Enhanced Safeguards to Protect IP.
Monies Flow to the Music Community.
Governed by the Global Music Community.
Available to the Entire Global Music Community.

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: Donuts Letter against .MUSIC community-based Application

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

We are greatly frustrated and disappointed that Donuts continues their campaign to obstruct community applicants. It is reminded that Donuts has filed templated letters to the EIU and ICANN to obstruct <u>every</u> community applicant in their contention set going through CPE regardless of nature or affiliation. In another desperate attempt to derail DotMusic's .MUSIC community application, Donuts filed yet another letter[1] rejecting the existence of the music community and telling the EIU to fail DotMusic because of <u>another</u> applicant's deficient application that has no correlation to DotMusic's application.

First, we urge ICANN and the EIU to investigate Donuts' anti-competitive pattern of behavior in the New gTLD Program as well as their attacks not only against the music community, but also frivolous Re-consideration Requests and Independent Review Processes (IRPs) filed against ICANN and the EIU to block community applicants that have prevailed CPE from launching their community TLD. In fact, <u>none</u> of the community applicants that have prevailed CPE that were competing with Donuts have launched their TLD because Donuts continues to follow a pattern of abusing ICANN accountability mechanisms to deter their launch in an anti-competitive manner.

Second, Donuts presentation of an EIU Determination for another community applicant (.music LLC/Far Further) as "precedent" is misleading and disingenuous, when in fact Donuts files accountability mechanisms against ICANN and the EIU when a decision goes against Donuts'

---

[1] https://www.icann.org/en/system/files/correspondence/alvarez-to-icann-eiu-10dec15-en.pdf

interests (See CPE Determinations for .HOTEL, .ECO, .RADIO and .SPA[2]). In those cases, Donuts conveniently chooses not to follow the "precedent" set by the EIU.

In their letter, Donuts tells the EIU to compare "apples to oranges" in their CPE assessment and come up with the same conclusion. That is, Donuts is telling the EIU to violate ICANN Bylaws by equating DotMusic's Application with FarFurther's Application thus resulting in a failing CPE score. To do so would ignore key differences in DotMusic's "music-tailored" application (including our Community Definition, Community Establishment, Nexus, Registration Policies and Support). Donuts' conclusion that DotMusic's application is the same as Far Further's application (it is not) and that Far Further's score should be "precedent" for DotMusic (it is not because our application is different) is highly inappropriate.

Furthermore, despite Donuts' false and misleading assertion, the EIU did not conclude that there is no "music community" (emphasis added). Rather, the EIU Determination was that Far Further did not meet the criteria based on their application's unique Community Definition, Community Establishment, Nexus and Registration Policies.[3] Putting words in the EIU's mouth that DotMusic's CPE "already has been decided by the EIU" based on another applicant's materially different policies is misguided.

Donuts is also misguided about ICANN Bylaws, which clearly state that applicants must be treated equitably and not be singled out for disparate treatment. Donuts is asking ICANN and the EIU to violate ICANN Bylaws, by falsely asserting that DotMusic's "application for community must fail" because another applicant's policies were not adequate to meet CPE criteria. A quick comparison[4] of DotMusic's policies and Far Further's show that the differences are material.

DotMusic's activities to launch a trusted, secure and safe community-based .MUSIC domain has been public and ongoing since 2008[5] and not a "last-minute attempt" as Donuts states.[6] No other applicant in the ICANN New gTLD Program has received more support than DotMusic. In fact DotMusic has received over 1500 letters of support, which is more support than all other CPE applicants combined.

---

[2] https://newgtlds.icann.org/en/applicants/cpe
[3] https://www.icann.org/sites/default/files/tlds/music/music-cpe-1-959-51046-en.pdf
[4] http://music.us/comparison
[5] http://music.us/events
[6] According to ICANN "the CPE Panel Process does not mandate a deadline for submitting correspondence in support of an application" (See recent .SPA Re-Consideration Request determination by ICANN, https://icann.org/en/system/files/files/reconsideration-15-14-foggy-sunset-bgc-determination-30nov15-en.pdf, Pg.7).

That said, DotMusic's support received <u>before</u> CPE commencement meets the requisite CPE criteria of "multiple institutions/organizations supporting the application, with documented support from institutions/organizations representing a <u>majority</u> of the overall community addressed"[7] (The application is supported by organizations with members representing <u>over 95% of global music</u>[8]). DotMusic's Support provides further evidence that DotMusic meets CPE criteria, while also rejecting the notion that there is no music community.

Despite amassing the largest music coalition ever assembled to support a music cause, Donuts calls such an unprecedented endeavor "a thinly veiled attempt to create a community" and that "common sense that one cannot and does not exist."

In recent letters to ICANN, many credible and recognized music organizations, including the IFPI, IAO, IFACCA, FIM, WIN, Merlin, IMPALA and A2IM rejected Donuts' notion that there is no music community.[9] Recently, many established artists also challenged Donuts' notion that there is no clearly organized and delineated music (industry) community as defined in DotMusic's application. It is fair to say that DotMusic's supporting organizations, such as the International Artist Organisation (the only music organization *mainly* dedicated to featured music artists globally), have more credibility than Donuts and their one-size fits all approach. Donuts is not a music organization nor has any expertise with respect to music to make such unfounded and unfriendly conclusions contrary to the opinions of established music artists and reputable music organizations and institutions, many of whom have actively served the community for decades.

---

[7] CPE Guidelines, https://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf, Pg.18

[8] For DotMusic support letters, see https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails:downloadattachment/142588?t:ac=1392,
https://www.icann.org/en/system/files/correspondence/zamek-to-icann-eiu-23nov15-en.pdf (100),
https://www.icann.org/en/system/files/correspondence/zamek-to-icann-eiu-09nov15-en.pdf, (400+)
https://www.icann.org/en/system/files/correspondence/zamek-to-icann-31oct15-en.pdf (85+)
https://www.icann.org/en/system/files/correspondence/zamek-to-icann-16sep15-en.pdf (100+)
https://www.icann.org/en/system/files/correspondence/zamek-to-icann-02sep15-en.pdf (30+)
https://www.icann.org/en/system/files/correspondence/zamek-to-icann-eiu-17aug15-en.pdf (40+)
https://www.icann.org/en/system/files/correspondence/roussos-to-icann-eiu-12aug15-en.pdf (100+)
https://www.icann.org/en/system/files/correspondence/zamek-to-icann-eiu-01dec15-en.pdf (500)
https://www.icann.org/en/system/files/correspondence/zamek-to-icann-eiu-11dec15-en.pdf (125)

[9] https://www.icann.org/en/system/files/correspondence/iao-to-icann-eiu-11dec15-en.pdf (IAO)
https://icann.org/en/system/files/correspondence/charnley-to-crocker-chehad%C3%A9-09nov15-en.pdf (IFPI)
https://www.icann.org/en/system/files/correspondence/smith-to-crocker-et-al-13oct15-en.pdf (IMPALA)
https://www.icann.org/en/system/files/correspondence/mahoney-to-crocker-et-al-12oct15-en.pdf (Merlin)
https://www.icann.org/en/system/files/correspondence/wenham-to-icann-06oct15-en.pdf (WIN)
https://www.icann.org/en/system/files/correspondence/machuel-to-icann-05oct15-en.pdf (FIM)
https://www.icann.org/en/system/files/correspondence/neuman-to-crocker-et-al-01oct15-en.pdf (A2IM)
https://www.icann.org/en/system/files/correspondence/gardner-to-crocker-et-al-26aug15-en.pdf (IFACCA)

www.music.us

Enhanced Safeguards to Protect IP.
Monies Flow to the Music Community.
Governed by the Global Music Community.
Available to the Entire Global Music Community.

Trusted. Safe. Licensed.

In a recent letter to the EIU and ICANN, established music artist Imogen Heap expresses her concerns over Donuts' letter:

> I see now a tiny sliver of what DotMusic has been experiencing over the last years. Companies such as Donuts, and their recent post have again been claiming there is no such thing as the music community, which is core to DotMusic's bid.
>
> I have been a member of the music community professionally for 20 years and before that, at least another 5 years, writing, recording and playing live. It exists. Ask any other one of the millions who are a part of it. Donuts are in the business of making money from domain names quite pure and simple. Artists such as myself and a huge proportion of our community are **making the actual music** upon which our own business lives. Let it be stated that DotMusic have taken no venture capital money, as they want to answer only to the communities' needs.
>
> If DotMusic win the bid for .Music, each domain name purchased will be directly benefitting the community at large. This kind of funding has never before been possible and the 'community' Donuts say don't exist, would come together, thrive and rise shining above any doubt of its existence. Their recent email to you, seems like a thin excuse to win perhaps what they feel is currently a losing battle. I can't otherwise explain this ridiculous concept, especially in these final hours.[10]

Ed O'Brien from legendary band Radiohead and Fran Healy from established and highly influential band Travis also supported DotMusic. They also rejected the notion that a music community does not exist in their recent letters to ICANN and the EIU:

> I challenge The Internet Corporation for Assigned Names and Numbers views that the global music community to which I belong does not exist.[11]

Donuts recurring negative attacks against music artists and other community members with disingenuous claims that there is no music community is not healthy for the domain industry. They only reinforce the domain industry's bad reputation by giving it yet another black eye. This negative perception is only amplified considering that Donuts/Rightside (co-applicants for .MUSIC and .BAND) currently market .BAND by using the term "music communities"[12] and quoting the IFPI[13] (an organization *mainly* dedicated to the music community addressed) in their marketing material. These public documents acknowledge the existence of the music community as defined by

---

[10] http://music.us/letters/ImogenHeap2.pdf
[11] http://music.us/letters/Radiohead.pdf and http://music.us/letters/Travis.pdf
[12] http://branding.rightside.co/api/download/28qb-dj9ehrud, Pg.2, Retrieved December 16, 2015
[13] http://branding.rightside.co/api/download/28qj-3k4nlku8, Pg.3, Retrieved December 16, 2015

www.music.us

Enhanced Safeguards to Protect IP.
Monies Flow to the Music Community.
Governed by the Global Music Community.
Available to the Entire Global Music Community.

DotMusic (as a delineated and organized logical alliance of <u>music communities</u> related to music) and highlight a pattern of behavior by Donuts and their allies to say whatever "fits their story" and contributes to their bottom line.

Donuts also falsely asserts that the "only anti-competitive behavior occurring in this debacle is that of DotMusic in its attempt to try to wrongfully become the <u>sole</u> applicant." We urge the EIU and ICANN to investigate that statement under the context of the New gTLD Program and Donuts' own pattern of behavior. DotMusic has <u>only</u> applied for .MUSIC, while Donuts operates nearly 200 new gTLDs. Furthermore, Donuts pattern of obstruction has been predictable: Every time a community applicant (from Donuts contention set) prevails CPE, Donuts files frivolous accountability mechanisms against ICANN and the EIU. Prevailing CPE applicants, that include .HOTEL,[14] .ECO,[15] .RADIO[16] and .SPA,[17] have not launched yet because of Donuts' pattern of anti-competitive behavior.

In conclusion, we echo the sentiments of the largest coalition of music organizations ever assembled to support a music cause to <u>reject</u> Donuts false statements that there is no music community. DotMusic's support is unprecedented for this New gTLD Program. As illustrated by DotMusic's supporting organizations (that represent a majority of music globally), an independent poll conducted by Harris/Nielsen with over 2000 diverse individuals as well as over 40 independent experts, <u>there is a music community</u> as addressed and defined in DotMusic's application.

DotMusic expects that the EIU and ICANN reject Donuts' ongoing obstruction and to grade the community application based on its merits by scoring it consistently with respect to other prevailing CPE Determinations, including .HOTEL, .ECO, .RADIO, .SPA and .OSAKA. DotMusic exceeds all CPE criteria based on those rulings and expects a fair, consistent and transparent evaluation that is compelling and aligned with the EIU's rationale in the CPE determinations that have prevailed.[18]

The music community addressed has serious concerns about Donuts ongoing attacks and lack of disregard that our community exists. Donuts statements are not appropriate nor are they constructive, especially for a sensitive string that they applied for that requires music-tailored enhanced safeguards to protect intellectual property and artists rights. We urge the EIU to assess our

---

[14] https://www.icann.org/resources/pages/various-v-icann-eco-hotel-2015-09-02-en
[15] https://www.icann.org/resources/pages/various-v-icann-eco-hotel-2015-09-02-en
[16] https://www.icann.org/resources/pages/afilias-brs-tin-llc-v-icann-2015-10-12-en
[17] https://www.icann.org/en/system/files/files/reconsideration-15-14-foggy-sunset-request-amended-attachments-04nov15-en.pdf
[18] https://newgtlds.icann.org/en/applicants/cpe

application based on its merits and trust, taking into consideration that a community-run .MUSIC would be music-tailored and appropriate for the needs of music artists.

This would indisputably serve the common good and the public interest, while also driving innovation to make the internet better as opposed to "wasting" .MUSIC[19] and making it just another heartless domain extension, void of any meaningful community adoption.

Respectfully Submitted,

Constantine Roussos
DotMusic Founder

Date: December 16, 2015

cc: Jason Schaeffer
         Legal Counsel for DotMusic

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

---

[19] http://diffuser.fm/will-dot-music-domains-make-the-internet-better/