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Re: Letter to GAC to support DotMusic's .MUSIC CPE Reconsideration Request 16-5

Dear Thomas Schneider and Government Advisory Committee ("GAC") Representatives:

As you may be aware, DotMusic (with Application ID 1-1115-14110) is the remaining community applicant for .MUSIC.¹ DotMusic's mandate, as set forth in our Public Interest Commitments (PIC)² and community-based Application,³ is to launch a trusted, safe and secure .MUSIC string that protects intellectual property, copyright and musicians' rights under a multi-stakeholder governance model. Our PIC and Application policies confirm that we are the only Applicant that incorporates music-tailored copyright and intellectual property protection provisions, including policies to stop domain hopping, takedown policies in the case of piracy, authorization provisions, permanent blocks, privacy/proxy provisions, true name/address mandates and trusted sender complaint policies amongst others. DotMusic's Application is also trusted because: (i) it is supported by organizations with members representing over 95% of music consumed globally;⁴ and (ii) .MUSIC will be governed and controlled by the global music community. Toward that end, each music constituent community type has a governance seat on the multi-stakeholder .MUSIC Board (PAB).⁵

Even though DotMusic scored maximum points for its community-based Registration Policies and enhanced safeguards, ICANN did not pass DotMusic's application in CPE⁶ because:

1. **ICANN ignored ICANN-accepted GAC Category 1 Advice that the MUSIC string pertains to a cohesive, regulated sector.** We, and those in the music community were pleased when the ICANN Board accepted GAC Category 1 Advice recognizing that the MUSIC string is a cohesive "regulated sector," a "*string likely to invoke a level of implied trust from consumers, and carry higher levels of risk associated with consumer harm;*" and (ii) that it is a "*string that is linked to [a] regulated sector*" that "*should operate in a way that is consistent with applicable laws.*"⁷ There was reasonable expectation that ICANN would apply this policy acceptance in the .MUSIC CPE process. However, contrary to the GAC Category 1 Advice, ICANN determined in the .MUSIC CPE Report that the Music Community defined has "no cohesion or awareness of a regulated sector applicable to all Music Community members across all music constituent types." This result is plainly against the public and community interest, and accepted GAC Advice;
2. **ICANN rejected the existence of the Music Community** as defined in the Application (the "*Music Community*," See Application 20A and 20D) by inaccurately finding that "*there is no "established name" for the applied-for string to match...for a full score on Nexus.*"⁸ It is beyond shadow of a doubt that the established name that the Application defines and identifies, the "*Music Community*," exactly matches the string .MUSIC and exists millions of times over.

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

² PIC, <https://gtldresult.icann.org/applicationstatus/applicationdetails/downloadpicposting/1392?t:ac=1392>,

³ <https://gtldresult.icann.org/applicationstatus/applicationdetails/downloadapplication/1392?t:ac=1392>

⁴ <http://music.us/supporters> and

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

⁵ See Expanding multi-stakeholder Board at <http://music.us/board>

⁶ .MUSIC CPE Report, <https://www.icann.org/sites/default/files/tlds/music/music-cpe-1-1115-14110-en.pdf>

⁷ <https://icann.org/en/system/files/correspondence/crocker-to-schneider-23jun15-en.pdf>, pp.1-2, An.5, p.8, Ex.A34

⁸ .MUSIC CPE Report, *Nexus*, p.5



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3. **ICANN ignored the unprecedented united, global support of DotMusic's Application.**

DotMusic received more support than all community applicants combined (representing every facet of the music community). Despite this documented support, ICANN did not apply the alternate CPE criterion to earn maximum points for “*support*” for an Application that has “documented support...from institutions/organizations representing a majority of the overall community addressed.”⁹

As a result of these three (3) procedural errors, ICANN deducted six (6) points from the .MUSIC CPE refusing to recognize and protect the Music Community. On February 24, 2016, DotMusic and ten global supporting organizations filed a Reconsideration Request (16-5) to overturn this flawed decision. The International Federation of the Phonographic Industry (“IFPI”) that represents the recording industry also filed a letter with ICANN and the Board Governance Committee (“BGC”) to accept the DotMusic Reconsideration Request.¹⁰ We also note that ICANN declined to recognize the IFPI as a globally-recognized organization mainly dedicated to the Music Community even though the IFPI is 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 1986.¹¹

Accordingly, consistent with its previously-issued GAC Category 1 Advice, we respectfully request that the GAC provide Advice to ICANN in support of the DotMusic Reconsideration Request 16-5¹² in the upcoming GAC Marrakech Communiqué. This Advice is to serve the global public interest and to ensure that .MUSIC is not auctioned and awarded to non-community applicants that lack enhanced copyright protection provisions and the multi-stakeholder governance structure to serve the interests of the Music Community. A co-requester to this Reconsideration Request includes the International Federation of Arts Councils and Culture Agencies (“IFACCA”), the only federation representing government ministries of culture globally and the Music Community in its entirety.¹³ In the next few weeks the ICANN BGC will determine whether to accept the Reconsideration. Therefore, DotMusic, its co-requesters and supporters urge GAC to consider this important issue for its upcoming Communiqué. DotMusic is also available for a presentation or a hearing in front of GAC at Marrakech if desired.

Respectfully Submitted,

Constantine Roussos
 DotMusic

February 29, 2016

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

⁹ AGB, *Support*, “Also with respect to “Support,” the plurals in brackets for a score of 2, relate to cases of multiple institutions/organizations. In such cases there must be documented support from institutions/organizations representing a majority of the overall community addressed in order to score 2,” 4-18

¹⁰ http://music.us/letters/IFPI_Letter_to_ICANN_DotMusic_Reconsideration_Request_24-02-16.pdf

¹¹ http://www.iso.org/iso/home/store/catalogue_tc/catalogue_detail.htm?csnumber=23401

¹² <https://www.icann.org/resources/pages/reconsideration-16-5-dotmusic-request-2016-02-25-en>

¹³ http://www.ifacca.org/membership/current_members