disputes about IP licensing of which I heard several.
7. Intellectual Property cases are assigned to the Chancery Division. From the outset of my judicial career, I heard and decided many such cases. I have never counted their number but it must run into several hundreds, many of which were patent cases. A search in the BAILII (British and Irish Legal Information website, www.bailii.org under the name "Mr Justice Jacob" produces 690 results. These are not all my decisions for the results will include decisions of other courts which refer to my first instance judgments. But most such first instance judgments will be there. Some early ones may be missing because pre-internet ones are not on the BAILII database. From 1997 to 2001 I was the Supervising Chancery Judge for Birmingham, Bristol and Cardiff which meant I was in charge of Chancery matters in those cities and their associated Circuits and heard the most important cases there. From 1995 until that assignment and thereafter I was the Judge in Charge of the Patents List.

Career as a Court of Appeal Judge (2003-2011)

8. In 2003 I was appointed a "Lord Justice of Appeal," the formal title of a judge of the Court of Appeal of England and Wales. From then until I retired in May 2011 I was in charge of the Intellectual Property List and sat on nearly all

IP cases in the Court of Appeal. A BAILII search produces 504 results. Again not all these are my judgments but I estimate that about half are.

Academic career

9. In early 2011 the opportunity of my present Chair came up. Although I could have stayed in the Court of Appeal for another 5 years (when I would have reached 75) it struck me that here was an opportunity for a new career and challenges. So, with some reluctance, for I was very happy there, I retired from the Court. I continue to sit there from time to time. Some English retired judges (who, is decided by the Lord Chief Justice) are asked back on a daily ad hoc basis. I do about three weeks sitting a year, mainly but not only in IP cases.
10. I am currently the President of the Intellectual Property Judges Association (members are patent judges of European countries).

Extra-judicial activities

11. I have also done many things in the law extra-judicially. In about 1987 I was made a “Bencher” of Grays Inn, one of the four Inns of Court. The Benchers are the governing body. I was Treasurer of the Inn (“Treasurer” was the name given in mediaeval times to the head of an organisation) in 2007. In 2011 my fellow European Judges elected me President of the Intellectual Property Judges’ Association, an association of European patent judges. I am regularly consulted on IP matters by the UK government and the European Commission, most recently in the case of the now-stalled possible revision of the Enforcement Directive (2004/48/EC).
12. I have written extensively on all aspects of Intellectual Property Law as well as other legal subjects. There is rather a lot of this. Attached hereto is a list of most of my publications see Annex 1. It is not complete I have not been that astute to check which lectures have been published and which not.
13. I am also a regular lecturer at conferences. In 2012 for instance I gave a lecture in Singapore (addressing the Asian Patent Attorneys’ Association);

Oxford University (conference about the Common Law of Intellectual Property); a conference in Zurich for INGRES (an association of Swiss IP lawyers) and Basel (the Hoffmann-La Roche lecture); a conference in Brussels organised by OpenForum Europe; another conference in Oxford concerning the Max Planck study of the European Trade Mark system; a trade mark conference in Nijmegen, Holland at the Radbooud University; the annual meeting of the Association of Law Teachers (of which I am President) in Oxford; the Fordham Annual Intellectual Property Conference in New York; an all day meeting in Columbia University with co-authors of a book for which I have written a chapter on copyright and parody (not yet published); the Managing Intellectual Property Conference in London (this year the magazine awarded me its lifetime achievement award); a conference in Brussels organised by the European Commission concerning possible amendment of the Directive on the Enforcement of IP Rights; the European Patent Judges' Symposium in Dublin; meetings with the highest court in Shanghai and the Supreme Court of China in Beijing; and two meetings of the Economic and Scientific Advisory Board (of which I am a member) of the European Patent Office. I sometimes take part in the European Patent Office's Patent Academy programme for teaching patent law to judges from countries which have limited experience of patents, for instance in November 2012 I acted as the judge in a mock trial run for Polish Judges in Krakow which was also filmed for the Academy's distance learning project.

14. In 2013 I have taught on a 1 week intensive course of IP law at the University of Melbourne, attended as an invited lecturer a meeting of ETSI (the mobile phone industry body for setting standards) and taken part in a 2 day teaching programme at the judicial training body of Romania.

Articles and Lectures

- Information Problems and the Law, *The Information Scientist*, March 1972 p.3
- The Protection of Geographical Indications of Origin in the UK, chapter in *Protection of Geographic Denominations of Goods and Services*, ed. Prof. Herman Cohen Jehoram, Sijthoff & Noordhoff, 1980.
- The Herschel Smith Lecture 1993, [1993] *EIPR* 312
- Novelty of Use Claims, *IIC* (1996) Vol 27 170 (also published in German *GRUR* (1996) Vol 45 p.1091), a paper for the 7th Symposium of European Patent Judges
- The Stephen Stewart Memorial Lecture: Industrial Property – Industry’s Enemy? [1997] *I.P.Q.* 3
- European Patent Procedure, a paper for the 1997 Fordham University Law School IP conference
- When is a trade mark not a trade mark? for the 1997 Fordham University Law School IP Conference
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- Towards a European Civil Procedural Code? The 27th Lord Upjohn Lecture, (1998) *The Law Teacher*, 125
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- Objectionable Narrowness of Claim, a “Side Bar” in *Principles of Patent Law*, Chisum et al., Foundation Press New York, (1999) also published in [1999] *EIPR* 40 along with subsequent correspondence
- Decisions relating to patents granted by the EPO in Great Britain and Germany, (1999) *VPP Rundbrief* 13
- Scope of patents in the UK - is there a doctrine of equivalents? for the AIPPI, Symposium, Helsinki, March 1999, published in *Nordiskt Immateriellt Rättsskydd*
- Can European Patent Specifications be Safely Shortened?, a paper for the FICPI conference, The Hague July 1999
- International Intellectual Property Litigation in the Next Millennium, The 1999 Deima lecture, Case Western Reserve University, Cleveland, Ohio, *Case Western Reserve Journal of International Law* (2000) vol. 32 p.507
- Intellectual Property in the new Millennium The Inaugural Presidential Address of the Shepherd and Wedderburn Centre for Research in Intellectual Property and Technology, Edinburgh, 1999
- The Community Patent or a European Patent Court? Is it time to Chose?, for the 2000 Fordham University Law School IP conference
- Trade Marks and the Olympic Games throughout the Years, *Marques Conference: Athens August 2000*, [2001] *EIPR* 1
- In Honour of Rudiger Rogge, *Festschrift für Rudiger Rogge zum 65. GRUR*, October 2001
- The Onward March of Intellectual Property Rights and Remedies, Chap. 17 of *Expanding the Boundaries of Intellectual Property*, OUP 2001
- The Grays Inn Reading, June 2002, Gresham College
- Thoughts on Insolvency Practitioners and Expert Witnesses, a paper for the R3 Conference, Malaga, May 2003, *Insolvency Law and Practice* (2003) Vol. 19 143
- My Dad and Gray’s Inn, (2002) 114 *Graya* 41
- Law and the Human Genome Project, a paper for the Washington University in St Louis, Missouri, Symposium, 2003, *Perspectives on properties of the Human Genome Project*, ed. F. Scott Kieff, Elsevier/Academic Press, 2003.
- Creating the Community Patent and its Court, an essay in *Intellectual Property in the New Millennium*, *Essays in Honour of William Cornish*, (2004) Cambridge p.79
- The Perfect Patent Court, an essay in ...". und sie bewgt sich doch!" *Patent Law on the Move*, a Festschrift for Gert Kolle and Dieter Stauder, Carl Heymanns Verlag (2005) p. 313
- The Globalisation of Copyright, for the 12th Biennial Copyright Law & Practice Symposium, Sydney, November 2005. *Copyright Reporter* (2006) Vol 24 p.10
- Interpretation of Claims and the Doctrine of Equivalents, for the 13th Symposium of European Patent Judges, 2006, Special Edition of the *EPO Journal*, 2007 p.138
- European Patent Litigation: Out of the Impasse? With Prof. Anthony Arnall, [2007] *EIPR* 209
- National Courts and the EPO Litigation System an essay in *Festbeiträge für Rudolf Teschmacher zum 65*, (2008) *GRUR Int* 658
- Monopolist v Antimonopolist: A never ending story: The Burrell lecture 2008
- Recent Patent Cases in England and Wales, for the 14th Symposium of European Patent Judges, Special Edition of the *EPO Journal*, 2009, p.139

- Woolly Lines in Intellectual Property Law, an essay in Patents and Technological Progress in a Globalized World, Liber Amicorum Joseph Straus, Springer (2009) p. 781
- Experts and Woolf: Have Things Got Better?, an essay in The Civil Procedure Rules Ten Years On, ed. Dwyer, OUP (2009)
- Knowledge of the World and the Act of Judging, the Congr s de La Magistrature, Qu bec City, November 2008, Proceedings of the 2008 Judges' Conference, p. 129
- The Chapter on Intellectual Property in The Judicial House of Lords 1876 2009 ed. Blom Cooper et al., OUP 2009
- Patents and Pharmaceuticals, a paper given in November 2008 at the Presentation of the Directorate-General of Competition's Preliminary Report of the Pharm sector inquiry, CIPA December 2008 p. 711
- Forward to The Common Law of Intellectual Property, a festschrift for David Vaver, Hart (2010)
- Be ye ever so High, a paper given to the First St.Petersberg Legal Forum, May 2011.
- James v Kaney - where next? A paper for the Autumn 2011 Expert Witness Institute Journal.
- Patent thickets: a paper for the European Patent Office Economic and Scientific Advisory Board meeting
Robin Jacob; Journal of Intellectual Property Law & Practice 2013; doi: 10.1093/jlplp/jps213
- Teaching as a Guest Lecturer at the University of Melbourne on their European IP Law course, February 2013.
- Bentham and Inaugural lecture, March 2013

Exhibit DIDP A109

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Samsung and Google Sign Global Patent License Agreement

on January 27, 2014

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Samsung Electronics and **Google** Inc. furthered their long-term cooperative partnership with a **global patent cross-license agreement** covering a broad range of technologies and business areas. The mutually beneficial agreement covers the two companies' existing patents as well as those filed over the **next 10 years**.

"We're pleased to enter into a cross-license with our partner Samsung," said Allen Lo, Deputy General Counsel for Patents at Google. "By working together on agreements like this, companies can reduce the potential for litigation and focus instead on innovation."

With this agreement, Samsung and Google gain access to each other's industry-leading patent portfolios, paving the way for deeper collaboration on research and development of current and future products and technologies.

"This agreement with Google is highly significant for the technology industry," said Dr. Seungho Ahn, the Head of Samsung's Intellectual Property Center. "Samsung and Google are showing the rest of the industry that there is more to gain from cooperating than engaging in unnecessary patent disputes."

Exhibit DIDP A110

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Resources

Requests for Reconsideration

▶ [About ICANN \(Internet Corporation for Assigned Names and Numbers\) \(/resources/pages/welcome-2012-02-25-en\)](#)

▶ [Board \(/resources/pages/board-of-directors-2014-03-19-en\)](#)

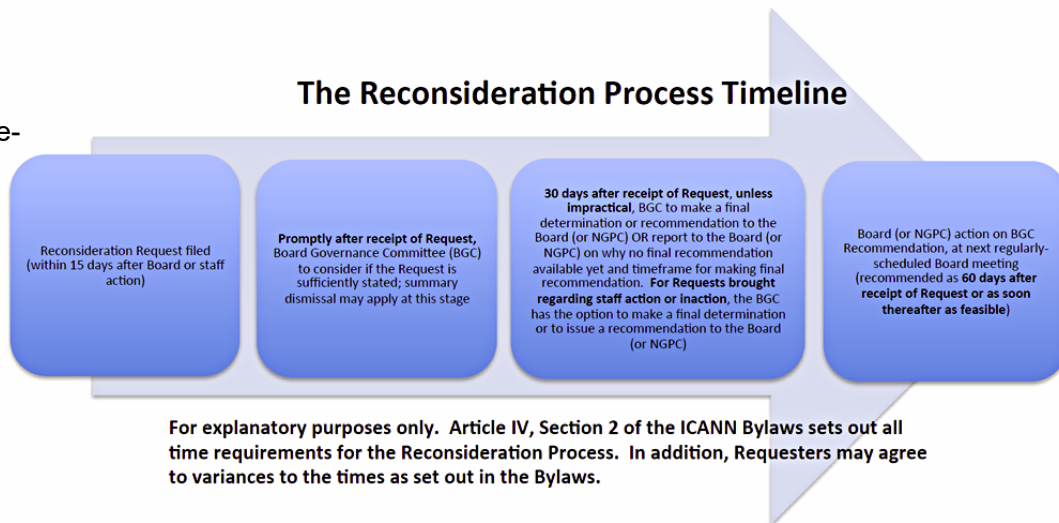
▼ [Accountability \(/resources/accountability\)](#)

▼ [Accountability Mechanisms \(/resources/pages/mechanisms-2014-03-20-en\)](#)

[Reconsideration \(/resources/pages/reconsideration-2012-02-25-en\)](#)

▶ [Ombudsman \(/resources/pages/ombudsman-2012-02-25-en\)](#)

Independent



A suggested form for submitting a Reconsideration Request is available [here \(/en/system/files/files/request-form-11apr13-en.doc\)](#) [DOC (Department of Commerce (USA)), 42 KB].

Reconsideration Requests Status Update

- 2016

<p>independent Review (/resources/pages/irp-2012-02-25-en)</p>	<ul style="list-style-type: none"> • Status Update – 29 April 2016 (/en/system/files/files/reconsideration-requests-status-2016-29apr16-en.pdf) [PDF, 89 KB] <ul style="list-style-type: none"> • 2016 Archive (/resources/pages/archive-2014-03-05-en#2016)
<p>▶ Document Disclosure (/resources/pages/transparency-2012-02-25-en)</p>	<ul style="list-style-type: none"> • 2015 <ul style="list-style-type: none"> • Status Update – 29 April 2016 (/en/system/files/files/reconsideration-requests-status-2015-29apr16-en.pdf) [PDF, 120 KB] <ul style="list-style-type: none"> • 2015 Archive (/resources/pages/archive-2014-03-05-en#2015)
<p>▶ Reviews (/resources/reviews)</p> <p>Expected Standards of Behavior (/resources/pages/expected-standards-2012-05-15-en)</p>	<ul style="list-style-type: none"> • 2014 <ul style="list-style-type: none"> • Status Update – 22 January 2015 (/en/system/files/files/requests-status-2014-22jan15-en.pdf) [PDF, 138 KB] <ul style="list-style-type: none"> • 2014 Archive (/resources/pages/archive-2014-03-05-en#2014) • 2013 Archive (/en/groups/board/governance/reconsideration/archive#2013)
<p>Enhancing ICANN (Internet Corporation for Assigned Names and Numbers) Accountability and Governance (https://community.icann.org/governance)</p>	<p>Request 16-6: DotKids Foundation (/resources/pages/reconsideration-16-6-dotkids-request-2016-05-06-en)</p> <p>Request 16-5: DotMusic Limited (/resources/pages/reconsideration-16-5-dotmusic-request-2016-02-25-en)</p>
<p>▶ Governance (/resources/pages/governance-2012-02-25-en)</p>	<p>Request 16-4: Roman Belichenko (/resources/pages/reconsideration-16-4-belichenko-request-2016-02-19-en)</p>
<p>▶ Groups (/resources/pages/groups-2012-02-06-en)</p>	<p>Request 16-3: dotgay LLC (/resources/pages/reconsideration-16-3-dotgay-request-2016-02-18-en)</p>
<p>Business (/resources/pages/business)</p>	<p>Request 16-2: Commercial Connect, LLC (/resources/pages/reconsideration-16-2-commercial-connect-request-2016-02-10-en)</p>
<p>Civil Society (/resources/pages/civil-society-2016-05-24-en)</p>	<p>Request 16-1: Commercial Connect, LLC (/resources/pages/reconsideration-16-1-commercial-connect-request-2016-01-27-en)</p> <p>Request 15-22: Centre for Internet and Society (/resources/pages/reconsideration-15-22-cis-request-2015-11-06-en)</p>
<p>▶ Contractual Compliance (/resources/pages/compliance-2012-02-25-en)</p>	<p>Request 15-21: dotgay LLC (/resources/pages/reconsideration-15-21-dotgay-request-2015-10-26-en)</p>
<p>▶ Registrars (/resources/pages/registrars-0d-2012-02-25-en)</p>	<p>Request 15-20: The Internet Commerce Association (/resources/pages/reconsideration-15-20-ica-2015-10-13-en)</p>
<p>▶ Registries</p>	<p>Request 15-19: The ICANN (Internet Corporation for Assigned Names and Numbers) Business Constituency & The ICANN (Internet Corporation for Assigned Names and Numbers) Noncommercial Stakeholders (Stakeholders) Group (NCSG (Non-Commercial Stakeholders Group))</p>

(/resources/pages/registries-46-2012-02-25-en)	<u>Group (NCSG (Non-Commercial Stakeholders Group))</u> <u>(/resources/pages/reconsideration-15-19-bc-ncsg-2015-10-13-en)</u>
Operational Metrics (/resources/pages/metrics-gdd-2015-01-30-en)	<u>Request 15-18: Ron Andruff</u> <u>(/resources/pages/reconsideration-15-18-andruff-2015-10-12-en)</u>
▶ Identifier Systems Security, Stability (Security, Stability and Resiliency) and Resiliency (IS-SSR) (/resources/pages/is-ssr-2014-11-24-en)	<u>Request 15-17: American Institute of Certified Public Accountants (AICPA)</u> <u>(/resources/pages/reconsideration-15-17-aicpa-2015-09-25-en)</u> <u>Request 15-16: CPA Australia Ltd</u> <u>(/resources/pages/reconsideration-15-16-cpa-australia-2015-09-18-en)</u>
▶ ccTLDs (/resources/pages/cctlds-21-2012-02-25-en)	<u>Request 15-15: Centre for Internet and Society</u> <u>(/resources/pages/reconsideration-15-15-cis-2015-09-09-en)</u> <u>Request 15-14: Foggy Sunset, LLC</u> <u>(/resources/pages/reconsideration-15-14-foggy-sunset-2015-08-10-en)</u>
▶ Internationalized Domain Names (/resources/pages/idn-2012-02-25-en)	<u>Request 15-13: Commercial Connect, LLC</u> <u>(/resources/pages/reconsideration-15-13-commercial-connect-2015-07-14-en)</u>
▶ Universal Acceptance Initiative (/resources/pages/universal-acceptance-2012-02-25-en)	<u>Request 15-12: E-Flux.art, LLC</u> <u>(/resources/pages/reconsideration-15-12-e-flux-art-2015-07-10-en)</u> Withdrawn <u>Request 15-11: Motion Picture Domain Registry Pty Ltd</u> <u>(/resources/pages/reconsideration-15-11-motion-picture-domain-registry-2015-06-30-en)</u>
▶ Policy (/resources/pages/policy-01-2012-02-25-en)	<u>Request 15-10: Atgron, Inc.</u> <u>(/resources/pages/reconsideration-15-10-atgron-2015-06-22-en)</u>
▶ Public Comment (/public-comments)	<u>Request 15-9: Atgron, Inc.</u> <u>(/resources/pages/reconsideration-15-9-atgron-2015-06-04-en)</u>
Root Zone (Root Zone) KSK Rollover (/resources/pages/ksk-rollover-2016-05-06-en)	<u>Request 15-8: Atgron, Inc.</u> <u>(/resources/pages/reconsideration-15-8-atgron-2015-05-20-en)</u>
▶ Technical Functions (/resources/pages/technical-functions-2015-10-15-en)	<u>Request 15-7: Booking.com B.V. and Travel Reservations SRL</u> <u>(/resources/pages/reconsideration-15-7-booking-bv-travel-reservations-srl-2015-05-15-en)</u> <u>Request 15-6: .Music, LLC</u> <u>(/resources/pages/reconsideration-15-6-music-2015-04-21-en)</u>
▶ Contact (/resources/pages/contact-2012-02-06-en)	<u>Request 15-5: Atgron Inc.</u> <u>(/resources/pages/reconsideration-15-5-atgron-inc-2015-03-23-en)</u>
▶ Help (/resources/pages/help-	<u>Request 15-4: Schwarz Domains & Services GmbH & Co. KG</u> <u>(/resources/pages/reconsideration-15-4-schwarz-2015-03-19-en)</u>

2012-02-03-en)

[Request 15-3: Brice Trail, LLC \(/resources/pages/reconsideration-15-3-brice-trail-llc-2015-03-12-en\)](#) Withdrawn

[Request 15-2: Big Room Inc. \(/resources/pages/reconsideration-15-2-big-room-inc-2015-02-23-en\)](#) Withdrawn

[Request 15-1: Atgron, Inc. \(/resources/pages/reconsideration-15-1-atgron-inc-2015-01-15-en\)](#)

[Request 14-46: Little Birch, LLC and Minds + Machines Group Limited \(/resources/pages/14-46-2014-10-22-en\)](#)

[Request 14-45: .music LLC \(/resources/pages/14-45-2014-10-22-en\)](#)

[Request 14-44: dotgay LLC \(/resources/pages/14-44-2014-10-22-en\)](#)

[Request 14-43: City of Spa \(/resources/pages/14-43-2014-10-21-en\)](#)

[Request 14-42: Ministry of Industry, Trade, Investment and Digital Economy of the Kingdom of Morocco \(/resources/pages/14-42-2014-09-30-en\)](#)

[Request 14-41: Afiliat Limited, BRS Media Inc., and Tin Dale, LLC. \(/resources/pages/14-41-2014-09-29-en\)](#)

[Request 14-40: Dadotart, Inc. \(/resources/pages/14-40-2014-09-26-en\)](#)

[Request 14-39: Despegar Online SRL, Radix FZC, Famous Four Media Limited, Fegistry, LLC, Donuts, Inc., Minds + Machines \(/resources/pages/14-39-2014-09-23-en\)](#)

[Request 14-38: The Business Constituency; The Registries Stakeholder Group; and The Non-Commercial Stakeholders \(Stakeholders\) Group \(NCSG \(Non-Commercial Stakeholders Group\)\) \(/resources/pages/14 38 2014 08 29 en\)](#)
Withdrawn

[Request 14-37: I-Registry Ltd. \(/resources/pages/14-37-2014-08-20-en\)](#)

[Request 14-36: Asia Spa and Wellness Promotion Council \(ASWPC\) \(/resources/pages/14-36-2014-07-25-en\)](#)

[Request 14-35: Amazon EU S.a.r.l. \(/resources/pages/14-35-2014-07-08-en\)](#)

[Request 14-34: Despegar Online SRL, DotHotel, Inc., dot Hotel Limited, Fegistry, LLC, Spring McCook, LLC, and Top Level Domain Holdings Limited \(/resources/pages/14-34-2014-07-01-en\)](#)

[Request 14-33: Dot Registry, LLC \(/resources/pages/14-33-2014-06-26-en\)](#)

[Request 14-32: Dot Registry, LLC \(/resources/pages/14-32-2014-06-26-en\)](/resources/pages/14-32-2014-06-26-en)

[Request 14-31: TLDDOT GmbH \(/resources/pages/14-31-2014-06-25-en\)](/resources/pages/14-31-2014-06-25-en)

[Request 14-30: Dot Registry, LLC \(/resources/pages/14-30-2014-06-25-en\)](/resources/pages/14-30-2014-06-25-en)

[Request 14-29: DotKids Foundation \(/resources/pages/14-29-2014-06-16-en\)](/resources/pages/14-29-2014-06-16-en)

[Request 14-28: DotMusic Limited \(/resources/pages/14-28-2014-06-11-en\)](/resources/pages/14-28-2014-06-11-en)

**[Request 14-27: Amazon EU S.a.r.l.
\(/en/groups/board/governance/reconsideration/14-27\)](/en/groups/board/governance/reconsideration/14-27)**

**[Request 14-26: Italian Government
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**[Request 14-25: French Government
\(/en/groups/board/governance/reconsideration/14-25\)](/en/groups/board/governance/reconsideration/14-25)**

**[Request 14-24: CNAOC, CIVC, EFOR, BNIC, and CIVB
\(/en/groups/board/governance/reconsideration/14-24\)](/en/groups/board/governance/reconsideration/14-24)**

**[Request 14-23: Danielle F. Watson
\(/en/groups/board/governance/reconsideration/14-23\)](/en/groups/board/governance/reconsideration/14-23) **Withdrawn****

**[Request 14-22: Swiss Government
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**[Request 14-21: Luxembourg Government
\(/en/groups/board/governance/reconsideration/14-21\)](/en/groups/board/governance/reconsideration/14-21)**

**[Request 14-20: Portuguese Government
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**[Request 14-19: Italian Government
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**[Request 14-18: CNAOC, CIVC, EFOR, BNIC, and CIVB
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[Request 14-16: Spain \(/en/groups/board/governance/reconsideration/14-16\)](/en/groups/board/governance/reconsideration/14-16)

**[Request 14-15: French Government
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[Request 14-14: United Kingdom Government](#)

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[Request 14-13: European Commission](/en/groups/board/governance/reconsideration/14-13)

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[Request 14-12: Tennis Australia](/en/groups/board/governance/reconsideration/14-12) [\(/en/groups/board/governance/reconsideration/14-12\)](/en/groups/board/governance/reconsideration/14-12)

[Request 14-11: Commercial Connect, LLC.](/en/groups/board/governance/reconsideration/14-11)

[\(/en/groups/board/governance/reconsideration/14-11\)](/en/groups/board/governance/reconsideration/14-11)

[Request 14-10: dot Sport Limited](/en/groups/board/governance/reconsideration/14-10) [\(/en/groups/board/governance/reconsideration/14-10\)](/en/groups/board/governance/reconsideration/14-10)

[Request 14-9: Merck KGaA](/en/groups/board/governance/reconsideration/14-9) [\(/en/groups/board/governance/reconsideration/14-9\)](/en/groups/board/governance/reconsideration/14-9)

[Request 14-8: DotMusic](/en/groups/board/governance/reconsideration/14-8) [\(/en/groups/board/governance/reconsideration/14-8\)](/en/groups/board/governance/reconsideration/14-8)

[Request 14-7: Asia Green IT System Ltd.](/en/groups/board/governance/reconsideration/14-7)

[\(/en/groups/board/governance/reconsideration/14-7\)](/en/groups/board/governance/reconsideration/14-7)

[Request 14-6: Dot Rugby Limited](/en/groups/board/governance/reconsideration/14-6) [\(/en/groups/board/governance/reconsideration/14-6\)](/en/groups/board/governance/reconsideration/14-6)

[Request 14-5: Vistaprint Limited](/en/groups/board/governance/reconsideration/14-5) [\(/en/groups/board/governance/reconsideration/14-5\)](/en/groups/board/governance/reconsideration/14-5)

[Request 14-4: Union of Orthodox Jewish Congregations of America](/en/groups/board/governance/reconsideration/14-4)

[\(/en/groups/board/governance/reconsideration/14-4\)](/en/groups/board/governance/reconsideration/14-4)

[Request 14-3: Corn Lake, LLC](/en/groups/board/governance/reconsideration/14-3) [\(/en/groups/board/governance/reconsideration/14-3\)](/en/groups/board/governance/reconsideration/14-3)

[Request 14-2: World Gold Council](/en/groups/board/governance/reconsideration/14-2)

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[Request 14-1: Medistry LLC](/en/groups/board/governance/reconsideration/14-1) [\(/en/groups/board/governance/reconsideration/14-1\)](/en/groups/board/governance/reconsideration/14-1)

[Request 13-23: Ruby Pike, LLC](/en/groups/board/governance/reconsideration/13-23) [\(/en/groups/board/governance/reconsideration/13-23\)](/en/groups/board/governance/reconsideration/13-23)

[Request 13-22: DotMusic](/en/groups/board/governance/reconsideration/13-22) [\(/en/groups/board/governance/reconsideration/13-22\)](/en/groups/board/governance/reconsideration/13-22)

[Request 13-21: European Lotteries](/en/groups/board/governance/reconsideration/13-21)

[\(/en/groups/board/governance/reconsideration/13-21\)](/en/groups/board/governance/reconsideration/13-21)

[Request 13-20: DotSecure, Inc.](/en/groups/board/governance/reconsideration/13-20) [\(/en/groups/board/governance/reconsideration/13-20\)](/en/groups/board/governance/reconsideration/13-20)

[Request 13-19: HOTREC](/en/groups/board/governance/reconsideration/13-19) [\(/en/groups/board/governance/reconsideration/13-19\)](/en/groups/board/governance/reconsideration/13-19)

[Request 13-19: ICITEL \(/en/groups/board/governance/reconsideration/13-19\)](#)

[Request 13-18: ILGA \(/en/groups/board/governance/reconsideration/13-18\)](#)

[Request 13-17: GCCIX, W.L.L. \(/en/groups/board/governance/reconsideration/13-17\)](#)

[Request 13-16: dot Sport Limited \(/en/groups/board/governance/reconsideration/13-16\)](#)

[Request 13-15: Commercial Connect, LLC \(/en/groups/board/governance/reconsideration/13-15\)](#)

[Request 13-14: DERCars, LLC \(/en/groups/board/governance/reconsideration/13-14\)](#)
Withdrawn

[Request 13-13: Christopher Barron \(/en/groups/board/governance/reconsideration/13-13\)](#)

[Request 13-12: Tencent Holdings Limited \(/en/groups/board/governance/reconsideration/13-12\)](#)

[Request 13-11: Non-Commercial Stakeholders \(Stakeholders\) Group \(/en/groups/board/governance/reconsideration/13-11\)](#)

[Request 13-10: Commercial Connect, LLC \(/en/groups/board/governance/reconsideration/13-10\)](#)

[Request 13 9: Amazon EU S.á.r.l. \(/en/group /board/governance/recon ideration/13 9\)](#)

[Request 13-8: Merck KGaA \(/en/groups/board/governance/reconsideration/13-8\)](#)

[Request 13-7: DISH DBS Corp. \(/en/groups/board/governance/reconsideration/13-7\)](#)

[Request 13-6: Hotel Top Level Domain S.a.r.l. \(/en/groups/board/governance/reconsideration/13-6\)](#)

[Request 13-5: Booking.com B.V. \(/en/groups/board/governance/reconsideration/13-5\)](#)

[Request 13-4: DotConnectAfrica Trust \(/en/groups/board/governance/reconsideration/13-4\)](#)

[Request 13-3: Non-Commercial Stakeholders \(Stakeholders\) Group \(/en/groups/board/governance/reconsideration/13-3\)](#)

[Request 13-2: Nameshop \(/en/groups/board/governance/reconsideration/13-2\)](#)

Request 13-1: Ummah Digital, Ltd.

(/en/groups/board/governance/reconsideration/13-1)

Request 12-2: GNSO (Generic Names Supporting Organization) Intellectual Property Constituency (/en/groups/board/governance/reconsideration/12-2)**Request 12-1: International Olympic Committee**

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Request 11-1: Michael Gende (/en/groups/board/governance/reconsideration/11-1)**Request 10-3: Michael Palage** (/en/groups/board/governance/reconsideration/10-3)**Request 10-2: .JOBS Charter Compliance Coalition**

(/en/groups/board/governance/reconsideration/10-2)

Request 10-1: Michael Palage (/en/groups/board/governance/reconsideration/10-1)**Request 06-4: ICM Registry** (/en/groups/board/governance/reconsideration/06-4)**Request 06-3: Marilyn Cade** (/en/groups/board/governance/reconsideration/06-3)**Request 06-2: Danny Younger** (/en/groups/board/governance/reconsideration/06-2)**Request 06-1: Network Solutions, LLC, et al.**

(/en/groups/board/governance/reconsideration/06-1)

Request 05-2: Edward Hasbrouck (/en/groups/board/governance/reconsideration/05-2)**Request 05-1: Bret Fausett** (/en/groups/board/governance/reconsideration/05-1)**Request 04-3: Network Solutions, LLC**

(/en/groups/board/governance/reconsideration/04-3)

Request 04-2: Danny Lee Younger

(/en/groups/board/governance/reconsideration/04-2)

Request 04-1: Bret Fausett (/en/groups/board/governance/reconsideration/04-1)**Request 02-6: VeriSign, Inc.** (/en/groups/board/governance/reconsideration/02-6)**Request 02-5: Dotster, Inc.** (/en/groups/board/governance/reconsideration/02-5)**Request 02-4: Ethan Katsh** (/en/groups/board/governance/reconsideration/02-4)**Request 02-3: Tony So** (/en/groups/board/governance/reconsideration/02-3)

[Request 02-2: Russ Smith \(/en/groups/board/governance/reconsideration/02-2\)](/en/groups/board/governance/reconsideration/02-2)

[Request 02-1: David Ogden \(/en/groups/board/governance/reconsideration/02-1\)](/en/groups/board/governance/reconsideration/02-1)

[Request 01-7: Edward Hasbrouck \(/en/groups/board/governance/reconsideration/01-7\)](/en/groups/board/governance/reconsideration/01-7)

[Request 01-6: Russ Smith \(/en/groups/board/governance/reconsideration/01-6\)](/en/groups/board/governance/reconsideration/01-6)

[Request 01-5: Michael Fromkin and Jonathan Weinberg \(/en/groups/board/governance/reconsideration/01-5\)](/en/groups/board/governance/reconsideration/01-5)

[Request 01-4: Verio \(/en/groups/board/governance/reconsideration/01-4\)](/en/groups/board/governance/reconsideration/01-4)

[Request 01-3: Monsoon Assets Limited \(BVI\) \(/en/groups/board/governance/reconsideration/01-3\)](/en/groups/board/governance/reconsideration/01-3)

[Request 01-2: .Kids Domains, Inc. \(/en/groups/board/governance/reconsideration/01-2\)](/en/groups/board/governance/reconsideration/01-2)

[Request 01-1: Beltraide \(/en/groups/board/governance/reconsideration/01-1\)](/en/groups/board/governance/reconsideration/01-1)

[Request 00-16: Telnic Limited \(/en/groups/board/governance/reconsideration/00-16\)](/en/groups/board/governance/reconsideration/00-16)

[Request 00-15: ICM Registry \(/en/groups/board/governance/reconsideration/00-15\)](/en/groups/board/governance/reconsideration/00-15)

[Request 00-14: SRI International \(/en/groups/board/governance/reconsideration/00-14\)](/en/groups/board/governance/reconsideration/00-14)

[Request 00-13: Image Online Design, Inc. \(/en/groups/board/governance/reconsideration/00-13\)](/en/groups/board/governance/reconsideration/00-13)

[Request 00-12: The .TV Corporation \(/en/groups/board/governance/reconsideration/00-12\)](/en/groups/board/governance/reconsideration/00-12)

[Request 00-11: Sarnoff Corporation \(/en/groups/board/governance/reconsideration/00-11\)](/en/groups/board/governance/reconsideration/00-11)

[Request 00-10: Paul Stahura \(/en/groups/board/governance/reconsideration/00-10\)](/en/groups/board/governance/reconsideration/00-10)

[Request 00-9: Roy Goldberg \(/en/groups/board/governance/reconsideration/00-9\)](/en/groups/board/governance/reconsideration/00-9)

[Request 00-8: Ivan Vachovsky \(/en/groups/board/governance/reconsideration/00-8\)](/en/groups/board/governance/reconsideration/00-8)

[Request 00-7: D. Alexander Floum \(/en/groups/board/governance/reconsideration/00-7\)](/en/groups/board/governance/reconsideration/00-7)

[Request 00-6: A. J. L. de Breed \(/en/groups/board/governance/reconsideration/00-6\)](/en/groups/board/governance/reconsideration/00-6)

Request 00-5: James Trefil/Adam Corelli

[\(/en/groups/board/governance/reconsideration/00-5\)](/en/groups/board/governance/reconsideration/00-5)

Request 00-4: Bret Fausett [\(/en/groups/board/governance/reconsideration/00-4\)](/en/groups/board/governance/reconsideration/00-4)

Request 00-3: Paul Wilson [\(/en/groups/board/governance/reconsideration/00-3\)](/en/groups/board/governance/reconsideration/00-3)

Request 00-2: Nigel Roberts [\(/en/groups/board/governance/reconsideration/00-2\)](/en/groups/board/governance/reconsideration/00-2)

Request 00-1: Russ Smith [\(/en/groups/board/governance/reconsideration/00-1\)](/en/groups/board/governance/reconsideration/00-1)

Request 99-4: Karl Auerbach [\(/en/groups/board/governance/reconsideration/99-4\)](/en/groups/board/governance/reconsideration/99-4)

Request 99-3: Mr. Perelman [\(/en/groups/board/governance/reconsideration/99-3\)](/en/groups/board/governance/reconsideration/99-3)

Request 99-2: Gene Marsh [\(/en/groups/board/governance/reconsideration/99-2\)](/en/groups/board/governance/reconsideration/99-2)

Request 99-1: Eric Brunner and Bob Gough

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Who We Are

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[Domain Name](#)

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Board (/resources/pages/board-of-directors-2014-03-19-en)	PGP Keys (/en/contact/pgp-keys)	Ombudsman (/help/ombudsman)	Financials (/en/about/financials)	Registrar Problems (/en/news/announcements/announcement-06mar07-en.htm)
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Careers (https://icann-openhire.silkroad.com/en/positions)	AOC Review (http://forms.icann.org/en/about/aoc-review/contact)		Dashboard Beta (https://www.icann.org/dashboard)	
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	For Journalists (http://forms.icann.org/en/contact/speakers)		Correspondence (/en/news/correspondence)	

Exhibit DIDP A111

1. Requester Information

Name: Constantinos Roussos

Address: Contact Information Redacted

Email: Contact Information Redacted with a copy to counsel,

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

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

DotMusic is challenging ICANN's inaction on 5 issues:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2/18/2014

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“irrelevant”:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

²⁴ <http://a2im.org/groups/itunes>

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

differences between Applications to justify the high likelihood material harm:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8. Detail of Board or Staff Action – Required Information

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

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

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

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

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

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

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

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

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

The Affected Parties believe that there was inaction by ICANN:

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

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

9. What are you asking ICANN to do now?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

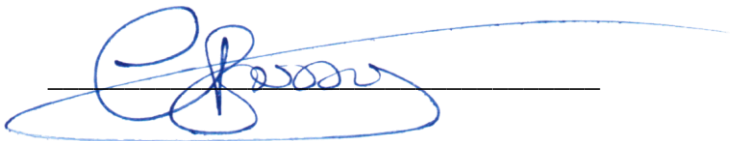
and the harm the same for all of the complaining parties?

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

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

Terms and Conditions for Submission of Reconsideration Requests:

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



Constantinos Roussos - .MUSIC (DotMusic)

Date: March 4th, 2014

Exhibit DIDP A112

Reconsideration Request Form

1. Requester Information

Name: Constantinos Roussos

Address: Contact Information Redacted

Email: Contact Information Redacted **with a copy to counsel,** Contact Information Redacted

2. Request for Reconsideration of:

X Staff action/inaction

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

DotMusic is challenging ICANN's inaction on 3 issues:

1) In not properly supervising and ensuring that appropriately qualified Expert candidates of the International Chamber of Commerce ("ICC") were a) selected; and b) adequately, trained to address the unique issues presented by Community Objections and the gTLD Program. The community expected that the ICC would be required to appoint and advise an appropriately qualified "expert," (not just an arbitrator) familiar with the unique needs and requirements presented in the gTLD Program, intellectual property and anti-competitive issues, and the needs and composition of the relevant community (e.g. a music or intellectual property expert for music-themed Objections)(Point 1);

2) In not recognizing the relevance and impact of the exceptional GAC Advice on the Community Objection process and Community Applicants, and in not advising the ICC and Community Objection Panelists on the GAC Beijing Communiqué of April 11, 2013 and subsequent GAC related issues: Responses to GAC Advice, Board Resolutions, Material Changes in Applicant positions through their GAC Advice Category 2 Exclusive Access Responses, and revisions to the new gTLD Registry Agreement¹ that addressed GAC

¹ 3(c) and 3(d) of Specification 11 provided that: (c) Registry Operator will operate the TLD in a transparent manner consistent with general principles of openness and non-discrimination by establishing, publishing and adhering to clear registration policies. (d) Registry Operator of a "Generic String" TLD may not impose eligibility

Concerns pertaining to exclusive access which were directly related to the anti-competitive issues raised in Community Objections. (Point 2); and

3) In not creating an appropriate appeal process for Community Objections and denying parties procedures to protect their fundamental rights and legitimate interests (Point 3).

4. Date of action/inaction:

The relevant Expert Determinations EXP_461_ICANN_78 (c EXP_479_ICANN_96 EXP_480_ICANN_97) were published on December 9, 2013 (See Annex 1).

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

The Decisions were presented to Objector and made public on December 9, 2013.

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

DotMusic Limited is a privately-held Cyprus limited liability company representing Community Objectors and Related-Objector Entities in Community Objections. Objector and/or Related-Objector Entities constitute a significant portion of the music community.²

criteria for registering names in the TLD that limit registrations exclusively to a single person or entity and/or that person's or entity's "Affiliates" [. . .]. "Generic String" means a string consisting of a word or term that denominates or describes a general class of goods, services, groups, organizations or things, as opposed to distinguishing a specific brand of goods, services, groups, organizations or things from those others" (New gTLD Registry Agreement, July 2nd, 2013, <https://www.icann.org/en/groups/board/documents/resolutions-new-gtld-02jul13-en.htm#1.d>).

² Objector Associate members include Pandora (<http://a2im.org/groups/pandora>), the world's largest streaming music radio with over 72 million active members (<http://investor.pandora.com/phoenix.zhtml?c=227956&p=irol-newsArticle&id=1860864>) and Apple iTunes (<http://a2im.org/groups/itunes>). iTunes accounts for 63% of global digital music market (<http://appleinsider.com/articles/13/04/16/apples-itunes-rules-digital-music-market-with-63-share>) – a majority - with 575 million active global members (<http://appleinsider.com/articles/13/06/14/apple-now-adding-500000-new-itunes-accounts-per-day>) abiding to strict terms of service and boundaries (<http://www.apple.com/legal/internet-services/itunes/www/index.html>) have downloaded 25 billion songs from iTunes catalog of over 26 million songs, available in 119 countries, regardless whether artist is independent or in a major label (<http://www.apple.com/pr/library/2013/02/06iTunes-Store-Sets-New-Record-with-25-Billion-Songs-Sold.html>). Related Objector Entities include: an international federation of nearly 70 government ministries of culture and arts councils, music distributors that distribute over 70% of global music on retailers such as iTunes and Amazon (e.g. Tune core, with over 500,000,000 sales, distributes more music in one month than all major labels have combined in 100 years, <http://blog.tunecore.com/2012/02/what-the-riaa-wont-tell-you-tunecores-response-to-the-ny-times-op-ed-by-the-riaa-ceo-cary-h-sherman.html>), an international association of music information offices from over 30 countries, music coalitions from leading music territories such as Canada, Brazil, France and others, music communities representing over 3 million musicians, industry professionals and organizations, the national association of recording industry professionals and others (<http://music.us/supporters.htm>).

The American Association of Independent Music is a non-for profit company representing its Members (both Labels and Associates), the U.S. Independent label music community, the World Independent Network, the Association of Independent Music, the Independent Music Companies Association (IMPALA) and the Merlin Network who collectively constitute a majority of the music community (emphasis added) to which the string is explicitly or implicitly targeted. (the “Affected Parties”).

On the 13th of March, 2013 Objections (cases EXP_461_ICANN_78 (c EXP_479_ICANN_96 EXP_480_ICANN_97) were filed against Amazon EU S.A.R.L in connection with music-themed Applications to run an exclusive access registry for .music, .song and .tunes (the “Objections”). The Objections raised concerns, among other things, about Applicant’s Applications to run exclusive-access registries thereby controlling the most semantically significant music-themed-strings and an entire scarce vertical for the distribution and monetization of music.

As to Point 1 – Lack of adequate supervision to ensure appropriately qualified Expert candidates of ICC were selected and adequately trained.

a) According to the “Selection of Expert Panels” Section 3.4.4 of the new Applicant Guidebook³, the Objector(s) relied upon specific language that the “panel will consist of appropriately qualified experts (emphasis added) appointed to each proceeding by the designated DRSP.” This is also consistent with ICC’s language that “the ICC will constitute a pool of qualified candidates (emphasis added) who can be appointed as experts in the new gTLD proceedings.”⁴

The expert appointed to render decisions in EXP_461_ICANN_78 (c EXP_479_ICANN_96 EXP_480_ICANN_97) is not a music, intellectual property, competition regulator or cultural expert versed in the unique music, intellectual property, competition and cultural issues that strongly relate to the music community. The Determinations published on December 9, 2013 (the “Decisions”), demonstrated that the panelist had limited knowledge on the functions of the music community and was ill-prepared to understand and address these unique music community matters.

³ <http://newgtlds.icann.org/en/applicants/agb/objection-procedures-04jun12-en.pdf>

⁴ <http://www.iccwbo.org/Products-and-Services/Arbitration-and-ADR/Expertise/ICANN-New-gTLD-Dispute-Resolution/Experts/>

A glance at the Panelist Francisco Orrego Vicuna's qualifications⁵ reveal that his specialties are: international law, international trade and investment. ICANN and the ICC failure to select qualified expert candidates (such as experts in competition regulation, intellectual property professors/judges/attorneys, or musicologists, ethnomusicologists, or music industry professors/attorneys), was a breach of the AGB and the obligation to create a meaningful evaluation of community concerns. The panelist, while being an arbitrator, was ill-equipped to address the unique issues presented and the Objectors relied to their detriment on the fact that the ICC would select an appropriate expert to review the Objections. Especially given the significant costs involved, it was reasonable to assume that the appropriate experts would be identified. These failures are evident, as follows:

First, the panelist agreed with Applicant's misleading statement that the music community does not rely on the DNS/Internet, holding that:

It is thus not possible to conclude that there is in this case a likelihood of concrete or economic damage to the community or that the Applicant intends to act contrary to the interests of such community or interfere with its activities. The dependence of the community on the DNS for its core activities has not been proven (emphasis added)" (Expert Determination, Section 71, p.24)

Any reasonably qualified expert should have taken judicial knowledge of the indisputable fact that the music community is heavily dependent on the DNS for the core of its activities. It is publicly acknowledged and commonly-known that the community most affected and impacted by the DNS was the music community. The DNS has changed the structure of how music (both legal and illegal) is distributed, marketed and consumed (See Annex 2). The DNS has also contributed to massive illegal piracy (e.g. via search engines, P2P networks or sites such as PirateBay) financially harming the community.

Secondly, the panelist lacked qualifications as an expert to render an opinion on whether the Applicant would be anti-competitive, and in his own words, the panelist claimed that competition regulators were the ones qualified to make such a determination:

Whether there is... anti-competitive behavior...is not something that can be established beforehand and is thus purely speculative... competition regulators will very well know how to address this problem (Section 70, Pg. 25)

⁵ http://www.arbitration-icca.org/about/governing-board/MEMBERS/Francisco_Orrego_Vicuna.html

As such, the panelist declined to render an opinion on a key issue of alleged material harm concerning Applicant's exclusive access gTLD policies (an opinion that an appropriately-qualified expert with experience working with competition regulators would have been equipped to render). Similarly, the panelist also ignored Objector's request to review the overall context of the Applicant's strategy to register close over 60+ gTLDs, all of which were closed generic strings, including, not one, but three music related strings, which presents significant anti-competitive concerns and would warrant further investigation as they are likely to create harm to the community and others. Instead, the panelist treated each music-themed gTLD objection in a mutually exclusive manner contrary to how the cases were presented, calling the Objector's reasonable assertion of likelihood of harm with respect to the Applicant's anti-competitive behavior "speculative" (Section 70, Pg. 25). Notably, the GAC Advice, ICANN revisions to the Registry Agreement and the Applicant's own change of position (from exclusive access to open) – pertinent evidence -- was rejected by the panel. Such evidence - if it had been transmitted by ICANN to the ICC for all Community Objection Panelists to consider - would have required panelists to appropriately opine and address as to the merits of such actions.

The panelist also stated that support for pirate networks does not prove harm "that can be established beforehand and is purely speculative" (Section 70, p.24). This statement flies in the face of irrefutable evidence and knowledge that copyright infringement is illegal and it harms the music community's legitimate interests. Such evidence of the Applicant's activity in pirate networks was ignored without reason and referred to as "speculative."

b) The panelist also denied Objector's standing by ignoring the size, composition and breadth of the Related Objector Entities and by failing to consider the standing of an Objector consisting of globally-recognized Label Members and ignoring Associate Members altogether (who have formal membership boundaries with Objector) that cover hundreds of millions of music community members having formal boundaries with Objector's Members. Furthermore the panel disingenuously asserted without any concrete proof or evidence that independent musicians were not strongly associated with the string "music":

While an association exists of course between the gTLD applied for and the term "music", this is by definition a generic term that might relate to music in general but not specifically to the "independent music community..." (Expert Determination, Section 66, p.24)

Objector Label Members include Labels representing the world's two best-selling artists of 2012, Adele and Taylor Swift,⁶ who are globally recognized and distributed. Associate members, include Apple iTunes (the world's largest music retailer with majority market share), which formally requires hundreds of millions of music fans to create formal Apple accounts and abide to strict terms of service in order to consume music. This is because objector Associate Members providing legal music (e.g. Apple iTunes or Pandora, the world's largest music radio) must ensure that royalties are paid to the music community rights-holders using clearly delineated, organized systems that identify rights-holders corresponding to each song sold or streamed (See Annex 3).

It is a fact that nearly all musicians (over 99%) are considered "independent" i.e. not signed to a major label. In fact, "70% of new music being bought is from artists not tied into old industry⁷" (the non-independents referred to as major labels). If one removes independent musicians from the music community then 99% of all music created would not exist. This undeniably proves the panel's lack of qualifications and incontrovertibly disproves the panelist's disingenuous assertion that the independent music community is not strongly associated with the "term" music. According to the AGB, "Community" is defined as "meaning "fellowship" – while still implying more of cohesion than a mere commonality of interest." The Independent Objector reiterates this definition "as a group of individuals who have something in common." (emphasis added). The common interest universally shared by the community is the "promotion and distribution of music." Furthermore, ICANN's definition of "Size" and "Substantial Opposition" relates to "a significant portion of the community⁸" – i.e. not the entire community. Substantial opposition should be taken within "context rather than on absolute numbers⁹" of a substantial portion of the community. The panelist did not follow the AGB language in regards to what constitutes a significant portion and that substantial opposition should be taken in "context rather than absolute numbers" i.e. not requiring "billions" of written expressions. However the panel curiously stated that "with billions of users the expressions of opposition would need to run in high numbers to meet this test." (Section 63, Pg.23). This clearly showed the panel's lack of understanding to these proceedings' rules that "opposition" relates to (i) opposition from the music community, (ii)

⁶ International Federation of the Phonographic Industry, <http://ifpi.org/content/library/dmr2013.pdf>, P.11

⁷ <http://blog.tunecore.com/2012/02/what-the-riaa-wont-tell-you-tunecores-response-to-the-ny-times-op-ed-by-the-riaa-ceo-cary-h-sherman.html>

⁸ <https://community.icann.org/display/newgtldrg/community+objection+grounds>

⁹ <http://newgtlds.icann.org/en/applicants/agb/string-contention-procedures-04jun12-en.pdf>, Module 4-11

not generically by Internet users, and (iii) be taken “within context” not literally. With such an unreasonable and unjustified statement the panel set an impossible threshold for any Objector to meet since using the number “billions” as a reference point to prove “substantial opposition” is irrational, unfair and ensures that any Objector would fail to meet such a standard (emphasis added). In context, in 2012 there were 42,100 employed musicians¹⁰ in the U.S, a country which represents 58% of the global digital music market¹¹ and 27% of the global music market share.¹² In this context, some Objector U.S Label Members alone represent a significant portion of the global community. As such, denying the Objector standing leads to serious procedural and fairness questions. If the panelist’s statements are taken literally no objector would ever qualify to have their concerns be heard since according to the panelist, **“music” is a generic term and can never have a shared, common interest, nor can a generic term be dependent on the DNS for core activities:**

A broad community may exist at the generic level... but this is not conducive to the clear delineation envisaged under this standard (Section 60, Pg.21)

While an association exists of course between the gTLD applied for and the term “music”, this is by definition a generic term that might relate to music in general but not specifically to the “independent music community” (66, Pg. 22)

The dependence of the community on the DNS for its core activities has not been proven (Section 71, Pg.24)

These statements run contrary to the Independent Objector who states there are many cases of strictly delineated communities and even filed many new gTLD Community Objections (.charity, .healthcare, .hospital, .indians, .med and .medical)¹³ based on his own definition of “community”:

It can include a community of interests, as well as a particular ethnic, religious, linguistic or similar community... a community can be defined as a group of individuals who have something in common ... or a common characteristic ... or share common values, interests or goals.¹⁴

¹⁰ U.S Department of Labor, <http://www.bls.gov/oes/current/oes272042.htm>

¹¹ <http://www.billboard.com/biz/articles/news/digital-and-mobile/1556590/ifpi-2013-recording-industry-in-numbers-global-revenue>

¹² http://www.ifpi.org/content/section_resources/rin/RIN_Content.html

¹³ <http://www.independent-objector-newgtlds.org/home/the-independent-objector-s-objections/>

¹⁴ <http://www.independent-objector-newgtlds.org/home/the-issue-of-closed-generic-gtlds/>, Community Objections, Section 3

While “music” is a generic term, it is dependent on a clearly delineated community which shares the common interest of promoting and distributing unique “music” through clearly delineated systems to compensate music community rights holders attributed to each song (emphasis added).

ICANN’s lack of action in ensuring appropriate selection and training of experts created a material harm to Objectors and the community proceedings.

As to Point 2: lack of consideration of the relevance and impact of the GAC Advice on the Community Objection process and failure to advise the ICC and Community Objection Panelists on the GAC Advice.

The Community Objection filing pre-dated the Beijing Communique and raised the same concerns set forth by the GAC and subsequently recognized by ICANN NGPC Resolutions and actions. After the Community Objection proceedings commenced, GAC and ICANN called into question Applications that were filed to run generic gTLDs as exclusive-access registries. This very question was presented by Objector at Objector’s significant expense. ICANN should have either advised the ICC and Panelists or required the ICC and Panelists to review and evaluate the impact and relevance of GAC Advice, Board Resolutions, and Applicant Responses to Category 2 on Exclusive Access, and revisions to the Registry Agreement to address these concerns.

When extremely significant, indeed program wide, issues were raised, the Board should have taken appropriate measures to either: a) suspend the proceedings to avoid further waste of resources addressing Applications that were called into question by GAC Advice; b) ensured that the ICC and Panelists were appropriately advised and educated regarding the importance and effect of the GAC Advice; and/or c) provided clear guidelines to address these issues without harming Objector(s).

As to Point 3: lack of an appeal process for Community Objections thereby denying parties procedures to protect their fundamental rights.

The failure of the Board to address a chorus of voices that called for an appeal mechanism to allow appropriate review of cases has prejudiced Objector’s ability to protect their members’ fundamental and legitimate rights.

ICANN's lack of action forced the parties to: a) bear significant expense; b) detrimentally rely on ICANN's stated policies and procedures for Community Objections; c) led to a breach of process; d) has resulted in Applicants materially changing their positions (e.g. from an exclusive access registry to an open registry) in the middle of a proceeding; and e) resulted in the selection and appointment of an expert that was not prepared to address the unique issues presented.

As a result of the Decisions, the Affected Parties suffered direct financial harm in order to prepare and file the Objections. The Affected Parties will also suffer financial harm, and their members will be globally affected should Applicant ultimately be awarded the most semantic music themed gTLDs, effectively controlling an entire music-related space on the Internet with unclear and unspecified policies, while disallowing the community from their legitimate right to registering their names under a public-resource gTLD.

The Affected Parties suffered a breach of due process in the proceedings because in the middle of the proceeding the Applicant was allowed to seemingly materially change (make a 180-degree shift) their Application from applying to run an exclusive-access registry to accepting GAC Advice on Category 2 Advice to intentionally open its registries. Affected Parties further suffered a breach in the proceedings when the panel, incredulously, refused to evaluate and consider relevant GAC Advice and other pertinent evidence presented.

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

Other groups adversely affected by the inaction are community applicants who have serious concerns about the unintended consequences and precedents created in the new gTLD Program in relation to Material Changes¹⁵ which are inconsistent to the AGB.

ICANN has opened the floodgates for allowing material changes without any consequences or accountability mechanisms to protect community applicants in a contention set by permitting standard Applicants to submit material changes in their Applications in the form of Public Interest Commitments (PICS) to remedy any faults an Application may have. In context, Community Applications already abide to the Registry Dispute Resolution

¹⁵ <http://newgtlds.icann.org/en/applicants/customer-service/change-requests>

Procedure (RRDRP) built-in accountability mechanism¹⁶ while standard Applicants do not. Community Applicants also have appropriate restrictions, including policies relating to authentication, Eligibility, Name Selection, Content/Use, and Enforcement to safeguard their communities.

Furthermore, Applicants with exclusive access Applications were also given the opportunity to respond to GAC Category 2 Advice. Nearly all exclusive access Applicants stated their intent to change their Applications to non-exclusive. Such public Responses negatively interfered with Community Objections since objected-to Applicants submitted GAC Category 2 Responses which directly contradict and are contrary to their Community Objection Responses. This is misleading and undermines the credibility of the new gTLD process. Objected-to Applications were given the opportunity to defend their exclusive access position – like they had in the Objection Responses – but decided against it since there are no repercussions for making inconsistent statements or any accountability mechanisms to prevent misleading the panelists. Also other Applicants used PICs – another form of material changes – in their Community Objection Responses which are not in their current Applications. Such changes of position occurring during Community Objection proceedings not found in current Applications indicates the procedural flaws of the Community Objection process and also vindicate Community Objectors' positions. ICANN has even took this issue a step further by revising the new gTLD Registry Agreement during Objection proceedings with language vindicating Objectors views. According to the AGB, any information that is deemed "false or misleading may result in denial of the application."

Such material changes, whether they are ones relating to changing a registry from “exclusive” to “non-exclusive” access or incorporating Public Interest Commitments (PICs) are clear, material changes, because they materially change an Applicant’s business model and other critical components in their Application, such as financial statements and their Letter of Credit. Under the ICANN AGB rules such material “changes” will likely “involve additional fees or evaluation in a subsequent application round.”

ICANN has introduced and allowed such procedural loopholes which objected-to Applicants have used to circumvent dispute resolution processes and the AGB, while

¹⁶ <http://www.icann.org/en/news/public-comment/rrdrp-15feb10-en.htm>

Community Applicants with responsible and accountable Applications are not allowed to incorporate such public interest changes to meet the CPE threshold. Loopholes, including Responses to GAC Category 2 advice, PICs or new ICANN NGPC Resolutions materially change Applications, negatively affect contention sets, circumvent Community Objections and create material harm to Objectors and community applicants in a contention set. NGPC Resolutions and ICANN's actions have introduced a harmful precedent to the ICANN new gTLD Program without any repercussions, consistent standards followed or accountability. In some cases, Panels have used NGPC Resolutions, the registry agreement revision and PICs against Objectors to prove that with these new resolutions material harm is avoided. This precedent used is a clear loophole benefiting objected-to Applicants at the Objectors' expense as Applicants argued that accepting GAC advice, new NGPC resolutions, new registry agreement revisions and adding PICs – all material changes – prove there is no possibility of material harm. As such, the existing new gTLD process has lost meaning since any standard Applicant is now allowed to “shift” their position without accountability of any sort or ICANN action to prevent such violations. Furthermore, ICANN is also in the process of once again favoring standard Applicants by giving brands special exemptions.¹⁷

Furthermore, community applicants and objectors in general have been materially harmed financially and procedurally as the selection of Community Objection experts was inconsistent with the AGB and the published CPE Guidelines which clearly say that experts are “selected based on their knowledge of specific countries, regions and/or industries, as they pertain to Applications.”¹⁸ Community applicants have relied on the language of the AGB that experts selected would be appropriately qualified with some credible level of knowledge and expertise on the communities reflected in the Applications determined. In many cases, the ICC has selected Panelists with no clearly appropriate qualifications or credible experience with respect to communities reflected in the Applications determined, which is a clear violation of the AGB, Section 3.4.4 which states that the “panel will consist of appropriately qualified experts.” As such, many Objectors were materially harmed by Determinations since Panelists lacked fundamental knowledge of community functions and such precedents might likely harm them in CPE Evaluation.

¹⁷ <http://www.icann.org/en/news/public-comment/spec13-06dec13-en.htm>

¹⁸ <http://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf>, Pg.22

8. Detail of Board or Staff Action – Required Information

Provide the Required Detailed Explanation here:

On June 19th 2013, a letter was sent to ICANN and the Board which raised serious concerns that "the ICC has not identified expert Panelists that have expertise in music - the relevant subject matter of interest for the communities."

On June 24th, 2013 ICANN responded stating that "for the matter of the expertise of the panel members...Section 3.4.4 of the Applicant Guidebook" states:

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

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

However, ICANN's response that the "appropriate qualifications" of an expert is in "mediation/arbitration" is not mentioned in the AGB. The definition of "expert" is "a person who has a comprehensive and authoritative knowledge of or skill in a particular area.¹⁹" Objectors reasonably relied on the fact that experts would be "appropriately qualified experts" pertaining to the Applications determined and have "comprehensive and authoritative knowledge" in that "particular area."

ICANN's correspondence opens up serious issues of lack of clarity, accountability and transparency in regards to the Community Objection process since the AGB clearly states the word "expert.", not the words "mediator" or "arbitrator" which would have been the appropriate words if ICANN's correspondence statements were applicable. This opens up new questions about the fairness of the process and the high probability of confusion based on the fact that ICANN did refer to the Panelists as "experts" not "arbitrators" or "mediators." This is aligned and consistent with the language used in another community-related

¹⁹ Oxford Dictionary, http://www.oxforddictionaries.com/us/definition/american_english/expert

evaluation process where experts are used – the Community Priority Evaluation. Specifically, CPE Guidelines clearly state that “evaluators are selected based on their knowledge of specific countries, regions and/or industries, as they pertain to Applications”²⁰ which is consistent with the definition of “expert” not an arbitrator or mediator. There is no mention in the AGB that the expert’s “appropriate qualifications” would be in “mediation/arbitration” because such qualifications would be inappropriate since they would directly harm Objectors given that Objectors would have the impossible burden of educating unqualified mediators/arbitrators on community specifics, how the community functions and other complexities requiring significantly more words than the maximum permitted in filing.

On July 30th an Additional Submission in light of GAC Advice/NGPC material change Resolutions and clarifications with respect to Amazon misleading Response statements about Objector's standing and material harm was submitted to Panelist:

Per Ms. Kořak's, message of July 30, 2013, we have been directed to confer directly with you. As you may be aware, yesterday we submitted Objector's Request for Leave to File an Additional Submission and Reply to Applicant's Response. Per the attached filing, this submission is made in accordance with Art 17 of the Attachment to Module 3 of the Applicant Guidebook.

On August 20th, the Panelist completely ignored material changes to the Program by GAC Advice, NGPC Resolutions and Applicant misleading statements and rejected the Additional Submission referring to its content as “not exceptional” despite the material changes’ influential impact on all new gTLDs and rule changes exceptionally affecting all Applicants:

Having examined the file... the Expert is of the opinion that it contains all the necessary elements required to reach a Determination on this dispute. Accordingly the Expert considers that there is no need to invite additional submissions as envisaged under Article 17 (a) of the Procedural Rules governing these proceedings. The Expert further notes the Applicant's comment to the effect that under Article 18 of the Procedural Rules production of documents is limited to exceptional cases. No such exceptional case exists at this time. On the basis of these considerations the Request is denied and its contents are not to be included in the file of this case.

In regard to GAC Advice, ICANN solicited responses from applicants for the strings identified by the GAC regarding whether they planned to operate the applied-for TLDs as exclusive access registries (defined as a registry restricted to a single person or entity and/or

²⁰ <http://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf>, Pg.22

that person's or entity's Affiliates" (as defined in Section 2.9c of the Registry Agreement). The responses were submitted to the New gTLD Program Committee (NGPC) of the ICANN Board. On 28 September 2013, the NGPC adopted a Resolution on GAC Category 2 Advice²¹ allowing applicants not planning to operate as exclusive access registries, and that are prepared to enter the Registry Agreement as approved, to move forward to contracting.

On October 8th, .MUSIC (DotMusic) sent written correspondence to ICANN²² in relation to Applicant Responses:

We write as a follow-up to our most recent Letter to ICANN (October 8th)²³ to formally record and publish our concerns about new material changes arising from ICANN NGPC Resolutions and their impact on the current Community Objection process. Specifically, we would like to highlight the effect of potentially prejudicial "exceptions" through the acceptance of certain GAC advice and ICANN NPGC resolutions.

On October 10th, 2013 .MUSIC followed up its email after the release of GAC Category 2 Advice Form Responses:

... it has come to our attention that two of the Applicants we have mentioned in our Letter (who are subject to community objections) have materially changed their opinion and clearly stated that their generic string application(s) for music-themed TLDs will no longer be operated as "exclusive" TLDs, a clear statement of admittance that their original applications' "exclusive" access music-themed TLDs create a strong likelihood of harm.

This is exactly the kind of issues on material changes our Letter has been trying to illustrate in light of ongoing Community Objections on the subject matter which now have no other predictable and consistent recourse but to be upheld given the transparent admittance by these Applicants: Amazon,²⁴ Far Further/ .music LLC.²⁵ We kindly request these statements by these two Applicants and our Letter be forwarded to the ICC Panelists since they are crucially pertinent to the cases at hand. We also kindly request some clarification statements from both ICANN and the ICC how such material changes will be addressed and handled since these Applicants' community objection responses were inconsistent with these GAC Category 2 Advice statements they have just made. It is clearly evident that (i) their original application submission was not done in error and such material changes and GAC Category 2 Advice statements: (i) affect third-parties materially, especially objectors and applicants in contention set, (ii) create

²¹ <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-28sep13-en.htm#2.a>

²² <http://www.icann.org/en/news/correspondence/roussos-to-crocker-et-al-08oct13-en.pdf>

²³ <http://www.icann.org/en/news/correspondence/roussos-to-crocker-et-al-12jul13-en.pdf> on the 12th, July 2013 with ICANN response at <http://www.icann.org/en/news/correspondence/willett-to-roussos-14aug13-en.pdf> on 14th August, 2013

²⁴ <http://newgtlds.icann.org/sites/default/files/applicants/09oct13/gac-advice-response-1-1316-18029-en.pdf>

²⁵ <http://newgtlds.icann.org/sites/default/files/applicants/09oct13/gac-advice-response-1-959-51046-en.pdf>

unfairness to both objectors and applicants in contention set, (iii) are material, and (iv), if allowed, create a precedent with unintended consequences to the new gTLD Program.

ICANN responded on October 22nd, 2013.²⁶ On October 10, 2013 another email was sent to the Expert and the ICC pertaining to Amazon's GAC 2 Response material change and position change in relation to their exclusive access applications for music-themed .music, .song and .tunes alerting GAC of their intentions to change their registries from exclusive to non-exclusive:

As you may not yet be aware, on October 9, 2013 (yesterday), ICANN published a submission by the Objected-to Applicant that materially affects the instant proceedings. Accordingly, Objector respectfully submits that these statements, and proposed sweeping changes to the Applicant's Applications be considered in connection with the instant matter.

As set forth below, to avoid further conflict with the Beijing Communiqué -- addressing concerns about Category 2 closed generic strings (and the same arguments asserted by Objector and under consideration in the instant proceedings) -- Applicant advised ICANN that it will materially change its position from running the .music, .tunes and .song TLDs as closed exclusive registries to open registries.

Accordingly, the Objector respectfully submits that the instant proceedings must now include an evaluation and consideration of the following ICANN publications dated October 9th, 2013 whereby Applicant states that it will change its Applications from "closed" and "exclusive" to "open."

Through these submissions the Applicant is attempting to circumvent this Objection and other criticism levied against it by "agreeing" to open its exclusive music-themed Registries. See New gTLD GAC Advice: Category 2 Safeguards and Applicant Responses Published October 9, 2013²⁷ and Applicant's Response to GAC Advice Category 2: Exclusive Access.²⁸

These newly-published statements by the Objected-to Applicant (published last night by ICANN) are contrary and inconsistent with the Applicant's Responses to the instant Community Objections. The foregoing submissions establish that the Applicant's originally-exclusionary polices in the objected-to Application(s) are not in the global public interest and would create a certainty of material harm to the legitimate interests of the music community and the global public interest.

Amazon has materially changed its stance with a new statement that their generic string application(s) for music-themed TLDs will no longer be operated as "exclusive" registries even though their current application(s) squarely state that "the TLD(s) will be operated as an exclusive registry." It is evident that Amazon's original position in relation to "exclusive" registry access has changed. Amazon's

²⁶ <http://www.icann.org/en/news/correspondence/willett-to-roussos-22oct13-en.pdf>

²⁷ <http://newgtlds.icann.org/en/applicants/gac-advice/cat2-safeguards>

²⁸ <http://newgtlds.icann.org/sites/default/files/applicants/09oct13/gac-advice-response-1-1316-18029-en.pdf>

proposed reverse in course is not yet approved and provides new evidence that Objector's concerns - which were raised prior to any public discussion about the harm of closed generics - should be upheld.

On the date that the instant Objections were filed, Applicant's music-themed applications (.music, .song and .tunes) created a certainty of material harm and were against the global public interest. The Applicant's proposed changes to its Applications are not yet approved and final by ICANN and thus the material harm still exists. Therefore, the only remedy is for this Panel to move to protect the community and public interest.

Objector also notes that ICANN's New gTLD Program Committee's (NGPC) Scorecard Resolution No. 10 dated September 28th, 2013²⁹ pertaining to the "Registry Agreement as approved by the NGPC, prohibits exclusive registry access for generic strings (emphasis added)." Here too, the NGPC resolution "is consistent with the GAC advice." The NGPC has directed ICANN "staff to move forward with the contracting process for applicants for strings identified in the Category 2 Safeguard Advice that are prepared to enter into the Registry Agreement as approved." Essentially, the NGPC and the objected-to Applicant have agreed with Objector's concerns that closed, exclusive registries for .music, .song and .tunes are improper and harmful.

If an expert determination has already been made that is contrary to upholding the Community Objection against the Applicant, we respectfully request the case be re-opened to address these new contradictory statements by the Applicant and to render a determination that: (i) is consistent with the Applicant's newly published conflicting statements; and (ii) is aligned with GAC advice and ICANN NGPC Resolutions on the issue of exclusive registry access for generic strings. Applicant is free to respond to these points and defend its material changes to open these strings in the midst of this Objection.

For the instant Community Objections to have meaning, and this process to maintain integrity, the matter must be re-opened and the issue be submitted for re-evaluation by the Expert.

On October 11, 2013, the Community Objection panelist in relation to Amazon's closed .music, .tunes and .song applications, Francisco Orrego Vicuña, responded:

I am in receipt of the parties' respective communications dated 10th and 11th October, 2013 in respect of the submission of new information in these cases. The Expert must inform the parties that no such new information can be considered at this stage in the context of the decisions on the cases noted... under Article 21 of the Dispute Resolution Procedure the Expert is directed to submit its Determination within 45 days of the constitution of the panel. This date has passed...The Objector's request in his communication of 10th October is accordingly not accepted.

²⁹ <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-annex-1-28sep13-en.pdf>

On November 26th, 2013 the ICC replied to our correspondence and informed in an email that such new information can be considered by the Expert:

...the Centre has also taken note of the exchange of e-mails between the parties and the Expert with regard to the request for re-opening the case following the Applicant's changes in its Applications. The Centre also notes the Objector's request that the ICC "*review this issue, allow discussion and provide clarification on these points*". The Centre would like to draw your attention to the fact, that the procedure for changing Applications, including the obligation of the Applicant to provide the explanations thereof, is governed by ICANN's rules... please be informed that the decision to re-open the case, should the need arise, and to take into account new or amended documents, is taken by the Expert (emphasis added) based on the information available and nature of the cases in question.

On November 26th, 2013 a response was sent to the ICC and Panelist:

After carefully reviewing the public Expert Determinations,³⁰ it is apparently clear that Experts have appropriately used the Applicant Guidebook as a strong reference for their Determinations and rules which makes this issue relevant and procedural in nature. As you have indicated, the procedure for changing Applications is governed by ICANN rules... The Centre also clearly noted that... "the decision to re-open the case, should the need arise, and to take into account new or amended documents, is taken by the Expert based on the information available and the nature of the cases in question.

The rules that the Expert must abide to are governed by ICANN rules and procedures, most notably the language contained in the Applicant Guidebook (AGB). There are specific provisions in regards to Material Changes found in the AGB³¹ to which all Applicants – including both Amazon (.music 1-1316-18029, .song 1-1317-53837, .tunes 1-1317-30761) and .music LLC/Far Further (.music 1-959-51046) must abide to, especially if their position is one of "exclusive access." However, they have publicly responded to GAC with a position which is 180 degrees different to their Responses to the ICC and different to their Application. This is misleading, inconsistent and legitimate grounds for concern with respect to procedures. If both Applicants' Responses and "original" Applications were so strong, they did have the option to defend their position with respect to GAC advice - as they did in their Objection Responses - but have now conveniently chosen a different direction, which is misleading and creates a harmful precedent in the ICANN process governing dispute resolution procedures.

It is reasonable to assume that in any proceeding – whether it is one conducted in a court of law or under an ICANN's dispute resolution procedure – that any inconsistencies or changes in position not reflected in the original testimony – the original Application (without any PICs or GAC Advice Category 1 or 2 material

³⁰ <http://www.iccwbo.org/products-and-services/arbitration-and-adr/expertise/icann-new-gtld-dispute-resolution/expert-determination/>

³¹ <http://newgtlds.icann.org/en/applicants/customer-service/change-requests>

changes) or their Responses to Objections - should be investigated by the Expert so that the procedures followed by the Expert are compliant with the Applicant Guidebook and no harmful precedent, unintended consequences or loopholes are created.

The ICANN Guidebook's section on "Material Changes" is clear that any information that is deemed "false or misleading may result in denial of the application" (AGB). We strongly believe that many – if not all - music-themed Applicants have provided misleading information in their Responses to the Community Objections because such Responses are not made public by the Centre (emphasis added). As such, there is no Applicant accountability towards the ICANN dispute resolution process or transparency with the Centre since the Applicants' Responses are not made public. We are deeply concerned with misleading music-themed gTLD Applicant Community Objection Responses especially those given to Experts that GAC Advice was "irrelevant." Such statements would not be seen under a positive light by both GAC or the ICANN NGPC if they were made public to them.

It is clear that if an Application is materially changed from "exclusive" to "non-exclusive" (by incorporating Category 2 safeguards) or incorporating Category 1 enhanced safeguards, it will affect its business model, its financial statements and its Letter of Credit. Under the ICANN AGB rules such "changes" will likely "involve additional fees or evaluation in a subsequent application round" (AGB) because the entire premise of the Applicant's Application has changed materially.

Last Thursday at the ICANN Public Forum in Buenos Aires/Argentina, we publicly informed the ICANN Board of these types of procedural loophole concerns which objected-to Applicants can use to circumvent the dispute resolution process. We have also met with the ICANN Ombudsman to express these same concerns and he recommended to reach out to the ICC and the Expert Panelist. The fact that the Centre agrees that "ICANN's new gTLD dispute resolution procedure does not provide for any specific provision in this regard" is clear evidence of procedural loopholes that Objected-to Applicants could use to their benefit to circumvent the Community Objections.

Our objective is that Objections are treated in a transparent and accountable manner, consistent with the Applicant Guidebook and rules contained in the AGB in regards to Material Changes or with respect to a change of position that was not in the original Application. We hope that the Experts acknowledge the issues at hand and the harmful precedent as illustrated in the Material Changes section of the AGB... music-themed gTLD Objectors' arguments, whether on the issue of "exclusive access" or "enhanced safeguards," were based on the Applicant's stated positions found in their Applications... Ultimately, the Expert should rule on the Applicant's stated Policies as found in their Applications taking into consideration any relevant new statements by the Applicant as well as new, pertinent ICANN NGPC Resolutions with respect to "exclusive access" or lack of "enhanced safeguards." Otherwise, the process has no meaning, and as long as a party can "shift" position to avoid scrutiny, there is no accountability.

Allowing inconsistent statements to be a justification for avoiding an adverse verdict would create a scenario that obviates the need for the Panel in the first place. We agree with the ICANN Resolutions and they provide additional evidence from ICANN - who, as the ICC agrees, writes the Rules - on the obvious harm created by music-themed Applications that do not have “adequate safeguards” or have “exclusive access.” We hope that the Expert Determinations are consistent and do not allow process loopholes for Objected-to Applicants to circumvent the process and the new ICANN NGPC resolutions which have vindicated the concerns presented in the music-themed Community Objections.

On December 3rd, 2013 the ICC responded to our correspondence:

The Centre carefully considered your comments regarding the above-mentioned case and the provisions of the Procedure and the Rules in this regard. Further, we have communicated your concerns to ICANN. However, at this point the Centre can only proceed pursuant to the current version of the Procedure which does not provide for the possibility of an amendment of the Objection in the course of the proceedings, unless permitted by the Expert (Emphasis Added). Accordingly, it is in his discretion to decide whether to take into account additional submissions...

There is also a lack of clarity with regard to the rules and procedures followed by the ICC and the panelist which are contradictory. On one hand the ICC states that Additional Submissions or amendments due to material changes at any stage of the proceedings can be “permitted by the Expert” and that “it is in his discretion to decide whether to take into account additional submissions”, while on the other hand the Expert denies having this power claiming that “no such new information can be considered at this stage in the context of the decisions on the cases noted” because “under Article 21 of the Dispute Resolution Procedure the Expert is directed to submit its Determination within 45 days of the constitution of the panel.”

It is noted that the ICANN Board and the NGPC responded to the GAC Advice and called for public comment and input regarding “closed generic” Category 2 Applications and took action to materially change how such gTLDs are to be operated and allowed Applicants to intentionally materially change their Applications, in some cases from an exclusive access registry to an open access registry – allowing substantial amendments to Applications during proceedings. During this process ICANN failed to respond to Objector’s stated concerns about the effect of GAC Advice on the proceedings and failed to advise the ICC and panel about the decisions made by ICANN. Moreover, at any point ICANN could have suspended

the Community Objection proceedings to allow for a reasoned review and consideration of the impact of such material changes on the wider gTLD process and Community Objections.

The Affected Parties believe that there was inaction by ICANN:

1) in failing to adequately train, advise, and instruct the ICC allowing the ICC to appoint an expert who was unqualified to address the specific issues related to music community presented by the Objector. The panel's unfamiliarity with the music community, its cultural composition, its strict delineation and a host of intellectual property issues it faces on the DNS (such as rampant piracy_ as well as the unique impact of the gTLD program on worldwide distribution of music, resulted in a fundamentally flawed decision that is a reversible error (emphasis added);

2) by refusing to present to the ICC and the panelist, GAC-related issues and new NGPC Resolutions: Responses to GAC Advice, Board Resolutions, Changes in Applicant positions through the GAC Advice Category 2: Exclusive Access Response Form for Applicants, and revisions to Registry Agreement that addressed GAC Advice allowed the Objection to proceed without consideration of the effect and importance of these exceptional developments that occurred after the Objections were filed;

3) by allowing a process to facilitate modifications and material changes to Applications are facilitated in response to GAC Advise on Category Exclusive Access Applications permitted Applicant's to fundamentally change positions in the middle of the proceedings without ramifications to the material detriment of Objector;

4) in creating a process by which exceptional modifications and material changes to Applications in response to GAC Advise on Category Exclusive Access Applications can be facilitated. Failing to address the effect of such actions to on-going Objections violated Article 4 of the Articles of Incorporation and Article 1, Section 2, 7, 8, and 9 of the ICANN Bylaws resulting in a breach of process and calls into question the legitimacy of the program; and

5) by failing to offer an appropriate appeal mechanism to address clear procedural issues and AGB violations pertaining to Objections especially in cases of unqualified panels and factually incorrect and inconsistent statements.

6) by harming applicants in a contention set as well as Community and Legal Rights Objectors against Amazon for the same strings that relied on the AGB's language. Amazon's position change in regards to exclusive-access, affects both Community Objections and Legal Rights Objections since they vindicate Objectors' arguments on the material harm test.

7) in failing to ensure there were no conflicts of interest and bias in panels relating to the new gTLD Objection process as whole. The Applicant's general counsel Doug Isenberg representing Amazon in these new gTLD Community Objections was also a Panelist determining a decision against another Objector (Food Network) in a new gTLD Legal Rights Objection proceeding. DotMusic has been involved in both Community Objections and Legal Rights Objections against Applicant for the same objected-to music-themed strings and such panel selection conflicts violate the AGB and introduces unintended precedents in that other panels may rely on for their determination. This compromises the credibility of the new gTLD program and sheds light on how Objections were mishandled by ICANN without any accountability on the selection of panels even if there was a clear conflict of interest.

9. What are you asking ICANN to do now?

The Affected Parties respectfully request that ICANN:

1) Reimburse or order the ICC to reimburse the Objector for all of its expenses, including but not limited to attorney fees, administrative expenses and Expert fees associated with cases: EXP_461_ICANN_78 (c EXP_479_ICANN_96 EXP_480_ICANN_97); and

2) Allow for new Community Objections to be filed for these Applications with the appointment of an appropriate Expert (noted as an expert in music/intellectual property/competition regulation);

3) Determine that Applicants that have made public statements intending to substantially amend their Applications by responding to GAC Advice be deemed material and inconsistent with their position in Community Objection Responses and rule in favor of Objectors given that it is admission of their harmful policies; or

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

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

DotMusic Limited (.MUSIC) is a new gTLD Applicant for the .music music-themed community application. The new gTLD Applicant and Objector(s)/Related-Objector Entities are entitled to a fair and appropriate evaluation of the AGB policies and procedures. Moreover, DotMusic as a competing applicant is adversely affected by ICANNs granting of modifications and changes to Applications in response to GAC Advice on Category 2 Exclusive Access Applications publicly stating Applicant's intention to fundamentally amend Applications and change positions without consideration on how such action affected other Applicants or the Community Objection process.

Furthermore, such panel decisions and false statements not based on facts pertaining to Objector's standing as a clearly delineated community (See Annex 3) or the music community's dependence on the DNS for activities (See Annex 2) can adversely affect the Community Priority Evaluation (and DotMusic as a community applicant) since EIU Evaluators could use the expert's factually incorrect opinion as precedent and fail Community Applicants in general (emphasis). DotMusic has spent over 8 years, significant resources and millions of dollars building the .music brand and receiving support from a significant portion of the community to pass CPE. If CPE fails, DotMusic will be subject to expensive auctions which were designed to favor deep pocketed standard Applicants – such as Amazon and Google – not community applicants.

The Objector and Related Objector Entities were entitled to a fair and appropriate management of the Objection proceedings in accordance with the AGB. By providing inadequate training and guidance to the ICC, ICANN allowed the ICC to appoint an unqualified expert that resulted in fundamentally flawed proceedings, factually incorrect statements and a harmful determination which creates a harmful precedent.

Breach of Fundamental Fairness

Basic principles of due process to the proceeding were violated and lacked accountability by ICANN, the ICC and the Panel. ICANN failed to consider concerns about the selection of the panel and the ICC failed to follow the procedures the AGB set in relation to selecting an

appropriately qualified expert in the subject-matter reflecting the Applications despite the excessive costs and resources attributed to filing. The panel also selected not to hear legitimate concerns and striking evidence by the Objector which were crucially relevant even contradicting the ICC's clear statements that it was up to panel's discretion to do so.

Failure to Consider Evidence

The Panel failed to consider relevant evidence relating to: (i) The Applicant deciding not to defend their exclusive access position and making a complete position change in their GAC Category 2 Response public statements changing from exclusive-access to non-exclusive, proving that their current Application creates a likelihood of material harm leading to a ruling favoring Objector; (ii) The clear standing of Objector as a clearly, delineated community; (iii) The significant size and global breadth of the Objector Members; (iv) How the music community is dependent on DNS/Internet for core activities.

Violation of ICANN Articles of Incorporation

Article 4 calls for ICANN to operate for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and applicable international conventions and local law, and to the extent appropriate and consistent with its Articles and ByLaws, through open and transparent processes that enable *competition and open entry in Internet related markets*.

ICANN should have properly communicated and delegated functions to the ICC and failed to do so in violation of ByLaws Art. 1, Section 2, 3 *To the extent feasible and appropriate, delegating coordination functions to or recognizing the policy role of other responsible entities that reflect the interests of affected parties*.

ICANN or the NGPC should have properly communicated to the ICC and the Panelists the existence and effect of GAC Advice, PICs, NGPC Resolutions and Registry Agreement revisions on pending Objections. ICANN or the NGPC should have also considered the effect of allowing such substantial amendments to Applications and material changes to the gTLD Program (ByLaws Art. 1, Section 2, 7 *Employing open and transparent policy development mechanisms that (i) promote well-informed decisions based on expert advice, and (ii) ensure that those entities most affected can assist in the policy development*

process; ByLaws Art. 1, Section 2, 8 Making decisions by applying documented policies neutrally and objectively, with integrity and fairness.

Between April, 2013 and December 9, 2013 (the date of the Decision), ICANN could have acted to protect Applicants and Objector from material harm by properly addressing material flaws with the ICC Process and/or informing the ICC and Panelists regarding the GAC Advice and related issues (ByLaws Art. 1, Section 2, 9 *Acting with a speed that is responsive to the needs of the Internet while, as part of the decision-making process, obtaining informed input from those entities most affected*; ByLaws Art. 1, Section 2, 10 *Remaining accountable to the Internet community through mechanisms that enhance ICANN's effectiveness*; ByLaws Art. 1, Section 2, 11 *While remaining rooted in the private sector, recognizing that governments and public authorities are responsible for public policy and duly taking into account governments' or public authorities' recommendations*; and ByLaws Art. 3, Section 1 *ICANN and its constituent bodies shall operate to the maximum extent feasible in an open and transparent manner and consistent with procedures designed to ensure fairness.*

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

X Yes

11a. If yes, Is the causal connection between the circumstances of the Reconsideration Request and the harm the same for all of the complaining parties?

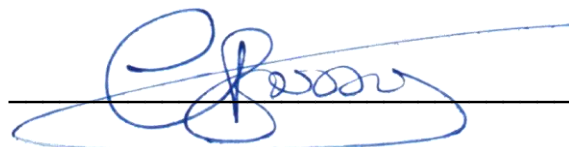
Yes, because the music community (i) has a shared, common interest - the legal distribution and promotion of music, (ii) is dependent on the DNS (where rampant piracy occurs) for core activities, and since (iii) Determinations of such significance pertaining to competition and exclusive access can create material detriment to the legitimate interests of a significant portion of the music community that is represented by the Affected parties. Failure of the panelist to understand that the music community is reliant on the DNS exhibits why this particular case requires someone familiar with music/intellectual property matters.

Do you have any documents you want to provide to ICANN?

Yes, please see Annex. Attached are the (i) 3 Expert Determinations for .music, .song, and .tunes (See Annex 1), (ii) Proof of evidence that the music community is reliant on the DNS/Internet for core activities (See Annex 2), and (iii) Proof of evidence that the music community is clearly and strictly delineated (See Annex 3), which was mentioned in the Additional Submission.

Terms and Conditions for Submission of Reconsideration Requests

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



Constantinos Roussos

DotMusic (.MUSIC)

12/22/2013

Date

Exhibit DIDP A113

AMENDED AND RESTATED ARTICLES OF INCORPORATION OF INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS

1. The name of this corporation is Internet Corporation for Assigned Names and Numbers (the “**Corporation**”).
2. This Corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the California Nonprofit Public Benefit Corporation Law for charitable and public purposes. The Corporation is organized, and will be operated, exclusively for charitable, educational, and scientific purposes within the meaning of § 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “**Code**”), or the corresponding provision of any future United States tax code. Any reference in these Articles to the Code shall include the corresponding provisions of any future United States tax code. In furtherance of the foregoing purposes, and in recognition of the fact that the Internet is an international network of networks, owned by no single nation, individual or organization, the Corporation shall, except as limited by Article 4 hereof, pursue the charitable and public purposes of lessening the burdens of government and promoting the global public interest in the operational stability of the Internet, as such global public interest may be determined from time to time by the multistakeholder community through an inclusive bottom-up multistakeholder community process, by carrying out the mission set forth in the bylaws of the Corporation (“**Bylaws**”).
3. The Corporation shall operate in a manner consistent with these Articles and its Bylaws for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and international conventions and applicable local law and through open and transparent processes that enable competition and open entry in Internet-related markets. To this effect, the Corporation shall cooperate as appropriate with relevant international organizations.
4. Notwithstanding any other provision of these Articles:
 - a. The Corporation shall not carry on any other activities not permitted to be carried on (i) by a corporation exempt from United States income tax under § 501(c)(3) of the Code or (ii) by a corporation, contributions to which are deductible under § 170(c)(2) of the Code.

- b. No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall be empowered to make the election under § 501 (h) of the Code.
 - c. The Corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office.
 - d. No part of the net earnings of the Corporation shall inure to the benefit of or be distributable to its directors, trustees, officers, or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article 2 hereof.
5. To the full extent permitted by the California Nonprofit Public Benefit Corporation Law or any other applicable laws presently or hereafter in effect, no director of the Corporation shall be personally liable to the Corporation for or with respect to any acts or omissions in the performance of his or her duties as a director of the Corporation. Any repeal or modification of this Article 5 shall not adversely affect any right or protection of a director of the Corporation existing immediately prior to such repeal or modification.
6. Upon the dissolution of the Corporation, the Corporation's assets shall be distributed for one or more of the exempt purposes set forth in Article 2 hereof and, if possible, to a § 501(c)(3) organization organized and operated exclusively to lessen the burdens of government and promote the global public interest in the operational stability of the Internet, or shall be distributed to a governmental entity for such purposes, or for such other charitable and public purposes that lessen the burdens of government by providing for the operational stability of the Internet. Any assets not so disposed of shall be disposed of by a court of competent jurisdiction of the county in which the principal office of the Corporation is then located, exclusively for such purposes or to such organization or organizations, as such court shall determine, that are organized and operated exclusively for such purposes, unless no such corporation exists, and in such case any assets not disposed of shall be distributed to a § 501(c)(3) corporation chosen by such court.
7. Any amendment to these Articles shall require (a) the affirmative vote of at least three-fourths of the directors of the Corporation, and (b) approval in writing by the Empowered Community, a California nonprofit association established by the Bylaws (the “**Empowered Community**”), following procedures set forth in Article 25.2 of the Bylaws.

8. Any transaction or series of transactions that would result in the sale or disposition of all or substantially all of ICANN's assets shall require (a) the affirmative vote of at least three-fourths of the directors of the Corporation, and (b) approval in writing by the Empowered Community prior to the consummation of the transaction, following procedures set forth in Article 26 of the Bylaws.

Exhibit DIDP A114

**DETERMINATION
OF THE BOARD GOVERNANCE COMMITTEE (BGC)
RECONSIDERATION REQUEST 15-8**

20 JUNE 2015

The Requester, Atgron, Inc, seeks reconsideration of the ICANN Board Governance Committee's ("BGC's") summary dismissal of Reconsideration Request 15-5, which sought reconsideration of the BGC's determination of Reconsideration Request 15-1. Request 15-1, filed by the Requester on 15 January 2015, challenged staff's actions in processing the Requester's Registry Services Evaluation Policy ("RSEP") request to allow the Requester to offer third-level domain name registrations in .WED.

The Bylaws provide that the BGC "may summarily dismiss a Reconsideration Request if, among other things: (i) the requestor fails to meet the requirements for bringing a Reconsideration Request; [or] (ii) it is frivolous, querulous or vexatious."¹ The BGC finds summary dismissal appropriate here because this is the third reconsideration request filed by the Requester based on the exact same facts and circumstances, raising the exact same arguments, and, as twice before, the Requester fails to satisfy the reconsideration criteria set forth in the Bylaws.² Furthermore, the Requester's conduct in filing multiple requests regarding the same underlying facts and raising the same arguments borders on frivolous, querulous, and vexatious. The BGC therefore summarily dismisses Request 15-8. The BGC also notes that ICANN is

¹ Bylaws, Art. IV, § 2.9.

² Article IV, § 2.2 of ICANN's Bylaws states in relevant part that any entity may submit a request for reconsideration or review of an ICANN action or inaction to the extent that it has been adversely affected by:

- (a) one or more staff actions or inactions that contradict established ICANN policy(ies); or
- (b) one or more actions or inactions of the ICANN Board that have been taken or refused to be taken without consideration of material information, except where the party submitting the request could have submitted, but did not submit, the information for the Board's consideration at the time of action or refusal to act; or
- (c) one or more actions or inactions of the ICANN Board that are taken as a result of the Board's reliance on false or inaccurate material information.

charged with using its resources in the public benefit; responding to the Requester's repeated reconsideration requests, when they do not raise any new arguments or assert any grounds for reconsideration, is not an appropriate use of those resources.

Exhibit DIDP A115

**DETERMINATION
OF THE BOARD GOVERNANCE COMMITTEE (BGC)
RECONSIDERATION REQUESTS 16-1 AND 16-2**

25 FEBRUARY 2016

Commercial Connect, LLC (Requester) filed two Reconsideration Requests—Requests 16-1 and 16-2 (collectively, Requests)—regarding the same subject matter.¹ In Request 16-2, the Requester seeks reconsideration of ICANN staff’s determination to proceed with the scheduled 27 January 2016 auction for .SHOP (Auction). In Request 16-1, the Requester seeks reconsideration of ICANN’s staff’s determination that the Requester’s time to invoke the Cooperative Engagement Process (CEP) regarding the Board’s denial of Reconsideration Request 15-13 (Request 15-13) had passed, and argues that ICANN staff “prevented” it from filing a valid Request for Independent Review Process (IRP). The Requester also renews the challenges that it raised in Request 15-13 to a Community Priority Evaluation (CPE) panel’s report finding that the Requester’s application for .SHOP did not achieve priority through CPE (CPE Report), and ICANN’s acceptance of that report.

I. Brief Summary.

The Requester submitted a community-based application for .SHOP (Application). Eight other applications were also submitted for .SHOP. The Requester’s Application did not prevail in CPE and therefore remained in contention with the eight other applications.

Requests 16-1 and 16-2 represent the *fifth and sixth* reconsideration requests that the Requester has filed related to its Application. In Request 16-2, the Requester seeks to somehow undo the results of the .SHOP Auction that occurred on 27 January 2016 – an auction in which the Requester previously had chosen not to participate. In Request 16-1, the Requester renews

¹ Because the Requests are made by the same Requester and raise sufficiently similar issues, they will be addressed in the same proceeding. Bylaws, Art. IV, § 2.8

its time-barred challenge to the CPE Report finding that its Application was not entitled to community priority. The Requester also challenges ICANN staff's determination that the Requester had missed the Bylaws-mandated deadline to initiate CEP regarding the Board's denial of Request 15-13. The Requester likewise claims that ICANN staff acted to prevent it from initiating an IRP regarding the Board's denial of Request 15-13.

The Requester's claims are unsupported and are the latest in a long line of frivolous abuses of ICANN's accountability mechanisms by the Requester. The Requester's renewed attempt to challenge the CPE Report is improper and time-barred. The Requester has not raised any new arguments or evidence since its previous challenge to the CPE report in Request 15-13, which was denied. As to the other issues raised by the Requester, the facts demonstrate that ICANN staff adhered to established policy and procedure with respect to the Auction, took unprecedented steps to keep the Requester apprised of, and involved in, the Auction, and properly responded to the Requester's many incomplete, aborted, and/or improper attempts to invoke ICANN's accountability mechanisms. The BGC therefore denies Requests 16-1 and 16-2.

The BGC is also deeply concerned by the Requester's repeated abuses of ICANN's accountability mechanisms and New gTLD Program processes, all of which appear to be last ditch delay tactics. These include, but certainly are not limited to, the Requester's filing of a frivolous lawsuit and a vacuous motion for temporary restraining order against ICANN in federal court in violation of the Terms and Conditions of the Applicant Guidebook (Guidebook), as well as the Requester's invocation of essentially *every* accountability mechanism within a 24-hour period before the Auction, after the Requester affirmatively decided to not participate in the Auction. ICANN has expended and diverted significant resources and funds engaging with the Requester and responding to its numerous, last-minute attempts to stop the .SHOP Auction.

Although providing fair, open, and transparent access to ICANN’s accountability mechanisms is critical to ICANN’s mandate, there is no justification for ICANN and members of its community having to suffer repeated baseless invocations of those mechanisms.

II. Facts.

A. Background Facts.

1. The Requester’s Application

In 2000, the ICANN Board adopted a measured and responsible application process for the introduction of new gTLDs.² The Requester submitted an application for .SHOP during this “proof-of-concept” round (2000 Application). In its 2000 Application, the Requester acknowledged that it had “no legally enforceable right to acceptance or any other treatment of [its] application or to the delegation in any particular manner of any top-level domain that may be established in the authoritative DNS root.”³ The Requester also expressly agreed in its 2000 Application to “*release[] and forever discharge[] ICANN . . . from any and all claims and liabilities relating in any way to (a) any action or inaction by or on behalf of ICANN in connection with this application or (b) the establishment or failure to establish a new TLD.*”⁴ The Requester’s 2000 Application was not approved by ICANN.

In 2012, as part of the New gTLD Program, the Requester submitted a community-based application for .SHOP. As provided for in the Guidebook, because the Requester had applied for .SHOP in its 2000 Application but was not awarded the string, the Requester received an US\$86,000 offset for its .SHOP Application.⁵ In accepting this credit, the Requester signed a

² ICANN TLD Application Process: Information for Applicants, *available at* <http://www.icann.org/en/tlds/tld-application-process.htm>

³ 2000 Application, *available at* https://archive.icann.org/en/tlds/mall1/_2_I6.1_AppTrans.htm, ¶ B12; *see also id.* ¶ B6 (“there is no understanding, assurance, or agreement that this application will be selected for negotiations toward entry of an agreement with a registry operator”).)

⁴ *Id.* ¶ B14.2 (emphasis added.)

⁵ Guidebook, § 1.5.1.

credit request form (2000 Credit Request Form) confirming that it “was not awarded any string pursuant to the 2000 proof-of-concept round and [] has no legal claims arising from the 2000 proof-of-concept process.”⁶

In addition, the Requester, like all others submitting applications in connection with the 2012 New gTLD Program, acknowledged and agreed to the Terms and Conditions set forth in Module 6 of the Guidebook. Among those Terms and Conditions is a waiver and release barring all actions in court or other judicial fora against ICANN or its Affiliated Parties (as defined in Guidebook Module 6) arising out of ICANN’s or those Affiliated Parties’ evaluation of any new gTLD application:

6. Applicant hereby releases ICANN and the ICANN Affiliated Parties [i.e., ICANN’s affiliates, subsidiaries, directors, officers, employees, consultants, evaluators, and agents] from any and all claims by applicant that arise out of, are based upon, or are in any way related to, any action, or failure to act, by ICANN or any ICANN Affiliated Party in connection with ICANN’s or an ICANN Affiliated Party’s review of this application, investigation or verification, any characterization or description of applicant or the information in this application, any withdrawal of this application or the decision by ICANN to recommend, or not to recommend, the approval of applicant’s gTLD application. APPLICANT AGREES NOT TO CHALLENGE, IN COURT OR IN ANY OTHER JUDICIAL FORA, ANY FINAL DECISION MADE BY ICANN WITH RESPECT TO THE APPLICATION, AND IRREVOCABLY WAIVES ANY RIGHT TO SUE OR PROCEED IN COURT OR ANY OTHER JUDICIAL FORA ON THE BASIS OF ANY OTHER LEGAL CLAIM AGAINST ICANN AND ICANN AFFILIATED PARTIES WITH RESPECT TO THE APPLICATION. . . .⁷

Following the results of a String Similarity Review (SSR) process and the determinations on various string confusion objections, the Requester’s Application was placed into a contention set with eight other applications for .SHOP.

The Requester filed twenty-one string confusion objections against applicants for strings like .BUY, .ECOM, .SALE, .SHOPYOURWAY, and for strings representing words such as

⁶ New gTLD Application 2000 Round Credit Request, *available at* <https://www.icann.org/en/system/files/files/cc-v-icann-oyler-declaration-exhibits-a-f-25jan16-en.pdf>.

⁷ Guidebook, Module 6, ¶ 6.

“web shop” in languages such as Chinese, Japanese, and Arabic.⁸ All but two of the Requester’s twenty-one objections were overruled, and one of the two objections in which the Requester prevailed was later overturned.⁹

In 2013 and 2014, the Requester also filed *three* separate Reconsideration Requests relating to its Application.¹⁰ All three Reconsideration Requests were denied.¹¹

Because the Requester submitted a community application, it was invited to participate in CPE. The Requester elected to participate in CPE, and on 21 May 2105, the CPE Panel issued the CPE Report, determining that the Requester’s Application scored only five out of 16 possible points on the CPE criteria—11 points less than the minimum required to achieve priority—and therefore did not prevail in CPE.¹²

On 10 July 2015, the Requester filed its *fourth* reconsideration request, Reconsideration Request 15-13, seeking reconsideration of the CPE Report, and challenging various procedures

⁸ See <http://newgtlds.icann.org/en/program-status/odr/determination>.

⁹ *Id.* One of the determinations finding that the Requester prevailed (Determination) was perceived as inconsistent with another string similarity objection determination. The NGPC resolved that the Determination should be re-evaluated, and the dispute resolution service provider that conducted the re-evaluation of the objection proceeding later overturned the Determination as unreasonable. NGPC Resolutions 2014.10.12.NG02-03, *available at* <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-10-12-en#2.b>; Final Determination on Case No. 0115 0003 3821, *available at* <https://newgtlds.icann.org/sites/default/files/drsp/21aug15/determination-2-1-1318-15593-en.pdf>.

¹⁰ Reconsideration Request 13-10, *available at* <https://www.icann.org/en/system/files/files/request-commercial-connect-05sep13-en.pdf>; Reconsideration Request 13-15, *available at* <https://www.icann.org/en/system/files/files/request-commercial-connect-25oct13-en.pdf>; Reconsideration Request 14-11, *available at* <https://www.icann.org/en/system/files/files/request-commercial-connect-02apr14-en.pdf>.

¹¹ BGC Recommendation on Request 13-10, *available at* <https://www.icann.org/en/system/files/files/recommendation-commercial-connect-10oct13-en.pdf>; NGPC Resolution 2014.11.07.NG02, *available at* <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-11-07-en>; BGC Determination on Request 13-15, *available at* <https://www.icann.org/en/system/files/files/determination-commercial-connect-12dec13-en.pdf>; BGC Determination on Request 14-11, *available at* <https://www.icann.org/en/system/files/files/determination-commercial-connect-29apr14-en.pdf>.

¹² CPE Report, *available at* <https://www.icann.org/sites/default/files/tlds/shop/shop-cpe-1-1830-1672-en.pdf>.

governing the New gTLD Program, as well as the SSR process and the adjudication of various string confusion objections, which ultimately resulted in the contention set for its Application.¹³

On 24 August 2015, the BGC recommended that Request 15-13 be denied, determining that the Requester's claims were time-barred, and in any event, the Requester had not demonstrated a basis for reconsideration with respect to the CPE Report or otherwise.¹⁴

On 28 September 2015, the New gTLD Program Committee (NGPC) accepted the BGC's recommendation to deny Request 15-13 (28 September 2015 Resolution).¹⁵ The minutes of that meeting were published on 19 October 2015.¹⁶

On 3 November 2015, the deadline for the Requester to invoke CEP relating to the 28 September 2015 Resolution expired.¹⁷

2. The Requester's Attempts to Delay the Resolution of the .SHOP Contention Set.

Following the denial of Request 15-13, rather than timely invoking the accountability mechanisms available to it, the Requester began to engage in months-long pattern of dilatory tactics aimed at preventing ICANN staff from facilitating resolution of the .SHOP contention set. On 17 November 2015, the day before a Request for IRP relating to the 28 September 2015 Resolution would have been due, the Requester filed a request pursuant to ICANN's Documentary Information Disclosure Policy (DIDP), seeking additional information regarding

¹³ Request 15-13, *available at* <https://www.icann.org/en/system/files/files/reconsideration-request-15-13-commercial-connect-with-appendices-10jul15-en.pdf>

¹⁴ BGC Recommendation on Request 15-13, *available at* <https://www.icann.org/en/system/files/files/determination-15-13-commercial-connect-24aug15-en.pdf>.

¹⁵ Resolution 2015.09.28.NG02, *available at* <https://www.icann.org/resources/board-material/resolutions-new-gtld-2015-09-28-en>.

¹⁶ *See* <https://www.icann.org/resources/board-material/minutes-new-gtld-2015-09-28-en>.

¹⁷ Cooperative Engagement Process, ¶ 2, *available at* <https://www.icann.org/en/system/files/files/cep-11apr13-en.pdf>; Bylaws, Art. IV, § 3.14.

SSRs, auctions, and other issues.¹⁸ The same day, the Requester appeared to make a request for CEP and stated that it anticipated initiating an IRP relating to the 28 September 2015 Resolution. The Requester claimed that it had delayed doing so on the mistaken impression that the minutes of that meeting had not yet been published, and then had been unable to submit a Request for IRP due to alleged issues with the International Centre for Dispute Resolution's (ICDR) website. The Requester attached a two-page Notice of IRP form (without any of the supporting documentation required to initiate an IRP) and requested a 30-day extension to initiate an IRP.¹⁹

On 18 November 2015, ICANN advised the Requester that minutes of the NGPC's 28 September 2015 meeting had been published on 19 October 2015 and directed the Requester to the link for the published minutes.²⁰ ICANN also advised the Requester that the deadline to initiate a CEP related to the 28 September 2015 Resolution had been 3 November 2015, and that the Bylaws-mandated deadline to file an IRP Request was 18 November 2015.²¹ Additionally, ICANN provided the Requester with links to pages on the ICDR's website with information about the requirements for filing IRP Requests to help assist the Requester with its attempts to initiate an IRP.²² With respect to the request for a 30-day extension, ICANN informed the Requester that because the deadline is mandated by ICANN's Bylaws, ICANN could not grant the requested extension.²³ In this time frame, the Requester never properly initiated CEP or an IRP, notwithstanding ICANN and the ICDR's attempt to assist the Requester.

On 29 October 2015, all applications in the .SHOP contention set were invited to enter into the auction process. Applicants were given a deadline of 26 November 2015 to elect to

¹⁸ DIDP Request, available at <https://www.icann.org/en/system/files/files/didp-20151117-1-smith-request-17nov15-en.pdf>.

¹⁹ Exhibit A, Pgs. 1-2.

²⁰ Exhibit B, Pgs. 6-7, 8.

²¹ *Id.*, Pg. 9

²² *Id.*, Pgs. 8-9.

²³ *Id.*

enter into the auction process and participate in the auction.²⁴ On 20 November 2015, ICANN sent the Requester a reminder regarding the 26 November 2015 deadline.²⁵ On 25 November 2015, the Requester asked for and received an extension to 1 December 2015 to respond to the auction invitation.²⁶ Despite repeated reminders by ICANN, the Requester did not respond to the auction request, as it had stated that it would do.²⁷ Instead, it informed ICANN on 4 December 2015 that it felt it should not have to respond while trying to determine a way forward with its IRP, and that it did not have sufficient information regarding the Auction.²⁸

On 3 December 2015, the Requester informed ICANN that it was “still [its] intent to file [a] request for Independent Review . . . but [was] still unclear on what is needed and how to proceed.”²⁹ The ICDR, which was copied on the Requester’s email, responded providing the Requester with all the relevant information for initiating an IRP. ICANN followed up, continuing to try to help the Requester, stating that ICANN understood that the ICDR had “provided [the Requester] with what appears to be all the relevant information needed to file your request for Independent Review. If you have any additional questions, please let us know.”³⁰

On 10 December 2015, ICANN was contacted by [an](#) attorney retained by the Requester. She stated that the Requester was considering pursuing an IRP relating to Request 15-13 and sought additional information regarding when that request would be considered by the NGPC.³¹ On 12 December 2015, ICANN responded to the attorney, setting forth the information it had

²⁴ Exhibit K, Pg. 130.

²⁵ Exhibit L, Pg. 138.

²⁶ *Id.*, Pgs. 137-38.

²⁷ *Id.*, Pg. 137.

²⁸ *Id.*, Pg. 136.

²⁹ Exhibit D, Pgs. 67-68.

³⁰ Exhibit E, Pg. 73.

³¹ Exhibit F, Pgs. 81-82.

previously provided the Requester by email on 18 November 2015 (including that the NGPC had considered Request 15-13 on 28 September 2015, and that the minutes of that meeting had been published on 19 October 2015).³²

On 11 December 2015, ICANN provided the Requester with further information regarding the auction process.³³ ICANN also specifically advised the Requester that at that time there were no accountability mechanisms affecting the .SHOP contention set and that the Auction was still scheduled for 27 January 2016.³⁴ ICANN repeated these reminders on 15, 18, and 22 December 2015.³⁵ On 23 December 2015, ICANN sent the Requester yet another reminder, further advising the Requester that if it wished to participate in the Auction it would need to submit a bidder agreement by 15 January 2016.³⁶

On 6 January 2016, the Requester filed a lawsuit regarding the Requester's Application and 2000 Application against ICANN and the ICDR in the United States District Court for the Western District of Kentucky, together with a motion for Temporary Restraining Order and Preliminary Injunction (Motion for TRO/PI).³⁷ Despite the Requester's claims of exigent circumstances in the lawsuit and Motion for TRO/PI, the Requester never served ICANN with a copy of the summons, complaint, or motion papers.

Despite the filing of the Requester's lawsuit, on 7 January 2016, ICANN participated in a telephone conference with the Requester, again advising the Requester of the 15 January 2016 deadline for submitting a bidder agreement and also advising it that the deadline to deposit

³² *Id.*, Pgs. 80-81.

³³ Exhibit L, Pgs. 134-35.

³⁴ *Id.*

³⁵ *Id.*, Pgs. 133-34.

³⁶ *Id.*, Pgs. 132-33.

³⁷ See <https://www.icann.org/en/system/files/files/cc-v-icann-complaint-06jan16-en.pdf>.

auction fees was 20 January 2016.³⁸ ICANN sent the Requester a final reminder on 15 January 2016.³⁹ The Requester did not submit a bidder agreement.

On 11 January 2016, after ICANN through its own means had learned of the Requester's lawsuit, ICANN's outside counsel sent the Requester's counsel a letter advising that the Requester's lawsuit was barred by the waivers and releases accepted by Requester in Module 6, Requester's 2000 Application and the 2000 Round Credit Form, and that the lawsuit was a breach of Requester's Application.⁴⁰ For these reasons, and others, ICANN's counsel demanded that the Requester withdraw the lawsuit or risk ICANN pursuing sanctions against the Requester and its counsel for filing a frivolous lawsuit as well as the risk of ICANN terminating the Requester's Application for breach of the Guidebook's terms and conditions.⁴¹

Knowing of these risks, the Requester proceeded with its lawsuit. However, on 18 January 2016, the Requester's counsel filed a motion to withdraw as counsel, stating that he had not been aware of the waivers and releases when the suit was filed and had a "fundamental disagreement" with the Requester's decision to proceed with the suit.⁴² On 25 January 2016, despite not having been served in the case, ICANN made a special appearance to oppose the Requester's Motion for TRO/PI based on an order from the court.⁴³ On 26 January 2016, the court denied the Requester's Motion for TRO/PI, finding that the Requester had failed to show a likelihood of success on the merits of its claims because the releases agreed to by Requester were "clear and comprehensive."⁴⁴ The court also granted the Requester's counsel's motion to

³⁸ Exhibit L, Pg. 132.

³⁹ *Id.*, Pgs. 131-32.

⁴⁰ Exhibit M.

⁴¹ *Id.*

⁴² See <https://www.icann.org/en/system/files/files/cc-v-icann-plaintiff-motion-withdraw-counsel-18jan16-en.pdf>.

⁴³ See <https://www.icann.org/en/system/files/files/cc-v-icann-special-appearance-atallah-declaration-25jan16-en.pdf>.

⁴⁴ See <https://www.icann.org/en/system/files/files/cc-v-icann-court-order-prelim-injunction-withdraw-counsel-26jan16-en.pdf>.

withdraw, finding that “[g]ood cause exists where an attorney’s continued representation of a client could subject counsel to [] sanctions.”⁴⁵

On 22 January 2016, and while the Requester’s Motion for TRO/PI was pending, a representative for the Requester sent ICANN a Notice of IRP filing, but did not provide the supporting documents required to complete its filing.⁴⁶ On 26 January 2016, the ICDR informed the Requester’s representative by email that its attempt to initiate an IRP was defective and “not sufficient in order to proceed with administration of this matter,” under the ICDR Rules and the Supplementary Procedures for IRPs, because it was not accompanied by the requisite supporting documentation.⁴⁷

Then, less than 24 hours before the Auction was scheduled to take place, the Requester attempted to invoke *all* of ICANN’s accountability mechanisms in a late and last-ditch effort to stop the Auction, in which it had previously and affirmatively chosen not to participate. First, on the morning of 26 January 2016, the Requester attempted to initiate a CEP regarding the 28 September 2015 Resolution.⁴⁸ ICANN staff promptly informed the Requester, as it had previously done on two other occasions, that the deadline to initiate a CEP relating to that Board action was 3 November 2015, nearly three months earlier.⁴⁹

Second, later that afternoon the Requester filed a complaint with the Ombudsman, which the Ombudsman declined for lack of jurisdiction in light of the Requester’s lawsuit.⁵⁰

Third, on the same day, the Requester filed Request 16-1, its *fifth* reconsideration request related to its .SHOP Application, seeking reconsideration of ICANN staff’s determination that

⁴⁵ *Id.*, Pg. 2.

⁴⁶ Exhibit S, Pgs. 171-72.

⁴⁷ Exhibit N, Pgs. 153-54.

⁴⁸ Exhibit G, Pgs. 84-88.

⁴⁹ *Id.*, Pg. 84.

⁵⁰ Exhibit J, Pg. 123.

the time to initiate a CEP had passed, arguing that staff had somehow prevented it from initiating an IRP, and renewing the various challenges raised in Request 15-13.⁵¹ The Requester included other applicants in the .SHOP contention set on many of these communications, despite requests that he not do so and in violation of ICANN's auction rules.⁵²

Finally, on the morning of 27 January 2016, less than two hours before the scheduled Auction, the Requester submitted a Request for Emergency Arbitrator to the ICDR (Emergency Request).⁵³ Without conceding the Requester's claims or the appropriateness and merit of the Emergency Request, ICANN immediately informed the ICDR that it would not challenge the Requester's pursuit of its Emergency Request.⁵⁴ Accordingly, the ICDR moved forward with the Emergency Request.

The .SHOP Auction was conducted on 27 January 2016, as had been scheduled to do since 29 October 2015.

On 28 January 2016, ICANN received an email from the ICDR stating that the Requester was seeking a short stay of the Emergency Request.⁵⁵ On 1 February 2016, the Requester's counsel notified the ICDR that the Requester was suspending its Emergency Request.⁵⁶ On 2 February 2016, the ICDR informed the Requester and ICANN that, based on the Requester's

⁵¹ Request 16-1.

⁵² Exhibit J, Pgs. 115-16. The auction rules provide that from the time auction deposits are submitted until after an auction concludes, applicants within the relevant contention set are not allowed to communicate with each other regarding the contention set. *See* New gTLD Auction Rules, Pg. 12, *available at* <https://newgtlds.icann.org/en/applicants/auctions>. The Blackout Period for the .SHOP Auction began on 20 January 2016.

⁵³ Exhibit O, Pgs. 158-59.

⁵⁴ *Id.*, Pgs. 157-58.

⁵⁵ Exhibit P, Pg. 161.

⁵⁶ Exhibit Q, Pgs. 163-64.

suspension, the ICDR was terminating the appointment of an emergency panelist to hear the Emergency Request.⁵⁷

Then, the Requester sought from the ICDR an extension to 5 February 2016 to submit papers supporting an IRP Request, which the ICDR permitted without consulting ICANN.⁵⁸ On 5 February 2016, the Requester sought another extension from the ICDR to submit papers supporting an IRP Request.⁵⁹ ICANN's counsel responded to the ICDR and the Requester that since the Requester had not yet filed any written submissions supporting an IRP Request, as required by ICANN's Bylaws and the Supplementary Procedures, the Requester had not yet initiated an IRP, and in ICANN's view extensions were not relevant.⁶⁰

On 10 February 2016, the Requester filed Reconsideration Request 16-2, its *sixth* reconsideration request, seeking reconsideration of ICANN staff's decision to go ahead with the 27 January 2016 Auction.⁶¹ On 10 February 2016, the Requester filed another IRP Request with the ICDR. The ICDR is in the process of administering the Requester's latest IRP Request. On 19 February 2016, however, the Requester's counsel failed to appear at a scheduled administrative hearing for that IRP.

B. Relief Requested.

In Request 16-1, the Requester asks that ICANN

1. “[I]dentify and correct[] process and policy errors that have been made by the EIU and ICANN” with respect to the issues raised by the Requester (relating to the CPE);⁶²

⁵⁷ *Id.*, Pg. 162.

⁵⁸ Exhibit R, Pgs. 167-68.

⁵⁹ *Id.*, Pgs. 166-67.

⁶⁰ *Id.*, Pg. 166.

⁶¹ Request 16-2.

⁶² Request 16-1, § 9, Pg. 4.

2. “[A]ccept the Requester’s Notice of Independent Review submitted on 17 November 2015 and the initiation of the Cooperative Engagement Process by the Requester on the same date;”⁶³
3. “[S]uspend the process for string contention resolution in relation to the .SHOP gTLD.”⁶⁴
4. Appoint a third party to perform a new CPE for the Requester’s Application or “[d]etermine that the [Requester] meets the Community standards . . . and allow [the Requester] to proceed to delegation.”⁶⁵

In Request 16-2, the Requester asks that ICANN

1. “[P]rovide a full explanation of why ICANN has not approved Requester’s application in the context of the 2000 round, in light of ICANN’s Mission and Core Values;”⁶⁶
2. Explain why ICANN “ignored Requester’s initial application in making determinations in the context of the 2000 round and the New gTLD Program, and more in particular the CPE and auction processes;”⁶⁷
3. “[S]et aside the results of the New gTLD Program Auction for the .SHOP contention set . . . pending the outcome of Reconsideration Request 16-1 and any Accountability Mechanisms Requester may invoke following the determination by ICANN;”⁶⁸
4. “[S]uspend the process for entering into an agreement with any party having participated in the auction process for the .SHOP gTLD before any pending or future Accountability Mechanisms relating to applications for the .SHOP gTLD have been completed.”⁶⁹

⁶³ *Id.*, § 9, Pg. 5.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ Request 16-2, § 9, Pg. 5.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

III. The Relevant Standards for Evaluating Reconsideration Requests.

ICANN’s Bylaws provide for reconsideration of a Board or staff action or inaction in accordance with specified criteria.⁷⁰ The Requester challenges the actions of staff and of a third party service provider. Dismissal of a request for reconsideration of staff action or inaction is appropriate if the BGC concludes, and the Board agrees to the extent that the BGC deems that further consideration by the Board is necessary, that the requesting party does not have standing because the party failed to satisfy the reconsideration criteria set forth in the Bylaws. The reconsideration process can properly be invoked for challenges to determinations rendered by panels formed by third party service providers, such as the EIU, where it can be stated that a panel failed to follow the established policies or procedures in reaching its determination, or that staff failed to follow its policies or procedures in accepting that determination.⁷¹

IV. Analysis and Rationale.

A. ICANN Staff Complied with Established Policy in Proceeding with the Scheduled Action for .SHOP.

In Request 16-2, the Requester argues that ICANN staff violated established policy by proceeding with the scheduled 27 January 2016 .SHOP Auction despite the fact that the Requester had submitted a reconsideration request—Request 16-1—on 26 January 2016.⁷²

ICANN’s website states that “a string contention set will be eligible to enter into the New gTLD

⁷⁰ Bylaws, Art. IV, § 2. Article IV, § 2.2 of ICANN’s Bylaws states in relevant part that any entity may submit a request for reconsideration or review of an ICANN action or inaction to the extent that it has been adversely affected by:

- (a) one or more staff actions or inactions that contradict established ICANN policy(ies); or
- (b) one or more actions or inactions of the ICANN Board that have been taken or refused to be taken without consideration of material information, except where the party submitting the request could have submitted, but did not submit, the information for the Board’s consideration at the time of action or refusal to act; or
- (c) one or more actions or inactions of the ICANN Board that are taken as a result of the Board’s reliance on false or inaccurate material information.

⁷¹ See <http://www.icann.org/en/groups/board/governance/reconsideration/recommendation-booking-01aug13-en.doc>, BGC Recommendation on Reconsideration Request 13-5.

⁷² Request 16-2, § 8, Pgs. 3-4.

Program Auction” only where “[a]ll active applications in the contention set have . . . [n]o pending ICANN Accountability Mechanisms.”⁷³ The Requester argues that Request 16-1, filed a day before the .SHOP Auction, represented a pending accountability mechanism that should have stayed the scheduled action.

However, contrary to what the Requester argues, there were no pending accountability mechanisms when the .SHOP contention set entered into the auction process. Specifically, the invitations for the .SHOP Auction were sent on 29 October 2015, three months before the scheduled auction date and at a time when no accountability mechanisms were pending. The Requester received an invitation, as well as numerous reminders from ICANN staff about deadlines related to the Auction. The Requester never accepted the invitation (despite having received multiple extensions of time to do so). The Requester also failed to invoke any accountability mechanisms, despite repeated reminders from ICANN staff (on 11, 25, 18, and 22 December 2015) that there were no pending accountability mechanisms affecting the .SHOP contention set and that the Auction was still scheduled for 27 January 2016. Meanwhile, the technical and financial preparations for the Auction went forward.

On 22 January 2016, the Requester filed a Notice of IRP, but did not properly invoke an ICANN accountability mechanism because the filing did not comport with the ICDR’s Rules and Supplementary Procedures. As the ICDR informed the Requester, on 26 January 2016, the Notice of IRP was defective and “not sufficient in order to proceed with administration of this matter,” because it was not accompanied by a supporting, written submission.

Finally, Request 16-1, filed by the Requester the day before the .SHOP Auction, and the Emergency Request, filed two hours before the Auction was set to begin, were not proper

⁷³ See <https://newgtlds.icann.org/en/applicants/auctions>.

methods to stay the scheduled Auction and ICANN received no “order” or any other direction from the ICDR to stay the auction. The Requester’s belated attempt to invoke an accountability mechanism represented a meritless and improper eleventh hour attempt to delay the scheduled Auction, when the Requester could have taken numerous actions long before to try to do so. Delaying the Auction at such a late date would have caused further significant delays to the other members of the .SHOP contention set, all of which had suffered from earlier delays caused by the Requester’s conduct in initiating earlier accountability mechanisms, and had already placed significant amounts of money in escrow in reliance on the Auction going ahead as scheduled. As such, ICANN staff properly determined that it would not violate established policy to proceed with the .SHOP Auction despite the Requester’s belatedly filed reconsideration request.

B. ICANN Staff Complied with Established Policy in Declining to Extend the Bylaws-Mandated Deadline for CEP.

In Request 16-1, the Requester argues that it attempted to initiate CEP on 17 November 2015 and again 26 January 2016, but was informed that the deadline to initiate CEP had already expired and could not be extended.⁷⁴ The Rules for CEP, which are incorporated into the Bylaws, provide that CEP must be initiated within 15 days of the posting of Board minutes that the requesting party contends demonstrate that the Board violated its Bylaws or Articles of Incorporation.⁷⁵ As ICANN staff repeatedly informed the Requester (which it did for the first time in November 2015), because the minutes relating to the 28 September 2015 Resolution the Requester seeks to challenge were posted on 19 October 2015, the deadline to initiate CEP expired on 3 November 2015. For ICANN staff to have extended this deadline could itself have been a violation of ICANN’s Bylaws. As such, staff did not violate any established policy in

⁷⁴ Request 16-1, § 8, Pg. 8.

⁷⁵ Cooperative Engagement Process, ¶ 2, *available at* <https://www.icann.org/en/system/files/files/cep-11apr13-en.pdf>; Bylaws, Art. IV, § 3.14.

determining that it could not extend the Bylaws-mandated deadline for the Requester to initiate CEP.

The BGC notes that CEP is a voluntary process and is not a prerequisite to file an IRP. The BGC also notes that the Requester was well aware of the 3 November 2015 deadline when it again attempted to initiate CEP on 26 January 2016, almost three months late and the day before the scheduled .SHOP Auction. ICANN had specifically informed the Requester on 18 November 2015 of the CEP deadline. The Requester then improperly used ICANN's denial of its time-barred CEP request as a pretext to file a "timely" Request 16-1. As discussed further below, Request 16-1 raises numerous time-barred arguments unrelated to the Requester's CEP request.

C. The Requester Never Properly Initiated an IRP.

In Request 16-1, the Requester also appears to argue that ICANN somehow prevented the Requester from initiating an IRP relating to the 28 September 2015 Resolution.⁷⁶ To the contrary, ICANN staff repeatedly attempted to assist the Requester to initiate an IRP.

As demonstrated by the 18 November 2016 email from ICANN attached to Request 16-1, when the Requester sought assistance filing an IRP Request with the ICDR, ICANN provided the Requester with all the information necessary to initiate an IRP, including links to the pages on ICDR's website containing information on filing fees, forms, and guides.⁷⁷ ICANN also reminded the Requester that it had not properly filed an IRP Request, and that the deadline to do so was that day.⁷⁸

⁷⁶ Request 16-1, § 8, Pg. 9.

⁷⁷ Exhibits to Request 16-1 (18 November 2015 email from E. Le to J. Smith, *available at* <https://www.icann.org/en/system/files/files/reconsideration-16-1-commercial-connect-attachments-redacted-26jan16-en.pdf>.

⁷⁸ *Id.*

Despite having all the relevant information, the Requester did not file an IRP Request. Instead, weeks later, on 3 December 2015, the Requester informed ICANN that it was “still [its] intent to file [a] request for Independent Review . . .but [was] still unclear on what is needed and how to proceed.” The ICDR, which was copied on the Requester’s email, responded providing the Requester with all the relevant information for initiating an IRP. ICANN followed up—still attempting to help and not to prevent the Requester from initiating an IRP—stating that it appeared the ICDR had “provided [the Requester] with what appears to be all the relevant information needed to file your request for Independent Review. If you have any additional questions, please let us know.” ICANN did not receive a response from the Requester.

On 22 January 2016, a representative for the Requester sent ICANN a two-page Notice of IRP filing, but again did not provide the supporting documents required to initiate an IRP. On 10 February 2016—almost three months after the 30-day deadline mandated by the Bylaws—the Requester finally submitted to the ICDR the documents required to initiate an IRP regarding the 28 September 2015 Resolution.

As this history reflects, at no time did ICANN staff prevent the Requester from initiating an IRP. To the contrary, ICANN staff repeatedly informed the Requester of the relevant deadlines and provided the Requester with all the relevant information required to initiate an IRP, even after the deadline to properly to do had long since passed. The Requester’s months-long delay in initiating an IRP was not caused by ICANN, but rather is consistent with the Requester’s other delayed invocations of ICANN’s accountability mechanisms.

D. The Requester's Renewed Argument of Issues Raised in Request 15-13 Is Improper and Time-Barred.

Finally, in Request 16-1 the Requester renews the same argument it raised in Request 15-13—challenging the results of the CPE Report finding its Application did not prevail in CPE.⁷⁹ The BGC issued its recommendation on Request 15-13 on 24 August 2015, and the NGPC accepted that recommendation on 28 September 2015. The 28 September 2015 Resolution and accompanying rationale were posted on 30 September 2015. The deadline to seek reconsideration of the 28 September 2015 Resolution was therefore 13 October 2015—over two months before the Requester submitted Request 16-1. The Requester gives no reason for its delay in seeking reconsideration of the 28 September 2015 Resolution.⁸⁰ Its Request is time-barred, and for this reason alone, its request is denied.

The BGC also notes that the Requester does not raise any new arguments or facts besides those already raised in Request 15-13. ICANN is charged with using its resources in the public benefit; responding to repeated reconsideration requests, when they are based on the same circumstances and do not assert any grounds for reconsideration, is not an appropriate use of those resources. For the reasons discussed in the BGC's Recommendation on Request 15-13, the Requester has not stated a basis for reconsideration of the CPE Report.⁸¹

V. Determination.

Based on the foregoing, the BGC concludes that the Requester has not stated proper grounds for reconsideration, and therefore denies Requests 16-1 and 16-2. In addition, the BGC notes that it is also deeply concerned by the Requester's repeated abuses of ICANN's

⁷⁹ Request 16-1, § 8, Pgs. 3-9.

⁸⁰ Notably, Request 15-13 was itself time-barred by over a month. The CPE Report was published on 21 May 2015. Thus, any reconsideration request challenging the CPE Report must have been filed by 5 June 2015. Bylaws, Art. IV, § 2.5. The Requester, however, did not file Request 15-13 until 10 July 2015, over a month after the filing deadline.

⁸¹ BGC Recommendation on Request 15-13, Pgs. 8-20.

accountability mechanisms and New gTLD Program processes, as described above and as explained further below.

First, the Requester filed suit against ICANN in a United States District Court, despite having accepted multiple releases—in its 2000 Application, its Credit Request Form and its New gTLD Application—barring it from bringing any claims against ICANN related to the Requester’s applications. On 11 January 2016, ICANN’s outside counsel informed the Requester of these releases and stated that if the lawsuit was not immediately dismissed, ICANN would “deem [the Requester] in material breach of the Terms and Conditions of its Application as well as the terms of the Credit Request Form, which may lead to the cancellation of [the Requester’s] Application.” Despite this, the Requester did not withdraw its lawsuit and proceeded with its Motion for TRO/PI. Thus, ICANN was required to expend considerable resources responding to the Requester’s frivolous Motion for TRO/PI. The Requester’s Motion for TRO/PI was denied by the court based on its finding that the Requester had failed to show a likelihood of success on the merits of its claims, and that the releases agreed to by the Requester were “clear and comprehensive.”

Next, as detailed above, the Requester has repeatedly and improperly invoked ICANN’s accountability mechanisms in an attempt to delay the resolution of the .SHOP contention set without any even arguably proper basis to do so. The Requester has filed six reconsideration requests relating to its Application, two of which, Request 15-13 and Request 16-1, raised arguments that were plainly time-barred. Further, Request 16-1 improperly raised the same arguments raised in Request 15-13. The Requester also repeatedly attempted to initiate CEP despite being informed that the Bylaws-mandated deadline for doing so had expired. Finally, despite repeatedly claiming that it was invoking the independent review process, the Requester

failed to actually file an IRP Request that even attempted to conform with the rules until 10 February 2016, almost three months past the Bylaws-mandated deadline.

Within 24 hours before the .SHOP Auction was set to go forward, the Requester made numerous frivolous attempts to invoke every ICANN accountability mechanism in a blatant attempt to halt the scheduled Auction. The Requester invoked CEP (despite knowing that it was time-barred by months), filed Request 16-1 (also raising time-barred arguments), and filed a complaint with the Ombudsman (which was declined for lack of jurisdiction). The day of the Auction, the Requester filed with the ICDR an Emergency Request for relief from an IRP emergency panel that (although time-barred) could have been filed well in advance of the Auction and which was ultimately abandoned by the Requester.

As discussed, ICANN is a nonprofit public benefit corporation charged with ensuring the stable and secure operation of the domain name system and remaining accountable to the Internet community while also using its resources in the public benefit.⁸² ICANN has expended significant resources engaging with the Requester and responding to the many (and mostly improper) filings described above. Although it is critical that all within the ICANN community have fair access to ICANN's accountability mechanisms, there is no justification for ICANN and members of its community having to suffer repeated baseless invocations of those mechanisms. .

⁸² Bylaws, Art. I, §§ 1, 2.10.

Exhibit DIDP A116

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How .MUSIC Will Go Mainstream and Benefit ICANN's New gTLD Program

Jan 06 2016 10:27 AMPDT | Comments 6 | Views 37 938

By [Constantine Roussos](#)

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Since the launch of the New gTLD Program in 2012, it has become evident that new gTLD registrations overestimated the demand for new Top Level Domain name extensions. Furthermore, new gTLD registrations did not anticipate the hurdles in raising awareness, not to mention creating adoption for new domains. Even the most pessimistic New gTLD Program critics did not expect such unsurprising results. It was a wake up call for many in the domain industry. The New gTLD Program currently lacks credibility. No new gTLD has yet to go mainstream and capture the world's imagination.

Obstacles to New gTLD Success: Competing with .COM, Awareness and Adoption

At the start of last year, [nc magazine](#) asserted in January 2015 that "given the challenges facing TLD adoption, it's unlikely that TLDs will make a huge marketing impact in 2015 unless there is some sort of game changing development."

At the same time, [Forbes](#) agreed with that assessment:

"In contrast to the slippery territory of the new domains, the existing names are solidly established. The .COM extension has been around for almost 30 years, and every Fortune 500 company has a .COM registration. The top 50 global brands direct customers to a .COM homepage. Almost all educational institutions use a .EDU suffix. And others like .ORG clearly stand for nonprofit organizations. People have come to rely on these familiar domains and are more than a little hesitant to incur the costs and uncertainty of venturing into new territory. Not a single leading brand has switched its online identity to one of the new domains, despite all the hype surrounding their introduction a year ago."

Many in the domain community also had some harsh words about the launch of ICANN's New gTLD Program:

Domain Name Wire (DNW) has been following ICANN's New gTLD Program closely since its inception in January 2014. DNW criticized the launch in a post titled "[New TLDs come out with a whimper](#)," followed by another [article](#) in March 2014 with harsh criticism stating that "the launch of new domain names has been anything but smooth. Confusion. Frustration. Incompetence." Nearly 2 years later, DNW [revised the New gTLD Program](#), asserting that "[2015] wasn't a break through year. Hundreds more top level domain names hit the market during 2015. But adoption of new domains didn't take off, proving what many in the industry have been saying: this is going to be a long, gradual process."

Dr. Paul Vixie, a pioneer of the internet's domain name system (DNS), took the criticism a step further according to [ZDNet](#):

"I think it is a money grab. My own view is that ICANN functions as a regulator, and that as a regulator it has been captured by the industry that they are regulating. I think that there was no end user demand whatsoever for more so-called DNS extensions [or] global generic top level domains (gTLDs). They're gradually rolling out, and they are all commercial failures."

As one of the biggest proponents of the New gTLD Program throughout the years, I am disappointed with the results of the New gTLD Program. Before the launch of the New gTLD Program in 2012, all proponents of the New gTLD Program worked together following a culture of "all for one and one for all" with a shared vision to get the New gTLD Program approved and launched. Unfortunately, those collaborative dynamics quickly changed to the detriment of the New gTLD Program and ICANN.

Michael Berkens from [TheDomainer](#) made an astute observation in January 2015, stating that "the new gTLD [registries] better not hope it's a zero sum game where you can win if only someone else loses."

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February Biggest Month to Date for Radix, Over 750K Domain Registrations

Otherwise it could be an everyone loses scenario "

My opinion is unwavering new gTLD success is about collaboration and cooperative competition known as cooperation to spur trust and adoption. Cooperation is defined as collaboration between business competitors in the hope of mutually beneficial results.

This is why they have been one of the biggest cheerleaders of community gTLDs. They are all about expanding the value pie by creating shared value to all community constituents. The value of the community-based network effects seen in TLDs such as .EDU, .GOV, and .ORG Registrants involved in US post-secondary education, US government or non-profits will choose .EDU, .GOV, and .ORG respectively over .COM because those TLDs stand for something that is trusted and believable by the general public. Another example is .BANK which is carving out its niche by becoming the status quo for banks following the trust model. However, none of these success stories are achievable without community-based policies implemented, high quality content and usage relevant to those respective communities. Serving a higher purpose provides more meaning than the semantic value of the TLD.

Many new gTLD registrars have made a colossal mistake trying to compete head-to-head with .COM under the non-differentiated factory approach of generally "open" TLDs. Most have employed identical marketing launches without offering a meaningful and innovative value proposition to registrants. The marketplace has spoken. By following the same "old school" TLD marketing playbook, the most likely outlook for new gTLD registrars are diminishing returns, especially for new gTLD registrars that lack the economies of scale and competitive advantage. A non-differentiated gTLD competing head-on with .COM (which shares all its attributes except the gTLD's novelty name) is a losing strategy and does not benefit CANN's New gTLD Program or raise awareness.

The only successful route for new gTLD registrars to compete is one based on "value innovation." This means to forget competing directly with .COM and making .COM irrelevant by strategically changing the playing field. Malcolm Gladwell's best seller "David and Goliath: Underdogs, Misfits and the Art of Battling Giants" [elaborates further](#).

"Davids win all the time. The political scientist Ivan Arreguin Toft recently looked at every war fought in the past 200 years between strong and weak combatants. The Goliaths he found won in 71.5% of the cases. Arreguin Toft was analyzing conflicts in which one side was at least ten times as powerful in terms of armed might and population as its opponent, and even in those lopsided contests the underdog won almost 33% of the time. When an underdog fought like David, he usually won. But most of the time underdogs didn't fight like David."

Bottom line, you cannot beat .COM fighting them under their own generally "open" and non-differentiated rules. .COM will always have a colossal home court advantage. The reason is simple. .COM has billions of dollars spent in marketing to raise awareness [over 120 million registrations](#) and decades of user recognition. Verisign is fortunate that they do not have to spend a dime in mainstream promotion because they have others. The .COM adopters spend billions. The .COM adopters are those who prefer the status quo because educating the general public over a new gTLD is difficult, expensive, and confusing. The only way to break the status quo is making a TLD the status quo by widespread community adoption.

The only way that a new gTLD can go mainstream is to share some of the same characteristics shared by .EDU, .GOV, or other community-tailored TLDs that are aligned with a community-based purpose that would convince registrants to choose a new TLD as the first option over a .COM. Such an objective is insurmountable if a TLD follows a non-differentiated, open approach without any policies catering to the corresponding community. Laying the foundations for adoption is critical for success. It also takes widespread adoption from the corresponding communities for such a feat to happen.

There are some key questions most gTLD registrars failed to answer. How can a new gTLD registry effectively differentiate itself to effortlessly convince the most appropriate registrants (the communities generally associated with each gTLD) to register, develop, and market those new domains as the official website and email address online? This is the only way to ensure that usage and compelling content from new gTLDs become more prevalent and eventually go mainstream. While some isolated domain name success stories with new gTLD are expected, such outliers do very little to increase awareness for the New gTLD Program helping all new gTLD registrars as a result. Jeff Davdoff, Donuts chief marketing officer [stated](#) that "pop culture usage is really going to accelerate the movement. Nothing beats the power of pop culture to drive a movement." Such an assessment is precise but a few select moves and studies using a new gTLD will not impact nor change the widespread perception of new TLDs as "wastelands." [Will music domains make the internet better or just more of a crowded wasteland?](#) Isolated new gTLD success stories do not constitute adoption because of their limited reach and longevity. Ongoing marketing and community adoption is paramount to success.

How Awareness, Adoption and Differentiation Can Be Achieved

The only way to spur mainstream awareness of CANN's New gTLD Program is widespread industry

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adopt on of a new gTLD that would create the multiplier network effect that would virtually spread across all marketing channels fostering an environment of high quality relevant and trusted content to increase exposure through higher search result rankings

The only remaining gTLD that can accomplish this is the MUS C community based gTLD DotMus c is the only MUS C applicant that has followed unfettered principles deals and Mission aligned with the community based purpose that the Community subscribes to such as

- creating a trusted identifier and safe haven for music consumption
- protecting musicians' rights and intellectual property
- fighting copyright infringement supporting fair compensation and music education and
- following a multi stakeholder approach of representation of all types of global music constituents without discrimination

To accomplish this objective DotMus c developed its Mission and Regulation Policies using a consensus driven bottom up methodology via feedback and universal principles collected in its ongoing extensive [public global Music Community consultation outreach campaign](#) launched in 2008

These principles and community tailored policies to which the entire global music community subscribes to is the underlying reason why DotMus c has amassed the largest global music coalition ever assembled to support a music cause including [organizations with members representing over 95% of global music](#) it bears noting that the [multi stakeholder MUS C Governance Board](#) is comprised of the most trusted and globally recognized organizations associated with music

DotMus c is expected to qualify as a "community" because it [exceeds the required Community Priority Evaluation \(CPE\) criteria consistent with previous prevailing E.U. determinations](#) for OSAKA HOTEL RADIO ECO and SPA Thus far DotMus c has received over 2 000 letters of support more than all CPE applicants combined DotMus c has also been supported by highly influential featured artists and the [International Music Organization \(AO\)](#) that represents featured artists globally Such adoption would make MUS C a driving force for CANN's New gTLD Program Popular artists that have voiced support for the MUS C community initiative include [Radhead](#) [mogen Heap](#) [Travis](#) [Sandie Shaw](#) and many others This unprecedented level of awareness resulted in monumental support before the MUS C gTLD has even launched

DotMus c's value based innovation for a MUS C community led initiative is one of creating differentiated value and making a difference that truly matters For example DotMus c does not allow parking pages According to [nLDStats](#) the vast majority of new gTLD domains an astounding 71 35% are parked (as of January 3rd 2015) This unique policy for MUS C is one of the most innovative restrictions in the New gTLD Program because it mandates website development usage and higher quality content Legal music content and usage seeking Furthermore MUS C can be the first TLD with copyright protection provisions and enforcement These ensure MUS C is a safe haven for legal music consumption and licensing and to increase consumer trust and safety These include policies to stop domain hopping takedown policies in the case of mass privacy authorization provisions permanent blocks privacy and proxy provisions true name and address mandates trusted sender complaint policies and many other [MUS C enhanced safeguards](#)

DotMusic has created a strong, trusted brand for itself over the last decade and has raised unprecedented support and awareness in both the domain and music industries that will be leveraged by DotMusic to become the first new gTLD to be community and industry adopted and to go mainstream. This feat cannot be achieved at such a scale under a MUS C gTLD model that lacks community based policies serving the music community and has no multi stakeholder governance structure The semantic value of a new gTLD alone cannot convince an entire community to adopt it

The semantic value of new gTLDs is currently the most prevalent value proposition to register a new domain Semantic value usage and general awareness will increase steadily over time for new gTLDs but more is needed to catapult that growth rate this is a win win situation for all players involved CANN will have more success stories to convincingly vindicate the launch of its New gTLD Program and to demonstrate that it has served the global public interest and increased competition diversity and consumer choice New gTLD registries (especially portfolio TLD registries) will also benefit because raised awareness and mainstream adoption of new gTLDs will persuade registrants to choose new gTLDs over COM because the risk of confusion and lack of awareness of the existence of new gTLDs will have decreased As more gTLDs are used and marketed globally the growth of new gTLDs will increase dramatically given the multiplier effect benefiting all constituents involved

The Way Forward: Collaboration and Co-opetition

The way forward for the domain industry is co-opetition in which new gTLD registries act with what all stakeholders recognize as partial congruence of interests This approach of cooperative competition based on shared mutually beneficial interests would be similar to the culture adopted by the new gTLD

aplicants before the New gTLD Program was launched. Sharing a similar purpose ultimately convinced CANN to launch the New gTLD Program. Today the challenges concerning the general public to register new gTLDs and proving the New gTLD Program's merits wrong. As one of the biggest advocates of CANN's New gTLD Program, it's my belief that the only way to achieve these goals through genuine cooperative effort, collaboration and working together to figure out how we can accelerate new gTLD growth and awareness.

The [Business Ethics Journal Review](#) emphasizes the benefits of cooperation:

"Globalization has not just led to greater competition but also to an increase of cooperation. A successful business in times of globalization is not merely a good market actor but also an organization that is able to cooperate. It should be noted that from a theoretical point of view cooperation is a non-economic mode of social interaction (in opposition to exchange and competition) that however is highly relevant for concrete business practices since it might lead to positive economic consequences."

It has been adequately proven that competing directly with COM is an unsustainable losing battle. For long-term success, growing profitability and sustainability, new gTLD registrars will eventually have to collaborate to realign their interests and business strategies under a shared value model in a manner that is beneficial to all parties in the domain value chain. Creating this indirect competitive advantage is ultimately the only way to compete with COM. One for all, and all for one.

.MUSIC Will Go Mainstream Benefiting the New gTLD Program and ICANN

We believe that a community-based MUSIC launch will propel CANN's New gTLD Program to new heights, benefiting all parties involved: the global music community, CANN, new gTLD registrars, and society as a whole. A widespread, community-adopted MUSIC has the highest chance of any gTLD to achieve the goal of a new gTLD going mainstream and becoming industry-adopted, to raise unprecedented new gTLD awareness with the general public.

As [Diffuser.fm points out](#), MUSIC "could be the biggest thing to happen to the web" and live up to the expectations voiced in December 2015 at [Techcrunch Disrupt](#) as a "game-changing" new gTLD and to become a "global home and first of its kind database for the music community" as disclosed recently in [Billboard magazine](#).

DotMusic is a prime position to jumpstart the New gTLD Program and create the necessary momentum to raise public awareness about new gTLDs. The domain community has a lot of positive developments to look forward to in 2016.

This post is part of the original article "[How MUSIC will go mainstream and benefit ICANN's New gTLD Program](#)." For more information, visit the [MUSIC website](#).

By [Constantine Roussos](#), Founder of DotMusic. More blog posts from Constantine Roussos can also be read [here](#).

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Comments

The half step law of demand

[Michael Elling](#) Jan 13, 2016 5:20 PMPDT

While appreciate everything the author said and documented, it struck me that one of the big reasons music may never take off is that one has 2 extra keystrokes and needs to "learn" about a new suffix. Why wasn't "mus" considered? I could already see the tagline "when the feeling strikes type mus".

The half step law of demand says that every additional step reduces demand by half. In this case, its "three" steps resulting in 1/8th the addressable market.

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1

MUSIC is the ISO 3166 standard country...

MUS is the ISO 3166 standard country

Constantine Roussos Jan 13 2016 6:47 PM PDT

MUS is the ISO 3166 standard country code for the country Mauritius. According to the CANN Applicant Guidebook an applicant cannot register these ISO country codes. For example Google applied for .AND but withdrew its application because it was the .SO code for the country Andorra.

User behavior shows that context, communication, and simplicity is more important than abbreviations that may create confusion. Interview a thousand people and ask them what "mus" stands for. Many will say "muslim" others will say "museum". Of course many will guess that it is "music". Why resort to guesswork? Do we want to confuse users or give them what they are looking for exactly? MUSIC is more intuitive for "music" than MUS.

Marketing is all about the right communication, simplicity, and volume. Confusing users is not effective marketing.

Following user behavior is also important. Ask someone to search for Radhead's music on Google. Will they search for "Radhead music" or "Radhead music?" For certain they will search for the exact match because they are looking for the most relevant result. Users rarely search using abbreviations of words. It's also important for search engines to give users what they are looking for, so being specific gives you higher quality, more relevant, and trusted results. Such a feat can be accomplished with an exact match, not an abbreviation, unless we find a way to change user search behavior (we cannot).

Regardless whether any suffix is 3 letters or 5 letters, the user will still have to know that it exists. Evidence shows that it's not as important as you think. If you do a search in the United Kingdom, most search results will be of domains that end in .CO.UK. In Australia, the equivalent would be .COM.AU and so forth. .CO.UK and .COM.AU were the standards that were adopted by all within those geographic communities. In the UK, the .CO.UK extensions are more prevalent than .COM.

Another example are two new gTLDs that have launched: .ONLINE and .ONL. Both stand for "online". According to nTLDstats.com, .ONLINE has nearly 130,000 registrations while .ONL has just over 5,000 (as of today). The marketplace has shown that a longer, more relevant string is better than a shorter, abbreviated one that may cause confusion.

If you were Google, would you use .GOO or .GOOGLE? If you were Microsoft, would you use .MIC or .MICROSOFT? Amazon would certainly prefer to have .AMAZON over .AMZN.

In conclusion, the biggest predictor of success in the New gTLD Program is community/industry adoption and usage based on community-tailored policies that serve a higher purpose and cater to the community associated with each gTLD string.

Constantine Roussos

[MUSIC](#)

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2

↳ Address Clarity

Michael Elling Jan 14 2016 6:58 AM PDT

Thanks Constantine. Good points and clarifications.

Typically companies are used to having the rTLDs as synonyms to their names. But otherwise, understand your other points and agree about the industry adoption being a key issue.

That said, it's still a big hill to climb versus the billions of users out there. Good luck!

Michael

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3

↳ Thank you Michael.Constantine Roussos.MUSIC

Constantine Roussos Jan 14 2016 9:45 AM PDT

Thank you Michael.

Constantine Roussos

[MUSIC](#)

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5

Penetration and timeframes

Michael Elling Jan 14 2016 7:03 AM PDT

Constantine,

I was wondering if you or someone at DotMusic has modeled future scenarios in terms of registrations and users and what the assumptions are that get to those levels?

Thanks

Michael

↳ **Michael, Our approach with .MUSIC has not been**

Constantine Roussos Jan 14 2016 10:26 AM PDT

Michael

Our approach with .MUSIC has not been to focus on registration volumes at all. We believe this is the wrong approach for music because the purpose of the .MUSIC community initiative is to launch a safe, trusted, and secure .MUSIC extension. As witnessed in the New gTLD Program, the total number of registrations can be manipulated by lowering price or offering free registrations. Registration volume alone is not a predictor of success. Usage and industry adoption. Some TLDs have millions of registrations but their usage rates are low. Another adverse effect of focusing on high volume by adopting a low price strategy is the proliferation of spam, phishing, and other forms of abuse because of the lower financial risk that cheaper or free domains offer to bad actors.

Both .EDU and .GOV have significantly lower registration volumes than other legacy TLDs but their usage is enormous, meaningful, and impactful. Google also values them as "authority" domains with high link popularity (or high PageRank), so this is why search engine optimization experts seek to get anchor backward links from .EDU or .GOV domains. It helps them with their search engine ranking efforts.

Our model is close to the .EDU model. Registrations for .EDU are restricted to U.S. post-secondary educational institutions that meet certain accreditation standards. Our .MUSIC model is only offered to members of the global music community that have to agree and certify that they abide to certain music-tailored policies, such as:

1) Eligibility: Only members of the global music community are eligible. They can belong to Music Community Member Organizations (e.g., be a member of The Recording Academy) or identify with any music community (i.e., have the requisite awareness of belonging to the community) with active participation in music-related activities. All .MUSIC registrants will also be verified using two-step authentication.

2) Name Selection: Registrants can only register the real names, acronym, or DBA. We also have a Globally Protected Marks List (GPML) of famous music brands and artists that no one can register except the authorized music brand or artist. This prevents cybersquatting and the big problem that exists in .COM: many big name artists do not have the exact match name in .COM. In many cases, fans have registered them or the band names so generic that it's too expensive to buy in the aftermarket.

3) Content and Use: Only legal music-related content and music-related usage is allowed. This way, the relevancy and quality factor for music is addressed. We also prohibit parking pages to make sure that users have a better user experience when visiting .MUSIC sites and find what they expect from music.

4) Enforcement: There are both proactive and reactive enforcement measures and mechanisms, including random compliance checks, crowdsourced enforcement, and enhanced safeguard provisions to protect copyright infringement. We also have an array of appeals mechanisms as well to ensure that registrants and complainants can have redress.

The aggregate effect of all these music-tailored policies is to create a safe haven for legal music consumption, which ensures that any traffic or monies goes to the music community, not uncensored or pirate websites. Fans also will be assured that when they interact with a .MUSIC domain, that the registrant is who they say they are and not an impersonator. Trust, security, and safety is critical to the future success of .MUSIC.

Constantine Roussos

[.MUSIC](#)

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