

## ANNEX F

### How Community Invoked is Dependent on the DNS/Internet for Core Activities

According to the European Commission/JRC Technical Reports: “music is now shared and consumed on a much larger scale than before and consumers benefit from this. Music sharing over the internet enables artists to get wider reputations and consequently more opportunities for record sales and merchandising and also more live performances with larger audiences... Digitization and the internet have thus disrupted the role of major music companies and their relationship with consumers... They can now listen to music (downloaded to their own devices or through streaming services) on many different devices, anywhere and anytime.<sup>1</sup> Social networks are increasingly important for the marketing and sales of music.” (Andra Leurdijk, Otilie Nieuwenhuis, P.7)

The community’s dependence on the DNS for its core activities is further highlighted by the continuing global growth of smartphones which have central features relating to music<sup>2</sup> and access to the DNS. By the end of 2011 there were 1 billion smartphones in use worldwide, a 46.6% increase over the previous year.<sup>3</sup> According to Worldwide Cellular User Forecasts, 2012-2017,<sup>4</sup> over the next 5 years the worldwide base of mobile subscriptions will rise to 8.9 billion with 4 out of 5 of these will be in developing countries. Now more than ever, the music community depends and is critically reliant on the Internet/DNS<sup>5</sup> for "distribution and promotion" of its primary activities,<sup>6</sup> such as communication (fan engagement, legal file sharing, social media and fan sharing, email lists, branding, reputation management), promotion (search engine optimization and marketing, pay per click, social media optimization and marketing, analytics, link exchanges, news),

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<sup>1</sup> Andra Leurdijk, Otilie Nieuwenhuis, European Commission, JRC Technical Reports, Statistical, Ecosystems and Competitiveness Analysis of the Media and Content Industries. The Music Industry, <http://ftp.jrc.es/EURdoc/JRC69816.pdf>, 2012, P.6

<sup>2</sup> U.S Department of Commerce, <http://selectusa.commerce.gov/industry-snapshots/creative-media-industry-united-states>

<sup>3</sup> Mobithinking, <http://mobithinking.com/mobile-marketing-tools/latest-mobile-stats/a#smartphonepenetration>

<sup>4</sup> <http://www.strategyanalytics.com/default.aspx?mod=pressreleaseviewer&a0=5335>

<sup>5</sup> Ashraf El Gamal, The Evolution of the Music Industry in the Post-Internet Era [http://scholarship.claremont.edu/cgi/viewcontent.cgi?article=1501&context=cmc\\_theses](http://scholarship.claremont.edu/cgi/viewcontent.cgi?article=1501&context=cmc_theses), 2012, P.67-68 and Eric de Fontenay, Impact of the Internet/New Media on the Music Recording Industry [http://userpage.fu-berlin.de/%7Ejmueller/its/conf/torino99/abs/e\\_deFontenay.html](http://userpage.fu-berlin.de/%7Ejmueller/its/conf/torino99/abs/e_deFontenay.html)

<sup>6</sup> Tunecore, <http://blog.tunecore.com/2012/06/then-v-now-the-path-to-success-for-artists.html>

distribution (official websites, blogs, social media profiles and media), and commerce (selling of digital downloads, merchandise, tickets, CDs and other products direct from their official website or web destinations, plus monetizing through web crowd-funding, web live streaming, online licensing and more).

According to the European Commission/JRC Scientific and Policy Reports, the “digital shift – that is the digitization of information, the generalization of the Internet protocol, and the rapid take-up of these technologies (final user equipment, broadband infrastructures, etc.) has transformed the way we produce, store, distribute and consume goods and services. The Media and Content Industries (MCI) – which covers the music industry... have been first and heavily hit by the digital shift.<sup>7</sup>” On the distribution side, allowing companies like Amazon or Google to dominate in some segments raises concerns about an extension of this domination to other segments (emphasis added). (Jean Paul Simon and Marc Bogdanowicz, P.17)

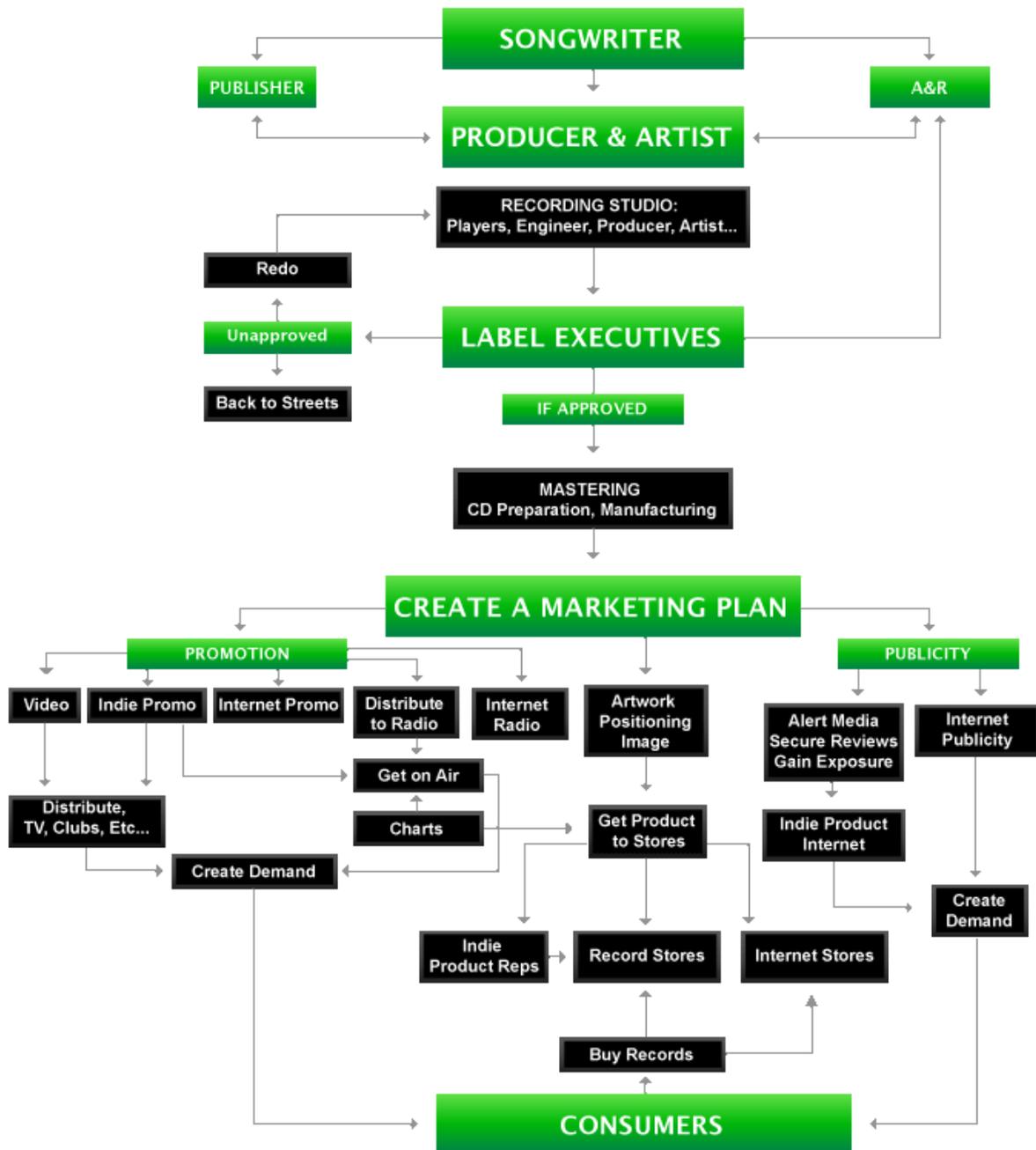
The Additional Submission provided concrete evidence beyond reasonable doubt of the Objector's clear delineated community, strong association with the community invoked, its global scope, activities and membership diversity, size and breadth. The Additional Submission invalidated Amazon's misleading arguments with concrete evidence and commonly-known facts that the Objector(s) Members and Related Objector Entities represented more than just U.S Label interests and that the community invoked was reliant on the DNS for its core activities.

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<sup>7</sup> Jean Paul Simon and Marc Bogdanowicz, European Commission, JRC Scientific and Policy Reports, <http://ftp.jrc.es/EURdoc/JRC77932.pdf>, P.4, 2012

## Annex G: How the Community invoked is clearly delineated and organized

As mentioned in Objection, the community invoked is clearly delineated and uses globally recognized strictly delineated systems for its activities. Typical operations for the creation, distribution and promotion of music is standard and strictly delineated in process are depicted in the diagram<sup>8</sup> below:



<sup>8</sup> NewArtist, [http://newartist.com/img/ind\\_flow\\_chart.gif](http://newartist.com/img/ind_flow_chart.gif)

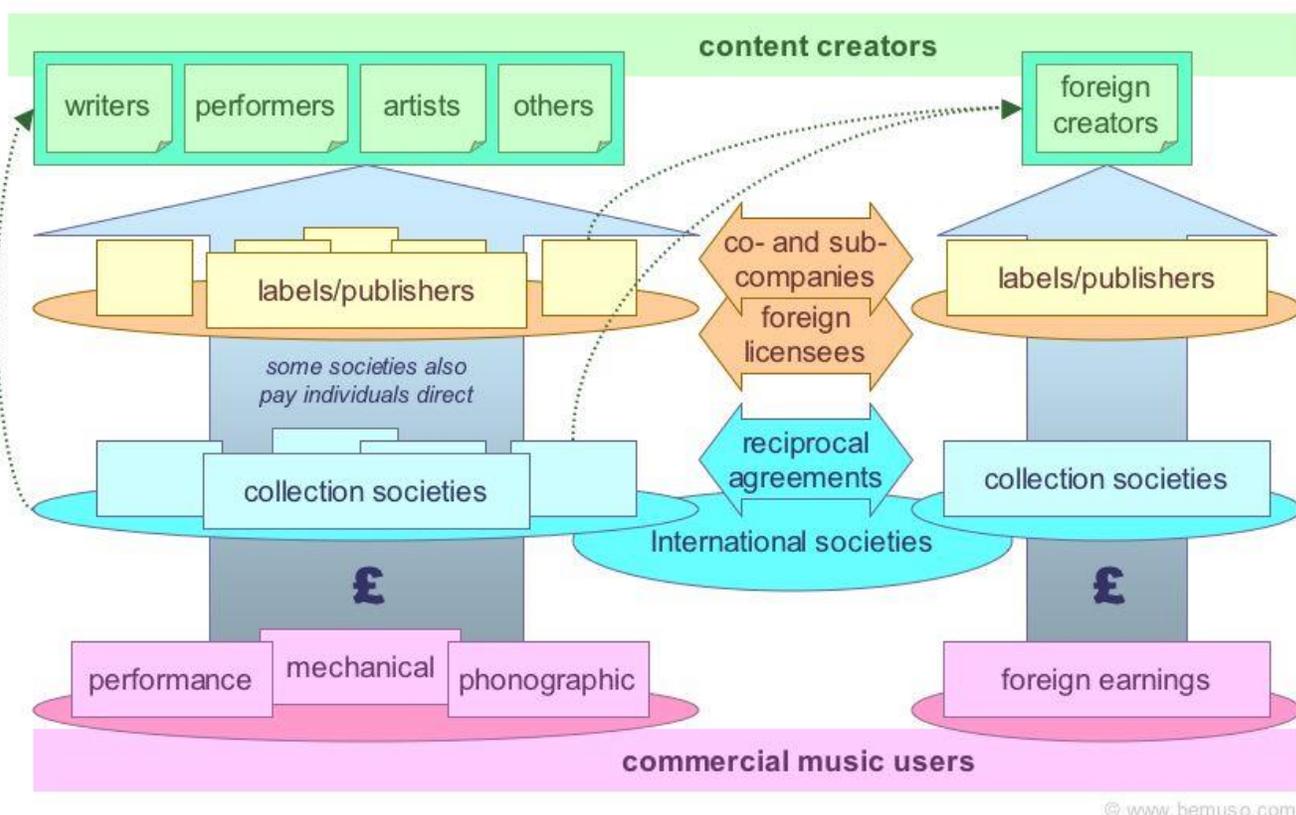
Strictly delineated systems pertaining to music include:

- i. North American Industry Classification System (NAICS) adopted in 1997 where Code 711130 relates to music groups and artists (See U.S Census, <http://www.census.gov/epcd/ec97/def/711130.HTM>)
- ii. The United Nations' International Standard Industrial Classification (ISIC) adopted in 1948 where Code 5920 relates to music in the form of sound recording or music publishing activities (See United Nations, <http://unstats.un.org/unsd/cr/registry/regcs.asp?Cl=27&Co=5920&Lg=1>)
- iii. The Dewey Decimal Classification (DDC) system adopted in 1876 used in over 200,000 libraries and in more than 135 countries where Code 760 relates to the class of "Music" (See Worldwide Library Cooperative OCLC, <http://oclc.org/dewey/resources/summaries.en.html>)
- iv. The Library of Congress Classification (LCC) system adopted in 1897 where code "M" relates to the class of "Music" (See Library of Congress, [http://www.loc.gov/catdir/cpsolcco/lcco\\_m.pdf](http://www.loc.gov/catdir/cpsolcco/lcco_m.pdf))

The global music community uses clearly delineated systems to facilitate its common, unified interest in distributing and promoting music. Such strictly delineated music systems are used to standardize, identify and match music to individual Music Community rights holders to compensate them appropriately. Such organized, strictly-delineated systems that pre-date September 2007 and cover the entire music community and how music is consumed include:

- i. The International Standard Recording Code (ISRC) formed in 1986 for music sound and video recordings (See ISRC, <http://www.usisrc.org/about/index.html>)
- ii. The International Standard Music Number (ISMN) formed in 1993 for printed music (See ISMN International, <http://www.ismn-international.org/whatis.html>)
- iii. The International Standard Musical Work Code (ISWC) formed in 2001 for musical works (See ISWC International Agency, <http://www.iswc.org/>)
- iv. The Global Release Identifier (GRid) System for digital music distribution (See International Federation of Phonographic Industry (IFPI), [http://www.ifpi.org/content/section\\_resources/grid.html](http://www.ifpi.org/content/section_resources/grid.html))

These delineated systems ensure that individual music is uniquely identified and attributed to individual members of the community invoked in a highly organized and structured manner including common, shared methods of royalty identification and allocation to compensate music community rights holders. Such community systems are strictly delineated and organized with respect to the allocation of world music royalties as presented in the diagram<sup>9</sup> below:



Such clearly delineated, organized and globally-standardized music royalties<sup>10</sup> include:

- i. Mechanical royalties
- ii. Performance royalties
- iii. Synchronization royalties
- iv. Digital rights royalties
- v. Print royalties
- vi. Sales royalties
- vii. Rental/public lending royalties

<sup>9</sup> NewArtist, [http://newartist.com/img/ind\\_flow\\_chart.gif](http://newartist.com/img/ind_flow_chart.gif)

<sup>10</sup> Alliance of Artists and Recording Companies AARC, <http://www.mymusicroyalties.com/types>

Furthermore governments are involved in this highly structured and delineated community to set statutory royalty rates. For example, in the United States, mechanical royalties are based on a "statutory rate" set by the U.S. Congress. This rate is increased to follow changes in the economy, usually based on the Consumer Price Index. Currently, the mechanical statutory rate is \$0.091 for songs five minutes or less in length or \$.0175 per minute for songs that are over five minutes long (Source: U.S Copyright Office, <http://www.copyright.gov/carp/m200a.html>).

## ANNEX H

### **A2IM's Recognized Standing: Independent Music Community Claim 50% of Grammys**

The 56th Grammy Awards were held on January 26, 2014. A Grammy Award is a globally-recognized accolade by the National Academy of Recording Arts and Sciences to recognize outstanding achievement in the global music industry. The annual presentation ceremony is presented in a globally-televised ceremony. It is the music equivalent to the Emmy Awards for television, the Tony Awards for stage performances, and the Academy Awards (Oscars) for motion pictures or film.

According to Billboard, the music industry trade publication (“Independents Claim 50% of Grammy Wins, Largest Share in A2IM History,” <http://billboard.com/biz/articles/news/indies/5885460/independents-claim-50-of-grammy-wins-largest-share-in-a2im-history>, January 27<sup>th</sup>, 2014), the independent music community received 50% of awards, the largest share in A2IM's history (emphasis added). As recognized by Billboard, the independent music community is strongly represented by the American Association of Independent Music and its global-recognition provides compelling evidence of indisputable standing in an ICANN Community Objection for music-themed gTLDs. Independent work is defined as one whose master recording rights are owned by an independent label or artist. The independent music community, in turn, are those not majority owned, or under contract with, any of the three major labels or their subsidiaries, namely Universal Music Group, Sony Music and Warner Music Group.

Rich Bengloff, the President of the American Association of Independent Music (A2IM) re-affirmed the strong association of the independent music community in relation to music in Billboard magazine (“Why the Grammys Matter to Indies”, <http://www.billboard.com/biz/articles/news/indies/5876984/why-the-grammys-matter-to-indies-guest-post-by-a2ims-rich-bengloff>), January 24, 2014):

“As Indie label and artist revenue market share has grown over the past seven years, Billboard Magazine’s analysis of 2013 market share by master ownership using Nielsen SoundScan shows a share increase to 34.6%.”

## ANNEX I

### **ThePirateBay Case Study: How the Community invoked and Music Pirates are Dependent on the DNS for Core Activities**

The world's most visited music pirate site, ThePirateBay (TPB), is one of the most popular sites on the Internet with over a billion page views a month according to Torrentfreak (<http://torrentfreak.com/top-10-popular-torrent-sites-2014-140104/>) and an Alexa rank of 79. In 2013, TPB increased its uploads by 50%, has made no less than six domain changes while evading international copyright enforcers. Nearly one-fifth of pirated content on TPB is music-related (<http://rt.com/news/pirate-bay-downloads-piracy-lobby-999/>). Millions of music songs are illegally downloaded on a daily basis harming the music community.

TPB has adopted a strategy of exploiting the Domain Name System (DNS) and top-level domains (TLDs) to conduct piracy and circumvent the law. It is indisputable that TPB heavily relies on the DNS for its core activity to distribute unlicensed music content. TPB's strategy of exploiting the DNS and TLDs as a vehicle for law circumvention has been recently highlighted by its purposeful tactic to continually change its domain name e.g from ThePirateBay.org to ThePirateBay.se to ThePirateBay.sx to ThePirateBay.pe to ThePirateBay.gy and back to ThePirateBay.se. ThePirateBay has stated that it has "70 domains to go" to keep its site online while announcing it is working on a browser to make the DNS "irrelevant" (<http://rt.com/news/pirate-bay-returns-sweden-504/>).

This provides further concrete evidence of the crucial significance of the DNS to the community invoked and the community's strong dependence on the DNS for core activities. Furthermore it re-affirms the exploitation of the DNS by bad actors and rogue, unlicensed sites such as TPB creating detrimental economic harm to the legitimate interests of the music community. New legal digital music services dependent on the DNS – such as iTunes, Pandora, Spotify (all of whom are A2IM Associate Members) – have been launched to offset the impact of music piracy arising from the DNS but has been a challenge to compete with "free" and the popularity of sites such as TPB.