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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

October 5th, 2015

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

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

Our music organization, the International Federation of Musicians¹ ("FIM"), supports the community-based DotMusic Application (ID 1-1115-14110)² 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*³ for the applied-for string by including all commercial, non-commercial and amateur stakeholders related to music without discrimination.

FIM is a relevant, non-negligible music non-governmental organization that is *mainly* dedicated to the global music community defined⁴ by representing the "voice of musicians worldwide." FIM is the only music body and international federation⁵ recognised to represent musicians and their trade unions globally with members in over 60 countries.⁶

¹ <http://www.fim-musicians.org>

² See <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1392> and <https://www.icann.org/en/system/files/correspondence/roussos-to-icann-eiu-1-31mar15-en.pdf>

³ 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>).

⁴ The Music Community is an "organized 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

⁵ According to ICANN's Applicant Guidebook ("AGB"): "With respect to "Delineation" and "Extension," it should be noted that a community can consist of...a logical alliance of communities (for example, an international federation of national communities of a similar nature... viable as such, provided the requisite awareness and recognition of the community is at hand among the members." (AGB, <https://newgtlds.icann.org/en/applicants/agb/guidebook-full-11jan12-en.pdf>, 4-12)

⁶ <http://www.fim-musicians.org/wp-content/uploads/FIM-members.pdf>

FIM, founded in 1948, is globally-recognized and has a permanent relationship with the *United Nations Educational, Scientific and Cultural Organization* (UNESCO),⁷ the International Labor Organization (ILO)⁸ and the World Intellectual Property Organization (WIPO).⁹ It is recognised and consulted by the Council of Europe,¹⁰ the European Commission¹¹ and the European Parliament¹², which enables it to participate in crucial negotiations on the protection of performers where it can make the voice of musicians heard. FIM is also member of the International Music Council (IMC)¹³ and collaborates with national and international organisations representing workers in the media field. Activities include the creation of the International Arts and Entertainment Alliance (IAEA)¹⁴ with the International Federation of Actors (FIA)¹⁵ and UNI-Media and Entertainment International (UNI-MEI).¹⁶ IAEA is a member of the Council of Global Unions (CGU).¹⁷ Furthermore, FIM works closely with collecting societies administering performers' rights.

FIM has created three regional groups, for Africa (FIM-AF, the FIM African Committee), for Latin America (GLM, Grupo Latino-americano de Músicos) and for Europe (the FIM European group).¹⁸ The Federation's main objective is to protect and further the economic, social and artistic interests of musicians with documented activities, such as:

- Furtherance of the organisation of musicians in all countries,
- Federation of unions of musicians throughout the world, furtherance and strengthening of international collaboration,
- Promoting of national and international protective legislative (or other) initiatives in the interests of musicians,
- Making of agreements with other international organizations in the interests of member unions and of the profession,
- Obtaining and compilation of statistical and other information referring to the music profession and provision of such information to member unions,
- Moral and material support of member unions in the interests of the profession and in accordance with the objects of FIM,
- Furtherance of all appropriate efforts to make good music a common property of all people,
- Holding of international congresses and conferences

FIM supports an Internet ecosystem that is a safe, vibrant, and innovative space where legal music creation, access and distribution can flourish. For such a music ecosystem to thrive, serve the global public interest and protect the legitimate interests of the global Music Community, responsible measures and safeguards to deter copyright infringement and malicious abuse are vital.

However, we have been disappointed with the general results of the New gTLD Program. Unfortunately, piracy and malicious abuse have been common themes with the New gTLD Program. Despite the low domain registration volumes of new gTLDs, many new gTLD registries have done little to adequately protect the fundamental rights of creators and take reasonable action against infringers.

⁷ <http://en.unesco.org>

⁸ <http://www.ilo.org>

⁹ <http://wipo.int>

¹⁰ <http://www.coe.int>

¹¹ http://ec.europa.eu/index_en.htm

¹² <http://www.europarl.europa.eu/portal/en/>

¹³ <http://www.imc-cim.org>

¹⁴ <http://www.iaea-globalunion.org>

¹⁵ <http://www.fia-actors.com>

¹⁶ <http://www.uniglobalunion.org>

¹⁷ <http://www.global-unions.org>

¹⁸ <http://www.fim-musicians.org/about-fim/history/>

With respect to music-themed gTLDs, we support policies that restrict .MUSIC registrations to legitimate Music Community members. Such prudent policies ensure that .MUSIC domains are highly relevant to legal, music-related content and use. It also deters bad actors from registering .MUSIC domains. Community-based, music-tailored restrictions ensure that social benefits exceed social costs (i.e. serve the global public interest) and help drive innovation by creating a trusted ecosystem of legal music consumption where monies flow to the Music Community not to illegitimate actors or unlicensed sites.

We would also like to express our serious concerns about last-minute, unsubstantiated opposition letters against DotMusic Limited's .MUSIC community-based application. These were recently filed by opponents of the "community" model. Some DotMusic competitors, their allies and other negligible entities that have no association with music filed opposition to obstruct the multi-stakeholder community application from prevailing Community Priority Evaluation (CPE). Donuts, a .MUSIC competitor and the largest gTLD applicant (307 applications), has engaged in a pattern of obstruction with relation to community applicants¹⁹ and ICANN.²⁰

These opposition letters followed a common script 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 organized and delineated Music Community that encompasses both commercial and non-commercial constituents, as defined by DotMusic Limited ("a strictly delineated and organized logical alliance of communities related to music"). The letters 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)²¹

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;²² (Enumerated Commitment #3)

¹⁹ 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

²⁰ 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

²¹ <https://www.icann.org/en/system/files/files/icann-response-birch-mmx-irp-request-redacted-27apr15-en.pdf>

²² <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails:downloadpicposting/1392?t:ac=1392>

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.²³ (Enumerated Commitment #5)

A spurious letter was also filed by Rightside²⁴ disingenuously stated that “it is preposterous...to claim that there exists a “music community.”²⁵ 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),²⁶ 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 an organized and delineated music community (Pg.6).²⁷ Another example to showcase the spurious nature of the template letters orchestrated by Donuts is the discrepancy and inconsistency illustrated in a letter,²⁸ which described its organization 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 Music Community defined in its application. Over 95% of global music consumed is created, promoted or distributed by the delineated and organized 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, IMPALA, the Merlin Network and many others. Without these stakeholders and organized 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 organized and delineated Music Community. To deny that the Community exists or participates 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 Advice and ICANN Resolutions and give preferential 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.

²³ <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails:downloadpicposting/1392?t:ac=1392>, Commitments #3 & #5

²⁴ Rightside and Donuts are co-applicants for both .MUSIC and .BAND

²⁵ <https://www.icann.org/en/system/files/correspondence/hammock-to-crocker-et-al-12aug15-en.pdf>

²⁶ <http://branding.rightside.co/api/download/28qb-dj9ehrud>

²⁷ <http://branding.rightside.co/api/download/28qj-3k4nlku8>

²⁸ <https://www.icann.org/en/system/files/correspondence/hutcherson-to-crocker-et-al-07aug15-en.pdf>

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*)²⁹ such as the music “(industry) community” defined in the DotMusic multi-stakeholder community application.

Respectfully submitted

Benoît Machuel
FIM General Secretary



²⁹ <http://gns0.icann.org/en/issues/new-gtlds/pdp-dec05-fr-part0-08aug07.htm>