



VIA EMAIL (steve.crocker@icann.org; fadi.chehade@icann.org; cherine.chalaby@icann.org; akram.atallah@icann.org; christine.willett@icann.org; thomas.schneider@bakom.admin.ch; cyrus.namazi@icann.org; and john.jeffrey@icann.org)

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

Re: Support for .MUSIC Community Application and Response to Music Community Obstruction

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

Our music organisation, the Independent Music Companies Association¹ (“IMPALA”), supports² the community-based DotMusic Application (ID 1-1115-14110)³ for .MUSIC to safeguard intellectual property and serve the legitimate interests of the entire global music community. The multi-stakeholder community defined matches the *nexus*⁴ for the applied-for string by including all commercial, non-commercial and amateur stakeholders related to music without discrimination.

IMPALA has over 4,000 members including top independents and national associations of independent companies across Europe.⁵ IMPALA represents the independent music community in Europe and is an organisation *mainly* dedicated to the music community defined by DotMusic⁶ by providing an “active single voice for the independent sector.”

¹ <http://www.impalamusic.org>

² Also see support letters from global music community, including the WorldWide Independent Network (WIN), the Association of Independent Music (AIM), the Merlin Network (MERLIN), the American Association of Independent Music (A2IM) and the Independent Music Companies Association (IMPALA), at <https://www.icann.org/en/system/files/correspondence/bengloff-to-crocker-et-al-07mar15-en.pdf> and <https://www.icann.org/en/system/files/correspondence/bengloff-to-chehade-et-al-20aug14-en.pdf>

³ See <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1392>

⁴ An independent Nielsen survey (similar to the Global Registrant Survey conducted by Nielsen on behalf of ICANN, See <https://www.icann.org/news/announcement-2015-09-25-en>) addressed whether the applied-for string was commonly-known (i.e. known by most people) and associated with the identification of the defined community. Most people, 1562 out of 2084 (3 in 4 or 75% of the respondents) responded “Yes.” (See Nielsen / Harris Poll, Quick Query Q3505, <http://music.us/nielsen-harris-poll.pdf>, Fielding Period: August 7-11, 2015, Pg. 1, 2 and 3). Furthermore, independent testimonies and disclosures from over 40 experts agreed with this assessment (See <http://music.us/expert/letters>).

⁵ <http://www.impalamusic.org/node/16>

⁶ The Music Community is an “organised and delineated logical alliance of music communities” as defined in DotMusic’s Application, See <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1392>, DotMusic Limited Application ID 1-1115-14110, Question 20a



IMPALA's mission is to grow the independent music sector, return more value to artists, promote cultural diversity and entrepreneurship, improve political access and modernise perceptions of the music sector:

- Growing the independent sector - Promoting growth is about maximising all commercial opportunities, delivering a proper regulatory framework, with improved market access, real finance, and a level playing field in all areas from access to media, to collecting societies through to online;
- Returning more value to artists - Removing all barriers to licensing of online and other services is vital, yet certain operators try to hide behind copyright exceptions or “safe harbour” rules. This effectively transfers value away from creators. Closing this “value gap” is important to the independent sector as it particularly distorts licensing efforts by smaller players. Returning value also means full transparency, proper reporting and revenue sharing;
- Promoting cultural diversity and entrepreneurship - Independent music is an excellent example of Europe’s cultural diversity. By discovering and releasing the most innovative artists, independent labels play a key role in the evolution of the cultural landscape. The economic and regulatory environment must actively foster cultural entrepreneurship and economic diversity;
- Improving political access - Smaller businesses need to work together to match the influence of larger companies. IMPALA provides an active single voice for the independent sector; and
- Modernising perceptions - By explaining how the music sector works, by broadening the agenda and offering new solutions, IMPALA aims to promote independent music, inspire decision makers to fulfil new promises to cultural SMEs, and open doors to investment.⁷

IMPALA’s documented activities⁸ for the independent music community include:

- Raising awareness and advocating for [strong and fair copyright](#), proper remuneration and freedom of expression;
- Promoting [a distortion-free Digital Single Market](#) by addressing the “value gap” caused by abuse of “safe harbour” rules;
- Campaigning for better access for independent music to online platforms, radio, retail, TV and other media;
- Advocating for transparency and fairness with artists – 2/3 of signatories of WIN’s [Fair Digital Deals Declaration](#) are European;
- Calling for new “[rules of engagement](#)” online – data protection, privacy, taxation, non-discrimination rules for dominant players;
- Encouraging “[follow the money](#)” to tackle mass infringing sites;
- Revisiting the anonymity/accountability equation for a dynamic & safe digital environment for all;
- Seeking to [stimulate competition](#) and [consumer choice](#) through new antitrust rules specific to culture;
- Taking action against concentration and other abuses;
- Promoting innovative commercial tools such as [Merlin](#), the first global digital rights agency for independents;
- Implementing IMPALA’s [Collecting Society Code of Conduct](#);
- Seeking tax credits, [loan guarantees](#), new revenue sharing mechanisms, and proper valuation of copyright assets;
- Campaigning for [reduced VAT on music](#), plus an end to discrimination between film & music support programmes;

⁷ <http://www.impalamusic.org/node/4>

⁸ <http://www.impalamusic.org/node/127>



- Delivering more & better choice for artists and music fans;
- Promoting culture as distinct to other goods and services, [mapping and measuring the sectors](#) adequately;
- [Levelling the playing field](#) for all cultural SMEs;
- Promoting the [UNESCO Convention on cultural diversity](#); and
- WIPO observer and member of UNESCO's Global Alliance.

Our organisation supports a secure and trusted Internet ecosystem that helps music grow and thrive. For such an ecosystem to flourish, serve the global public interest and protect the legitimate interests of the global Music Community, responsible measures and safeguards to deter copyright infringement and bad actors are of great essence. Despite the low domain registration volumes of new gTLDs, many new gTLD registries have not adequately protected the fundamental rights of creators by taking effective action against infringers and abuse.

We would also like to express serious concerns about the spurious, unsubstantiated opposition letters filed by opponents of the “community” model against DotMusic Limited’s .MUSIC community-based application. A DotMusic competitor, its allies and other negligible entities that have no association with music filed last-minute opposition letters to obstruct the multi-stakeholder community application from prevailing Community Priority Evaluation (CPE). Community applications have been the subject of what is by far the longest public comment period in ICANN history. The DotMusic application has been open for public comment since 2012 i.e. for nearly 3 and half years. Reasonably, one would expect that any truly concerned organisation or entity would have voiced their opinions years ago when the application was first published, especially taking into context DotMusic’s public outreach efforts since 2008.⁹ This would have represented a “good faith” concern because community applicants could have undertaken to deliberate with the concerned party to establish whether to make changes in their applications to accommodate that party if the broader community agreed through an application change request process. As such, any last-minute letters of opposition should be considered in this context. By any measure, more than enough time has passed for legitimate concerns to be raised by any party (including formal community objections). According to ICANN, the deadline for community objection closed on 13 March, 2013.¹⁰ As such, any opposition against DotMusic is time barred and should not be considered relevant.

The obstruction was orchestrated by Donuts, a .MUSIC competitor and the largest gTLD applicant, which has a history of engaging in a pattern of obstruction against community applicants¹¹ and ICANN.¹² These opposition letters followed a common script (that was provided in a template letter distributed by Donuts) to shun the existence of the Music Community. ICANN has passed Resolutions on Safeguards (Category 1) based on Government Advisory Committee (GAC) advice stating that “music” is a sensitive, regulated sector. This regulated music sector is driven by an organised and delineated Music Community that

⁹ <http://music.us/events>

¹⁰ <http://www.iccwbo.org/products-and-services/arbitration-and-adr/icann-new-gtld-dispute-resolution/how-to-file-an-objection> and <https://newgtlds.icann.org/en/program-status/odr>

¹¹ According to a letter from the Sports Communities: “[The Sports Communities requested for the] end to Donuts’ unwarranted, anticompetitive and illegitimate attempts to delay the delegation to the Sport, Ski and Rugby Communities of their legitimately-won and long overdue New Generic Top Level Domain Names,” See <https://www.icann.org/en/system/files/correspondence/omahoney-et-al-to-klitgaard-21nov14-en.pdf>, Pg.1

¹² According to ICANN: Donuts’ “Requests are exceptionally broad and inappropriate” and would “impose a massive burden on ICANN that would delay this already-delayed proceeding considerably further,” See <https://www.icann.org/en/system/files/files/icann-letter-brief-donuts-10aug15-en.pdf>, Pg.1



encompasses both commercial and non-commercial constituents, as defined by DotMusic Limited (“a strictly delineated and organised logical alliance of communities related to music”). Another letter orchestrated by a Donuts ally also attacked ICANN’s own mandated CPE “Eligibility” policy to restrict registration to the Community members as “chill[ing] free expression on the Internet.” As ICANN has stated in recent filings:

When an applicant submits a community-based application, it is not, as the [Opposition Letters] imply, simply seeking to “exploit the application process” (IRP Request ¶ 47). As set forth in the Guidebook, community-based applicants agree to operate the applied-for gTLD “for the benefit of a clearly delineated community” (Guidebook § 1.2.3.1, Cls. Ex. RM-5). This involves implementing “dedicated registration and use policies for registrants in [the applied-for gTLD],” (Guidebook § 1.2.3.1, Cls. Ex. RM-5) policies that substantially restrict the sorts of domain name registrations a gTLD may accept and thereby might significantly limit the potential profitability of a gTLD. (Pg.6)...The recommendation of the GNSO that applications representing communities be awarded priority in string contention (ICANN Board Rationales for the Approval of the Launch of the New gTLD Program at 94 (“ICANN Board Rationales”) (Cls. Ex. RM-11)). (Pg.10)¹³

Contrary to the opposition comments, DotMusic’s application pledges:

A commitment to not discriminate against any legitimate members of the global music community by adhering to the DotMusic Eligibility policy of non-discrimination that restricts eligibility to Music Community members -- as explicitly stated in DotMusic’s Application -- that have an active, non-tangential relationship with the applied-for string and also have the requisite awareness of the music community they identify with as part of the registration process. This public interest commitment ensures the inclusion of the entire global music community that the string .MUSIC connotes;¹⁴ (Enumerated Commitment #3)

A commitment that the string will be launched under a multi-stakeholder governance structure of representation that includes all music constituents represented by the string, irrespective of type, size or locale, including commercial, non-commercial and amateur constituents, as explicitly stated in DotMusic’s Application.¹⁵ (Enumerated Commitment #5)

A spurious letter was also filed by Rightside¹⁶ disingenuously stating that “it is preposterous...to claim that there exists a “music community.””¹⁷ Such statements are inconsistent with public marketing material for promoting the .BAND music-themed gTLD, which is operated by Donuts and Rightside. Marketing material clearly mentions promotions to “music communities” (Pg.2),¹⁸ which is consistent with DotMusic’s definition of the Music Community as a logical alliance of “music communities.” Another .BAND Marketing Kit also refers to existence of the “music sector” further highlighting the existence of

¹³ <https://www.icann.org/en/system/files/files/icann-response-birch-mmx-irp-request-redacted-27apr15-en.pdf>

¹⁴ <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails:downloadpicposting/1392?t:ac=1392>

¹⁵ <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails:downloadpicposting/1392?t:ac=1392> , Commitments #3 & #5

¹⁶ Rightside and Donuts are co-applicants for both .MUSIC and .BAND

¹⁷ <https://www.icann.org/en/system/files/correspondence/hammock-to-crocker-et-al-12aug15-en.pdf>

¹⁸ <http://branding.rightside.co/api/download/28qb-dj9ehrud>



an organised and delineated music community (Pg.6).¹⁹ Another example to showcase the spurious nature of the template letters orchestrated by Donuts is the discrepancy and inconsistency illustrated in a letter,²⁰ which described its organisation as one that was “comprised of musicians...and individuals in the music community.” Despite acknowledging the existence of the “music community” in its company description, the letter later takes a different position to doubt the existence of the “music community” by incorporating Donuts’ talking points which refer to a “*music community, if such a thing even exists*”. Such revealing statements highlight that any opposition letters that doubt or shun the existence of the community are spurious and filed for the purpose of obstruction. Accordingly, the Community Priority Evaluation panel should respectfully determine that there is no relevant opposition to the DotMusic application.

DotMusic does have support of the majority of the Community defined.²¹ Over 95% of global music consumed is created, promoted or distributed by the delineated and organised Community that has supported DotMusic’s application, including many commercial and non-commercial entities *mainly* dedicated to the Community, such as the IFPI, RIAA, FIM, ICMP, IFACCA, IAMIC, ISME, A2IM, WIN, NAMM, NMPA, Merlin and many others. Without these stakeholders and organised processes that the defined Music Community follows, it would be impossible for the general public to enjoy the music that they do today. Music would not exist in its present form. Musicians cannot be recognized, compensated or attributed appropriately without the defined organised and delineated Music Community. To deny that the Community exists or that it does not participate in a shared system of creation, distribution and promotion of music with common norms and communal behavior is akin to denying the existence of music altogether.

The Music Community shares a legal framework governed by common copyright law under the Berne Convention, which was established and agreed upon by over 167 international governments, which includes shared rules and communal regulations. In addition, further evidence that there is cohesion within the Community is the existence of numerous globally-recognized standards and classification systems, which identify who the individual songwriters, publishers and rights holders are and which songs they are associated with, so that community members are appropriately compensated or attributed. Such global music classification systems include the ISMN, ISRC, ISWC and the ISNI.

Thus far, there have not been any community-based, music-themed TLDs launched in the new gTLD Program. We urge the EIU to follow GAC Advice²² and ICANN Resolutions²³ and give preferential

¹⁹ <http://branding.rightside.co/api/download/28qj-3k4nlku8>

²⁰ <https://www.icann.org/en/system/files/correspondence/hutcherson-to-crocker-et-al-07aug15-en.pdf>

²¹ See <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails:downloadattachment/142588?t:ac=1392> and <http://music.us/supporters>

²² The GAC issued advice to ICANN in multiple Communiqués regarding CPE and the various outcomes. In its Communiqués from Beijing, Durban, and Singapore, the GAC referred to “preferential treatment” that should be given applications with “demonstrable community support” or a “collective and clear opinion.” (See Governmental Advisory Committee. (11 April 2013) GAC Communiqué – Beijing People’s Republic of China. Retrieved from <https://www.icann.org/en/system/files/correspondence/gac-to-board-18apr13-en.pdf>; See Governmental Advisory Committee. (18 July 2013) GAC Communiqué – Durban, South Africa. Retrieved from <http://durban47.icann.org/meetings/durban2013/presentation-gac-communique-18jul13-en.pdf>; See Governmental Advisory Committee. (27 March 2014) GAC Communiqué – Singapore. Retrieved from <http://www.icann.org/en/news/correspondence/gac-to-board-27mar14-en.pdf>)

²³ In the 14 May 2014 scorecard, ICANN responded to the GAC that it “[would] continue to protect the public interest and improve outcomes for communities, and to work with the applicants in an open and transparent manner



treatment to DotMusic’s community application, which has demonstrable support, by ensuring that it prevails CPE to increase diversity, differentiation and music-tailored safeguards in the New gTLD Program. Such a result would serve the global public interest and ensure that the multi-stakeholder music community governs .MUSIC in a responsible, trusted and safe manner.

Any other result would compromise the credibility and reputation of both ICANN and the EIU because, as outlined in the 2007 GNSO Final Report for the Introduction of New Generic Top-Level Domains, “where an applicant lays any claim that the TLD is intended to support a particular community, that claim will be taken on trust (CV 7 -10)” and a “community should be interpreted broadly and will include, for example, an economic sector, a cultural community” (IG P*)²⁴ such as the music “(industry) community” defined in the DotMusic multi-stakeholder community application. Section 4.2.3 of the Applicant Guidebook further reminds the stated goal of the CPE process, which was to “identify qualified community-based applications, while preventing both ‘false positives’ (awarding undue priority to an application that refers to a ‘community’ construed merely to get a sought-after generic word as a gTLD string) and ‘false negatives’ (not awarding priority to a qualified community application).

Respectfully submitted

A handwritten signature in black ink, which appears to read "Helen Smith". The signature is written in a cursive, flowing style.

Helen Smith,
Executive Chair
IMPALA
70 Coudenberg
1000 Brussels
Belgium

in an effort to assist those communities within the existing framework.”(See ICANN. (14 May 2014) Annex 1 to Resolution 2014.05.14.NG02. Retrieved from <https://www.icann.org/en/system/files/files/resolutions-new-gtld-annex-1-14may14-en.pdf>)

²⁴ <http://gns0.icann.org/en/issues/new-gtlds/pdp-dec05-fr-parta-08aug07.htm>