

ICANN Re-Consideration Request filed by .MUSIC

## **.music LLC / Far Further**

**Proof that the .music LLC/Far Further Application has Exclusive-Access Language creating a likelihood of material harm to the community**

**Proof that the current .music LLC Application with ID 1-959-51046 is inconsistent with their GAC Category 2 Advice Response to ICANN**

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## i) Background

With respect to GAC Category 2 Advice Response, ICANN did not verify whether some Applications had exclusive access language. This allowed Applicants (such as .music LLC with ID 1-959-51046) to circumvent the change request requirement initiated by ICANN if objected-to Application contained exclusive access language as disclosed in those Applicants' GAC Responses.<sup>1</sup>

In such cases where there is a clear discrepancy between what the Application states and what the objected-to Applicant provided in their Response, ICANN has not taken any action to ensure that these Applicants are required to submit a change request since "the Registry Agreement provides that registry operators of a "generic string" TLD may not impose eligibility criteria for registering names in the TLD that limit registrations exclusively to a single person or entity and/or that person's or entity's "Affiliates" (Section 2.9(c) of Registry Agreement).

GAC Advice and NGPC Resolutions agree that such exclusive access language for generic music-themed strings create a likelihood of material harm and Objections or opposition to such Applications are relevant and justified. The Community Priority Evaluation Guidelines also assert that such opposition "must be of reasoned nature and sources of opposition that are clearly spurious, unsubstantiated, made for a purpose incompatible with competition objectives" be rejected (CPE Guidelines, P.20<sup>2</sup>). Since such opposition and Objections are directly related to "competition" and are issues that both GAC Advice and ICANN have agreed upon, they are of reasoned nature and material to the new gTLD Program.

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<sup>1</sup> <http://newgtlds.icann.org/en/announcements-and-media/announcement-4-09oct13-en>

<sup>2</sup> <http://newgtlds.icann.org/en/applicants/cpe/guidelines-27sep13-en.pdf>

## ii) How .music LLC's Application creates Material Detriment

The .music LLC application<sup>3</sup> creates a likelihood of material detriment to the rights or legitimate interests of a significant portion of the community to which the string may be explicitly or implicitly targeted on the grounds of discrimination based on its exclusionary eligibility and registration policies.

The application's nature creates significant economic, cultural and reputational damage. These exclusionary policies clearly illustrate that the applicant is not acting in accordance with the interests of the entire community, including music fans/consumers. It only serves a select group of associations with "accreditation" that was established without any publicly recognized criteria and designed solely in conjunction with the gTLD process. The "Accreditation" has never been historically recognized by the global music community before the ICANN gTLD application process.

A substantial portion of the community uses the Internet to perform core activities such as communication, marketing, branding, distribution and sharing. By excluding a substantial portion of the community, such as Do-It-Yourself artists, music fans and other members who do not belong to "Accredited" associations negatively interferes with core Internet-related activities that the music community participates in.

A substantial majority of the community do not belong to "Accredited" Associations formed before 2007 as portrayed by .music LLC in their Application. The exclusion of the community not belonging to "Accredited" Associations formed before 2007 from registration eligibility and prevention from associating and branding themselves using a culturally semantic "music" string identifier not only creates a culturally harmful division within the music community but also creates other detrimental outcomes such as anti-competitive issues and infliction of material economic and artistic harm.

Detrimental issues that the highly restricted application creates include based on discrimination grounds include:

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<sup>3</sup> <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/1659>

## **A. EXCLUSION NEGATIVELY HARMING LEGITIMATE PARTICIPATION, CORE ACTIVITIES AND USER EXPERIENCE**

Excluding a significant portion of the community that has no formal association with “Accredited” associations from registration and participation harms the community and will have substantial negative repercussions to the applicant’s mission to create a “trusted brand” under the string since credibility is strongly tied to creating a trusted brand. If a majority of credible and legitimate music community members are excluded, this will negatively affect the string, its core activities, user experience and consumer trust to a great extent.

Consumer trust is an integral factor for launching the new gTLD program and a critical component outlined by ICANN and the U.S government in their Affirmation of Commitments to “promote competition, consumer trust, and consumer choice in the DNS marketplace.”<sup>4</sup>

The applicant states that those community members “who produce, play or practice the art of music is at loggerheads with those who consume it” and that their application “challenges that notion by focusing on the one thing they both have in common: a passion for music.” The application asserts that “for the music to last, there has to be a balance between the needs and desires of both” those music community types and re-affirms that “the era of perceived friction between the producers and consumers of music is about to end, as both find a new platform where their mutual interests and desires coalesce for the combined greater benefit (18a).”

However, their application’s restrictive eligibility and registration policies prove otherwise by excluding music fans/consumers altogether thus creating “friction” through discrimination. This discrimination will negatively harm the proposed mission and purpose which is at odds and continually inconsistent with the nexus and the strict, clear delineation of music community as aforementioned and defined by the applicant.

The applicant continually addresses music consumers as integral constituents that form the music community but yet does not consider them eligible for registration, despite the applicant’s “express intent and purpose of serving a community established and known worldwide, which despite location, culture or genre, is identified and united by a single word: music (20a).” The applicant even admits that fans are crucial stakeholders but does not

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<sup>4</sup> <http://www.icann.org/en/news/announcements/announcement-30sep09-en.htm>

include them in their "nexus" and makes them ineligible from registration because the "interests of creators were assumed to be at odds" with the interests of music fans. However, the application acknowledges that both constituents are essential and that "one cannot exist without the other" and that "both have something crucial in common: a passion for music, and a symbiotic relationship (20d)." This showcases with certainty that exclusion of one constituent creates substantial detriment to the entire music community, not merely to a majority of it.

The applicant continually affirms that its purpose is to serve a community united by the word "music" but eliminates a substantial portion of the community, such as music fans/consumers, buskers, informal participants and Do-It-Yourself (DIY) artists. DIY artists by definition do not belong to "Accredited" associations. The DIY ethic refers to the ethic of self-sufficiency through completing tasks without the aid of a paid expert or association with third-parties relating to task performed. In "Cultures of Authenticity and Deconstruction," Ryan Moore explains that "the process of creating independent media and interpersonal networks in opposition to the corporate media is referred to as the "do-it-yourself," which enabled "spectators to become participants" and "enabled a sense of local community."<sup>5</sup>

Music fans/consumers and Do-It-Yourself artists by definition do not have membership in an "Accredited" association and thus are discriminated against and blocked from registration despite the applicant recognizing and acknowledging that both "creators" and "consumers" are, indeed, members of the community: "The music community is dedicated to faithfully and concurrently meeting the needs of both "creators" and "consumers" of music alike" (20a).

Historically-speaking, any participation within the music community, such as attending a music concert, street team or word of mouth marketing or artist crowdfunding, does not have any requirement of affiliation with any association. Community members never had to belong to "Accredited" associations to be considered legitimate and eligible. The application clearly acknowledges that their "definition of the music community does not have individual consumers of music" unless they are forced to "belong to one of the "Accredited" Member Organizations of the Global Music Community," a loose club of associations/organizations called Charter Member Organizations.

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<sup>5</sup> <http://www.stevenlaurie.com/wp-content/uploads/2012/01/moore-punkauthenticity.pdf>

The applicant's premise of the alleged conflict relates to commercial activities. Music constituents also include non-commercial constituents. The application focuses entirely on commerce to justify its "odds" with music consumers. This ignores the significant portion of the music community that is non-commercial in nature and culturally driven. Music culture has historically existed ages before modern music commerce. Recorded music is a fairly recent phenomenon in the chronology and evolution of music from a historic perspective and only came to fruition following the invention of the gramophone in 1888.<sup>6</sup>

Music fans are not in conflict with the music community. They add value. If fans were in conflict with commercial entities then under the same token musicians should be considered to be in conflict with commercially-driven instrument manufacturers. However, one can not exist without the other.

Despite fans and DIY artists fulfilling the applicants community delineation, namely in the "advocacy, promotion, distribution, even financing of music" they are excluded from registering a .music domain.

Today, fans share and distribute music. Many fans form street teams to help market artists' music and spread the word. Others administer artist fan sites that are focused on enhancing an artist's brand. The Internet has facilitated fan funding through outlets such as Kickstarter, Sellaband, Pledge Music and Indiegogo, with many in the music industry claiming this is the new "record labels" of the future: artists get to keep all their rights and the funders - the fans - benefit too. For example, Amanda Palmer raised nearly \$1.2m from fans on Kickstarter.<sup>7</sup> Kickstarter alone has generated over \$41m in fan funding for music artists. Many major artists such as Public Enemy (59,100 Euros),<sup>8</sup> George Clinton<sup>9</sup> (\$50,419) and Ben Folds Five<sup>10</sup> have used fan funding as well. Independent artists such as Five Iron Frenzy<sup>11</sup> (\$207,980) and Murder By Death<sup>12</sup> (\$187,048) are amongst hundreds of thousands of artists that choose fan funding as their new source of financing, sharing and promoting their music.

"The business as we know it is broke," says Peter Jenner, legendary artist manager of Pink Floyd. "Digital technology is fundamentally changing our business in a way that no

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<sup>6</sup> <http://www.pbs.org/wgbh/pages/frontline/shows/music/inside/cron.html>

<sup>7</sup> <http://www.kickstarter.com/projects/amandapalmer/amanda-palmer-the-new-record-art-book-and-tour?ref=card>

<sup>8</sup> <https://www.sellaband.com/publicenemy>

<sup>9</sup> <http://www.indiegogo.com/Fundraiser-for-C-Kunspyrhzy-and-What-Studios>

<sup>10</sup> <http://www.pledgemusic.com/projects/benfoldsfive/>

<sup>11</sup> <http://www.kickstarter.com/projects/fiveironfrenzy/new-five-iron-frenzy-album?ref=card>

<sup>12</sup> <http://www.kickstarter.com/projects/murderbydeath/murder-by-death-new-album-bitter-drink-bitter-moon?ref=card>

development in the last 200 years has, except for the onset of electricity. The consumer is now the distributor and manufacturer, which represents a fundamental change in the value chain of who gets what."<sup>13</sup>

Former chairman of major music label EMI Alain Levy wrote an article posted by the International Federation of the Phonographic Industry<sup>14</sup> that represents the recording industry worldwide (1400 members in 66 countries and affiliated industry associations in 56 countries). In "Digital Music and How the Consumer became King" Levy re-iterates the significance music fans play in today's music culture and business and should not be discriminated against:

"More music is being consumed than ever before. Fans want music their way, not the way that content owners dictate...Consumers have an increased and vital role, of that there is no doubt. The music companies continue to reinvent themselves to harness the power of the consumer by understanding that the internet has changed the face of promotion. Now the windows have shifted and the online world starts the first buzz, with music companies giving fans the tools to discover and promote their favourite bands. The new digital consumer has impacted every area of our creative process - they have changed the way we source, present and market our content in every way.

Communities are the places for aspiring artists to showcase or demo their sounds, and we have the added benefit that the consumer is right there with us during the discovery process voting on an artist's popularity by virtue of their clicks...The implication of the online world is that we are now picking up artists who are slightly more mature in terms of development and the strength of their online fan base...Marketing has moved from push to pull. Consumers are now the marketers and distributors of content too. Music regularly provides the consumer with marketing assets like banners, images and video and audio free samples to encourage them to promote their favourite band...allowing the consumer to become part of the creative process both online and in traditional media.

It's all about embracing and encouraging consumer involvement and recognising that content will be used to create more content. Content providers that listen to the

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<sup>13</sup> [http://articles.chicagotribune.com/2006-10-15/news/0610150197\\_1\\_music-industry-future-of-music-coalition-tower-records](http://articles.chicagotribune.com/2006-10-15/news/0610150197_1_music-industry-future-of-music-coalition-tower-records)

<sup>14</sup> [http://www.ifpi.org/content/section\\_about/index.html](http://www.ifpi.org/content/section_about/index.html)

consumer will drive compelling content and thrive. If there were a media executive generated 'most viewed' list of trends in this new digital world we face, they would read as follows: The consumer is totally empowered.<sup>15</sup>

## **B. COMPETITION**

The fact that the applicant's "goal for .music is to create a trusted brand and secure name space" is only restricted to "accredited members of the .music community (18b)" creates anti-competitive and anti-trust issues based on the restrictive nature of the application's eligibility and registration policies. This would certainly give a significant and unfair branding and marketing advantage on the Internet to music community members belonging to "accredited" associations over a significant portion of the community who are unfairly ineligible for registration.

Discrimination will also materially harm on outreach efforts for maximizing the string's potential. There is also no such recognized criteria that constitute an "accredited" community association or "accredited" member of the community.<sup>16</sup> This alone is anti-competitive. Incorporating select gatekeepers without any publicly recognized criteria and creating gated exclusionary clubs is detrimental to the legitimate interests of the music community and serving the global public interest:<sup>17</sup>

Excerpt from Techcrunch's publication on the topic:

"It goes *against* the reality we know today, which is that new technologies are allowing anyone to become a musician. Instead, it's based on the obsolete notion that only those in a special club are "really" musicians. What you end up with is exactly what the RIAA wants: a system where it gets to "accredit" musicians. A system where gatekeepers still matter. If .music uses such a system, it almost immediately becomes irrelevant, and sets itself up as an exclusionary club in an era when such things aren't necessary anymore."<sup>18</sup>

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<sup>15</sup> [http://www.ifpi.org/content/section\\_views/view024.html](http://www.ifpi.org/content/section_views/view024.html)

<sup>16</sup> <http://www.techdirt.com/articles/20120208/03161317696/always-gatekeeper-riaa-backs-music-proposal-if-its-only-limited-to-accredited-musicians.shtml>

<sup>17</sup> <http://www.techdirt.com/articles/20120201/09311617622/rise-professional-amateur-fall-gated-exclusionary-clubs.shtml>

<sup>18</sup> <http://www.techdirt.com/articles/20120208/03161317696/always-gatekeeper-riaa-backs-music-proposal-if-its-only-limited-to-accredited-musicians.shtml>



### **C. “ACCREDITATION” CRITERIA OF CHARTER MEMBER ORGANIZATIONS ARE NOT HISTORICALLY OR PUBLICLY RECOGNIZED BY GLOBAL MUSIC COMMUNITY**

According to the ICANN new gTLD guidebook, an established institution must have "public historical evidence of its existence, such as the presence of a formal charter or national or international registration, or validation by a government, inter-governmental organization, or treaty. The institution must not have been established solely in conjunction with the gTLD application process."<sup>19</sup>

The "Charter Member Organizations" were established "solely in conjunction with the gTLD process" and have never been historically recognized by the global music community before the ICANN gTLD application process. Supporting organizations and associations for the applicant do have history of existence but never in relation to what the applicant refers to as a "Charter Member Organization" which forms the basis for registration eligibility. Basing the application's strict and restricted eligibility and registration criteria on loose and publicly unrecognized "accreditation" criteria materially harms a significant portion of the music community which is discriminated against and as a consequence excluded from registration.

There is no clear criteria how an entity can become a Charter Member Organization which is in itself discriminatory and anti-competitive since the applicant ultimately makes the decisions on who is eligible or not to become an "accredited" association.

### **D. VALIDATING AGENT ISSUES, ACCOUNTABILITY AND LIABILITY**

The application's eligibility and registration policy and process creates validating agent issues for "accredited" associations, including potential privacy, business proprietary, inconsistent database crosschecking and maintenance liability problems.

Only "musical artists, musicians, songwriters and music professionals who are validated members of a qualifying music association will be permitted to register second level names

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<sup>19</sup> <http://newgtlds.icann.org/en/applicants/agb/objection-procedures-11jan12-en.pdf> (Section 3.2.2.4)

(18b)” and “domain registrations may be accepted, but will not resolve until the registrant has been identified and validated as a member of the music community via their membership in at least one existing association related to the creation and support of music (18b).”

This places a significant burden of liability to the “accredited” associations which become de-facto validating agents since they are forced to share member information with a third-party applicant to perform cross-checking verification. Association members have never agreed to have their information shared with third-parties for domain registration purposes.

Furthermore, such sharing poses significant privacy and business proprietary issues for the “accredited” associations since their members’ information is regarded strictly confidential.

Other related issues include discrimination against members of “accredited” associations if the “accredited” associations themselves choose not to become validating agents because of the aforementioned validating agent liabilities. This means that even members of “accredited” associations would not be able to register their domain. This would create unnecessary exclusion from registration or force the member to join another “accredited” association that is a validating agent which would increase the affected registrant’s costs.

Eligible registrants can only be “validated as members of the music community through their existing and maintained membership in existing associations related to the creation and support of music (18b)” and “tied to their domain registration through verification of their membership standing by their applicable music association (18b).” The applicant’s “Registry will directly verify a registrant’s affiliation with a qualifying music association member both at initial application and through annual reviews of each association (18b).”

“Potential domain registrants must be members of or affiliated with at least one Member Organization of the Global Music Community. Domain registrations may be accepted, but will not resolve until the registrant’s membership credentials have been verified. This will require verification of relevant membership data during the registration process. This membership will be crosschecked with the relevant Member Organization. Verification of continued membership is required for renewal, to ensure ongoing eligibility (20e).”

This means that if a legitimate member of an “accredited” association does not renew their membership with their association they will lose their “ongoing eligibility” since “verification of

continued membership is required for renewal” and unfairly lose their domain. This raises competition issues against “accredited” associations since locking legitimate members into membership to maintain their domain registration can be construed as anti-competitive and detrimental to the interests of the community member.

Excerpt from Digital Music News publication on topic:

“What if that registration was subject to approvals and conditions, as determined by a clique of music industry organizations? And what if you had to be a member of one of those organizations to even be considered for approval? Far Further...outlines a plan to make sure applicants are part of the exclusive club.

"Domain registrations may be accepted, but will not resolve until the registrant has been identified and validated as a member of the music community via their membership in at least one existing association related to the creation and support of music."

But wait – it gets worse. Because if you get approved, then have a falling out with your trade organization, you could easily lose your domain. And what if you switch to a trade organization not on the approved list?

"Should the registrant fail to meet the eligibility criteria, they risk the suspension and ultimately deletion or loss of their domain name. Verification of continued membership is required for renewal, to ensure ongoing eligibility."

This raises all sorts of potentially bad scenarios. What if a company gets kicked out of a group based on a legal disagreement – one that would normally be resolved by the courts? In that scenario, the group risks losing its domain name, which could translate into the company then losing its business overnight. It's a massive risk.

The potential abuses quickly degenerate into a laundry list... And what about the next crop of superstars? Do those artists need to belong to an approved group to register their name and collect fans?

The question is whether this old boys club summarily puts .music into the loser category... Stick with .com or something else. Which means this sort of ultra-

exclusivity could mean death in incubation. Extensions like .info never took off, and this sort of behavior could create a similar fate for .music.<sup>20</sup>

Excerpt from BuzzFeed publication on the topic:

What if community support means private control? Far Farther seems to want an iron grip on anyone looking to use a “.music” domain.

This means that if you are a musician who does not belong to the trade organizations supporting Far Farther, you will not have access to the domain... What would that mean for someone early in their career who has no need to join a trade group? Creating a website usually doesn't require people to pay membership dues.

"That strikes me as really bad because technology has made it so that many of these organizations are obsolete," said digital music expert Zisk. "What the Internet is about is disintermediation — musicians being able to connect with fans directly. Not to go through some old-school organizations. That's not fair."<sup>21</sup>

**E. ABSENCE OF A GLOBALLY RECOGNIZED AND CONSISTENT  
“ACCREDITED” ASSOCIATION DATABASE FOR VALIDATION COMPROMISES  
THE VERIFICATION PROCESS AND INCREASES ECONOMIC COSTS TO  
REGISTRANTS**

The applicant states that “membership will be crosschecked with the relevant Member Organization. Verification of continued membership is required for renewal, to ensure ongoing eligibility (20e).”

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<sup>20</sup> <http://www.digitalmusicnews.com/permalink/2012/120625riaa>

<sup>21</sup> <http://irene.buzzfeed.com/reghan/the-day-the-music-died-2>

However, an internationally-recognized and consistent member database belonging of the applicant's "accredited" association to perform the verifications, crosschecking and maintenance of membership described in its eligibility and registration policies is non-existent.

This means that the verification process selected is compromised and is not enforceable nor scalable. Costs associated with setting up such a database in a manual manner would be significant, highly time consuming and lead to unnecessarily higher domain pricing which would create economic harm to the community. In addition, manual crosschecking and ensuring that members retain their membership with "Accredited" associations also increases the liability and workload capacity for these validating agents. Undertaking such a responsibility is not a primary purpose or mission for any music association. This will translate into higher economic costs and a needlessly higher domain registration pricing to registrants.

Executing and enforcing such a manual "cross-checking" process as a standardized mechanism for eligibility and registration will be unmanageable, expensive and time-consuming and likely not within the mission of "Accredited" associations.

## **SERVING THE GLOBAL PUBLIC INTEREST**

Internet statistics reveal the size, diversity, semantic and cultural significance of "music." According to Google Adwords, the "music" category of keywords, including short-tail and long-tail variations, is the Internet's most searched category e.g. the term "music" has 226,000,000 monthly searches on Google. Variations of other keyword phrases with the term "music" amount to billions of monthly searches too. Other related terms within the music category enjoy millions of global searches, such as "lyrics" (338,000,000), "music songs" (101,000,000) and "mp3" (277,000,000) respectively. Popular music genres enjoy millions of global searches too e.g. "rock" (83,100,000). Popular music artists also enjoy millions of searches, such as Justin Bieber (30,000,000). The term "music" translated in other languages also enjoy millions of global searches, such as the Spanish term "musica" (185,000,000).

YouTube, according to Alexa,<sup>22</sup> is the 3rd most visited site after Google and Facebook. The term "Youtube" has 1,380,000,000 monthly searches on Google. The "music" channel is the most popular category on Youtube.<sup>23</sup> According to ComScore, 40% of YouTube's audience clicked over in July 2011 to watch music videos. Vevo's music channel accounted for 38% of YouTube's viewers. This clearly substantiates the cultural and semantic nature as well as the popularity of "music", making this a "sensitive" string that is a public resource to be consumed by the entire community, not a club of associations.

The applicant acknowledges that "the choice of "music" as a string is important" and identifies community members as "the people who create, write, record, perform, develop, teach, preserve, nurture, promote, distribute and sell music, think of themselves as members of the music community. "Music" is the one tribal identity that is global (20d)." However, the application chooses to exclude and discriminate against music fans, DIY artists and other legitimate members of the music community "tribe" who fulfil that identification for eligibility.

The applicant's intended registration policies discriminate against supporting the purpose of the string by creating a "restricted domain space" where second level .music domain names can only be registered by entities with "Music Association/Organization membership or affiliation with at least one Member Organization of the Global Music Community (20e)."

The application's discriminatory nature is highlighted by its acknowledgement that "the string "music" is also relevant for the consumers or fans of music. Although the music lover or consumer is not defined as part of the Global Music Community, they do share a common bond: a passion for music. The music lovers and consumers are very much a sustaining force and the "raison d'être" for the Global Music Community." Despite fans being a sustaining force of the community, they are excluded in a discriminatory manner which relegates the entire user experience of the string. A music public resource without fan participation cannot exist.

Despite this, the applicant acknowledges that their "definition of the music community does not include individual consumers of music (20d)" even though they form a substantial portion of the community playing a leading role on how music is distributed and marketed on the Internet today.

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<sup>22</sup> <http://www.alexa.com/topsites>

<sup>23</sup> <http://adage.com/article/digital/popular-channel-youtube/229281/>

Concrete evidence aforementioned factually substantiates that discrimination will have a materially detrimental impact on user experience and trust since a significant portion of the music community, such as music fans and DIY artists, are not eligible for registration creating concrete economic and reputational harm and interference with community core activities. The lack of participation through the applicant's discriminatory registration eligibility damages the development of a more engaging and shared user experience as well as adversely harms the creation of a more collaborative, innovative and positive network effect if the entire music community was allowed to join and contribute as registrants. Other members of the community have expressed similar opinions on the application's severe consequences in ICANN's public comments, including Grammy award winner E-Love<sup>24</sup>, NRG music award winner Melissa Mars<sup>25</sup>, DIY musician Travis Pearman<sup>26</sup> and NUE Talent Agency<sup>27</sup>.

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<sup>24</sup> <https://gtldcomment.icann.org/comments-feedback/applicationcomment/commentdetails/11706>

<sup>25</sup> <https://gtldcomment.icann.org/comments-feedback/applicationcomment/commentdetails/11702>

<sup>26</sup> <https://gtldcomment.icann.org/comments-feedback/applicationcomment/commentdetails/11718>

<sup>27</sup> <https://gtldcomment.icann.org/comments-feedback/applicationcomment/commentdetails/11443>

### iii) Correspondence with ICANN and ICC

In regard to GAC Advice, ICANN solicited responses from applicants for the strings identified by the GAC regarding whether they planned to operate the applied-for TLDs as exclusive access registries (defined as a registry restricted to a single person or entity and/or that person's or entity's Affiliates" (as defined in Section 2.9c of the Registry Agreement). The responses were submitted to the New gTLD Program Committee (NGPC) of the ICANN Board. On 28 September 2013, the NGPC adopted a Resolution on GAC Category 2 Advice<sup>28</sup> allowing applicants not planning to operate as exclusive access registries, and that are prepared to enter the Registry Agreement as approved, to move forward to contracting.

On October 8<sup>th</sup>, .MUSIC (DotMusic) sent written correspondence to ICANN<sup>29</sup> in relation to Applicant Responses (such as .music LLC):

We write as a follow-up to our most recent Letter to ICANN (October 8<sup>th</sup>)<sup>30</sup> to formally record and publish our concerns about new material changes arising from ICANN NGPC Resolutions and their impact on the current Community Objection process. Specifically, we would like to highlight the effect of potentially prejudicial "exceptions" through the acceptance of certain GAC advice and ICANN NPGC resolutions.

On October 10<sup>th</sup>, 2013 .MUSIC followed up its email after the release of GAC Category 2 Advice Form Responses:

... it has come to our attention that two of the Applicants we have mentioned in our Letter (who are subject to community objections) have materially changed their opinion and clearly stated that their generic string application(s) for music-themed TLDs will no longer be operated as "exclusive" TLDs, a clear statement of admittance that their original applications' "exclusive" access music-themed TLDs create a strong likelihood of harm.

This is exactly the kind of issues on material changes our Letter has been trying to illustrate in light of ongoing Community Objections on the subject matter which now have no other predictable and consistent recourse but to be upheld given the transparent admittance by these Applicants: Amazon,<sup>31</sup> **Far Further/ .music LLC**.<sup>32</sup> We kindly request these statements by these two Applicants and our

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<sup>28</sup> <http://www.icann.org/en/groups/board/documents/resolutions-new-gtld-28sep13-en.htm#2.a>

<sup>29</sup> <http://www.icann.org/en/news/correspondence/roussos-to-crocker-et-al-08oct13-en.pdf>

<sup>30</sup> <http://www.icann.org/en/news/correspondence/roussos-to-crocker-et-al-12jul13-en.pdf> on the 12th, July 2013 with ICANN response at <http://www.icann.org/en/news/correspondence/willett-to-roussos-14aug13-en.pdf> on 14th August, 2013

<sup>31</sup> <http://newgtlds.icann.org/sites/default/files/applicants/09oct13/gac-advice-response-1-1316-18029-en.pdf>

<sup>32</sup> <http://newgtlds.icann.org/sites/default/files/applicants/09oct13/gac-advice-response-1-959-51046-en.pdf>



Letter be forwarded to the ICC Panelists since they are crucially pertinent to the cases at hand. We also kindly request some clarification statements from both ICANN and the ICC how such material changes will be addressed and handled since these Applicants' community objection responses were inconsistent with these GAC Category 2 Advice statements they have just made. It is clearly evident that (i) their original application submission was not done in error and such material changes and GAC Category 2 Advice statements: (i) affect third-parties materially, especially objectors and applicants in contention set, (ii) create unfairness to both objectors and applicants in contention set, (iii) are material, and (iv), if allowed, create a precedent with unintended consequences to the new gTLD Program.

ICANN responded on October 22<sup>nd</sup>, 2013.<sup>33</sup>

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<sup>33</sup> <http://www.icann.org/en/news/correspondence/willett-to-roussos-22oct13-en.pdf>

## iv) Correspondence with Panel and ICC and Proof of Exclusive Access Language in .music LLC's Application

On October 13, 2013 another email was sent to the Expert and the ICC pertaining to objected-to Applicant's GAC 2 Response material change and position change in relation to their exclusive access applications for music-themed .music alerting GAC of their intentions to change their registries from exclusive to non-exclusive:

...it is unclear what the Applicant intends to do with the proposed gTLD string. ...the question of whether or not Applicant's registrar and registry Policies are against the Community and Public interests are the questions presented before this Panel. Accordingly, the new public statements by Applicant that seem either to change their position or run counter to their Application Policies require attention. Because this situation is neither contemplated in the Rules nor what would be expected in a typical proceeding (where the matter is not fluid and changing while under evaluation), the Community respectfully requests clarification from the ICC.

The GAC (and the ICANN NGPC) made it clear that "closed generics" are against the public interest. Applicant's Response to the GAC Advice<sup>34</sup> appears to be inconsistent with their stated Policies and could be interpreted as an admission that Applicant's exclusive registry/sole registrar policies were not in the public or community interest. In its Response to GAC Advice Category 2 Applicant, ostensibly to respond to or avoid GAC criticism, advised ICANN that they will not run an "exclusive access" registry.

While the Applicant may believe that their submission to ICANN in response to the GAC Advice is immaterial, their Application -- as filed prior to the April 12, 2013 Community Objection submission to the ICC -- clearly represents that that they will be the "sole registrar" with resellers (Affiliates) that are only composed of Community Member Associations formed before 2007.

The Application also includes a contractual inclusion of a Policy Advisory Board composed of only Community Member Associations "formed before 2007." ("The dotMusic Registry will establish a Policy Advisory Board (PAB) before launch of the TLD. The role of the PAB will be part of the .MUSIC LLC's contract with ICANN, the Registrar-Registry Agreement and the Registrant Agreement. The PAB will be comprised of twenty-one (21) members representing the Charter Member Organizations of the Global Music Community" - See Applicant's Application Answer to Question 20c<sup>35</sup>).

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<sup>34</sup> <http://newgtlds.icann.org/sites/default/files/applicants/09oct13/gac-advice-response-1-959-51046-en.pdf>

<sup>35</sup> <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails:downloadapplication/1659?t:ac=1659>

Far Further twice reiterates its intention to be the “sole registrar” through its statements in Section 28.4.3 of its Application, using the word “exclusive” to illustrate its “exclusive access” model: “The dotMusic Registry intends to operate as a sole registrar model but will offer exclusive reseller services for music associations to sell domain names to their memberships” and “.Music Registry will set itself up as a **sole registrar**, providing reseller capability to Community Member Associations (i.e Affiliates), who will in turn sell .Music domains to their memberships.” (emphasis added).

The Applicant's statements below that "even if .Music, LLC was now, or intended to operate .Music as a closed generic in the future" and that "it has absolutely nothing to do with a Community Objection" is exceptionally troubling. Applicant seeks to ignore that these issues are at the core of the Community Objection. The question is whether or not the following are against the Community (and public) interest:

- (1) Applicant's sole-registrar model with exclusive resellers (“Affiliates”) Policies;
- (2) Permitting only select Charter Member Organizations / Associations ("Affiliates") formed before 2007 to (i) participate and offer registrations to their members ("Affiliates") (ii) become affiliated resellers to generate revenues through domain registrations, and (iii) become members of the .music Policy Advisory Board ("Affiliates").

If the Applicant is granted the TLD (based on the plain language of their Application) it will become both the exclusive registry (akin to a manufacturer) and also, the "sole registrar" (akin to a retailer). This vertically-integrated approach under one roof is anti-competitive and excludes a significant portion of entities with a legitimate claim to participate. This is of great significance because the Applicant's policies would appear to preclude all other .music Applicants (and any other legitimate interested party) from offering .music domains at the retail level as an ICANN-accredited registrar (or affiliate) who are not “Charter Member Organizations.”

Moreover, contrary to the Applicant's incredulous position below, Amazon, the other “exclusive access” registry applicant for .music, recognized the relevancy and significance of the GAC Advice and responded that they plan to remove their closed "exclusive access" registry model from their application.<sup>36</sup> One could conclude that these changes were made precisely because the GAC Advice (and the ICANN NGPC) made it clear that a closed or exclusive generic gTLD does not serve the global public interest (i.e there is a clear material detriment if such exclusive access registries are allowed to proceed for generic strings).

Finally, Far Further's statement that "changes to the Rules are irrelevant to the Community Objection proceeding" is plainly wrong. The Applicant's representations to ICANN are material, and relevant to whether or not it will run a gTLD that that harms the Community and the global public interest.

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<sup>36</sup> <http://newgtlds.icann.org/sites/default/files/applicants/09oct13/gac-advice-response-1-1316-18029-en.pdf>

It is our understanding that the ICC is currently reviewing and holding decisions to assure compliance and avoid inconsistency with decisions. Accordingly, the ICC is petitioned to review this issue, allow discussion and provide clarification on these points. This issue has the potential to call into question the integrity of the process.

On November 26<sup>th</sup>, 2013 another correspondence was sent to the ICC:

...As you have indicated, the procedure for changing Applications is governed by ICANN rules... The Centre also clearly noted that... “the decision to re-open the case, should the need arise, and to take into account new or amended documents, is taken by the Expert based on the information available and the nature of the cases in question.

The rules that the Expert must abide to are governed by ICANN rules and procedures, most notably the language contained in the Applicant Guidebook (AGB). There are specific provisions in regards to Material Changes found in the AGB<sup>37</sup> to which all Applicants – including... **.music LLC/Far Further (.music 1-959-51046)** must abide to, especially if their position is one of “exclusive access.” However, they have publicly responded to GAC with a position which is 180 degrees different to their Responses to the ICC and different to their Application. This is misleading, inconsistent and legitimate grounds for concern with respect to procedures. If both Applicants’ Responses and “original” Applications were so strong, they did have the option to defend their position with respect to GAC advice - as they did in their Objection Responses - but have now conveniently chosen a different direction, which is misleading and creates a harmful precedent in the ICANN process governing dispute resolution procedures.

It is reasonable to assume that in any proceeding – whether it is one conducted in a court of law or under an ICANN’s dispute resolution procedure – that any inconsistencies or changes in position not reflected in the original testimony – the original Application (without any PICs or GAC Advice Category 1 or 2 material changes) or their Responses to Objections - should be investigated by the Expert so that the procedures followed by the Expert are compliant with the Applicant Guidebook and no harmful precedent, unintended consequences or loopholes are created.

The ICANN Guidebook’s section on “Material Changes” is clear that any information that is deemed "false or misleading may result in denial of the application" (AGB). We strongly believe that many – if not all - music-themed Applicants have provided misleading information in their Responses to the Community Objections because such Responses are not made public by the Centre (emphasis added). As such, there is no Applicant accountability towards the ICANN dispute resolution process or transparency with the Centre since the Applicants’ Responses are not made public. We are deeply concerned with misleading music-themed gTLD Applicant Community Objection Responses especially those given to Experts that GAC Advice was “irrelevant.” Such

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<sup>37</sup> <http://newgtlds.icann.org/en/applicants/customer-service/change-requests>

statements would not be seen under a positive light by both GAC or the ICANN NGPC if they were made public to them.

It is clear that if an Application is materially changed from "exclusive" to "non-exclusive" (by incorporating Category 2 safeguards) or incorporating Category 1 enhanced safeguards, it will affect its business model, its financial statements and its Letter of Credit. Under the ICANN AGB rules such "changes" will likely "involve additional fees or evaluation in a subsequent application round" (AGB) because the entire premise of the Applicant's Application has changed materially.

Last Thursday at the ICANN Public Forum in Buenos Aires/Argentina, we publicly informed the ICANN Board of these types of procedural loophole concerns which objected-to Applicants can use to circumvent the dispute resolution process. We have also met with the ICANN Ombudsman to express these same concerns and he recommended to reach out to the ICC and the Expert Panelist. The fact that the Centre agrees that "ICANN's new gTLD dispute resolution procedure does not provide for any specific provision in this regard" is clear evidence of procedural loopholes that Objected-to Applicants could use to their benefit to circumvent the Community Objections.

Our objective is that Objections are treated in a transparent and accountable manner, consistent with the Applicant Guidebook and rules contained in the AGB in regards to Material Changes or with respect to a change of position that was not in the original Application. We hope that the Experts acknowledge the issues at hand and the harmful precedent as illustrated in the Material Changes section of the AGB... music-themed gTLD Objectors' arguments, whether on the issue of "exclusive access" or "enhanced safeguards," were based on the Applicant's stated positions found in their Applications... Ultimately, the Expert should rule on the Applicant's stated Policies as found in their Applications taking into consideration any relevant new statements by the Applicant as well as new, pertinent ICANN NGPC Resolutions with respect to "exclusive access" or lack of "enhanced safeguards." Otherwise, the process has no meaning, and as long as a party can "shift" position to avoid scrutiny, there is no accountability.

Allowing inconsistent statements to be a justification for avoiding an adverse verdict would create a scenario that obviates the need for the Panel in the first place. We agree with the ICANN Resolutions and they provide additional evidence from ICANN - who, as the ICC agrees, writes the Rules - on the obvious harm created by music-themed Applications that do not have "adequate safeguards" or have "exclusive access." We hope that the Expert Determinations are consistent and do not allow process loopholes for Objected-to Applicants to circumvent the process and the new ICANN NGPC resolutions which have vindicated the concerns presented in the music-themed Community Objections.

Both the ICANN Board and the NGPC responded to the GAC Advice and called for public comment and input regarding "closed generic" Category 2 Applications and took action to materially change how such gTLDs are to be operated and allowed Applicants to intentionally materially change their Applications, in some cases from an exclusive access

registry to a non-exclusive registry – introducing a process which would allow substantial amendments to Applications during proceedings. During this process ICANN failed to respond to Objector’s stated concerns about the effect of GAC Advice on the proceedings and failed to advise the ICC and panel about the decisions made by ICANN. The Applicant .music LLC was not contacted by ICANN to submit a change request to alter the exclusive access language in their Application.

**v) .music LLC GAC Category 2 Advice Response (which  
inconsistent with exclusive access language in their  
current Application)**

## GAC ADVICE CATEGORY 2: EXCLUSIVE ACCESS Response Form for Applicants



Please complete this form and submit it as an attachment to the current Customer Portal case using the following file naming convention: “[Application ID] Response to GAC CAT 2 Advice” (e.g., “1-111-11111 Response to GAC CAT 2 Advice”). All responses must be received no later than 23:59:59 UTC on 04-September-2013.

Please note: This form will be publically posted.

Application Prioritization Number	1557
Application ID	1-959-51046
Applied for TLD (string)	music
Applicant Name	.music LLC

Questions	Response (Please Select one checkbox)
<p>1. Will the TLD be operated as an exclusive access registry?</p> <p>An exclusive access registry is defined as a registry restricted to a single person or entity and/or that person’s or entity’s Affiliates (as defined in Section 2.9(c) of the Registry Agreement).</p>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<p>2. Does your current application state that the TLD will be operated as an exclusive registry?</p>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<p>3. Do you have a pending change request regarding exclusive access?</p>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No



**vi) .MUSIC's ("DotMusic") Opposition Letter and Concerns  
with .music LLC's Application**



June 29th, 2013

## Concerns with Application ID 1-959-51046

To Whom It May Concern,

We would like to address our serious concerns and objection to Application ID 1-959-51046 policies. Our concerns only relate to application policies. This is not an objection to any organization or entity that has supported this Application. Our main objective is to shed light on the policies and educate the entire at-large music community and interested parties.

### **Concern 1: Only Associations founded Prior to 2007 Can Participate and Poses Anti-Competitive Implications and Fairness Concerns**

One of the most troubling exclusionary registration policies that will serious anti-competitive concerns and liability for supporting Organizations relates to the Applicant's "defined-criteria" for registration that requires "Current registration and verifiable membership in a global music community organization that was organized and in existence prior to 2007."<sup>1 2</sup> This means that any legitimate "global music community organization" organized and formed after 2007 does not qualify to become an "Accredited Association," and, in turn, its members will also be disallowed from registration unless they join an "Accredited Association" defined by the Applicant that was organized before 2007.

We support the participation of the entire music community in the String – especially new entrants from emerging and developing nations and regions such as China, India and Africa - not just Associations organized prior to 2007. These regions are expected to grow significantly and introduce new relevant music associations and organizations to serve those regional artists (including collection societies, music unions, educational institutions and other music communities) in the next decade. However, under this application all these important constituents – who unfortunately currently have minimal exposure – will be disallowed from participating because they have been set up before 2007.

### **Concern 2: Ongoing, Manual Cross-Checking of Members by Each Supporting Association is Mandatory and Poses Privacy and Sharing Member Proprietary Information Concerns as well as other Legal Implications**

<sup>1</sup> Applicant's Answer to Question 20a, <https://gtldresult.icann.org/application-result/applicationstatus/applicationdetails/downloadapplication/1659?t:ac=1659>

<sup>2</sup> The Applicant alleges that this registration eligibility policy is an ICANN guideline but it is clearly not. The ICANN Applicant Guidebook Module 4-11 language pertaining to the 2007 date relates to the "definition" of the word "community" and that there was "some understanding of the community's existence prior to September 2007," not an ICANN-mandated registration eligibility policy (<http://newgtlds.icann.org/en/applicants/agb/string-contention-procedures-04jun12-en.pdf>)



The Application's "Accreditation" process is another worrisome component of their restrictive eligibility registration policy. Applicant also confirmed their application policies to the Government Advisory Committee that:

"Domain registrations may be accepted, but will not resolve until the registrant's membership credentials have been verified. This will require verification of relevant membership data during the registration process. This membership will be crosschecked with the relevant member organization. Verification of continued membership is required for renewal, to ensure ongoing eligibility."<sup>3</sup>

Also there is no such certification or thing to qualify an artist to be an "Accredited" artist. Policies of such nature that require cross-checking are suitable for regulated industries (with low volume domain registrations) that require Accreditation, such as .EDU, .COOP, .AERO or .MUSEUM (all have under 10,000 registrations<sup>4</sup>). Incorporating such "cross-checking" policies with a cultural term such as "music" is not applicable since no such "accreditation" exists nor is it appropriate since it transfers all the risk and responsibility to the supporting "Accredited" Associations to perform the "cross-checking" and share their members' data with a 3<sup>rd</sup>-party registrar to complete a registration. Also, and more importantly it creates a division in the community with unfair eligibility rules that discriminate against independent artists who do not belong to Associations.

These "Accredited" Associations will be responsible to manually verify registrant memberships resulting into unnecessary costs especially since such a manual process is not scalable. Other concerns include the high likelihood of legal liability since registrants are mandated to keep an ongoing membership with an Accredited Association just to keep their domain. If membership with an Accredited Association is not renewed each year then a registrant will lose their domain i.e a registrant's domain registration is reliant on ongoing membership with supporting Accredited Association. Other legal risks and anti-competitive issues are likely to arise since a registrant will not be able to switch membership to join a new competing Association that was set up after 2007 since all those new Associations are disqualified from participating.

### **Concern 3: Legitimate Fans are Excluded**

The Application acknowledges that the "term or string "music" is also relevant for the consumers or fans of music" and confess that they are "very much a sustaining force and the "raison d'être" for the Global Music Community" and that "one cannot exist without the other" but excludes them from participation.<sup>5</sup> This is not given fans rising increasing influence on artist careers. According to the 2013 Crowdsourcing Report fan funding has risen 81% to \$2.7 billion. Fans have created a new avenue for artists to raise funds without giving up creative control and

<sup>3</sup> <http://newqtlds.icann.org/sites/default/files/applicants/23may13/gac-advice-response-1-959-51046-en.pdf>, Page 5

<sup>4</sup> <http://www.icann.org/en/topics/new-qtlds/benchmarking-report-15feb10-en.pdf>, Page 16

<sup>5</sup> Ibid

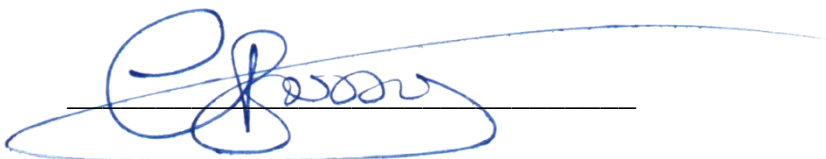
have successfully funded more than 1 million campaigns in 2012. The significance of this trend and its impact on music artists is compelling since global crowd funding volume is forecasted to increase to \$5.1 billion.<sup>6</sup>

#### **Concern 4: Application Policies Can NOT be Changed at a Future Date**

While Applicant might think policies could be changed in the future, according to ICANN rules, the Applicant can not change any of their policies at a future date. Evaluation and scoring is based on the registration policies described in the Application.<sup>7</sup> The scoring and evaluation is not based on policies that are changing or to be determined at a future date. Such a “change” by Applicant would be considered a “material change” because it directly affects the Community Priority Evaluation.<sup>8</sup> Moreover, changes from an Applicant’s stated policies would adversely affect other Applicants in contention. As outlined by ICANN guidelines, “ICANN reserves the right to require a re-evaluation of the application in the event of a material change. This could involve additional fees or evaluation in a subsequent application round. Failure to notify ICANN of any change in circumstances that would render any information provided in the application false or misleading may result in **denial** of the application.”

Please do not hesitate to contact me to discuss any of these issues or concerns that we have expressed in this letter. We believe they are important issues that affect the Domain Name System (DNS) and the artist community that is heavily reliant on the Internet for a substantial core of its activities.

Sincerely,



Constantine Roussos  
.MUSIC  
Email: [costa@music.us](mailto:costa@music.us)  
Telephone: +1 310 985 8661

Supporting .MUSIC Community Member Organizations (MCMO):  
<http://music.us/supporters.htm>

<sup>6</sup> <http://www.crowdsourcing.org/editorial/2013cf-the-crowdfunding-industry-report/25107>

<sup>7</sup> Applicant Guidebook, <http://newtlds.icann.org/en/applicants/agb/guidebook-full-04jun12-en.pdf>, Module 4.2.3, Criterion #3 at 4-15 and 4-16

<sup>8</sup> <http://newtlds.icann.org/en/applicants/customer-service/change-requests>

ICANN Re-Consideration Request filed by .MUSIC

# **Sir Robin Jacob's Conflict of Interest and Work Relationship with Samsung, one of Google's (an objected-to Applicant's) main multi-billion dollar Business Partners**

**Proof that Panelist Sir Robin Jacob was hired to work on behalf of Samsung after he ruled in Samsung's favor as the Judge in a patent case between Samsung and Apple (13-02-27 United States International Trade Commission ITC-862 Protective Order Subscription).**

February 27, 2013

The Honorable Lisa R. Barton  
Secretary  
U.S. International Trade Commission  
500 E Street, S.W.  
Washington, D.C. 20436

Re: *Certain Electronic Devices, Including Wireless Communication Devices,  
Tablet Computers, Media Players and Televisions, and Components Thereof,  
Inv. No. 337-TA-862*

Dear Secretary Barton:

Enclosed for filing please find Protective Order Subscriptions for experts Coleman Bazelon, Ph. D, Philip Green, Thomas D. Vander Veen, Ph. D, Iain Sharp, Michael Allan Martin Davies, Denis Mazeaud, Albert A. Petrick, Keith R. Ugone, Ph.D, and Sir Robin Jacob working on behalf of Respondents Samsung Electronics Co. Ltd., Samsung Electronics America, Inc., and Samsung Telecommunications America LLC in the above-referenced investigation.

Sincerely,

/s/ Joseph V. Colaianni

**UNITED STATES INTERNATIONAL TRADE COMMISSION  
Washington, D.C.**

**In the Matter of**

**CERTAIN ELECTRONIC DEVICES,  
INCLUDING WIRELESS  
COMMUNICATION DEVICES, TABLET  
COMPUTERS, MEDIA PLAYERS, AND  
TELEVISIONS, AND COMPONENTS  
THEREOF**

**Inv. No. 337-TA-862**

**NOTICE OF INSTITUTION OF INVESTIGATION**

Institution of investigation pursuant to 19 U.S.C. § 1337

AGENCY: U.S. International Trade Commission

ACTION: Notice

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on November 30, 2012, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, on behalf of Ericsson Inc. of Plano, Texas and Telefonaktiebolaget LM Ericsson of Stockholm, Sweden. Letters supplementing the complaint were filed on December 3, December 12, and December 19, 2012. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electronic devices, including wireless communication devices, tablet computers, media players, and televisions, and components thereof by reason of infringement of certain claims of U.S. Patent No. 6,029,052 (“the ‘052 patent”); U.S. Patent No. 6,058,359 (“the ‘359 patent”); U.S. Patent No. 6,278,888 (“the ‘888 patent”); U.S. Patent No. 6,301,556 (“the ‘556 patent”); U.S. Patent No. 6,418,310 (“the ‘310 patent”); U.S. Patent No. 6,445,917 (“the ‘917 patent”); U.S. Patent No. 6,473,506 (“the ‘506 patent”); U.S. Patent No. 6,519,223 (“the ‘223 patent”); U.S. Patent No. 6,624,832 (“the ‘832 patent”); U.S. Patent No. 6,772,215 (“the ‘215 patent”); and U.S. Patent No. 8,169,992 (“the ‘992 patent”). The complaint further alleges that an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue an exclusion order and a cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Room 112, Washington, D.C. 20436, telephone (202) 205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810. Persons with mobility impairments who will need special assistance in gaining

access to the Commission should contact the Office of the Secretary at (202) 205-2000. General information concerning the Commission may also be obtained by accessing its internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205-2560.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.10 (2012).

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on January 3, 2013, ORDERED THAT –

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain electronic devices, including wireless communication devices, tablet computers, media players, and televisions, and components thereof that infringe one or more of claims 1-3, 5, 8, 11, 13, 14, and 18 of the '052 patent; claims 28-33, 36, 37, 39-43, 46, 47, 50, 51, and 54 of the '359 patent; claim 30 of the '888 patent; claims 1-3, 8, 10, 19, 20, 23, 24, 26-33, 38, 40, 50, 53-55, 57, and 62-68 of the '556 patent; 1, 4, 6, 9-13, and 16-20 of the '310 patent; claims 1, 24-26, 28, 30, and 54 of the '917 patent; claims 1, 4, 6, 7, 17, 20, 22, and 23 of the '506 patent; claims 1-3, 11-14, 19, 21, 22, and 30-32 of the '223 patent, claims 1, 4, 9, 10, and 12 of the '832 patent; claims 1, 2, 4, 6, 8, 15, 22, 25, 26, 29, 32, 34, 45, 46, 49, 52, and 54 of the '215 patent; claims 1, 3, 5-8, and 10-15 of the '992 patent, and whether an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337;

(2) Pursuant to Commission Rule 210.50(b)(1), 19 C.F.R. § 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties and other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors, 19 U.S.C. §§ 1337(d)(1), (f)(1), (g)(1);

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Ericsson Inc.  
6300 Legacy Drive  
Plano, TX 75024



Telefonaktiebolaget LM Ericsson  
Torshamsgatan 23, Kista  
164 83 Stockholm  
Sweden

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Samsung Electronics America, Inc.  
85 Challenger Road  
Ridgefield Park, NJ 07660

Samsung Telecommunications America LLC  
1301 East Lookout Drive  
Richardson, TX 75082

Samsung Electronics Co., Ltd.  
Samsung Electronics Building  
1320-10, Seocho 2-dong  
Seocho-gu, Seoul 137-857  
Republic of Korea

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, S.W., Suite 401, Washington, D.C. 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.13. Pursuant to 19 C.F.R. §§ 201.16(d)-(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

A handwritten signature in cursive script that reads "William R. Bishop".

William R. Bishop  
Supervisory Hearing and Information Officer

Issued: January 3, 2013

ANNEX L

ICANN Re-Consideration Request filed by .MUSIC

# **Correspondence with ICC before Community Objections were filed**

**Clarifications from ICC that both “Objector and Objector Related-Entities will be taken in context” and that “ICC does not require signed letters from the Related-Entities”**

**From:** Constantinos Roussos  
**Sent:** 25 February 2013 23:07  
**To:** TUEMPEL Hannah  
**Cc:** KOSAK Spela; Tina Dam  
**Subject:** ICANN / ICC Community Objection Clarification - Related group of objectors filing under one community-objection

Dear Hannah Tuempel,

Thank you for the call. It was very helpful.

In recap:

- **Objector and Objector Related-Entities will be taken in context** by Expert Panel in regards to determining "likelihood of material harm" and determining that the Objector and Related-Entities represent "a significant portion of the community" that a likelihood of material harm is inflicted upon.
- The **ICC does not require signed letters from the Related-Entities**

If we have any more questions we will let you know.

Again thank you for the call and your prompt response to this matter.

**From:** Constantinos Roussos  
**Sent:** 25 February 2013 23:07  
**To:** TUEMPEL Hannah  
**Cc:** KOSAK Spela; Tina Dam  
**Subject:** ICANN / ICC Community Objection Clarification - Related group of objectors filing under one community-objection

Dear Hannah Tuempel,

We have some questions regarding to community objections.

We have a coalition of music organizations and federation of governments and arts councils that represent a majority of the music community.

Our goal is to object "collectively" as a majority of the music community against music-themed applicants that create a likelihood of material harm to the music community's legitimate interests, implicitly or explicitly. We would like to do this collectively not independently against multiple applicants. We understand that each different application requires a different objection.

Your FAQ on <http://www.iccwbo.org/products-and-services/arbitration-and-adr/expertise/icann-new-gtld-dispute-resolution/how-to-file-an-objection/> states:

- An Objector may wish to be supported by other entities:
  - An Objector may wish to use the support of other entities to demonstrate its standing.
  - An Objector may also wish to use the support of other entities to finance its Objection.
- However, only the Objector itself will be considered as a party to the proceeding. All other entities will be considered as related entities.
- Accordingly, in case of a Community Objection, the Expert's test as to whether the Objector has standing, will be tested solely with regard to the Objector itself.

Questions:

1. Does the ICC count the Objector and Related-entities as a one unified group of objectors filing the same objection collectively?
2. We understand the lead Objector has to demonstrate standing but how does that relate to showcasing "significant portion of the community"? To showcase a "significant portion of the community" will both the Objector with standing and Related-entities be counted as one singular group of objectors representing a majority of the community sharing the same arguments under the Objection?
3. As a community-based applicant we have a coalition of supporters and we will be participating as a "related-entity" to the objector with standing along with our supporters as "related-entities." Does the ICC require signed objection letters from each one of the related-entities or is it fine to attach them as related entities to the objector with standing without signed letters?