
ARIF HYDER ALI



January 30, 2017

VIA E-MAIL

ICANN Board Governance Committee c/o Chris Disspain, ICANN BGC Chair 12025 Waterfront Drive, Suite 300 Los Angeles, CA 90094	Mr Göran Marby President and Chief Executive Officer ICANN 12025 Waterfront Drive, Suite 300 Los Angeles, CA 90094
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Dear President Marby and members of the BGC:

We are writing on behalf of our client, DotMusic Limited (“DotMusic”), to remind ICANN about the Board Governance Committee’s (the “BGC”) delay in making a final recommendation to the ICANN Board (the “Board”) regarding DotMusic’s Reconsideration Request 16-5 (“Reconsideration Request”). Over 11 months have passed since DotMusic submitted the Reconsideration Request to the BGC, however, the BGC has not made a final recommendation to the Board with respect to DotMusic’s Reconsideration Request. This is inconsistent with the BGC’s obligation under ICANN’s Bylaws to review a reconsideration request on a timely basis. Specifically,

- Under Section 4.2(q) of ICANN’s Bylaws (October 1, 2016): “The Board Governance Committee shall make a final recommendation to the Board with respect to a Reconsideration Request within 30 days following its receipt of the Ombudsman’s evaluation (or **30 days** following receipt of the Reconsideration Request involving those matters for which the Ombudsman recuses himself or herself or the receipt of the Community Reconsideration Request, if applicable), unless impractical, in which case it shall report to the Board the circumstances that prevented it from making a final recommendation and its best estimate of the time required to produce such a final recommendation. In any event, the Board Governance Committee shall endeavor to produce its final recommendation to the Board within **90 days** of receipt of the Reconsideration Request.” (emphasis added); *see also* Section 4.2(q) of ICANN’s Bylaws (May 27, 2016) (same); and

- Under Article IV(2)(16) of ICANN's Bylaws (February 11, 2016): “The Board Governance Committee shall make a final determination or a recommendation to the Board with respect to a Reconsideration Request within *thirty days* following its receipt of the request, unless impractical, in which case it shall report to the Board the circumstances that prevented it from making a final recommendation and its best estimate of the time required to produce such a final determination or recommendation.” (emphasis added); *see also* Article IV(2)(16), ICANN's Bylaws (July 30, 2014) (same).

The BGC has been provided with substantial evidence for making a final recommendation on DotMusic's Reconsideration Request: (1) DotMusic has submitted extensive materials to assist the BGC in assessing DotMusic's Reconsideration Request, including multiple independent expert opinions prepared by renowned experts in the music industry, such as an independent joint expert opinion by Dr. Noah Askin and Dr. Joeri Mol and independent expert opinions by Honorary Professor Dr. Jorgen Blomqvist and Dr. Richard James Burgess; and (2) DotMusic made a lengthy telephonic presentation to the BGC on September 17, 2016, and gave the BGC ample opportunity to seek additional information or clarifications from DotMusic during the presentation.

Likewise, we understand that: (1) on September 17, 2016, the Board directed “the President and CEO, or his designee(s) to undertake an independent review of the process by which ICANN staff interacted with the CPE provider, both generally and specifically with respect to the CPE reports issued by the CPE provider” (“Independent Review”); and (2) on October 18, 2016, the BGC requested “from the CPE provider the materials and research relied upon by the CPE panels in making their determinations with respect to the pending CPE reports” (“Request for Information from the CPE Provider”). DotMusic has not received *any* communication from ICANN regarding the status of the Independent Review or Request for Information from the CPE Provider. The BGC cannot (and should not) rely on these processes to delay DotMusic's application.

Accordingly, we request an immediate update about the status of: (1) DotMusic's Reconsideration Request 16-5 and the BGC's best estimate of the time it requires to make a final recommendation on DotMusic's Reconsideration Request; (2) the Independent Review; and (3) Request for Information from the CPE Provider.

We look forward to receiving a response from you.

DotMusic reserves all of its rights at law or in equity before any court, tribunal, or forum of competent jurisdiction.

Sincerely,

A handwritten signature in black ink, appearing to be 'Arif Hyder Ali', with a long horizontal stroke extending to the right.

Arif Hyder Ali