

APPENDIX 1: Timeline of Relevant Events (Reconsideration Request 16-5)

10 February 2016

- The CPE Provider issued its report on the Application (CPE Report), awarding the application 10 out of 16 points and finding that the Application did not meet the CPE requirements for community priority.¹

24 February 2016

- The Requestors submitted Request 16-5, seeking reconsideration of the CPE Report and ICANN organization's acceptance of that Report.²

17 March 2016

- DotMusic sent a letter to the Board “to remind [them] of the consensus GAC Category 1 Advice Resolutions that were accepted by the ICANN Board and [New gTLD Program Committee (NGPC)] in 2014.”³ DotMusic argued that because ICANN org had accepted the GAC Category 1 Advice, “the ICANN Board and NGPC have accepted that the music community, in its entirety, has cohesion based on international law.”⁴

22 March 2016

- Far Further/.Music LLC (Far Further), another community-based applicant for the .MUSIC gTLD who participated in CPE and did not succeed, sent a letter to the Board, asking it to “act consistently and apply the same standards to all parties as it considers [DotMusic's] reconsideration request.” The BGC had previously denied Far Further's request for reconsideration of the results of its CPE application (Request 14-45).⁵

28 March 2018

- DotMusic responded to Far Further's letter to the BGC, asserting that Far Further engaged in a “repeated pattern of behavior of filing spurious letters and abuse of accountability mechanisms” and calling it “misguided and anti-competitive.”⁶
- The National Music Council sent a letter to the BGC in support of the Application and Request 16-5.⁷

¹ <https://newgtlds.icann.org/sites/default/files/tlds/music/music-cpe-1-1115-14110-en.pdf>.

² <https://www.icann.org/resources/pages/14-44-2014-10-22-en>.

³ <https://www.icann.org/en/system/files/files/reconsideration-16-5-dotmusic-to-icann-bgc-17mar16-en.pdf> (emphasis in original).

⁴ *Id.*

⁵ <https://www.icann.org/en/system/files/files/reconsideration-16-5-dotmusic-letter-music-llc-to-icann-22mar16-en.pdf>.

⁶ <https://www.icann.org/en/system/files/files/reconsideration-16-5-dotmusic-to-icann-bgc-28mar16-en.pdf>.

⁷ <https://www.icann.org/en/system/files/files/reconsideration-16-5-national-music-council-to-icann-bgc-28mar16-en.pdf>.

29 April 2016

- DotMusic submitted a request pursuant to ICANN’s Documentary Information Disclosure Policy (DIDP) seeking documents relating to the CPE Report (2016 DIDP Request),⁸ and asked ICANN to postpone its review of Request 16-5 pending ICANN’s response to the DIDP Request. ICANN agreed.

15 May 2016

- ICANN org responded to the 2016 DIDP Request.⁹

30 May 2016

- The Requestors filed Request 16-7, challenging ICANN org’s response to the 2016 DIDP Request.¹⁰

17 June 2016

- DotMusic submitted the “Expert Legal Opinion” of Dr. Jørgen Blomqvist, Honorary Professor in International Copyright (Blomqvist Opinion),¹¹ reiterating the arguments raised in Request 16-5.¹²

26 June 2016

- The BGC denied Request 16-7.¹³

19 July 2016

- The National Music Council sent a clarifying letter to the BGC, “rescind[ing] as error” its prior “endorsement of DotMusic.” The National Music Council explained that it intended to support Far Further’s application for the .MUSIC gTLD rather than DotMusic’s application for the same string.¹⁴

⁸ <https://www.icann.org/en/system/files/files/didp-20160429-1-dotmusic-request-29apr16-en.pdf>.

⁹ <https://www.icann.org/en/system/files/files/didp-20160429-1-dotmusic-response-supporting-docs-15may16-en.pdf>.

¹⁰ <https://www.icann.org/en/system/files/files/reconsideration-16-7-dotmusic-request-redacted-30may16-en.pdf>.

¹¹ Blomqvist Opinion, available at <https://www.icann.org/en/system/files/files/reconsideration-16-5-dotmusic-expert-opinion-blomqvist-redacted-17jun16-en.pdf>.

¹² See *id.*

¹³ BGC Determination on Request 16-7, <https://www.icann.org/en/system/files/files/reconsideration-16-7-dotmusic-bgc-determination-26jun16-en.pdf>. The Requestor has now filed six reconsideration requests: the instant Request 16-5 (challenging the CPE report), Request 16-7 (challenging the response to the 2016 DIDP Request), Request 17-2 (challenging the response to the Requestor’s 2017 DIDP Request), Request 17-5 (challenging ICANN organization’s response to a second 2017 DIDP request, filed jointly with dotgay LLC), Request 18-1 (challenging ICANN organization’s response to a 2018 DIDP Request), and Request 18-5 (challenging the Board’s resolution acknowledging and accepting the CPE Process Review Reports).

¹⁴ <https://www.icann.org/en/system/files/files/reconsideration-16-5-national-music-council-to-icann-bgc-19jul16-en.pdf>.

12 September 2016

- DotMusic submitted the “Expert Ethnomusicologist Opinion” of Dr. Richard James Burgess, Doctor of Philosophy in Ethnomusicology (Burgess Opinion).¹⁵ The Burgess Opinion asserted that the Requestors had satisfied the CPE Criteria for Community Establishment, Nexus between Proposed String and Community, and Community Endorsement.¹⁶

17 September 2016

- DotMusic made an oral presentation to the BGC regarding request 16-5 (2016 Presentation) and submitted the slides used in the 2016 Presentation.¹⁷

19 September 2016

- DotMusic submitted a 3-page letter responding to the BGC’s question, raised during DotMusic’s 17 September 2016 presentation, about how the defined community would be affected if the .MUSIC gTLD is not delegated to DotMusic.

11 October 2016

- DotMusic submitted a “Joint Organisation Experts’ Opinion” in support of Request 16-5, by Dr. Noah Askin (Ph.D.) and Dr. Joeri Mol (Ph.D.) (Joint Opinion).¹⁸ The Joint Opinion asserted that the Requestors had satisfied the CPE Criteria for Community Establishment, Nexus between Proposed String and Community, and Community Endorsement.¹⁹

6 December 2016

- DotMusic submitted a 57-page letter (including Appendices) supplementing its 19 September 2016 response to the BGC’s inquiry.²⁰

15 December 2016

- DotMusic asked the BGC to consider the Council of Europe’s 4 November 2016 Report on “Applications to ICANN for Community-Based New Generic Top-Level Domains (gTLDs): Opportunities and challenges from a human rights perspective” (CoE Report) in connection with Request 16-5.²¹

¹⁵ <https://www.icann.org/en/system/files/files/reconsideration-16-5-dotmusic-ethnomusicologist-opinion-burgess-redacted-12sep16-en.pdf>.

¹⁶ *Id.*

¹⁷ <https://www.icann.org/en/system/files/files/reconsideration-16-5-dotmusic-to-icann-bgc-17sep16-en.pdf>.

¹⁸ <https://www.icann.org/en/system/files/files/reconsideration-16-5-dotmusic-joint-organisation-opinion-redacted-11oct16-en.pdf>.

¹⁹ *Id.*

²⁰ <https://www.icann.org/en/system/files/files/reconsideration-16-5-dotmusic-to-icann-bgc-06dec16-en.pdf>.

²¹ <https://www.icann.org/en/system/files/files/reconsideration-16-5-dechert-to-icann-bgc-15dec16-en.pdf>.

17 September 2016

- ICANN’s Board directed ICANN organization to undertake a review of the process by which ICANN organization interacted with the CPE Provider, both generally and specifically with respect to the CPE reports issued by the CPE Provider as part of the New gTLD Program.²²

18 October 2016

- The BGC discussed potential next steps regarding the review of pending reconsideration requests relating to the CPE process.²³ The BGC determined that, in addition to reviewing the process by which ICANN organization interacted with the CPE Provider related to the CPE reports issued by the CPE Provider (Scope 1), the review should also include: (i) an evaluation of whether the CPE criteria were applied consistently throughout and across each CPE report (Scope 2); and (ii) a compilation of the research relied upon by the CPE Provider to the extent such research exists for evaluations that are the subject of pending reconsideration requests (Scope 3).²⁴ Scopes 1, 2, and 3 are collectively referred to as the CPE Process Review. FTI Consulting, Inc.’s (FTI) Global Risk and Investigations Practice and Technology Practice were retained to conduct the CPE Process Review. The BGC determined that the then eight pending Reconsideration Requests relating to the CPE process, including Request 16-3, would be on hold until the CPE Process Review was completed.²⁵

5 May 2017

- DotMusic submitted a DIDP Request (2017 DIDP Request), seeking 10 categories of documents and information relating to the CPE Process Review.²⁶

4 June 2017

- ICANN org responded to the 2017 DIDP Request (2017 DIDP Response) and explained that, with the exception of certain documents that were subject to DIDP Defined

²² <https://www.icann.org/resources/board-material/resolutions-2016-09-17-en#1.a>.

²³ <https://www.icann.org/resources/board-material/minutes-bgc-2016-10-18-en>.

²⁴ *Id.*

²⁵ <https://www.icann.org/en/system/files/correspondence/disspain-letter-review-new-gtld-cpe-process-26apr17-en.pdf>.

²⁶ <https://www.icann.org/en/system/files/files/didp-20170505-1-ali-request-05may17-en.pdf>. The 2017 DIDP Request sought the same documents, in verbatim requests, as those requested in Items No. 4-13 in a DIDP Request filed by dotgay LLC in May 2017. *Compare* DIDP Request No. 20170518-1, <https://www.icann.org/en/system/files/files/didp-20170518-1-ali-request-18may17-en.pdf>, with the 2017 DIDP Request. dotgay LLC and the Requestor are represented by the same law firm, and that firm filed both DIDP Requests and filed Reconsideration Requests challenging both DIDP Requests. *See* Reconsideration Request 17-2; Request 17-3. Reconsideration Request 17-3 raises many of the same arguments that the Requestor raised in Request 17-2. *Compare* Reconsideration Request 17-2, with Request 17-3.

Conditions for Nondisclosure (Nondisclosure Conditions), all the remaining responsive documents had already been published.²⁷

10 June 2017

- DotMusic submitted a joint DIDP Request with dotgay LLC, seeking four categories of documents and information relating to the CPE Process Review (Joint DIDP Request).²⁸

18 June 2017

- DotMusic filed Reconsideration Request 17-2 (Request 17-2), which challenged certain portions of the 2017 DIDP Response.²⁹

10 July 2017

- ICANN org responded to the Joint DIDP Request.³⁰

25 July 2017

- DotMusic and dotgay LLC filed Request 17-4, challenging certain portions of the Joint DIDP Request.³¹

23 September 2017

- The Board denied Request 17-2, consistent with the BAMC's recommendation.³²

29 October 2017

- The Board denied Request 17-4, consistent with the BAMC's recommendation.³³ DotMusic subsequently initiated Cooperative Engagement Process proceedings concerning Requests 17-2 and 17-4.³⁴

13 December 2017

²⁷ <https://www.icann.org/en/system/files/files/didp-20170505-1-ali-response-04jun17-en.pdf>.

²⁸ DIDP Request No. 20170610-1 (<https://www.icann.org/en/system/files/files/didp-20170610-1-ali-obo-dotgay-et-al-request-redacted-10jun17-en.pdf>).

²⁹ Request 17-2 (<https://www.icann.org/en/system/files/files/reconsideration-17-2-dotmusic-request-redacted-18jun17-en.pdf>).

³⁰ ICANN org response to DIDP Request No. 20170610-1 (<https://www.icann.org/en/system/files/files/didp-20170610-1-ali-obo-dotgay-et-al-response-10jul17-en.pdf>).

³¹ Request 17-4 (<https://www.icann.org/en/system/files/files/reconsideration-17-4-dotmusic-dotgay-request-redacted-25jul17-en.pdf>).

³² <https://www.icann.org/resources/board-material/resolutions-2017-09-23-en#2.a>.

³³ Board Action Regarding Request 17-4 (<https://www.icann.org/resources/board-material/resolutions-2017-10-29-en#1.a>).

³⁴ See Cooperative Engagement and Independent Review Processes Status Update, 29 March 2018 (<https://www.icann.org/en/system/files/files/irp-cep-status-29mar18-en.pdf>).

- ICANN organization published FTI’s reports issued in connection with the CPE Process Review.³⁵

10 January 2018

- DotMusic filed another DIDP Request, seeking 19 categories of documents and information relating to the CPE Process Review (2018 DIDP Request).³⁶

16 January 2018

- DotMusic submitted a letter to the Board, claiming that the CPE Process Review lacked transparency or independence, and was not sufficiently thorough.³⁷ DotMusic asked the Board to take no action with respect to the conclusions reached by FTI until the parties have had an opportunity to respond to the FTI Report and to be heard as it relates to their pending reconsideration requests.³⁸

2 February 2018

- DotMusic submitted a 66-page letter to the Board and the BAMC, challenging the results of the CPE Process Review Reports.³⁹ DotMusic argued that FTI did not “substantive[ly] engage[] with” DotMusic’s concerns about the CPE Report because:

9 February 2018

- ICANN org responded to the 2018 DIDP Request.⁴⁰ ICANN org provided links to all the responsive, publicly available documents. With respect to those requested materials that were in ICANN org’s possession and not already publicly available, ICANN org explained that those documents would not be produced because they were subject to certain Defined Conditions of Nondisclosure (Nondisclosure Conditions) set forth in the DIDP. Notwithstanding the Nondisclosure Conditions, ICANN org “also evaluated the documents subject to these conditions . . . [and] determined that there are no circumstances for which the public interest in disclosing the information outweighs the harm that may be caused by the requested disclosure.”⁴¹ Additionally, in response to two of the requested items, ICANN org explained that the requested documentary information did not exist.⁴²

³⁵ See <https://www.icann.org/news/announcement-2017-12-13-en>.

³⁶ DIDP Request No. 20180110-1 (<https://www.icann.org/en/system/files/files/didp-20180110-1-ali-request-redacted-10jan18-en.pdf>).

³⁷ See <https://www.icann.org/en/system/files/correspondence/ali-to-icann-board-16jan18-en.pdf>.

³⁸ <https://www.icann.org/en/system/files/correspondence/ali-to-icann-board-16jan18-en.pdf>.

³⁹ See 2 February 2018 email from C. Roussos to ICANN Board attaching “Analysis of .MUSIC Community Priority Evaluation Process & FTI Reports” (DotMusic CPE Process Review Letter) (<https://www.icann.org/en/system/files/files/reconsideration-16-5-dotmusic-cpe-fti-to-icann-board-02feb18-en.pdf>).

⁴⁰ 2018 DIDP Response (<https://www.icann.org/en/system/files/files/didp-20180110-1-ali-response-redacted-09feb18-en.pdf>).

⁴¹ *Id.*

⁴² *Id.*

10 March 2018

- DotMusic filed Request 18-1, challenging certain portions of the 2018 DIDP Response.⁴³

15 March 2018

- The Board acknowledged and accepted the findings set forth in the CPE Process Review Reports, declared that the CPE Process Review was complete, concluded that, as a result of the findings in the CPE Process Review Reports there would be no overhaul or change to the CPE process for this current round of the New gTLD Program, and directed the BAMC to move forward with consideration of the remaining Reconsideration Requests relating to the CPE process that were placed on hold pending completion of the CPE Process Review (the 2018 Resolutions).⁴⁴ The Board instructed the BAMC to consider the remaining Requests in accordance with the Transition Process of Reconsideration Responsibilities from the BGC to the BAMC (Transition Process),⁴⁵ and with a Roadmap for the review of the pending Reconsideration Requests (Roadmap).⁴⁶

19 March 2018

- The BAMC invited the Requestors to “submit additional information relating to Request 16-3, provided the submission is limited to any new information/argument based upon the CPE Process Review Reports” by 2 April 2018. The BAMC also invited the Requestors to “make a telephonic oral presentation to the BAMC in support of” Request 16-5. The BAMC requested “that any such presentation be limited to providing additional information that is relevant to the evaluation of Request 16-5 and that is not already covered by the written materials.”⁴⁷

23 March 2018

- DotMusic responded to the BAMC’s 19 March 2018 invitation to submit supplemental briefing and/or make a telephonic presentation concerning Request 16-3.⁴⁸ DotMusic “reject[ed] BAMC’s invitation to make a telephonic presentation limited to 30 minutes”

⁴³ <https://www.icann.org/en/system/files/files/reconsideration-18-1-dotmusic-request-redacted-10mar18-en.pdf>.

⁴⁴ <https://www.icann.org/resources/board-material/resolutions-2018-03-15-en#2.a>. One Board member, Avri Doria, abstained from voting on the 2018 Resolutions due to concerns “about the rigor of the study and some of its conclusions.” San Juan ICANN Board Meeting, 15 March 2018, at Pg. 12-13

(<https://static.ptbl.co/static/attachments/170857/1522187137.pdf?1522187137>) However, Ms. Doria nonetheless “accept[ed] the path forward” that the Board was setting. *Id.*

⁴⁵ <https://www.icann.org/en/system/files/files/reconsideration-responsibilities-transition-bgc-to-bamc-05jan18-en.pdf>.

⁴⁶ 2018 Resolutions. *See also* Roadmap (<https://www.icann.org/en/system/files/files/roadmap-reconsideration-requests-cpe-15feb18-en.pdf>).

⁴⁷ <https://www.icann.org/en/system/files/files/reconsideration-18-5-dotmusic-bamc-recommendation-attachment-1-14jun18-en.pdf>.

⁴⁸ <https://www.icann.org/en/system/files/files/reconsideration-16-3-et-al-dotgay-dechert-to-icann-board-bamc-redacted-23mar18-en.pdf>.

and “reject[ed] ICANN’s attempt to impose an artificial two weeks deadline” for supplemental briefing.⁴⁹

5 April 2018

- DotMusic reiterated to the BAMC that, “[i]n order to provide ICANN with further substantive comments on the CPE Process Review,” DotMusic “must have” certain of the items it sought in its 23 March 2018 letter.⁵⁰

14 April 2018

- DotMusic submitted a new Reconsideration Request (Request 18-5) seeking reconsideration of the 2018 Resolutions.⁵¹

18 July 2018

- The Board denied Requests 18-1 and 18-5, consistent with the BAMC’s recommendations.⁵²

⁴⁹*Id.* at Pg. 4-5.

⁵⁰ 5 April 2018 email from R. Wong to ICANN organization (<https://www.icann.org/en/system/files/files/reconsideration-18-5-dotmusic-bamc-recommendation-attachment-2-14jun18-en.pdf>).

⁵¹ Request 18-5 (<https://www.icann.org/en/system/files/files/reconsideration-18-5-dotmusic-request-redacted-14apr18-en.pdf>).

⁵² Board Action on Request 18-1 (<https://www.icann.org/resources/board-material/resolutions-2018-07-18-en#2.b>); Board Action on Request 18-5 (<https://www.icann.org/resources/board-material/resolutions-2018-07-18-en#2.f>).