

February 10, 2016

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

## Re: ICANN Board Governance Committee Determinations & Inconsistent Policies

Dear ICANN and Economist Intelligence Unit ("EIU"):

Please accept this letter to express our concerns with the recent ICANN Board Governance Committee Determination (BGC) against community applicant DotGay. Regrettably, it appears that ICANN continues to misapply its policies and is rendering (itself or through its agents) <u>inconsistent</u> Determinations without accountability, transparency and predictability for applicants and their community constituents.

As you are likely well aware, DotMusic is the remaining community applicant for .MUSIC.<sup>1</sup> As you may also be aware, we are a global music community initiative supported by organizations with members representing over ninety-five percent (95%) of music consumed globally<sup>2</sup> (our support includes, but is not limited to, the only global federation representing musicians, the only global federation representing government culture agencies and arts councils, the major labels, the major publishers, the global independent music community, the Recording Academy/GRAMMYs, ASCAP, BMI, SESAC and many others). Our mandate is to launch a trusted, safe and secure .MUSIC extension that protects intellectual property, copyright and musicians' rights. Our initiative has also received support from the at-large artist community, the International Artist Organisation<sup>3</sup> (representing the interests of featured artists globally) and other globally-recognized music organizations *mainly* dedicated to the music community addressed (such as the

<sup>&</sup>lt;sup>1</sup> DotMusic community Application (ID 1-1115-14110), <u>https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1392</u>

<sup>&</sup>lt;sup>2</sup> <u>http://music.us/supporters</u> and

https://gtldresult.icann.org/applicationstatus/applicationdetails:downloadattachment/142588?t:ac=1392

<sup>&</sup>lt;sup>3</sup> https://www.icann.org/en/system/files/correspondence/iao-to-icann-eiu-11dec15-en.pdf



IFPI<sup>4</sup>). Indeed, we have an all-inclusive tent that is unified by our core principles consistent with the articulated community-based purpose of the applied-for gTLD.

To date, ICANN has received thousands of letters indicating support for our Application (this groundswell of support is greater than those received by all CPE applicants combined). Such unprecedented support provides further evidence that DotMusic exceeds the requisite CPE criteria, particularly when compared to the prevailing CPE results for .SPA, .HOTEL, .OSAKA, .ECO and .RADIO. If there is an organized and delineated "spa" community or a "hotel" community (with limited support letters), and if those community applications can meet CPE criteria, then both DotMusic's defined organized and delineated "music community application exceed CPE criteria.<sup>5</sup> The notion that "there is no such thing as a delineated and organized music community associated with the .MUSIC string" is flatly rejected by our community application and our documented support submitted to ICANN (which continues to grow).

The state of the new gTLD program, as it pertains to community applicants, is moving counter to the notion that "generic top-level domains (gTLDs) must be introduced in an orderly, timely and <u>predictable</u> way."<sup>6</sup> As set forth by ICANN:

The evaluation and selection procedure for new gTLD registries should respect the principles of fairness, transparency and non-discrimination. All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, <u>fully</u> <u>available to the applicants prior to the initiation of the process</u>.<sup>7</sup> Normally, therefore, no subsequent additional selection criteria should be used in the selection process.

Recommendation 9: There must be a clear and pre-published application process using objective and measurable criteria.

Principle A: New generic top-level domains (gTLDs) must be introduced in an orderly, timely and <u>predictable</u> way.

According to a recent statement by the Chairman of the BGC regarding the denial of DotGay's Request for Reconsideration:

The denial of the Request for Reconsideration is not a statement about the validity of dotgay LLC's application or dotgay LLC's supporters. The decision means that the BGC <u>did not</u>

<sup>&</sup>lt;sup>4</sup> <u>https://www.icann.org/en/system/files/correspondence/charnley-to-crocker-chehad%C3%A9-09nov15-en.pdf</u>

<sup>&</sup>lt;sup>5</sup> Also see detailed rationale at <u>http://music.us/dotmusic-community-application-passes-cpe-consistent-with-eiu-determinations</u>

<sup>&</sup>lt;sup>6</sup> Final Issue Report on New gTLD Subsequent Procedures, <u>https://gnso.icann.org/en/issues/new-gtlds/subsequent-procedures-final-issue-04dec15-en.pdf</u>, at pp.23-24

<sup>&</sup>lt;sup>7</sup> According to the Oxford dictionary, the word "fully" is defined as "completely or entirely; to the furthest extent" or "without lacking or omitting anything," <u>http://www.oxforddictionaries.com/us/definition/american\_english/fully</u>



find that the CPE process for dotgay, LLC's .GAY application violated any ICANN policies or procedures (emphasis added).<sup>8</sup>

While this statement on its face is innocuous, a closer examination of the BGC decision (and rationale) reveals inconsistencies in the process.

The BGC specifically found that:

To warrant an award of two points, though, it <u>must</u> be the case that the "Applicant is, or has documented support from, the recognized community institution(s)/member organization(s), or has otherwise documented authority to represent the community[.]" Here, the Second CPE Panel concluded that the Requester was ineligible for a two-point award given that it is "not the recognized community institution(s)/member organization(s), nor did it have documented authority to represent the community, or documented support from the recognized community institution(s)/member organization(s)" in part <u>because</u> "[t]here is no single such organization recognized by all of the defined community's members as the representative of the defined community in its entirety."<sup>9</sup>

In contrast, the .HOTEL CPE Panel found, that the .HOTEL applicant had "recognized" organizations "representing the community."<sup>10</sup>

In denying the applicant a full two points, the Dot Gay Second CPE Panel found that:

"Recognition" **demands** not only this unilateral dedication of an organization to the community, but **a reciprocal recognition** on the part of community members of the organization's **authority** to represent them.<sup>11</sup>

However, under the CPE Guidelines<sup>12</sup>, this is not the only option to receive the full two (2) points under Support. A review of the determinations indicates that the EIU may <u>not</u> have considered alternative options for scoring full points under CPE Support for DotGay.

CPE Guidelines provide that if an applicant lacks "documented authority to represent the community"<sup>13</sup> (requiring "reciprocal recognition"), then the Panel should consider <u>alternative options as follows</u>:

<sup>&</sup>lt;sup>8</sup> <u>https://www.icann.org/news/blog/bgc-s-comments-on-recent-reconsideration-request</u>

<sup>&</sup>lt;sup>9</sup> ICANN DotGay BGC Determination, <u>https://www.icann.org/en/system/files/files/reconsideration-15-21-dotgay-bgc-determination-01feb16-en.pdf</u>, at p.27

<sup>&</sup>lt;sup>10</sup> <u>Id</u>., pp.27-28

<sup>&</sup>lt;sup>11</sup> DotGay Second CPE, <u>https://www.icann.org/sites/default/files/tlds/gay/gay-cpe-rr-1-1713-23699-en.pdf</u>, at p.11

<sup>&</sup>lt;sup>12</sup> CPE Guidelines, <u>https://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf</u>

<sup>&</sup>lt;sup>13</sup> CPE Guidelines, <u>https://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf</u> at pp.16-18



First, the Panel should decide whether the applicant has "documented support from the <u>recognized</u> community institution(s)/member organization(s) <u>to represent</u> the community?" <sup>14</sup> <sup>15</sup> If the applicant meets this criterion then the full two (2) points are awarded. If not, the Panel should then consider whether:

1) there are <u>multiple</u> institutions/organizations supporting the application, with documented support from institutions/organizations representing <u>a majority</u> of the overall community addressed?<sup>16</sup>

or

2) the applicant have support from the majority of the recognized community institution/member organizations?<sup>17</sup>

In the case of .HOTEL, it appears that applicant received the full 2 points <u>because</u> the Panel found "recognized community institution(s)/member organization(s),"<sup>18</sup> the International Hotel & Restaurant Association (IH&RA) and HOTREC. The IH&RA and HOTREC did <u>not</u> have "**a reciprocal recognition** on the part of community members" or have the "**authority** to represent them" i.e. they were <u>not</u> "representative of the defined community **in its entirety**."

The .HOTEL CPE Panel stated that:

The community as defined in the application has at least one entity mainly dedicated to the community. In fact there are *several* entities that are *mainly* dedicated to the community, such as the International Hotel and Restaurant Association (IH&RA), Hospitality Europe (HOTREC), the American Hotel & Lodging Association (AH&LA) and China Hotel Association (CHA), among others.<sup>19</sup>

... The applicant possesses documented support from the <u>recognized</u> community institution(s)/member organization(s).<sup>20</sup>

<sup>&</sup>lt;sup>14</sup> This alternative option (based on "recognition") does not appear to require "reciprocal recognition" or "authority" <sup>15</sup> CPE Guidelines, pp.17-18

<sup>&</sup>lt;sup>16</sup> Id.

 $<sup>^{17}</sup>$  Id.

<sup>&</sup>lt;sup>18</sup>. HOTEL CPE, <u>https://www.icann.org/sites/default/files/tlds/hotel/hotel-cpe-1-1032-95136-en.pdf</u>, p.6

<sup>&</sup>lt;sup>19</sup> <u>Id.</u> at Community Establishment, p.2

<sup>&</sup>lt;sup>20</sup> HOTEL CPE, https://www.icann.org/sites/default/files/tlds/hotel/hotel-cpe-1-1032-95136-en.pdfat Support, p.6



In awarding .HOTEL a full two (2) points for Support, the Panel concluded that the .HOTEL applicant fulfilled <u>two</u> options (either option was acceptable under the CPE Guidelines):

[t]hese groups constitute the <u>recognized</u> institutions <u>to represent</u> the community, <u>and</u> a <u>majority</u> of the overall community as described by the applicant.<sup>21</sup>

Therefore, it appears that the .HOTEL community applicant passed with full scores for Community Establishment and Support where "several entities were mainly dedicated to the community" and "recognized," despite those organizations also representing other interests or sectors such as "restaurants" (or some being geographically focused like the AH&LA and the CHA). Conversely, the Second CPE Panel for DotGay appears to have refused to give full scoring to the applicant by stating that "[t]here is no single such organization recognized by all of the defined community's members as representative of the defined community in its entirety."<sup>22</sup>

We note that there is <u>no</u> policy or rule that <u>requires</u> an organization to represent a community in its "entirety" to score the full two points under Support. While there is an option requiring the "authority to represent the community," the CPE Guidelines provided other alternative options available to score the full two points under Support.

The CPE Guidelines define "recognized" as "institution(s)/organization(s) that are clearly <u>recognized</u> by the community members as <u>representative</u> of that community" i.e. <u>not</u> in their "*entirety*" but merely "*representative*." According to the Oxford dictionary, the primary definition of "*recognize*" is to "identify."<sup>23</sup> According to the Oxford dictionary, the definition of the adjective "*representative*" is "typical of a class, group, or body of opinion" or "containing typical examples of many or all types" or "to act and speak on behalf of a wider group."<sup>24</sup>

Based on the foregoing, it can be reasonably argued that the <u>International Lesbian, Gay</u>, Bisexual, **Trans and Intersex Association** (ILGA) is "typical of a group" that is representative of the "gay" community.<sup>25</sup> Thus, the rational to find that the <u>International Hotel</u> & Restaurant Association (IH&RA) with respect to the "hotel" community satisfies CPE, even though the IH&RA also represents restaurants, should apply to the ILGA in the case of DotGay. If the IH&RA is a "recognized" and "representative" entity of the "hotel" community then why is ILGA not treated similarly with respect to the "gay" community if they share similar characteristics as representative organizations?

<sup>&</sup>lt;sup>21</sup> <u>Id.</u>

<sup>&</sup>lt;sup>22</sup> DotGay Second CPE Report, <u>https://www.icann.org/sites/default/files/tlds/gay/gay-cpe-rr-1-1713-23699-en.pdf</u>, p.11

<sup>&</sup>lt;sup>23</sup> <u>http://www.oxforddictionaries.com/us/definition/american\_english/recognize</u>

<sup>&</sup>lt;sup>24</sup> http://www.oxforddictionaries.com/us/definition/american\_english/representative

<sup>&</sup>lt;sup>25</sup> ILGA is recognized because it has consultative status at the United Nations, <u>http://ilga.org/about-us</u>



Therefore, it appears that the CPE process for DotGay's .GAY application violated ICANN CPE policies with inconsistent grading or evaluation. Per the CPE Guidelines the evaluation process should ensure: **consistency of approach in scoring Applications will be of particular importance**...<sup>26</sup> and "[t]he panel must be able to exercise **consistent** and somewhat subjective judgment in making its evaluations in order to reach conclusions that are compelling and defensible...<sup>27</sup>

Accordingly, the recent BGC determination on .GAY further highlights inconsistent interpretations of the Applicant Guidebook and CPE rules and issues facing community applicants.

In light of the above inconsistent reading of the AGB and CPE rules, DotMusic has serious concerns with respect to the CPE evaluation for .MUSIC that is under evaluation processing. Namely, there are two key components of CPE that appear unclear, unpredictable and inconsistent: 1) the process for determining whether an organization is *"recognized"* and *"representative"* of the subject community; and 2) the **contextual interpretation** of community particularities that requires in-depth knowledge and expertise of the community.<sup>28</sup>

In light of the above discussion, it should be noted that the IFPI, should exceed the same criteria under Community Establishment and Support for the .MUSIC CPE.

The IFPI is <u>only</u> associated with **music** and it is <u>the</u> **globally-recognized organization that administers the International Standard Recording Code (ISRC)**, an international standard code for uniquely identifying sound recordings and music video recordings, which is **reciprocally recognized across all segments of the music community**. The code was developed with the ISO technical committee 46, subcommittee 9 (TC 46/SC 9), which codified the **standard as ISO 3901** in 1986.<sup>29</sup> The IFPI's ISRC is "intentionally standardised under ISO," globally structured<sup>30</sup> and "well established, widely accepted internationally"<sup>31</sup> Furthermore, it relates to the addressed music community defined by DotMusic, an "organized and delineated logical alliance of communities related to music."

The IFPI does not restrict ISRC codes to solely its members. In fact, <u>ISRC eligibility is available and</u> <u>dedicated to the entire global music community</u>, irrespective of whether they are members of organizations or trade associations or not, are professionals or amateurs, are independent or non-independent, commercial or non-commercial:

<sup>&</sup>lt;sup>26</sup> CPE Guidelines, <u>https://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf</u> at p.22
<sup>27</sup> Id.

<sup>&</sup>lt;sup>28</sup> The CPE Guidelines mandate that "[t]he panel will be an internationally recognized firm or organization with significant demonstrated expertise in the evaluation and assessment of proposals in which the relationship of the proposal to a defined...community plays an important role," CPE Guidelines, p.22

<sup>&</sup>lt;sup>29</sup> <u>http://www.iso.org/iso/home/store/catalogue\_tc/catalogue\_detail.htm?csnumber=23401</u>

<sup>&</sup>lt;sup>30</sup> <u>http://isrc.ifpi.org/en/isrc-standard/structure</u>

<sup>&</sup>lt;sup>31</sup> <u>http://isrc.ifpi.org/en/why-use/benefits</u>



Owners of recordings may for example be independent artists, record labels or recorded music groups. ISRC is available to all owners of recordings regardless of their membership<sup>32</sup> (or not) with any industry association.<sup>33</sup>

In fact, without the IFPI's ISRC codes there would not be legal music consumption because there would be no way to appropriately and efficiently attribute music to music community members. Without the IFPI's ISRC codes, YouTube Music (which is consumed by over 1 billion YouTube users) would be unable to effectively credit the corresponding music copyright owner related to each music video.<sup>34</sup> For the same reason, nearly <u>all</u> digital music retailers <u>rely on and require</u> ISRC codes, including Apple iTunes<sup>35</sup> (the largest music retailer in the world offering over 43 million music tracks<sup>36</sup>).

Another issue of concern is evaluating and understanding the subjective and contextual nature of a given community. According to the BGC Determination concerning the .OSAKA CPE:

[The] string .OSAKA [was] awarded full points in the nexus category even though the community definition included not just those living in Osaka but also "those who self identify as having a tie to Osaka."

...<u>Different outcomes by different independent experts related to different gTLD</u> applications are to be expected... As such, a host of distinct considerations come into play with respect to each step of the evaluation and, in addressing the nexus component, the CPE panel evaluating .OSAKA specifically referred to the governmental support the applicant had demonstrated (emphasis added).<sup>37</sup>

ICANN states that "different outcomes by different independent experts related to different gTLD applications are to be expected," which is contrary to and inconsistent with the ICANN CPE Guidelines. Transparency and accountability mechanisms, including the quality control requirement of compelling, consistent and defensible documentation, forms an integral part of ICANN's decision-making standards. The AGB and CPE Guidelines provide in pertinent part that:

<sup>&</sup>lt;sup>32</sup> DotMusic's community application defines the community as "a strictly delineated and organized community of individuals, organizations and business, a "logical alliance of communities of a similar nature," that relate to music: the art of combining sounds rhythmically, melodically or harmonically." The IFPI's ISRC codes do <u>not</u> restrict eligibility to members of select music organizations but are available to the entire global music community as defined. <sup>33</sup> http://isrc.ifpi.org/en/using-isrc

<sup>&</sup>lt;sup>34</sup> https://support.google.com/youtube/answer/6007080

<sup>&</sup>lt;sup>35</sup> <u>http://www.apple.com/itunes/working-itunes/sell-content/music-faq.html</u>

<sup>&</sup>lt;sup>36</sup> http://www.apple.com/itunes/music and http://www.digitalmusicnews.com/2014/04/24/itunes800m

<sup>&</sup>lt;sup>37</sup> ICANN DotGay BGC Determination, <u>https://www.icann.org/en/system/files/files/reconsideration-15-21-dotgay-bgc-</u> determination-01feb16-en.pdf, pp.24-25



All EIU evaluators undergo regular training to ensure <u>full understanding</u> of all CPE requirements as listed in the Applicant Guidebook, as well as to ensure <u>consistent judgment</u> (CPE Panel Process Document, p.2)...

The Panel Firm exercises **consistent judgment** in making its evaluations in order to reach conclusions that are compelling and defensible, and documents the way in which it has done so in each case (CPE Guidelines, Pg.22 and CPE Panel Process Document, Pg. 3).<sup>38</sup>

The EIU will fully cooperate with ICANN's <u>quality control</u> process...<sup>39</sup>

While DotMusic has provided over 40 independent expert testimonies<sup>40</sup> and an independent Nielsen poll<sup>41</sup> to prove that it meets the full criteria for Community Establishment and Nexus, there is no way to verify and ensure that the Economist Intelligence Unit has hired music experts (or has the specialized understanding) to evaluate the .MUSIC community application <u>so that the particularities of the music community are considered and addressed</u>. As the .OSAKA CPE determination demonstrates, context and identification are important factors when evaluating a community.

In the case of the music community, it is important to understand the symbiotic inter-relationship between all of our supporting groups and our constituents operating under a regulated sector based on copyright, and their shared principles to create safe, trusted and secure .MUSIC community-based top-level domain with music-tailored policies that protect intellectual property. Whether it is a professional musician, an amateur, or a music aficionado, in one way or another they will either be a member of one of DotMusic's supporting organizations or be able to self-identify (e.g. identifying that they have a tie with the community and/or its culture) as a member (of the organized and delineated music community defined) who has a legitimate purpose in addressing the community by taking affirmative and verifiable action to restrict content and use to demonstrable music-related activities and by certifying to abide to a set of community-tailored registration requirements aligned with the community's goals.<sup>42</sup> Accordingly, DotMusic should meet the CPE criteria if the appropriate standards are applied and the context and nature of the music community is understood.

Finally, DotMusic remains concerned with the appearance of inconsistent and discriminatory practices by ICANN to favor certain applicants over community applicants. For example, the ICANN Board recently

<sup>39</sup> CPE Guidelines, <u>https://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf</u>, at pp.22-23
 <sup>40</sup> http://music.us/expert/letters

<sup>&</sup>lt;sup>38</sup>CPE Guidelines, <u>https://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf</u> atp.22, and CPE Panel Process Document, <u>http://newgtlds.icann.org/en/applicants/cpe/panel-process-07aug14-en.pdf</u>, p.3

<sup>&</sup>lt;sup>41</sup> Nielsen / Harris Poll, Quick Query Q3505, <u>http://music.us/nielsen-harris-poll.pdf</u>,

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<sup>&</sup>lt;sup>42</sup> In the .OSAKA CPE, the EIU awarded full points for Community Establishment and Nexus for a community definition that stated that: "[m]embers of the community are defined as those...who <u>self identify as having a tie</u> to Osaka, <u>or the culture</u> of Osaka. Major participants of the community include, but are not limited to the following: [...] Entities, including natural persons <u>who have a legitimate purpose in addressing the community</u>," p. 2



agreed to Donuts' appeal request for .HOSPITAL because of objection inconsistencies and agreed to a "reevaluation by a new three-party expert panel,"<sup>43</sup> even though ICANN responded to GAC advice that "there is a risk of inconsistency to implement this advice now" pertaining to appeals for community applicants and that "ICANN would prefer to establish a review mechanism more broadly for subsequent rounds."<sup>44</sup> Also recently, ICANN responded to letters from the German Federal Ministry for Economic Affairs and Energy, the DIHK and the Swiss Federal Office of Communications<sup>45</sup> stating that Donuts was allowed to make material changes to their application to proceed with the delegation of .GMBH based on GAC advice and Donuts' Public Interest Commitments (PIC). ICANN rejected a similar change request by the .CPA community applicants.<sup>46</sup>

While ICANN appears to have allowed non-community applicants<sup>47</sup> to make material changes to their application, ICANN has <u>not</u> permitted community applicants to make any equivalent material changes to their application or PIC even though the GAC has advised ICANN to give "preferential treatment for all applications which have demonstrable community support" and "to take better account of community views, and improve outcomes for communities."<sup>48</sup> Also, while ICANN accepted some GAC Advice and appears to have permitted non-community applicants to change their applications materially to proceed with delegation, ICANN has not implemented any changes to the CPE process to give preferential treatment to communities with demonstrable support, or to take better account of thousands of letters submitted to ICANN and the EIU by the music community.

DotMusic agrees with Thomas Schneider's recent letters<sup>49</sup> to ICANN on behalf of the Government Advisory Committee (GAC) that:

[T]he GAC remains of the view that, consistent with previous advice, as many issues as possible (within legal constraints) should be dealt with in the current round, without prejudice to considering them on their merits in the lead-up to any subsequent rounds.

... The current [ICANN Board] scorecard does not appear to meet these criteria.<sup>50</sup>

<sup>44</sup> https://www.icann.org/en/system/files/correspondence/crocker-to-schneider-28apr15-en.pdf, p.1 and

<sup>&</sup>lt;sup>43</sup> https://www.icann.org/resources/board-material/resolutions-2016-02-03-en#2.c

https://www.icann.org/en/system/files/correspondence/schneider-to-crocker-2-29jan16-en.pdf, Appendix 1, p.23 <sup>45</sup> <u>https://www.icann.org/en/system/files/correspondence/willett-to-schnorr-28jan16-en.pdf</u>, https://www.icann.org/en/system/files/correspondence/willett-to-ortmeyer-wernicke-28jan16-en.pdf and

https://www.icann.org/en/system/files/correspondence/willett-to-metzger-28jan16-en.pdf

<sup>&</sup>lt;sup>46</sup> ICANN "deferred consideration of AICPA's December 2014 Change Request, including changes made to reflect the principles of the Beijing Communiqué," <u>https://www.icann.org/en/system/files/files/reconsideration-request-15-17-aicpa-redacted-19sep15-en.pdf</u>, p.4

 <sup>&</sup>lt;sup>47</sup> DotMusic Reconsideration Request, <u>https://www.icann.org/en/system/files/files/request-dotmusic-07jun14-en.pdf</u>
 <sup>48</sup> https://gacweb.icann.org/download/attachments/32637223/Final GAC Communique Durban 20130717.pdf, p.6

and https://www.icann.org/en/system/files/correspondence/schneider-to-crocker-2-29jan16-en.pdf, Appendix 1, 2 and 3 <sup>49</sup> https://www.icann.org/en/system/files/correspondence/schneider-to-crocker-2-29jan16-en.pdf and

https://www.icann.org/en/system/files/correspondence/schneider-to-crocker-29jan16-en.pdf



The music community is anxiously waiting for the .MUSIC CPE decision on DotMusic's community application. As expressed on many occasions, CPE is proving to be an inconsistent and unpredictable process. Community applicants have worked diligently for years to meet the criteria and gather demonstrable support by following the AGB, and responding to GAC advice.

There is no doubt that ICANN staff is working diligently and the EIU has a difficult task, however, the lack of transparency, accountability and predictability continues to prejudice community applicants relying on ICANN's Bylaws, the Applicant Guidebook and the CPE Guidelines.

We hope that ICANN and the EIU consider and address these issues in connection with the .MUSIC CPE Determination.

Respectfully submitted,

Jason Schaeffer Legal Counsel DotMusic

Constantine Roussos Founder DotMusic

Website: <u>http://www.music.us</u> Supporting Organizations: <u>http://www.music.us/supporters</u> Board: <u>http://www.music.us/board</u>

<sup>50</sup> https://www.icann.org/en/system/files/correspondence/schneider-to-crocker-29jan16-en.pdf, p.1