



December 10, 2015

BY E-MAIL

Dr. Steve Crocker, Chairman of the ICANN Board;  
Fadi Chehadé, ICANN President & CEO;  
Akram Atallah, 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 Secretary; and  
Community Priority Evaluation Panel, Economist Intelligence Unit

Re: .MUSIC Community Priority Evaluation (CPE)

ICANN and the Economist Intelligence Unit:

We write as a frustrated applicant for the .MUSIC gTLD in response to the letter to each of you from DotMusic Limited (“DML”) dated 3 November 2015<sup>1</sup> regarding the Community Priority Evaluation (“CPE”) for DML’s Application No. 1-1115-14110 (the “Application”). While we do not savor providing you more correspondence on this matter, we feel we must respond in light of DML’s campaign of misinformation. DML’s letter is nothing more than a last-minute attempt to launch personal attacks on other applicants – applicants who would like to compete fairly for the .MUSIC gTLD – and it blatantly ignores the precedent set by the EIU regarding the .MUSIC string.

It is clear from DML’s various submissions that it has spent much time and money trying to desperately convince disparate entities interested in music to submit letters of support for the EIU’s consideration, including a recent submission by DML dated 23 November 2015, months after the EIU began considering its CPE election.<sup>2</sup> DML continues to bombard the ICANN Correspondence page in a thinly veiled attempt to create a community, despite the EIU finding already that a community application for .MUSIC is merely made up of “a proposed community construed to obtain a sought after generic word as a gTLD.”<sup>3</sup> DML’s form-letter submissions and inflammatory comments are nothing more than an attempt, similar to the previous applicant, “to use the gTLD to organize the various groups noted in the application

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<sup>1</sup> <https://www.icann.org/en/system/files/correspondence/schaeffer-to-crocker-et-al-03nov15-en.pdf>

<sup>2</sup> <https://www.icann.org/en/system/files/correspondence/zamek-to-icann-eiu-23nov15-en.pdf>

<sup>3</sup> <https://www.icann.org/sites/default/files/tlds/music/music-cpe-1-959-51046-en.pdf> (page 4)

documentation, as opposed to applying on behalf of an already organized and cohesive community.”<sup>4</sup>

Furthermore, no matter how many letters DML drums up, it can’t change the fact that the EIU already and rightly has found that the term “MUSIC” cannot denote a “community” as defined in the Guidebook. The previous .MUSIC community applicant scored only three points out of the fourteen needed (and sixteen available) to pass CPE.<sup>5</sup> It received no points for either the 4-point “community” or 4-point “nexus” elements of the CPE test.<sup>6</sup> The same result must follow here.

The EIU reasoned in the earlier CPE determination that there is a “lack of awareness, recognition, and/or cohesion” among the music community and that while some “may share an interest in music, the AGB specifies that a ‘commonality of interest’ is not sufficient to demonstrate the requisite awareness and recognition of a community among its members.”<sup>7</sup> As the EIU panel correctly ascertained, there cannot be a music community as there “is no entity that organizes” a music community “in all the breadth of categories explicitly defined.”<sup>8</sup> Once again the music community defined in DML’s application, which necessarily overlaps with the previous applicant, “does not have awareness and recognition among its members. Failing this kind of ‘cohesion,’ the community defined by the application does not meet the AGB’s standards for a community.”<sup>9</sup>

The prior panel held that the term “MUSIC” does not match the name of, or even identify – and certainly not uniquely so – the proffered community.<sup>10</sup> DML did not apply for .INDEPENDENTMUSICPRODUCERS, .MUSICALTHEATERUSHERS, or .BOSTONCHAMBERMUSICSOCIETY. It applied for a generic term that impacts billions of people around the world.

The DML letters are a nullity at this point because they can make no difference based on the precedent that the EIU already has established in evaluating the generic term “MUSIC” for community status. The precedent dictates that DML’s application for community must similarly fail.

To do otherwise would be in violation of the ICANN Bylaws, Section 3, which states ICANN “shall not apply its standards, policies, procedures or practices inequitably or single out any particular party for disparate treatment”.<sup>11</sup>

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<sup>4</sup> *Id.*

<sup>5</sup> See <https://www.icann.org/sites/default/files/tlds/music/music-cpe-1-959-51046-en.pdf>.

<sup>6</sup> *Id.* at 1.

<sup>7</sup> *Id.* at 2.

<sup>8</sup> *Id.* at 4.

<sup>9</sup> *Id.* at 5.

<sup>10</sup> *Id.* at 5-6.

<sup>11</sup> <https://www.icann.org/resources/pages/governance/bylaws-en>

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Contrary to DML's false assertions, the only anti-competitive behavior occurring in this debacle is that of DML in its attempt to try to wrongfully become the sole applicant for a generic TLD by conjuring up a community for such a generic term where it already has been decided by the EIU and common sense that one cannot and does not exist.

Regards,

A handwritten signature in blue ink, appearing to read 'Alvaro Alvarez', with a long horizontal flourish extending to the right.

Alvaro Alvarez

Donuts Inc., Senior Vice President, General Counsel and Secretary

cc: Jonathon Nevett, Donuts Inc. Co-Founder and Executive Vice President